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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.

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C A S E R E P O R T S

C H I L E

Arrest of Lawyer Threatens Independence of the Legal Profession

A Chilean lawyer, Gustavo Villalobos, was arrested on 6 May 1986. Mr. Villalobos works with the Vicaria de la Solidaridad, the human rights body of the Catholic Church in Chile. He and several medical colleagues were arrested as a result of a case they handled during their work at the Vicaria.

On 28 April 1986, a man with a bullet wound, Hugo Gomez Peña, entered the Vicaria seeking medical and legal aid. He claimed to have been a bystander to an armed clash involving the police. He was questioned by the staff about his involvement and insisted that he was a bystander. After examination of his wounds, he was referred by the medical staff to a private clinic and asked by Mr. Villalobos to return to the Vicaria to make a statement. Mr. Gomez did not return.

Two days later, two doctors and two other staff members of the clinic were arrested. On 6 May, lawyer Villalobos and a medical colleague went voluntarily to the 3rd Military Prosecutor's Office to present testimony. They were arrested and taken into custody on the basis of warrants previously issued. On 10 May they were charged with violations of the Arms Control Law.

At the time of the arrests the staff were unaware of the whereabouts of the wounded man, Hugo Gomez. Then on 13 May he was left in serious condition at the house of another physician who occasionally worked with the Vicaria. The doctor contacted the Vicaria for advice. The Vicaria contacted the Minister of Interior. After assurances that the man would receive the necessary treatment, he was given over to police custody.

On 29 May, the wife of one of the arrested doctors of the clinic was also taken into custody and charged under the arms control laws. She had made a statement to the police indicating that her husband had left their home with the police after being told by them that the clinic was on fire. After he left she rang the clinic and was told that there was no fire.

The Vicaria, the Chilean Lawyers' Association, the Chilean Medical Association and numerous human rights organisations have strongly protested against the arrests. The Vicaria, in a public statement, noted that lawyer Villalobos and his colleague had gone voluntarily to the prosecutor's office and did all they could to clarify their position and the circumstances of the case and that the behaviour of the two men was in keeping with their ethical and moral duties. It further reaffirmed the Vicaria's commitment to the protection of human rights and human dignity and asserted that no connection existed between it and any terrorist activities.

These arrests are viewed by those in Chile as an attack against the Vicaria because of its long-standing role in documenting human rights abuses in Chile. The charges against those arrested carry a potential penalty of five years. According to one of the lawyers representing the defendants, the only charge which could possibly be made against the defendants is failure to notify the authorities that they had treated someone with a gunshot wound. This crime carries a maximum penalty of sixty days imprisonment or a fine.

The Chilean Bar Association issued a public statement in which it gave its full support to Mr. Villalobos, noting that he was being charged as a result of activities legitimately performed in the exercise of his profession and observing that the measures being taken against him "could represent a threat to the principle of professional secrecy, which constitutes for lawyers not only a right, but moreover an absolute duty". The Bar also expressed support for the Vicaria, observing that its 'courageous work to uphold and protect the rights of man has been acknowledged both nationally and outside Chile". It also organised a silent march to the military prosecutor's

office on 7 May; the march was broken up by security officers using water cannons.

A number of lawyers have formed a "Committee for the Right to Legal Defence" to demonstrate their support for Gustavo Villalobos. The Committee forwarded a letter to the Supreme Court in which it noted the Vicaria's distinguished work and the important cases handled by lawyer Villalobos. They specifically referred to his representation of the relatives of three men murdered in March 1985, one of whom also worked at the Vicaria. The case became widely known when the investigating judge concluded that the police (carabineros) had been directly involved in the killings.

The CIJL has expressed its concern about the case to the government of Chile and urged the government to release Mr. Villalobos.

C O L U M B I A

Investigation Conducted on Retaking of Palace of Justice

CIJL Bulletin no. 16 reported on the deaths in Columbia of 43 judges, eleven supreme court justices and 32 lower court judges, as a result of an armed confrontation between the government and M-19 guerrillas. Recent information about the fighting, contained in a report of the official investigatory commission set up under the auspices of the Attorney-General, suggests that the army and police officers involved acted on their own initiative and disregarded the advice given by the Council of Ministers that it would be better to continue negotiations with M-19 leaders.*

* The report also indicates that the death toll was higher than previously reported, with 95 and not 91 people having been killed, 17 of whom were judges or assistant judges of the Supreme Court.

According to the report, the head of the police was informed by the Chief Justice, who was being held hostage, that the hostages believed they would be killed by the guerrillas if the police and army attempted to retake the Palace of Justice.

The investigation has also revealed that some of the hostages were killed in the cross-fire between government troops and M-19 guerrillas. Examinations of the bodies revealed that several were killed by bullets coming from government weapons.

The National Association of Judicial Employees has called for the resignation of the Minister of Defence and the Head of the Police Forces.

I N D O N E S I A

Actions Against Lawyer Undermine the Position of the Bar Association

The CIJL has been following with concern the case of Adnan Buyung Nasution, an Indonesian lawyer well-known for his defence of those accused of political crimes and for his part in the founding of Lembaga Bantuan Hukum, the Indonesian Legal Aid Foundation. Mr. Nasution had been threatened with disbarment as a result of events which had occurred during the trial of former Asean Secretary-General, Hartono Dharsono, who was charged with subversive activities against the state.

Background

The Dharsono case was a strongly political one. The defendant was accused of being responsible for subversive actions because he signed a petition to the government to establish an independent and objective committee of enquiry into the riot at Tanjung Priok. The defendant denied the charge and his lawyers suggested in their defence that the inaction of government agents contributed to the Tanjung Priok affair.

The judgment in the case was read out on 8 January 1986. During its delivery, the presiding judge repeatedly criticised the conduct of the team of the defence counsel, saying that they had presented the defence statement improperly, naively and unethically, but without saying how their conduct was unethical. On the fourth occasion of these remarks Mr. Nasution was provoked to intervene and ask the judge to specify in what way the conduct of counsel had been unethical. This led to some commotion in the public gallery. Thereupon an armed police officer rushed into the court room giving orders to the audience without invitation or instruction from the presiding judge. Seeing the inaction of the judge, Mr. Nasution protested against the intervention of the police officer, saying that the judge was responsible for preserving order and that the police officer should retire from the room, which he did on the order of the presiding judge. The judge then proceeded with his judgment.

No complaint or report of this incident was made on the initiative of the presiding judge, either at the hearing or subsequently. However, at the request of the Supreme court a report, dated 5 February 1986, was made by the new presiding judge of the trial court, the presiding judge at the trial having been transferred to another post.

On 10 February 1986, the Supreme Court ordered by letter the Central Jakarta District Court to investigate further the truth of the report against Mr. Nasution and to state in the form of an Administrative Decree its conclusion as to whether or not supervisory action should be taken against him.

On 24 February 1986, Mr. Nasution was summoned by the President of the Central Jakarta District Court at the written instruction of the Supreme Court. Mr. Nasution was asked to submit not later than 10 March 1986 a written explanation or defence statement regarding the truth of the report against him. By a letter of 4 March 1986 addressed to the President of the Central Jakarta District Court, Mr. Nasution asked for a copy of the said written

instruction of the Supreme Court to the Central Jakarta District Court in order to find out its legal basis. On 6 March 1986, Mr. Nasution received a letter from the President of the Central Jakarta District Court rejecting this request by Mr. Nasution on the ground that the letter of instruction of the Supreme Court was addressed to the President of the Central Jakarta District Court.

