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CONTENTS

CENTRE FOR THE INDEPENDENCE OF JUDGES AND LAWYERS

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THE CENTRE FOR THE INDEPENDENCE OF JUDGES AND LAWYERS (CIJL)

The Centre for the Independence of Judges and Lawyers was created by the International Commission of Jurists in 1978 to promote the independence of the judiciary and the legal profession. It is supported by contributions from lawyers' organisations and private foundations. The Danish, Netherlands, Norwegian and Swedish bar associations and the Netherlands Association of Jurists have all made contributions of $1,000 or more for the current year, which is greatly appreciated. The work of the Centre during its first two years has been supported by generous grants from the Rockefeller Brothers Fund, but its future will be dependent upon increased funding from the legal profession. A grant from the Ford Foundation has helped to meet the cost of publishing the Bulletin in english, french and spanish.

There remains a substantial deficit to be met. We hope that bar associations and other lawyers' organisations concerned with the fate of their colleagues around the world will decide to provide the financial support essential to the survival of the Centre.

Affiliation

Inquiries have been received from associations wishing to affiliate with the Centre. The affiliation of judges', lawyers' and jurists' organisations will be welcomed. Interested organisations are invited to write to the Secretary, CIJL, at the address indicated below.

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B A N G L A D E S H

Arbitrary Dismissal of Judge Threatens Independence of Judiciary

On 8 January 1984, a Supreme Court judge in Bangladesh, Justice Syed Muhammad Husain, was peremptorily dismissed from his position after 9½ years of service. The letter informing Justice Husain of his dismissal did not set out any reasons for the action, nor have any reasons been given since that time. The CIJL has made several inquiries of the government, requesting its comments on the reasons for the removal of Justice Husain, all of which remain unanswered.

Justice Husain is understood to be the third Supreme Court judge to be removed from office by the military authorities in Bangladesh. His dismissal underscores the threat to the independence of the judiciary posed by martial law regulations and decrees. Martial law was imposed in Bangladesh after a military coup in March 1982. Under the martial law regulations the Chief Martial Law Administrator can remove any judge of the Supreme Court without a statement of reasons. Therefore, judges may be removed at the pleasure of the executive and the removal is incontestable.

Under the Constitution of Bangladesh which was suspended by the military authorities in March 1982, a Supreme Court Judge could be removed only on grounds of judicial misconduct. An inquiry had to be held by a Supreme Judicial Council and the recommendation for removal had to be supported by a resolution of Parliament.

These provisions were designed to ensure the independence of the judiciary by ensuring that removals took place only for reasons previously established and through a procedure designed to uphold the fairness of the proceedings.

Both the draft principles on the Independence of the Judiciary (CIJL Bulletin No. 8) and the Montreal Universal Declaration on the Independence of Justice (CIJL Bulletin No. 12) state that removal or disciplinary action should take place only in accordance with established standards of judicial conduct and should be conducted by an independent body composed, at least in part, of members of the judiciary or the legislature, and that such proceedings should ensure fairness to the judge and an opportunity for a full hearing.

The dismissal of Justice Husain did not comply with any of these safeguards and must, therefore, be viewed as an arbitrary action on the part of the martial law authorities undermining a basic principle of the Rule of Law. Other aspects of martial law decrees also threaten the independence of the judiciary, particularly the establishment of martial law courts. See ICJ Review No. 30 (July 1983) for a discussion of these courts.

The Supreme Court Bar Association and several district bar associations have protested against the removal of Justice Husain.

G U A T E M A L A

Continued Violence Against Members of the Legal Profession

CIJL Bulletin No. 11 contains an article describing the abduction of Yolanda Urizar de Aguilar. Prior to the publication of the article, the CIJL had issued a circular letter requesting the intervention of lawyers and lawyers' associations. Numerous lawyers' associations responded to this appeal.

Unfortunately, we must report that the most recent information we have received indicates that Ms. Urizar de Aguilar was killed while in the custody of the security

forces. Although the government has not officially confirmed her death, the former head of state, General José Efrain Rios Montt, told her father, a retired army colonel, that she had been killed.

Recently, on 2 February 1984, a law student, Manfredo Belteton de Leon, was kidnapped by armed men while driving in his car in Guatemala City. There is no information as to his whereabouts, although there is reason to believe he is still alive and in the custody of the security forces.

Mr. Belteton de Leon was a student at the University of San Carlos and worked as an adviser to the Central Nacional de Trabajadores (CNT) and to other unions. His wife has applied for a writ of habeas corpus, but no hearing has taken place.

The continued victimisation of lawyers in Guatemala is a grave threat to the independence of the legal profession, the Rule of Law and the general human rights situation. The CIJL has published several articles on the killings and abductions of lawyers in Guatemala. In many cases the lawyers were representatives of trade unions, peasant groups or the national university and its legal aid service. During the years 1980 to 1981 over 60 lawyers were assassinated. This number diminished during the years 1982 and 1983, largely because many lawyers went into exile. As noted in CIJL Bulletin No. 6, "the government has proved singularly ineffective in preventing the assassination of threatened individuals or in bringing to justice the culpable parties".

Special Tribunals

Until recently persons detained on security grounds were brought before special tribunals. The establishment of special tribunals was widely criticised because such tribunals represent a threat to the independence of the judiciary and because the procedures adopted by the tribunals often do not conform to internationally recognised norms of due process

of law. On 1 September 1983, the special tribunals in Guatemala were abolished, ostensibly in recognition of these concerns. However, rather than bringing detainees before the ordinary courts, they are now being held in incommunicado detention.

This represents a worsening of the situation because torture and other forms of cruel and inhuman treatment are more likely to occur when persons are held incommunicado. It also represents an implicit threat to the independence of the judiciary, because the government refuses to use the ordinary courts, apparently in the belief that the judges, after reviewing the evidence, would order the release of persons they believe improperly detained.

Lawyers, lawyers' associations and judges' associations have been invited to write to the government of Guatemala expressing their concern about the death of Yolanda Urizar de Aguilar, the abduction of Manfredo Belteton de Leon and the practice of incommunicado detention.

P A K I S T A N

Arrest and Detention of Lawyers

The CIJL has expressed its concern about the arrest and continued detention without trial of a large number of lawyers in Pakistan. The lawyers were detained during September and October 1983 for their participation in peaceful demonstrations in which they demanded a return to the Rule of Law in Pakistan, the restoration of the Constitution and respect for the independence of the judiciary, including the abolition of martial law courts.

During August, September and October nearly 400 lawyers were arrested, including many local bar association leaders. Most of the lawyers were released during late January and early February of this year, but 80 to 90 continue to be detained. To date no specific charges have been filed against them and their cases have not been reviewed by the ordinary courts.

Because general charges of violations of martial law regulations have been made against those in detention, the decision whether they should remain in custody rests with the Summary Military Court, which sits fortnightly. The court is empowered to authorise the continued detention of prisoners for whom there is no specific charge sheet. Several of these hearings have taken place without the prisoners being present and some have taken place inside the prison.

Recently two of the lawyers, Mr. Abdul Hafeez Lakho, President of the Karachi Bar Association and Mr. Kazi A. Ghani, were moved from the Central Prison, Karachi, to Mach Jail in Baluchistan which is located 500 miles away in the coldest part of Pakistan. The isolation of this prison makes it unlikely that the families of the prisoners would be able to visit them.

In addition to Messrs. Lakho and Ghani, the following lawyers are among those who remain in detention:

Ali Mukhtar Naqvi
Hassan Feroze
N.D. Khan
Abdullah Baloch
Nafees Siddiqui
Fatehyab Ali Khan
A. Majeed Khanzada
Maula Bux Chandio
Ashiq Hussain Laghari
Rasool Bux Paleejo
Amir Ali Qureshi
Lal Bux Memon
Qazi Mohammad Bux Dhamra
Abdul Fateh Memon
Rahim Bux Jamali
Pir Mazhar
Qazi Abdul Qadir
Jabbar Patoli
Pervaiz Shah
Manzoor Hussain Wassan

Shafi Mohammad Chandio	Noor Mohammad Thebo
Syed Ali Taqi Shah	Saifuddin Panhwar
Agha Saifuddin	Ghafoor
Siddiq Kharal	Ataur Rahman Memon
Abdul Hakeem Memon	Ahmad Nawaz Awan
A. Latif Qureshi	Agha Saifullah
Mohammad Saleh	Mumtaz Ali Bhutto
Munawwar	Ghulamullah Mahoto

The CIJL does not have the names of all the lawyers still in detention.

