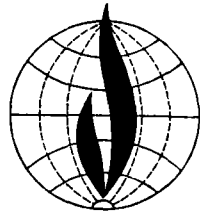


CIJL BULLETIN



N° 8

CONTENTS

CASE REPORTS

Egypt	1
Turkey	4
Guatemala	10
El Salvador	13

ACTIVITIES OF LAWYERS ASSOCIATIONS

African Bar Association	15
The National Association of Lawyers for Agricultural Workers in Brazil	17

ARTICLES

The Need for a Balance in the Appointment of Judges by Lionel Murphy	21
The Permanency and Relativity of the Rights of the Defence by Christian Panier	25

DOCUMENT

X Draft Principles on the Independence of the Judiciary	33
---	----

REVIEW OF MATERIALS RECEIVED	46
------------------------------	----

CENTRE FOR THE INDEPENDENCE OF JUDGES AND LAWYERS

October 1981

Editor: Daniel O'Donnell

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

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

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

Affiliation

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

Individual Contributors

Individuals may support the work of the Centre by becoming Contributors to the CIJL and making a contribution of not less than SFr. 100.— per year. Contributors will receive all publications of the Centre and the International Commission of Jurists.

Subscription to CIJL Bulletin

Subscriptions to the twice yearly Bulletin are SFr. 10.— per year surface mail, or SFr. 15.— per year airmail. Payment may be made in Swiss Francs or in the equivalent amount in other currencies either by direct cheque valid for external payment or through a bank to Société de Banque Suisse, Geneva, account No. 142.548; National Westminster Bank, 63 Piccadilly, London W1V OAJ, account No. 11762837; or Swiss Bank Corporation, 4 World Trade Center, New York, N.Y. 10048, account No. 0-452-709727-00. Pro-forma invoices will be supplied on request to persons in countries with exchange control restrictions to assist in obtaining authorisation.

*Inquiries and subscriptions should be sent to the
CIJL, P.O. Box 120, CH-1224 Chêne-Bougeries/Geneva, Switzerland*

CASE REPORTS

E G Y P T

Interference with the Bar and Prosecution of Lawyers under "Law of Shame"

In the months before his untimely death, President Sadat took a number of drastic steps against a wide spectrum of opponents or critics, from the bar to the Coptic Church, from communists and Nasserites to Islamic fundamentalists. The CIJL views with concern those actions which constitute an interference in the organised bar's right to self-government.

As early as August 1980 it was learned that members of the Council of the Order of Advocates were under investigation for criticising governmental policies while abroad, in particular for criticising the Camp David agreement at the Rabat Congress of the Union of Arab Lawyers. While the Camp David Agreement is the subject of political controversy, it also presents important legal issues including the compatibility of the agreement with the fundamental right of the Palestinian people to self-determination. These issues are a proper subject of debate by lawyers and legal organisations.

The conflict between the government and the bar, which also extended to alleged abuses of human rights in Egypt and attempts to interfere in the independence of the bar by disruption of meetings and similar tactics, reached the point where in January 1981 President Sadat asked the parliament to constitute a commission to investigate the attempts of certain members of the Council of the Order of Advocates to involve the organisation in activities not within its proper sphere of interest.

The commission of investigation was constituted. Several members of the Council of the Order refused to cooperate with it, saying that both the president and the legislature had acted ultra vires in creating the commission and that the inquiry was inconsistent with legislation recognising the autonomy of the Order. The commission concluded its inquiry in July 1981, recommending certain amendments in the 1968 law concerning the legal status of the bar and amendments to the code of

conduct for lawyers concerning participation in international meetings and congresses.

The legislature's response far exceeded the scope of these recommendations. On 22 July, in the absence of opposition parliamentarians who left in protest, a law consisting of only one article was adopted. The law dissolved the Council of the Order and empowered the Minister of Justice to appoint a new Council for the period of one year, at which time a new Council would be elected.

A number of prominent members of the bar also have been arrested and charged with offences under the recently enacted "Law of Shame". This law establishes a special court of system to try crimes such as "propagation of whatever implies denial of heavenly religions, "incitement of youths ... to depart from religious values or loyalty to the fatherland", or "publishing or broadcasting abroad ... if this is bound to harm any of the country's national interests". The charges against these lawyers appear to be directly related to their active opposition to Egypt's policy towards Israel. Conviction under this law may result in disqualification for positions such as membership of the bar Council, and it has been alleged that these prosecutions are intended to disqualify them from participation in the next election.

The purported reason for the dissolution of the Council and appointment of new officers was involvement in "political questions" beyond its proper area of concern. However, one of the first public acts of the newly appointed President of the Order, who was Minister of Culture and Information in the Sadat government from 1976-77, was to send a "message of allegiance" to President Sadat. The message included a statement of support for the governments policy towards Israel. This suggests that the interference in the autonomy of the bar association was not intended to depoliticise the organisation, but rather to assure its loyalty to the policies of this particular government.

A resolution adopted by the United Nations Sub-Commission in 1980 states that freedom of association "is vested with particular importance" for bar associations and calls on all states to respect this right "fully" and "without interference". The particular importance the

Sub-Commission attributes to the independence of bar organisations is directly related to their special role in the protection of public liberties. Although bar associations should maintain neutrality in partisan politics, the distinction between involvement in political and legal issues is often hard to distinguish including in questions regarding international treaties and law.

Whether members of the bar Council have abused their office and committed acts which merit criminal or administrative sanction is not a question we can address. Two things are clear, however. If abuse of office or criminal acts have occurred, the sanction should be imposed on the individual, not the collectivity. Direct interference in the government of the bar is an overreaction and undermines the bar's ability to act as an independent watchdog on public liberties, a role which is now even more important with the declaration of a state of emergency following the assassination of President Sadat.

Secondly, whenever legal, social and political institutions are being questioned lawyers become involved in challenging government policies, sometimes in the simple exercise of their profession, sometimes out of conviction, often because of a mixture of the two. To be sure, lawyers must be subject to prosecution or professional discipline when the occasion warrants. If their independence is to be preserved, however, it is essential that they not be tried for vaguely defined "political" offences and that their actions be judged under the normal penal laws and procedure, or before the authorities normally charged with the discipline of the profession, as the case may be.

Organisations of lawyers have been asked to write to the new President of Egypt, His Excellency Hosni Mubarak, asking him:

- (1) promptly to restore the bar's right to elect its own leadership, and
- (2) to halt the prosecutions under the dangerous "Law of Shame".

T U R K E Y

The Independence of Judges and Lawyers since the Military Coup

On 12 September 1980 the elected government of Turkey was overthrown and martial law, previously in force in prescribed regions, was extended to the whole country. A National Security Council (NSC), composed of leaders of the three branches of the armed forces and the national police, was created and "provisionally" assumed legislative and executive powers.

The military justified their intervention by the civilian government's inability to control terrorism and the danger of civil war. Political assassinations by both left and right wing organisations and religious fanatics had reached an average of 22 per day during the months prior to the coup. *) The new government - in contrast to some other military governments which have used terrorism as a pretext for the seizure of power - succeeded in reducing this toll to one per day. This has won the government considerable popular support.

Certain measures have been criticized as excessive, notably the suspension of all political parties and the NCS's assumption of the right to make permanent changes in the constitution and laws. In addition, although organisations on the extreme right and extreme left share responsibility for the wave of terrorism which swept the country, it appears that the repressive measures taken by the government have been applied unevenly to the detriment of left of centre groups, particularly in the trade union field.

Two aspects of the present situation are of particular concern to the CIJL: the considerable inroads which have been made into the role and function of the judiciary and the difficulties encountered by a number of defence and trade union lawyers.

*) The Legal Situation in Turkey, ICJ Review No. 26, June 1981, p. 34.

Restrictions on the Jurisdiction of the Courts

The inroads into the role of the judiciary concern the original and appellate jurisdiction of the courts as well as judicial review of legislation and acts of the executive. Firstly, the Law on the Constitutional Order provides that, although the Constitution of 1961 remains in force, in the event of any conflict or discrepancy between a law, decision or communiqué of the NSC and the Constitution, such law, decision or communiqué shall be deemed a constitutional amendment. This provision, reminiscent of the legislation of the Chilean Junta after its September 1973 coup, would by itself appear to preclude review of the constitutionality of the legislative acts of the NSC. Any doubt is removed by Article 6 of the same law which expressly prohibits recourse to the Constitutional Court to contest the constitutionality of such proclamations. Since all legislative bodies other than the NSC have been dissolved and are not likely to be reconstituted for some time, judicial review of the constitutionality of laws has been completely eliminated for the foreseeable future.

A second inroad into the role of the courts has occurred with the elimination of jurisdiction over the acts of martial law authorities. Article 7 of the Law of 15 November 1980 provides: "No proceedings may be instituted with a view to annulling administrative actions taken by martial law commanders under the provisions of the present Act, nor can they be held civilly liable for personal fault". When the civilian government was overthrown the regional martial law commanders came under the authority of the army chief of staff rather than the Prime Minister. Another law of 19 September 1980 expanded the authority of martial law commanders over censorship, the regulation of trade union activities and the dismissal of teachers and civil servants with the overthrow of the civilian government.

Thus judicial review of the administrative acts of martial law commanders was eliminated at the very time their powers were expanded considerably, their submission to civilian political authority eliminated and the entire country placed under martial law.

A third inroad into judicial independence results from the expansion of the original jurisdiction of military courts at the expense of civilian courts. In addition to the crimes previously entrusted to military courts by the Martial Law Act, the jurisdiction of military courts has been extended to the political crimes defined in Articles 141 and 142 of the Penal Code and to "any kind of crime against the republic, against the NSC or its communiqués, orders and decisions, against the integrity, indivisibility and independence of the fatherland and the nation, and against national security, as well as crimes likely to subvert fundamental rights and freedoms".