By a letter of 10 March 1986 addressed to the President of the Central Jakarta District Court, Mr. Nasution objected to the forum, the proceedings and the method of summoning, investigating and evaluating the conduct of advocates. He contended that these were without any legal authority as no regulations had been issued pursuant to Ordinance No. 14/1985 or Ordinance No. 2/1986. Mr. Nasution said that a forum for hearings on the conduct of lawyers should first be formally established and the procedure for enforcement laid down in regulations in accordance with Ordinance No. 2/1986. Meanwhile, he regretted that he was not prepared to comment upon the accusations against him in the report of 5 February 1986 to the Supreme court.

At the time of the incident there was no law or regulation governing disciplinary proceedings concerning the conduct of advocates. An ordinance dated 30 December 1985 stipulated that the Supreme Court and the Government (in this case, the Ministry of Justice) undertake supervisory action on lawyers and notaries, but no procedures were laid down for such action. A further order was issued on 3 March repeating the existence of such supervisory power and stating that implementary regulations would be issued.

The Indonesian Bar Association (IKADIN)* made a statement on 24 February asserting that the Indonesian Constitution

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* Editor's note: Prior to 1985 there was no single national organisation of lawyers. Legislation passed in 1985 called for the establishment of a single, unified organisation. The executive board of the organisation was elected in November 1985.

of 1945 and Pancasila protect the independence and impartiality of the legal profession. It further noted that it was the duty of lawyers to be objective, critical, honest and impartial and to respect and honour the rule of law and human rights in all cases. It then went on to state that there should be an objective system for the supervision of lawyers and that the task of supervising the profession properly belonged to the Bar Association. It asserted that supervision should be based on ethical principles, with objective and impartial mechanisms for their enforcement and the application of sanctions. These procedures should be established in cooperation with all the bodies responsible for respect of law and the administration of justice, including the Ministry of Justice, the judiciary and the police, in order that the enforcement procedures be effective and official.

Then, without having been served with any formal charges or having been summoned to any oral hearing, Mr. Nasution was sent on 19 March 1986 a copy of the Jakarta District Court's Administrative Decree No. 01/PW.ad/1986 proposing to the Minister of Justice that he revoke the practicing licence of Mr. Nasution as an advocate. A copy was sent to Mr. Nasution, who was told that he could appeal against it within one month. No mention was made as to who the appeal should be addressed to nor the procedures to be followed.

A further statement was issued by the Board of IKADIN on 3 April 1986 following its meeting on 1 April. In its statement the Bar took a firm position on the question of discipline, stating that it properly and legally belongs to the Bar and that the judicial and executive authorities should accept decisions of the Bar as long as they do not contradict the laws and morals.

The Bar also reviewed the law existing at the time of the incident, referred to the provisions concerning contempt of court in the Code of Criminal Procedure, and noted that one of the major elements for establishing contempt was

missing in the case. It also reviewed the Administrative Decree of the Central Jakarta District Court and the procedures that led to its being issued, noting flaws in both. It asserted that the courts only had authority to determine if contempt of court as it exists under the criminal procedure law had occurred, and stated the Bar's intent to take over the matter of discipline in the case and put it before its Board of Ethics. The Bar further suggested that the Judges' Board of Ethics should look into the way the matter had been handled by the Central Jakarta District Court.

ICJ/CIJL Interventions

The ICJ and CIJL wrote to the government on 1 April expressing their concern over the proceedings being taken against Mr. Nasution, noting that they were defective "by reason of the lack of any legal basis for the forum or the proceedings; any formal charges against him; any summons to attend a hearing; any proper defence rights, including the right to present orally his defence and his objections to the legality of the forum and the proceedings, either by himself or by another advocate on his behalf; or any participation by or role for the Indonesian Bar Association".

The Government was urged not to take a decision in the case "until, following consultations with the Bar Association, proper procedures for disciplinary hearings have been laid down, and until the matter has been reconsidered under such proceedings".

Recent developments

It appears that the Jakarta District Court has changed the status of the Administrative Decree it issued proposing that Mr. Nasution's licence be revoked from that of a decree to a report to the Supreme Court. As a result, Mr. Nasution has withdrawn his appeal. However, the future use of the "report" remains unclear.

The Supreme Court has forwarded a letter to the Minister of Justice recommending that Mr. Nasution's licence be revoked for six months, referring to the description of the case and the reasoning of the Central District Court. No action has been taken on the matter, as concurrently with this action by the Supreme Court, the Chief Justice and the Minister of Justice held a meeting with the Bar during which it was decided that the Bar would consider Mr. Nasution's case according to its Code of Ethics. The Minister has agreed to take the Bar's decision into account, but has not agreed to be bound by it. The Minister has also asked that the Bar consult with his office before making a final decision in the case. No decision on this issue has been taken by the Bar.

Conclusion

The decision of the Minister of Justice to consult with the Bar is to be welcomed. However, having agreed to the Bar's consideration of the case, the Minister should also agree to be bound by the Bar's decision. Under the present arrangements it is possible that two separate and perhaps disparate decisions will be taken as to the appropriate action in Mr. Nasution's case.

M A L A Y S I A

Lawyer Acquitted on Charge of Sedition

Param Cumaraswamy, Vice-President of the Bar Council of the State of Malaya, was acquitted on 25 January 1986 of sedition charges that had been brought against him because of an open appeal he had made on behalf of the Bar Council to the Malaysian Pardon's Board to reconsider a petition for commutation of a death sentence imposed against one Sim Kie Chon. A report on this case was contained in Bulletin no. 16.

It was alleged by the prosecution that Mr. Cumaraswamy's statement was likely to cause dissatisfaction and discontent among the people and to promote feelings of ill-will and hostility between the different classes. It referred to particular passages in Mr. Cumaraswamy's statement, notably:

> "What is disturbing and will be a source of concern to the people is the manner in which the Pardon's Board exercises its prerogative"; and
>
> "On records before the courts Sim's case certainly was less serious than Mokhtar Hashim's case yet the latter's sentence 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."

The judge referred first to the independence of the judiciary in Malaysia, observing that the decision was being made by "a judge who is independent of the party in power in the State". He then went on to conclude that the statements made by Mr. Cumaraswamy did not have the tendency to incite or raise disaffection among the people nor were they likely to create discontent or dissatisfaction among the people, nor raise such sentiments against Authority. With respect to the charges of inciting ill-will the judge concluded:

> "Mr. Cumaraswamy was certainly not trying to promote ill-will and hostility between the different classes of the population. In fact, he was urging the Pardons Board not to create the feeling or impression among the population that the Board was discriminating between the different classes."

The acquittal was warmly welcomed by the Bar and by the public. In a statement issued following his acquittal, Mr. Cumaraswamy said:

> "Today is a great day for freedom of speech and the independence of the Bar and the judicial system. The case has shown that our courts will stand by and protect the fundamental freedoms enshrined in the Constitution."

The CIJL also welcomes the court's decision; it testifies to the independence of both the judiciary and the legal profession in Malaysia.

M A L T A

The December 1984 ICJ Review contained a report on human rights in Malta which discussed, among other issues, the independence of the judiciary. Of particular concern was a resolution passed by the Parliament on 13 November 1984 whereby it suggested to the Minister of Justice that in a situation where a judge continues to hear a case in which he might be prejudiced, the Minister should consider whether it would not be less harmful to continue to pay the judge while removing him from performing his functions. The resolution had been introduced by the then Senior Deputy Prime Minister, now Prime Minister, because a judge had refused to disqualify himself on the grounds of bias in a school licensing case involving the Roman Catholic Church.

