

**For the Rule of Law**

# THE REVIEW



**INTERNATIONAL COMMISSION OF JURISTS**

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# Human Rights in the World

## Eritrea

For a quarter of a century, the Eritrean Movement has sustained a war of liberation against Ethiopia. The historical and legal background to the conflict as well as the claim of Eritrea to self-determination were discussed in the ICJ Review No. 26 (June 1981).

The conclusion reached was that the Eritrean people are entitled to determine their future within the principle of self-determination, and to have their case heard by the United Nations. However, no state has been willing to raise the issue at the United Nations. It appears that strategic and geo-political interests continue to dictate this silence on the Eritrean issue at the United Nations as well as at the O.A.U., in spite of the growing number of victims of the Ethiopian and Eritrean war, the number of Eritrean refugees, most of them in the Sudan, and the number of displaced persons inside Eritrea. Moreover, according to the available information, a substantial number of Ethiopian soldiers are said to be held by the Eritrean People's Liberation Front (EPLF). At the 44th session of the UN Human Rights Commission, the International Commission of Jurists expressed its concern about these prisoners. The Ethiopian government considers them as deserters and refuses to acknowledge them as Prisoners of War. It is not prepared to negotiate with the EPLF for their return which would imply recognition of the EPLF and of an internal conflict. It has not proved possible to resolve the

problem under the Additional Protocol of the Geneva Conventions relating to internal conflicts.

The EPLF wishing to be relieved of its responsibility for, and the cost of, maintaining these prisoners, has requested the International Commission of Jurists to assist them in finding a solution based on humanitarian grounds. The situation is very complex but it should be recalled that during the period 1978-1979, a substantial number of prisoners were allowed to return to the areas controlled by the Ethiopian forces. It is reported that a number of them have been reintegrated into the Ethiopian forces, while others, considered as deserters, were summarily executed. It seems that the only hope for a solution lies in persuading the parties to accept the ICRC as an intermediary in order to negotiate a humanitarian solution. However, this hope seems slim especially in view of the recent measures taken by the Ethiopian government, including:

- expulsion of the relief agencies operating in Eritrea and Tigray.
- general mobilisation for a large military offensive in the North of Ethiopia.
- proclamation of a state of emergency in Eritrea and Tigray.

These measures are in part the result of EPLF victories on the Nafa, Agdabet and Halhal fronts. These victories are said to have forced the Ethiopian govern-

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ment to abandon a number of towns, including Barentu, Ali Ghidir, Haicota, Tessenei and Agordat. The residents of these towns were able to elect municipal councils for the local administration and Eritrean relief agencies were able to provide aid to areas most recently liberated.

The expulsion of the relief agencies has deeply concerned not only the agencies involved, but also the International Community. The UN Secretary-General has sent a representative to Addis Ababa to plead against these measures of expulsion. These measures, which will increase the suffering from famine of the populations affected were taken for 'reason of security' according to the Ethiopian authorities. Hitherto, the relief agencies have been able to carry on their work on behalf of the civilian population, while the war rages around them. This has been due to an explicit consensus of the armed forces on both sides. But this consensus no longer exists. On 21 May, Ethiopia ordered the ICRC to withdraw within two weeks "all the material and food under its control" and threatened to carry out "alternative measures" if this order were not executed. The Ethiopian Commissioner for relief aid has stated that "the relief activities in Eritrea and Tigray will be implemented once the bandits (ref. to the EPLF) will have been crushed militarily."

The general mobilisation announced by the Ethiopian authorities has already taken effect. On 12 May, an attack by the Ethiopian army allegedly killed approximately 400 civilian residents of She'eb in Eritrea and compelled approximately 8,000 people to flee to the valleys without

any shelter. According to a report of the EPLF the Ethiopian troops set fire to She'eb and six villages in the surrounding region. It is deplorable that the civilian population is the victim of military operations in violation of the Geneva Conventions.

A government Decree of 14 May has appointed new military administrators with absolute powers in Eritrea and Tigray. Soldiers and police are allowed to enter and search any home at any time. They can stop, arrest and shoot civilians on the spot. They can evict people and move them from place to place and confiscate civilian property. All civilians have been ordered to evacuate a 10 km (6 mile) strip along the border with Sudan and the Red Sea Coast within 15 days.

It is to be feared that the expulsion of the relief agencies and the use of powers of exception in Eritrea and Tigray will sow the seeds of extensive repression of the civilian population, who is regarded as supporter of the liberation movements. Indeed, without its active support, it would clearly be difficult for the Eritrean forces to maintain control over the liberated areas. This support of the population adds weight to the claim that the Eritrean people should be able to determine their future on the basis of self-determination.

In view of the history of this conflict, as summarised in ICJ Review No. 26, it cannot be said that to raise the Eritrean issue in the UN General Assembly would be a violation of Article 1(7) of the UN Charter relating to internal affairs of states.

## Fiji

Subsequent to the publication of an article in the ICJ Review No. 39 (December 1987), the head of the military government in Fiji, Brig. Rabuka, resigned as President on 5 December 1987, and was replaced by the former Governor-General, Ratu Sir Penaia Ganilau. Sir Penaia nominated as Prime Minister Ratu Sir Kamisese Mara, who had previously held this post for 17 years from the time of Fijian independence in 1970 until his election defeat in April 1987. Thus, an interim civilian administration was established and the Prime Minister announced that a new Constitution would be drafted to provide for a return to parliamentary democracy.

The interim government, through a 'Fundamental Rights and Freedoms Decree', restored basic human rights and fundamental freedoms. Following the establishment of the civilian government, the Supreme Court judges who had been appointed by the military administration were removed from office to facilitate the creation of an independent judiciary. The President, through the 'Judicature Decree', created a High Court, a Fiji Court of Appeal and a final appellate court known as the Supreme Court of Fiji. The 'Judicature Decree' stated that 'every court shall, in the exercise of its judicial functions, be independent of the Executive or any other authority'. Sir Timoli Tirivaga, who had resigned from the post of Chief Justice following the military coup, resumed his position as head of the Supreme Court. Similarly Sir Moti Tikaram, a member of the International Commission of Jurists who had resigned as Ombudsman, accepted appointment as Resident Justice of Appeal.

In March 1988, the Prime Minister announced that a Cabinet Committee was considering proposals for a new Constitution. The proposals are to be conveyed first to a special meeting of traditional chiefs from all parts of Fiji and then to the Great Council of Chiefs. This process of consultation with the chiefs and their Council will be followed by consultations with an 'Advisory Committee' consisting of representatives of major ethnic communities and cultural groups. The Prime Minister further stated that, once a broadly acceptable Constitution including electoral provisions are finalised, elections will be held as a first step towards representative government. He also stated that, "we are clear in our perception and firm in our belief that a new constitution will have to ensure the full protection of the fundamental interests and concerns of the indigenous Fijian people, but at the same time accommodate on a fair and equitable basis, the position of the other communities in our multi-ethnic and multi-cultural society."

The interim government has set itself a two year time-frame to complete the drafting of the Constitution and to hold elections for the establishment of a representative government.

It is commendable that Brig. Rabuka relinquished office voluntarily and paved the way for the establishment of an interim government, thereby creating possible conditions for the restoration of parliamentary democracy in Fiji. The task of drafting a constitution that would be acceptable to all sections of the population is not easy and in the words of the Prime Minister, "the interim administration has no illusion about the difficulty of its task."

We are also confident that through the framework of consultations and dialogue, it shall be possible to develop a broadly

acceptable constitution that will provide for a speedy return to parliamentary democracy."

## India

Following the 1975-77 state of emergency, proclaimed for reasons of "internal disturbances", the parliament of India amended the constitution in 1977 so that a state of emergency could only be proclaimed for reasons of "war, external aggression or armed rebellion."

During the 1975-77 emergency, fundamental rights were curtailed. In particular, article 21 of the Constitution stating that "no person shall be deprived of his life or personal liberty, except according to procedure established by law", was suspended. This implied that no writ of habeas corpus could be filed to challenge the legality of an order or detention. (Under the Indian Constitution, a writ of habeas corpus or any other writs can be filed if any of the fundamental rights are infringed). When the government's suspension of article 21 was challenged in the Supreme Court of India\*, the Court proclaimed that article 21 shall remain suspended during the entire period of the state of emergency and no writ petition could be filed to challenge the legality of any detention orders or other orders. There was thus no way of challenging the arbitrary actions of the government, which contributed to widespread abuses of human rights.

In order to prevent such arbitrary actions by the government in the future, the post emergency parliament in 1977

amended the Constitution so that article 21 can not be suspended during a state of emergency.

In March 1988, however, the Indian Parliament adopted the 59th amendment to the Constitution, thereby amending the articles dealing with the proclamation of states of emergency. As a result of this latest amendment, the government can proclaim a state of emergency "if the integrity of the country is threatened by internal disturbance in any part of the territory of India", and article 21 of the Constitution will be automatically suspended whenever a state of emergency is proclaimed in the whole or in part of India. The government has thus restored in effect the pre-1977 articles concerning states of emergency.

The amendments were justified by the government as necessary to deal with the situation in the Punjab. Human rights activists in India, however, argue that the government has already instituted a number of measures in order to deal with the situation in the Punjab and that the imposition of a state of emergency and suspension of article 21 is unwarranted. According to Mr. Fali Nariman, former Solicitor General of India and a member of the International Commission of Jurists, article 21 enables the Punjab courts to grant relief to those who were either inadvertently, falsely or mali-

\* The Judgement of the Supreme Court in ADM Jabalpar vs Shirkant Shukla.

ciously identified as terrorists or their accomplices and, with the suspension of article 21, believes there will be much more arbitrariness and increasing disregard for human rights at all levels.

By introducing the latest amendments, India is violating its obligations under the International Covenant on Civil and Political Rights to which it is a party. Under article 4 of the Covenant, no state party shall, even in time of an emergency threatening the life of the nation, derogate inter-alia from the Covenant's guar-

antees of the right to life, and freedom from torture, or other cruel, inhuman or degrading treatment or punishment.

The government should consider withdrawing the 59th amendment to the Constitution. This would retain the safeguard provided by the 1977 amendment which provided that article 21 shall not be suspended even in the case of an emergency, and restore the government's compliance with article 4 of the International Covenant on Civil and Political Rights.

## Palau

In January 1988, a mission was organised by the American Association for the ICJ (AAICJ) and sent to the Republic of Palau in Micronesia on behalf of the ICJ and the AAICJ. The purpose of the mission was to investigate complaints about threats to the Rule of Law and interference in the independence of the Judiciary. The mission was composed of Mr. William J. Butler, Chairman of the Executive Committee of the ICJ, Judge George Edwards of the United States Court of Appeals for the Sixth Circuit and Justice Kirby President, Court of Appeals, Supreme Court, New South Wales. In late April 1988, the report of the mission was published in New York.\* This note summarises the main points.

Palau is a group of islands on the western perimeter of Micronesia, not far from the Philippines. After successive periods of Spanish, German and Japanese colonial rule, Palau came under the authority

of the United States of America in September 1944. It was occupied at that time as part of the "island hopping" policy for the defeat of Japan. In 1947 a trusteeship agreement was entered by the United States of America and the Security Council of the United Nations, to include Palau. By 1980, the relevant trust territory had been divided into four political entities, one of which was Palau. Palau still has strategic importance in the Pacific. Reports that it is under consideration by the United States as an alternative site for naval bases presently in the Philippines have been denied.

In April 1979, a constitutional convention in Palau adopted a federal constitution. Following concern expressed about the fate of the Micronesian people of Bikini, the proposed constitution included a limitation on the use, testing, storage or disposal in Palauan territory of "harmful substances such as nuclear, chemical,

\* American Association for the ICJ, *Palau: a Challenge to the Rule of Law in Micronesia*, report of a mission, New York, April 1988.

gas or biological weapons." This constitution was approved at referendum by 92% of the population of Palau. However, the new constitution was opposed by the United States which was concerned that it might cut across the policy of that country not to admit or deny the existence of nuclear materials on its naval vessels. The High Court of the Trust Territory set aside the constitutional referendum on a technical point. A new draft constitution was then submitted in October 1979 omitting the "nuclear clause". However, this constitution was rejected by 70% of the people. In July 1980, by a third referendum, the original constitution was reaffirmed. It contains in Article XIII, section 6, a prohibition on the use, testing, storage or disposal within Palau of (relevantly) nuclear weapons without the express approval of not less than 75% of the votes cast in a referendum submitted on that specific question.

Following the adoption of the new constitution, negotiations took place between the government of Palau and the government of the United States, which remains the Administering Power under the trusteeship. The purpose was to establish the post trusteeship relationship between the two countries. Under Article 76 of the United Nations Charter, the Trustee has a duty to advance the "progressive development" of the trust territory "towards self-government or independence" in compliance with the "freely expressed wishes of the peoples concerned". Other parts of the former trust territory have moved towards the status of independent republics. So-called "Compacts of Free Association" with the United States have been entered by the Federal States of Micronesia and the Marshall Islands. Other islands in the former trust territory have opted for, or moved towards, "Commonwealth sta-

tus" (the Northern Marianas and Guam). The compacts all give the United States rights to use the territory concerned for military purposes.

The negotiated compact, with its contemplation of the entry of the United Nations vessels, possibly carrying nuclear people of Palau for the purpose of securing general approval of the compact and specific approval of section 314 in it relating to the use of "radioactive" materials. Although in five referenda significant majorities favoured the proposal, in none did the majority reach 75%. The last such referendum was held in June 1987.