The CIJL has on several occasions called for interventions on behalf of lawyers detained in Pakistan. In almost all of the cases the lawyers had been detained because they had protested against the negative effects of martial law on the Rule of Law in Pakistan. CIJL Bulletins Nos. 6 and 7 contain descriptions of various decrees issued by the military government which have affected the jurisdiction of the civil courts and the rights of the defence. These decrees have been consistently opposed by the Pakistan Bar Association.

The decrees provide for the establishment of military tribunals whose decisions are immune from review by civilian courts and whose procedures do not afford basic guarantees to the defence. Defendants in military tribunals are not entitled to legal representation and the members of the Tribunals are not required to have legal qualifications. Military tribunals have jurisdiction to try any criminal case, and it is the martial law authorities who decide whether a case under ordinary criminal law will be heard in a military tribunal or in an ordinary court. The martial law provisions also deprive the High Courts of jurisdiction over cases under martial law orders or regulations, over any matter under consideration by a military court or over any "thing done or any action taken or intended to be done or taken pursuant to a martial law order or regulation". In addition, the High Courts are barred from issuing process against any person acting under the authority of martial law administrators.

The criticisms lodged by the Pakistan Bar Association are well-founded. Both the Draft Principles on the Independence of Judges (CIJL Bulletin No. 8) and the Universal Declaration on Justice (CIJL Bulletin No. 12) state that special tribunals, such as the military tribunals in Pakistan, should not have jurisdiction to try civilians, and that all tribunals should comply with internationally recognised principles of due process of law.

The recent arrests were a result of these lawyers expressing their concern that the martial law decrees were eroding rights guaranteed by the Pakistan constitution and were having a profoundly negative effect on the Rule of Law in Pakistan. The draft principles on the independence of the legal profession (CIJL Bulletin No. 10) encourage lawyers to express their views on needed reforms of the system of the administration of justice. The arrest of over 400 lawyers for expressing such views is a clear threat to the independence of the legal profession.

The following resolution was adopted unanimously by the Sind Bar Council :

> "This Council expresses its grave concern over the continuance of martial law and continued suspension of the constitution of 1973 against which the legal fraternity has consistently been protesting for the last six years. This Council also expresses grave concern on the continuous detention of innumerable lawyers throughout the Province of Sind. There is no single reason in favour of keeping these lawyers imprisoned when most of the lawyers of other Provinces have already been released.
>
> "This Council takes serious exception to the fact that a distinguished member of this Council, Mr. Ali Mukhtar Naqvi, could not attend the first meeting of the Council held on 27 January 1984 due to the indifferent attitude adopted by the authorities in respect of his release. This Council also views with concern the

shifting of Mr. A. Hafeez Lakho, President of the Karachi Bar Association, to the infamous Mach Jail, Buluchistan. This Council therefore demands immediate and unconditional release of all lawyers throughout Pakistan ...".

Lawyers, lawyers' associations and judicial organisations have been invited to write to the government of Pakistan expressing their concern about the arrest and detention without trial of lawyers in Pakistan for expressing their views on the need for legal reform and the effect such actions will have on the Rule of Law and the independence of the legal profession.

Raza Kazim

A Pakistan lawyer, Raza Kazim, was arrested from his home in Lahore on 9 January 1984. No reasons have been given for the arrest and his whereabouts remain unknown.

Witnesses saw him being taken away by men in civilian clothes who were driving vehicles similar to military jeeps. His wife and several friends began visiting local police stations about half an hour after the arrest. It has been reported that his arrest was unofficially acknowledged at the Civil Lines Police Station. A man answering his description was detained there briefly at the request of the Inter-Services Intelligence, but at the time of Mrs. Kazim's visit to the station he was no longer there.

The Lahore Martial Law Administration's Sub-Office in Lahore was contacted, but denied having carried out the arrest. However, the possibility that Mr. Raza Kazim had been detained by the Special Military Intelligence was not rejected.

Later in the afternoon of 9 January, Mr. Kazim telephoned his home, but was unable to disclose his whereabouts. His family has had no further contact with him.

On 10 January, the local police requested that Raza Kazim's passport be brought to them. The request was refused by his wife. Subsequently, unidentified armed men called at his home and took the passport.

A writ of habeas corpus was filed with the Lahore High Court in late January. At the time of writing, no date has been fixed for the hearing, notwithstanding the immediate priority which should be given to habeas corpus applications.

As stated above, no reason for the arrest has been given. Mr. Raza Kazim, who is in his mid-fifties, handled primarily international commercial law cases. At the time of his arrest, the safe in his house was broken into and documents, including his diary of casework, were removed.

He was previously detained in 1981 because of articles published in an Urdu-language journal which were critical of martial law regulations. However, since then he is reported not to have engaged in any activities which could be considered political.

Lawyers, lawyers' organisations and judicial organisations have been invited to write to the government of Pakistan expressing their concern about the arrest without charge or trial and the continued incommunicado detention of Mr. Raza Kazim.

P O L A N D

Harassment and Arrest of Lawyers in Poland

The CIJL is concerned about the recent arrest and harassment of lawyers in Poland by government officials. In recent months an increasing amount of pressure has been put on lawyers to stop their representation of political dissidents and trade unionists. Those lawyers who have represented Solidarity and those presently representing the defendants in the KOR case have been particularly affected.

The arrest of Maciej Bednarkiewicz has so far received the greatest publicity. He has been representing Barbara Sadowska, the mother of Grzegorz Przemyk who died in March 1983 from internal injuries after having been in police custody. In September 1983 six people, including two policemen, were charged with his death; it was alleged that the policemen had beaten him to death. The charges against the policemen were later dropped by prosecutors who claimed that Mr. Przemyk's death was actually caused by injuries received from one of the ambulance drivers who had taken him to the hospital from the police station, rather than the injuries he received at the police station. The prosecutors have stated that the ambulance driver confessed to having struck Mr. Przemyk and to having given him the injury which led to his death.

As Mrs. Sadowska's representative, Mr. Bednarkiewicz had the right to attend investigative hearings being conducted in her son's case. It has been suggested that Mr. Bednarkiewicz became aware of evidence that policemen had used torture in the questioning of detainees and that his arrest was motivated by a desire to prevent him from attending the trial of the defendants in the Przemyk case. Mr. Bednarkiewicz has also been representing defendants in the KOR case.

After Mr. Bednarkiewicz's arrest his office was searched and confidential documents were taken from his files concerning the Przemyk case. They were read by the authorities before being returned to him.

Mr. Bednarkiewicz has been accused of aiding a deserter from a militarized unit (ZOMO riot police), hiding a person sought by the Security Services, and incitement to give false evidence and to reveal state and official secrets. It is also alleged that propaganda material was found in his apartment.

On 27 January, 40 Polish intellectuals, including lawyers, college professors and journalists, condemned the arrest and stated that it was an intensification of the intimidation of Polish lawyers.

Another attorney, Wladzslaw Sila-Nowicki, well-known for his defence of political dissidents, wrote an open letter to the Prime Minister, Gen. Wojciech Jaruzelski, wherein he accused the government of having fabricated the charges against Mr. Bednarkiewicz. In his letter of 16 February, Mr. Sila-Nowicki indicated that Mr. Bednarkiewicz had been aware that attempts were being made to frame him. Mr. Sila-Nowicki had been advised by Mr. Bednarkiewicz in August that a man claiming to be a ZOMO deserter had visited his office in March 1983. He had not taken the case because the man made him suspicious. Sometime later, Mr. Bednarkiewicz was called to the Ministry of Internal Affairs where a tape of a statement by the man was played for him. The man claimed that Mr. Bednarkiewicz had told him to remain in hiding, offered him 50,000 zlotys and asked him to steal a police radio transmitter, for which he would pay 200,000 zlotys, and show him how it worked. According to Mr. Sila-Nowicki, Mr. Bednarkiewicz laughed and asked whether "this nonsense was being treated seriously". In his letter, Mr. Sila-Nowicki went on to say that "Maciej Bednarkiewicz is a victim of a cynical provocation. The people who organised it are aware of the fact that he never committed any of the offences with which he has been charged."

Mr. Sila-Nowicki himself was arrested on 1 March 1984 and charged with "activities in a propaganda campaign harmful to the Polish nation". He was released shortly thereafter. The investigation is being conducted pursuant to Article 270 of the penal code, which provides for six months to eight years imprisonment for anyone who "publicly insults, rails against or humiliates the Polish nation" and under Article 273 which provides for six months to five years of imprisonment for anyone who "produces, keeps or mails" such material.

Reporters working for the New York Times and the BBC have been questioned about their contacts with Mr. Sila-Nowicki.