Legislation had been passed making it mandatory for private schools to have an operating licence. Most private schools in the country are run by the Roman Catholic Church. The Archbishop refused to apply for a licence claiming that the conditions set out in the legislation were too onerous and would make it impossible for the schools to continue to function. The Church then filed proceedings challenging the legislation's constitutionality.

Some procedural rulings were made by the presiding judge from which an interlocutory appeal was taken. After the hearings resumed the Archbishop was called to give evidence. At one point he stated that the church schools were open to all, irrespective of means and social standing. Someone in the public gallery shouted that this was not true. The judge then observed that he had been a worker's son and had attended a Catholic school. No objection was raised by the government to this comment at the time. Two days later, however, the government requested the judge to remove himself from the case. The motion was denied by the court.

The government then introduced a resolution in parliament which asked the Chief Justice to suggest to the

presiding judge that he remove himself, and stated that if the judge should continue to sit in the case the Minister of Justice should consider removing him from his functions while continuing to pay him. In the resolution it was noted that the circumstances would not justify removal of the judge under the constitution. It was also urged that the Minister of Justice in future should consider using such a procedure when it would be considered "less harmful to the people" to relieve a judge of his functions than to let him decide a case "according to his passions". The resolution was subsequently amended to remove the specific references to the presiding judge when he decided to abstain on his own motion, saying that in view of the prevailing circumstances, independently of the truth of the allegations of partiality, he would abstain because justice had to be seen to be done as well as being done.

Since then no judge has been assigned to the case and the resolution remains in effect. This situation seriously undermines the independence of the judiciary and damages public confidence in the courts. The judiciary has a responsibility to decide matters before it; cases can not be left untried. Judges should not tolerate attempts by the executive and the legislature to make them subservient to the will of the latter two branches of government.

The actions taken by the executive and legislature in this case do not comport with the United Nations Basic Principles on the Independence of the Judiciary, which call for guarantees of judicial independence, respect for that independence by other branches of government, and prohibit "inappropriate or unwarranted interference with the judicial process". In contrast, the resolution passed by the Maltese parliament suggests that an arm of the executive branch, the Minister of Justice, should use his authority to supplant decisions of the courts and to avoid the normal judicial and constitutional mechanisms for removal of a judge.

It is to be hoped that the government of Malta will reconsider its position in this matter.

Harassment of the Legal Profession

Lawyers have not been left unscathed by the events taking place in South Africa during the past year. On 1 August 1985, Victoria Mxenge, a well-known human rights lawyer, was shot dead outside her home in Umlazi township, near Durban. She had undertaken the defence of many accused of political crimes against the government and at the time of her death was a member of the defence team in the treason trial then taking place in Pietermaritzburg against 16 leaders of the United Democratic Front. The government has been criticised for doing little to investigate the circumstances of her death. Victoria Mxenge's husband, also a prominent human rights lawyer, was killed in 1981. No one has ever been charged with his murder. The couple had three children.

Lawyers have also been among those arrested in mass round-ups pursuant to the security laws and the emergency decrees promulgated in July 1985. Yunus Mahomed and Abdullah Mohamed Omar were arrested near the end of August 1985; both were known for their defence of persons accused of political crimes. Yunus Mahomed was one of the lawyers on the defence team in the Pietermaritzburg case. Both were subsequently released, but Abdullah Omar was re-arrested after several days at the end of October; see CIJL Bulletin no. 16. He was again released in mid-December, but his freedom of movement was severely restricted which made it impossible for him to continue his law practice. The emergency regulations then in effect had provisions for restriction of movement that resembled banning orders, and these had been applied to Mr. Omar. His release was conditioned on his remaining in his magesterial district. He applied for and received permission to travel within the province, but this was restricted to travel having to do with his legal practice.

Those lawyers practising in the so-called "independent" homelands have not escaped harassment and intimidation. Two lawyers from Umtata, Transkei, were arrested in 1985: Dumisa Ntsebeza and Prince Madikizela. The latter is still subjected to the terms of a banning order.

Dumisa Ntsebeza has been detained twice since October 1985. His first arrest was on 8 October. At the time he was in the process of obtaining sworn statements about the arrest and murder of a relative, Batandwa Ndondo, a community health worker who was arrested in late September and subsequently shot by security police. Another relative at whose home Batandwa Ndondo had been living, an eyewitness and acquaintances of the Ntsebeza family were also detained. All were held under the provisions of section 47 of the Transkei Public Security Act, which permits the authorities to withhold information about detainees. They did so in this case, refusing to disclose the reasons for and the places of detention.

All of the detainees were subsequently released. Dumisa Ntsebeza was served with a banishment order which forced him to take up residence in a remote area of Transkei. An application to overturn the order was made, and Mr. Ntsebeza was permitted to stay at his home pending a decision on the application.

Subsequently on 28 January he was again detained and held incommunicado. No reasons were given for the detention. He was later released in mid-February. Dumisa Ntsebeza frequently acted for those accused of political crimes.

The other Transkei lawyer, Prince Madikizela, has undergone numerous arrests since August 1985. He had been banished without trial in October 1984 to a remote rural area. The order of banishment stated that he was being prohibited from living in Umtata, the capital, because his presence was "not in the general public interest". The banishment made it impossible for him to continue his law practice and to be with his family.

He was arrested on 27 August and detained incommunicado. While in prison he became ill and was admitted to hospital.

Then, on 27 September, he was convicted of having contravened his banishment order and sentenced to three months' imprisonment, suspended for five years, and given a choice of paying a fine or serving 60 days imprisonment. He was then taken back to the hospital.

On 1 October, he was removed from the hospital by the security police although he had not been given a medical discharge and was placed in detention. An appeal against the conviction of 27 September was lodged on 7 October and Prince Madikizela was released on bail. However, he was re-detained on 10 October and kept in detention until 30 October. He was subsequently re-arrested on 3 December and again charged with having contravened the terms of his banishment order. He was released on remand. On 28 January 1986 he was re-detained.

He became ill the following day; he suffered a recurrence of the colitis he had first experienced during his detention in August. He was admitted to hospital on 30 January where, for 10 hours, he remained handcuffed to the bed. When the handcuffs were removed he was put in leg-irons. Again, he was charged with breaching the terms of his banishment order. Following a protest by the hospital authorities, the leg-irons were removed. As of April 1986, there was still concern for his health and his banishment order was still in force. Prince Madikizela was also known for his defence of those accused of political crimes.

Similar events have taken place in Ciskei. In late September, lawyer Hinta Siwisa was arrested in his office in Mdantsane, near East London. He has been the defence lawyer in a number of political cases and has been detained three times previously without ever having been brought to trial. At the time of his arrest he was acting on behalf of a number of people detained and arrested in the Ciskei. No reasons were given for his arrest. He was subsequently released uncharged in mid-December.

