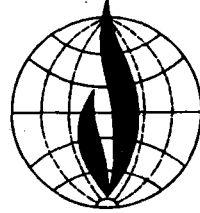


**For the Rule of Law****THE REVIEW****INTERNATIONAL COMMISSION OF JURISTS****HUMAN RIGHTS IN THE WORLD**

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# Human Rights in the World

## Chile

On 7 November 1984 President Pinochet declared a 'state of siege' in Chile. Under the 1980 Constitution, which came into force on 11 March 1981, a state of siege may be proclaimed in case of civil war or internal strife. In the decree imposing this state of siege it was merely stated that there was a situation of internal strife, without any supporting facts or allegation to indicate the nature of the strife and the justification for imposing this state of exception.

Two days earlier President Pinochet had already declared a 'state of emergency', which may be imposed in serious cases of disturbance of public order or danger to national security, and ten days later, on 17 December 1984, he declared a 'state of danger of disturbance of the internal peace.' Again no explanation was given of the necessity for these declarations.

On 17 June 1985 the state of siege was lifted, but the other two states of emergency remained and are still in force. The underlying cause of these declarations may be attributed to the growing exasperation of virtually all sections of the population at the continuance of the military dictatorship under General Pinochet, and the demand for free elections and a return to democracy under the rule of law.

During the transition period of the 1980 Constitution (from 1981 to 1989) President Pinochet has the following powers under these states of exception:

a) to arrest and detain people for up to five days and, in case of terrorist activ-

- ities, for up to 20 days;
- b) to limit the right of assembly and freedom of information by control of the founding, editing and circulation of new publications;
- c) to prohibit entry into the national territory by, or to expel from it, those who propagate the doctrines mentioned in Art. 8 of the Constitution, those who are suspected or have the reputation of being followers of those doctrines, and those who carry out acts contrary to the interests of Chile (whatever that may mean) or constitute a danger for internal peace; and
- d) to decree internal exile of persons, for a period up to three months.

Persons affected by these measures have no judicial remedy. They can only request reconsideration of the measure by the authority that decreed it.

It is to be expected that under a state of siege, which is the most severe of these three states of exception, the repression by the military and other security forces will be intensified. In some respects this is what happened, but in other respects the repression has been worse both before and after the period of the state of siege.

The ICJ's affiliate in Chile, the Chilean Commission of Human Rights, has produced a remarkable report on the repression, including detailed statistics on the incidence of various forms of repression before, during and after the period of the state of siege. These are based on information compiled by the Chilean Com-

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mission and by the Vicaria de Solidaritat of the Catholic Church in Santiago. These statistics show that the detentions for political reasons increased from a monthly average of 571 before the state of siege to 4,900 during the state of siege, and remained at 1,002 per month in the last 6 months of 1985 after the state of siege had been lifted. Restrictions on residence, including 'internal exile' to remote and desolate parts of the country, rose from an average of 12.4 cases per month before the state of siege to 72.2 during it, and fell back to 15.4 after it. Cases of torture rose from 19 per month to 24.4, and fell back afterwards to 11.8. On the other hand, cases of bodily injuries other than torture fell from 118.1 per month before the state of siege to 39 during it, and rose again to 89.8 per month after it was lifted. Similarly, cases of deaths caused by the security forces, or by paramilitary groups believed to be linked with the security forces, fell from 5.2 per month to 4.3 and rose to 6 after the state of siege; and cases described as 'attempted homicides' fell from 15.8 per month before to 10.4 during the state of siege and rose to 31.2 after it was lifted.

These figures indicate that the repression has remained at approximately the same intensity throughout, but that its form changed. During the state of siege there were many more restrictive measures, in particular detention for political reasons and restrictions on residence, but before and after it there was more state violence causing bodily injuries and death.

This report, with its tables of statistics, was submitted by the International Commission of Jurists to the UN Commission on Human Rights in March 1986 (E/CN.4/1986/NGO/45).