The report of the ICJ mission outlines the events which followed the defeat of the June 1987 referendum. These events included steps taken to propose an amendment to the constitution by a two-stage procedure: to allow the compact to be adopted by a simple majority of those voting and then to submit it for approval by such a simple majority; the standing down of large numbers of government employees upon the basis that without the compact, funds to pay their salaries were running out; a challenge to the constitutional validity to the two stage procedure for the amendment of the constitution; violence and intimidation brought to bear upon the litigants who had mounted that challenge; and the attempted intimidation of the judiciary involved in hearing the challenge.

The two stage move by referendum to permit the compact to be approved by a simple majority of the people of Palau was duly held. The compact was then purportedly approved in this way. Two legal challenges were thereupon mounted in the Supreme Court of Palau. The first, in August 1987, was brought by the Ibedul, the paramount Chief of Palau under the traditional law. However, in return for an arrangement made with the

President of Palau, the Ibedul consented to the dismissal of his proceedings. Shortly afterwards a number of Palauan women filed a suit raising precisely the same points of constitutional challenge as had been pleaded in the Ibedul's action. It was this suit (*Ngirmang Vs. Salii*) which was to initiate the ICJ mission.

The response to the suit brought by the Palauan women was an outbreak of violence vividly described in the ICJ mission report. The father of the main plaintiff was murdered and her house was firebombed; most of the plaintiffs were threatened with violence and the homes of some of them were fired upon; a committee of furloughed workers surrounded the Supreme Court demanding that the court dismiss the case; and letters were written by the committee to the Chief Justice directly, protesting about his alleged partiality. Soon after receiving such letters the Chief Justice reversed an earlier order he had made, disqualified himself from further hearing the matter and assigned the case to Judge Hefner, a Judge of the Supreme Court of Palau who is normally resident in the Northern Marianas.

When Judge Hefner arrived in Palau he was immediately faced by a request of the women plaintiffs to withdraw their suit. On 9 September 1987 he made an important statement in court recording the "indications that the dismissal was brought about by intimidation through the use of violence". He concluded his statement:

"The courts are established to allow anyone to have their case heard and decided by an impartial tribunal. Even the so-called little person or the underdog is entitled to have his/her day in Court no matter how unpopular his or her cause may be. If in this case

any one of the plaintiffs have been denied that right, it is tragic... The justice system has failed the plaintiffs."

The ICJ mission report records its findings as above. It is highly critical of the Bar of Palau for failing to defend the independence of the judiciary and the right of parties to litigate their disputes in the courts. It records the appearance of intimidation which arises from the order of the Chief Justice vacating his previous orders and disqualifying himself after receiving threatening letters from the Committee of Furloughed Workers. It urges that the United States, as Administering Power, should not terminate its trusteeship until the issue raised in the litigation challenging the constitutional validity of the approval of the Compact is determined in the Supreme Court of Palau. The ICJ mission report asserts that the certificates of the Executive Government of Palau and of the President of the United States that constitutional process has been duly observed are not conclusive, at least in the light of the evidence that proceedings in the Supreme Court of Palau were withdrawn under threat and intimidation. The report recommends that if the women plaintiffs recommence their proceedings they should be protected by the government of Palau, which should also investigate and bring to justice those responsible for the acts of violence and intimidation described. The report concludes with a recommendation that steps should be taken to educate the people of Palau concerning the rights of the citizens guaranteed by their constitution, including the right to an independent judiciary and to observance of the rule of law.

Shortly after the ICJ mission report was released and concurrent enquiries were underway before committees of the

United States Congress, it was announced in Palau that the women plaintiffs would recommence their proceedings in the Supreme Court of Palau. Furthermore, proceedings in the United States Congressional Committees made it apparent that, until the Supreme Court of Palau has determined the issues raised by the women Plaintiffs, Congress will not approve the termination of the trusteeship and thus the conclusion of direct United States involvement in responsibil-

ity for Palau.

The report puts the United States on notice of the violations set forth in the document and urges it to take steps to ensure that the Rule of Law in Palau is upheld. The Supreme Court of Palau in a 33 page judgment of Judge Hefner held that the referendum held in August 1987 was unconstitutional and of no effect. It appears that there may have to be another referendum, requiring a 75% majority.

## Singapore

The June 1987 issue of the ICJ Review No. 38 contained an article on Singapore, concerning the detention without trial or charge of 22 persons for an alleged "Marxist Conspiracy". By the end of 1987, all but one were released under the condition that they should not join any political party or social organisation and not leave Singapore without the permission of the authorities.

On 18 April 1988, eight of these former detainees were rearrested along with Patrick Seong, a lawyer, who had represented some of these persons during their earlier detention.

Prior to this rearrest, these eight persons had issued a signed public statement in which they denounced their detention last year, during which they were subjected to ill-treatment. One of the former detainees who has also signed the statement, a lawyer, Tang Fong Har, escaped arrest by remaining overseas when the statement was released. The government has issued a warrant of ar-

rest against her for failing to return to Singapore as stipulated in the travel authorisation granted to her.

In their statement the eight now detained and Tang Fong Har categorically denied the government's accusation at the time of their arrest of being involved in a "Marxist Conspiracy" to subvert the existing social and political system in Singapore". They further stated that:

- "We were never a clandestine, communist or marxist network and many of us did not even know one another before the arrest."
- "We have never propagated, in words or in action, a communist state for Singapore. Rather, we had through open and legitimate organisations and legitimate means, advocated more democracy, less elitism, protection of individual freedoms and civil rights, greater concern for the poor and the less privileged, and less interference in the private lives of citizens."

- "Absurdly, it seemed to us that we were arrested and detained for the legitimate exercise of our rights as citizens through registered and open organizations. We did not infiltrate these organisations but joined them as members, volunteers and full-time workers. Neither did we use these organisations as fronts to propagate subversive activities."

Concerning their treatment during detention, they stated:

- "Following our sudden arrests, we were subjected to harsh and intensive interrogation, deprived of sleep and rest, and some of us for as long as 70 hours inside freezing cold rooms. Most of us were hit hard in the face, some of us no less than 50 times, while others were assaulted on other parts of the body during the first three days of interrogation."
- "We were actively discouraged from engaging legal counsel, advised to discharge our lawyers and refrain from taking legal action so as not to jeopardise our chances of release."
- "We were compelled to appear on television and warned that our release would depend on our performance on television. We were coerced to make statements to incriminate ourselves and other detainees."
- "What we said on television was grossly distorted and misrepresented by editing and commentaries, which attributed highly sinister motives to our actions and associations."

Immediately after their arrest, the Singapore government repeated in a press release that their arrest was due to their participation in a marxist conspiracy. The

government justified their rearrest by stating that:

"The detainees now claim that everything they did was legal and legitimate. When they claim, or worse, if they truly believe, that they have done nothing wrong, there is every likelihood that they will resume their former activities. The government must determine why they have repudiated their earlier statements and reversed their positions. It has therefore rearrested the eight former detainees who were in Singapore. In addition, it has also arrested Patrick Seong, a lawyer in connection with the investigations."

Concerning the accusations of ill-treatment, the government stated that they are unspecific and vague and do not provide any specific instances of, or evidence for, the allegations.

The government also announced the appointment of a Commission of Inquiry to determine whether the marxist conspiracy was a government fabrication, the circumstances under which the nine former detainees have retracted their previous statements and whether the detainees were assaulted and tortured as alleged.

On April 1988, the government cancelled the Commission of Inquiry stating that it had been rendered redundant by sworn declarations by the eight detainees retracting their earlier public statement. The retraction of their statement, while in incommunicado detention, raises doubts as to whether they signed the declaration of their own accord or whether they were coerced into doing it, particularly in view of the allegations of ill-treatment and coercion during their previous detention.

The ill-treatment referred to in the former statement is corroborated by separate declarations by three of the nine signatories. The lawyer, Tang Fong Har who escaped arrest described in a statement issued in Europe, how she was slapped in the face during interrogations and denied sleep for some seventy hours. Similarly, Wong Souk Yu, now in detention, recounted in a statement published in the *Far Eastern Economic Review* (5 May 1988) her treatment during the period of interrogation and how her statements to the interrogation officers were distorted, misrepresented and quoted out of context when presented on television. Another detainee, Mr. Tang Lay Lee has similarly recounted how she was interrogated in a very cold room, slapped several times and doused with cold water.

On 6 May, the government arrested another lawyer and President of the Law Society, Mr. Francis Seow, who had represented two of the detainees in a habeas corpus hearing filed by their relatives. He was arrested during his visit to

the detention centre while taking instructions from his clients. According to the government, he was arrested for questioning as part of the government's investigations into foreign interference in the domestic affairs of Singapore. The arrest of Mr. Francis Seow has deprived the two detainees of their legal counsel. He was one of the few lawyers who were ready to test the legality of detentions under the Internal Security Act.

It is deplorable that the government rearrested the eight persons under the Internal Security Act, instead of bringing them to trial and seeking to prove the allegations that they were part of a marxist conspiracy. In view of the retraction of their public statements, the government should inquire into the allegations of ill-treatment and provide the detainees with an opportunity to put forward their defence in an open trial. Similarly, the two lawyers, Patrick Seong and Francis Seow, should either be released or tried for any criminal acts they are alleged to have committed.

## Taiwan

In July 1987 Martial Law, which had been in force in Taiwan for the last 38 years, was lifted.

In 1986, the authorities had already showed signs of liberalisation by tacitly approving the formation of an opposition party (prohibited under martial law). The opposition party, called the 'Democratic Progressive Party (DPP)', demanded an end to martial law and the establishment of direct trade, tourist and postal links with mainland China. In December 1986, DPP contested the elections that were

held for 73 seats in the Legislative Yuan (Parliament) and for 84 seats in the National Assembly (Upper House). Hitherto in such elections, only individuals were able to contest the ruling party candidates. For the first time, an opposition party, the DPP, fielded its candidates and received 22 percent and 19 percent of the votes for the Legislative Yuan and the National Assembly respectively.

These positive developments were followed by the lifting of martial law in July 1987, which implied that civilians

would no longer be subject to arrest and trial by military courts. Also, the administration of regulations concerning publications was shifted from the security agencies to the government information office, and the existing restrictions on the formation of political parties and freedom of association were reduced.

However, the lifting of martial law was immediately followed by the promulgation of a National Security Law, justified by the authorities as necessary to cope with military threats from China and to maintain national security and order. Under the National Security Law, judgements or sentences passed by military courts during martial law cannot be appealed or challenged in civilian courts.

The National Security Law has been criticised by the native Taiwanese opposition groups as prohibiting any discussion on the present anachronistic claim of sovereignty over all of China including Taiwan by the ruling KMT party and the party's adherence to the 1947 Constitution that was drawn up on mainland China. Their criticism stems from Article 2 of the National Security Law which states that, "Public assembly and association must not violate the Constitution, advocate communism or division of the national territory". This implies that demands for changes in the 1947 Constitution and for the recognition of Taiwan as a separate entity cannot be made by native Taiwanese. Both these issues are crucial for the political participation of the native Taiwanese because under the fiction that the national legislature represents the whole of China, they constitute a minority in these institutions. No general elections have been held since 1948 and the surviving mainland representatives elected in 1948 continue to hold their seats in the Legislative Yuan as well as in the National Assembly. Only peri-

odic 'supplementary elections' are held for the purpose of choosing additional representatives from Taiwan province and the offshore islands. As a result, of the total current Legislative Yuan's membership of 315, the Taiwanese, who constitute 80% of the population, have only 73 members.

Even after the lifting of Martial law, the ruling KMT party is unwilling to entertain any discussion on independence for Taiwan. This has been exemplified by the recent cases of Mr. Ts' Ai Yu-Chuan and Mr. Hsu Tsao-Teh, a Presbyterian Clergyman and businessman respectively, arrested in October 1987, under the National Security Law, for advocating independence. They were subsequently sentenced to eleven and ten years respectively.

The charges against them stemmed from the inaugural meeting in August 1987 of the Formosa Political Prisoners Association, which was chaired by Mr. Hsu Tsao-Teh and Mr. Ts' Ai Yu-Chuan, who proposed a motion that the Association's Charter should include a clause favouring independence for Taiwan. The arrest and the heavy sentence imposed upon them for expressing the idea of independence for Taiwan is an indication that the National Security Law could be used as a means to silence the legitimate political demands of the native Taiwanese.

In addition to the National Security Law, various other repressive laws that were enacted during martial law still remain in force. For example, the 'anti-hoodlum' law under which any person could be designated as a 'hoodlum' and with the approval of the court, remanded for 'reformatory education'. Also, alleged 'hoodlums' could be held incommunicado without their families being notified. Moreover, under this law, the length of

'reformatory education' for an alleged 'hoodlum' is not determined by the court but by the military, which is responsible for providing 'reformatory education'.

Similarly, another Executive Decree promulgated in 1984 and still in force, empowers the Government to detain persons suspected of criminal activity, and indefinitely without charge or trial. Furthermore, restrictions on the press and publications continue to be maintained although they have been eased since the lifting of martial law. Under the 'Publications Law' the authorities can seize or ban printed material that, 'instigates sedition, treason and offenses against public order'. The lifting of martial law has not included liberalisation in granting li-

cences for starting newspapers and still today, only 31 papers owned by the government or the ruling party, are published.