Arrests Since the Declaration of Emergency on 12 June

Richard Ramodipa, a young black lawyer active in recent months in defending human rights cases, was arrested on 12 June 1986 by security police in the Potgietersrus/Mahwelereng area of the Northern Transvaal. He is believed to be held under the emergency regulations issued on 12 June 1986. These provisions permit police and other security forces to arrest people without a warrant and detain them incommunicado and without charges for an initial period of 14 days. The Minister of Law and Order may then authorise further detention on an unlimited basis at his discretion and without hearing representations from the detainees concerned. Richard Ramodipa was previously arrested in late May and held briefly before being released without charge. The day after his release, he received a death threat. It is suspected that these threats may have come either from the police or from people whose actions are condoned by the police. Currently, Richard Ramodipa represents the family of Makompo Lucky Kutumela, who is alleged to have been beaten to death after being detained on 4 April 1986 by Lebowa police at Mahwelereng.

Two lawyers from Kingswilliamstown, Eastern Cape, have also been arrested since the emergency, John Eldred Smith and Travor Van Heerden. The two are partners in a law firm, Smith, Tabata and Van Heerden, which has been involved in handling human rights cases. There are reports that the third partner has also been arrested.

Another detainee is Rishi Thakurdin of Port Elisabeth. Few details are available on his case.

There are fears for the safety of all those detained under the emergency. When emergency powers were introduced in 1985 on a lesser scale, there were thousands of detentions and extensive reports of torture. Police and other security forces have immunity against prosecution for any acts they commit in connection with the emergency.

Conclusion

The continued arrest and detention of lawyers, apparently due to their agreeing to handle human rights cases, is another example of the South African government's refusal to build a society governed by the Rule of Law.

T H E W E S T B A N K

Military Order 1164 Threatens the Independence of the Bar Association

The CIJL is concerned about the promulgation of Military Order 1164 by the military authorities in the West Bank on the establishment of a "Council of Lawyers" to govern the legal profession in the West Bank. The order would give effective control over the Council to the head of the civilian administration in the West Bank.

Background Information

Prior to the Israeli occupation of the West Bank, lawyers there were members of the Jordanian Bar Association. After the occupation the lawyers undertook a strike as a method of protest against several Israeli actions they considered to be illegal, including changes made in the organisation of the courts. However, as time passed and pressure was placed on the legal profession by residents of the West Bank needing legal services for both criminal and civil matters, a number of lawyers decided to again take up cases.

These lawyers were threatened with disciplinary action by the Jordanian Bar Association and eventually a number of them were struck from the rolls. The Bar Association has also offered a stipend to lawyers willing to continue the strike. As new lawyers have entered the profession they have had to choose between joining the strike or taking up practice. Over the years the two groups,

those on strike and those in practice, have been in numerical parity.

Attempts by the practising lawyers to resolve their dispute with the Jordanian Bar Association have been unsuccessful. One suggestion was that a section be established for the West Bank. This request was submitted to both the Bar and the military authorities in the West Bank but was rejected by the Jordanian Bar. The military authorities, although not refusing the request outright, refused to consider the inclusion of Arab lawyers practising in Jerusalem in the West Bank association.

In October 1984, the issue of a regional bar association was again raised with the military authorities. The West Bank lawyers indicated their desire to establish the association in keeping with Jordanian law. No action has been taken by the Israeli authorities. The lawyers have submitted a petition to the Israeli High Court of Justice asking that the authorities be ordered to show cause why a union should not be permitted. The case is undecided. At present, the powers of the Bar Association reside in the military officer in charge of the judiciary.

The lawyers on the West Bank have repeatedly expressed their concern about the negative consequences to the Bar and to the administration of justice on the West Bank due to the absence of a Bar association. Many complaints have been lodged with the military authorities about the sytem of justice, including delays, poorly trained judges, lack of facilities and the divisions made between military and civil cases. Without an organisation to punsue these complaints and to protect the interests of the lawyers, few changes can be expected. To date, none of the complaints have received a satisfactory response from the authorities.

Military Order 1164

The Council will be responsible, inter alia, for (1) the registration of attorneys; (2) upholding the principles and traditions of the profession and defending its members;

(3) discipline; (4) determining the rate of fees; and (5) settlement of disputes between lawyers. The President, deputy and members of the Council are to be appointed by the head of the civilian administration in the West Bank. The order provides in certain cases for the final approval of Council decisions to be left where it has been, namely in the hands of the civilian administration of the West Bank.

A disciplinary committee is to be appointed by the Council and is to be composed of three members from the Council and two alternates. The committee is to consider disciplinary action in cases relating to rules of conduct of military courts, to the authorities of the Israeli defence forces, or to the "security of the area". In addition to suspension, fines or revocation of the lawyer's licence to practice, possible disciplinary measures include banning a lawyer temporarily or permanently from representing clients before a military court and also before any of the Israeli defence force authorities, including at the time of arrest or interrogation. The decisions of the disciplinary committee are to be reviewed by an Objections Committee.

Objections committees receive their status from another military order which calls for the creation of objections committees to meet from time to time to review administrative decisions of various officers and bodies governing the West Bank. In practice, members of the committees are reserve Israeli army officers appointed by the Area Commander for the West Bank.

The power to fix the amount of registration fees and the annual dues is given to the head of the civilian administration. Supervision of the execution of the law is also given to the Civilian Administrator.

CIJL Concerns

The CIJL wrote to the Israeli government on 20 May 1986 setting out its concerns and urging that the order be rescinded. No response has yet been received to this letter.

Below are excerpts from the letter:

"First, we must note that there is some question concerning the legality of such an order. Under international law an occupying power may only issue such laws as are necessary for the maintenance and safety of its army and the realisation of the purpose of the war. A law governing the organisation of the legal profession does not fall within these limitations. In addition, the Israeli government has recognised that Jordanian law continues to govern the West Bank and has stated that only those amendments necessitated by humanitarian and security considerations and proper and effective administration will be made. In our view none of these reasons would warrant the establishment of a government-controlled Bar Association.

It also appears that issuance of this order may have come about because of the repeated requests of West Bank lawyers to form a Bar Association and their decision to bring suit in the Israeli courts as a result of the military authorities' rejection of this request. If this is so, it appears to be an attempt to preempt a decision of the High Court.

Turning to the order itself, of primary concern to the CIJL is the power given to the Civilian Administrator in the West Bank to appoint the Council of the Bar Association and to regulate its internal affairs. Both the Universal Declaration on Justice and the CIJL/ICJ Draft Principles on the Independence of Lawyers state clearly that the Bar Association is to be independent and self-governing and that its Council or executive body is to be freely elected by all its members (Universal Declaration on Justice, Article 3.25; Draft Principles on the Independence of the Legal Profession, Articles 33 and 34).

A Bar Association's duty is to work to protect the rights of its members, to defend the role of lawyers in the society, to promote and support law reform, to work for improvements in the administration of justice and to ensure the provision of legal services to all sectors of society (Universal Declaration, Article 3.27 and Draft Principles, Article 35). A Council

appointed by the authorities could not properly carry out these functions or might find it awkward to do so because it would require the Council to criticise acts taken by those who appointed them. Furthermore, it would be difficult if not impossible for a Bar Association, whose Council was appointed by the authorities, adequately to defend the interests of those who criticise government policy. Many of the lawyers practising on the West Bank have indicated their disapproval of certain policies being carried out by the Israeli authorities there, including policies concerning the administration of justice. Such activities are recognised as proper by the Universal Declaration on Justice and the Draft Principles on the independence of the legal profession and should in appropriate cases be supported by the Bar Association. They might not, however, be favourably viewed by the authorities. A Bar Association with a government-nominated Council would not be looked upon as neutral in any dispute that might arise in connection with such criticisms, and would find it difficult to maintain its credibility in rendering any decision in a disciplinary matter that might arise out of such a dispute.

