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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 work of the Centre has been supported by generous grants from the Rockefeller Brothers Fund and the J. Roderick MacArthur Foundation, 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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BANGLADESH

Arbitrary Dismissal of Judges Threatens Independence of the Judiciary

Martial law regulations continue to be used by the Executive to remove judges; Bulletins nos. 13 and 14 reported on the removal of several Supreme Court Judges. The CIJL has learned that an Additional District and Sessions Judge, Mr. Hare Krishna Das, and Civil Court Judge, Mr. Abdul Hossain Khan, were dismissed on 15 November 1984 and 21 September 1985 respectively. In neither case were reasons given for the dismissals. The judges were not informed of the charges against them and were not given an opportunity to be heard.

The CIJL has obtained a copy of the order of dismissal in Mr. Das' case. It merely states that the President and Chief Martial Law Administrator is of the opinion that Mr. Das' dismissal is necessary in the interests of the government and that it is effective immediately. It has been suggested that Judge Das was dismissed at the instigation of District and Sessions Judge M. A. Karim, who wanted Judge Das removed for personal reasons. Judge Karim is a personal friend of the Chief Executive, H.M. Ershad.

Judge Das attempted to obtain a copy of the allegations and a transcript of the proceedings against him, but his request was refused by the Ministry of Justice. The terms of his dismissal were particularly harsh as he was left without a pension after 15 years of service. In addition, the manner of his dismissal has caused him to be refused admission to the Bangladesh Bar Council and, therefore, he is prevented from acting as an advocate.

Judge Das was sitting in the District of Pabna. In a resolution adopted on 2 February 1985, the District Advocates' Bar Association has expressed its support for him as well as its "deep grief at the dismissal of a learned, honest and good judge".

No details are available concerning Judge Hossain Khan's dismissal.

The Basic Principles on the Independence of the Judiciary adopted at the 7th UN Congress on the Prevention of Crime and Treatment of Offenders (reproduced infra, p. 49) which was attended by representatives of the government of Bangladesh, states that judges shall only be subject to removal for reasons of incapacity or behaviour that renders them unfit to discharge their duties (Article 18), that all proceedings shall be determined in accordance with established standards of judicial conduct (Article 19), and that decisions of removal shall be subject to independent review (Article 20). In addition, there is a general obligation on the part of governmental institutions to respect and observe the independence of the judiciary (Article 1). None of these standards are being adhered to in Bangladesh.

C H I L E

New Wave of Violence Against Human Rights Activists Affects Judges and Lawyers

Attacks against human rights activists have been on the increase in Chile. Young people, students and Catholic church activists have been singled out most frequently and within these groups there has been an increasing number of assaults on women. Lawyers and judges have also been affected by this new wave of violence; lawyers because they have represented those accused of political crimes or organisations active in the field of human rights and judges because they have rendered decisions unfavourable to the government, or the government security forces. A recent

report by the Lawyers' Committee for Human Rights and Americas Watch documents several cases of harassment directed against lawyers and judges.

The offices of lawyers Ernesto Montoya and Doris Silva in the northern city of Iquique were ransacked, office furniture and equipment destroyed and files stolen. The Chilean Bar Association condemned the attack, saying that it violated the right to a legal defence as the lawyers represented clients in cases with political significance.

A group using the acronym "M.O.N.A." sent a threat to lawyer Luis Hermosilla on 17 May 1985 stating: "You should notify Gustavo and at the same time remind yourself that the account that we have pending against you has still not been paid. This is the last letter that we will send you requesting payment. Sincerely, M.O.N.A.". The Gustavo referred to in the letter is lawyer Gustavo Villalobos. Both he and Hermosilla are lawyers for the Vicaria de la Solidaridad, the human rights office of the Catholic church. The two are representing the families of three men killed at the end of March. This is the second threatening letter that lawyer Villalobos has received.

In another case, terror tactics have been used to try and stop the investigation into the death of a 24-year old civil engineering student, José Randolph, from Concepcion. His body was found on rocks near the ocean on 27 May 1985. The police, who had arrested Randolph the previous day for drunken driving, claim that the death was a suicide. However, there were discrepancies in the stories offered by police officers, some stating he had escaped from the police station, others stating that he had run away from the hospital where he had been taken for a blood alcohol test. Preliminary tests on the supposed suicide note show that at most half of it was written by Randolph.

The autopsy also suggests that his death resulted from a burst liver caused by blows from a hard object and not a fall. His wrists had lesions on them, suggesting

he had been tied and the mud on his boots did not correspond to that from the surrounding area.

In an effort to stop the investigation from going forward, two unidentified men, wearing hoods and driving a utility van kidnapped the wife of the court reporter assisting the judge, Mirta Navarette, and held her in captivity for two hours. She was beaten and a cross was cut into her left breast. During her captivity she was interrogated about the investigation. On her release she was told that she was not being killed because they wanted her to take a message to the judge to the effect that if he continued the investigation they would do to his wife what they had done to her in the breast, but to his wife's face, and that he would be blown up with a bomb. Despite the appointment of a special investigator to look into the incident, Mirta Navarette was attacked again on 25 July. The assailants were dressed in civilian clothes and were masked. They forced their way into her home, beat her and slashed a cross into her forehead.

The lawyer acting for the Randolph family has withdrawn from the case because of the number of threats made against his wife and family. However, the investigation is continuing. On 5 August the judge ordered the arrest of three policemen on charges of falsifying documents in the case.

C O L U M B I A

The Death of 43 Judges

Although the events in Columbia do not fall specifically within the mandate of the CIJL, it could not let this edition of the Bulletin go to print without some mention of them.

In a regrettable and unfortunate incident, 43 members of the Columbian judiciary were among the 91 people killed in a conflict between the government and M-19

guerrillas. On 6 November 1985, a group of M-19 guerrillas overtook the Palace of Justice by force. At the time of their attack there were over 500 people inside the building. About half were able to escape before the guerrilla occupation of the building. Those who did not escape were taken as hostages. Among the hostages was the President of the Supreme Court, Dr. Alfonso Reyes Echandia, a man well-known to the International Commission of Jurists and a member of its affiliate, the Andean Commission of Jurists. Dr. Eschandia was one of those killed when government troops stormed the building. The others included eleven members of the Supreme Court and 32 from the lower courts.

Leaders of the M-19 claim that they seized the building in an attempt to force the government to publish both the findings of a Commission for Peace created as part of an agreement between the government and opposition groups and the agreement reached between the Columbian government and the International Monetary Fund. Apparently the decision to occupy the Palace of Justice was taken by the leaders of M-19 and they mapped out the strategy. Whatever the motivations, the taking of innocent people as hostages cannot be condoned. Also troubling are the allegations that the guerrillas deliberately set about killing the judges once the military surrounded the building.

The government reaction to the crisis must also be questioned. Only 27 hours elapsed between the taking of the Palace and the final attack by government soldiers, which included the use of dynamite and cannon fire. Certainly an event of this magnitude with such a great potential for loss of life required more time for reflection and discussion both within the government and with others in the society. Allegations have also been made that government troops fired indiscriminately when taking over the building, thus leading to an unnecessary loss of life.

Prior to the government takeover of the building the President of the Supreme Court had tried to reach the President of the country by telephone to ask him to delay

a military solution and to continue discussions with the guerrillas, but his efforts to reach the President were unsuccessful. Then, in a radio broadcast, the judge asked the President to consider negotiations with those holding the building, saying that a great tragedy would result if a military solution were sought.

Both the judiciary and the legal profession have protested the government's action and have boycotted a funeral service organised by the government for the judges. Recently all the country's judges resigned in protest over the government's actions.

It is hoped that these events will resolve themselves in the near future, as the country is now faced with the aftermath of a tragic natural disaster and continues to struggle to rebuild its democracy.

H O N D U R A S

Political Battle Between President and Congress Affects Independence of the Judiciary

Article 1 of the Basic Principles on the Independence of the Judiciary states, inter alia, that "it is the duty of all governmental ... institutions to respect and observe the independence of the judiciary". Using the judiciary as a weapon in a political dispute, as occurred in Honduras during March/April 1985, is a clear violation of this fundamental principle.

Presidential elections are due to take place in Honduras in November. Selection of party candidates took place in spring. A dispute between President Roberto Suazo Còrdova and the President of the Congress, Efraín Bù Giròn lead to a constitutional crisis and adversely affected the independence of the judiciary, particularly the public's perception of the judiciary as a separate organ of goverment.

During February 1985, rumours started to spread that President Suazo might seek to change the Constitution so that he could stand for re-election. Many within his party and some members of the opposition were against such a constitutional change. Near the end of February, in circumstances that remain unclear, some of the leaders of the Liberal Party were replaced by persons more favourable to President Suazo. By this time, talk of amending the Constitution had ceased; however, President Suazo indicated a clear preference for the nomination of Oscar Mejia Arellano, considered to be a loyal supporter.

The President of the Congress, also a member of the Liberal Party, was seeking the party's nomination for President of the country. He and his supporters were unhappy with the support given by President Suazo to Arellano.

Attention then turned to the Supreme Court. On 12 March, a court employee suggested that a move was underway to change the judicial framework of the country and to replace members of the Supreme Court. On 18 March, the Congress passed legislation calling for an investigation into the administration of justice, as well as the functioning of the Supreme Court; a committee was nominated to carry out the investigation. Allegations were made during the debate on the legislation that the court was not carrying out its work properly. The Court's President and three other members were called on to come before Congress and explain the activities of the Court.