Although the lifting of martial law is a positive step, the authorities should remove existing restrictions concerning various civil and political rights.

It is reassuring to note that the new President Lee Teng Hui who assumed office in January 1988, has publicly reaffirmed the commitment of his late predecessor, Chiang Ching-Kuo to move Taiwan away from an authoritarian regime to one that values democratic ideals. This democratic process should include the right of the native Taiwanese to self-determination.

# COMMENTARIES

## The Prisoners of the Uprising\*

From 9 December 1987, when the current uprising in the Occupied Territories began, until 1 May 1988, al-Haq estimates that more than 17,000 Palestinians including over 2,000 administrative detainees have been detained in Israeli jails. We estimate the current number of detainees to be over 5,500, excluding those who were arrested before the uprising started. Most of the detainees are aged between 15 to 35 years old.

It is impossible for al-Haq or for any other organisation to give an exact number of the Palestinian detainees. We base our estimates on the capacity of Israeli detention centres, and the duration of the period of actual imprisonment that the military courts in the Occupied Territories are currently imposing as sentence for 'disturbing public order', the most common charge during the uprising. Al-Haq considers its estimates to be conservative, and believes that the figure given by the Israeli military authorities of 4,800 detainees since the beginning of the uprising (al-Quds 12/4/1988) is extremely low.

This briefing paper details the process of arrest, the conditions of detention, the military trial procedure and the use of administrative detention in the Israeli-occupied Territories during the first five

months of the Palestinian uprising of December 1987.

### Process of Arrest

According to Military Order 378, any Israeli soldier may, without a warrant, arrest for 18 days any person who has, or is suspected of having, committed a 'security offence'. It is important to note here that the term 'security offence' is given an extremely broad definition by the Israeli military orders to include such activities as participating in demonstrations, stone throwing and the possession of banned materials. According to the Israeli military orders, minors between the age of 12 to 14 may be detained for up to six months.

The majority of Palestinians who have been arrested during the uprising have been either picked up off the street by soldiers or settlers, arrested from their homes in the middle of the night by army forces in large numbers or summoned to military government buildings for questioning and then arrested. Due to the wide range of powers granted to Israeli soldiers, mentioned above, arrest is often arbitrary.

In almost every case of detention

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documented by al-Haq, detainees reported that they were systematically beaten by soldiers following their arrest.

## **The Right of the Family To be Informed of Arrest**

A major problem that Palestinian detainees face following their arrest is that the military authorities do not notify their families of the arrest, nor of the place of detention. This has always been a problematic issue in the Occupied Territories, but since the uprising it has become particularly acute. Locating detainees from the Occupied Territories is the task of the legal advisor to the military government, carried out on request by a lawyer. This is the only official channel open to Palestinians to find out where a prisoner is being detained. The prisons and detention centres do not provide answers to such queries from the families.

In al-Haq's opinion, the office of the legal advisor has not been responding adequately to lawyers' requests since the uprising. Al-Haq has made many interventions to this office on behalf of families in an attempt to find out the whereabouts of their detained relatives, but in vain.

Formerly, families were also able to locate detainees through the International Committee of the Red Cross (ICRC). By virtue of an agreement concluded between the ICRC and the Israeli government, the ICRC is entitled to receive the name of each detainee within 12 days of arrest and to visit him no later than 14 days following his arrest. Since the uprising, however, families have found that the ICRC has been unable to inform them of their relative's whereabouts at the expiration of this time, and sometimes not for several weeks. It

seems therefore that the authorities are not complying with their agreement to provide the ICRC with the names of all those who have been detained systematically.

Ironically, on 03/02/88, Amram Mizna, the Commander of the Central Area issued Military Order No. 1220, giving families the right to be informed 'without delay' about their relative's place of detention, unless the detainee himself requests otherwise. However, the new order also added a new article, Article 78 (d) to Military Order 378 which allows the military authorities to keep a detention secret for eight days provided they obtain a court order. This reservation means that the order in fact offers little improvement to the detainees. In practice, even the little improvement it does contain has not been respected. Since the issuance of this order, al-Haq is not aware of a single case in which the family has been informed of an arrest within a reasonable period.

Thus, the only channel available for a Palestinian family to locate a detained relative is through other prisoners who have been released. It hardly needs pointing out that this is entirely inadequate.

## **The Right to a Lawyer**

Military Order 1220 referred to above, also grants the detainee the right to consult with a lawyer of his choice immediately after his arrest. The Israeli police, however, are given the power by virtue of the same order, to suspend this right for a period of up to 15 days on "security" grounds.

Lawyers face difficulties visiting their clients in detention centres even when the security argument is not used. The

experience of several lawyers visiting Ansar 3 in the Negev and Dahriyyeh, south of Hebron, illustrates this point.

Lawyers were not permitted to visit Ansar 3 for more than a month following its opening. During that time, more than 1,000 prisoners were denied the right to consult with their lawyers, including several hundred administrative detainees who were therefore unable to instruct their lawyers to appeal the detention order. Permits from the Area Commander are still required before lawyers are allowed to enter the centre. As a result, lawyers cannot visit Ansar 3 frequently although over 2,600 detainees are currently held there.

Lawyers visiting the Dahriyyeh Detention Centre are not treated in a professionally acceptable manner. The centre does not have a system of arranging for lawyers' visits simply because it does not, unlike other prisons and detention centres, respond to telephone calls to arrange appointments to visit clients. Lawyers are kept waiting outside the Dahriyyeh military compound for hours before they are admitted to the centre. When they are finally allowed in, they are not brought all the clients with whom they requested interviews, the guards usually claiming that the remainder are not in Dahriyyeh.

When detainees in Dahriyyeh are brought to meet with their lawyers, they are accompanied by soldiers holding clubs. They report that from the moment they leave their cells until they enter the lawyer's room, they are ordered to bend over and to put their hands behind their back in a humiliating manner, and are sometimes beaten. An intervention by one of al-Haq's lawyers to a guard in the centre requesting that detainees be treated in a more human manner ended with the order that the lawyer herself

leave the compound. The room in which the meeting takes place is filthy and does not contain facilities for sitting or writing.

Thus, not only do Palestinian detainees have no absolute right to consult a lawyer, but if they do see a lawyer the conditions under which the meeting takes place are calculatedly unpleasant for both lawyer and client, making it difficult to conduct the business at hand.

## Prisons and Detention Centres

There are several types of centres in which Palestinians from the Occupied Territories may be detained. These are:

1. *The conventional prisons* of Jenin, Nablus, Ramallah, Hebron, Jnaid, and Tulkarem in the West Bank, and the Central Prison in Gaza. These prisons fall under the authority of the General Administration of Prisons, a department of the Israeli Ministry of Police.

These prisons, with the exception of Jnaid and Gaza, have two sections: one which holds sentenced prisoners and another which holds those who are under interrogation or who are awaiting trial. Jnaid and the Central Prison in Gaza have separate sections for administrative detainees. Tulkarem prison was closed in 1983 because of unhealthy accommodation but was re-opened during the uprising.

2. *The six army detention centres* in the West Bank and Gaza, where many of the detainees are currently being held. The names of these centres and our estimates of the number of detainees currently being held in each is as follows: in the West Bank, Far'a (600), Tulkarem (100), Dahriyyeh (650), Hebron 2 (200), Bitounia

(180); and in Gaza, 'Ansar 2' (Katiba) (800).

All these centres are run by the Israeli Army and hold unsentenced prisoners. Dahriyyeh, Hebron 2, and Bitounia are new detention centres which were opened during the uprising. From the reports al-Haq gathered on the conditions in these centres, it would seem that these centres are meant to be places for punishment rather than detention. Dahriyyeh in particular is notorious for its cruel conditions. The detainees complain of harsh and humiliating treatment which includes systematic beating, overcrowding, forced labour, and lack of hygiene (see al-Haq's report *Dahriyyeh: Centre for Punishment*)

3. *Israeli military government buildings and police stations* in the Occupied Territories, which are often used as temporary detention places for some days. Because of the short duration of detention in these compounds, we are unable to assess the number of persons presently being held in them. It is our opinion however, based on the reports we gathered, that the most brutal beatings usually occur in these compounds.

4. *All the prisons and detention centres inside Israel* itself, where Palestinians from the Occupied Territories are held in violation of Article 76 of the Fourth Geneva Convention of 1949 Relative to the Protection of Civilians in Time of War. This states that detainees must be "detained in the occupied country, and if convicted they shall serve their sentences therein." Detention centres in Israel have been made use of more frequently than prisons during the uprising. The Atlit Detention Centre near Haifa, for example, has more than 700 Palestinian detainees from the West Bank. The

Ramleh prison is used to keep administrative detainees from Jerusalem.

In the first month of the uprising, Kitsyot, a new detention centre known amongst Palestinians as 'Ansar 3' was opened in the Negev. It was recently announced that this desert prison is capable of containing 4,000 detainees. At present, there are over 2,600 detainees from the Occupied Territories there, more than 2,000 of whom are administrative detainees.

Detainees in Ansar 3 complain of their total isolation since visits from families and lawyers are restricted by the need to obtain permission from the Area Commander. Books and newspapers are not allowed, and detainees suffer from collective punishment and other hardships. Perhaps worst of all, many detainees complain that they were not informed of their status and do not know whether they are under regular or administrative detention, and for how long.

## **Military Trials during the Uprising**

The prisoners of the uprising, with the exception of those who have been put under administrative detention or released without trial, are subjected to military trials.

The most common charge faced by prisoners of the uprising is that of 'disturbing public order'. Most of those who are accused of 'disturbing public order' are brought to trial without being subjected to intensive interrogation. The lengthy interrogation routinely conducted by the Shin Bet, which includes the use of torture in order to procure confessions is not used in such cases. Instead, the military authorities obtain statements from the detainees and the

arresting soldier at the police station immediately after the arrest. In most cases, the detainees will deny the accusation while the soldier's statement will incriminate the suspected persons.

The authorities apparently rely on the fact that the soldier's incriminating statement together with his testimony before the court are invariably considered by the military courts as sufficient evidence to convict Palestinian detainees. The evidence of the Israeli soldier in the military court is always believed over the detainee's.

One problem that Palestinian detainees face is that in many cases soldiers do not come to the court to testify. The court adjourns the case to another date for the purpose of hearing the soldier's evidence. Meanwhile, the detainee remains in custody. Bail requests are granted only after the detainee stays in custody for a period of time close to the expected sentence. This practice confirms that the conditions in the detention centres mentioned above constitute part of the punishment.

Despite the Israeli High Court's recommendation to the Israeli Minister of Defence on 7 February 1988 that he consider the establishment of a military court of appeal in the West Bank, no such judicial process of appeal has so far been set up.

With the exception of the above points, the information included in al-Haq's Briefing Paper No.3 on the military courts remains valid.

### **Administrative Detention During the Uprising**

More than 2,000 of the detainees from the West Bank and Gaza presently held in Israeli jails are held under orders of

administrative detention, involving imprisonment without charge or trial for a period of up to six months which is then renewable. Some of those initially detained pending trial were subsequently served with administrative detention orders.

On 20 March 1988, the Israeli military authorities announced the issuance of new regulations relating to administrative detention. Lawyers were not given copies of these new regulations, but newspapers reported that the new regulations grant any military commander in Israel the authority to issue a 6-month administrative detention order, whereas previously only the area commander had this power. The regulations also cancelled the already limited quasi-judicial review process in administrative detention cases introduced in 1980 as promised by Begin to Carter in the framework of the Camp David Accords. Instead, the administrative detainee is given the possibility of appealing the order to a military appeal committee, but to date this committee has not yet been formed.

The new regulations were said to be issued to "ease the heavy burden on the military courts and the military prosecutor resulting from the large number of the administrative detention orders issued in the last three months" (Ha'aretz, 20/03/1988). In fact, they enable an unlimited number of such orders to be issued by widening the class of those who can issue the orders and eliminating the requirement for any immediate review.

Most of the administrative detainees from the West Bank and Gaza are currently being held outside the Occupied Territories at Ansar 3 in the Negev, in violation of the provisions of the Fourth Geneva Convention.

Both the Fourth Geneva Convention and also the Israeli Military Regulations

of 1982 concerning the conditions of administrative detention indicate that administrative detainees who are imprisoned without charge or trial, should receive special treatment to make their detention as painless as possible. Contrary

to these provisions, most of the administrative detainees from the Occupied Territories are being held in some of the harshest conditions prevailing in Israeli jails.

## UN Commission on Human Rights

The 44th Session of the United Nations Commission on Human Rights met in Geneva from 1 February to 11 March 1988. Mr. Alioune Sene of Senegal was elected chairman and ably guided the Commission through stormy seas, particularly during debate on the United States' proposal to condemn the human rights situation in Cuba, which all but overshadowed major accomplishments of the session.

### Theme Mechanisms

Over the years, the "theme" mechanisms, in particular the Special Rapporteurs on Torture and on Summary or Arbitrary Executions and the Working Group on Enforced or Involuntary Disappearances, have developed into effective and flexible institutions for identifying abuses and intervening rapidly in urgent cases. As Amnesty International pointed out in its intervention, however, these mechanisms are hampered by states which fail to respond to requests for in-

formation, respond with blanket denials or give misleading or inaccurate responses. Amnesty International urged the rapporteurs to note when responses are deficient and to emulate the practice of the Working Group of inviting the authors of complaints or charges to comment upon the official responses of governments so as to help the rapporteurs to judge the veracity of the response.