Moreover, the decisions even of this nominated Council are to be subject in certain cases to the approval of the head of the civilian administration, thus reducing still further its independence.

A further objection is the terms of Article 3 restricting the jurisdiction of the disciplinary committee under the Jordanian law and requiring a separate Committee to be formed to deal with conduct before a military court or authorities of the Israeli defence forces, or "conduct ... to do with the security of the area". The Bar Association disciplinary committee should be responsible for the proper conduct in all fora, and its members are, of course, subject to the manifold military orders relating to security offences."

Action Suggested to Lawyers' Organisations

Lawyers and lawyers' associations were respectfully urged to write to the Israeli authorities urging that Military Order 1164 be rescinded and that discussions take place with the practising lawyers on the West Bank concerning the establishment of an independent bar association.

THE SENATE OF THE INNS OF COURT AND THE BAR OF ENGLAND AND WALES

A Public Affairs Committee was established by the Senate of the Inns of Court and the Bar of England and Wales in October 1985. The functions of the Committee are:

"(a) to pursue the Bar's moral duty as a profession to use its skills in helping to look after the disadvantaged;

(b) to seek to foster good relations and to assist to provide a good image for the profession, with people and organisations outside the Bar, e.g. by carrying out public duties, or 'pro bono' work, etc; and

(c) to act if and when necessary as a voice for the Bar on moral issues of the day with a legal content, e.g. organ transplants, the need for a Bill of rights, etc."

The first two topics taken under consideration by the Committee were:

"(a) whether, and if so, how the work of the Free Representation Unit should be extended, for instance into the European Court of Human Rights, or into provincial centres; and the desirability of attracting into FRU some barristers of greater experience and seniority;

(b) whether, and if so how, the Bar should seek to explain the legal system and its part in it, the rule of law, and like topics to the wider public, in particular to secondary schools, polytechnics and colleges."

With respect to the first topic, the Committee has recommended that the services be extended and efforts should be made to persuade more barristers to take part in its activities. It further recommended that "in suitable cases FRU should undertake on a 'pro bono' basis representation before the European Court of Human Rights of litigants whose financial circumstances precluded them pursuing meritorious cases". Recommendations were also made as to steps to be taken to increase the number of barristers available to undertake such work.

As to the second topic, the sub-committee has adopted a provisional view that panels of speakers be set up to "(a) assist the public to understand the nature of the judicial process and the role of the Bar in it, and (b) to give them a greater understanding and, therefore, respect for the law and its application by the courts."

The creation of the Committee and its importance to the profession was commented upon by the Chairman in the annual report of the Senate as follows:

> "The traditional skills of the Bar lie in specialist advocacy and advice in connection with litigation. But, as a profession, we have increasingly recognised that our skills and experience give us a somewhat wider duty to the public. The Senate therefore established a Public Affairs Committee to consider how best the Bar could discharge its duty of serving the public interest in areas outside its day-to-day work. The first report of the committee has suggested an expansion of the Free Representation Unit. I believe that the public expects the profession to make its contribution to law reform, human rights, and education as to the value of the rule of law. I hope that the work of the committee will strengthen the respect in which the profession is held."

The CIJL warmly welcomes the establishment of this Committee, which gives effect to the recommendations on the responsibilities of lawyers in the CIJL Principles on the Independence of the Legal Profession.

THE GHANA BAR ASSOCIATION

The following resolution was passed by the Ghana Bar Association at its annual general conference, held from 25 to 27 September 1985.

"The Ghana Bar Association:

1. DEEPLY CONCERNED at the absence of a permanent and popularly accepted political framework within which the economic and social development of Ghana can take place in an atmosphere of peace

   (i) CALLS upon the Provisional National Defence Council (PNDC) to take urgent measures to secure for the country a democratic constitution which, in particular, enshrines:

      (a) The principle of one man one vote.
      (b) The right of citizens of Ghana to cast their votes in secret in freely and fairly conducted elections or referenda.
      (c) The principle that the only legitimate manner in which changes of Governments can take place is through the ballot box as laid down by the Constitution itself.
      (d) And protects the fundamental human rights of citizens.
      (e) The Principle of the fundamental and absolute illegality and illegitimacy of coups d'état and other violent means of changing governments.

   (ii) DECLARES its uncompromising stand that any constitution for Ghana must be subject to approval by the people's own freely elected representatives or directly by the people themselves as the basis or source of its validity.

2. (a) RECALLING various resolutions of the Ghana Bar Association on the political system of the country from 1977 to date:

(b) REALISING that of late reference has been made by the Chairman of the National Commission for Democracy to the desirability of collating views on a permanent political system for Ghana:

REAFFIRMS its stand as contained in its resolution Number 3 dated the 13th day of January 1984, viz:

"THE GHANA BAR ASSOCIATION declares its preparedness at any time, if called upon, to enter into a dialogue with the PNDC and other well-meaning representatives, Groups, Bodies or Organisations with a view to finding acceptable solutions to problems and matters of national interest including the early return of the country to a Democratically Elected Government in which all the citizens of Ghana shall be entitled to participate."

3. AWARE that arbitrary arrests and detentions without trial by a Court of regular and competent jurisdiction by the PNDC government and its security agencies have not ceased:

CALLS upon the PNDC forthwith either

(a) To bring such detainees up for trial before any court of competent and regular jurisdiction; or
(b) To release them from detention or imprisonment; and
(c) To bring to an end all arbitrary arrests and detentions.

4. FIRMLY CONVINCED that the existence of two parallel judicial systems or regimes infringes and violates the right of all Ghanaians to be governed by a common set of laws and rules:

RE-AFFIRMS its decision that its members shall not appear at or before the Public Tribunals set up in the country by the PNDC in their professional capacity.

5. CONCERNED at the increasing decline in the sartorial standards of members which has been recognised as one of the causes of loss of public esteem for Lawyers:

RE-AFFIRMS its decision that all lawyers shall be properly dressed before all Courts and fully robed before the Superior Courts.

LAWYERS' PETITION TO THE NATIONAL ASSEMBLY OF TURKEY

Four hundred and seventy-four lawyers registered with the Istanbul, Kocaeli, Sakarya, Ankara, Diyarbakir, Bursa, Izmir, Antalya, Zonguldak, Adana, Edirne and Canakkale Bar Associations presented a jointly-signed petition to the leaders of the parliamentary parties, members of parliament and the Bar Council. The petition sets forth the lawyers' views on steps to be taken on such issues as torture, amnesty, changes needed in the laws governing parole and in the constitution. It states:

"We the undersigned lawyers, present our views in the hope of democracy in our country, for a state based on the rule of law, for a bright future predicated on peace and tranquility where the defence of and demands for 'human rights' and 'human dignity' will be acknowledged and for a future where free thought in all its senses will no longer be criminalised. We present our views in the hope and longing for such a future.

"A Commission should be founded by the National Assembly with the specific task of investigating torture allegations and the findings of this body should be made public along with instances of the allegations collected.

"In the carrying out of the sentences of political prisoners we should be aware of our responsibilities derived from endorsing international covenants and thus reorganise prison terms and other legal conditions. It should be acknowledged that our citizens deserve as much

freedom as that which exists in /other countries having signed/ the international covenants bearing Turkey's signature.