The members of the Supreme Court refused to appear before Congress. Subsequently, on 27 March, the report of the investigatory committee was approved. It stated that the Supreme Court had not fulfilled its constitutional responsibilities and that there had been violations of several laws. Then, on 29 March, the Congress dismissed the President and four judges of the Court and designated replacements. This action was denounced by President Suazo who referred to it as a technical coup d'état and accused

those who had voted for the legislation of being traitors to the country. The new President of the Court was arrested and put in detention and the other appointees went into hiding. All the new appointees were charged with treason and cases brought against them in the criminal courts. The army was placed on a state of alert and was sent to guard the courthouse. The President also tried to bring treason charges against the 53 members of parliament who had voted for the legislation, but the Congress refused to waive the immunity granted to parliamentarians for acts taken in the course of their duties.

An important factor in the dispute was the Supreme Court's power to appoint the head of the National Elections Board. That body oversees the election results and rules on all disputes having to do with the electoral process, including internal party disputes. In addition to the Supreme Court, each party appoints one member of the Board. The Supreme Court appointment is perceived as giving an advantage to the ruling party as it would have appointed the Supreme Court judges.

The crisis continued for several weeks until strikes were called for by the major labour and peasant organisations, apparently after discussions with the military to ensure that reprisals would not occur. At that point the Catholic church intervened and the army was convinced to take a more active role in negotiating a solution between the factions. A compromise was reached while President Suazo was out of the country, apparently with his approval. With respect to the Supreme Court, it was agreed that all the newly appointed judges would resign, that the former President of the Court would retain his office, and that Congress would then have the right to appoint four judges.

This type of political manoeuvring can only serve to destroy public confidence in the judiciary and make it a tool of the other institutions of government, severely undermining its independence and thereby the Rule of Law.

New Legislation Poses Threat to Independence of the Bar Association

Bulletin no. 12 contained a report on the independence of the legal profession and the organised Bar in Indonesia. The report referred to the "New Order" being established in Indonesia, known as Pancasila (the creation of one national ideology) and the creation of a collective of functional groups known as Galongan Karya (Golkar). It was noted that although the leaders of Golkar claimed it was not a political party, it held the majority of seats in Parliament and that the President and most cabinet officials were members, thus, in effect making Golkar the ruling party.

At that time the legal profession remained outside of Golkar, however, increasing pressure was being exerted on the legal profession to join.

There is no national organisation of lawyers in Indoesia. Every citizen has the right to appear in court to represent not only himself but others, and as a result many persons "practising" law have not passed the qualifying examinations to become advocates and in many cases they have not had formal legal training. These lawyers are referred to as "bush lawyers". There are several "lawyers" organisations, some representing particular groups such as notaries or government prosecutors. However, Peradin, the association representing qualified private practitioners is the only organisation with a code of ethics and a disciplinary system.

A bill is presently before the Indonesian Parliament which would create a national bar association and bring it within Golkar. The legislation would place all qualified lawyers and all lawyers' organisations, including those offering legal aid, within one organisation. The new organisation will have to accept Pancasila as its governing

ideology, make reports on its finances to the government and allow its members to be disciplined by the Ministry of Justice. In addition, the government will have the final approval over the composition of the executive committee. Once the committee is elected by the association, the names of the proposed members will have to be submitted to the government. If the government disapproves of a member, then it will have the right to appoint someone to take the member's place.

The Universal Declaration on Justice, adopted in Montreal in June 1983, contains provisions concerning the independence of the bar association which state that in each jurisdiction independent and self-governing associations of lawyers shall be established and that the council or executive body of these associations shall be freely elected by all the members without interference. The legislation being enacted in Indonesia violates this principle and rather than ensuring an independent bar, ensures government control over the bar.

M A L A Y S I A

Charge of Sedition Poses Threat to Independence Of the Legal Profession

The Vice-President of the Bar Council of the States of Malaya, Param Cumaraswamy, has been charged with sedition as a result of an open appeal he made on behalf of the Bar Council to the Malaysian Pardon's Board to reconsider the petition of one Sim Kie Chon for commutation of his death sentence. The statement was made on 24 July; Mr. Cumaraswamy was arrested on 10 August, and charged the following day. His trial is scheduled to begin on 26 November. In addition to being the Vice-President of the Bar Council he is Chair of the Council's Human Rights Commission and is Co-Chair of the LAWASIA Human Rights Standing Committee.

Background

Sim Kie Chon was charged under the Internal Security Act (ISA) with possession of a revolver without a licence and five pounds of ammunition. The charge carries a mandatory death sentence. After exhausting his right to appeal, Sim petitioned the Pardon's Board for commutation of the death sentence. His petition was rejected. Sim then challenged the Board's action in court. On 23 July 1985, the Supreme Court upheld the High Court's dismissal of the case, ruling that the power of the Pardon's Board is a "prerogative of mercy" exercised by the King and is not subject to review by the courts.

The following day Mr. Cumaraswamy made the appeal to the Pardon's Board during a press conference held at the offices of the Selangor and Federal Territory Bar Committee. He urged the Board to review the petition on humanitarian grounds and to commute the death sentence "in the name of justice and in good conscience".

In his statement Mr. Cumaraswamy expressed the view that Sim should not have been charged under the ISA as there was no evidence that Sim was involved in any subversive or organised violence which the ISA was enacted to prevent. He pointed out that if the death sentence had not been mandatory, no court would have found the evidence sufficient to warrant a death sentence and that this was a factor that should have been taken into account by the Pardon's Board.

Mr. Cumaraswamy went on to compare Sim's case to that of Datuk Makhtar Hashim, a former Minister of Culture, Youth and Sports who was convicted of murdering a political rival and whose death sentence was commuted to life imprisonment. He stated: "On the records before the court, Sim's case certainly was less serious than Makhtar Hashim's case. Yet the latter's case was commuted. The people should not be made to feel that in our society today the severity of the law is meant only for the poor, the meek and the unfortunate

whereas the rich, the powerful and the influential can somehow seek to avoid the same severity". He pointed out that Makhtar Hashim had actually discharged a firearm and killed someone and that the trial had been treated as a security case. The only difference was that Makhtar Hashim had a licence for his firearm.

In explaining the reasons for the open appeal, Mr. Cumaraswamy noted that Sim had exhausted all his avenues through the courts and that only the Pardon's Board could conduct a further review of his case. He then noted: "What is disturbing and will be a source of concern to the people is the manner in which the Pardon's Board exercises its prereogative. Though the prerogative of pardon is not justiciable before the courts, yet surely it cannot be absolute under a system of government committed to justice and to the Rule of Law. Even prerogatives must be exercised with some uniform, if not principles, guidelines ?

The Charge

Apparently a report was lodged with the police on the day Mr. Cumaraswamy made the statement and he was questioned twice by the police. However, he was not informed by the Attorney-General of the impending charge nor was the Bar Council approached in the matter. Mr. Cumaraswamy was arrested at his office during the morning of 10 September and later released on bail. He was charged under Section 4(1)(b) of the Sedition Act the following day in the Magistrate's Court but the case was removed to the High Court at the request of the prosecutor. It is alleged that he uttered seditious words during his statement of 24 July; a copy of his statement was attached to the charge. However, the prosecutor has not specified the particular sections of the statement that constitute sedition. Mr. Cumaraswamy has entered a plea of not guilty. The charge carries a penalty of M$ 5,000 (US$ 2,005) or three years imprisonment or both.

Bar Association Support

On 12 September the President of the Bar Council, Ronald Khoo, issued a statement on behalf of the Bar Council expressing full support for Mr. Cumaraswamy, stating:

> "The Malaysian Bar views with grave concern the preferment of the sedition charge against its Vice-President. It is of the opinion that the charge presents a grave challenge to its existence and functions under the Legal Profession Act, 1976. Malaysian Bar is committed under that Act to uphold the cause of justice and to speak fearlessly on the fundamental freedoms which are the bedrock of this nation."

LAWASIA (The Law Association for Asia and the Western Pacific) has expressed its concern over the arrest and has stated that it will monitor developments in the case and is taking steps to arrange for the attendance of an observer at the trial.

CIJL and ICJ Intervention

On 19 September the CIJL and the ICJ wrote to the government of Malaysia expressing their concern about Mr. Cumaraswamy's arrest and stating that if his statement on behalf of the Bar Council were the basis of the sedition charges that, with all due respect, such an issue would be a proper matter for comment by a representative of the Bar Association. They noted: "It is internationally recognised that it is the duty of members of the legal profession to comment upon the administration of justice, in order to help promote the highest standards and avoid possible injustices", and urged that the charge be withdrawn. The comments of the government were solicited, but so far no response has been made. The CIJL and the ICJ will jointly send an observer to the trial.

P A K I S T A N

Raza Kazim

Bulletin nos. 13, 14 and 15 reported on the case of Raza Kazim, who was being tried before a military court on charges of sedition and other offences against the State. The CIJL has learned that Mr. Kazim was acquitted on 14 July 1985 and was released. Mr. Kazim was in poor health throughout much of his detention and had to be put in hospital.

P H I L I P P I N E S

Harassment of Human Rights Lawyers

The CIJL has become increasingly concerned about the situation of human rights lawyers in the Philippines. During May 1985 it issued a circular letter describing the arrests of Filipino lawyers active in defending human rights cases; five were members of the Free Legal Assistance Group of the Philippines (FLAG) and the others were members of MABINI. Then in July the CIJL issued a circular letter calling upon major international lawyers' organisations to respond to a FLAG appeal to investigate the situation of human rights advocacy in the Philippines. FLAG is an association of lawyers who give free legal aid to the poor, including those accused of crimes, mostly "national security offences", farmers, labourers, urban poor and students. It is the oldest organisation of its kind in the Philippines.