In a compromise between the western states and the others, the mandates of all the theme mechanisms, including the special rapporteurs on mercenaries and investment in South Africa, (opposed by the West) were extended for two years instead of the usual one. This will enable them to plan the even development of their mandates.

### Torture

The report of the Special Rapporteur on Torture, Mr. P. Kooijmans, contained brief descriptions of his appeals to states and of reports received from states on

measures taken to combat torture. He also gave descriptions of situations, such as corporal punishment, inhuman prison conditions, generally applied harsh treatment, prolonged stay on death row and the detention of minors along with adults, which, falling in a "grey area" between torture proper and other forms of treatment, he considers to be within his mandate. He repeated his endorsement of expert visits to places of detention as a means of preventing torture and drew attention to the European convention against torture and to efforts underway in the Americas which incorporate this practice. He perhaps underestimates the intricacies of such a system, however, when he recommends that a panel of experts be set up within the Human Rights Centre for use by states not parties to any regional arrangement.

With the entry into force of the UN Torture Convention, several Eastern European states proposed that the Rapporteur's mandate be restricted to those countries not ratifying the convention. This would, however, confuse the complimentary roles of the Rapporteur, who must respond effectively and rapidly to credible allegations of torture, and the Committee Against Torture, which is a quasi-judicial body. Moreover, only 10 states, none of them from Eastern Europe, have recognized the competence of the committee to hear complaints.

### *Disappearances*

The Working Group on Disappearances, one of the most effective UN mechanisms, asked 14 governments to explain 1094 new cases of disappearances in 1987. In its report, it gave a helpful explanation of its working methods. Among the country situations which

stand out in its report are Colombia, where 30 new cases were reported and 636 still remain unresolved, and Guatemala, to which the Working Group was invited to send a mission and where a serious pattern of disappearances continues.

### *Summary of Arbitrary Executions*

Special Rapporteur Amos Wako reported to the Commission that he had asked 27 governments to respond to allegations of executions and had intervened with urgent appeals to 14. He also reported on his visit to Suriname. For the first time, he dealt in depth with the question of executions by armed opposition groups, such as the South African-backed Renamo guerillas in Mozambique (though he did not mention the contras in Nicaragua). Together with the Special Rapporteur on Torture, he re-emphasized the need for international standards for proper investigation into all cases of suspicious death as essential, not only to bring those responsible to justice but also to prevent further occurrence of summary and arbitrary executions and called for the training of law enforcement officers in human rights issues connected with their work.

### *Mercenaries*

In 1986, in response to the growing use of mercenaries, the Commission appointed a Special Rapporteur to study the question of the use of mercenaries as a means to violate human rights and to impede the right of peoples to self-determination. In his widely praised first report Rapporteur Enrique Bernaldes Ballasteras set forth the framework for his

future work: the definition of "mercenary" in the 1977 First Additional Protocol to the Geneva Conventions may be inadequate in view of the complex nature of mercenary activity today. By studying actual reports of mercenarism in Africa and Latin America, the Commission can contribute towards a better understanding of the phenomenon which would be useful to the Ad Hoc Committee of the General Assembly which is drafting a convention against mercenarism, and more generally in developing mechanisms to confront the phenomenon. Over the dissenting vote of *Western delegations*, the mandate of the Rapporteur was extended and enlarged to authorize him to study credible reports of mercenary activity by means of on-site visits.

### **Convention on the Rights of the Child**

Ten years after Poland submitted to the Commission the first draft of a Convention of the Rights of the Child, the Working Group concerned completed its first reading of a final text. It hopes to complete its work in time for it to be adopted in 1989, the 30th anniversary of the UN Declaration of the Rights of the Child. Accordingly, a special two-week session of the working groups and preparatory consultations hosted by UNICEF have been held, leading to the adoption of 16 new articles. Some controversy remains on the recruitment age for soldiers (France, the UK and the US object to a ban on recruitment for youths under 18) and on the role of UNICEF (Venezuela has objected to giving to any role in implementation). In addition, several third-world delegations criticised the text as *being too oriented towards the Western model of the nuclear family*. Neverthe-

less, consensus was achieved on most major points. The text will be subjected to an in-depth technical review by the Secretariat and then submitted to a special meeting of the Working Group in November/December 1988.

### **Country Situations**

#### *South Africa*

The Commission heard the report of the *Ad-Hoc Working group of Experts on South Africa*, which, created in 1967, has been continually refused access to that country. Over opposition led by the U.S., the U.K. and the F.R.G., it adopted resolutions reaffirming the legitimacy of armed struggle to achieve self-determination in South Africa and Namibia, demanding that all states impose mandatory and comprehensive sanctions against South Africa and condemning South Africa's use of mercenaries and its illegal occupation of Namibia. The only resolution to pass by consensus was one calling for the immediate release of all child detainees and condemning the conditions of their detention.

#### *Israeli-Occupied Territories*

Amidst growing tension in the Israeli-Occupied Territories, the first week of the Commission was spent condemning Israeli practices. Four resolutions, stocked with needlessly inflammatory language, passed by large majorities, though three were opposed by most Western delegations. The Commission unanimously reaffirmed that the Fourth Geneva Convention is applicable to the territories. This is in line with the view

taken by the International Committee of the Red Cross and most international lawyers, but is steadfastly rejected by Israel.

Later, the Commission was addressed by Yasser Arafat, Chairman of the Palestine Liberation Organisation.

### *Chile*

UN Special Representative Fernando Volio Jimenez, who visited Chile for the third time in December 1987, presented his report to the Commission. While the conservative Volio has often been criticized for his lenient treatment of the Pinochet government, his report lists 287 cases of murder and torture.

For the 14th consecutive year, the Commission condemned Chile's human rights record. After strongly lobbying to include references in the resolution to Chilean victims of "terrorism" and a commendation of the government for "improvements" in its record, the U.S.A. joined six other countries in abstaining.

### *El Salvador*

Amidst reports of the resurgence of death squad activities, to which the ICJ referred in its intervention, a proposal by Costa Rica, with the support of the United States, to end the mandate of the Special Representative on El Salvador, Pastor Ridruejo was the subject of intensive negotiations opposing those countries with the rest of the Latin delegations led by Peru. According to the legal office of the Archbishop of San Salvador (Tutela Legal), some 274 civilians died in military operations in the first five months of 1987 and Amnesty International reported that many former political

prisoners who were amnestied in 1987 had already been re-arrested or killed. U.S. Ambassador Armando Valladares denounced reports of continuing violations, however, as "disinformation". Costa Rica was forced to back down in the negotiations, however, and the final resolution continued the mandate of the Special Representative and expressed concern over the on-going violations.

### *Afghanistan*

The Commission heard the report of the Special Rapporteur Felix Ermacora who visited Afghanistan in cooperation with the government authorities. A resolution condemned continuing human rights violations.

### *Iran*

The Special Representative was refused access to Iran, and had to base his report on interviews with refugees. A resolution expressed deep concern over grave human rights violations.

### *Cuba*

For the second consecutive year, the United States mounted a campaign to condemn Cuba for human rights abuses. In 1987, a procedural motion by India not to vote on the Cuba resolution passed by a one-vote margin. While the U.S.'s draft resolution was considerably toned down from the previous year, its tactics were not.

The tone for the campaign was set by the appointment as head of the U.S. delegation of Armando Valladares, a former Cuban prisoner and naturalized U.S. citi-

zen. The choice of a "witness" with no diplomatic or human rights experience to lead a delegation at the most important inter-governmental human rights forum was seen by many as an indication that the U.S. was more concerned with using the Commission to achieve a condemnation of a political enemy than in working seriously to protect human rights in all parts of the world.

Unlike last year when U.S. lobbying focused on the states' delegations to the Commission, this year, heavy pressures were exerted by the State Department in the capitals of the member states. According to press reports, for instance, the U.S. promised Argentina that it would pressure Great Britain over the Falkland Islands in return for Argentina's vote on the Cuba resolution.

Pressure was exerted in Geneva as well, however. According to three of the participants in a closed meeting of Western states, Valladares warned that any attempt to block the resolution on Cuba would be seen as a "hostile act" against the U.S. and pointed out that in 1987 U.S. commercial credits to India were cut by \$15 million as a result of its procedural manoeuvre. Valladares also warned that resolutions of interest to other countries "might not be discussed if the sabotage tactics against the U.S. resolution are successful."

With an uncertain show-down approaching, and many states uncomfortable about having to take a position, Cuba offered a compromise solution by inviting the Chairman and one member from each region to conduct an on-site inquiry into the human rights situation in Cuba.

On behalf of 4 Latin countries, Colombia immediately proposed a draft decision accepting the Cuban offer. The non-aligned countries quickly put their

weight behind the proposal which, in the end, was adopted by consensus. A delegation from the Commission will thus visit Cuba this year and prepare a report for the next session. This is an entirely novel procedure and the report will be awaited with interest.

## **Economic, Social and Cultural Rights**

Debate on this topic was once again marked by the distinct view of these rights by, on the one hand, the developing countries and the Socialist block, and, on the other, the Western group. The most extreme position was taken by the U.S., which spoke pejoratively of "so-called economic, social and cultural 'rights'". The Commission heard the report of the Working Group of Governmental Experts on the Right to Development which recommended that states should ensure equality of access to basic resources and that the international community should urgently adopt the measures called for in the General Assembly's Declaration on the Right to Development (See Review No. 38).

In its intervention, the ICJ suggested that the Right to Development best be achieved by ensuring the right to participation of those concerned or likely to be affected by the development in question, and gave two examples of "development" programmes violating basic human rights. One is the Narmada river valley project of 30 major dams and 135 medium dams in India financed by the World Bank. Nearly one million people, mostly tribals, living in the project area will be displaced, and no comprehensive policy for compensation and rehabilitation has been elaborated. The other, also funded by the World Bank, is the transmi-

gration programme in Indonesia of people from over-populated Java to under-populated islands, particularly to Irian Jaya, formerly West Papua, in complete disregard of the traditional land rights of the local population.

## **Prisoners of Conscience**

The Commission for the first time called, by consensus, for the release of political prisoners, defined as those imprisoned for peacefully seeking to exercise or promote their rights to freedom of thought, opinion and expression and freedom of association, assembly and participation in public affairs. A belated attempt by Nigeria and Algeria to amend the U.K.-sponsored resolution to remove the word "peacefully", and thus include armed liberation fighters, was not pressed to a vote.

## **Discrimination against Persons with AIDS**

The ICJ raised for the first time in the Commission the serious human rights implications of certain reactions to the spread of the AIDS disease and the HIV virus.

As Dr. Mann, Director of the Global Programme on AIDS (World Health Organisation) has said: "The fears that provoke (discriminatory) reactions often unveil thinly disguised prejudices about national origin, race, religion or sexual orientation". For example, state legislation in a Western European country requires testing for residence permits for aliens, except those from Western Europe, despite the fact that Western Eu-

rope has the second highest number of reported AIDS cases. Reference was also made to the Council of Europe recommendation on guidelines (R 87/25, 26.11.87) urging no compulsory screening; sites for voluntary testing with full respect for confidentiality; as a general rule, no compulsory health controls, restriction of movement or isolation of carriers, control at borders or exclusion of carriers from school, employment, housing, etc., as these are not justified scientifically or ethically.

## **Confidential "1503" Procedure**

In closed session, the Commission decided to drop Benin, Grenada, Iraq and Pakistan from its confidential review of gross violations. The Commission also decided that Brunei, Honduras, Paraguay and Zaire would be kept under review. It was reported that the resolution on Paraguay stated that if no improvements were made by next year, the case against that country would be made public – a measure used for only the third time this year when the Commission announced that Albania's case will be taken up publicly at the 1989 Commission.

## **Advisory Services**

The U.N. Advisory Services Programme, in which the ICJ participates, is designed to assist governments to promote and protect human rights through expert assistance, training courses and seminars. This valuable programme draws funds from both the regular U.N. budget and a voluntary fund to which governments and others may contribute.

Thus far, Canada, Finland, Italy, the Netherlands, Norway, Sweden, Togo and the United Kingdom have made or pledged contributions to the fund.

Nevertheless, the programme is jeopardized by the tendency of the Commission to use it as a half-way house to remove countries from the confidential 1503 list. This occurred in 1987 with Haiti and Guatemala, and was attempted this year with El Salvador. Much discussion under this item was devoted to the situation in those two countries. In March 1987, one year after the fall of Jean-Claude Duvalier, the Commission moved Haiti to the programme because of the government's "demonstrated commitment to fully restore human rights and fundamental freedoms." As the ICJ's intervention noted, that commitment was "demonstrated", over the next year, by the mass slayings of citizens attempting to vote, arbitrary arrests and sham elections. The expert appointed to provide advisory services, the former French magistrate André Braunschweig, was not even able to visit the island. Nevertheless, the Commission voted again to offer advisory services to the government. Indeed, only a strong NGO lobby won insertion of a phrase expressing the Commission's "concern over the human rights situation in Haiti."

In Guatemala too, the human rights situation remains fragile, as illustrated in the report of the Working Group on Disappearances. The Commission's expert Hector Gross Espiell of Uruguay acknowledged that "human rights are still being violated", but not once in his report did he mention the armed forces.