The medieval practice of banishing citizens into external exile has continued in force, though its incidence has gradually diminished. At the beginning of 1985 there

were 4,942 Chileans living abroad who were not allowed to return to Chile. At the end of 1985 the number was 3,844, but this included 110 new cases of exile. Accordingly, it appears that 1,208 Chileans in exile were allowed to return during 1985.

Apart from the gross violations of human rights already referred to, and the continued ban on political activities, the censorship and control of the media continues to deny freedom of expression. The national television programme is entirely under government control. There are also four university run television channels covering the larger cities which are indirectly controlled by the government through the university rectors, who are all appointed by the government. The main radio stations are either owned by the government or by economic groups which support the military regime. During 1985 the government prosecuted some journals which had criticised the regime. The courts rejected the charges, but in such cases the editors, journalists and people interviewed suffer repeated arrests and periods of detention which make their professional life almost impossible.

Amendments extending the powers of the government to restrict and suppress human rights under states of exception have been made by another decree law of 14 July 1985, entitled the Constitutional Organic Law of States of Exception. This law, *inter alia*:

- provides that on the renewal of a state of siege, all regulations and orders made pursuant to it are automatically renewed;
- increases the number of officials to whom the President can delegate the special powers given to him under states of exception;
- defines places for internal exile, expressly naming isolated and desolate places;
- leaves it to the discretion of the issuing

authorities of administrative regulations and other measures to decide through which of the media they are to be published; and

- enables those who exercise powers delegated by the President to act without any form of judicial control.

Under the transitional provisions of the Constitution the legislative power continues to reside exclusively in the 'Junta de Gobierno'. Some of the laws that have been promulgated have been issued solely in order to benefit particular individuals, legalising irregular practices and overturning established legal precedents. Such laws have become colloquially known under the name of the individuals who have benefitted from them, such as the 'Ley Fontaine' (No. 18.431 of 23 August 1985) and the 'Ley Mendoza' (No. 18.772 of 23 November 1985).

### 'Chile's Demands'

A remarkable response to the continued repression and disastrous economy, with about one third of the work force unemployed, was made on 26 April 1986. On this date a document entitled 'Chile's Demands' was made public under the signatures of delegates of 'the 18 most important social organisations in Chile', meeting in secret as the National Assembly of Civic Representatives. These include trade unions, professional associations, students unions, and organisations of shopkeepers, slum residents and others as well as political parties. The largest opposition group, the Christian Democratic Party, gave its support after the Communist Party agreed to participate and curb its use of violence. All these organisations represent about 3 million people.

The document contains 50 specific demands, grouped under seven headings. These are demands for:

1) *Democracy to guarantee a life worthy of all Chileans,*  
including minimum wages covering all basic necessities; relief of extreme poverty; a massive housing programme; a new health law with increased state support and improved services; labour reforms to give security in employment; and reform of the career structure for state employees, civil and military.

2) *Democracy to put an end to discrimination,*  
including a vast employment programme; equality before the law of women workers; recognition of and respect for trade union rights; restoring the status of professional associations to enforce their professional codes, determine their scale of fees, etc.; reestablishing independent labour courts and ratification of ILO Conventions Nos. 87, 98, 137 and 151; restoring law No. 16.625 on the rights of agricultural workers; recognition of minority rights, in particular of the Mapuche Indians; free election of local government authorities and community organisations; free election and recognition of all democratic student federations; tax reforms; coordination of public and private transport services; and support for workers cooperatives.

3) *Democracy to develop a pluralist education and culture,*  
including ending the process of privatisation of education; restoring the full autonomy of the universities; increasing the state contribution to their financing; guaranteeing pluralism and abolishing exclusion on grounds of philosophical, religious or doctrinal convictions; participation of cultural workers' organisations in developing a policy for the defence of the cultural and artistic patrimony; restoring press freedom and eliminating all censorship; reforming television channels to ensure a better cul-

tural level, and to reflect without distortion the principal currents of opinion.