A mission, in which the CIJL and the ICJ participated, took place from 18 to 28 August. Several of the lawyers referred to in the 30 May circular letter were interviewed by the mission.

Arrest of FLAG Lawyers in Abra Province

During April 1985, two FLAG lawyers, Romeo Astudillo and Alberto Benesa, from Abra Province, Northern Luzon, were arrested and charged under the 1981 anti-subversion law. The initital arrest took place on 10 April. Both applied for and were granted bail. Subsequently, a Presidential Detention Action (PDA) was issued. This allows detention without a warrant or trial for indefinitely renewable periods of up to one year. The lawyers were re-detained on 28 April pursuant to the PDA and are being held in Camp Villamor, run by the Philippines Constabulary Command in Banqued.

Three charges were jointly laid against the two lawyers: (1) aiding the New People's Army in that they gave 8,000 pesos to the NPA; (2) recruiting for the NPA; (3) giving the NPA, inter alia, rounds of ammunition and a walkie-talkie radio. An additional charge of giving 1,000 pesos to the NPA for the purchase of medicine was laid against Mr. Benesa. Both lawyers deny the charges and say there is no substance to them.

The trial against the two has started, but it is believed that the proceedings will be quite prolonged. One of the witnesses against the two has stated that he was tortured in order to extract a statement and that three other witnesses were also tortured.

The two were the only lawyers handling civil rights cases in the region. Both believe their activities in this regard were the primary cause of their arrest. They have had a high success rate; apparently no convictions have been entered against their clients since 1978. Since their arrests those accused of political crimes have not been able to secure the services of an attorney. Both lawyers have been provincial presidents of the Integrated Bar of the Philippines (IBP) and both have held positions in opposition parties. Benesa is also a member of the

Northern Luzon Human Rights Organisation, a group founded by the Catholic church.

MABINI Lawyers Arrested

On 22 April, two lawyers working for MABINI were arrested and charged with subversion. They are: Jejomar Binay and Vladimir Sampang. The charges against lawyer Sampang were later dropped. The lawyers had worked together on a subversion case and obtained an acquittal for their client. Shortly thereafter the two lawyers and their client were arrested.

Arrest of FLAG Lawyers in Davao

During May, three additional FLAG lawyers were arrested in Davao, Mindanao. First, on 10 May, Laurante Ilagan was arrested outside his office. When he asked to see the order for his arrest he was shown a "mission order" which is a commander's order to a subordinate directing the subordinate to carry out a specific task. Mission orders have not previously been used in order to arrest people. The mission order referred to a PDA, but when Mr. Ilagan was taken to the Regional Headquarters of the Philippines Constabulary at Camp Catitipan and asked to see the PDA he was told that for "tactical reasons" he could not.

Later that day a group of 14 lawyers went to the camp to try and see Ilagan and to secure his release. When the lawyers arrived they were denied entry to the camp. One lawyer, Antonio B. Arellano, insisted on seeing Ilagan, saying that he was Ilagan's representative; he also asked to see an attorney from the Judge Advocates Office. When he arrived at the office he was shown a mission order referring to a PDA issued for his own arrest.

A third FLAG lawyer, Marcos Risonar, was arrested on 12 May 1985, also on a mission order and was also placed in detention at Camp Catitipan.

It later surfaced that the PDA's had been issued in January 1985; according to Presidential Decree 1877, PDAs must be executed within 24 hours in Manila and within 48 hours elsewhere. The lawyers had frequently been in the camp visiting clients, discussing cases with the Judge Advocate's Office as well as discussing problems other lawyers were facing in representing clients detained at the camp. Yet no attempt was ever made to serve the PDAs.

On 14 May, writs of habeas corpus were filed with the Supreme Court in Manila; the IBP joined as a petitioner to the writ. On 21 May, the three lawyers were transferred to Manila for the hearing on 23 May. The Supreme Court issued the writs and ordered the immediate temporary release of all three. Immediately following the issuance of the Supreme Court order, the lawyers acting in the case, including two former Supreme Court judges, went to the detention centre to secure the release of the three. There they were told by the military authorities that they acted on orders from "higher up" and refused to release the men until told to do so. It was their view that a PDA takes precedence over a Supreme Court order and until it is withdrawn, the lawyers cannot be released.

On 27 May, criminal complaints were filed by the military with the fiscal's office in Davao; the fiscal is responsible for conducting the preliminary investigation of a case. Unless a suspect is caught committing a crime, preliminary investigation is mandatory and the party named has an opportunity to file responding affidavits. The information is then laid in the regional court. However, in this case the information was laid in the Regional Court in Davao the same day the complaint was filed. All three were charged with rebellion and as is usual in such cases warrants were issued for their arrest on the filing of the information. The lawyers have not applied for bail; they fear that if they are released from prison they may be killed or their families may be subjected to harassment.

Also on 27 May, the Solicitor General filed a motion for reconsideration of the writs of habeas corpus with the Supreme Court. Then on 28 May, the day after the informations were laid in the Davao court, another motion was filed before the Supreme Court arguing that the rebellion charges rendered the case moot. This motion was only recently decided by the Supreme Court which ruled that the case was moot as the lawyers' detention is now based on warrants of arrest issued by the trial court.

There is much concern within the legal community about an executive order being used to override a decision of the Supreme Court. Also, there is a widespread belief that the lawyers were arrested because of their work in the human rights area. This concern was justified by a press statement issued by the military headquarters in Davao which stated: "The arrest of Ilagan who had lately been engaged in human rights lawyering for suspected persons detained for subversion, rebellion and other charges was long overdue". (This was reported in "The Business Day", a journal supporting the government.)

Antonio Arellano is the Davao City Chairman of FLAG and acts as a coordinator among the FLAG lawyers in the region. He is also director of the IBP Human Rights Committee and as such sits on the IBP board. He is also a member of two opposition groups. Laurente Ilagan is a member of one of the opposition groups, a national coalition.

Killings Perpetrated Against Lawyers

Other lawyers have been told that PDAs have been issued for them, or that they are on military "hit lists". Some have been put under surveillance by the military who threatened them with firearms and told them if they were not careful they would be next.

These threats are not taken idly as three lawyers have been shot in the last 19 months. On 13 March 1984, FLAG lawyer, Florente de Castro, was shot in his home; he

also acted as a radio commentator. Three men barged into the house while he was having breakfast with his family and started to shoot. Traces of 17 bullets were found. One of the assailants was identified as an army captain and witnesses gave sworn statements as to his identity. When the case was called for the preliminary investigation, the witnesses refused to testify out of fear.

A Davao City lawyer, Zorro Aguilar, was killed on 23 September 1984. He was walking with a journalist who lived long enough to identify the killers as members of the Philippines military.

Then, on 2 April 1985, Romaflo R. Taojo was shot in his home. He was shot five times by a weapon used by members of the army intelligence. He had been active in the handling of human rights cases and shortly before his death he had conducted successful negotiations with local plantation owners on behalf of a group of labourers. Also, he had just undertaken to represent some relatives in a commercial dispute with a member of the local military. Taojo had been warned that he was on a military "hit list".

A fourth lawyer, Crisostomo Cailing of Balingasag, Misamis Oriental, was shot on 6 July 1985. In addition to being a member of FLAG, he was also a member of the IBP Human Rights Committee. Cailing was shot at his home; he was married with six children. He was the only lawyer in the Cagayan de Oro region handling human rights cases. He had been representing a local farmer in his attempt to stop food blockages by the army. The military impose these restrictions, in theory, to prevent food from reaching the guerillas, but the effect is usually that the local population is deprived of food. The farmer had been shot by unidentified gunmen in June 1985.

Thorough investigations have not been conducted in any of these cases, nor has anyone been charged.

CIJL, ICJ and Bar Association Interventions

The CIJL and the ICJ have protested these events to the government of the Philippines and participated in the international fact-finding mission. Numerous lawyers' organisations responded to the appeals issued by the CIJL in May 1985 and have written to the government of the Philippines expressing their concern. The Integrated Bar of the Philippines has urged the Minister of Defence to conduct inquiries into the arrests of the Abra lawyers and has reminded him of a statement he made to the IBP on 21 May 1983 indicating that the Ministry of National Defence "does not harbour any suspicion of rancour against lawyers undertaking legitimate and well-meaning efforts to defend the rights of their clients, even though those clients may be facing charges of subversion and similar crimes." In response to the IBP appeal, Minister Enrile reaffirmed this policy.

The CIJL intends to continue to monitor the situation in the Philippines, as recent events demonstrate that not only are lawyers under attack but also the very notion of the Rule of Law.

S O U T H A F R I C A

Arrest of Lawyer Abdullah Omar

On 20 September 1985, the CIJL issued a circular describing the arrest of Cape Town civil rights lawyer Abdullah Omar. The CIJL has learned that Mr. Omar was released in mid-October but was re-arrested during the night of 24/25 October, along with many other leading personalities.

There is widespread concern about the state of Mr. Omar's health. During his previous detention his wife had obtained permission to visit him. However, when the visit took place Mr. Omar was unable to recognise her.

The reasons for Mr. Omar's condition are not known, but in a number of cases South African detainees have suffered mental breakdowns as a result of sensory or sleep deprivation. It is feared that a further period of incarceration could have permanent effects on Mr. Omar's health, particularly as he has a history of coronary thrombosis.

Mr. Omar was previously held under Section 29 of the Internal Security Act, no. 4 of 1982, which permits detention for the purposes of interrogation. His arrest on 24/25 October was under Section 50 of the Act which permits detention without a warrant if the person is suspected of contributing to public disorder. It is believed that all those arrested on 24/25 October are now being held under the emergency regulations which were extended to the Cape Town area on 26 October. Those associated with Mr. Omar deny that he was taking part in or contributing to public disorder.