In case of doubt the martial law commander is empowered to decide whether a given case comes within the jurisdiction of the military or martial law courts. These courts are predictably devoid of the guarantees of independence and impartiality which normally characterise civilian courts. They are composed of two military judges and one ranking military officer in most cases, although the law provides for trial before a single judge in certain cases. The members of these courts are subject to the regional martial law commander in matters of promotion, and may be disciplined for "having adopted decisions forbidden by the law". The NSC and Ministry of Defence control the appointment, transfer and dismissal of the members of these courts.

A major exception to the court's appellate jurisdiction in penal matters is made by the Law of 19 September 1980, which provides that there shall be no right of appeal from sentences imposed by martial law courts unless the sentence exceeds three years. In addition, the previously recognised discretion of martial law courts to suspend sentences or reduce them for good behaviour during trial has been eliminated.

Finally, since under Turkish law the remedy of habeas corpus is not available to persons detained without charge pursuant to a state of siege, the Law of 9 November 1980, which extends to 90 days the length of time a person may be so detained, further limits the power of the courts to protect the rights of persons deprived of their liberty.

The repression experienced by some lawyers and difficulties encountered in the pursuit of their professional duties also gives cause for concern. With respect to the former, the cases of two lawyers have become well known. Although it is not suggested that these cases are typical, they do illustrate how the concentration of power in the hands of security authorities and the lack of legal guarantees creates a vulnerability which can only have an unwholesome effect on the lawyers' independent exercise of the profession.

The first case is that of Ahmet FEYZIOGOU of Bursa, a trade union lawyer arrested the day of the coup, 12 September 1980. On 20 October 1980 he died in police custody. The official version of his death is that he jumped out a fifth floor window of police headquarters. Amnesty International has reported, however, that his corpse bore signs of electric shock and beating, and it is believed that he died as a result of torture.

The second case is that of Ercument TAHIROGLU, another trade union lawyer. Mr Tahiroglu headed a large team of defence lawyers in one of the most important political trials to follow the coup d'état, the trial of 300 members of the DISK trade union confederation. He was detained for a total of more than seven months after the coup, being released in late April or early May 1981.

Other lawyers committed to the defence of political prisoners have been subject to lengthy periods of detention without trial, particularly in smaller cities or in the Kurdish region of eastern Turkey. In two cases the CIJL has been able to confirm the detention of lawyers by military authorities while the attorneys were involved in an important political trial. Reports of physical mistreatment of one detained lawyer and psychological pressure on another by threatening to abuse a detained relative have also been confirmed.

A variety of measures taken by the new government also interfere with the lawyer's ability to represent effectively his clients, particularly clients in detention. Adjournments to prepare pleadings have been limited by law to 15 days, or 30 days in the case of mass trials.

The above mentioned law authorizing detention for 90 days under the state of siege constitutes a major obstacle to effective representation, since detainees are held incommunicado and may not contact an attorney during this period. When consultations with prisoners are permitted, they occur in the presence of soldiers or guards. A Belgian lawyer who undertook a human rights mission in Turkey concluded that the difficulties lawyers encountered in consulting with imprisoned clients and preparing the defence are so great that in effect "they can only exercise their profession in the courtroom itself." *)

Conclusion

In a situation as urgent as that which led the military to seize power in Turkey, human rights are often seen as luxuries and separation of powers is equated with obstructionism. In Turkey, however, concern for human rights is the very *raison d'être* of the government; its seizure of power was motivated by daily violations of the most fundamental human right, the right to life.

The decision to give priority to this right, and the struggle against terrorism, is understandable and justified. However, according priority to the right to life, and in concrete terms to the elimination of terrorism, should not serve as a pretext for disregarding or devaluing other rights which, although they may have no meaning without the right to life, are also fundamental.

The question is not simply which rights may be retained and which must be sacrificed in order to surmount the crisis; it is of equal or greater importance to leave intact the institutions without which rights cannot be effectively protected. In this respect, in so far as the judiciary and bar are concerned, the government has, it is submitted, taken excessive powers.

*) George-Henri Beauthier, Rapport d'une Mission d'Observation en Turquie, published by the International Federation of Human Rights and the Belgian League for the Defence of Human Rights, Brussel, August 1981.

When martial law authorities have such broad powers as they do in Turkey, there is inevitably a degree of arbitrariness and abuse of power. An independent authority capable of investigating and bringing to light abuses and injustices is essential. However, by restricting the jurisdiction of the civilian courts by authorising lengthy periods of detention without the possibility of judicial review, and by precluding review of sentences imposed by martial law courts and review of administrative acts of martial law commanders, the government has removed two essential tools for preserving the rule of law even in a state of emergency.

Similarly, ready access to legal advice and counsel's ability to represent any client freely and without inhibition are essential elements of any system of justice worthy of the name. Although lawyers cannot claim special immunity by reason of their professional status, when the legal threshold for arrest and detention is reduced in times of emergency a government interested in protesting human rights must, as a matter of policy, weigh the need for detaining lawyers against the effect this may have on the provision of urgently needed legal services. Reports of the repression of lawyers in Turkey suggest that the government may need to exercise more vigilance to ensure that defence lawyers are able to pursue their professional duties without fear of being identified with their clients and subjected to arbitrary detention and harassment.

Finally, one of the most disturbing features of the changes effected in the rights of citizens and the powers of the courts is that they are expressed in permanent terms. This is in violation of one of the most basic principles governing states of emergency, i.e. that emergency measures - particularly laws not passed by a democratically elected legislature - should be in force only for the duration of a genuine emergency. The current plans of the government call for convening a nominated Consultative Assembly to prepare a new Constitution followed by the holding of elections for a new national legislature. It remains to be seen whether the new Constitution will ensure full respect for democratic principles and will restore the judiciary to its proper role as an independent power capable of safeguarding the rights of citizens. There are disquieting indications that it will be restrictive in nature.

G U A T E M A L A

Campaign of Violence Against the Legal Profession Continues to Claim Victims

In June 1980 and March 1981, the CIJL appealed to organisations of judges and lawyers throughout the world to write to the government of Guatemala expressing concern about the assassination of judges, lawyers and law professors in that country. At the time of our second appeal, thirty-six had been assassinated and three others had "disappeared" since January 1980.

Information concerning these assassinations and related incidents was submitted to the United Nations and the Inter-American Commission of Human Rights. Neither has yet made public the results of their investigations, however.

Newly received information concerning the death or disappearance of eleven additional members of the legal community causes us to issue yet another appeal. There is considerable circumstantial evidence that these killings are related to the professional activities of the victims, and that the security forces at least tolerate them. In many cases the assassinated attorneys have been representatives of trade unions, peasant groups or the national university and its legal aid service. In one previously reported instance the assassins attributed the murder of a lawyer to his defence of a political prisoner; in another the assassination of a judge hearing a sensitive case was followed, a few days later, by that of the judge assigned to replace him. The method of killing is identical in an overwhelming majority of cases. The killings normally occur in daylight, often in heavily populated areas. No case has been reported in which the responsible parties have been brought to justice or an attempted murder has been frustrated by the police, even where death threats have been reported to them, or where the assassination was preceded by an unsuccessful attempt.

The incidents which have recently come to the attention of the CIJL include the following:

Mario Arnoldo Castro Pérez, member of the Law Faculty of the University of San Carlos, was assassinated on 25 February 1981. He was machine-gunned from a passing car while driving in the capital.

José Gerardo Reyes Alvarez, another member of the same Law Faculty, was killed on 26 February 1981. While driving in Guatemala City, he was chased by another car. He left his car and fled into a public building. The gunmen followed, and shot him dead.

Guillermo Alfonso Monzón Paz, another member of the same Law Faculty, was killed on 27 February 1981. He was a specialist on penal law, and had written extensively on violence in Guatemala. He was also machine-gunned by men in a passing car while driving in the capital.

Jorge Palacios Motta, another professor at this Law Faculty, was machine-gunned while driving through Guatemala City on 4 March 1981.

José Anibal Moreno, a 39 year old member of the same Law Faculty, was killed in Sacatepéquez on 4 March 1981. Reportedly he was abducted in Guatemala City and taken to this area by car, then let out of the car and shot as he tried to run away.

Jorge Romero Imery, Dean of the same Law Faculty, was kidnapped on 15 March 1981. His body was found at the side of a highway on 8 May. He had also worked in the 'Bufete Popular', a service related with the University of San Carlos which provides legal assistance to the poor (the deaths of six other lawyers connected with the 'Bufete Popular' were reported in Bulletin Nos. 6 and 7).

Héctor Antonio Guerra Solís, a 55 year old practitioner was kidnapped on 24 March 1981 by a group of armed men. The kidnapping occurred in San José Acatempa, Jutiapa.

Luis Horacio Arroyave Pariaqua, a 70 year old practitioner, was shot dead in his office in Guatemala City. This assassination took place on 30 March 1981, at midday.

Oscar Bonilla de Leon, Professor of Law at the University of San Carlos, was machine-gunned while driving through Guatemala City on 7 May 1981. Two other members of the Law Faculty present in the same car died in this attack. The Administrative Secretary of the Law Faculty gravely wounded in the same incident, Lic. Miriam Elizabeth Gomez Lima, left the country later that month.

Jorge Carlos Mancio Ortiz, died in the same incident.

Carlos Enrique Tuch Orellana, died in the same incident.

Hugo Ariel Motta Muñoz, a 28 year old attorney working in the 'Bufete Popular' of Huehuetenango, was kidnapped on 22 May 1981.

The kidnapping, carried out by six heavily armed men, occurred as Mr Motta was being questioned in a court in El Quiché in connection with marijuana offences. His body was identified as one of ten contained in a common grave discovered the following month.