4) *Democracy to rectify*

*the most flagrant injustices,*

including compensation for victims of torture and the families of those assassinated or who have disappeared; persons dismissed from work by reason of their democratic convictions; youths and others who have been driven by unemployment to prostitution, delinquency and drug addiction; retired persons deprived of their pensions or other social rights; and exiles deprived of their right to live in their country.

5) *Democracy to ensure respect*

*for human rights,*

including repealing article 24 of the Constitution and ending all states of exception; renewing the judiciary to guarantee effective defence rights and restoration of an effective remedy by *amparo*; dissolving the CNI security services; releasing all political detainees; promulgating and proclaiming officially the International Covenant on Civil and Political Rights; and ratifying the UN Convention on the Elimination of All Forms of Discrimination against Women.

6) *Democracy to re-establish*

*national independence,*

including applying the recommendations made by various UN organs; replacing the 'doctrine of national security' with one centred on the role of the armed forces in external defence and emphasising its respect for the sovereignty of the people; returning Chile to a policy of cooperation with other Latin American and Third World countries to confront problems of external debt, to defend the prices of their raw materials, and to establish a new international economic order; renegotiation of external debts and ensuring that external resources are devoted mainly to the solution of national problems.

7) *Democracy to restore the Rule of Law,*

including periodic elections of governments by free, equal, informed and secret ballots; a legitimate democratic Constitution; separation of powers; independence of the judiciary; legislation based on the popular will and approved by elected representatives; equal application of the laws to the authorities and to individuals; a re-definition of the legal role of the armed forces and police committed to a legitimate democratic Constitution and subordinate to the elected authorities.

## Haiti

Haiti was a French colony until 1804, when it gained its independence only to succumb to a period of tyranny with a succession of self-proclaimed emperors, kings and presidents and a spattering of enlightened (and unenlightened) despots. There was a fierce hope among this island nation of

5.7 million that these long years of harsh and undemocratic rule would end with the expulsion of Jean-Claude Duvalier (ex-President-for-Life) on 7 February 1986. The Duvalier dictatorship began in 1952 with Jean-Claude's father, François, and caused a massive exodus of almost 1.5 million Hai-

tians, mainly to the Dominican Republic, Canada and the United States. There had also been 'internal' migration, with some 50,000 people moving from the countryside to Port au Prince each year, causing that city's population to increase from 250,000 in 1970 to 720,000 in 1982. Most of the new city-dwellers had just changed the privations of the countryside for life in an urban slum.

Since Duvalier's departure, the National Council of Government (NCG) has been acting as the provisional government. Among the most important decisions it has taken to mark a symbolic break with the former regime are the abolition of the Constitution elaborated under the Duvalier regime in 1983; the dissolution of the National Assembly; the dissolution of the *Volontaires de la Sécurité Nationale* (the *Ton Ton Macoutes*); the liberation of all political prisoners; the restitution of freedom of the press and mass media, and with it the reopening of the two most outspoken radio stations, critical of the Duvalier regime; and the promise of democratic elections.

However, despite these measures and the claim to a fresh start there have been some disquieting signs since the departure of Duvalier, that have upset many Haitians. They have seen with distrust and fear the presence in the NCG and the new cabinet of some prominent former officials and associates of Duvalier. They sit beside new members such as Gerald Gourgue, former head of the Haitian League of Human Rights, who have the people's trust. He was the only member of the NCG to openly criticise the Duvaliers and, ominously, resigned from the NCG on 20 March, allegedly because of frustration at his inability to push his colleagues to arrest and try former Duvalier officials for human rights abuses.

The resignation from the NCG on 21 March of Prosper Avril, NCG Adviser, Alex Cineas, Minister without Portfolio, and Max

Valles, Minister of Information, all well-known for their connections with the Duvalier regime, has been regarded as an attempt to placate popular discontent with the NCG. This also seems to be the reason for the seizure of the *Ton Ton Macoute's* properties and the request to Brazil for the extradition of Colonel Albert Pierre, who, according to opponents of the Duvalier regime, was directly involved, as former Chief of the Secret Police, in torture and kidnappings leading to the deaths of at least 500 Haitians. These measures had been preceded by strong popular pressures.