Lawyers' and judges' organisations have been urged to write to the government of South Africa expressing their profound concern over the re-arrest and detention of Mr. Omar, particularly in light of his deteriorating health and to urge that he be released.

S O U T H K O R E A

Transfer of Judges Threatens Independence of the Judiciary

Two judges of the Seoul District Court were transferred to posts in rural areas after handing down not guilty verdicts in cases against anti-government student demonstrators during August 1985. The transfers were ordered by the Supreme Court. A third judge, Soh Tae-Yong, of the Seoul District Court, was transferred on 1 September to a provincial court, a day after he was reassigned to the Seoul District Court, for having written an article

critical of the transfers for a weekly law journal. Judge Soh indicated that the transfer of the two judges should not have taken place.

On 11 September, the Korean Federal Bar Association recommended that the Chief Justice, Yoo Tae-heung, should assume full responsibility for the incident and should take corrective action. The Bar stated that the authority and independence of the judiciary had been impaired by the abuse of personnel management and that steps must be taken to restore the damaged prestige of the judicial branch and prevent the recurrence of such incidents. It then stated that if the Chief Justice were unwilling to take the necessary actions, he should resign.

The Seoul Area Bar Association also denounced the transfer of the judges, stating that it threatened the independence of the judiciary and the basic rights of citizens, and that without guarantees for the independence of judges there could be no independence of the judiciary.

On 18 October, the New Korea Democratic Party, the major opposition party, brought an impeachment motion before the Parliament against the Chief Justice on the basis that he had violated two articles of the constitution by submitting to government pressure in the management of court personnel and by transferring judges because of their rulings without having instituted disciplinary procedures. The motion was defeated on 21 October.

The Basic Principles on the Independence of the Judiciary state that judges are to decide matters before them impartially without any pressure, threats or interferences and that a judge's term of office and conditions of service are to be adequately secured by law. The Principles also safeguard a judge's right to freedom of expression. The transfer of judges because of decisions they have rendered or because of their expression of views on the administration of justice is contrary to these

principles and threatens the independence of the judiciary and the Rule of Law.

U N I T E D S T A T E S

California Supreme Court Election Campaign Threatens Independence of the Judiciary

The election of judges raises difficult issues with respect to the independence of the judiciary. The electoral system must achieve a fine balance between the obligation placed on judges to decide matters before them impartially, the duty of the other branches of government to observe and respect the independence of the judiciary and the public's right to a say over the competence of a particular judge or group of judges. As with other elections there are no criteria specified for the public to use in the exercise of their judgment. Several groups and individuals have attempted to enunciate criteria in the course of the California electoral campaign, but for the most part they reflect the speaker's personal belief rather than a reasoned and well-researched approach to the matter.

Under the California constitution judges are appointed by the governor, after submission of names of proposed nominees to a State Bar Committee. They are then approved by the Commission on Judicial Appointments, confirmed by the voters at the next general election and submitted to retention elections every 12 years. Candidates run unopposed in the elections. If a candidate is defeated, the governor makes a replacement appointment in accordance with the above system. During November 1986 retention elections will take place for five of the seven California Supreme Court judges, including the Chief Justice.

Campaigning is already underway. Several interest groups have formed, a number of them with the avowed purpose of defeating the four Supreme Court Justices appointed by

Democratic governors; the justices are: Chief Justice Rose E. Bird, Associate Justices, Joseph R. Grodin, Stanley Mosk and Cruz Reynoso. Particular attention is being given to the Chief Justice. The groups opposed to her retention are focusing on her so-called "liberal" viewpoints, in particular the position she has taken in death penalty cases (California is one of the 27 states in the United States which imposes the death penalty). These groups claim that she and her colleagues have attempted to thwart public will by reversing most of the death sentences given by the lower courts and letting a backlog of cases build up. They argue that in making their decisions the voters should consider whether the judges are carrying out the will of the people; they argue that judicial elections are no different from other elections.

Those supporting the Chief Justice and her colleagues argue that a Justice's decision in a particular case should not become the focal point of an election, otherwise the result will be gallup-poll justice. They note that the system of retention elections was adopted to avoid politicising the judiciary and to avoid the type of campaigns that exist in other elections. They also point out that the frequency of reversals and the backlog in death penalty cases is typical of all states where the death penalty exists.

The Governor, a Republican, some state legislators and the Board of Directors of the District Attorneys' Association have all taken positions opposed to the Chief Justice. The Governor, in addition to citing the death penalty issue, has recently referred to decisions of the Chief Justice that he considers "anti-business" as a basis for his opposition to her retention. The District Attorneys' Association has issued a "White Paper" which refers to the court as being anti-prosecution and it is vocally opposed to the retention of the Chief Justice.

Many lawyers have questioned the propriety of the Governor's involvement as well as that of the District

Attorneys' Association in the campaign. This position has support in the Draft Principles on the Independence of the Judiciary adopted in Milan with the active participation of the US representatives. Principles 1 and 2 state:

> "1. The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.
>
> "2. The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason."

The Governor's statements indicate that he is acting without proper respect for the independence of the judiciary and is, in fact, attempting to place pressure on the judges in order to obtain specific results. The same applies to those legislators taking part in the campaign. The actions taken by the District Attorneys' Association also fall into the category of improper influences and pressures. It is also questionable whether this organisation and the individuals in it should ethically be involved in the campaign. A prosecutor's role goes beyond securing convictions. As an arm of the state and its representative in the judicial process, a part of the prosectutor's role is to ensure that justice is done and thereby to promote the Rule of Law. It would seem that those sponsoring these activities have forgotten this aspect of their work.

It must be remembered that judges do not choose to hear the cases brought before them. To ensure that they will give fair consideration to all matters they must remain outside the public debate and also must be able to decide matters before them without fear of reprisal. Campaigns directed at judges because of decisions taken do not enable judges to act without fear. Differences in political outlook should not be permitted to cloud the fact that the proper administration of justice requires

judges to adjudicate impartially between conflicting rights and interests and to apply the law according to their understanding of its meaning.

ACTIVITIES OF LAWYERS' AND JUDGES' ORGANISATIONS

AFRICAN BAR ASSOCIATION

The African Bar Association held its fifth Biennial Conference in Lusaka, Zambia, from 19 to 21 August 1985 and adopted resolutions concerning the role of lawyers, the independence of the judiciary and the situation in South Africa. Those concerning the role of lawyers in developing countries are reproduced below:

> "The African Bar Association, having chosen as its theme for its Fifth Biennial Conference held at Lusaka, Zambia, "The Role of a Lawyer in a Developing Country", and after discussing all the papers presented thereon there emerged a general consensus that legal education in Africa should be broadened to include a study of the social sciences and thereby equip lawyers of member countries to offer meaningful services to their various governments, communities and individuals in their search for solutions to their problems, whether social, economic, cultural or otherwise. The Conference accordingly resolves as follows:
>
> 1. That Bar Associations or Law Societies should encourage Law Schools to include in their curriculum the study of the Social Sciences.
>
> 2. That lawyers through their respective Bar Associations or Law Societies should spearhead the spread of awareness amongst the general populace of their rights and responsibilities. ...
>
> 3. That lawyers should be conscious of the political, ideological and social conditions prevailing in their countries, and in their quest for social justice in their society should not be deterred by political instability prevailing therein.
>
> 4. That governments should be encouraged to consult with and seek the advice of the Bar Associations and Law Societies in their respective countries whenever any legislation is proposed to be passed or made.

5. That the African Bar Association recommends to governments to make use of local expertise whenever any negotiations in any field of development are to be undertaken.

...

10. That this Conference having taken note of the fact that it is essential to provide adequate legal advice and representation to all those threatened as to their life, liberty, property or reputation who are not able to pay for it HEREBY RECOMMENDS to Bar Associations or Law Societies to take steps to ensure that legal aid is made available to the poor and indigent persons of member countries in both civil and criminal matters in which they may be involved, and free of charge to them.

... "

UNION OF ARAB JURISTS

The Second Conference of the Union of Arab Jurists was held in Amman, Jordan, from 28 to 30 July 1985. The Conference adopted two documents, the Charter of Honour for the Arab Jurists to Struggle for the Human Rights and Basic Liberties in the Arab Homeland, and the Arab Declaration on the Independence of the Judiciary. The latter document is reproduced below. Copies of the Charter of Honour can be obtained from the Union's secretariat.

The Arab Declaration on the Independence of the Judiciary

As the obedience of the state to the law is the solid basis for the legitimacy and continuation of the system of rule; as the independence and immunity of the judiciary are basic guarantees to ensure the submission of the state to the law and the protection of rights and liberties; as it is the nature of the judiciary to be independent, and it should be so, any violation of these principles or any interference by any of the other authorities or the public in the procedures of the judiciary affects the balance of justice and destroys the foundations of government. If the judge performs his job freely and independently, feeling secure of his future, it is the greatest guarantee for the people, rulers and citizens as well.

The independence of the judiciary basically depends on the supremacy of law which means that no violation of the citizens' rights, liberties and holy precincts should

be made except in accordance with the ordinary law, and after a sentence is duly passed according to measures taken by the law. Judges should not be under the supremacy of anyone or anything except the law. No authority should be be immune from any law or order or measure or from the observance of the law, nor should any authority intervene in the matters and affairs of justice.

As confidence in the judiciary is an essential factor in the ability of the government to continue in power, the creation of a second class of courts or decision-making bodies violates this confidence. This includes the creation of exceptional courts or investigating bodies or the direct appointment by other governmental bodies of members of the judiciary. Such measures destabilise confidence in the courts and acts taken by them and perpetuate conflicts.