Another lawyer acting as defence counsel in the KOR case was also briefly detained; he is Piotr Andrzejewski. He was charged with abuse of freedom of speech because of a letter he wrote to the Naval Court in Gdynia, criticising the procedures adopted by the court, particularly the practice of indefinite detention, contrary to the provisions of martial law, and the obstacles to the ability of defendants to mount a proper defence. He has been temporarily suspended from the bar by the Minister of Justice and could be suspended for up to 2 years if he is found to be guilty of the charges. This is the second time that he has been accused of abusing the right to freedom of speech. Appeals by Polish intellectuals have been sent on his behalf to international lawyers' associations.

Also of concern are the recent statements by government officials in which they accuse lawyers who represent opponents of government practices of being unpatriotic. The government has said that when lawyers forget, while defending an individual, that they are still citizens of the state it shows irresponsibility or ill-will.

The arrest and harassment of lawyers for their representation of particular groups of clients represents a direct threat to the independence of the legal profession. Lawyers must be free to represent their clients to the best

of their ability and, as is universally recognised, lawyers are not to be identified with their client's cause. No lawyer is to suffer from or be threatened with sanctions by reason of his having advised or represented any client or client's cause.

Lawyers, lawyers' associations and judges' organisations have been invited to write to the government of Poland expressing their concern about the harassment of lawyers because of their representation of clients unpopular with the government.

T U R K E Y

Limitations on the Rights of the Defence in Military Courts and Harassment and Intimidation of Defence Lawyers

The CIJL and the International Commission of Jurists have on several previous occasions published articles on the problems faced by defendants and their lawyers in military courts in Turkey and an article on the state of exception in Turkey was published in the recent ICJ publication, States of Emergency - Their Impact on Human Rights. During July 1982, the ICJ sent an observer, Dr. Konrad Meingast, to the Diyarbakir military tribunals. Dr. Meingast concluded that violations of the rights of the defence and violations of human rights were regular occurrences. They included the use of torture to extract confessions, the use of forced confessions as evidence at trial, the refusal of the presiding judge to note or examine statements by the accused that they had been tortured, unreasonably long periods of pre-trial detention, inadequate facilities for preparation of the defence, lack of confidentiality in the lawyer-client relationship, lack of public trials and excessive demonstration of military

power in the courtroom for the purpose of intimidating the accused and the witnesses.

These violations flow in large part from the declaration of martial law and the decrees that have been issued under it. These decrees suspend many of the rights guaranteed under the Constitution and laws of Turkey. Even those that have not been suspended are infringed by practices of both the military and the military tribunals.

Recently the CIJL received a report prepared by the Turkish lawyer, Serafettin Kaya, which describes the difficulties faced by defence lawyers and their clients. His account details the problems outlined in Dr. Meingast's report and underscores the inability of defendants to obtain a fair trial before the Diyarbakir military tribunals. Mr. Kaya was one of the few lawyers in Diyarbakir who was willing to represent defendants before the military tribunals and because of his representation of these defendants and his criticism of the procedures adopted by the military tribunals and the use of torture in the prisons he was arrested and was detained in prison for 7½ months. He escaped from prison and is now living in the Federal Republic of Germany. A summary of Dr. Kaya's report follows this introduction.

Following the summary of the report is a statement by Hüsseyin Yildirim who worked in the same chambers with Mr. Kaya. Mr. Yildirim was arrested in October 1981. His statement describes his imprisonment during which he was tortured. After his release from prison, he continued to be harassed by the members of the armed services and finally left Turkey in 1982 after an attempt was made on his life.

The third lawyer in these chambers was Mahmut Bilgili who was sentenced to 5 years' imprisonment in 1982. The charge against him was based on an allegation that he had given his professional services free of charge to a client and therefore must be in sympathy with his client's

cause. He is presently detained in Diyarbakir military prison and no precise information is known about his state of health.

There have been a series of hunger strikes at the Diyarbakir military prison during which at least eleven prisoners have died. The most recent began on 3 January 1984. One of the six principal demands of the prisoners is the right to a genuine defence, including the right to an attorney of one's choosing and the right of attorneys to gain access to their clients, respect for the confidentiality of the lawyer-client relationship and the means to adequately prepare a defence.

It is to be hoped that the new civilian government will undertake a close review of the military tribunals and will, if they permit them to continue, institute trial procedures which conform to international standards of due process of law.

Précis of Report by Serafettin Kaya

Use of Confessions as Evidence in Criminal Prosecutions

Various provisions of the Constitution and the criminal procedure law were designed to ensure that confessions were not obtained by the use of torture or abusive tactics and that in cases where such acts occurred, the confession would not be used as evidence against the defendant. An example of these safeguards is Article 14 of the Constitution (and court decisions interpreting Article 14) which states that evidence obtained in violation of the law, particularly through the use of torture, may not be used as evidence against a defendant. Another mechanism for the safeguarding of rights was the vesting in the public prosecutor of the sole authority to question political detainees; courts were not to allow into evidence statements obtained during interrogation by the police or armed services. Further, neither a confession nor statements made under

interrogation were to be used as the sole basis for a finding of guilty; other corroborating evidence was necessary. This evidence could not be in the form of statements by the police, since section 156 of Law Number 353 and section 242 of the Code of Criminal Procedure prohibit the use of police statements to prove a defendant's confession.

None of these provisions are being adhered to and confessions obtained under torture are often the only evidence supporting a verdict of guilty. Although under the Code of Criminal Procedure the presiding judge has a duty to enter complaints of torture into the record of the proceedings and forward a copy of the allegations to the public prosecutor who must initiate an investigation, most statements by prisoners that they have been tortured are ignored and in many cases the presiding judge has not entered the prisoner's statement in the record.

Lawyer-Client Relationship

Law No. 353 gives defendants the right to appoint a lawyer(s) to represent them and states that the defendant has an unhampered right to speak with and communicate with his lawyer. These communications are to be confidential unless there is a court order to the contrary. In addition, defendants have the right to receive copies of documents concerning their cases.

With respect to the preparation of the defence, unless a court order directs otherwise, both the defendant and his lawyer have a right of access to documentation in the prosecutor's file concerning the case.

Again, none of these provisions are being followed at the military tribunals in Diyarbakir. Defendants have not been given the right to appoint an attorney but can only receive visits from lawyers who have been previously engaged to represent them. Defendants have had to rely on their

families to find and appoint lawyers without being able to discuss the appointment with them.

Defendants do not have an unhampered right to visits from their attorneys. Rather the number of visits as well as their length is severely circumscribed. A lawyer is only permitted to visit the prison at Diyarbakir once a week and may only meet with three clients during each visit. In addition, the number of lawyers permitted into the prison on any given day is limited to three. Two hours are allotted for the visits, but in fact the visits are only permitted to take place for several minutes and in some cases have been limited to one minute.

The facilities provided for these meetings are not adequate and do not respect the confidentiality of the lawyer-client relationship. A wall (1½ metres high, topped with barbed wire) separates the client from his lawyer and both must shout to make themselves heard. Soldiers are present on both sides of the wall during the entire visit.

When lawyers arrive to speak with their clients, they must give a copy of their appointment by the family and their identity papers to the prison officials and wait outside until entry is approved. This process often takes up to an hour. Once the lawyer is permitted to enter the prison he is subjected to a thorough search of both his person and his papers. In addition, he is at all times accompanied by two soldiers. A wait of up to an hour often follows his entry into the prison and when the client is brought into the room the lawyer is subjected to a second search.

Defendants are not permitted to receive copies of any documents concerning their cases, including the indictment against them, nor are they allowed copies of sections of the penal code or the Code of Criminal Procedure. They are not permitted to write to their attorneys.

Lawyers are often not permitted to examine the documents in the prosecutor's file and prosecutors will not discuss cases with them.

Law offices are routinely searched and it appears that no warrants are necessary for these searches. There is no recourse against them.

Trial Procedures and Presentation of the Defence

Even when the trial has started the lawyer is often denied access to documents in the file. When access is granted, photocopying of documents is not permitted.

Lawyers must wait outside the court building until they have been cleared to enter and are subjected to searches of their person and papers before permission is granted. They are always accompanied by soldiers. Lawyers may only speak when asked to by the judge and are not permitted to speak for any length of time. Lawyers who raise questions about the procedures or who state that their clients have been tortured are warned by the judge not to continue and some lawyers who have persisted in going forward with their case have been physically removed from the courtroom.

Lawyers do not have a right to call witnesses in defence of their clients, but may only put in a written request for permission to do so. Lawyers may not confer with their clients during the proceedings. Permission must be obtained from the judge if the lawyer wants to leave the courtroom for any reason.

During the trial defendants must sit with their feet together and their hands on their knees. They may not move and their heads must always be raised and facing forward. They do not have the right to request permission to speak. Soldiers surround the defendants and sometimes strike those who move from the required position. Defendants are not allowed to take notes during the trial procedure.