One of the NCG's priorities has been to prevent violence from again being predominant in Haiti. Initial incidents of violence and looting which erupted after Duvalier's departure were directed mainly at the headquarters of the *Ton Ton Macoutes* and other public buildings, and unofficial figures estimate that 200 people were killed, among them civilians, members of the *Ton Ton Macoutes*, and others linked to the Duvalier regime.

Much of the discontent felt by a people repressed for 30 years has now surfaced and has caused (and continues to cause) widespread unrest which the country is ill-equipped to deal with, not least because of the power vacuum which Duvalier left behind. Under the Duvalier regime, all organised opposition had been virtually eliminated and there was no person or body sufficiently prepared to take over the reins of government.

The situation is exacerbated by the discontent felt for the NCG which has lost the confidence of many of those who originally supported it unconditionally. In addition, the new President, General Henri Namphy, is in ill health and his government is under pressure from all sides:

— just a few weeks after the NCG took over, strikes bogged down sectors of the

government and industry and violent street confrontations resurfaced in some cities, sometimes more ferocious than before;

- it is alleged that some of the business and political groups that enjoyed special benefits during the three decades of Duvalier rule have paid impoverished people to cause disturbances;
- some former Duvalier officials are challenging the government over the elaboration of a preliminary list of twelve former security or government officials who are to be prosecuted on charges of theft or homicide;
- roadblocks used previously to protest against the Duvalier regime have reappeared; and
- members of the army have circulated handbills complaining of poor working conditions and the impossibility of making a living on their salaries of \$68 a month.

Lack of coordination between the different government branches has also caused serious problems, for example, in coping with street riots in some cities.

It is obvious that the NCG needs urgently a substantial influx of foreign aid to be able to function effectively. When it took office, only \$500,000 in foreign exchange remained in the Haitian Central Bank to cope with expenses such as the \$40 million needed just for petrol and food for the next twelve months. Unofficial sources consider that Duvalier took at least \$30 million a year out of the public treasury.

Haiti is considered the poorest nation in the Western hemisphere, with a *per capita* income estimated in 1983 at \$300 (even lower in the rural areas), a literacy rate of 15%, and almost 85% of its professionals, technicians and other skilled workers now living abroad. The return of Haitian refugees and exiles is a delicate matter. The

NCG has taken some measures in this respect, which have been much criticised for creating problems concerning the removal of legal impediments to return (re-entry visas), the physical safety of the returnees, and their reintegration into Haitian life.

One of the NCG's most criticised measures is the requirement of re-entry visas for all those who have been abroad for more than 90 days. In addition, the NCG has not been clear in defining the status of Haitians abroad, a necessary prerequisite for many refugees and exiles planning to return. Although some have already returned, no-one expects a massive influx in the near future, especially not of those half a million Haitians estimated to be in the United States. The thought of such a massive return evidently frightens the NCG, and some officials have stated that the NCG has no immediate plans to abrogate the decree stipulating the need for re-entry and exit visas. Thus, Haitians wishing to return will be required to make an application for a re-entry visa at the Haitian Embassy or Consulate of their country of residence, and such applications will be examined on an individual basis. Members of the government have themselves said that one of their primary concerns is the economic burden which the massive return of Haitian refugees would place on Haiti's already limited resources. Other sources, however, state that business leaders and prospective political candidates feel threatened by the competition for political and economic power that the exiles' return would mean. There are some who think that any potential presidential candidate would have to come from among those political personalities who remained in Haiti despite the Duvalier regime.

In general terms, the return of Haitian refugees and exiles from abroad is perceived by the NCG as raising questions of national security and public order, reinforced by the



highly political and emotional background to the last few months in Haiti. However, the problem also needs to be seen in a humanitarian and non-political perspective, starting with acknowledging the basic human right of each person to return to and

live in their home-land.

Haiti needs help to counter the disorganisation and lack of preparation and experience which hinders it from creating and maintaining the kind of government its oppressed people have dreamt of.