As the proper training of judges and the provision of adequate remuneration are a means of ensuring purity, justice, objectivity and ultimately confidence in the judiciary, and as judges should be competent to perform their functions with the requisite neutrality, and learning, the Second Conference of the Union of Arab Jurists promulgates this united declaration on the independence of the judiciary and considers it to be an ideal and permanent basis for the constitutional protection of the independence of the judiciary to which all Arab governments should adhere.

Article One: The state should submit to law; the independence and immunity of the judiciary are basic guarantees to protect the rights and liberties.

Article Two: The forming of all exceptional or special courts is prohibited. The creation of special investigative or decision-making bodies must also be prohibited.

Article Three: The right to bring legal proceedings is a sacred and guaranteed right for all people. Every person has the right to resort to ordinary courts. In the written legislation no law or administrial order should be exempt from the supervision of the judiciary.

Article Four: Judges are exempt from dismissal. In this Declaration, judges are all those who practice the work of interrogation or trials whatever the method of their appointment and who are carrying out judicial functions.

Article Five: Judges are independent and no-one has power over them in their decisions except the law. No authority has the right to interfere in the matters of justice, individual cases, or prevent the implementation of judicial decisions.

Article Six: The administrial and financial affairs of the judiciary and of judges should be handled by a supreme council composed solely of members of the judiciary. No

decision in this regard should be made without the agreement of this council.

A committe presided over by the Secretary-General of the Union of Arab Jurists and including four jurists chosen by the Secretary-General, is formed to receive the observations of jurists concerning violations of this Declaration. The committee will investigate allegations of violations and will try to eliminate them as well as to include the principles of the Declaration in the legislation of all Arab countries. The committee should submit an annual report of its activities to the permanent Bureau, and implement the Bureau's decisions in this respect. The committee's findings will be placed before the General Conference of the Arab Jurists' Union for discussion and appropriate action.

The Independence of the Judiciary and the Appointment of Judges in Canada

The Canadian Bar Association produced two reports in August 1985, one entitled, "The Independence of the Judiciary in Canada" and the other, "The Appointment of Judges in Canada". The first includes considerations of the following issues: (1) the importance of an independent judiciary; (2) prerequisites for the independence of the individual judge; (3) prerequisites for the independence of the judiciary, (4) independence of the Bar; (5) the Supreme Court of Canada; (6) proposed amendments to the Canadian Constitution; as well as a declaration on the independence of justice in Canada. The second undertakes a review of: (1) the Canadian judiciary; (2) the appointment of judges at both the federal and provincial levels; (3) judicial appointments in other countries; (4) the role of the Canadian Bar Association; (5) the quality of appointments: perception and reality; and (6) political patronage and judicial appointments.

In the belief that the reports would be of interest and use to others, the CIJL has reproduced excerpts from the introductions and the conclusions and recommendations. Those wishing copies of the full reports should contact the Canadian Bar Foundation, Suite 1700, 130 Albert Street, Ottawa, Ontario, Canada.

Report of the Canadian Bar Association Committee on the Independence of the Judiciary in Canada

Introduction

As we approach the 21st century, the Bench and Bar have not escaped the questioning that the shock waves of this century have set into motion. Our collective and personal lives have been shaken to their foundations by two Great Wars, by a revolution that has spread to half the globe, by the end of political colonialism, and by a new morality.

In this context, the judicial system of Canada, inherited from England, has been described as wanting. Some of its alleged deficiencies have been underlined with particular emphasis: its slowness, its lack of touch with the realities of life, its refusal to be drawn into the political discussions of the age. And the never-ending power struggle between Ottawa and the provinces has played its part.

Solutions have been proposed by many, and it would serve no useful purpose to list them here. Suffice it to say that too often they have a common thread: the diminution of the judiciary as created by centuries of struggle.

A parallel development has taken place. In April of 1982, the Charter of Rights and Freedoms was enacted, rendering more essential than ever the existence of an independent judiciary.

As the President of the Canadian Bar Association, Mr. L. Yves Fortier, Q.C., observed:

> "The judiciary now plays a pivotal role in defining our rights and freedoms, and in limiting the power of governments to pass laws which impinge upon these rights. The Charter has elevated members of the judiciary to a new plateau of legal, and I daresay, political prominence." (1)

And this opinion has been echoed from the Chief Justice of the highest court in the land. In a recent speech, the Right Honourable Brian Dickson remarked:

> "We face an unparalleled test of our legal, social and political assumptions in the near future. As a society, we have chosen to look to the courts for the elucidation and resolution of some of the values most fundamental to the Canadian way of life. The legal profession - practitioners and academics - must join with the judiciary and assist them with vigour in meeting this great challenge." (2)

It should be emphasised that this new and vital role has not fallen exclusively to the Supreme Court of Canada, but rather, is shared by all courts in Canada. And thus, the need for an independent judiciary is greater than ever

before. The modalities of that independence may exhibit some flexibility, but the principle itself must be inviolate.

...

All Canadians have an interest in preserving and enhancing the independence of the judiciary. All Canadians are proper spokesmen for the judges. There is, however, one group for whom the task is especially appropriate, and that is the Bar. The Bar is in an especially good position to recognise and understand the issues. And moreover, lawyers have a special relationship to the judges since both are vital elements in Canada's justice system. Therefore, it is not only appropriate that the Bar address the question of judicial independence, it is its duty.

...

Obviously, this report does not pretend to be the last word on the subject. Its more modest goal is to be the starting point of an informed and lively discussion on some aspects of the concept of judicial independence.

...

Recommendations

...

Introduction

(1) The study on the independent judicial administration of the courts made in 1981 by The Honourable Mr. Justice Deschênes entitled Masters in their own house be brought up to date with a view to bringing about the implementation of its conclusions;

The importance of an independent judiciary

(2) The existence of a judicial power, coequal with and distinct from the legislative and the executive powers, be recognised in the Constitution;

Prerequisites for the independence of the individual judge

(3) All judges of Canadian courts be guaranteed tenure during good behaviour;

(4) Subject to exceptional cases, judges not be appointed before their late forties;

(5) The trend to transfer more jurisdictions to administrative tribunals be reversed;

(6) All judicial functions exercised by tribunals be entrusted to persons having all the protections of the judiciary;

(7) The provision of a compulsory retirement age for judges be retained;

(8) After reaching retirement age, no judge be allowed to maintain a place on the bench at the option of the government;

(9) Judges receive adequate remuneration and that the salaries paid to senior civil servants be used as a floor;

...

(12) Immunity for acts performed judicially be extended to judges of all ranks, whatever the source of their appointment;

(13) Members of all governments be careful not to interfere with the judiciary, directly or indirectly;

(14) The formulation of rules of conduct for judges, should any be formulated, be left to the judges themselves;

(15) Judges restrict their public comments to the law, the legal system and the administration of justice, the view of the Honourable J.O. Wilson in A Book for Judges on the role of judges in matters of current public interest being endorsed;

(16) Judges avoid providing the press with explanations of their judgments;

(17) Judicial Councils be established in those jurisdictions which do not have them;

(18) Judges not be active participants in any process resembling plea bargaining;

Prerequisites for the independence of the judiciary

(19) Only in exceptional circumstances judges be appointed from the ranks of the civil service and of in-house counsel;

(20) A suitable waiting period be established before appointment to the bench of an active politician;

(21) The appointment process not receive detailed public scrutiny;

(22) Adequate measures be put in place for the physical security of judges and their families, court personnel and jurors;

(23) Full powers of controlling the court procedure, including contempt powers, be retained by Superior Court judges and extended in lower courts;

(24) Alternative forms of dispute resolution be encouraged, including pre-trial conferences, mini-trials and arbitrations, to meet overwork and overload conditions;

(25) Judges not be entitled to sabbaticals;

(26) Adequate administrative and physical arrangements for Canada's judges and courts be provided by all governments;

(27) The recommendations made by Mr. Justice Deschênes in his work Masters in their own house, necessary

to implement the stages of consultation and decision sharing, be implemented as soon as possible;

(28) Investigation of judicial conduct by any Canadian judicial council be conducted in camera, the only appeal being to Parliament or a legislature;

(29) Former judges of the Superior Courts not appear in any court;

(30) Former provincially appointed judges, with leave of the provincial law society, be allowed to appear in any court five years after leaving their court;

(31) Judges must not be asked to undertake commissions of inquiry, except in those cases where the nature of the matter under investigation makes the choice of a judge as a commissioner particularly appropriate;

(32) No additional emolument be given to a judge who accepts to sit on a commission of inquiry, except adequate travelling expenses;

(33) The concept of promotion within the judicial system be discouraged;

Independence of the Bar

(34) It is to be recognised that the practice of law in a free society is a public service which must exist independently from the state, subject to minimum regulations by the legislatures;

The Supreme Court of Canada

(35) The immediate administrative independence of the Supreme Court of Canada be implemented, adapting as a model of the relationship between the Court and the federal government that of the Auditor General of Canada;

(36) The role of the Supreme Court of Canada as the apex of a completely independent judicial system be formally recognised in the Canadian Constitution;

Proposed amendments to Section 96 of the Constitution

(37) It be recognised that the progressive transfer of jurisdiction from general courts to single purpose tribunals is not in the best interest of judicial independence;

(38) Superior Courts retain their full jurisdiction over all fields of substantive law;

(39) A right of appeal from any adjudicative administrative tribunal be recognised.

References

(1) From the text of a speech given by Mr. L. Yves Fortier, Q.C., during the term of his presidency of the Canadian Bar Association, on the occasion of his visits to the various branches of the Association.