René Oswaldo Cifuentes de Leon, attorney, was kidnapped on 3 June 1981 while leaving his office in Guatemala City.

A number of other incidents were reported, apart from the disappearances and assassinations. A judge and a penal lawyer sought refuge abroad because of threats on their lives. The judge is Otto Marroquín Guerre, member of the Court of Appeal, who sought refuge in Mexico in January 1981; the attorney is Gonzalo Menéndez de la Riva who, when forced into exile, had been conducting the defence of the accused assassin of Mr Laugerud Lossi, son of a former president of Guatemala. Other incidents include the bombing of the 'Bufete Popular' of Antigua, Sacatepequez, on 1 May 1981, the assassination of Jorge Lorenzo García Jiménez, chief clerk of the Justice of the Peace of Nueva Concepción, Escuintela, in early August 1981, and the assassination of Eduardo Augusto Quifión Barillas, clerk of the Justice of the Peace of

Los Amates, Izabel, on 27 August 1981.

These recently reported cases bring the number of judges, lawyers and law professors assassinated in the eighteen months period beginning January 1980 to forty-seven, and the number of "disappeared" to five. There has been discussion of closing the Law Faculty, and it has become difficult for defendants in politically sensitive cases to find lawyers willing to defend them.

Organisations of lawyers have been asked to write to Ing. Rafael Eduardo Castillo Valdez, Minister of Foreign Relations, Palacio Nacional, Guatemala,

- (1) expressing their concern about this continuing wave of violence and its effects on the independence of judges and lawyers, and
- (2) inquiring as to what action the government has taken to halt these killings and bring the responsible parties to justice.

EL SALVADOR

Intimidation and Violence Against Judges and Lawyers Continues

An article describing some of the consequences for the legal community of the terrible violence in El Salvador appeared in the previous issue of this Bulletin. Since then several additional incidents have been reported. Three concern lawyers involved in legal aid or human rights activity:

On 19 August 1981, Rosa Judith Cisernos, 42 years old, was assassinated outside her home in the capitol city of San Salvador. She was approached by armed men who seized her and murdered her in cold blood. She was legal adviser to the peasant organisation, Salvadorian

Communal Organisation, as well as director of the family planning and women's rights organisations, Salvadorian Demographic Association.

The founder and several workers of Socorro Juridico, a legal aid organisation established by the Archbishopric of San Salvador, were included in a list of "traitors" published by the army in April 1981. This type of libellous statement is inconsistent with the obligation El Salvador accepted in ratifying international human rights instruments, to respect the honour and reputation of each individual. In addition, given evidence of the armed forces' complicity in illegal assassinations and kidnappings, it must be perceived as a threat intended to discourage and interfere with the work of the organisation.

The CIJL has also learned that in January 1981 members of the armed forces and police entered the home of attorney Maria Magdalena Enriquez, president of the Human Rights Commission of El Salvador. As she was absent, seven other persons staying in her home were taken into custody. This forms part of the pattern of intimidation directed against those involved in documenting and denouncing the illegality and violation of human rights which have become so widespread in El Salvador. The offices of the Commission have been the target of repeated bombings during the past year, two collaborators were assassinated in October 1980, and one was abducted for a period of weeks in January 1981.

The previous article also describes an appalling incident of intimidation of a judge, involving the killing of five members of his family. Another attack on the judiciary took place on 9 October 1981, in the form of the bombing of the building housing the Supreme Court. One bomb exploded in proximity to the office of the President of the Court, Mr Leonel Carias Delgado, who was seriously injured. A second bomb exploded in the legal assistance office of the Court. A total of thirteen persons were injured by the explosions. The explosions are believed to be the work of a right-wing para-military group whose activities, according to reports of the Inter-American Commission on Human Rights, are tolerated by the government. *)

*) 1979-1980 Annual Report of the IACHR, p. 137.

ACTIVITIES OF LAWYERS' ASSOCIATIONS

Activities of the African Bar Association

At its Third Biennial Conference in 1978 the African Bar Association, a federation of national bar associations from english-speaking Commonwealth countries of the continent, adopted the Freetown Declaration in which it pledged its energies to the promotion of human rights in Africa. Particular emphasis was given to the right of the individual of access to the courts and due process of law, and the need to oppose laws restricting or ousting the jurisdiction of the courts and penal laws of retroactive effect.

The Fourth Biennial Conference took place from 27 July - 1 August in Nairobi. Present were delegates from twelve nations: Botswana, Gambia, Ghana, Kenya, Lesotho, Malawi, Nigeria, Sierra Leone, Tanzania, Uganda, Zambia, and Zimbabwe. The theme of the conference was "Law and Democracy in Africa", and three days were devoted to the discussion of various topics, among them "The Courts and Democracy", "Democratic Processes in Africa and Elections", "The Westminster System of Government in Africa", "Human Rights and a Written Constitution", "Human Rights of African Women", and "Human Rights and Human Development in Africa".

The outgoing Secretary-General, Mr Amos Wako of Kenya, gave an account of the Association's efforts to promote human rights since the adoption of the Freetown Declaration. The Association's activities have been significant on both the regional and national levels. With respect to the former, the African Bar Association participated in several preliminary meetings, one sponsored by the United Nations and the others by the Organisation of African Unity, with a view to drawing up a regional human rights instrument and a mechanism for implementing it. These efforts bore fruit in the adoption of the African Charter on Human and Peoples' Rights by the O.A.U. Assembly of Heads of States in Nairobi in July 1981. In addition, the A.B.A. played an important role in the creation of the Inter-African Union of Lawyers, a professional organisation encompassing the entire continent (see CIJL Bulletin No. 7).

On the national level, the Association intervened with the governments of Ghana, Swaziland, Tanzania, Uganda and Zambia regarding possible human rights violations. In some cases the interventions appear to have had some effect, as for example in two countries where lawyers were released from prison.

The conference closed with the adoption of several resolutions concerning human rights, including one recommending the adoption of constitutional provisions limiting the term of office of the president or chief executive of a country, one recommending greater involvement of women in decision-making, and one calling upon member bar associations to work towards the ratification of the African Charter on Human and Peoples' Rights and urging governments to "ensure that development policies are truly designed to enhance the advancement of rights for the people of that country". Of particular interest is a resolution on the judiciary. The text is as follows:

"The position of the judiciary in the realisation of human and democratic rights is of central importance. The judiciary because of its insecurity has not satisfactorily played its leading role in the development of the democratic process. The method of appointing judges and other judicial officers is identified as one of the factors leading to the present judicial attitude. The conference consequently resolves:

1. That the judiciary in each member country be more assertive innovative and bold on fundamental rights issues and that the legal profession in each member country must be represented in judicial service commissions and should play an active role in the appointment of judges.
2. That the appointment of judges on contract derogates from and strikes at the very core of democratic process and judicial independence. Judges must therefore normally be appointed on permanent basis and their security of tenure constitutionally guaranteed."

The conference also approved the creation of an A.B.A. Human Rights Committee, to have constituent committees in each member country.

Its function will be to "educate the public on their fundamental and human rights and to supervise and monitor the enforcement and breaches of human rights in member countries".

The African Bar Association's commitment to the promotion and defence of human rights is outstanding, and it is hoped that the creation of human rights committees in member states will permit it to become even more effective in this area of its activity.

B R A Z I L

The National Association of Lawyers for Agricultural Workers in Brazil

A meeting in December 1980 of 150 lawyers involved in the representation of rural workers in Brazil led to the creation of the National Association of Lawyers for Agricultural Workers. Agricultural labour is of great importance in Brazil: 44% of the population, approximately 53 million persons, is rural, and 75% of the nation's foreign exchange earnings are derived from agriculture. The distribution of land, and the income derived from it, is sharply skewed: less than 2% of land owners possess 54% of the arable lands; 48% of the land owners own parcels of less than 10 hectares, and 15 million rural workers own no land at all. The economic policies pursued by the government have had the effect of intensifying the concentration of land ownership and mal-distribution of wealth during the recent decade.

This mal-distribution of wealth and increasing concentration of land ownership sets the scene for frequent conflicts between large land holders and agricultural labourers or small land holders. Despite some favourable legal provisions, such as a law giving title to those who have worked a parcel of land for 10 years, representation of the rural poor is rendered difficult by the magnitude of the problem and the lack of resources of the rural poor, on the one hand, and the considerable wealth and sometimes ruthless tactics of the large landowners on the other.

In this conjuncture ANATAG was formed as an organisation for coordination and mutual assistance. Priority is given to support for the trade unions rights of seasonal and other agricultural workers, defence of the land rights of small landholders threatened with physical eviction, deterrence of violence against peasants by physical presence at the scene of evictions or other labour conflicts, deterrence of violence against lawyers by a national and international information campaign, and the mobilisation of public opinion against national policies which encourage the concentration of land ownership and therefore the interests of small farmers and the landless. The objectives of the organisation as formulated in its statute are set out in the Appendix to this article. It works in collaboration with the Pastoral Commission on the Land, a group inspired by the Brazilian Catholic Bishop's appeal for the protection of the rights of "posseiros", i.e. those who occupy and farm land without holding formal title of possession.

Repression of Lawyers

The lawyers committed to this type of legal activism have been subjected to repeated incidents of intimidation and violence in recent years. ANATAG believes that, in most instances, these are the work of agents or employees of the large landowners.

Two serious incidents occurred in the months preceeding the creation of ANATAG. In October 1980 an attempt was made to assassinate Vanderly Caixe, a lawyer for a union of rural workers in Northeast Brazil and now the Secretary-General of ANATAG. On 10 November 1980, Agenor Martins de Carvalho was assassinated. He was the lawyer of a union of rural workers in Rodonia, and at the time of his murder was involved in the defence of a group of posseiros threatened with expulsion. He was shot at point blank range by men who came to his home in the middle of the night. During the four preceeding years he had been the target of three other attacks. The crime remains unsolved.