## India

### Situation in the State of Punjab

In the last few years the situation in the Indian state of Punjab has received considerable attention in the international press and other media. This is the state where the majority of the Sikhs live and the problems of the state are largely related to the religious and political demands of the Sikhs. Of the 13 million Sikhs living in India, about ten million live in Punjab. Though they constitute less than two percent of the total population of India, they play a prominent role in politics and in other fields. They hold important posts in the state and central government, in the army and in the administrative services. Nearly ten percent of the Indian army are Sikhs.

The Sikh religion was founded nearly 500 years ago. Its basic tenets are faith in one God, acceptance of the teaching of the ten Gurus and of the *Adi Granth* or 'Original Book' which contains the hymns of the first five Sikh Gurus. In addition, a Sikh must believe in the necessity and importance of *amrit* or initiation and must not adhere to any other religion. Though distinct from the Hindu religion, the Hindus and the Sikhs have lived in harmony to the extent that inter-marriages are common and at times in a Hindu family one member would be offered to the Gurus to become a Sikh, while others remain Hindus.

In partition of India at the time of independence, the Punjab province was divided in two. West Punjab formed part of Pakistan and East Punjab, where the majority of the Sikhs lived, remained part of India. After independence, the boundaries of several states were redrawn to create linguistic states on the basis of recommendations made by the States Reorganisation Commission. However, the Commission failed to recommend the application of the linguistic formula to Punjab. As a result, the Sikhs started agitating for a Punjabi-speaking State. This led to the creation in 1966 of the State of Punjab and adjoining it, the predominantly Hindu State of Haryana. The two states shared a joint capital city in Chandigarh, built to the design of Le Corbusier. It had the status of union territory administered by the central government. This led to renewed agitations that Chandigarh be handed over to the State of Punjab. In 1970, Prime Minister Indira Gandhi announced a formula under which Chandigarh would be handed over after a five year interim period in return for the secession of some Hindu-speaking areas of Punjab to the neighbouring State of Haryana. This helped to maintain the status quo but the resentment of the Sikhs continued.

In spite of the political turmoil and agi-

tations, the State witnessed a phenomenal economic growth. The per capita growth of the State was and is still the highest among all states in India.

The state benefited from the increased availability of irrigation and the high-yielding varieties of wheat seeds introduced in the 1960s as part of the Green Revolution.

The economic development brought its own social strains with many of the young people ignoring the religious rituals and many young men refusing to adopt the outward symbols of the Sikhs, the beard and the turban. This in turn gave rise to a demand for greater assertion of the religion. At the political level, the influx of large numbers of non-Sikh agricultural workers from other states threatened the voting majority of the Sikhs. The Sikhs form only a small majority over the Hindu population and until recently the Congress Party always managed to win the state elections with the help of votes from both the Sikh and the Hindu communities. The only exception was in 1977 when the Sikh political party, the Akali Dal, formed a government with the help of some other parties opposed to the Congress Party.

In 1973, as an opposition party in the State Assembly, the Akali Dal formulated a document known as the Anandpur Sahib Resolution, which contained the religious and political demands of the party. In 1977, this Resolution was approved by the General House of the Akali Dal and in 1978, the All-India Akali Conference adopted a new policy programme in the form of twelve resolutions. As an opposition party in 1981, the Akali Dal began its agitation for the implementation of these demands and the present crisis began with this agitation.

The demands included, *inter alia*:

- that Chandigarh City be handed over to Punjab;
- revision of the distribution of Ravi-Beas river waters;
- the installation of a broadcasting station at the Golden Temple, Amritsar, for the relay of spiritual hymns and declaration of Amritsar as a holy city;
- amendments to be made to the Sikh Gurdwaras (Temples) Act of 1925 so as to extend the powers of the Central Gurdwara Management Committee to the whole of India;
- strengthening the state powers in the federal Constitution by restricting the Central government's role to defence, foreign relations, currency and general communication;
- the amendment of Article 25 of the Indian Constitution on freedom of religion, so as to recognise the separate identity of Sikhs.