In cases where a defendant has been ordered freed that order does not come into force until it has been signed by the local military commander.

Judges and Prosecutors

The military tribunals are presided over by a military judge. The tribunal is composed of two military judges and from one to three assistants. There is no requirement that any member of the panel have had legal training and there are many military judges who have not.

Martial law has changed the rôle of the public prosecutor. Under the law as it existed prior to martial law a public prosecutor was charged with examining the case and collecting all evidence both for and against the accused, including the questioning of the defendant and the witnesses. It was his responsibility to decide whether a trial was necessary or whether there was insufficient evidence to go forward.

Under martial law it is the military commander of a region who decides whether a case will be pursued or not. The public prosecutor is expected to follow the commander's directions. The questioning of witnesses and of the defendant is no longer done by the prosecutor but by the secret police or the "political police". As stated above, these groups often use torture to obtain confessions.

Conclusion

The report concludes with the following statement:

> "I have not read all this; I have lived it myself. These are situations with which I have been confronted.
>
> "A lawyer who cannot converse sufficiently with his client, may not discuss his problems confidentially with him, may not make contact with him in the way he wishes, not examine the file nor see the evidence,

may not discuss the evidence with his client or present the evidence he wishes, cannot go to court without fear, has no right to immunity and cannot say everything in court for fear of reprisals, can also not ensure a genuine defence and be successful in that defence.

"Can one say that a man whose life is not certain, who has no right to speak in court, does not know the evidence, the documents or even the accusations against him and cannot contest them, who must sit in court in a particular way, is denied water and cigarettes, is constantly in fear, who always feels the pain of the blows delivered to his head with sticks, cannot make contact with his lawyer or discuss his problems with him, who is tortured whenever he goes to meet his lawyer - can one say that such a man enjoys the right to a defence ?"

Statement by Hüseyin Yildirim

"I had been acting as a lawyer for political prisoners at Diyarbakir. Often there were up to 50 lawyers present in the mass-trials, but I and my two colleagues from my chambers were almost the only lawyers who dared speak out against the conditions in the courts, and the manner in which confessions had been forced out of the accused under torture. I was beaten in court itself by officers with sticks and the court officials just looked on in silence. It was in such conditions that I was obliged to defend several thousand prisoners over a period of a few months.

"The military authorities constantly tried to put me under pressure, even offering me bribes (an apartment in Istanbul or Ankara and a considerable sum of money) in an attempt to persuade me to stop defending Kurdish prisoners. On 11 October 1981, I was myself arrested and taken to police detention centres where I was repeatedly tortured for a month and forced to sign a false confession. On 10 November 1981, I was finally brought to Diyarbakir military

prison where I was imprisoned for a period of nine months. There I suffered every kind of vicious torture and, what was often far worse, witnessed the terrible cries and clamour of my fellow prisoners as they too were tortured.

"I was arrested and imprisoned purely on account of my professional activities, not belonging to any political organisation whatsoever. While under torture, the prison authorities attempted to force me to sign documents incriminating fellow lawyers, accusing them of collaboration with separatist organisations and so on.

"On one occasion, after I had been in prison for several months, I was taken from my cell and shown to a group of other prisoners who had been my clients and whom, before my arrest, I had defended. They were asked if they knew who I was. They could not recognise me. When they were told who I was, their faces betrayed their anguish at seeing me, their lawyer, also there in prison. Almost their only hope of assistance and support outside the prison had vanished. I am, however, only a lawyer and no senior member of the executive committee of an illegal Kurdish organisation. You can therefore imagine what the torture is like for these, whom the Turkish military see as their main enemies in Kurdistan.

"On 15 July 1982, I was taken on a stretcher to a judge who told me that I was to be released. This was as a result of 500 letters of protest being sent from Europe, and 48 lawyers' chambers intervening on my behalf. On my release I weighed 40 kg., as compared to 70 kg., ten months earlier on my entry into prison.

"I was so shocked and moved by all that I had seen in prison that I started almost at once to defend political prisoners again. The authorities had not expected this after the treatment which they had given me. I noticed that, at the beginning, they were very friendly and polite to me. I am sure that they feared that I would leave Turkey and speak of my experiences.

"I gave evidence and denounced what I had seen in Diyarbakir prison. One day I was attacked in the street at Diyarbakir by policemen who then carried me off and tortured me again for three days. When I still continued to defend my clients, the military authorities forced the local Bar Association, of which I was a member, to sign a paper forbidding me to act as a lawyer for political prisoners.

"The Bar Association did not have the right to do this and the central Bar Association at Ankara annulled the decision. On the same day, just after the reversal of the prohibition had been made known, I was shot at as I was entering a hotel. The police had encircled the hotel. I managed however to get away and, realising that it was too dangerous for me to remain in the country, I fled across the border to Syria and then to Sweden."

U R U G U A Y

Harassment of Defence Lawyer Hugo Batalla

Hugo Batalla a well-known and respected defence lawyer has received death threats from a paramilitary group calling itself Comando de Acción Nacionalista. The threats are a result of Mr. Batalla's representation of Lilián Celiberti and Universindo Rodríguez Díaz who have filed charges against Uruguayan army officers for kidnapping, torture and illegal imprisonment. In view of the number of killings carried out by such groups, these threats are of grave concern.

Ms. Celiberti, her three infant children and Mr. Rodríguez Diaz, all of Uruguayan nationality, were kidnapped from Brazil in 1978 by members of the Uruguayan army acting in concert with members of the Departamento de Ordem Politico e Social (DOPS)(Dept. of Political and Social Order) and brought to Uruguay where Ms. Celiberti and Mr. Rodríguez Diaz were subjected to torture and were kept in incommunicado detention for 4½ months. They were tried by a military court on charges of "subversive association" and "attacks on the Constitution". They were not permitted to have lawyers of their own choosing and were not permitted to introduce evidence at the trial. The military court found them guilty and imposed sentences of 5 years which ended in November 1983 at which time they were released.

Confirmation of the circumstances surrounding their abduction was received from one of the soldiers who participated in the events. He has deserted the Uruguayan army and fled to Europe where he now lives. He has given a statement

describing the events, naming those who took part and the purpose of the "operation".

When the situation came to light in Brazil there was a public outcry and a full investigation was ordered by the Governor of Rio Grande do Sul. As a result of the investigation three members of the DOPS were tried for kidnapping, illegal imprisonment and abuse of their official position. One of the defendants was found guilty and was given a term of imprisonment.

In addition the Human Rights Committee has considered the case of Lilián Celiberti and has found that Uruguay violated provisions of the Covenant on Civil and Political Rights with respect to its actions towards her and has stated that she is entitled to compensation for these violations.

Mr. Batalla along with attorney Mario Jaso Anchorena has agreed to represent Ms. Celiberti and Mr. Rodríguez Díaz in their case before the Uruguayan courts. Mr. Batalla, a former member of parliament, has defended other persons accused of "political" crimes. He was the defence counsel for General Líber Seregni a well-known politician who was a member of Parliament immediately before the coup d'état of 1973.

The CIJL has written to the government of Uruguay stressing the need for a complete investigation into the death threats against Mr. Batalla and the need to bring to justice those responsible. Such threats are a direct attack on the Rule of Law and the independence of the legal profession, and can not be permitted to go unpunished. It is to be hoped that the government of Uruguay will recognize the importance of such an investigation and do all in its power to put a stop to this type of harassment.

Y U G O S L A V I A

Arrest of Lawyer Vladimir Seks

The CIJL is concerned about the case of Vladimir Seks, a 41-year-old Yugoslav lawyer who has been sentenced to 8 months' imprisonment on charges of having falsely and maliciously represented social and political conditions, and who is due to start his term of imprisonment very shortly. The CIJL's concern is based on apparent irregularities in the trial and in the failure of the Supreme Court of Croatia to follow the directions to thoroughly review the evidence given by the federal court of Croatia in its decision reversing the guilty verdict entered against Seks. This concern is heightened by the suggestion that the charges against Seks were made because of his work on behalf of those accused of political crimes and those with cases against government officials, as well as the work he undertook as a deputy district attorney.

Arrest, Charge, Trial and Appeal

Mr. Seks was arrested in the evening of 14 April 1981. He had spent the evening with friends at a restaurant and as he was about to leave a young man asked him if he would join the man and his friend for a drink. Mr. Seks accepted the invitation and shortly thereafter the young man punched Mr. Seks and then called the police. Seven or eight policemen appeared immediately and took Mr. Seks into custody. The arrest occurred the day after Mr. Seks had visited, at the request of Amnesty International, Manda Paric, a nun accused of having engaged in anti-Yugoslav propaganda while visting relatives in Austria.