(2) From the text of a speech given by the Right Honourable Brian Dickson at the mid-Winter meeting of the Alberta Branch of the Canadian Bar Association, Edmonton, February 2, 1985.

Report of the Canadian Bar Association Committee on the Appointment of Judges in Canada

Introduction

This committee was established by the Executive Committee of the Canadian Bar Association in early 1984 and has functioned with the assistance of a generous grant from the Donner Canadian Foundation.

The terms of reference were to investigate the extent to which the present methods of appointing judges by federal and provincial governments produce the best-qualified candidates for the bench; to survey alternative methods of evaluating and selecting potential judges to ensure that the best candidates are selected; and to make recommendations accordingly.

...

It became obvious that the only worthwhile method of obtaining in-depth information about the present system of judicial appointments - and of scanning a wide spectrum of suggestions for improvements - was to interview as many of those involved in the process as possible. Accordingly, the chairman or the secretary, accompanied by a member of the research staff and usually by a committee member, interviewed present and former ministers of justice; present and former special advisers to the minister; provincial attorneys-general and some deputy attorneys-general; the chief justice of Canada; the chief justices of the Federal Court of Canada, the provinces, and the various provincial superior courts; chief judges of county and district courts; chief judges of the provincial and territorial courts; other judges; officers or committees of branches of the Canadian Bar Association; officers or committees of the provincial governing bodies of the legal profession; and other members of the profession. A list of those interviewed is appended to this report. In addition to these interviews, the committee received many written submissions, a list of which is appended to this report. As well, with the cooperation of the branches of the Canadian Bar Association, we gathered some information on the previous political involvement of judges appointed in Canada since 1978.

Realising that a study of this nature could not be confined to Canada, the chairman interviewed the head of the Judicial Appointments Division of the Lord Chancellor's Department in London and, at the 1984 Annual Meeting, the committee met with the chairman of the Bar Council of England and Wales, the president of the American Bar Association, the vice-president of the Law Council of Australia and the president of the Law Society of New Zealand. We also received information on the appointment of judges in Israel and Denmark. The information from these sources has been invaluable.

...

The Chief Justice of Canada, the Rt. Hon. Brian Dickson, speaking to the Canadian Bar Association in August 1984, said:

> "The public is entitled, in my opinion, to be reassured that our judges are appointed on the basis of merit and legal excellence alone."

Our recommendations are designed to give the public and the profession the reassurance suggested by the Chief Justice.

We believe that our recommendations, if adopted, will establish a system for judicial selection and appointment that will ensure that the best qualified people are appointed and guarantee the judicial excellence to which the Canadian public is entitled.

We emphasise that a word of caution must be added. Because our mandate was to identify weaknesses in the system of judicial selection and appointment, it is inevitable that our report will appear to focus on those weaknesses. However, it is our opinion that the standard of the bench in Canada is high and that the country has been well served. That does not mean, however, that it is not desirable to make the improvements necessary to achieve the objective of ensuring that judicial appointments are based on merit and legal excellence alone.

Conclusions and Recommendations

Historically all judicial appointments, both federal and provincial, have been made by political decision, usually by the cabinet on the recommendation of the minister of justice. This political process is a necessary part of our system of government, and there is no practical alternative. What we recommend is a selection system that will encourage appointment of the best people to judicial office without changing the responsibility of governments for appointment.

Our report shows that all is not as it should be in appointments to the bench. We are concerned that the public expects - and is entitled to have - judges that are well qualified and perceived to be independent of political influence. The present system of selection and appointments at the federal level is, in several respects, overly dominated by political considerations:

- In most provinces politics plays too important a part in selecting candidates for the bench - in some provinces to the point of abusing the concept of partisanship.
- There have been unseemly political confrontations between the federal government and several provincial governments over who should be appointed to judicial office. These confrontations are not only demeaning to those involved; they also demean the

selection and appointment process and, ultimately, all those that hold the office of judge. It is our hope that our suggestions can help governments avoid the situation where certain provinces have refused to co-operate with the federal government and virtually vetoed appointments in an effort to bargain for candidates.

- Some judicial appointments have been made on the eve of a change of government or shortly after a government assumed office with such haste as to give the impression that the political authority acted precipitately without the consideration and care that should be given to selecting the best person for the office of judge.

Unfortunately, the screening process that does exist - through the CBA National Committee on the Judiciary - does not seem to have corrected the situation, although undoubtedly some inappropriate appointments have been prevented.

It is our conviction that the public is entitled to a system of selection that will open the doors to more candidates, provide careful and measured consideration of qualifications, and not be subject to partisan influences. Judges must be, and be seen to be, independent. Judges must be regarded as capable and knowledgeable. Finally, judges must be chosen from a variety of backgrounds and be representative of the community. The need for independence is beyond question, and the demands of the Charter have given an additional dimension to such independence.

Our country is so large, and there are so many potential appointees, that it is impossible for ministers and cabinets to review and select candidates without the assistance of advisers. This feature of the present system is inevitable, given the busy schedule of ministers, but we take exception to the fact that the system is completely informal and unstructured and is carried on in private beyond public scrutiny. It is hardly surprising that such a system is inefficient, highly political and open to public criticism. Moreover, in the past, the selection and appointments process has concentrated too much responsibility in a single position - the office of special adviser on judicial appointments - without supporting that responsibility with a formalised system for gathering information and assessing candidates' qualifications. Canada deserves a better method of selecting the people that will preside in our courts of justice.

The system we propose is a Canadian one. We do not advocate the American system of election or congressional review. Neither would the methods used in England by the Lord Chancellor work in a Canadian setting. Essentially, what is needed is a selection process that reflects the independent traditions of the common law and the values of our federal state. With these preliminary observations in mind, we turn now the committee's specific suggestions for reform.

...

Federal Judicial Appointments

1. The final decisions on appointments of judges must remain with the government. However, appointments must be made as the result of an established, well-known and understood advisory process to facilitate selection of the best candidate.

2. Nominations or suggestions for candidates should be encouraged from a wide variety of sources - judges, lawyers, politicians at all levels and the public generally.

3. The Canadian Bar Association National Committee on the Judiciary has improved the process, but by its nature it cannot ensure that only the best candidates are considered for appointment.

4. In a federal system where judges adjudicate on both federal and provincial civil and criminal law, it is essential for meaningful consultation to take place between the federal appointing authority and provincial attorneys-general. This consultation has been inadequate or completely lacking in the past.

5. Consultation in advance of appointments should also take place with the chief justice of the relevant court. Here again, consultation has often been inadequate or completely lacking in the past.

6. The necessary consultations with attorneys-general should involve the federal minister of justice at some stage or, in cases that concern the prime minister's prerogative, the prime minister. These consultations are too important to be delegated completely to staff.

7. To avoid delays in filling vacancies on the bench, the selection process should be initiated well in advance of anticipated vacancies.

8. Appointments to the Supreme Court of Canada must continue to be representative of the regions and legal systems of Canada. The minister of justice should consult the chief justice of Canada and the attorney-general (or minister of justice) of the province from which the appointment is to come, or the attorneys-general of the provinces in the region from which the appointment is to come. In addition, the minister of justice should obtain and take into consideration the views of all other provincial attorneys-general and ministers of justice.

9. Because the Federal Court of Canada is the only court for suits against the federal Crown, it is important that the selection process remove all perception of bias in favour of the federal government. At present, this court is perceived by many, rightly or wrongly, as a government-oriented court because so many former politicians and federal officials have been appointed to it.

10. Parliament should not play a role in the selection or appointment of federal judges. It is neither necessary nor desirable for the legislative branch to be involved. It is contrary to the Canadian tradition for the appointment of judges to be subjected to a congressional-type process of public examination and review.

Advisory Committees on Federal Judicial Appointments

The defects in the present system of selecting federal judges and, in particular, actual or perceived political favouritism or patronage, have led us inevitably to the conclusson that there is a need for a formalised system designed to obtain the best qualified people and to remove partisan influences. The device of including in the selection process a non-political body made up of judges, lawyers and members of the public, as well as representatives of the appointing authority, has been adopted in most provinces to cure the problem. It has worked well. In such provinces the quality of appointments has improved greatly without removing the appointing power from government. It is now time for this process to be adopted for federal appointments.

11. We therefore recommend that there be an Advisory Committee on Federal Judicial Appointments in each province and territory to advise the minister of justice on appointments to Section 96 courts and to the Supreme Court of Canada.

...

13. A committee would be consulted by the federal minister of justice on all vacancies occurring in its province ...

16. The appropriate advisory committee should also be consulted by the minister of justice with respect to elevations from one court to another. Proposed elevations should not be treated differently from other appointments.

17. The prime minister should consult the appropriate committee with respect to the appointment of chief justices, associate chief justices and chief judges from among those already serving on the bench. Appointments to these positions direct from the bar should be treated in the same manner as other new appointments.

...

In the case of the Federal Court of Canada, the Tax Court, and any other federal courts that might be created, a separate advisory committee is required.

19. We therefore recommend that there be an Advisory Committee on Appointments to Federal Courts ...

Provincial and Territorial Appointments

Judicial councils and selection committees responsible for recommending provincial and territorial judicial appointments are working well in some provinces and territories and have produced significant improvements in the quality of appointments. Selection processes in Alberta, British Columbia, Newfoundland, Quebec, the Northwest Territories and the Yukon have several features in common that we consider essential to their success:

- Three constituencies - the bench, the bar and the general public - are represented on these councils or committees.
- The judicial council or selection committee can consider candidates from many sources, not only those proposed by the provincial attorney-general or minister of justice.
- Councils and committees also seek out candidates actively and inquire into and assess their qualifications.
- Councils or committees submit to the attorney-general or minister of justice short lists of candidates assessed as those most highly qualified for the appointment in question.
- The provincial attorney-general or minister of justice selects a name from the list provided or, failing that, returns to the council or committee for further recommendations.