This last demand was not part of the Anandpur Sahib resolution. Article 25 contains an "explanation" that "the reference to Hindus [in the article] shall "be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly". This provision gave offence to the Sikhs as implying that Sikhs were a Hindu sect.

In late 1981, the Akali Dal intensified its agitation in support of these demands. The series of demonstrations and the frequent violent clashes that accompanied them led to the imposition of direct rule by the central government in October 1983. Matters came to a head with the assault by the Indian Army in June 1984 on the Golden Temple in Amritsar, regarded by the Sikhs as their holiest shrine. The shrine had been used as the headquarters of an extremist militant group under the leadership of Sant Jarnail Singh Bhindranwale. A few days before the army assault, the Sikh militants in the temple were involved

in fierce fighting with the police forces, resulting in several deaths. The Akali Dal announced a new phase in its agitation and threatened that food grains would not be allowed to be transported to other states. In reaction, the government sent the army into Punjab and on 3 June imposed a state-wide 36 hours curfew, suspended mail and road traffic and banned all news coverage. During the night of 5-6 June, the army began an assault on the Golden Temple, called Operation Blue Star, and similar operations were launched against 37 other Sikh temples throughout Punjab. It was reported that the most sacred parts of the Golden Temple were damaged, although the troops had been instructed to avoid causing damage. The militant leader, Bhindranwale, and his close associates were killed and the leaders of the Akali Dal who surrendered were arrested. The reactions to the assault on the Golden Temple were swift and widespread and in some cases violent, involving civilian disturbances and desertions by Sikhs from army units.

According to a government White Paper, the number of 'terrorists' and civilians killed during the military action at the Golden Temple was put at 493 with 92 soldiers killed. However, unofficial reports estimate the number of militants killed at 1,000 and the number of soldiers at 250.

The White Paper also identified the following four factors that contributed to the crisis: the agitations sponsored by the Akali Dal in support of demands submitted to the government and on which negotiations were in progress: a communal and extremist movement which degenerated into open advocacy of violence; secessionist and anti-national activities with the declared objective of establishing an independent state; and involvement of criminals and other anti-social elements. The White Paper said there were 775 violent incidents in Punjab between 1 January and 3 June, in which

298 people were killed.

In response to this violence, two ordinances were issued in April and June 1984, amending the National Security Act and creating special Courts for terrorist affected areas. The amendment to the National Security Act (NSA) enables persons to be detained without trial for up to two years and they can be held for six months without their detention being reviewed by the Advisory Board established under the Act. Further, before a court can order the release of a detainee, it must find that all grounds for detention are invalid, rather than specific individual grounds, as previously. The second, called the Terrorist Affected Areas (Special Courts) Ordinance, provides for trials to be held *in camera*, the burden of proof is shifted to the accused and appeals are limited only to the Supreme Court within a reduced 30-day period.

Justice V.M. Tarkundae, a retired High Court Judge, criticised the two ordinances as 'a serious encroachment on personal freedom'.

In an attempt to restore calm, the government issued another publication, entitled '*The Sikhs in their home-land, India*', which details the successive meetings held by the Prime Minister or Cabinet Ministers with the Akali Dal representatives between 1981 and 1983. This publication listed the Akali demands that the government was willing to accept as part of a negotiated agreement. The government said, however, that the 'negotiations were time and again frustrated just when a settlement seemed on the anvil'.

On 31 October, 1984, five months after the assault on the Golden Temple, Prime Minister Mrs. Gandhi was assassinated by two Sikh members of her bodyguard. The assassination was followed by widespread attacks on Sikhs in Delhi and other places, in which nearly 3,000 Sikhs were killed and 35,000 Sikhs took refuge in Delhi alone. These attacks were described as the

worst communal holocaust since independence.