## **Report of the Sub-Commission**

Debate over the report of the Sub-

Commission focused on the role of experts and NGOs in that body as well as on its numerous recommendations to the Commission regarding indigenous people. (See Review No. 39). Several delegations expressed concern that the Sub-Commission was taking on too much work. In its resolution, sponsored by the F.R.G and other Western governments, the Commission recognises the Sub-Commission's capacity for fulfilling the distinct role of an expert body within the U.N. human rights system, but implicitly criticizes the Sub-Commission for overstepping that role. It also calls on the Sub-Commission to organise contributions of observers and NGOs "in such a way as to leave sufficient time for debate among its members."

The Commission approved the recommendation that Erica Daës, Chairperson of the Working Group on Indigenous Populations, complete preparation of a draft declaration on indigenous rights. Bowing to pressure from Canada, the Commission refused to endorse a proposal that Miguel Alfonso Martinez of Cuba undertake a study on the status of treaties between states and indigenous peoples. Instead it authorised an "outline" of a study this year, refused secretarial assistance and warned the expert not to touch the "inviolability of [state] sovereignty and territorial integrity." The Commission deferred to a Spanish request that a reference to 1992 – the 500th anniversary of Columbus' landing in America – be deleted from a proposal that the General Assembly proclaim an International Year of Indigenous Peoples.

The Commission also called upon the Sub-Commission to review and finalise the Draft Declaration on the Independence and Impartiality of Judges, Jurors and Assessors and the Impartiality of Lawyers.

## **Elections to the Sub-Commission**

Under new procedure to ensure continuity, members of the Sub-Commission will serve 4 year terms, with half the body being renewed every two years. In this, the first year, the entire Sub-Committee membership was voted upon.

One of the notable results was in the voting for the three unopposed Eastern European candidates. In 1987, Romania's Sub-Commission member Dumitru Mazilu failed to attend the meeting and there were widespread reports that his government had prevented him from doing so and that he might even be in detention. As a result, many countries refused to vote for the new Romanian candidate, who received only 25 votes, as compared to the 42 votes for Stanislav Chernichenko of the USSR and the widely respected Danilo Turk of Yugoslavia.

## **Relations with NGOs**

Continuing a practice begun last year, the French, USSR, U.K., and U.S. delegations held question-and-answer sessions

with NGOs.

The meetings with the Soviets were often remarkable. In a display of glasnost, the USSR introduced their visa department to discuss new Soviet emigration laws, the public prosecutors of Azerbaijan to explain the background of the Armenia-Azerbaijan conflict, and representatives of the Orthodox and Protestant churches and the lead Rabbi of Leningrad, who candidly discussed the problems they face in the Soviet Union.

The growing number of NGOs and NGO interventions led to a feeling on the part of some governments that too much time may be going to them. NGOs should be sensitive to their role and should try to coordinate their efforts towards concrete results.

The Philippine delegate on two occasions regrettably launched into personal attacks on Philippine NGO representatives, who had testified on the human rights situation in that country. In addition to breaking decorum by referring to a speaker personally, the move was seen as particularly disturbing, given the growing number of attacks on human rights defenders in the Philippines.

# Rules of Procedure of the African Commission for Human and Peoples Rights

1987 witnessed the birth of a new regional body for the application of human rights: the African Commission for Human and Peoples' rights (hereafter referred to as 'the Commission'). This Commission, established under art. 30 of the African Charter of Human and Peoples' rights (hereafter referred to as the 'Charter'), held its first session at the headquarters of the OAU (Addis Ababa) on 2 November 1987. On that occasion, the 11 members of the Commission elected Isaac Nguema of Gabon and Ibrahim Badawi El-Sheikh of Egypt as President and Vice-President respectively for a renewable period of two years. During examination of the question of the Commission's future activities, its members exchanged views on the draft rules of procedure prepared by the OAU Secretariat. It was agreed that each member would present his remarks, comments or amendments to the draft rules of procedure for the next meeting. A Special Rapporteur, Mr. Youssoupha Ndiaye was asked to make a synthesis of the replies and to report to the second mission. This was held in Dakar from 8 to 13 February 1988 and was devoted mainly to two items: the study and adoption of the Commission's rules of procedure and the preparation, discussion and adoption of a draft programme of activities for the Commission.

During the opening speech, the President of the Commission paid tribute to the ICJ for its contribution to human rights activities in Africa. In June 1987, prior to the election of the Commission's members, the ICJ had organised a colloquium in Dakar to clarify the "shadow

zones" of the Charter.

In January 1988, the ICJ submitted to the Special Rapporteur numerous amendments to the Secretariat's draft rules of procedure. All but two of their recommendations were accepted.

The rules of procedure as adopted by the Commission on 13 February 1988, comprised 120 articles. This document is of prime importance to the NGO's and lawyers called upon to advise individuals on the manner of presenting their communications.

As regards the NGO's, apart from the role which they play in the submission of communications, the rules of procedure stipulate that those of them appearing on a list established by the Commission may send observers to the Commission's meetings when the items relevant to their fields of activity are under discussion.

Although there is no specific provision to that effect, it appears possible and in any case desirable for an NGO to be represented at a closed meeting if it can assist the Commission in its work.

On this question, the general principle defined in art. 32 is that meetings of the Commission and its subsidiary bodies are private. They take place in closed sessions unless the Commission or the subsidiary body decides otherwise. It is true that the Commission may publish a communiqué through the Secretariat at the end of a closed session (art.33). In the view of the ICJ, apart from meetings devoted to the examination of papers which must be discussed in private, meetings of the Commission or its subsidiary bodies should normally be public,

especially as there is no indication in the African Charter that sessions shall normally be closed. The Commission has many important functions which are best exercised in public in order to stimulate public interest in its work. The reports of public meetings are widely distributed unless in exceptional circumstances the Commission decides otherwise. On the other hand, the minutes of closed sessions are distributed solely to members of the Commission and other participants at these meetings (art.40). The rules of procedure provide for the possibility of consultations between the Commission and the NGO's (art.77). This willingness to involve the NGO's is welcomed and can lead to close collaboration between them and the Commission on matters of promotion and protection of human rights.

The promotional activities assigned to the Commission by article 45.1 of the Charter are not dealt with in the rules of procedure, save for the periodic reports submitted by member States under the terms of article 62 of the Charter. The submission of these reports and their examination by the Commission not only constitutes a system for monitoring the implementation of the Charter by a dialogue between the Commission and member States; in addition, the Commission's general comments on the periodic reports can influence the legislation of the state concerned. Within the framework of this promotional activity, there is nothing to prevent the Commission from receiving briefing materials from NGO's which would draw the attention of its members to identify certain issues which ought to be raised with the state's representative. This informed practice has become so common both within the Inter-American Commission and the UN Human Rights Committee that this contribu-

tion from the NGO's has on occasions been referred to publicly in those bodies.

Although there can be no doubt about the importance of the Commission's promotional role which is wholly under the control of the Commission and which normally should be in public, all measures taken by the Commission as part of the communications procedure will remain confidential until the Conference of Heads of State and Government decides otherwise (art.59 of the Charter).

### **Communications from Member States**

As regards member States, the rules of procedure embody the distinction proposed by Judge Keba Mbaye during the Dakar symposium to the effect that a member State may submit either:

- a "negotiation-communication" (art 87-91) or
- a complaint-communication" (arts 92-100).

Negotiation-communications are those under Article 47 of the Charter, which provide for a peaceful procedure for settling a dispute where one State charges another with violating the Charter. Every "negotiation-communication" has to be submitted to the Secretary-General and to the President of the Commission. It must include a detailed and complete account of the facts denounced and indicate the provisions of the charter which are said to have been violated. This is brought to the attention of the member State which has three months in which to respond to the situation denounced. If the matter cannot be settled by negotiation or if there is no reply, it will be referred to the Commission in the

first case and can be referred to it in the second. This referral triggers the "complaint-negotiation procedure", which takes place in closed session.

It must also be emphasized that the Commission encourages friendly settlements (art. 97) and provides for representation of the member States involved during discussion of the affair (art.99). The report which the Commission prepares sets out the facts and the conclusions which it has reached. This report is sent to the member States concerned and also to the Conference of Heads of State, including whatever comments the Commission considers appropriate (art.100).

Without seeking to predict the future of this procedure, it can be said that the experience acquired by existing human rights bodies justifies the expectation that inter-State communications will be rare and no particular conditions of receivability apply. The authors of "other communications", on the other hand, must comply with the conditions of receivability described in detail in article 114 of the rules of procedure.

## Other Communications

These are the communications referred to in art.55 of the Charter which are submitted by parties other than member States and are considered by the Commission on the decision of a simple majority of its members. As in the case of inter-State communications, the Commission cannot accept communications involving a State which has not adhered to the Charter. Article 114 of the rules of procedure defines the authors of "other communications" as:

"any person claiming to be victim of a violation by a member State of any

rights set forth in the Charter, or by any person acting in his name when it is clear that the claimant is unable to present the communication himself;

"an individual or organisation alleging with supporting evidence a situation of serious massive violation of human and peoples' rights" and that;

"the Commission may accept such communications from any individual or organisation, wherever located".

The Commission may solicit clarification from the author of a communication regarding the applicability of the Charter to that communication. However, sessions in which the Commission examines matters of a general nature, such as procedures for implementation of the Charter, can be public (art. 105). A member of the Commission is prohibited from taking part in the examination of a communication if he is involved or if he has participated in any capacity in the adoption of a decision concerning the matter to which the communication relates (art.107).

Without prejudice to the ultimate decision on the substance of the case, the Commission may inform the member State concerned of its views on the desirability of taking provisional measures. Such measures would be designed "to prevent irreparable harm to the victim of the alleged violation" (art. 109). Before any communication undergoes thorough examination, the State concerned must be notified of its existence by the President of the Commission.

The Commission may instruct one or more working groups including not more than three of its members, to submit to it recommendations on compliance with the conditions of admissibility laid down under article 56 of the Charter and clarified in article 114, as follows:

"In deciding upon receivability of a communication in accordance with the provision of the Charter, the Commission shall ensure:

- (a) that the communication identifies its author even if anonymity is requested. In this case, anonymity will be guaranteed;
- (b) that the author claims to be a victim of a violation by a member State of any one of the rights set forth in the Charter or, where appropriate, that the communication is submitted on behalf of an alleged victim (or victims) unable to submit or authorise a communication;
- (c) that the communication does not constitute an abuse of the right to submit a communication under the Charter;
- (d) that the communication is not incompatible with the provisions of the Charter;
- (e) that the communication is not limited to information published or broadcast by the mass media;
- (f) that the same matter is not already under examination by another procedure of international investigatory or regulatory body;
- (g) that the alleged victim has exhausted all available domestic remedies or that such a procedure is unduly prolonged;
- (h) that the communication has been submitted within a reasonable time since the exhaustion of the domestic remedies or within a period established by the Commission".

It is commendable, realising the high level of illiteracy in Africa, that the Commission has provided such wide access to the communications procedure and agrees to respect the anonymity of a

communication's author if so requested. Without this, reprisals might be taken against a person who has denounced a member State.

As regards the rules that domestic remedies must first be exhausted, it is to be hoped that the Commission's jurisprudence will be strict in denouncing dilatory procedures.

As part of its procedure for establishing the receivability of a communication, the Commission may request additional information or comments, through the Secretary-General, from the member State concerned or the author of the communication and establishing a time limit for the reply. Should it decide that a communication is irreceivable, its author will be informed of the decision as soon as possible. If the communication was also sent to the member State concerned, the latter will also be informed of the decision. Nevertheless, the Commission may subsequently reconsider a decision of receivability if the author of a communication establishes that the grounds for the Commission's rejection no longer exist (art.116).

Once the Commission has decided that a communication is receivable, it notifies the member State and the author concerned. The member State then has four months in which to submit to the Commission explanations or statements on the matter under examination and to indicate, where appropriate, what measures it has taken to rectify the situation denounced. The explanations or statements submitted by the member State are communicated to the author of the communication, who can then exercise his right of reply by submitting, within the time limit determined by the Commission, written comments on the declarations of the State. At this stage, the Commission may reconsider its decision

with respect to receivability in the light of the information provided by the member State (art.117)

If the communication is receivable, the Commission examines it, taking into account all information it has obtained from both the author and member State concerned. It may entrust the communication to a working group comprising three of its members for its recommendations. Pursuant to article 118, the findings from the Commission's examination of the communication (or its final decision) are communicated to the Conference of Heads of State and Government of the OAU. The Conference or its President may request the Commission "to carry out a thorough study and to submit a detailed report containing its conclusions and recommendations, under article 58, clause 2 of the Charter" on the situations which it has brought to its attention. The situations reported to the Conference are those which "appear to reveal the existence of a set of serious or massive violations of human and peoples' rights". The "other communications procedure" is somewhat similar to that established by ECOSOC resolution 1503. The Commission may have to clarify and define the expression "thorough study" which is taken from the wording of resolution 1503. But they will obtain any clarification from the practice of the UN Commission on Human Rights.

Can the Conference of Heads of State

file a case? The rules of procedure do not make provision for this, but it would seem that there would be no objection to its doing so.

Article 119 provides for amendment of the rules of procedure, stating that "only the Commission may modify the rules of procedure". Article 120 defines the conditions for temporary suspension of the application of any article of the rules of procedure. Such suspension, which can take place only by decision of the Commission, may not be undertaken without a precise and express purpose and must be restricted to the time necessary to achieve that purpose. Unlike the rules of procedure of the European Commission on Human Rights, there is no stipulation that the decision to suspend the application of any provision must be taken unanimously.