More recently Father José de Patrocinio, lawyer for a union of rural workers in the state of Pernambuco, was threatened with death in May 1981. At the time he was involved in an important campaign to

defend the right to free elections within the union. The following month, on 12 June 1981, Joaquim das Neves Norte was assassinated in Mato Grosso do Sul. He was shot as he arrived at his office at 7 a.m. For four years he had been providing legal assistance, under the auspices of the Pastoral Commission of the Land, to small farmers threatened with expulsion. Witnesses noted the registration number of the car used by the assassins, and one suspect has been arrested. He had also been the subject of an attack the previous year.

Support by French Lawyers

Around the same time as the foundation of ANATAG, a "Committee for the Support of Lawyers Serving Rural Workers" was created in France with the purpose of forging links between the french legal community and these Brazilian lawyers. In less than one year of activity, its accomplishments have been considerable.

In June 1981, a visit by the Secretary-General of the Brazilian association to France was arranged, and meetings with leaders of the French bar took place. the Ordre des Avocats of Paris subsequently sent a message of support to ANATAG. This type of publicity and demonstrations of support will, it is hoped, help to diminish the risks of assassination and physical violence which the lawyers in these areas must endure. Among the bar of Lyon, the third most important bar in France, a movement to provide financial aid to the Brazilian lawyers has been organised. The poverty of the rural workers in Brazil, as in many other countries, remains one of the most important limitations on lawyers who wish to serve this sector of society, rivalling even repression as a limitation on their activity.

This action of French lawyers in initiating direct bilateral assistance, both moral and material, to lawyers struggling to defend the interests of the poor in one of the underdeveloped regions of the world, is an example which other bar associations might consider emulating.

Appendix

Objectives of the National Association of Lawyers of Agricultural Workers

(Article 2 of the Statutes of ANATAG)

- a) To bring together lawyers and articled law clerks in the militant defence of rural workers;
- b) To furnish meetings and collective work projects for the exchange of experience among members;
- c) To provide technical assistance to members regarding difficulties encountered in their practice;
- d) To represent members where and when necessary;
- e) To articulate forms of support and solidarity for lawyers of workers, whenever threats occur or their rights are violated;
- f) To promote ample denunciation of arbitrary actions, injustices and injuries to the fundamental rights of citizens;
- g) To lend support and practical solidarity to all entities which struggle for complete democracy;
- h) To sponsor studies, conferences, seminars, and courses on the legal, political, economic and social level on all aspects of the employment relationship, its origins, consequences and implications;
- i) To promote activities aimed at the technical and political training of members and the education of students;
- j) To participate in inter-disciplinary activities with entities and/or professionals of other disciplines committed to popular struggles;
- l) *) To defend the creation of chairs of Agricultural Law in the Law Faculties, promoting [the use of] materials [representing] the viewpoint of rural workers.
- m) To struggle for the creation and implantation, throughout the entire national territory, of an Agrarian [system of] Justice in order to judge all disputes concerning the use, possession and ownership of land.

*) In the Portuguese alphabet the letter "l" follows directly the letter "j".

THE NEED FOR A BALANCE IN THE APPOINTMENT OF JUDGES *)

by Mr Justice Lionel Murphy of the High Court of Australia

In modern times judge-made law represents the judges' idea of what is appropriate, ideas fashioned of the wisdom of their predecessors and adapted to meet changing conditions. It is called common law, decisional law or judge-made law. The expansion of legislation and the expansion of administration means, paradoxically, that the law-making role of the judges is bound to increase in Australia as elsewhere. This is a fact of modern life.

It follows that the judges perform an extremely important function. The influence of judges, especially in the higher courts on the development of those laws which mostly closely concern the citizen, is generally far greater than that of even most cabinet ministers. Whether this is good or bad, it is a fact of life.

In their law-making functions, judges necessarily have to use some guidelines. I am speaking for example of cases where the Constitution or an Act of Parliament is not clear or where a novel case arises in the area of judge-made law. If a judge can find no guidance what does he turn to. He turns to his own social values. No one seriously suggests that judges decide cases on party political lines, but it is inescapable that they decide them according to their broad social values.

As long ago as 1920 Lord Justice Scrutton, a great English judge, said: "The habits you are trained in, the people with whom you mix, lead to your having a certain class of ideas, of such a nature that when you have to deal with other ideas, you do not give as sound and accurate a judgment as you would wish. This is one of the great difficulties at present with the Labour. Labour says, where are your

*) This is the revised version of an address given by Mr Justice Murphy to the Australian National Press Club in May 1981. The Canberra Times has kindly consented to republication.

impartial judges. They all move in the same circle as the employers and they are all educated and nursed in the same ideas as the employers. How can a Labour man or a trade unionist get impartial justice. It is very difficult sometimes to be sure that you have put yourself into a thoroughly impartial position between two disputants, one of your own class and one not of your class."

Lord Hailsham, a staunch defender of the judiciary, who has visited Australia recently, has asserted that: "There is no such thing as the value-free or neutral interpretation of the law. Judges, like everybody else, are influenced by the economic and political climate of their time. Judges must move with society."

It is really impossible to get a judge who does not bring his own social values to bear on the cases. Some cases, of course, are so clear that the judges are unanimous, others are not. And sometimes, not rarely, the social face values will be strong factors in individual judgments. If judges are normal human beings they have social values concerning the kinds of issues which arise before the courts.

There are specialists who measure judges performances in the United States of America and in Australia, particularly, in Australia, the High Court, and the result of their work is described as jurametrics.

It is obvious from jurametrical studies that all judges have pronounced social values which can be seen consistently throughout their judgments. This does not mean that one can predict the decision of a case or the decision of any particular judge but one can predict with a great deal of probability that on issues of a particular type, Judge A will tend to be more on one side than Judge B.

There have been studies in Australia particularly those by Professor Blackshield, that have shown the tendencies of the High Court judges since federation on various issues and what is remarkable about those studies is the consistency of the way the patterns of social value are reflected in the decision of the cases.

For the public to maintain confidence in the judiciary at least two things are needed. Firstly, there must be a balance in the selection of judges. Secondly, there must be informed public discussion about the

judiciary and what it does. As the social values of the judges so greatly influence the laws and their application it is of the utmost importance in a democratic society that those values fairly reflect the prevailing values of the society in which the judges operate.

Therefore, it is extremely important what kind of person is appointed to the courts. In many countries there seems to be a reasonable balance of social classes, of races, of sexes. But in the U.S.A., in the United Kingdom and in Australia the picture is far from reassuring. Yet even in the U.S.A. there would be an outcry if all the bench were democrats or if they were all republicans.

In Australia, no attempt is made to achieve any balance. With rare exceptions, appointments are made of persons who can fairly be regarded as conservative or ultra-conservative.

If the balance is destroyed, so that the courts are obviously overwhelmingly dominated, particularly by conservative or on the other hand, progressive attitudes, which do not represent a fair reflection of those attitudes in the community, the court is likely to be regarded with suspicion. A proper balance throughout our legal system is overdue. This includes the appointing to the federal and state courts of women as well as men judges and court officers, of those whose families are not from the British Isles as well as those who do originate from the British Isles.

On the present trends it will be a long time before that balance is achieved.

Universal experience shows that women and non-Britishers are perfectly capable of being admirable judges. We should examine our legal education and legal practice and processes of advancement, define what is inhibiting the advancement of them to judicial office. Apart from those factors the process of selection is too narrow. It is almost restricted to the appointment of Queens Council. This means that in the legal profession where you have academics, where you have government lawyers, where you have solicitors and junior barristers, the selection is restricted to almost 1% of the lawyers.

Now, do not misunderstand me, I am not suggesting that there be some system of proportional representation so that there is some exact representation on the judiciary of all sections of the community. Far from it. But we have gone much too far away from any reasonable balance in Australia. Now that is not merely a personal view of mine. That is shared by others outside Australia who observe it including some very distinguished lawyers in other countries.

The media should not be inhibited to criticism of the decisions of the courts. The High Court is, after all, seven men appointed by government, largely an elite exercising a very great influence on Australian society. It is of the utmost importance that their decisions be subjected to analysis and criticism by academics, parliamentarians, the public and the press.

Academic analysis tends to be confined to specialist areas. There is very little attention given by anyone to the whole spectrum of judges' work.

The courts in Australia have not made much contribution to civil liberties. This may be explained partly by the slavish following of the English common-law decisions which, on the whole, have not had a good record in civil liberties. The other reason is the absence of a Bill of Rights which gives courts the opportunity, and to some extent requires them, to preserve fundamental freedoms. However, the leaders of our society proclaim to the nation and other nations that our society, our laws, are conducted to certain fundamental principles, for example, the rule of law, equal justice and opportunity, equal protection of the laws, and they state that everyone is entitled to live in freedom and dignity. These are fine principles. Regrettably they are not strictly observed. The people who suffer in our society are obvious: aborigines, migrants, women and those who are physically and economically disadvantaged. Their complaints are not revolutionary. All they ask is that the great principles of justice be applied to them. The ideals of law are most admirable. The problem is to get the court to implement in practice what the law proclaims in theory. The High Court's success will be judged by the extent to which it does implement the great ideals of justice and human rights.

THE PERMANENCY AND RELATIVITY OF THE RIGHTS OF THE DEFENCE

by Christian Panier *)

Must the principle of due respect for the rights of the defence, and demands for their application, be understood differently according to the nation, the political regime, economic factors or the social context?