Mr. Seks was charged with hostile propaganda under Article 133 of the Yugoslav Penal Code, which states that:

> "Whoever falsely and maliciously represents social and political conditions in the country will be punished by a term of imprisonment from 1 to 10 years."

He is alleged to have said that the army and youth in Yugoslavia should be organised along the lines advocated by the Nazis, that the army was stupid and that Franco had had a good army and that Yugoslavia should emulate it. The investigating magistrate who ordered Mr. Seks' imprisonment was himself under investigation for abuse of authority in a lawsuit being handled by Mr. Seks.

The charges were and continue to be denied by Mr. Seks. He denies not only having made such statements but also having engaged in any conversation about this subject. He maintains that he was "framed" by the young man, who was well-known in the region as a thief, in exchange for leniency.

That evening Mr. Seks' office was searched by members of the secret police who went through his files and who removed some documents which were later introduced as evidence at the trial. This search violated Yugoslav law which obligates the police to notify the local Bar Association prior to a search so that they may be present, and which states that the confidentiality of the lawyer-client relationship must be maintained during the search. The required notification was not given and documents were taken from Mr. Seks' files.

As Mr. Seks continued to deny the charges, a second set of charges was added. These accused Seks of having, at a party on 6 March 1981, said that the Yugoslav system and all its organs were rotten, especially the police and the court system and that it must fall. He was also accused of having said that everything Milovan Djilas, the most famous Yugoslav dissident, had said was true. Seks denies having said these things. He states that he did say that there were many problems in the system and that the police and the court system should be improved.

A third set of charges was based on Mr. Seks' representation of a prison guard who had been accused of aiding prisoners in escape attempts. It was alleged that

Mr. Seks illegally entered the jail to interview other prison guards.

Both the second and third set of charges were dismissed by the presiding judge during the trial. At the trial several witnesses admitted that they had been paid by the investigating judge to testify against Mr. Seks with respect to the third set of charges.

On 17 December 1981, Mr. Seks was found guilty on the first set of charges despite a finding that he had been provoked into making the statements. Under applicable case law if the statements are provoked there cannot be malice and accordingly the person cannot be found guilty. The verdict was affirmed on 9 November 1982 by the Supreme Court of Croatia, seemingly without an independent review of the evidence. The Supreme Court confirmed the sentence of 13 months on 19 January 1983.

The case was then appealed to the Federal Court of Croatia, which on 5 April 1983 sent the case back for review, specifically directing the appellate court to carefully consider "whether all or any of the statements for which he was sentenced could represent malicious and false representations of social and political conditions in the country". The federal court also found that the decision of the Supreme Court of Croatia violated the criminal proceedings Act because its affirmation of the trial court decision was based on an incorrect assessment of the facts placed before the trial court. At page 2 of its decision the federal court stated:

> "The appellate court argues that 'the state of facts has been established beyond any doubt on the basis of the defendant's defence itself, since the defendant did not deny having uttered those statements and defends himself by stating that he was intoxicated and provoked'. This is contradictory both to the trial court's sentence and the defendant's defence since the defendant never even

allowed the possibility of having uttered the statements for which he is sentenced."

The Supreme Court of Croatia did not undertake the independent review ordered by the federal court, but merely confirmed the verdict and reduced the sentence. The reduction of the sentence to 8 months' imprisonment deprived Mr. Seks of the right to appeal to the federal court because it does not have jurisdiction over cases with sentences under a year.

However, the federal prosecutor does have the power to institute "proceedings for the protection of legality" which would effectively bring the case before the federal court for review. Vladimir Seks has asked the prosecutor to institute such proceedings and is now awaiting a reply. The only difficulty with the proceeding is that it does not automatically suspend the commencement of the term of imprisonment. A special request for delay will have to be made by the federal public prosecutor.

Background Information

Vladimir Seks graduated in January 1966 from the Faculty of Law at the University of Zagreb, Republic of Croatia. Upon graduation, he went for training to the district attorney's office in Vinkovci, Croatia, from which he had received a scholarship during his third and fourth years of study. He worked there from 1966 to 1968, with one year away from the office to do his military service.

After completing his training he became a deputy district attorney but then left the Vinkovci office to work as a municipal court judge in Osijek. He spent one year as a judge and then went to work at the Osijek district attorney's office where he spent two months as an assistant district attorney and six months as a deputy district attorney.

While deputy district attorney of Osijek he commenced an investigation into the illegal opening of mail by the local

police. Under the federal penal law of Yugoslavia it was and is unlawful for the police to open mail unless there is a criminal proceeding underway and they have the approval of a judge or unless they have the written authorisation of the Minister of Police of the republic. After a preliminary investigation conducted along with an investigating magistrate he asked to be allowed to go forward and start a formal criminal proceeding. At that time each district attorney in an office voted on whether a case should go beyond the preliminary stage and a prosecution undertaken. The vote was in favour of allowing him to proceed.

However, shortly after the vote, he was urged by his superiors to stop the investigation and to state that no illegal acts on the part of the police or post-office officials had been found. Mr. Seks resigned his office rather than carry out the orders. His superior used as an excuse to stop the investigation student demonstrations that had started in Zagreb, Croatia.

After resigning in October 1970, it took almost two years before he was able to find another job in the field of law. In white-collar fields potential employers check with the police before hiring someone. If the police do not approve, application for employment is rejected. In Mr. Seks' case, the police had started a campaign to discredit him, claiming hat he was counter-revolutionary and unpatriotic.

Finally, after two years of negative responses and refusals of admission to the Croatian Bar Association, the bar association relented and allowed Mr. Seks to become a member and to set up practice in a small village outside Osijek. He entered into the private practice of law at the beginning of 1973.

Mr. Seks is one of the few lawyers who will handle "political" cases. Since 1973 he has handled about fifty per cent of these cases in Osijek. Some of his cases concern harassment by police officials directed at individuals.

In about fifty per cent of these cases he has succeeded in either initiating an official investigation or in obtaining a declaratory judgment that the police officer in question did act illegally.

Support from the Croatian Bar Association

The Croatian Bar Association has written three letters on behalf of Vladimir Seks. The first was sent on 9 November 1981 and asked for clarification of the circumstances surrounding the arrest of Vladimir Seks and the search of his office. The Bar Association noted that one of the charges against him arose out of the performance of his duties as a lawyer and that such an arrest is not to take place unless it has been authorised by a special counsel to the court before whom the charges will be tried. It requested that it be informed whether such authorisation had been obtained. It went on to note that a search of a lawyer's office is not to take place without notification being given to the bar association and that the bar association has the right to be present. The letter also points out that despite the fact that the confidentiality of the lawyer-client relationship is not to be violated during a search a document was taken from Mr. Seks' files and used as evidence at the trial. It then goes on to request confirmation of these facts.

The second letter was sent on 14 January 1982. It noted that the first letter had gone unanswered which the bar found surprising given the gravity of the situation and that a guilty verdict had been entered against Mr. Seks. It again asked whether the information referred to in its first letter was correct. In this letter the bar association also noted the important rôle played by lawyers in protecting the rights of citizens and noted that it was for this reason that laws had been passed to ensure lawyers could carry out their functions without fear of reprisal. According to the bar association, these laws were not designed to protect the lawyer but rather the citizens of the country.

Violations of these laws not only put into question the ability of lawyers to practice their profession but also jeopardised the constitutional rights of workers and of citizens. The bar association then asked that impeachment proceedings be commenced against the investigating magistrate who allowed these violations of the law to occur and that disciplinary proceedings be commenced against the police who participated in the search and who seized the document.

On 31 January 1984 the Croation Bar Association sent a letter to the federal public prosecutor in support of Mr. Seks' request that the prosecutor institute proceedings for the protection of legality. It stated that after careful review of the files it considered his request to be well-founded. The Bar refers to the finding of the federal court that essential facts were not properly considered which caused it to reverse the Supreme Court decision and send it back for a complete re-examination of the relevant facts.

Prior to the letter of 31 January 1984, the Bar Association had sent a petition to the federal public prosecutor in which it asked that the proceedings for the protection of legality be commenced and stating that it did not believe Mr. Seks to be guilty of the crimes alleged. The petition refers to Mr. Seks as a conscientious, honest and skilled lawyer.

Lawyers, lawyers' associations and judges' associations have been asked to write to the federal public prosecutor urging him to institute, on behalf of Vladimir Seks, proceedings for the protection of legality.

BAR ASSOCIATION OF GUATEMALA

Below is the text of a petition dated 16 February 1984 by the Guatemalan Bar Association addressed to the President of Guatemala, and calling for an investigation into the role of the police in cases of "disappearances", the publication of a complete list of all those detained by the police, the enactment of reforms to ensure that all future arrests will be made within the framework of the law and for punishment of those responsible for illegal acts.