"We should redefine the concept of the State from the 'Holy and Infallible State' which exists now to a concept of a 'democratic social welfare state based on the rule of law' and internalise this notion in our political attitudes.

"Regardless of why these were installed in the first place, statutes defining the period of detention and /which are/ used for extracting confessions outside the will of the individuals concerned should be abrogated from our jurisprudence. Our laws should specify that individuals can only be detained for 24 hours.

"Despite the fact that officials assert that our country is applying a liberal model, the same mentality also puts forward political conceptions and solutions which correspond to the practices of an authoritarian state. This is an important contradiction which can result in serious shortcomings in our social structure.

"We the undersigned lawyers to not accept the view that, including the Constitution, the laws are 'fixed for all time' and that these 'can not be changed'."

ADDRESS PRESENTED BY THE PAKISTAN BAR COUNCIL AT THE FIFTH PAKISTAN JURISTS CONFERENCE

The Pakistan Bar Council took the occasion of the Fifth Jurists Conference held from 28 to 30 March 1986 to express its views about the situation of judges and lawyers under martial law and to make suggestions as to steps to be taken to improve the position of the judiciary and the Bar now that martial law has been ended. This was done in the form of an "Address of welcome to the Prime Minister of Pakistan". Believing that the "Address" contains much useful information, the CIJL reproduces it below.

"It is a great honour and pleasure ... to address and welcome you all on behalf of the Pakistan Bar Council in my capacity as its Chairman to this august Assembly of the learned people and esteemed jurists. This is the Fifth Jurists' Conference in Pakistan organised by the Pakistan Bar Council which is at the apex of the elected bodies of the legal fraternity in this country and this address represents the views of the Council. The objects of this conference are not only to provide an opportunity of furnishing a common platform for the lawyers, judges and eminent jurists, but also to collectively think about and contribute to the advancement of law, promotion of justice and protection of human rights. This forum of the legal lumineries, I am sure, will identify the problems and suggest their solutions which will help in building a just society.

"Mr. Prime Minister: Pakistan was created by democratic process under the leadership of the Quaid-e-Azam who believed in the Rule of Law and this process has to continue. The legal fraternity also believes in the Rule of Law. It is of the view that the law must rule and every individual, high or low, must be answerable to his fellow beings. Nobody should be above the law or enjoy immunity from the law. Any law in conflict with human rights should be avoided. Every wrong must have a redress. The Rule of Law should be

effectively enforced and psychologically ingrained in the minds of people. We were under Martial Law for over eight years and the Rule of Law went to the background. We are hopeful that now with the lifting of Martial Law and revival of democracy in the country it will be governed under the Rule of Law and not by the law of the ruler.

"The protection of universally recognised basic human rights is the foundation of a modern and just society. Without guarantees for these rights, the safety of life, liberty and honour of a citizen cannot be ensured. We are aware of the fact that these basic rights which are defined as Fundamental Rights are guaranteed by and under our Constitution and have now been restored and made justiciable after a period of 20 years. It is the injunction of Islam and an article of faith with the Muslim society that no one shall violate or encroach upon any fundamental right or freedom. Every man is born free and nature has given him complete freedom to adopt his way of life, profession and business. Any curtailment of human rights through executive or legislative action produces a sense of insecurity amongst the citizens. The frequent use of the Maintenance of Public Order Ordinance or other detention laws hampers the civil liberties of the people and impedes the creation of an egalitarian society. We hope such measures will be avoided in future.

"After the promulgation of Martial Law in Pakistan in July 1977, the Judiciary, under the law of necessity, conferred legality on the Martial Law regime in Begum Nusrat Bhutto's case. Thereafter, a treatment was meted out to the judiciary in which no society can take pride. The addition of Article 212-A to the 1973 Constitution, the promulgation of the Provincial Constitution Order in the year 1981, and the enforcement of various Presidential Orders, Martial Law Regulations and Martial Law Orders relating to the jurisdiction of the Superior Courts seriously undermined the powers and dignity of the judiciary. On the enforcement of the Provincial Constitution Order, 1981, a large number of judges of the Superior Courts did not take oath or were retired, leaving an adverse impression in the mind of the

public. Subsequently, instead of making permanent appointments to the superior judicial offices, the Chief Justice and Judges were kept on the acting list for a long time to weaken the rank and file of the judiciary. Transfers of some of the judges or shifting of their headquarters adversely affected the independence of the judiciary.

"It is unfortunate that in view of Articles 196, 200 and 203-C of the Constitution, the superior judiciary is not completely free to discharge its duties without fear of favour, nor has its complete independence been secured according to the Objectives Resolution. Article 200 deals with the transfer of judges of the High Courts. As originally framed, no judge of a High Court could be transferred except with his consent and after consultation by the President with the Chief Justice of Pakistan and the Chief Justices of both the High Courts.

"In 1976, by the Fifth Amendment, a proviso was added laying down that such consent or consultation with the Chief Justices of the High Courts would not be necessary if such transfer was for a period not exceeding one year at a time.

"Just before lifting Martial Law, the President of Pakistan, by Presidential Order No. 14 of 1985, amended the proviso and increased the period of transfer to two years. Shortly thereafter, by Presidential Order No. 24 of 1985, sub-Article (4) was also added to Article 200 which provides that if a judge of a High Court does not accept transfer to another High Court he shall be deemed to have retired.

"Similarly, a judge of a High Court who does not accept appointment as a Judge of the Federal Shariat Court shall stand retired under sub-Article 5 of Article 203 C.

"Another anomalous amendment has been made in Article 196 of the 1973 Constitution by P.O. No. 14 of 1985; whereby in case the office of the Chief Justice of a High Court is vacant or the Chief Justice of a High Court is absent or is unable to perform the functions of his office, the President

has been empowered to appoint one of the other judges of the High Court or may request one of the judges of the Supreme Court to act as Chief Justice. These provisions are directly in conflict with Article 180 of the 1973 Constitution which provides for the appointment of the most senior of the other judges of the Supreme Court to act as Chief Justice of Pakistan.

"The Pakistan Bar Council strongly feels that the above amendments curtail the independence of the judiciary, limit its functioning and expose it to the wishes of the executive. The Pakistan Bar Council is of the view that to ensure the complete independence of judiciary, proper amendments in Articles 196, 200 and 203-C are necessary.

"Mr. Prime Minister! The legal profession also suffered immensely. Several amendments were brought in the Legal Practitioners and Bar Council Act, 1973, to curtail the activities of the legal fraternity.

"Firstly, amendments were made in the Legal Practitioners and Bar Councils Act, 1973, which were strongly resented by the legal profession. By the newly added Sections 59-A and 59-B in the year 1982 it was, inter alia, provided that Bar Councils and Bar Associations would not indulge in political activities and that the right of an advocate to practice as such would not be dependent upon his being a member of a Bar Association or be affected in any manner by reason only of his not being or having ceased to be a member or his having been removed from the membership of a Bar Association. By the first provision, the activities of the advocates were intended to be controlled and by the latter provision a gross indiscipline was introduced in the legal profession.

"Subsequently, the most controversial amendments were made in the said Act in the first week of March 1985, when the elections had already taken place and the country was on the threshold of a democratic era. The enrolment and disciplinary matters of the advocates were taken away from the Bar Councils and given to the judiciary. These amendments are discriminatory, uncalled for and a severe blow to the freedom of the legal

profession. All other professional bodies like Medical and Dental Councils and Engineering Councils in the country are empowered to deal with the cases of professional misconduct of their members, but strange enough in the case of the members of the legal profession their elected representatives have been deprived of these powers.