The premise of this paper is that the answer is no. Only the modes of their application should vary according to the concrete possibilities of nations.

Before formulating the exceptions and distinctions which, with all political rigour and honesty, are required by situations as dissimilar as those of capitalist countries with a high concentration of wealth and those of exploited nations, we would like to outline one requirement which, it is submitted, englobes the fundamental rights of each individual, group or people: the imprescriptible and inalienable right to defend oneself peacefully (which distinguishes the right to defence from the right to resistance) and therefore, among other modes, that of finding and engaging a defence lawyer or other representative(s) each time one confronts the powers that be, whether state power or private power, hidden power or naked power.

Protean defence

Powers in the plural, because, it is submitted, defence rights cannot be considered solely with reference to the institution of justice or to judicial power; these rights must be available in face of any power, be it legislative, administrative or judicial, or in any other domain or

*) This report was first presented to a Congress of the International Association of Democratic Lawyers in Malta, November 1980. The author is a member of the bar in Belgium, and Lecturer at the University of Louvain.

of any other apparatus (especially disciplinary or professional authorities), likely to take decisions concerning individuals or groups. To defend oneself, it is submitted, is to demand that the holders of power - legislative and statutory - consider the aspirations of minority as well as representative groups. To defend oneself also is to have a say in the elaboration of administrative decisions concerning such and such a citizen, such and such a resident, such and such a group. To defend oneself is obviously to be able freely to present all one's arguments before a judge whose power of decision over one's property, interests or possessions could lead to the possible deprivation of rights.

To defend oneself also, and perhaps especially, means to demand the establishment of a place - and it is precisely the duty of political powers to create or organise it - constituting a forum where everyone can be heard when confronted by the conflicting interests and rights which make up the social fabric.

Individuals and groups inevitably clash in economic, social and cultural arenas. Almost always - whatever be the political nature of the society where they exist: capitalist or communist or societies under imperialistic rule - almost always these clashes are between unequal parties. It is one of the basic responsibilities of the political authority to ensure that these clashes are resolved permitting all opposing forces to defend themselves peacefully and to express themselves clearly before a decision is made.

Rights to defence and societies in conflict

Thus conceived in a fashion not exclusively judicial, the rights of the defence become in a sense the principal rule of the game of formalised conflict, one of the essential guarantees of the equitable resolution of conflicts, not negating demands but, on the contrary, revealing the fundamental conflicting elements of the dispute.

It may be objected that such a conception presumes the permanence and recurrence of conflict. That is, in fact, what is suggested, for if a classless society can be conceived of, at least in terms of a utopia,

it is not possible to imagine a society without conflicts. This would be other-worldly and no-one could reasonably subscribe to it.

Today, wherever one turns, societies remain class societies and the state structures which they espouse, or which are imposed from without or within, remain ones in which class nature prevails. Hence the vital necessity for a code of understanding between individuals, groups and forces which officially or in fact constitute and support these state structures. In face of a repressive structure or any other forms of power, be they public or private, monopolised by the state - even socialist - or controlled by interest groups, the rights to defence become a rampart and their application becomes a demand. They form part of the human rights to which is devoted a growing amount of international commitment, subscribed to by numerous states. The international community has a right to demand from all states which have subscribed to these rights, as well as from those who have not, that they be honoured. It has a duty to denounce those who fail to do so and, since it is a question of the fundamental principles common to civilised nations, without the issue of non-interference in the internal affairs of other countries being raised.

Universality and relativity of defence

This being the case, what should be demanded of the states responsible for the concrete implementation of these rights to defence, which, even if the degree to which they are respected is generally higher than in the past, still remain perilously threatened?

Naturally, all countries cannot reasonably be expected to establish a state apparatus having a configuration, structural relationships and modalities of operation such that the rights to defence will enjoy everywhere maximal effective standards. Where vital needs are not satisfied or the infrastructure is insufficient or non-existent, where cultural models do not accord the same value to debate and to the accusatory technique as developed in western countries with a complex social structure, one could not, for example, demand the same functional perfection, an administrative and judicial apparatus equally supplied

with personnel and premises, and as accessible to the public as those prevailing in more advantaged countries. Where the development of the super-structure (universities, schools, intellectual professions) is only beginning, how can a public service or judiciary with a "high standard" of training be demanded? How can a large and organised body of professional counsel be imagined? These are doubtless goals which remain to be realised. The mere fact that they are not absolutes is enough to explain, but not to excuse, the large number of errors, the groping in the dark, the numerous corrections required.

In the real pursuit of these objectives advantaged nations, which very often exploit and dominate disadvantaged ones, have a considerable responsibilities. Only when they actually shoulder them will they be heard to complain of those shortcomings which, until now, they have really done nothing to prevent.

Detailing the modes of operation of the rights to defence leads one to enumerate, still in terms of goals, the essential qualities which they should have: free, independent, egalitarian, and democratic.

The attributes of the defence

Free: The Defence should be able to be practised without hindrance, prohibition or censure. To defend would firstly be to understand, then to make understood, a given situation or what leads to given behaviour. It would often also be to denounce any intrigue by a social, economic or political power without this ever being interpreted as reprehensible or liable to civil or penal sanctions. Nor should anyone who fully exercises this right be subject to economic or social consequences. There can be no disqualification of the defence without an attack on freedom.

Independent: The exercise of defence should not require authorisation by any existing power. The forces of public authority and social constraint should have the least influence on the constitution and methods of proceeding of the defence. The organisation of professional bodies of defence lawyers, where they exist, should develop as much as possible on the basis of the greatest autonomy. If they must be auxiliaries to

something, advocates should be pre-eminently representatives of the law rather than auxiliaries to the governing powers. The links which they are forced to maintain with these powers for the smooth exercise of their profession must be as flexible as possible. The organisation of the legal profession in the west fulfils, in spirit if not in its actual operation, this wish for independence. Is this also the case where, directly or indirectly, officially or in secret, the defence lawyer is entirely dependent for access to his position on the decision of the powers that be? One hesitates to say "yes".

It seems to us also that potential dependence is harmful when it arises from the interaction between the advocates and such and such an economic or social power to which he is subject. Just as a system of justice which is atomised or devoted to its own professional interests to the exclusion of other concerns carries the seeds of a mechanism for conflict settlement tending towards the fascistic, so the creation of a body of lawyers which is excessively devoted to "professionalism", it is submitted, is in the long run inimical to the effective fulfillment of the function of the defence. This is not meant to imply that the lawyer, or in more general terms the representative of the defence, should not have privileged professional links with given economic or social interest groups. What is meant is that everything possible must be done, including by the public authorities, to ensure that the lawyer remains free to weave these links as well as to break them.

Egalitarian: Defence should be egalitarian at two levels: access to the practice of advocacy by anyone who, satisfying objective legal conditions, hopes to practise it professionally, and secondly, the possibility for everyone to put forward his defence and have the assistance of a defence lawyer.

The socio-economic and cultural conditions affecting access to the profession and practice of defence (studies, professional training, concrete conditions of access to "clients") should be considerably democratised by a deliberate policy of the government and the professions in question. In this area, western countries are woefully inadequate. There is a rather systematic recurrence of the fundamental inequalities

which make the profession of advocacy a position of social privilege, thus hampering any possibility of a genuine democratisation of the practice.

Moreover, where state services do not perform the role which is rightfully theirs, it is the particular responsibility of defence lawyers to demand conditions of equal access to their services for citizens. Once again, the mechanisms of legal and juridical assistance in western countries show in this respect numerous flaws, which the first national colloquium of the Belgian Association of Democratic Jurists exposed very clearly in October 1979. It is the duty of jurists to pay particular and vigilant attention to this essential aspect of democracy.

Democratic: Another feature of the right to defence is precisely that it is, or ought to be, democratic. To be available to all, defence lawyers must therefore be truly concerned about everyone, that is the largest groups of people as well as each individual.

This concern for democracy does not consist of silencing the individual dimensions of opposition to power which all defence implies. It consists on the contrary of asserting and concretising the fact that defence is not at the service of all except where it serves each individual first, i.e. where it assumes the role of spokesman for individuals and groups against the powers that be. This does not mean that the powers themselves should not have the right to defence or representation. It only - but how crucially - asserts the idea that there should be equal defence for all, without which there is a great risk of having totalitarian defence for the benefit of a few ... or for the benefit of an ideology which is imposed on all and supposed to be shared by all.

A defence can not be democratic without being appropriately informed. This is an extremely concrete problem. What can defence lawyers do if they have to attempt to explain facts the exact nature of which they did not know; or if they have to respond to charges which are vague or indefinite, ephemeral or expandable according to the whims of the prosecuting authority or party? What assistance would a defence lawyer be able to give if he is unacquainted with all the material out

of which the conflict arose and upon which the trial was based? Clarity of debate thus seems to follow from the intangible characteristics of democratic defence, just as a fundamental prerequisite of democratic defence seems to be the concrete existence of equality in debate. This in turn can only be ensured by the independence and impartiality of the judge or arbiter. However free or egalitarian the defence, what meaning would it have in a situation where, even before it is expressed, the fate of the person to be tried is sealed in advance?

To defend the Defence

That which eliminates true defence can be termed inquisition. Inquisition, inquisitorial: the word has an ecclesiastico-political ring. The lessons that we have been able to learn from experience teach us that there can be no protection against it except by the universal assertion of the minimum requirements that we have just singled out.

Illustrations of these requirements, or rather the urgent need for their application, have been given by numerous recent events which had in common the fact that the powers that be deliberately undermined the status and credibility of the person who, in so many parts of the world, personifies this "institutional opposition", the "legal dissidence" of the defence, the lawyer. The Croissant affair in the Federal Republic of Germany, the Graindorge affair in Belgium, diverse proceedings against French, Italian or Spanish lawyers because of the exercise of their profession in trials of a political nature, numerous restrictions and attacks on the rights to defence notably in Latin America and in some communist countries ... everywhere this "criminalisation" of defence has brought in its train legal or administrative restrictions on the individual liberties of all citizens, the lengthening of periods of detention, relaxing conditions for police searches ... and as a corollary, the enlargement of inquisitorial powers.