"Mr. President,

After careful consideration, the Guatemalan Bar Bar Association hereby addresses the following statement to the President:

I. Different sectors of the population have expressed their concern about the increase in the number of criminal acts which are committed daily against the life, liberty and security of the people by individuals acting with complete impunity.

Accordingly, one must mention that, through these acts of violence, hundreds of people have been kidnapped by armed men dressed as civilians and have thus disappeared.

II. Also, in press releases published on the 13th and 14th of this month, high-placed officials of the National Police revealed that one hundred and seventeen people who had apparently been kidnapped, and of whom nothing was previously known, were found confined in centres run by the police. One such centre is the Department of Technical Investigation (DIT).

The press releases also noted that the families of the missing persons petitioned the police about the whereabouts of their relatives. However, the police denied that they had been imprisoned. Nevertheless, there is talk than an even greater number of people are missing than has been reported.

III. The President must agree that the activities of the police corps contradict legally-binding rules. Furthermore, in propagating these criminal acts, the so-called "security forces" of the state contribute to the spread of fear and violence. Ideally, if the police proceed to arrest an individual, they must do it without concealing the fact and must immediately entrust the suspect to the competent legal authorities. In issuing a warrant of arrest the courts have the obligation under the Penal Code to ensure that violence, the unnecessary use of force or any other vexatious procedures are avoided. Similarly, the above-mentioned code gives the prisoner the right to communicate with his family, lawyer, reputable friends and personal physician; no person can deprive the prisoner of this right by means of incommunicado detention. The code also provides for the liability of those who violate this provision.

In cases such as those mentioned above, the behaviour of the police has led to a loss of faith in the police as an institution; it is their role to protect the life, integrity and security of the people.

In fact, in the afore-mentioned cases, no difference exists between the behaviour of the police and that of common criminals. Thus, the state loses moral authority. It is imperative to stress the serious damage suffered by the whole legal apparatus of the state when the police arrest an individual and deny him access to the courts where a writ of habeas corpus could be demanded and, therefore, to apply to investigate the

lawfulness of the restraint. Under the civil rights code of the constitution (and the right to habeas corpus) hiding the fact that an arrest has taken place or any other method of denying a person's constitutional rights, constitutes the crime of kidnapping.

IV. In view of the serious nature of the facts presented herein, which clearly constitute a violation of human rights and contradict the basic principles of the system of justice, the Guatemalan Bar Association requests the President to consider the following proposals:

First, a full investigation must be ordered to clearly determine the role and responsibility of the police in the disappearance of the afore-mentioned one hundred and seventeen people.

Secondly, a complete list of all those detained, particularly those whose detention has heretofore been concealed by the police, must be published. All persons must then be entrusted to the competent legal authorities for a just trial in court.

Thirdly, the police corps must be ordered to obey the Constitution and laws when making arrests; for example, they must obtain a court warrant, except in cases of in flagrante delicto.

Above all, the police must renounce all unnecessary methods of repression and abstain from vexatious acts against arrested individuals. Instead, they must assure that those arrested are brought before the proper courts.

Fourthly, the executive must take such measures as it deems appropriate to control the police in order to prevent continued acts of violence against the security of the whole society. These measures should be taken not

only for the sake of social stability but also to fulfil the state's commitment vis-à-vis the international community to respect human rights.

Guatemala, 16 February 1984"

COMMITTEE FOR IMPLEMENTING LEGAL AID SCHEMES, INDIA

In 1981, the government of India established a "Committee for Implementing Legal Aid Schemes" under the chairmanship of Mr. Justice Bhagwati of the Indian Supreme Court. The Committee was charged with the implementation of an earlier report on the question of legal aid for the poor. The Committee has established one of the most far-reaching government sponsored legal aid schemes in the world.

In December 1983 the Committee submitted to the government a progress report on its activities, which now extend to the field of social action litigation (see ICJ Review No. 29, p. 37). In view of its imaginative and innovative approach the CIJL has decided to publish extensive extracts form the report. Comments on the report or articles on legal aid programmes in other countries will be welcome.

REPORT

2. The legal aid programme adopted by the Committee is of a two-fold character:

(a) court or litigation-oriented legal aid programme;
(b) preventive or strategic legal aid programme.

3. Dispensation of court or litigation-oriented legal aid is the responsibility of State Legal Aid and Advice

Boards which have been set up in the States in accordance with the Model Scheme evolved by the Committee. The Committee renders financial assistance to States Legal Aid and Advice Boards and to non-political social action groups for implementing various items of preventive or strategic legal aid programmes.

Court or Litigation-oriented Legal Aid:

11. This form of legal aid is given by initiating or defending legal proceedings in a court of law to vindicate the rights and legal remedies available to the poor and vulnerable sections of the society. This is the traditional form of legal aid. The Committee does not give such legal aid and advice directly to any person. Legal aid and advice is dispensed by the State Legal Aid and Advice Boards and Legal Aid Committees in Districts, High Courts and the Supreme Court.

12. The Committee has set up a Supreme Court Legal Aid Committee for giving legal aid and advice in cases coming up before the Supreme Court.

13. The legal aid movement has gained momentum in the country and its impact is being felt. It may, however, be pointed out that the legal aid movement has not made as much progress in some of the States as it ought to have because of difficulties arising from inadequacy of staff, non-availability of finances and long drawn-out process of release of funds by the State Government and lack of sufficient enthusiasm by the State Governments and the lawyers. State Legal Aid and Advice Boards are actively engaged in the redressal of the grievances of the people and in addition to giving legal aid and advice, they are also taking up specific legal aid programmes, such as legal aid camps, lok adalats, training of para-legals and promotion of legal literacy among the rural poor.

Preventive or strategic legal aid:

14. The Committee lays greater stress on preventive or strategic legal aid, which consists of the following items:

(i) Promotion of Legal Literacy, including publication of Legal Aid Newsletter, booklets and documentary films

15. The Committee attaches great importance to the promotion of legal literacy as it is necessary that the weaker sections of the community must know their rights and benefits given to them by various social welfare legislations and governmental schemes and measures. With this end in view, the Committee is publishing a Quarterly Legal Aid Newsletter, separately in Hindi and English, which contains features, inter alia, News from States, Know Your Rights, Reports on Legal Aid Camps, Reports on Public Interest Litigation and informative articles on various aspects of the legal aid programme in different parts of the country, creating awareness amongst the people about the imperative necessity of a comprehensive and integrated legal aid programme and providing a forum for exchange of views and experiences on the delivery of legal services to the weaker sections of the community.

17. National Plan for Legal Literacy: The Committee has set up a National Legal Literacy Cell within the Committee and a National Plan for Legal Literacy prepared by Mr. J.K. Mathur, Additional District Judge, Etawah, is before the Committee for its finalisation. Under this programme, a cadre of legal educators is to be trained who will spread legal literacy among the people and conscientize them within a reasonable period of time. The Committee also proposes as part of this programme to persuade the N.S.S., Adult Education Programme and Central Workers Education Programme, to introduce legal components in their training programme.

18. A documentary film on 'Legal Aid' has already been produced in collaboration with the Films Division of India which was exhibited in August 1983 throughout the country. Another documentary film on 'Legal Aid' in Hindi and Marathi has been produced by the State of Maharashtra at the suggestion of the Chairman of the Committee. The Committee has suggested production of two more documentary films, one on 'Women and the Law' and the other on 'Industrial or Agricultural Labour and the Law', and the Chairman of the Committee has already initiated the necessary steps in that direction. The Committee is considering production of seven to eight short films on various aspects of the Legal Aid by the Films Division of India and, if necessary, through private producers.

19. The Committee is utilising the television and radio media for publicity of the legal aid and legal literacy programme. The Chairman of the Committee has already appeared on the television in one of its rural programmes entitled 'CHAUPAL' and has also given talks on All India Radio on legal literacy, public interest litigation and legal aid in general.

20. The Committee has moved the Ministry of Information and Broadcasting for making time available on television and All India Radio for giving information in regard to the availability of the legal aid programme. The Committee has also decided to utilise the existing institutions, such as N.S.S., Family Planning Programme, Adult Education Programme, Workers' Education Programme, I.R.D.P., etc., for the purpose of giving publicity to the availability of the legal aid programme.

(ii) Legal Aid Camps

21. Legal Aid Camps are held to carry justice to the doorsteps of the people. The Committee has helped to evolve guidelines for organising legal aid camps and assisted State Legal Aid and Advice Boards to hold camps, particularly in the rural areas. These camps are attended by the

Chairman of the Committee, Executive Chairman of the respective State Legal Aid and Advice Boards, the Law Ministers of the State and others.