"Simultaneously with the amendments in the Legal Practitioners and Bar Councils Act, 1973, Articles 204 of the Constitution dealing with the contempt of courts has been amended by P.O. No. 14 of 1985 omitting thereby the "Explanation" to that Article, which read as under:

> "'Explanation-Fair comment made in good faith and in the public interest on the working of the Court or any of its final decisions after the expiry of the period of limitation for appeal, if any, shall not constitute contempt of the Court.'

"The Pakistan Bar Council is unable to find wisdom behind the omission of the 'Explanation'. Does this mean that a judgment of a court in no circumstances can be commented upon even in good faith? Such a provision is not recognised in Islam and shall impede the development of law.

...

"Sir, the Martial Law has been lifted and fundamental rights have been restored and made justiciable. These steps will definitely go a long way to establish the true democratic institutions in the country.

"Mr. Prime Minister! We are well aware that you are facing innumerable problems as a legacy of the past. However, we would like to point out to you that without an honest, efficient and independent system of dispensation of justice, a just society can neither be created nor can democracy flourish. To strengthen the judicial institutions and dispensation of speedy and inexpensive justice, the Pakistan Bar Council makes the following proposals:

1. Complete separation of judiciary from executive

"To make it function independently, it is imperative that the judiciary should be completely separated from the executive to meet not only the long-standing demand of the public, but also to fulfil a constitutional requirement.

2. Adequate number of judicial officers with reasonable terms and conditions of services

"It is a universal truth that justice delayed is justice denied. In our courts, lacs* of cases are pending disposal. The number of judges is absolutely inadequate. After independence the number of judicial officers has not been increased commensurate with the rise in the number and variety of cases. The inadequate number of judges is a major cause for justice delayed. The terms and conditions of the judicial officers have also not been improved, keeping in view the changing times. It is desirable to ensure that there should be an honest, efficient and well-paid judiciary with requisite numbers according to the volume of work and enjoying a sense of security.

3. Conditions of the subordinate Courts and the Bar rooms

"The condition of the subordinate Courts and most of the Bar rooms in the district is deplorable due to lack of proper equipment, furniture and books. Although grants have been made by the Federal and Provincial Governments in some cases, yet those are inadequate. The Pakistan Bar Council hopes that the Federal Government will impress upon the Provincial Governments to make suitable financial allocations in their annual budgets in this regard.

4. Appointment of judicial and executive officers

It is the duty of State functionaries to ensure that every appointment to an executive or judicial office is made

* A 'lac' is 100,000.

from the best amongst the persons available. There is no dearth of efficient and honest persons in Pakistan. The Holy Prophet said 'whoever appoints a person to discharge the duties of any office while there is another amongst his subjects more qualified for the same than the person so appointed does surely commit an injury with respect to the rights of Allah, the Prophet and the Muslim Umma.'

5. Convictions under Martial Law

"The Pakistan Bar Council urges that convictions in Martial Law cases, which are not past and closed, should be subject to judicial review.

"The Pakistan Bar Council also avails of this opportunity to bring to your notice the problems of the legal profession and the litigants which require immediate attention and redress:

(i) Under the Legal Practitioners and Bar Councils Act, 1973, the Pakistan Bar Council framed the Rules for the Legal Education in the year 1978. Due to lack of cooperation from the Government, the Rules could not be implemented Kindly look into it and make your Government helpful to the Pakistan Bar Council in the implementation of the Rules.

(ii) The Pakistan Bar Council under its statutory function framed a scheme for free legal aid in the country to help the poor and the needy litigants. The scheme could, however not be implemented due to lack of funds. In other countries free legal aid is the responsibility of the State. The Pakistan Bar Council has proposed an additional stamp on Vakalatnama, the revenue from which should go to the Pakistan Bar Council for implementation of the scheme. Registration on this subject is overdue. An adequate amount may also be donated initially by the Federal Government to establish a fund for that purpose.

(iii) The Pakistan Bar council and the Provincial Bar Councils have no buildings of their own to house their

offices. The Federal Government should provide a suitable independent building to the Pakistan Bar Council for this purpose and the Provincial Governments be asked to provide similar accommodation to the Provincial Bar Councils.

(iv) The Pakistan Bar Council has already recommended to the Federal Government that the law be amended so as to provide that no Advocate should have more than one retainership in the institutions or bodies owned or controlled by the Government. The amendment may kindly be brought in the law immediately.

(v) No Grant-in-Aid, which is the statutory obligation of the Federal and the Provincial Governments under the Legal Practitioners and Bar Councils Act, 1973, has been made for the last several years. The Pakistan Bar council requests you to kindly provide reasonable Grant-in-Aid to the Pakistan Bar Council and ask the Provincial Governments to make Grants-in-Aid to the respective Provincial Bar Councils."

R E P O R T

Legal Aid in Nepal

The following report was prepared under the auspices of the Nepal Bar Association for a seminar.

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The Constitution of Nepal aims at the promotion of the welfare of the people by setting up a society which is democratic, just, dynamic and free from exploitation. The right to equality and the right to consult and be defended by a legal practitioner have been enshrined in the Constitution as fundamental rights. Legal aid is, undoubtedly, one of the effective instruments in the realisation of these rights and objectives.

Legal Aid Situation in Nepal

The need and importance of legal aid has been felt by the judiciary and lawyers of Nepal. However, appropriate steps have yet to be taken to effectuate and institutionalise legal aid. Presently, provisions for legal aid have been made by the following forums:

1. the judiciary,
2. the Nepal Bar Association,
3. the Women's Legal Aid Services Project, and
4. the law campuses.

Judiciary

The Supreme Court appoints two advocates and each regional court one advocate or pleader on a monthly remuneration to argue in the cases of indigent or poor people before the respective court.

The arrangement is limited only to arguments and does not include counselling, drafting and other legal services.

The judicial arrangement for free legal argument, though laudable, has not been effective and can hardly be termed a legal aid scheme. There are several reasons. Firstly, remuneration and terms of service are not attractive. Secondly, the appointed lawyers do not get briefs and relevant documents. Thirdly, the service to be rendered is limited to arguments only. Fourthly, legal aid lawyers are not appointed in the lower courts where the indigents and poor are directly concerned.

The judiciary has felt it necessary to improve and expand free legal aid facilities, and this feeling has been voiced and recommended by a recent conference of judges. However, the judiciary faces constraints due to limited allocation of budget.

Nepal Bar Association

The history of the Nepalese Bar is not very old. The legal profession received legal recognition only in 1956 through the Supreme Court Rules which were later codified in the Law Practitioners Act, 1968. The Nepal Bar Assocation was duly incorporated and established in 1962. Despite its nascent growth, the Nepalese Bar has been conscious of the importance of legal aid since its beginning. Members of the Nepalese Bar have, in their private capacity, been rendering manifold legal aid in human rights cases and also to some selected indigent and poor people. The Nepal Bar Association has been trying to institutionalise legal aid. Since its inception it has formed legal aid committees and has also formulated rules for rendering legal aid to the needy. Units of the Nepal Bar Association have also formed legal aid committees. The Nepal Bar Association has strongly urged making legal aid effective in many of its conferences, seminars and meetings. It has prepared and submitted a draft of a Legal Aid Bill to the Government and is lobbying the concerned authorities for enactment. Recently, the Nepal Bar Association has formed a special committee for legal aid. The Committee is devising schemes to give free legal aid and is structuring programmes for legal literacy and awareness among the poor.