Without any doubt, this general lowering of the democratic temperature corresponds to the interest of the economic and political powers to lower the general level of vigilance of society at a time of structural crisis, precisely when democratic principles require even greater vigilance.

Defence also implies the genuinely political responsibility of denouncing these dangers. Defence literally should know how to give tongue, to shout when silence is demanded, to fight always and untiringly against the very power from which it so often solicits the conditions for its own free and independent practice. Stubborn towards the powers that be, deaf when they are stubborn towards it, defence is animated by multiple contradictions.

Always at the service of individuals and groups which fight for causes that they believe to be just, on the side of the oppressed, ceaselessly at the service of freedoms even where the ruling power claims to be a better guarantor, the defence lawyer is Sisyphus. At the top or at the bottom of the hill, the rock represents the dignity of peoples.

DRAFT PRINCIPLES ON THE INDEPENDENCE OF THE JUDICIARY

A Committee of Experts organised by the International Association of Penal Law, the International Commission of Jurists and the Centre for the Independence of Judges and Lawyers, and hosted by the International Institute of Higher Studies in Criminal Sciences met at the Institute in Siracusa, Sicily, on 25-29 May 1981 to formulate draft principles on the Independence of the Judiciary. The participants comprised distinguished judges and other jurists representing different regions and legal systems. They came from Africa, Asia, America and Eastern and Western Europe.

The main purpose of the meeting was to seek to exchange information and formulate principles which might be of assistance to Dr. L.M. Singhvi, Special Rapporteur on the Study on the Independence of the Judiciary of the U.N. Sub-Commission on the Protection of Minorities and the Prevention of Discrimination. Dr. Singhvi was present at the meeting, and submitted the Draft Principles to the Sub-Commission at its August 1981 meeting as an annex to his progress report (U.N. Doc. E/CN.4/Sub.2/481/Add.1). *)

These draft principles are to be seen as a first draft and comments upon them will be welcomed by the sponsoring organisations. Their aim is to formulate principles guaranteeing the existence and proper functioning of an independent judiciary as an essential condition for the respect and protection of human rights under the rule of law.

*) See CIJL Bulletin No. 6 for Dr. Singhvi's preliminary report to the Sub-Commission.

DRAFT PRINCIPLES
ON THE INDEPENDENCE OF THE JUDICIARY

I. Preamble

Art. 1. The Universal Declaration of Human Rights (Art. 10) and the International Covenant on Civil and Political Rights (Art. 14(1)) proclaim that everyone should be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. An independent judiciary is indispensable for the implementation of this right.

II. Definition

Art. 2. Independence of the judiciary means

- (1) that every judge is free to decide matters before him in accordance with his assessment of the facts and his understanding of the law without any improper influences, inducements, or pressures, direct or indirect, from any quarter or for any reason, and
- (2) that the judiciary is independent of the executive and legislature, and has jurisdiction, directly or by way of review, over all issues of a judicial nature.

III. Qualification, Selection and Training of Judges

Art. 3. Applicants for judicial office should be individuals of integrity and ability, well-trained in the law and its application.

Art. 4. Applicants qualified as set out in Art. 3 above should have equality of access to judicial office.

Art. 5. Selection for the appointment of judges should be made without distinction of any kind such as race, colour, sex, language or religion, political or other opinion, national or social origin, property, birth or status.

[Note: This article is without prejudice to the requirement that a judge be a citizen of the country in question.]

Art. 6. These principles apply whatever the method of selection and appointment of judges.

[Note: In some countries candidates for the judiciary are post-graduates who have been admitted by competitive examination to a special school for future judges, and when they have successfully completed the school's curriculum, they are appointed to existing vacancies. In some countries judges are recruited by competitive examination and receive apprenticeship training by attending courts and learning from the judges. In another country appointment is open to candidates who have successfully completed a postgraduate practical service assisting judges, prosecutors, lawyers and administrators. In some countries judges are elected by their fellow citizens. In other countries they are chosen from practicing members of the bar. No international norms give preference to any of these methods. Experience indicates that each is capable of sustaining a competent, independent and impartial judiciary.]

Art. 7. In-service training should be made available to keep judges informed of important developments, including developing social trends, new technologies and their legal consequences, studies into the causes of crime and sentencing policies and their effects.

IV. Posting, Transfer and Promotion

Posting

Art. 8. The assignment of a judge to a post within the court to which he is appointed is an internal administrative function to be carried out by the court itself.

[Note: Unless assignments are made by the court, there is a danger of the erosion of judicial independence by outside interference. It is vital that the court not make assignments as a result of any bias or prejudice or in response to external pressures. These comments are not intended to exclude the practice in some countries of requiring that assignments be

approved by a Superior Council of the Magistrature or similar body.]

Transfer

Art. 9. Except pursuant to a system of regular rotation, judges shall not be transferred from one jurisdiction or function to another without their freely given consent.

[Note: Unless this principle is accepted transfer can be used to punish an independent and courageous judge, and to deter others from following his example. This principle is not intended to interfere with sound administrative practices enumerated in the law. Thus exceptions may be made, for example, where a judge in his early years is transferred from post to post to enrich his judicial experience.]

Promotion

Art. 10. Promotion should be based on an objective assessment of the candidate's integrity and independence of judgment, professional competence, experience, humanity and commitment to uphold the rule of law.

Art. 11. An independent commission composed entirely or in its majority of judges should be established with responsibility for deciding upon promotions or for recommending candidates for promotion to the appropriate authority.

[Note: All court systems are hierarchical in structure. Only in some countries, however, has a system developed where judges are encouraged to expect promotions to higher courts or promotions in rank. This may create among the judges a pressure to conform which is dangerous for judicial independence.

Creation of judicial commissions such as those described above constitute an important safeguard against the use of promotions to restrict judicial independence, as well as being the most reliable procedure for identifying those best qualified for higher judicial posts. Many countries have Judicial Service Commissions or Superior Councils of the Magistrature

which fulfil these functions. In doing so, they should give consideration to any representations made by representatives of the bar, by other associations or by members of the public.

In addition to the establishment of commissions such as those described in the principle, additional safeguards may be desirable to safeguard against the possibility of promotions having an influence on judicial independence. In some countries, for example, the list of vacant posts and the list of candidates for those posts are published to permit public scrutiny of promotions. In one country, changes from one court to a higher court are considered changes in function rather than changes in rank, and salaries are based on years of experience rather than on the particular judicial office held.

In order to ensure that respect for the fundamental human rights of all persons becomes a reality, it is of the greatest importance that the judiciary be composed of men and women having the requisite qualities. Thus in every system for the promotion of judges, the fundamental goal must be to appoint the individuals who have best demonstrated the qualities mentioned in this principle.]

V. Retirement, Discipline, Removal and Immunity

Retirement

Art. 12. All judges, whether selected by appointment or elected, should have guaranteed tenure until a mandatory retirement age, subject only to removal for incapacity or serious illness.

[Note: Pursuant to this principle elected judges should not be required to stand for re-election.

This article is not intended to apply to international courts.]

Discipline

Art. 13. Any disciplinary proceedings concerning judges should be before a court or a board composed of and selected by members of the judiciary.

Art. 14. All disciplinary action should be based upon standards of

judicial conduct promulgated by law or in established rules of court.

Art. 15. The decision of a disciplinary board should be subject to appeal to a court..

[Note: Opinion was divided as to whether the disciplinary board should also include a minority of non-judges.

Disciplinary sanctions may include a variety of options ranging from censure or reprimand to the most drastic action of removal.

A common law judge who was unable to attend the meeting has suggested that articles 13 and 15 should be amended to read as follows:

"13. Disciplinary proceedings against a judge shall be taken formally where it is desired that the judge be, for serious reason, removed from his office. Such disciplinary proceedings shall be taken in the first instance before a board composed of members of the judiciary selected by their peers and there shall be a right of appeal from the decision of such a board to a court.

15. Where the conduct of a judge does not warrant removal from his office, disciplinary or other procedures in relation to that conduct should be taken privately in accordance with the powers vested in the Chief Judge of his court."

Removal

Art. 16. A judge should not be subject to removal unless, by reason of a criminal act or through gross or repeated neglect or physical or mental incapacity, he has shown himself manifestly unfit to hold the position of judge.

Immunity

Art. 17. Judges should have immunity from civil suit for acts done in their official capacity.

[Note: The principle that a judge, in exercising his legal authority, should be free to act upon his convictions without fear of personal consequence to himself is of the highest importance for the proper administra-

tion of justice. Liability to answer to everyone who feels aggrieved by the action of a judge would be inconsistent with the possession of this freedom and would destroy the independence of the judiciary.

This principle is without prejudice to the right which an individual should have to compensation from the state for injury incurred by reason of negligence or fraudulent or malicious abuse of authority by a court, and this right should be assured by an effective legal remedy.

In regard to the degree of immunity there was a difference of opinion. Some were in favour of absolute immunity, believing that the principle of public accountability would be adequately met, where necessary, by disciplinary action. Others considered that in principle, and in accordance with the practice of some countries, a disciplinary board or a court should be able to remove a judge's immunity in a case of fraudulent or malicious abuse of authority. Another view was that an injured party should be able to apply to a court to have the immunity of a judge removed.]