A careful examination of the rules of procedure, especially as regards the clauses in part II relating to the functions of the Commission demonstrates the determination of the Commission's members to safeguard their independence vis-a-vis both the member States and the OAU. This independence is an essential condition for the proper exercise of the Commission's functions. Paraphrasing Francois Monconduit<sup>1</sup> this independence alone can give rise within governments to the mixed feelings of respect and awe which are essential to enable the Commission to assert its authority.

1) Author of a brilliant study on the "Commission Européenne des Droits de l'Homme" published by Editions Sijthoff, 1965. This study, supported by a grant from the Council of Europe was awarded the Dupin aine Prize of 1965 and the Prize of the Faculty of Law and Economics in Paris.

# ARTICLE

## The Exercise of Political Freedoms in Morocco

by  
Omar Bendourou\*

Since Morocco's independence and especially since 1958, there exist texts guaranteeing citizens the enjoyment of political freedoms. The Constitution currently in force, dating from 10 March 1972, like its precursors<sup>1</sup> guarantees various individual and collective freedoms. Article 9, for example, establishes freedom of movement, residence, opinion, all forms of expression, assembly, association and membership of any trade union or political body. It similarly grants economic and social rights: the right to education and employment (art.13), the right to strike (art.14), the right to ownership (art.15) and lays down the principle of equality (art. 5,8,9,12 and 13). Moreover, article 10 states that "No-one may be arrested, detained or punished except in the cases and manner established by law. The domicile is inviolable. Searches and checks may be carried out only under the conditions and in the manner set out in the legislation". In addition, article 11 provides that the secrecy of mail shall be respected".

Despite the fact that these freedoms are embodied in the Constitution, the

authorities do not hesitate to impinge upon them. In this article only those aspects of the Moroccan political freedoms code which deal with the freedom of association, of the press, of assembly and trade union freedom will be examined. The violation of these freedoms is demonstrated in both the promulgation of laws restricting their scope and in the administrative practices.

### Legal Restrictions on the Exercise of Political Freedoms

This article deals successively with the principal legal restrictions placed on the freedom of association, the press, assembly and trade unions.

#### Freedom of Association

This is governed by the dahir\*\* of 15 November 1958 as amended by that of 10 April 1973. These dahirs distinguish between different forms of association: association of individuals, unions of federa-

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1) Two other constitutions have existed in Morocco since it gained independence in 1956: one promulgated on 14 December 1962, and the other on 31 July 1970. Further information on the political and constitutional evolution of Morocco since its independence can be found in Dr. Bendourou's book: "Le pouvoir exécutif au Maroc depuis l'indépendance", Publisud, Paris, 1986.

\*\* (decree of the king of Morocco of legislative or administrative character).

tions or associations, and foreign associations on the one hand and political parties and associations of a political nature on the other. Several common provisions apply to political parties and associations, such as those relating to their constitution, suspension or prohibition. Political parties, like other associations (except for foreign unions or federations of associations which can only establish themselves once they have obtained an authorisation decree) have to be declared in advance to the office of the local administrative authorities (caid or pacha) and to the public prosecutor (arts. 2 and 5). They may be prohibited if they concerned with "an unlawful cause or in pursuit of an unlawful objective, conflicting with the law of good morals" or which "are designed to threaten the integrity of the national territory of the monarchical form of government" (art.3).

Consequently, a party planning action within the democratic framework for the establishment of a republic, would be prohibited. Even more serious is that any association in general can be prohibited "if it appears that the association's activities are of a nature likely to threaten public order."<sup>2</sup> The prohibition may take place by course of law or by governmental action. The government may also simply suspend a party for a limited time (art.7).<sup>3</sup> As the concept of public order is ambiguous, the administration has discretionary power to suspend or prohibit a party whose influence is becoming disturbing for the government. It is in this context that we must place the suspension of the "Union Nationale des Forces Populaires" (UNFP) in April 1973 and the

de facto suspension of the "Union Des Forces Populaires" in 1981.

### **Freedom of the Press**

This is regulated by several dahirs whose substance is to be found in that of 15 November 1958 as modified in particular by the dahirs of 28 May 1960 and 10 April 1973. No newspaper or periodical may appear before it has been declared to the prosecutor's office of the court of first instance of the town in which the management and editorial staff of the publication are located (art.5). Furthermore, at the time of publication or delivery, two copies must be sent to the prosecutor's office and the information service in Rabat (art.8). The Minister of the Interior may order the seizure of any newspaper or periodical the publication of which would pose a threat to public order (art.77). Action against any publication is also left to the discretion of the authorities, who may suspend or prohibit one if it "has threatened the institutional, political or religious basis of the kingdom, without prejudice to the other penalties foreseen in the texts in force" (art.77).

The terms used in this law are deliberately vague so as to provide the authorities with grounds to stifle the opposition press. It has been used to seize, suspend or prohibit several newspapers ("La Nation Africaine", "Al Tahir", "Maghreb Information", "Al Mouharir", "Libération", etc). The amendments of 1973 have added to these restrictions by introducing other authoritarian provisions authorising very severe penalties for the publi-

2) This provision was introduced in 1973 (dahir of 10 April 1973).

3) Prior to 1973, political parties could be dissolved only by course of law. Since the issue of the dahir of 10 April, the government is also empowered to ban or suspend them.

cation of news held to be false, without taking into consideration the good or bad faith of the reporters, or for articles considered offensive to the king and the royal family (5-20 years hard labour and a fine of between 100,000 and 1,000,000 dirhams)<sup>4</sup> (art.41).

### **Freedom of Assembly**

This is governed by the dahir of 15 November 1958 as amended by that of 10 April 1973 and by the dahir of 29 June 1935 as amended by that of 26 September 1969. Every meeting or demonstration must be announced in advance and can be prohibited by the authorities if it disturbs or is liable to disturb the peace (art.7, cl.2).

Mass meetings are governed by special legislation. The decrees make a distinction between armed and unarmed meetings. An unarmed one becomes an armed one if a single person carrying an arm or dangerous device is not expelled (art.18). In such a case, the police may disperse the meeting without warning. In other words, an unarmed meeting is considered as armed if one person carrying an arm or device infiltrates it, even if its members are unaware of the fact. Unarmed meetings are also forbidden if they may disturb the peace.

The most authoritarian dahir, however, is that of 29 June 1935. This was issued by the resident French authorities during the period of the protectorate and was designed to combat or repress the nationalists fighting for the independence of Morocco. It provides, amongst other things, that "anyone having committed an act tending to cause a disturbance of the peace or threatening public

safety shall be liable to three months to two years imprisonment and/or a fine of 500-2,000 dirhams....Any person having been guilty of disrespect to the authorities shall be subjected to the same penalties" (art.1).

It will be noted that the terms "public Order" – a concept which dominates all clauses relating to freedoms, and "disrespect towards the authorities" provide the administration with a means of undermining the rights of citizens. What is meant for example by "disrespect towards the authorities"? Does it allow for the criticism of a decision taken by the government or Head of State? The leaders of the Moroccan socialist party have in fact been tried on the basis of this interpretation.

### **Trade Union Freedom**

The laws regulating the organisation of trade-unions stem from the dahir of 16 July 1957. By comparison with other freedoms, that of trade unions is somewhat wider. Again, the authorities must be notified of their creation; however, they cannot be prohibited other than by decision of the courts. Although this provision appears to offer an important guarantee, the authorities did not hesitate to suspend the activities of the "Confédération démocratique du Travail" in 1981.

Those briefly are the main restrictions on the exercise of political freedoms. In practice however, the authorities go beyond the legal provisions by using all means to weaken even further the few rights to which the citizens can lay a claim.

4) 1 dirham is equivalent to 0.20 Swiss Francs.

## **Administrative Practices in the Violation of Freedoms**

The relationship between the authorities and the opposition provide one of the best examples of the violation of human rights. In this connection, a distinction must be drawn between the actions taken by the authorities against the opposition parties as organisations which have led either to their prohibition or their suspension and their repressive actions which, whilst maintaining the legality of these parties have been directed at their leaders, militants and publications.

### **Example of the Prohibition or Suspension of Certain Opposition Parties**

From the period of Morocco's independence to the present day, three parties have been prohibited or suspended. The first party to be prohibited was the Moroccan Communist Party (MCP). The conditions and circumstances under which this prohibition occurred are extremely important from the legal aspect. Firstly, this action took place subsequent to the proclamation of the Royal Charter of 1958 relating to political freedoms and the promulgation of the dahir of 15 November 1958 recognising freedom of association. Initially, the MCP was suspended by governmental decree and the public prosecutor simultaneously took court action in view of its dissolution. On 29 October 1959 the Court of first instance in Casablanca concluded that, according to its statutes, the MCP was operating within the laws of the constitutional monarchy and has no intention of conflicting with the country's religious institutions. The MCP could therefore not be banned under the laws in force. The public prosecutor appealed

to the Court of Rabat which gave its decision on 9 February 1960. Referring to the King's speech of 8 September 1959 condemning materialistic doctrines, the Court declared the MCP dissolved.

It is important to note the legal repercussions of this decision. Disregarding all legal provisions concerning freedoms, the court based its judgment on the words of the king, thus elevating them to the rank of legal norms which is a flagrant breach of the rule of law. Moreover, by its novelty, this decision constitutes a regrettable precedent which could in the future, lead to other prohibitions based on the same jurisprudence. Therefore, if tomorrow a political party adopts positions contrary to the views of the king, and is consequently criticised by him, a court may ban it by regarding its viewpoint as conflicting with the policy of the Commander of the Faithful (it will be seen later that a similar situation arose in 1981).

The second party to be banned was the "Parti de la Libération et du Socialisme" (PLS). Having adapted the party's statutes to the factual situation in Morocco by formally abandoning all reference to Marxism and stipulating Islam as the basis for the national tradition, the former leaders of the MCP founded the PLS on 17 July 1968. It appears that the creation of this party was authorised by the king. A year later, on 20 September 1969, the Court of Rabat decided to ban it. The Court's decision was based on part of a speech made by the leader of the PLS in Moscow (at the conference of communist parties and workers held in June 1969) in which he expressed his support for the Soviets. The Court viewed the PLS as merely the judicially dissolved MCP and sentenced its two main leaders to 10 and 8 months imprisonment. The Secretary-General of the PLS had how-

ever stressed several points in a statement read to the court. Firstly, that the PLS was a new party in terms of its doctrine, leaders and organisation and had nothing in common with the MCP. Secondly, that the party's presence at the Moscow conference in no way weakened the independence of the party, whose objective was to defend the sovereignty and unity of the country, and especially, he pointed out, as the party representatives' main task was to serve the Palestinian cause. Finally, the declaration of support for the Soviets had merely been a gesture of courtesy towards the host.

The authorities' third victim was the "Union Nationale des Forces Populaires" (UNFP). This party had been represented in the government during the early years of independence, but was thrown into the opposition in 1960. In 1973, the presence of an armed group, apparently sent by an exiled former leader of the UNFP, served the authorities as a pretext for suspending the party, which it accused of having masked subversive actions. Several of the party's leaders were arrested, most of whom were later acquitted. The UNFP claimed, on the contrary, that it had nothing to do with these events, intended acting in full legality and had no intention of becoming a subversive group.

This decision was reached at a time when relations between the king and the opposition were very strained after two coups d'état and the refusal by the opposition to participate in the coalition government under the conditions proposed by the Palace. The Rabat branch of the UNFP was apparently the most intransigent party. The suspension was aimed at eliminating it from the government so as to facilitate contacts with the other opposition parties and induce it to moderate its demands. That is why, after eight

months' suspension, the party re-acquired legality after its leaders agreed to participate in the diplomatic campaign concerning the Western Sahara in order to explain the Moroccan case and the legitimacy of its territorial claims.

Mention must be made of the dissolution of the Moroccan Students' Union, the "Union Nationale des Etudiants Marocains", in January 1973. The government considered that this organisation had become dominated by a subversive group and decided therefore to ban it and close all its offices. This ban was not lifted until 1978. Although the government has taken only a few decisions to ban or suspend organisations, since 1959-1960, it has increasingly pursued repressive action in various forms against the lawful opposition.

### **Repression of the Lawful Opposition**

A few examples will clearly indicate the typical violations of human rights. Following the promulgation of Morocco's first Constitution (14 December 1962) and the results of the legislative elections (17 May 1963) which were not very favourable to the government, the authorities launched two actions against the opposition parties. It arrested four members of the 'Party Istiqlal' (PI) who had just been elected to the new house of representatives, accusing them of threatening the State's external security. They were arrested in complete disregard for the diplomatic immunity granted by the Constitution to members of parliament. However, the most spectacular repressive action, yet undertaken was the arrest of the majority of UNFP leaders. In fact, these measures were simply a reaction to the opposition's success in the legislative elections and in particular to the unex-

pected results achieved by the UNFP. By holding elections the government had hoped to reduce the opposition to a few seats. As it turned out, the election results were a defeat for the government because the governmental parties united in the past with the "Front Démocratique pour la Défense des Institutions Constitutionnelles" (FDIC) obtained only 69 seats out of a total of 144, the same number as the opposition. This defeat was all the more important as the FDIC obtained only 33.52% of the votes against the opposition's 51.86%. Having failed to reduce the opposition's role democratically, the government attempted to limit it by repression and terror. It sought to justify this action by claiming to have uncovered a plot against the monarchy. As soon as news of the arrests and their cause spread, voices of several celebrated persons and eminent lawyers abroad were raised<sup>5</sup> against the government's methods, which were seen as a means of decapitating the main opposition party. It was somewhat difficult to believe in a plot against the government just after election results favourable to the opposition. The parliament which had just been elected would provide the opposition with a platform from which to express itself and defend its projects, especially as the UNFP- despite the repression- openly stated its support for legality and its intention to act accordingly in pursuit of its political aims.