Three separate reports by independent groups were made on the attacks on the Sikhs in Delhi and surrounding parts. A report issued by the People's Union for Democratic Rights and the People's Union for Civil Liberties in November 1984 concluded that although there was widespread shock, grief and anger following Mrs. Gandhi's assassination, the attacks on Sikhs were far from spontaneous but were, on the contrary, the "handiwork of a determined group" and "the outcome of a well-organised plan marked by acts of both deliberate commission and omission by important politicians of the Congress Party at the top and by authorities of the administration". The second report was made by a group called 'Citizens for Democracy'. In the preface to this report, Justice Tarkundae states that, "the rioting was organised by a number of unscrupulous politicians who are habitually associated with anti-social elements and down-right criminals – that is the reason why looting was so extensive and why the killing of Sikhs was attended with unparalleled brutality". The third was the report of the 'Citizens' Committee' headed by Justice Sikri, a former Chief Justice of India, and comprising other prominent citizens. It concluded that, "the disturbances in Delhi did not involve clashes between any two warring factions, each inflicting whatever damage it could on the other. They were entirely one-sided attacks on members of the Sikh community and their property, often accompanied by arson and murder, raping and looting. The whole community was unfortunately made a scapegoat for the reprehensible crime of a couple of crazed fanatics who happen to be co-religionists."

All three reports refer to the support and assistance given to the Sikh victims by Hindu neighbours and state that the riots

were not communal. The reports also refer to the deeper malaise of criminalisation of politics and the law enforcement agencies. The well-known Indian social scientist, Rajni Kothari, sums up this malaise by saying that it:

"... was also due to the increasing estrangement between civil authority and the police that has been growing in large parts of the country and over many years, resulting in mounting lack of trust in the ordinary police and increasing resort to paramilitary forces and the Army. This was expressed forcefully by everyone from the Home Secretary to the then Prime Minister before the Army Action in Amritsar and was repeated again in Delhi when Rajiv Gandhi is reported to have told Opposition leaders that the police was incapable of handling the situation and "we must wait for the army". Yet another element in the situation was the known complicity in the riots of politicians at various levels, many of whom, especially at Pradhan and lower levels, have for long been in league with the police in 'fixing' this or that individual or group. In short, official hostility and lack of trust at one level, official complicity at another and official incitement at yet another got combined to produce the horror of the very guardians of law and order becoming part of the reign of terror unleashed on the Sikhs."

In March 1985, the new government under Prime Minister Rajiv Gandhi released the leaders of the Akali Dal and offered to discuss within the framework of the Indian Constitution the demands of the Akali Dal. In April, the government also announced a judicial investigation into the anti-Sikh violence in Delhi in November 1984. However, the violent activities of the militant Sikhs

continued. For example, on 10-11 May a number of bombs left concealed in transistor radios exploded in Delhi and nearby towns killing ten and injuring 200 persons. Following this, the Parliament adopted a 'Terrorist and Disruptive Activities (Prevention) Act'. Several human rights groups have expressed concern over the broad definition of disruptive activity which includes 'any action taken which questions, disrupts or is intended to disrupt whether directly or indirectly the sovereignty and territorial integrity of India or bring about or support any claim... for the cession of any part of India or secession of any part of India from the Union.' The Act defines 'terrorist' as anyone who used explosives, firearms, poisons or other lethal weapons with intent to overawe the government as by law established or to strike terror in the people or any section of the people or to alienate any section of the people. The Act provides for a death sentence if found guilty of murder.

In July, the Prime Minister announced in Parliament that a Memorandum for the settlement of the Punjab problem had been signed with Sant Longowal, the leader of the Akali Dal.

Under the terms of the agreement, Chandigarh would become the capital of Punjab only and Haryana would be compensated by the transfer from Punjab of some Hindi speaking areas. A Commission would be established to demarcate the areas and the transfer would take place on 26 January 1986. Claims regarding the sharing of water from the Ravi-Beas system would be referred to a tribunal presided over by a Supreme Court judge. Also, efforts would be made to rehabilitate and provide gainful employment for those who had been discharged from the Army following incidents of desertion in June 1984. The Akali Dal gave assurances that the Anandpur Sahib Resolution was entirely within the frame-

work of the Indian Constitution and that its purpose was to provide greater autonomy for the state with a view to strengthening the unity and integrity of the country.