VI. Working Conditions, Administrative and Financial Arrangements

Organisation of the Judiciary

Art. 18. Any hierarchical organisation of the judiciary and any difference in grade or rank should in no way interfere with the right of the individual judge to pronounce freely in accordance with his appreciation of the facts and his interpretation of the law.

[Note: In some countries the judiciary is organised in strictly hierarchical order, prevailing even between members of the same court. In these circumstances the higher ranking judges, especially if they are likely to be asked to recommend a colleague for promotion, may even unwittingly exercise a restrictive influence on the independence of subordinate colleagues, or induce in them an unduly deferential attitude towards their superiors. Consequently it appears useful to enunciate this principle.]

Assignment of cases

Art. 19. The court itself should be responsible for assigning cases to individual judges or to sections of a court composed of several

judges, in accordance with law or rules of court.

[Note: There may be, and in some jurisdictions there is, a right of appeal to the court as a whole where such decisions are made by the President or a senior judge of a court.]

Specialisation of Judges and Tribunals

Art. 20. Considering the increase in the volume and diversity of judicial matters, the creation of specialised courts contributes to efficiency and the effective administration of justice, which in turn enhances the independence of the judiciary. Nevertheless, specialisation should not preclude the periodic rotation of judges, assisted by appropriate in-service training.

Professional privilege

Art. 21. Judges are bound by professional secrecy in relation to their deliberations and to confidential information acquired in the course of their duties other than in public proceedings. They must not be required to testify on matters of which they have knowledge as judges.

[Note: It is clear that if judges can be required to testify or otherwise disclose information about their deliberations their independence may be threatened.]

Freedom of Association and Expression

Art. 22. In accordance with the Universal Declaration of Human Rights, members of the judiciary like any other citizens are entitled to freedom of expression, association and assembly. However, judges should refrain from expressing public criticism or approval of the government, or from commenting on controversial political issues, in order to avoid any impression of partisanship.

[Note: Judges should be free to form and join associations of judges, to represent their collective interests and to express opinions and take

positions orally or in writing on matters pertaining to their functions and to the administration of justice. Such associations may organise assemblies, conferences, or general or specialised meetings for the entire judiciary or sections of it, and issue reports and communicate their views in an appropriate manner.

Opportunities for dialogue and consultation between judges of the same rank or grade can help to reinforce judicial independence.

The freedom of expression of judges is, of course, subject to the limitations of professional secrecy, in accordance with Article 21.

There was considerable discussion whether it was proper for judges to be members of political parties. Some took the view firmly that they should not in any circumstances, in order both to keep themselves free from possible political pressures and not to prejudice their reputation for impartiality. Others thought that they could without harm be members of a political party, but that they should not hold office or take part in policy formulation or in party activities.

Yet others saw no objection to judges having full freedom of association in political parties and playing an active and even leading role in them. Some of those opposed to these latter views considered that there might be less objection to a judge being a member of a political party in a one party state.

In some countries a 'duty of reserve' is imposed upon judges. This requires them as a matter of discipline to exercise restraint in the exercise of their freedoms, in order to reconcile them with the particular nature of their responsibilities.]

Disqualification from hearing particular cases

Art. 23. Judges can and should decline to sit in cases where their independence may properly be called into question, whether or not so requested by one of the parties. In doubtful situations the court or the Chief Justice or President of the Supreme Court should decide upon request by the judge concerned.

[Note: In some jurisdictions there is an immediate right of appeal against a refusal by a judge to disqualify himself.]

Financial provisions

Art. 24. To ensure its independence the judiciary should be provided with the means and resources necessary for the proper fulfilment of its judicial functions.

Art. 25. The budget of the judiciary should be established by the competent authority in collaboration with the judiciary. The amount allotted should be sufficient to enable each court to function without an excessive workload. The judiciary should be able to submit their estimate of their budgetary requirements to the appropriate authority.

Note: An inadequate provision in the budget may entail an excessive workload by reason of an insufficient number of budgeted posts, or of inadequate assistance, aids and equipment, and consequently be the cause of unreasonable delays in adjudicating cases, thus bringing the judiciary into discredit.]

Art. 26. Judges should receive at regular intervals remuneration for their services at a rate which is commensurate with their status and not diminished during their continuance in office. After retirement they should receive a pension enabling them to live independently and in accordance with their status.

Note: It is essential for the independence of the judiciary that salary levels should be such that judges are not exposed to the temptation to seek other sources of income.

An exception to the principle of non-reduction of salaries may be made at a time of economic difficulty if there is a general reduction of public service salaries and members of the judiciary are treated equally.]

Physical protection

Art. 27. It is the responsibility of the executive authorities to ensure the security and physical protection of members of the judiciary and their families, especially in the event of threats being made against them.

[Note: Whether it is a question of direct and personal threats or of the general situation of public order, judges should be able to carry out their functions in the calmness and safety which are necessary for their independence. They should be able to count on the protection of the competent authorities.]

VII. The Role of the Judiciary in a Changing Society

Art. 28. In societies in which radical changes are being made serious tensions sometimes arise between the judiciary and the executive or legislature. In these circumstances judges often have a difficult role to fulfil, calling for the highest judicial qualities. On the one hand they should understand and give due weight to the goals and policies of the changing society when construing legislation or reviewing administrative decisions. On the other hand they must uphold the human rights of individuals and groups which are laid down in the constitution, laws and, where applicable, international instruments, or which reflect the lasting values of the society. As in the other situations, justice requires judges to adjudicate impartially between the conflicting rights and interests and apply the law according to their understanding of its meaning.

[Note: Tensions and conflicts of the kind referred to have at times arisen when a constitutional or other court has invalidated reform legislation or executive action as being unconstitutional, or when there has been a series of decisions restricting the effect of reform legislation, such as trade union or land reform laws or programmes of nationalisation. It may be noted that these tensions or conflicts usually arise in countries where the independence of the judiciary is in general respected and the judiciary is not subservient to the executive.

Judges should accordingly inform themselves fully about the goals and policies of a changing society. They must also be alert to restrict limitations on personal freedom and resist all forms of discrimination. It follows that at times the judicial function may legitimately operate as a restraining factor on reform legislation, not as a result of an instinctive resistance to change, but following a considered weighing up of the conflicting interests and values at stake. Where possible judges should,

in order to avert accusations of partiality or obstruction, make clear in their judgements their understanding of the different social and political interests at stake. In some legal systems, however, this is impossible as the law forbides the judge to give judgment in this way.]

VIII. Judicial Independence and the Protection of Human Rights

Art. 29. The independence of prosecutors and advocates and the fearless and conscientious fulfilment of their respective professional duties is a necessary complement to the independence of judges, and is an essential safeguard for the attainment of justice, liberty and respect for the rule of law, and for the protection of human rights of all persons in any society.

[Note: In criminal proceedings the independence and impartiality of judges can be substantially assisted by the independence of prosecutors and lawyers. In particular the independence of defence lawyers must be fully preserved to enable them to counterbalance the role of prosecutors and assist the judges by marshalling countervailing evidence and argument.

In some countries prosecutors although part of the Judiciary, are hierarchically organised and subject to the orders of the Executive. The latter thus has the means to exercise an indirect pressure on judges of the bench through influential prosecutors. It is preferable therefore that prosecutors should, except in relation to specific matters specified by law, be independent of the executive power.]

Art. 30. The principle of the independence of the judiciary entitles and requires a judge in a criminal case to ensure the fair conduct of the prosecution and to enquire fully into any allegation made of a violation of the rights of the accused which is relevant to the issues in the case.

Art. 31. Judges should keep themselves informed about international conventions and other instruments establishing international human rights norms, and should seek to implement them as far as feasible within the limits set by their national constitution and laws.

[Note: In some countries the constitution recognises the primacy of duly ratified treaties over national law, including even laws passed subsequent to the ratification of or accession to the treaty concerned. In other countries laws enacted after the date of ratification or accession prevail and their provisions must be applied by the judiciary. The wording of this article is intended to cover both situations.]

Art. 32. Derogations from the principle that the judiciary should have jurisdiction, directly or by way of review, over all issues of a judicial nature. may be admissible in times of war or grave national emergency, under conditions prescribed by law.

[Note: Experience shows that in times of war or national emergency there is an increased risk of abuses of power and of severe derogations from constitutionally or legally guaranteed freedoms and rights.

The constitution and laws should, therefore, define precisely the circumstances and conditions of admissibility of such derogations by the executive and institute controls to be exercised by the legislature or other appropriate organs.]

BRIEF REVIEW OF MATERIALS RECEIVED

The American Bar Association's Final Draft of the Model Rules of Professional Conduct, reprinted in the ABA Journal, October 1981.

The fruit of four years of study, the Draft Model Rules will be presented to the governing body for adoption in 1982. A more comprehensive version of the Draft Model Rules, incorporating extensive notes on the "legal background" is also available from the A.B.A. National Centre for Professional Responsibility, 77 S. Wacker Dr., Chicago, Illinois 60606, U.S.A.

Colloquium on the Policy of Institutionalisation of the State of Exception and Its Rejection by the Uruguayan People. Readers of the CIJL Bulletin are already aware of the effects prolonged states of emergency often have on the jurisdiction of the courts, the independence of judges and the lawyers' ability to represent clients freely and vigorously. This book, the record of a colloquium organised by the CIJL and four other organisations in Geneva in February 1981, represents one of the most comprehensive attempts to date to analyse the causes and effects of the prolonged state of emergency, using the example of Uruguay. Available from the Secretariat International des Juristes pour l'Amnestie en Uruguay, 33 rue Godot-de-Mauroy, F-75009 Paris, in english, french and spanish, 141 pages.

The Contempt of Court Act 1981, by Peter Carter-Ruck, in the Law Society's Gazette, 28 October 1981. A brief analysis of this law, which effects some significant changes in the law of contempt in the United Kingdom. The Law Society's Gazette, 113 Chancery Lane, London WC2, England.