The behaviour of those responsible for this affair and their disrespect for the rules of judicial procedure reinforced doubts about the validity of their accusa-

tions. The government disclosed no details of this affair until several weeks after the arrest, a fact which reinforced the belief that the police trumped up the evidence to prove the existence of a plot. The government also refused French lawyers the right to defend the accused, in violation of the Franco-Moroccan Convention on Court Procedure<sup>6</sup> which showed the fears of the authorities to put in the hands of foreign lawyers files which were devoid of any substance.

During the interrogations and detention, the law was disregarded. The accused later gave an account of the torture and ill-treatment of which they bore traces. During the hearing, the defence rights were flouted (expert evidence rejected, removal of firearms without the presence of lawyers, etc.). From that date onwards, the opposition parties were constantly subjected to repression, the intensity of which depended on the circumstances and the good-will of the authorities.

Until 1971, the authorities practised unrelenting repression. This took several forms such as the arrest of active members and militants of the 'Parti Istiqlal' (PI) and especially the UNFP, and court action against their directors. Freedom of the press was restricted for both organisations; the PI's newspapers were seized and the UNFP publications (*Al Mouharir* and *Libération*) were prohibited. This repression reached its peak in the years 1969-1970 when the authorities once again carried out large-scale arrests of UNFP members (about 200 persons), accusing them of a "plot" against the mon-

5) See for example J. Lacouture, *le Monde*, 21.8.1963; Maurice Duverger, *Ibid*, 12.10.1963 and C.A. Julien, *Ibid*, 30.1.1964.

6) The government tried to justify its decision by the fact that the lawyers in question did not speak Arabic, yet in an earlier case, that of the Bahias, a French lawyer, M. Valer, was authorised to plead in French (See *le Monde*, 13.12.1964).

archy. The manner in which the proceedings unfolded showed once again that the case was a political one in which no evidence existed to justify the arrests.

Repression slackened between 1971 and 1972, but regained its former severity in 1973. For example, as already pointed out, the UNFP was suspended in April of that year. The beginning of overtures towards the legally established opposition became apparent in 1974 following the "campaign for the liberation of the Western Sahara". These overtures culminated in 1977 in the setting up of the first parliament under the Constitution of 1972. They continued to some degree until 1981. At the same time there was a hardening of the authorities' attitude towards the opponents described as "Marxist-Leninist", who were tried mainly in two court actions (1973 and 1977).

In 1981 however, the government halted the liberalisation process begun in 1977, as well as its overtures to the legally established opposition. The decision to suppress the opposition arose from three main positions adopted by it. The first position concerned its backing of a general strike in June 1981. This came about after the government - to everyone's surprise - increased primary commodity prices from 14% to 77% in May 1981. In protest, the Democratic Federation of Labour decided upon a 24-hour general strike to take place on 20 June. The "Union Socialiste des Forces Populaires" (ex Rabat branch of the UNFP) supported the union's initiative. However, during the day of 20 June, although the Confédération Démocratique du Travail (CDT) and USFP unions had not called for any action, spontaneous demonstrations by the public degenerated into riots in Casablanca, causing deaths and injuries (66 deaths according

to the government; over 600 dead- the majority killed by bullets- and many injured, according to the opposition). Holding the CDT and USFP responsible, the government arrested leaders of the CDT and over 100 members of the two organisations. In addition, it closed down the offices of the CDT. Trials were organised immediately to deliver severe sentences on their militants. The measures adopted by the government in response to the activities of the opposition served as a warning and a precursor of future measures.

The opposition's second position concerned the resolutions adopted by the Committee set up to implement the OAU's decisions on the Western Sahara. These resolutions adopted on 28 August 1981 relate to the manner of applying the results of the referendum in the Western Sahara. The Policy Committee of the USFP published a communiqué on 5 September expressing its disagreement with these resolutions and requested in particular that they be submitted to a vote by the population. The following day, the government arrested 5 Members of the Policy Committee, including the party's First Secretary, A. Bouabid and brought them before the courts for threatening public order. They were tried under the dahir of 29 June 1935 which was passed during the period when Morocco was still a French Protectorate.

This shows that the party members were arrested and tried for their political disagreement with the government, that is, because of their political opinions.

The opposition's third position concerned the decision to extend the duration of parliament. According to the initial version of article 43 of the Constitution, the House of Representatives is elected every four years. However, in May 1980, the King proposed a referen-

dum to extend the mandate of parliament to 6 years. During the election campaign no government official specified whether the constitutional amendment was to apply retroactively to the parliament then sitting, which was due to end in 1981. Confusion was compounded by the fact that the text submitted for approval did not contain a transitory clause indicating its date of entry into force. The USFP view was that the decision reached by the referendum in question could not be applied retroactively to the first legislature and it therefore stated that its members of parliament would sit beyond 4 years. In October 1981, by individual letters to the steering Committee of the House of Representatives, USFP members of parliament announced that in their opinion the legislature had come to an end and that they would leave the parliament. The government's reaction to the attitude of USFP members was simply to exclude them.

This exclusion was decreed and explained by the King in his annual address to the House of Representatives in October 1981. He described the withdrawal of the USFP members as "contrary to the Constitution and a hostile gesture towards the entire community". He then said "it places on us, as sovereign of this country, Commander of the Faithful, as well as intellectual and moral guardian of the constitutional institutions...the obligation to ensure that our institutions function correctly, whatever the cost, and to seek ways of putting an end to such offhand and carefree actions". He added "These people (the USFP members of parliament) have excluded themselves from the Mohammedan community" and consequently "anyone who ignores the law must expect to be ignored by it". He concluded that they should be excluded from the community, stating that "As

Commander of the Faithful, we repudiate those who formed part of this assembly but left it with complete disregard to the laws of the State". After this address, the USFP members of parliament were placed under house arrest.

The government's change of attitude towards the parliamentary opposition stemmed from its increasing influence, acquired by a loosening of governmental control. Indeed from 1977, the opposition parties were granted a fair amount of freedom. Although censorship for example, never ceased and militants of the opposition were occasionally subjected to harassment by the police, the opposition parties were able to hold their congresses and meetings more easily than in the past. Their press was also granted appreciable freedom in its criticism of governmental action. For example, the USFP published critical studies undertaken by its graduate members. It carried out a very extensive survey of the various aspects of official policy and its harmful effects on the national economy and the population's living standards. It also highlighted the almost irresponsible attitude of the parliamentary majority which consisted of systematically approving the most unpopular governmental measures, which were at the same time the ones that affected the poorest groups (the austerity plan of 1978-1980, the rents bill, the increase in the price of basic commodities). It was within the framework of this liberal setting that a new trade union (close to the opposition) came into being. This was the CDT which rapidly gained the support and sympathy of thousands of workers. The success of the general strike in 1981 was the best demonstration of its real influence in the country.

However, this movement towards greater liberalisation was to be called into question in 1981 during the events in

Casablanca. These alarmed the government as they disclosed the expanding influence of the opposition and the danger created by liberalisation under the conditions then prevailing. That is why, in October 1981, the King defined the role and responsibilities of any opposition operating within the framework of the royal democracy as follows: "Hassanian democracy will not be perfect and we shall not rest content until we have taught the Morroccans how to practice opposition to the government of the King of Morocco....If we were involved in the opposition we would say our primary task is to serve the King who is the ruler of all Moroccans" (speech of 12 November 1981).

### **The Present Situation of the Legal Opposition**

During 1981 and especially during the second half of that year, the main opposition party, the USFP was decapitated; its newspapers were banned in June; September saw the arrest of its leaders and in October its members of parliament were placed under house arrest. Despite protests from abroad (especially from the French socialist party) and a foreign conciliation mission (led by the former President of Senegal, Mr. Senghor, representing inter-African socialism), the authorities left the USFP no alternative: either it supported the royal democracy or it would be suppressed. Thus in order to revive its activities and obtain the cancellation of the state of emergency imposed upon it, the USFP was obliged to accept reconciliation with the government by giving way to its threat. It was thus that the members of parliament under house arrest returned to parliament during that same autumn session and the "Opposi-

tion Ittihadia" group officially re-occupied its place in October 1982. The party henceforth refrained from taking any action which would anger the Palace. In 1983 it even had to participate in a government responsible for ensuring the regularity of the elections planned for September 1984.

The other opposition parties, i.e. the "parti du progrès et du socialisme (PPS)" and the "organisation d'action démocratique et populaire" (OADP), assumed a wait and see attitude from the time of their creation. The PPS was not created until 1974. It was the prolongation of the PCM and the PLS. The difficulties it endured with the government led it to moderate its statements and attitude with regard to the government's general policy. The OADP was not set up until 1983. It is a left-wing party which also adopted cautious positions in order to retain its legality and maintain its structures.

Despite the wait and see attitude of the three left-wing opposition parties, they have been kept under tight control by the authorities since the events in Casablanca. The government ensures that their behaviour conforms to the major decisions taken by the Palace. If they stray from the lines laid down, they are called back to order. A recent case can be quoted as an example. The newspaper of the PPS was suspended for 70 days (end of October 1986 to 10 January 1987) because its Secretary-General had expressed an opinion conflicting with that of the Court Counsellor in an editorial of the daily "Al Bayane". The divergences of opinion related to the scope of the consensus of Morocco. During the election of Mr. Johana Ohana, an associate of the Court Counsellor to the steering Committee of the House of Representatives (Autumn 1986) the opposition group (Oppo-

sition Ittihadia) threatened to leave the Assembly Steering Committee if that candidate was elected. The Court Counsellor, Mr. Guédira, published an article warning the parliamentary opposition by recalling the principles of the national consensus which, according to him, could not be violated. The PPS replied to the Court Counsellor, pointing out that the consensus related only to Islam, territorial integrity and the institutions, and that all other subjects could be open to debate. It appears that the suspension of the newspaper was pronounced because the editor omitted to include the monarchical form amongst the principles he quoted (Cf Mr. Sehim, Grand Mahgreb, February 1987). However, in view of the fact that under the Constitution, the monarchy is an institution, the grounds for the sanction must be sought elsewhere. It was primarily a sanction against the party and a warning to all the other political movements of the consequences of lack of restraint. This sanction can be considered moderate since it could have been expected that Mr. Ali Yata, manager of the newspaper and also Secretary-general of the PPS would be taken to court for prejudice to the monarchical principles with the further possibility of the party being suspended. As we have already seen, this would not have been the first time that this would have happened.

The same caution has to be practised by active members of the opposition who, in addition are closely supervised by the authorities. They do not hesitate to arrest militants if there is doubt about the nature of their activities. In 1984, for example when many militants of the opposition were questioned and accused of

being involved in the public demonstrations which degenerated into riots against the high cost of living. Members of the opposition belonging to movements classified as "Marxist-Leninist" did not escape unscathed the full force of the repression. In a file sent to the royal palace in November 1985, Amnesty International mentioned over 100 cases in Morocco.

## Conclusion

As the political system in Morocco consists of a theocratic monarchy,<sup>7</sup> it is rather difficult to conceive of democracy in such a system. For this reason, far-reaching reforms are essential to ensure the protection of freedoms to which the citizens have a claim. However, this protection cannot be guaranteed without a separation of powers because, as Montesquieu pointed out ("De l'esprit des lois", Book XI, Chapter VI), there can be no freedom when all power is concentrated in the hands of a single person. Yet the King rejects the separation of powers and considers that his religious role as Commander of the Faithful allows him to control all the other constitutional institutions (royal address of 13 October 1978). In order to achieve a modern democracy, it is therefore necessary to ensure minimum conditions for the exercise of power. This implies that the King must disengage himself from party quarrels and re-inforce his position as an appeal authority and guarantor of unity and national continuity. Moreover, it is essential to set up a parliament elected entirely by direct universal suffrage granted with full legislative powers. The government

7) See the author's article "La monarchie théocratique au Maroc", *Revue de droit international et de droit comparé*, Nos. 1-2, 1987, pp 88-108.

must also be guaranteed complete legal and political autonomy vis-a-vis the King. Finally, the independence of the judiciary and its separation from the powers of the King must be guaranteed. These minimum reforms presume a transforma-

tion of the traditional concepts of power as they presently prevail in modern thinking. In other words, the present theocratic monarchy must give way to a constitutional and democratic one.