21. All provinces where these criteria are not met should adopt procedures, modify existing procedures, or adopt or amend legislation so that provincial appointing authorities are provided with an effective source of independent advice on judicial appointments. ...

Criteria for Appointment

24. After discussing the basic qualifications and character requirements for judicial appointment with a large number of knowledgeable people that are, or have been, involved in appointing judges in Canada, the committee recommends the following list of essential qualities for men and women being considered for judicial appointment:

High moral character
Human qualities: sympathy, generosity, charity, patience
Experience in the law
Intellectual and judgmental ability
Good health and good work habits
Bilingualism, if required by the nature of the post.

25. In the present climate of public opinion about judicial appointments, and because of the appearance of political influence, it is inappropriate for cabinet ministers to be appointed directly to the bench.

However, it would be unfair to exclude ex-ministers from consideration indefinitely. The committee therefore recommends that no such candidate be considered for appointment for at least two years after resigning from cabinet.

Training

We place significant emphasis on the need for experience in the law. Judges are required to interpret the law, and to do their jobs well, they must understand how it works in a practical way and how lawyers practise.

Related to experience in the law is the need, especially under present circumstances, for judges learned in the law with the ability to conduct research. A modern judge, particularly at the appellate level, is required to do a great deal of research and to write logically and well.

Ideally (as in England) trial judges should be drawn from the practising bar, from those lawyers with day-to-day experience in the courtroom. We recognise that in Canada this is an ideal and not always possible. In these circumstances it is essential for all newly-appointed judges to be given adequate training to prepare them for the bench, particularly in the conduct of criminal trials and sentencing. We cannot emphasise too strongly the need for further training over and above what is already provided. Such additional training could also take the form of refresher courses for judges that have already acquired experience on the bench.

26. We therefore recommend that the government of Canada support the establishment of a national centre for judicial training and education for both federal and provincial judges. This would mean that courses for newly-appointed judges would be available at all times, not only once a year as at present. We also invite the federal and provincial governments, the Canadian Judicial Council, the Canadian Bar Association and other interested groups to explore means to give practising lawyers an opportunity to serve in part-time judicial capacities in order to test or improve their qualifications for appointment to the bench.

Conditions of Employment

27. Both federal and provincial governments should look for way to overcome two facts that inhibit well-qualified people from accepting judicial appointments. The Income Tax Act should be amended to eliminate double taxation during a judge's first year on the bench. Salaries and other benefits of all judges in all courts, whether appointed federally or provincially, should be maintained at appropriate levels. Inflation protection for provincially appointed judges' salaries should be established by statute, as it is for federally appointed judges.

The Role of the Judiciary in Plural Societies

The International Centre for Ethnic Studies, Sri Lanka, and the Public Law Institute, Kenya, held a workshop on the theme: "The Role of the Judiciary in Plural Societies" from 1 to 4 February 1985 at Eldoret, Kenya. The topics considered were: (a) the social, economic and political context of the judiciary; (b) contradictions in pluralism; and (c) the legal profession, pluralism and public interest litigation. The workshop assessed the avenues open to the judiciary to provide access to justice to the deprived and vulnerable sections of society and how it can influence social cohesion in plural societies. The report of the workshop follows:

Pluralism

1) Plural societies have been defined as those in which diverse groups live side by side, "combine but do not mix". In this regard, it was agreed that almost all African and Asian societies were, in fact, plural societies.

2) Pluralism as a theoretical concept has two aspects. The first involves respect for diverse cultural and ethnic communities which exist in any given society. The second sees pluralism as an aspect of political democracy, in which diverse points of view, political, social and ethnic, are reflected in political decision-making and political action.

3) Pluralism as a form of political ideology and action contains two contradictory aspects. Pluralism may be used to justify dominance and legitimate repression. Linguistic minorities, women and other vulnerable groups, may find domination legitimated by the ideology of pluralism. On the other hand, pluralism can assume a liberation dynamic. In this context, it may be important to consider that pluralism in its positive form is an aspect of human rights - an attempt to democraticise society and provide a framework for political participation and increasing social justice. In this way, the negative features of pluralism may be contained especially if they run counter to universal values concerning human rights and human dignity.

4) Pluralism is a concept which aims at social justice both at the national and the sub-national level. This

factor has become important in the post-nationalist period, especially in countries where the nationalist enterprise has failed to live up to expectations and has in fact created new structures of power and ideology which work against social justice. In this context, pluralism provides a framework for the formulation of legal-political instruments which will help democratise post-colonial societies in Asia and Africa. Some of the devices which have been used are, for example, the devolution of power, elimination of sex-based discrimination, litigation under the equal protection clause, defence of cultural, linguistic and religious rights of minorities and other disadvantaged groups, affirmative action, and preference policies.

Pluralism and the judiciary

5) Of the many institutions of government, it is the judiciary which is centrally placed to protect the democratic rights of citizens and disadvantaged groups. The executive and the legislature are primarily concerned with national development on a macro-scale. They are more prone to constructing majoritarian, broad-based policies. It is in fact the judiciary which must ascertain the actual impact of these policies on the lives of individual citizens and social groups in particular situations.

6) There are many devices which the judiciary can use to exploit the contradictions within the state without outright confrontation and to formulate doctrines which effectively protect the rights of citizens and disadvantaged groups. Failure to recognise this duty is therefore to deny citizens the fundamental right to voice their grievances and receive the appropriate remedy.

7) An innovative approach to legal training is required to effectively evolve devices of judicial activism which are relevant in African and Asian societies. Legal training in most of our societies is generally based on the study of /the/ statutes, precedents, and legal concepts which are often not relevant to our social context. Traditional legal training makes lawyers and judges extremely uncomfortable with doctrines and concepts which are "non-legal" in origin. However, other disciplines, especially the social sciences, may provide the judiciary with data and concepts which are relevant to the actual social reality. Concepts such as "pluralism" attempt to provide the judiciary with legal-political tools for the sensitive implementation of existing law and for the creative development of new and more relevant judicial doctrine.

Social action litigation and the legal profession

8) Since independence, most African and Asian states have unequivocally articulated, in their legal and

constitutional orders, the concepts of freedom, equality and justice for all.

9) The realisation of these judicial constructs, however, has been largely impeded by the pervasive caution displayed by the legal profession and the judiciary. Part of this caution stems from perceptions of the judicial role. The executive and legislature (comprising the political elites) have arrogated to themselves the role of exercising society-wide powers to pursue policies of national development. The role of the judiciary has been perceived as being limited only to adjudication usually involving individual claims, concrete in time and space. In this context, any creative initiative on the part of judges to address society-wide issues is perceived to be an encroachment or usurpation of the functions of the executive and the legislature. Hence the trend towards judicial caution and restraint.

10) The prevailing perception of the judicial role amongst the executive and the legislature and community alike, is one of providing justice according to law by interpreting and applying rather than making law. This perception is often shared by the bar and by judges, leading to the view that mechanical interpretation of the law is both possible and desirable. But, in reality, it is neither because judging is always an act of will, power and discretion.

11) Judicial activism, far from being a threat to national security or the development of the nation-state, is imperative for the attainment of such objectives. A principal constraint to the principle of judicial activism is the lack of coordination in the responsibilities of the judiciary in aiding the attainment of the goals of national security and societal development.

12) Another major constraint, identified in several African and Asian countries, is the direct and indirect forms of pressures and interferences exerted by the executive in the normal performance of the judicial function.

13) Participants in the workshop reaffirmed the need to safeguard the independence of the judges from all forms of interference and to accord full respect for their decisions. Independence of the judiciary is especially crucial in one-party states for effective articulation and protection of plural interests.

14) Judicial activism can be an important strategy to overcome all forms of oppression, exploitation and impoverishment unjustifiable under any model of societal development in Africa and Asia. Since the majority of human beings in most African societies are among the impoverished and exploited, there is an urgent need for judicial activism in providing amelioration of such impoverishment and exploitation.

15) There is need to enhance the competence of the judiciary and the bar in adjudicating matters

involving key issues of social justice. Legal education needs to be reformed so as to create competent professionals who are not only legal technocrats but who actively intervene in the problems of the oppressed, impoverished and exploited. In this context, clinical legal aid programmes attached to law schools, active encouragement of students' participation in social action litigation, etc., may be some of the innovations in legal education which should be encouraged.

16) For the law and the judiciary to become relevant to the people in their daily lives, the communication of law to the people requires restructuring - especially the restructuring of legal discourse both at the judicial and legislative levels. In addition, social action groups and public interest movements should also evolve programmes for legal literacy so as to enable the poor and the deprived to become conscious of their rights.

17) In some countries popular participation in making laws and in administering justice is the surest means of fostering values of justice and pluralism. In others, social action litigation may become a principal instrumentality, not only for enhanced access to justice for marginal groups but also for long-term renovation of institutional arrangements for social transformation. It is therefore imperative that public spirited members of the bar unite to create movements for such litigation so as to ensure access and justice to the most disadvantaged groups in society.

18) Judicial activism, encouraged by social action litigation, inspired by constitutional values, may be regarded as a vital human technology for social change in impoverishing societies.