European Commission of Human Rights, Communiqué C(81)50, announcing the decision to declare inadmissible, in the case of

DEMESTER v. BELGIUM, a complaint that denial of a post in the judiciary on the grounds that the candidate was a priest constituted a discrimination and infringement of freedom of religion. Available from the Council of Europe, B.P. 413 R6, F-67006 Strasbourg, in english and french.

European Commission of Human Rights, Communiqué C(81)52, announcing the completion of hearings in the case of VAN DER MUSSELE v. BELGIUM in which the applicant claims that the official appointment of a barrister as defence counsel of an impecunious accused constituted "forced labour", discrimination against the legal profession or a violation of the right to property.

Judicial Accountability in Scandinavia, California and the U.S.A. by Professor Stanley Anderson, in the American Journal of Comparative Law, Volume 28 (1980). Single issues available from F. Rothman & Co., 10368 W. Centennial Road, Littleton, Colorado 80123, U.S.A.

Legal Profession in Singapore: Code of Ethics and Disciplinary Procedures, by T.P.B. Menan, President of the Law Society of Singapore, in The Malaysian Law Journal, July 1981. Includes brief reference to case law concerning lawyers and contempt of court.

Le Nouveau Pouvoir Judiciaire, organ of the Union Syndical des Magistrats, No. 293 (May-June 1981). Contains in particular a note on the need for reform of the Conseil Supérieur de la Magistrature. U.S.M., 33, rue du Four, F-75006 Paris.

Pouvoirs, No. 16 (1981). A special issue on the system of justice in France, with contributions by 12 judges, lawyers and academics. Available from P.U.F., Service de Périodiques, 12 rue Jean-de-Beauvais, F-75005 Paris.

Rapport de Mission Effectuée au Caire, October 1981. Report of a

mission by the bar associations of Kénitra and Casablanca, Morocco, and the Union of Arab Lawyers, to investigate the detention and prosecution of certain members of the Egyptian Bar. Available from the Union of Arab Lawyers, 34 rue de l'Amiral Monchey, F-75014 Paris, in French, 8 pages.

Reports of the Symposium on the Independence of Judges and Lawyers. A collection of speeches delivered at a symposium organised in November 1980 in Helsinki by the Finnish Section of the International Commission of Jurists, including by Gustaf Petrén, Judge of the Supreme Administrative Court of Sweden and a Member of the ICJ, E.-J. Taipale, President of the Finnish Bar Association, and Curt Olsson, President of the Supreme Court of Finland.

The Responsibility of Judges in Applying Unjust Laws in South Africa. A pamphlet issued by the Civil Rights League, 527 CTC Building, Plein Street, Cape Town 8001, Republic of South Africa.

Summary of Proceedings of the National Seminar on Judicial Appointments and Transfers, October 1980. Available from the Bar Council of India, AB/21 Lal Bahadur Shastri Mar, Facing Supreme Court Bldg, New Delhi 110001, in english, 10 pages.

MEMBERS OF THE INTERNATIONAL COMMISSION OF JURISTS

KEBA MBAYE (President)	President of the Supreme Court of Senegal; former President U.N. Commission on Human Rights
ROBERTO CONCEPCION (Vice-President)	Former Chief Justice, Philippines
HELENO CLAUDIO FRAGOSO (Vice-President)	Advocate; Professor of Penal Law, Rio de Janeiro
JOHN P. HUMPHREY (Vice-President)	Prof. of Law, Montreal; former Director, UN Human Rights Division
ANDRES AGUILAR MAWDSLEY	Prof. of Law, Venezuela; former Pres. Inter-American Commission
BADRIA AL-AWADHI	Dean, Faculty of Law and Sharia, Univ. of Kuwait
GODFREY L. BINAISSA	Former President of Uganda
ALPHONSE BONI	President of Supreme Court of Ivory Coast
ALLAH BAKHSH K. BROHI	Former Law Minister, Pakistan
WILLIAM J. BUTLER	Attorney at law, New York
JOEL CARLSON	Attorney at law, New York (formerly in South Africa)
HAIM H. COHN	Former Supreme Court Judge, Israel
TASLIM OLAWALE ELIAS	Judge, Int. Court of Justice; former Chief Justice of Nigeria
ALFREDO ETCHEBERRY	Advocate; Professor of Law, University of Chile
EDGAR FAURE	Former Prime Minister of France
GUILLERMO FIGALLO	Former Member of Supreme Court of Peru
LORD GARDINER	Former Lord Chancellor of England
P. TELFORD GEORGES	Member of Supreme Court, Zimbabwe
LOUIS JOXE	Ambassador of France; former Minister of State
P.J.G. KAPTEYN	Councillor of State, Netherlands; former Prof. of Int'l. Law
KINUKO KUBOTA	Former Prof. of Constitutional Law, Japan
TAI-YOUNG LEE	Director, Korean Legal Aid Centre for Family Relations
SEAN MACBRIDE	Former Irish Minister of External Affairs
RUDOLF MACHACEK	Member of Constitutional Court, Austria
FRANCOIS-XAVIER MBOUYOM	Director of Legislation, Ministry of Justice, Cameroon
NGO BA THANH	Member of National Assembly, Vietnam
TORKEL OPSAHL	Prof. of Law, Oslo; Member of European Commission
GUSTAF B.E. PETREN	Judge and Deputy Ombudsman of Sweden
SIR GUY POWLES	Former Ombudsman, New Zealand
SHRIDATH S. RAMPHAL	Commonwealth Sec.-Gen.; former Att.-Gen., Guyana
DON JOAQUIN RUIZ-GIMENEZ	Prof. of Law, Madrid; Pres., Justice and Peace Commission, Spain
TUN MOHAMED SUFFIAN	Lord President, Federal Court of Malaysia
MICHAEL A. TRIANTAFYLIDIS	Pres. Supreme Court, Cyprus; Member of European Commission
AMOS WAKO	Advocate, Kenya; Sec.-Gen., Inter African Union of Lawyers
J. THIAM HIEN YAP	Attorney at Law, Indonesia

HONORARY MEMBERS

Sir ADETOKUNBO A. ADEMOLA, Nigeria	FERNANDO FOURNIER, Costa Rica
ARTURO A. ALAFRIZ, Philippines	W.J. GANSCHOF VAN DER MEERSCH, Belgium
GIUSEPPE BETTIOL, Italy	HANS HEINRICH JESCHECK, Federal Republic of Germany
DUDLEY B. BONSAI, United States	JEAN FLAVIEN LALIVE, Switzerland
VIVIAN BOSE, India	NORMAN S. MARSH, United Kingdom
A.J.M. VAN DAL, Netherlands	JOSE T. NABUCO, Brazil
CHANDRA KISAN DAPHTARY, India	LUIS NEGRON FERNANDEZ, Puerto Rico
ELI WHITNEY DEBEVOISE, United States	Lord SHAWCROSS, United Kingdom
PER FEDERSPIEL, Denmark	EDWARD ST. JOHN, Australia
T.S. FERNANDO, Sri Lanka	MASATOSHI YOKOTA, Japan
ISAAC FORSTER, Senegal	

SECRETARY-GENERAL

NIALL MACDERMOT

Development, Human Rights and the Rule of Law

Report of a Conference held in The Hague, 27 April-1 May 1981, convened by the ICJ.

Published by Pergamon Press, Oxford (ISBN 008 028951 7), 244 pp.

Available in english. Swiss Francs 15 or US\$ 7.50.

Increasing awareness that development policies which ignore the need for greater social justice will ultimately fail was the key-note of the discussions at this conference. It brought together economists, political scientists, and other development experts together with members of the International Commission of Jurists and its national sections. Included in the report are the opening address by Shridath Ramphal, Secretary-General of the Commonwealth and member of the Brandt Commission, a basic working paper by Philip Alston reviewing the whole field, shorter working papers by leading development experts, and a summary of the discussions and conclusions, which focussed on the emerging concept of the right to development.

★ ★ ★

Ethnic Conflict and Violence in Sri Lanka

Report of a mission to Sri Lanka in July-August 1981 by Professor Virginia A. Leary of the State University of New York at Buffalo.

Geneva, December 1981, 88 pp. (ISBN 92 9037 011 9).

Available in english, Swiss Francs 7 or US\$ 3.50, plus postage.

After a careful survey of the background, causes and nature of ethnic conflict and violence and an examination of the legal and administrative measures adopted by the government, Prof. Leary formulates her findings and recommendations. Among her conclusions are that police behaviour has been discriminatory towards the minority Tamils and that the recently promulgated Terrorist Act violates Sri Lanka's international obligations.

★ ★ ★

The West Bank and the Rule of Law

A study by members of Law in the Service of Man (LSM), a group of Palestinian lawyers affiliated to the International Commission of Jurists (ICJ),

published jointly by the ICJ and LSM, Geneva, October 1980, 128 pp. (ISBN 92 9037 005 X).

Available in english. Swiss Francs 10 or US\$ 6, plus postage.

The study is the first survey and analysis to have been made of the changes in the law and legal system introduced by Israeli military orders during the 13-year occupation. It is a task which could only be undertaken by West Bank lawyers as the military orders, which number over 850, are not available to the general public and not to be found in libraries. The study is divided in three main parts: the judiciary and the legal profession, restrictions on basic rights and Israeli alterations to Jordanian law. The authors of the study argue that the military government has extended its legislation and administration far beyond that authorised under international law for an occupying power, thus ensuring for the State of Israel many of the benefits of an annexation of the territory.

★ ★ ★

Publications available from: ICJ, P.O. Box 120, CH-1224 Geneva

or from: AAICJ, 777 UN Plaza, New York, N.Y. 10017