# **BASIC TEXTS**

## **Forty-First World Health Assembly**

### **Agenda item 24**

## **AIDS: Avoidance of Discrimination In Relation to HIV-Infected People and People with AIDS**

The Forty-first World Health Assembly,

*Recalling* resolution WHA40.26 on the global strategy for the prevention and control of AIDS, Economic and Social Council resolution 1987/75, and United Nations General Assembly resolution 42/8 on the prevention and control of AIDS;

*Endorsing* the London Declaration on AIDS Prevention unanimously adopted on 28 January 1988 by the World Summit of Ministers of Health on Programmes for AIDS Prevention;

*Recognizing* that AIDS is a global problem which poses a serious threat to humanity, and that urgent and worldwide action is required to implement WHO's global strategy to combat it;

*Acknowledging* with deep appreciation the work of WHO, through the Global Programme on AIDS, in directing and coordinating the global strategy;

*Noting* the medical, ethical, legal, socioeconomic, cultural and psychological implications of AIDS prevention and control programmes;

*Recognizing* the responsibility of Member States to safeguard the health of everyone and to control the spread of HIV infection through their national policies and programmes, taking into account their epidemiological situation, and in conformity with the global strategy;

*Bearing in mind* the responsibility of individuals not to put themselves or others at risk of infection with HIV;

*Strongly convinced* that respect for human rights and dignity of HIV-infected people and people with AIDS, and of members of population groups is vital to the success of national AIDS prevention and control programmes and of the global strategy;

1. URGES Member States, particularly in devising and carrying out national programmes for the prevention and control of HIV infection and AIDS:

(1) to foster a spirit of understanding and compassion for HIV-infected people and people with AIDS through information, education and social support programmes;

(2) to protect the human rights and dignity of HIV-infected people and people with AIDS and of members of population groups, and to avoid discriminatory action against and stigmatization of them in the provision of services, employment and travel;

(3) to ensure the confidentiality of HIV testing and to promote the availability of confidential counselling and other support services to HIV-infected people and people with AIDS;

(4) to include in any reports to WHO on national AIDS strategies information on measure being taken to protect the human rights and dignity of HIV-infected people and people with AIDS;

2. CALLS ON all governmental, non-governmental and international organizations and voluntary bodies engaged in AIDS control programmes to ensure that their programmes take fully into account the health needs of all people as well as the health needs and dignity of HIV-infected people and people with AIDS;

3. REQUESTS the Director-General:

(1) to take all measures necessary to advocate the need to protect the human rights and dignity of HIV-infected people and people with AIDS, and of members of population groups;

(2) to collaborate with all relevant governmental, non-governmental and international organizations and voluntary bodies in emphasizing the importance to the global strategy for the prevention and control of AIDS of avoiding discrimination against HIV-infected people and people with AIDS;

(3) to stress to Member States and to all others concerned the dangers to the health of everyone of discriminatory action against and stigmatization of HIV-infected people and people with AIDS and members of population groups, by continuing to provide accurate information on AIDS and guidance on its prevention and control;

(4) to report annually to the Health Assembly through the Executive Board on the implementation of this resolution.

*Fifteenth plenary meeting, 13 May 1988*  
*A41/VR/15*

# Council of Europe Committee of Ministers

Recommendation No. R (87) 25

## of the Committee of Ministers to Member States Concerning a Common European Public Health Policy to Fight the Acquired Immunodeficiency Syndrome (AIDS)

*(Adopted by the Committee of Ministers on 26 November 1987  
at its 81st Session)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

*Considering* that the aim of the Council of Europe is to achieve greater unity between its members and that this aim may be pursued, *inter alia*, by the adoption of common action in the health field;

*Aware* of the growing challenge for public health authorities represented by a new and severe health hazard, the Human Immunodeficiency Virus (HIV) infection, transmissible by sexual intercourse, through the blood, during pregnancy and perinatally, and which can induce a variety of conditions such as AIDS, Aids Related Complex (ARC), various cancers, neurological and other disorders, as well as some problems with respect to healthy carriers;

*Conscious* that there is at present neither vaccine nor cure for AIDS;

*Considering* that, under these circumstances, HIV infection will dangerously increase and spread in the population if no immediate and effective preventive action is taken;

*Considering* that such an epidemic will represent a very heavy burden for health services and social security systems, and will have serious economic consequences;

*Considering* that it may also pose ethical, legal and social problems in terms of stigmatisation and discrimination;

*Bearing* in mind the Convention for the Protection of Human Rights and Fundamental Freedoms;

*Recalling* its Recommendations No. R(83)8 and No. R(85)12 concerning the screening of blood donors for AIDS markers;

*Judging* that the implementation of a harmonised comprehensive preventive policy at European level may effectively limit the spread of the disease;

*In the light of the present knowledge, recommends the governments of member states to:*

- I. declare the fight against AIDS an urgent national priority;
- II. carefully devise, in the light of socio-cultural contexts, the most appropriate public health policy for the prevention of AIDS by drawing up a comprehensive strategy consisting of programmes and measures which:
  - are scientifically justified and expedient to impede the spread of the infection with a view to the protection of the health of citizens, and
  - do not interfere unnecessarily with their individual rights to objective information, freedom and private life;
- III. follow to this end the guidelines set out in the appendix to this recommendation;

IV. intensify co-operation within Europe in pursuing studies on specific aspects of the control of AIDS with a view to:

1. assisting national health administrations in continuously adjusting their public health policy to actual requirements;
2. optimising the effectiveness of such policies by avoiding duplication of efforts through exchange of information, comparison and assessment of strategies;
3. identifying common areas of research in the field of AIDS prevention, diagnosis and treatment, for which specific funds should be allocated;
4. achieving a concerted harmonised European policy in the fight against AIDS.

#### *Appendix to Recommendations No. R (87) 25*

### **Guidelines for the Drawing Up of a Public Health Policy To Fight AIDS**

#### **1. Co-ordinating committees**

Those governments which have not yet done so, should urgently set up co-ordinating committees at national, regional and local levels in keeping with the size and administrative structure of the country.

##### *1.1. Task of the committees*

The task of the national committee should consist in the drawing up of a public health policy for the prevention of AIDS taking into account the complex implications at strategic level (for the essential elements of this policy, see Item 2 hereafter).

The appointment of regional and local committees should serve as a means of ensuring a regular flow of information and vertical and horizontal co-operation in the implementation of the policy and co-ordination of actions.

The national committee should monitor the implementation of the policy by instituting an appropriate feed-back system for permanent revision and adaptation of the policy.

Resources should be made available, both in terms of finance and personnel, to implement the nationally agreed policy at regional and local levels.

##### *1.2. Membership of the committees*

Membership of the national committee should include, for example, representatives of relevant governmental sectors: health, social affairs, social security, education, research, etc.

The national committee should seek the advice of experts in various fields, interested parties, health staff, associations and organisations, whether public or private, whose work is relevant to AIDS prevention.

The membership of regional and local committees should include the same representatives at the corresponding level so as to reflect all concerned interests.

The committees, whether national, regional or local, should be set up in such a way as to:

- ensure a balanced approach integrating the various aspects and issues involved;
- facilitate the drawing up of a consensus policy taking into account the various interests and allowing for an optimal use of scarce resources.

## 2. Formulation of a public health policy: essentials

The national AIDS committee should draw up a comprehensive policy based on an agreed strategy consisting of a series of co-ordinated and consistent programmes in a variety of complementary fields, combining:

- prevention:
  - health information programmes directed at the general public,
  - health education programmes targeted on groups at particular risk,
  - health promotion programmes;
- public health regulatory measures;
- strengthening of health care services;
- training of staff;
- evaluation and research.

### 2.1. *Prevention: health information, education and promotion*

National health administrations should concentrate their efforts on preventive measures aimed at behavioural change to control the epidemic since these are of singular importance as long as a vaccine and cure have not been found.

To this end, a health communication strategy should be devised at the national level taking account of the views of health education, mass communication and social science experts, professional advertisers, etc.; such a strategy should be based on the following programmes which will respectively bear short-, medium- and long-term effects:

- health information programmes directed at the general public with a view to maintaining awareness, avoiding panic reactions and preparing for targeted health educational activities;
- health education programmes directed at groups particularly at risk with a view to achieving behavioural change;
- health promotion programmes with a view to helping individuals in choosing healthy life-styles.

#### 2.1.1. *Health information programmes directed at the general public*

The objective should consist in counteracting misinformation, prejudice and fear by raising the level of knowledge about the modes of transmission, the spread of the infection and the risk associated with behavioural patterns. The public should be informed of measures to prevent infection and, in particular, that sexual transmission may be prevented by careful selection of sexual partners, by avoiding casual sexual contact and by the use of the condoms.

Special attention should be paid to the media, whose role in shaping public opinion is crucial; a strategy should be adopted to favour responsible reporting on the subject; to this end dossiers should be regularly prepared and made available to the press.

#### 2.1.2. *Health education programmes targeted on groups particularly at risk*

Such programmes should be planned on a medium-term basis, as their main objective, behavioural change, cannot be reached overnight.

Three overriding principles should permeate health education activities:

- behavioural change depends on the attitude of the individual;
- the individual is responsible for the outcome of his behaviour towards himself, others and society;
- the individual must be treated with dignity and respect.

No health education programme (primary prevention) should be initiated if not backed up by secondary and tertiary prevention facilities (that is, sites for voluntary testing, counselling, treatment and psycho-social support services).

Target groups to be considered may vary in size from country to country and programmes and activities should reflect this variability; however, in view of the transmission modes, the following should in any case be taken into account:

- intravenous drug users,
- men with homosexual contacts,
- prostitutes,
- customers of prostitutes,
- "sex-tourists", coming from or travelling to areas where AIDS is endemic,
- haemophiliacs,
- people staying in or traveling to areas with a high prevalence of AIDS,
- the prison population,
- adolescents.

### 2.1.3. *Health promotion programmes*

Sex education should be integrated in a wider reflection on life-styles and human relationships. Such programmes should encourage individuals to assume responsibility for their health by becoming aware of risks and benefits inherent in various life-styles.

## 2.2. *Public health regulatory measures*

In the light of present knowledge, given the absence of curative treatment and in view of the complexity of the epidemic, the implementation of the following public health measures is to be considered essential to limit the spread of HIV infection.

### 2.2.1. *Screening*

- systematic screening programmes should be fully implemented in respect of donations of blood, mothers' milk, organs, tissues, cells and, in particular, semen donation in compliance with the usual strict requirements of informed consent and regulations for confidentiality of data; for greater security, heat-treatment or other inactivation procedures of plasma products should continue to be enforced; self-exclusion from donation should continue to be strongly recommended to individuals with high-risk behaviour;

- there should be no compulsory screening of the general population nor of particular population groups;

- health authorities should instead invest resources in the setting up of sites - when these do not already exist - for voluntary testing fully respecting confidentiality regulations, and for arranging under the same conditions contact tracing of partners of seropositives;

- voluntary testing should be backed up by counselling services which should be readily accessible or even free of charge;

- the identification, where necessary, of groups to whom to recommend voluntary testing should be decided upon by health authorities in close co-operation with experts in the field; the identification on the basis of risk factors of cases to whom to recommend voluntary testing should be the task of medical staff;

- quality of testing should be ensured through the appointment of reference centres.

### 2.2.2. *Other measures:*

- public health regulatory measures such as health controls, restriction of movement or isolation of carriers, should as a general rule not be introduced on a compulsory basis;

- in the light of present knowledge, discriminatory measures such as control at borders, exclusion of carriers from school, employment, housing, etc. should not be introduced as they are not justified either scientifically or ethically.

### *2.2.3. Information relating to seropositivity:*

- individuals, whether donors or not, should be informed of a confirmed positive result of a blood test; they should be referred to competent medical and counselling services to be informed of precautions to be taken to protect their own health and to avoid spreading the infection to other individuals;
- if they take appropriate measures, health staff can usually avoid contamination; patients should, therefore, themselves be left to advise health staff of their seropositivity unless the patient has specifically authorised a doctor to pass on this information.

### *2.2.4. For the purposes of gaining insight into the epidemiology of HIV infection:*

- the reporting of AIDS cases in strict compliance with confidentiality regulations is strongly recommended;
- where implemented, the reporting of seropositivity should also be carried out in strict compliance with confidentiality regulations;
- the setting up of epidemiological studies of representative samples or cohorts of the general population and groups with risk behaviour on a voluntary basis and in compliance with regulations of confidentiality and anonymity is to be considered essential in identifying risk factors associated with seropositivity and changing patterns of the disease.

## *2.3. Strengthening of health care services*

Flexible plans consistent with the epidemiological projections and capable of efficiently meeting increasing needs should be drawn up; in this respect the responsible health authorities should:

- ensure adequate in-patient facilities or reinforce existing in-patient units for the treatment of AIDS and related conditions, staffing them with multidisciplinary teams;
- organise out-patient facilities supported by community care services allowing patients to maintain as much as possible a private and a social community-integrated life;
- organise psycho-social support services for in- and out-patients as well as for asymptomatic carriers, their partners and families.

## *2.4. Training of staff*

Appropriate training programmes should be organised for all categories of health staff, especially for those working in the field of diagnosis, treatment, control of transmission of infections, psychological support and terminal care.

Staff in the social services should be trained in the implementation of policies and regulations, as well as in patient and family assistance and psychological support.

Staff who may have occupational exposure to infected fluids and secretions should be kept informed of sensible hygienic precautions to be taken both for themselves and for their clients.

Training for teachers should be organised to allow them to integrate AIDS prevention in health education.

## *2.5. Evaluation and research*

Development of research and co-operation at European level through the designation of reference centres in all AIDS-related fields is an urgent priority to combat AIDS, would be of great benefit both in terms of effectiveness of programmes and costs, and should therefore be strongly supported by national health administrations.

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*July 1987. Published October 1987. Swiss Francs 5, plus postage.*

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