The Administration of Justice and the Human Rights of Detainees: Sub-Commission Study on the Independence and Impartiality of the Judiciary, Jurors and Assessors and the Independence of Lawyers

During August 1985, Dr. L.M. Singhvi presented his final report to the Sub-Commission on Prevention of Discrimination and Participation of Minorities. The 73-page report contains discussions on the following topics: (1) the principle of the independence of the judiciary; (2) state responsibility for the denial of justice; (3) justice and the justice system; (4) the concepts of impartiality and independence; (5) a defence of these concepts; (6) independence and impartiality of the judiciary; (7) independence and impartiality of jurors and assessors; (8) independence of lawyers; and (9) deviancies from the norms of independence and impartiality. In addition, the report contains a set of recommendations concerning the independence of judges, jurors and assessors, and lawyers.

Unfortunately, due to constraints of time, the Sub-Commission was unable to give full consideration to Dr. Singhvi's report and the attached recommendations. It has been put over to August 1986 when it will be considered as a matter of high priority. A full description of the report and the Sub-Commission's comments will be give by the CIJL in the October 1986 Bulletin. Those interested in obtaining a copy of the report should contact the Centre for Human Rights, Palais des Nations, 1211 Geneva 10.

D O C U M E N T S

Basic Principles on the Independence of the Judiciary

The 7th UN Congress on the Prevention of Crime and the Treatment of Offenders, at its meeting in Milan, Italy, from 26 August to 6 September 1985 adopted by consensus Basic Principles on the Independence of the Judiciary. Committee I of the Congress, which was charged with the initial consideration of the Principles, engaged in extensive discussions about them; the Secretary of the CIJL actively participated in those discussions. The Principles have now been passed by the UN General Assembly and are the first UN Standards in the field.

The Congress resolution adopting the Basic Principles recommends that they be implemented at the national, regional and inter-regional levels, urges regional and international commissions, institutes and organisations, including non-governmental organisations, to become actively involved in their implementation; requests the Secretary-General to take steps to ensure the widest possible dissemination of the Basic Principles and to assist member states in their implementation.

Below are the Basic Principles adopted by the 7th Congress.

"Whereas in the Charter of the United Nations the peoples of the world affirm, inter alia, their determination to establish conditions under which justice can be maintained to achieve international cooperation in promoting and encouraging respect for human rights and fundamental freedoms without any discrimination,

"Whereas the Universal Declaration of Human Rights enshrines in particular the principles of equality before the law, of the presumption of innocence and of the right to a fair and public hearing by a competent, independent and impartial tribunal established by law,

"Whereas the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights both guarantee the exercise of those rights, and in addition, the Covenant on Civil and Political Rights further guarantees the right to be tried without undue delay,

"Whereas frequently there still exists a gap between the vision underlying those principles and the actual situation,

"Whereas the organisation and administration of justice in every country should be inspired by those principles, and efforts should be undertaken to translate them fully into reality,

"Whereas rules concerning the exercise of judicial office should aim at enabling judges to act in accordance with those principles,

"Whereas judges are charged with the ultimate decision over life, freedoms, rights, duties and property of citizens,

"Whereas the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, by its resolution 16, called upon the Committee on Crime Prevention and Control to include among its priorities the elaboration of guidelines relating to the independence of judges and the selection, professional training and status of judges and prosecutors,

"Whereas it is, therefore, appropriate that consideration be first given to the role of judges in relation to the system of justice and to the importance of their selection, training and conduct,

"The following basic principles, formulated to assist Member States in their task of securing and promoting the independence of the judiciary should be taken into account and respected by Governments within the framework of their national legislation and practice and be brought to the attention of judges, lawyers, members of the executive and the legislature and the public in general. The principles have been formulated principally with professional judges in mind, but they apply equally, as appropriate, to lay judges, where they exist."

Independence of the judiciary

1. The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.

2. The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.

3. The judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law.

4. There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law.

5. Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.

6. The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.

7. It is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions.

Freedom of expression and association

8. In accordance with the Universal Declaration of Human Rights, members of the judiciary are like other citizens entitled to freedom of expression, belief, association and assembly; provided, however, that in exercising such rights, judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary.

9. Judges shall be free to form and join associations of judges or other organisations to represent their interests, to promote their professional training and to protect their judicial independence.

Qualifications, selection and training

10. Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection shall safeguard against judicial appointments for improper motives. In the selection of judges, there shall be no discrimination against a person on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status, except that a requirement, that a candidate for judicial office must be a national of the country concerned, shall not be considered discriminatory.

Conditions of service and tenure

11. The terms of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law.

12. Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists.

13. Promotion of judges, wherever such a system exists, should be based on objective factors, in particular ability, integrity and experience.

14. The assignment of cases to judges within the court to which they belong is an internal matter of judicial administration.

Professional secrecy and immunity

15. The judiciary shall be bound by professional secrecy with regard to their deliberations and to confidential information acquired in the course of their duties other than in public proceedings, and shall not be compelled to testify on such matters.

16. Without prejudice to any disciplinary procedure or to any right of appeal or to compensation from the State, in accordance with national law, judges should enjoy personal immunity from civil suits for monetary damages for improper acts or omissions in the exercise of their judicial functions.

Discipline, suspension and removal

17. A charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure. The judge shall have the right to a fair hearing. The examination of the matter at its initial stage shall be kept confidential unless otherwise requested by the judge.

18. Judges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties.

19. All disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct.

20. Decisions in disciplinary, suspension or removal proceedings should be subject to an independent review. This principle may not apply to the decisions of the highest court and those of the legislature in impeachment or similar proceedings.

Resolution on the Role of Lawyers

Also adopted at the 7th Congress was the following resolution on the role of lawyers which highlights the importance of an independent legal profession to the protection of rights and freedoms and recommends to Member States that they provide for the protection of practising lawyers in the exercise of their profession. This resolution was adopted by consensus and, like the Basic Principles, has been approved by the General Assembly. The CIJL has been asked to assist the Committee for Crime Prevention and Control with the work assigned to it by the Congress.

Role of lawyers

The Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Considering that a fair and equitable system of administration of justice and the effective protection of rights and freedoms of citizens depend on the contribution of lawyers and of the judiciary,

Considering also that the role of lawyers and of the judiciary mutually complement and support each other as integral parts of the same system of justice,

Recognising that adequate protection of the rights of citizens requires that all persons have effective access to legal services provided by the lawyers who are able to perform effectively their proper role in the defence of those rights, and to counsel and represent their clients in accordance with the law and their established professional standards and judgment without any undue interference from any quarter,

Aware that bar associations and other professional associations of lawyers have a vital role and responsibility to strive to protect and defend their members against improper restrictions or infringements, as well as to uphold their professional ethics,

Believing that the legal profession must serve all sections of society and that bar associations have a responsibility to cooperate in making available the services of lawyers to all those in need of them,

1. Recommends that Member States should provide for protection of practising lawyers against undue restrictions and pressures in the exercise of their functions;

2. Requests the Secretary-General to provide interested Member States with all the technical assistance needed to attain the objective described above;

3. Also requests the Secretary-General to encourage international collaboration in research and in the training of lawyers, using, in particular, regional institutes for the prevention of crime and the treatment of offenders;

4. Requests the Committee for Crime Prevention and Control to study this question, taking into account the work already done and to prepare a report on the role of lawyers;

5. Requests the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders and its preparatory meetings to consider further those issues.

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Human Rights in Ghana

Report of a Mission to Ghana in June/July 1984 by Prof. C. Flinterman for the ICJ and the Netherlands Committee for Human Rights. Published by SIM, Utrecht, 1985. Available in English. ISBN 92 9037 025 4. Swiss Francs 12, plus postage.

The first part of this report deals with the administration of justice, in particular the government-inspired system of Public Tribunals and their potential for abuse. The second part considers the general human rights situation, regretting that the government's attempts to cure the country's economic ills are resulting in disquieting curtailment of the free exercise of civil and political rights. Prof. Flinterman ends his report with recommendations addressed to the government.

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Torture and Intimidation at Al-Fara'a Prison in the West Bank

A Report by Law in the Service of Man (ICJ's West Bank affiliate). Published by the ICJ, Geneva, 1985. Available in English. ISBN 92 9037 0246. Swiss Francs 10, plus postage.

This report contains 20 affidavits by victims to illustrate the torture and ill-treatment carried out at Al-Fara'a prison in the Occupied West Bank. The practices include harassment, humiliation and indignity, inadequate food, hygiene and toilet facilities, brutal physical and mental punishment and lack of medical care.

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Academic Freedom Under Israeli Military Occupation

A Report by A. Roberts, B. Joergensen and F. Newman. Published by the ICJ and the World University Service (UK), Geneva and London, 1984. Available in English. ISBN 0 906405 20 3. Swiss Francs 10, plus postage.

This 88-page report by three distinguished academics from Great Britain, Denmark and the United States, written after visiting the region and meeting both Palestinians and Israelis, calls for a fundamental reappraisal of the relationship between the Israeli military authorities and the Palestinian institutions of higher education in the West Bank and Gaza Strip.

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The Philippines: Human Rights After Martial Law

Report of a Mission by Prof. V. Leary, Mr. A.A. Ellis, Q.C., and Dr. K. Madlener. Published by the ICJ, Geneva, 1984. Available in English. ISBN 92 9037 023 8. Swiss Francs 12, plus postage.

This report by an American professor of international law, a leading New Zealand lawyer, and a distinguished German specialist in comparative law is published seven years after "The Decline of Democracy in the Philippines", the original ICJ report on violations of human rights under martial law. In 1981 martial law was nominally lifted but many of its worst aspects have been retained, including indefinite detention without charge or trial by Presidential order. The report describes the widespread human rights abuses by the military and police forces, analyses the relevant legal provisions as well as describing the policies and practices in various fields of economic and social rights. It contains 40 recommendations for remedial action.

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