However, the committees of the Nepal Bar Association have not been effective in providing legal aid. A lack of funds has constricted the legal aid activities of the Nepal Bar Association.

Women's Legal Aid Service Project

This project sponsored by the Nepal Women's Organisation has been rendering free legal services to needy and poor women who come to the organisation for assistance. The services include counselling, legal pleadings, appearances and arguments in court. Apart from litigation oriented aid, the project undertakes legal literacy and does organising work to make poor, downtrodden and suppressed women conscious of their rights and remedies. It trains some of the literate village women in elementary law and practice. The project has its central offices in Kathmandu and recently has established regional offices in two regions, namely Pokhara and Dhankuta.

The efforts of the project have been partially successful due to the dedication of its employees and financial resources made available by some foreign agencies.

The project, however, has not been able to percolate legal aid services to the vast multitudes of poor and suppressed women living in the hills, valleys and plains of Nepal.

Law Campuses

The law campuses in different parts of Nepal have established law clinics or legal workshops with a view to providing legal aid, imparting practical training to the students, creating para-legals and inculcating feelings among students to serve the needy.

The law clinics have yet to fulfil their noble objectives.

Prospects

Legal aid in Nepal has yet to materialise effectively, notwithstanding good intentions and manifold activities from different forums. The legal aid schemes and programmes require huge financial resources, efficient administration and dedicated cadres.

A national level organisation for legal aid is the need of the hour. Such an organisation should be manned with committed members, equipped with efficient staff and function through an organisational framework. Only then will the organisation satisfactorily render legal aid and accomplish both litigation oriented legal aid programmes and strategic legal aid programmes encompassing legal literacy, legal publications and legal aid camps.

For the present, in the absence of such a national level organisation, launching of a national legal aid project on a voluntary basis has become a necessity.

Legal aid needs to be treated as a human right and should be guaranteed by law. For this, lobbying for legislation for legal aid has to be undertaken.

The present forums which are rendering legal aid should be made broad-based - more effective and meaningful.

Financial resources from national and international agencies and the Government need to be tapped. Public opinion has to be mobilised and geared for the promotion of legal aid schemes and projects.

Seminars and conferences on legal aid, such as the present one, are expected to help materialise and institutionalise legal aid with national and international efforts.

Resolutions of the UN Committee on Crime Prevention and Control

CIJL Bulletin no. 16 reported on the Basic Principles on the Independence of the Judiciary adopted by the 7th UN Congress on the Prevention of Crime and the Treatment of Offenders, 1985, and later approved by the General Assembly, as well as a resolution on the Role of Lawyers adopted at the Congress and approved by the General Assembly.

At its meeting in March 1986, the UN Committee on Crime Prevention and Control discussed the steps necessary for the full implementation of these documents and adopted the two resolutions cited below.

The CIJL urges Bar Associations and other lawyers' organisations to participate actively in the implementation of these resolutions, as they are invited to do in each resolution.

Basic Principles on the Independence of the Judiciary

1. Invites Member States to inform the Secretary-General every five years, beginning in 1988, of the progress achieved in the implementation of the Basic Principles on the Independence of the Judiciary, including their dissemination, their incorporation into national legislation, the problems faced in their implementation at the national level and assistance that might be needed from the international community, and requests the Secretary-General to report thereon to the Eighth Congress on the Prevention of Crime and the Treatment of Offenders.

2. Appeals to all Governments to promote seminars and training courses at the national and regional levels on the role of the judiciary in society and the necessity for its independence;

3. Requests the Secretary-General:

(a) To provide Governments, at their request, with the services of experts and regional and interregional advisers to assist in implementing the Basic Principles and to report to the Eighth Congress on the technical assistance and training actually provided;

(b) To report to the tenth session of the Commitee on Crime Prevention and Control on the steps taken to disseminate the Basic Principles;

(c) To include the Basic Principles in the United Nations publication: A Compilation of International Instruments (sales no. E.83.XIV.1);

4. Encourages the United Nations regional and interregional institutes for the prevention of crime and the treatment of offenders to assist in the implementation of the Basic Principles and to pay special attention to this issue in their research and training programmes;

5. Urges intergovernmental and non-governmental organisations and other entities concerned to become actively involved in this process and to inform the Secretary-General of the efforts made to disseminate and implement the Basic Principles and the extent of their implementation, and requests the Secretary-General to include this information in his report to the Eighth Congress;

6. Requests the Committee to include this issue in the agenda of its tenth session;

7. Further requests the Eighth Congress and its preparatory meetings to consider this issue.

Role of Lawyers

1. Requests the Committee on Crime Prevention and Control, in carrying out its mandate under resolution 18 of the Seventh Congress on the Prevention of Crime and the Treatment of Offenders, to pay particular attention to the following:

(a) The need to provide for effective access to legal assistance for all groups within society;

(b) The need to ensure that all those charged with criminal offences have the right to communicate freely and confidentially with counsel of their own choosing; to defend themselves in person or through legal assistance of their own choosing; to be informed, if they do not have legal assistance, of these rights; and to have legal assistance assigned to them, in any case where the interest of justice so requires, and without payment by them in any such case if they do not have sufficient means to pay for it;

(c) The need to educate the public on the important role lawyers play in protecting fundamental rights and liberties;

(d) The need to ensure that lawyers have appropriate training and qualifications; that they are individuals of integrity and ability; and that there is no discrimination with respect to entry into the legal profession against a person on the ground of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status;

(e) The role of Governments, bar associations and other professional associations of lawyers in ensuring that lawyers are entitled to give legal assistance and are able to perform effectively their proper role, in particular 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;

(f) The right of lawyers to undertake the representation of clients or causes without fear of repression or persecution and to carry out their functions to the best of their ability;

(g) The obligation of lawyers to keep communications with their clients confidential, including the right to refuse to give testimony on such matters;

2. Calls upon the Secretary-General to study these issues with a view to assisting the Committee in its task and to prepare a preliminary report for consideration and further action by the Committee at its tenth session;

3. Invites the United Nations regional and interregional institutes for the prevention of crime and the treatment of offenders to pay special attention to these issues in their research and training programmes;

4. Urges intergovernmental and non-governmental organisations and other entities concerned to become actively involved in this process;

5. Requests the Committee to include these issues in the agenda of its tenth session;

6. Further requests the Eighth Congress on the Prevention of Crime and the Treatment of Offenders and its preparatory meetings to consider these issues.

Corrigendum

CIJL Bulletin no. 16 contained lengthy excerpts from both the "Report of the Canadian Bar Association Committee on the Independence of the Judiciary in Canada" (page 32) and the "Report of the Canadian Bar Association Committee on the Appointment of Judges in Canada" (page 37). We have been asked by the Canadian Bar Association to make clear that these were reports of these Committees and not of the Bar Association.

Both reports were considered by the Council of the Bar Association at its mid-winter meeting. The report on the Appointment of Judges in Canada was approved in its entirety and is to be strongly recommended to the government for early implementation. The report on the Independence of the Judiciary was also approved, with the exception of recommendations 4, 19, 25 and 33 which are to be deleted and recommendations 5, 11, 21, 24, 28, 29, 30, 31 and 37 which are to be referred for further study.

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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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