22. The nature of the cases that come up before these legal aid camps are - mutation of land, land pattas, forest land, bonded labour, criminal cases of a trivial nature, pending civil suits and rehabilitation of destitute women rescued from the red-light areas, etc.

(iii) Urban and Rural Entitlement and Legal Support Centres

24. The Committee has now embarked upon a programme of associating non-political social action groups working at the grass-roots level in different parts of the country for the purpose of surveying, identifying and documentation of the problems of the tribal and rural poor. The Committee has set up Urban and Rural Entitlement and Legal Support Centres for providing legal resource to the social action groups and rural organisations of the poor within the area of their operation, holding camps for training non-political social activists as para-legals and for conducting surveys of the various entitlements of the rural and urban poor and to ensure their implementation so that social justice can reach the common man and the objectives set out in the Preamble and the Directive Principles of the Constitution can be realised.

27. These Legal Support and Entitlement Centres would be providing:

(a) Legal services;
(b) training of para-legals;
(c) socio-legal surveys to find out whether the people are getting social and economic entitlements and, if not, why;
(d) taking up all matters affecting the poor with the administrative authorities; and

(e) failing relief from the administrative authorities, take up public interest litigation.

29. The Committee, through these Centres, has held para-legal training camps for social workers so that they could give first-aid in law to the poor in their respective areas of operation, resolve their problems out of court as far as possible and help the poor to fight exploitation and injustice and report cases in the nature of public interest litigation to the Committee or the State Legal Aid and Advice Boards for being taken up in the High Courts and/or the Supreme Court of India.

(iv) Training of Para-Legals

30. The Committee is of the view that for over 650 million people 250,000 lawyers or so will hardly be able to cope with the growing demand of the people and it has, therefore, adopted training of para-legals or bare-foot lawyers as one of the important items of its programme for catering to the needs of the people at the grass-root level.

31. Under this programme, training in rudimentary knowledge of law and the basic elements of the social welfare laws and procedure is imparted to social workers, gram sevaks, gram panchas and other men and women belonging to the weaker sections of the community. After training, these para-legals would be helpful in finding out, particularly at the grass-roots level, the sources of exploitation of the weaker sections, creation of legal awareness amongst them, giving first-aid in law and providing support and assistance to them, organising them to fight for their rights through the legal process, bringing about community rights mobilisation, bringing about mutual reconciliation and settlement of problems, failing which taking the poor to the legal aid centres for legal aid and advice.

32. Several para-legal training camps have already been held under the guidance of the Committee in different parts of the country.

(1V)(a) Women para-legal training course

33. Women fall under special category for legal aid and advice. The Committee has taken cognizance of women as a class who have been subject to deprivation, brutality and extortion. The Committee has now focussed attention on women as a class and is trying to build up social and legal defences for this class. With this end in view, the committee organised a pioneer three days' para-legal training programme on 1-3 January 1983 in Delhi, where about 50 women social workers representing 16 Delhi-based Women's Organisations were given training in rudimentary knowledge of law on various subjects. The Committee has decided to form a Co-Ordinating Cell for Women which will be charged with surveying, identifying and resolving the various problems of women through the process of law by the accredited women social workers of the Committee so that women could feel that their dignity and honour is being protected.

(1V)(b) Legal Aid Clinics

37. With a view to involving law students in the legal aid programme and channelling their energies towards constructive work, the Committee is trying to persuade the universities and law colleges to set up Legal Aid Clinics.

38. The Committee has evolved a Model Scheme for Legal Aid Clinics in the universities and law colleges. Prof. Madhava Menon, an academician from Delhi University and a Member of the Committee has been entrusted with implementing this programme.

(v) Legal Education Programme

41. On a suggestion of the Committee, the Bar Council of India has agreed to introduce 'Law and Poverty' as an optional subject, to begin with, in the third year of the LL.B. curriculum.

42. The Committee, in collaboration with the Bar Council of India has taken up the preparation of the book on 'Law and Poverty'. This is altogether a new subject and hardly any reading material is available at one place for for the benefit of the students who opt for this subject. An Editorial Committee has been set up. Dr. Upendra Baxi, Vice Chancellor, South Gujarat University, is the Chief Editor of the book, other subscribers being eminent jurists and academicians, such as Prof. Madhava Menon, Dr. Gaur, Dr. Lotika Sarkar and others.

(vi) Research in the areas of law affecting the poor

43. The Committee decided that it is absolutely necessary to carry out research in the areas of law affecting the poor to develop and innovate new adjudicatory mechanisms for disputes settlement and to research into the rôle of informal justice system, particularly in the rural areas that would help to organise legal services cheaply, expeditiously and more effectively. Under this programme, the Committee organises Seminars, Workshops, Conferences, etc., on different subjects having bearing on the various laws affecting the poor.

(vii) Legal Aid and the Bar Council

49. The Bar Council of India has, on the suggestion of the Committee, decided to set up a Legal Aid Committee for giving legal aid to the poor. The Scheme prepared by the Bar Council postulates setting up one or more Legal Aid Committees. According to the Scheme, the legal aid through the Bar Council of India shall be admissible to every

applicant whose income does not exceed Rs. 6,000/- per annum and who has got a prima facie case and who has not obtained legal aid from any other source.

50. The Committee, jointly with the Bar Council of India, would be holding four workshops for the High Court Judges in four different regions of the country. The object of the workshops is to expose the High Court Judges to the concepts of legal aid and public interest litigation and to discuss problems relating to these topics with a view to improving the functioning of the legal aid programme and sensitising judges to the problems of the poor.

(viii) Public Interest Litigation

51. Public interest or social action litigation is intended to bring problems of the poor before the courts. So far the courts have been largely utilised by the rich and the affluent with a view to protecting their interests, but now, for the first time and as a result of the efforts of the Committee and the lead taken by the Supreme Court, the problems of the poor are coming before the courts by way of public interest litigation which has been made possible as a result of the expansion of the doctrine of locus standi in the Judges' Appointment and Transfer case. Public interest litigation seeks to reach justice to the common man by making basic human rights meaningful for him. There are a large number of such cases coming up before the Supreme Court and the High Courts where the basic human rights of the poor are being enforced. Cases for securing enforcement of labour laws, including Minimum Wages Act, etc., eliminating bonded labour, improving hygienic conditions in protective homes, protecting juvenile prisoners against sexual assault in jails, ensuring speedy justice to under-trial prisoners languishing in jails for years without trial, dispensing social justice to slum dwellers, implementation of the prohibition against untouchability and removal of environmental pollution created by stone quarry operators in Doon Valley and seeking prohibition of drugs harmful to human life are some of the illustrative cases under this category.

53. Public interest litigation as declared by the Supreme Court in several judgments is not an adversary litigation where one party is making a claim or demand against the other but it is a collaborative effort on the part of the petitioner, the government and the court to see that basic human rights become meaningful for the large masses of people who are leading a life of want and destitution and who are deprived of justice and the exercise is not for the purpose of finding fault with the government or the officers but to ensure that the constitutional objective of giving social justice to the people - which is equally the obligation of the government - is realised. It is intended to help the government to fulfil its constitutional obligations.

55. The Committee is in the process of evolving guidelines for setting up of the Public Interest Litigation Cell, on a uniform basis, throughout the country.

PLAN OF ACTION FOR THE NEXT CALENDAR YEAR

56. The Second Meeting of the Law Ministers and Executive Chairmen of the State Legal Aid and Advice Board was held on 1 October 1983 at Jaipur to discuss the problems and difficulties experienced by the various State Legal Aid and Advice Boards in implementation of the legal aid programme and future course of action. The decisions taken at the meeting form the blue-print for the calendar year 1984.

57. The summary of the decisions taken at the meeting is given below:

i) uniform income ceiling of Rs. 6,000/- per annum and that there should not be insistence on certification of the income. Members of the Scheduled Castes, Scheduled Tribes, women and children should generally be exempt from the means test;

ii) the High Courts of the States and the State Governments should be requested to frame rules under section 304(2) and (3), Criminal Procedure Code for giving legal aid to the indigent litigants in criminal proceedings;

iii) model and guidelines for holding legal aid camps; training of para-legals and setting up of Public Interest Litigation Cell to be evolved by the Committee;

iv) adequate staff and funding of the Legal Aid Committees and expeditious rendition of accounts of grants received by them as also timely submission of the monthly progress reports to the Committee;

v) special cells for redressal of grievances from women and children to be manned, as far as possible, by women lawyers and women social workers;

vi) utilisation of the services of the institutions like N.S.S., Family Planning, Adult Education, Workers' Education Programme, IRDP and Panchayats for the publicity of the legal aid programme;

vii) intimation as to the availability of legal aid to be appended on every summons for the benefit of the indigent accused;

viii) the Committee is to develop a symbol for illiterate people for identification of legal aid organisations;

ix) orientation of office bearers and lawyers to legal aid programme, through periodic seminars and workshops;

x) collection of social welfare legislations for preparation of a legal aid manual;

xi) appointment of lawyers in two panels in Legal Aid Committees;

xiv) to request Chief Justices of the High Courts to giving priority to legal aid cases.

50. The Committee has recommended that legal aid cases should be exempted from the purview of court fee and stamp duty and registration charges on documents, etc.

REPORT OF URUGUAYAN COMMISSION FOR HUMAN RIGHTS

The Uruguayan Commission for Human Rights was created in 1983 as a result of the demands by the citizens of Uruguay that a democratic way of life and respect for the Rule of Law be restored and that the military return to its barracks. It is composed of distinguished persons from different disciplines and from different ideological viewpoints. Lawyers play a prominent rôle in the Commission.

One of the first public actions of the Commission was to issue a report dated 18 November 1983. It was reproduced in the Montevideo press and gave an extremely detailed account of all the difficulties experienced by lawyers who act for the defence in trials before military courts in Uruguay - the harassment they are subjected to and the restrictions and sanctions that are applied to them. The report is a vindication of the right and duty of every lawyer to act for the defence in penal proceedings in cases where he believes he should do so, even where the case in question is political and the defendant or the cause has aroused the animosity of the government. It also vindicates the right of a lawyer not to be equated with the actions and opinions of his clients, which may be very different from and even completely opposed to his own.

In the belief that this report merits a wider readership, it is reproduced here in full.

REPORT

THE RIGHT OF DEFENCE IN CASES
FALLING UNDER MILITARY JURISDICTION

1. Relationship with the defendant

There is virtually no possibility of communicating privately with the defendant either in the military tribunals or in military prison establishments.

Conditions for visits by defence counsel

(a) Military Prison establishment No. 1 (EMR 1, Libertad, Men). The inmates can be visited on Wednesdays, Thursdays and Fridays from 3 to 5 p.m. To be able to do so, a telephone call must be made to the Prison on Mondays or Tuesday, requesting permission to visit and giving the number of persons to be visited. If the defence counsel indicates a day on which he would wish to make the visit, he must confirm by telephone that he has received the authorisation to do so.

Records are kept on every defence counsel who goes to the Prison; the following information is included: Data on defence counsel himself - name, domicile, office address, telephone number, identity card, photograph. Data on the members of his family (parents, brothers and sisters, wife, children) - full name must be given, date of birth, domicile, place of work or study, address of place of work or study.

The defence attorney must state whether any member of his family has a record for offences against the national interest.

The lawyer's interview with his client is held by telephone, defence counsel and defendant being separated by a piece of glass. A guard is present the entire time

and will interrupt the conversation if it departs from matters strictly concerned with the defence.

Defence counsel are carefully searched before entering and leaving. The only objects they may take in with them are a blank sheet of paper, a pencil, a pen and eye glasses. Even if the eye glasses are not worn all the time, no eye glass case may be taken in. No jewellery or adornment of any kind is permitted, except a watch. Any type of brief or paper must be examined. All other objects in the defence counsel's possession must remain in the reception office.

(b) Military Prison Establishment No. 2 (EMR 2, Punta Rieles, Women). Visits are allowed every Monday from 9 a.m. to 12 noon and it is not necessary to telephone beforehand. The registration and searches are the same as those described for EMR 1. The visit may last for only ten minutes, after which the telephone is disconnected.

(c) Other establishments. The conditions of visits to prisoners held in barracks are determined in each case by the commanding officers concerned, but in no case is any conversation of a private nature allowed; a guard is always present to monitor what is said.

2. Judicial Procedures

(i) Habeas corpus

Application for writs of habeas corpus take at least two to three months and in some circumstances even longer. The court confines its enquiry to addressing formal requests for information to the commanding officers of the three armed services and the Ministry of the Interior. In certain cases the Ministry of National Defence and the Military Police are also approached. The replies, when received, are usually negative, in the sense that they

disclaim all knowledge of the detention of the person in question. When the detention is acknowledged, the detainee is then made out to have been arrested two or three days before being brought before the court. This kind of situation occurs when persons are arrested in the street and no-one has been able to testify to the act of arrest.

(ii) Penal proceedings

A private defence counsel is not always present at the hearing after the preliminary investigation because the courts do not always notify counsel of the hearing. Furthermore, the fact that the prisoner has been isolated beforehand makes it difficult, if not impossible, for him to give the name of the lawyer his family has consulted. As a rule, the court-appointed defence counsel is present at the hearing and the change in defence counsel is then formalised. This procedure has the drawback of taking several days to complete and when the charge has been finalised, it often happens that the period of three days allowed to submit remedies of reposición (reconsideration) and, if necessary, appeals, has already expired.

The presence of defence counsel at the initial hearing is the only means of verifying that the defendant's testimony as to whether or not he ratifies any confessions or statements made while in the custody of the police is accurately reflected in the record. Defence counsel is not allowed to raise any defences but is only permitted to make statements on the issue of ratification.[1]

(iii) Evidence

It is extremely difficult to ensure that evidence is heard. In many cases, the court states it has sufficient proof of the facts and refuses to permit counsel to introduce evidence contradicting that of the prosecution. Sometimes courts refuse to allow the introduction of defence evidence for security reasons.

In the few cases where courts agreed to examine defence evidence, the questions prepared by defence counsel were ignored thereby invalidating the purpose of the procedure.

(iv) Right to review case files

/Unlike the system in the ordinary courts/ files may not be removed from the court clerk's office by defence counsel and notes may only be taken by hand (in exceptional cases, they are authorised to type them). Defence counsel is authorised to make a recording of the proceedings only in exceptional cases. Photocopying of documents in the court file, of court records or of sentencing records, is not permitted.

Defence counsel have great difficulties in taking appeals from sentencing decisions since only three days are allowed in which to take the appeal including Saturdays and no copy of the notification of sentence is made available. This occurs even though sentences may range from 8 to 10 years imprisonment. The lawyers must review the court files to prepare the appeal in the court clerk's office surrounded by the general public and other lawyers seeking information about their cases.

(v) Sanctions imposed on lawyers

On occasion, lawyers have been threatened with or have actually been sanctioned by the court. They are given warnings or injunctions to "observe the correct form". This occurs even when the lawyer has correctly followed procedural rules. It is a means of coercing defence counsel in the performance of their duties and may make them less effective in defending their clients.

(vi) Difficulty of changing defence counsel

The paperwork requirements for such a change often lead to unjustifiable delays in the completion of the formalities. There have been cases in which such changes have been disallowed, again unjustly, especially in view of the fact that the choice of defence counsel is the exclusive province of the defendant or the prisoner already serving his sentence.

Montevideo, 18 November 1983

(1) The members of the joint ICJ / Amnesty International mission to Uruguay in 1974 were told by defence counsel that they had no opportunity to speak to their clients until the examination of the defendant by the judge was completed. When asked by the judge if the confession was made freely and voluntarily they almost always said 'yes'. Afterwards they told their counsel that it was made after torture, and explained that they had not told the judge this as the interrogators said that if they did so they would be tortured again or be returned to the prison camp.

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States of Emergency – Their Impact on Human Rights

A comparative study by the International Commission of Jurists, 1983.
Available in english (ISBN 92 9031 019 X). Swiss Francs 40 or US$ 19.50, plus postage.

This 480-page publication contains detailed studies on states of emergency in 20 countries during the 1960s and 1970s, a summary of the replies to two questionnaires sent to 158 governments, and an analysis of this material by the staff of the ICJ, followed by a set of recommendations. The country studies on Argentina, Canada, Colombia, Eastern Europe (Czechoslovakia, German Democratic Republic, Hungary, Poland, USSR, Yugoslavia), Greece, Ghana, India, Malaysia, Northern Ireland, Peru, Syria, Thailand, Turkey, Uruguay and Zaire are based on papers prepared by experts, mostly from the countries concerned. The two questionnaires related to the law and practice under states of exception, and administrative detention. The concluding chapter of general observations and conclusions is followed by 44 recommendations for implementation at international and national levels.

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Rural Development and Human Rights in South East Asia

Report of a Seminar in Penang, December 1981.
Published jointly by the ICJ and the Consumers' Association of Penang (CAP)
(ISBN 92 9037 017 3).
Available in english, Swiss Francs 10, plus postage.

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

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Human Rights in Islam

Report of a seminar in Kuwait, Geneva, 1982, 95 pp.
Available in english (ISBN 92 9037 014 9) and french (ISBN 92 9037 C15 7),
Swiss Francs 10, plus postage.

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

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Civilian Administration in the Occupied West Bank

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

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

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