Tragically, the moderate leader, Sant Longowal, was assassinated by the militants on 20 August, raising doubts about the Punjab State Assembly. However, elections were held on 25 September and the central government's rule which had been in force since October 1983 was lifted. In the elections, the Akali Dal won an absolute majority for the first time, winning 73 of the 115 seats in the Assembly. Mr. Surjit Singh Barnala, leader of the Akali Dal, was sworn in as Chief Minister. The new government immediately released 456 detainees, withdrew cases against 224 and later released 3,487 persons under the recommendations of a Committee appointed to scrutinise the cases of persons arrested after the assault on the Golden Temple.

The assumption of power by the Akali Dal brought some normalcy to the troubled State. However, the militants continued their activities which culminated in their again taking over the Golden Temple in February 1986. Members of the Damdami Taksal, the fundamentalist seminary once headed by Bhindranwale, and militant students occupied the temple complex and announced the dismissal of the Golden Temple Head Priest and the disbandment of the Central Gurdwara Management Committee, which is an elected body. As a result of the occupation of the Temple by the militants, the Sarbat Khalsa or gathering of the whole community, which usually meets in the Golden Temple, met in another temple in Anandpur and passed a resolution accusing the Damdami Taksal of 'turning the gurus' places of worship into battlefields'. On 30 April, the militants proclaimed from the Golden Temple the creation of Khalistan, a separate State for the Sikhs. On 1 May, paramilitary troops entered the temple to

arrest the main leaders of the militants and to free the temple from the hands of the militants.

At the time of writing, the Akali Dal government is facing a crisis with the resignation of two of its cabinet ministers and some members of the Assembly, as a protest against the police raid on the Golden Temple.

According to some observers, the central government contributed to the present crisis by not implementing the accord made with Sant Longowal. In particular, the transfer of Chandigarh City did not take place on 26 January as stipulated in the agreement. According to the government, the transfer was delayed because the Commission appointed to identify the Hindi speaking villages that were to be transferred to Haryana failed to finalise its recommendations in time. It is reported that a new Commission has been appointed to determine the Hindi speaking villages and to facilitate the transfer of Chandigarh City to Punjab.

It is true that the assault on the Golden Temple in June 1984 and the killing of Sikhs in November 1984 has alienated the Sikhs. One way of helping to heal the wounds would be to implement the accord and assure the Sikhs that they could continue to play the role they have hitherto played in the economy and in the politics of the country. This would also strengthen the Akali Dal government and enable it to deal with the militants politically. According to the independent news magazine, *India Today*, the central government's strategy 'seems to hinge on:

- reforming the Punjab police and giving it effective professional leadership so that it is protected as far as possible from political and social pressure;
- trying to mobilise public opinion on all sides including the Congress Party, to

offer public support to the Barnala government; and

- expediting the settlement of the outstanding issues from the Punjab accord.'

Such a strategy would help in the short-term. In the long-term, however, the central government, in the view of many, will have to face up to the challenge of building a federal consensus to take into account the aspirations and demands of different ethnic, religious and regional groups that make up the country. In the words of Rajni Kothari:

"It is fundamentally a transition from a secular and unitary model of a national polity to one in which both regions and communities are staking their claims and counter-claims. Two basic challenges are posed by this transition. One is that of rebuilding national unity from the ruins of the antecedent, political process based on secular interplay between plural identities left behind by both Mrs. Gandhi and the national opposition.

"The second is to do this by looking at the considerable vitality and mass support of various regional parties and party-like formations as well as many grassroots movements and agitations. Instead of running them down or getting scared of them, the need is to provide a stable structure to their interplay both among themselves and with the centre of the polity.

"Thus, the basic task before the new inheritors of power - both at the centre and in the regions - is to build once again a federal political consensus, this time in a scenario of a lot that has gone under and a lot that is aspiring to be born, of a situation that calls for a basic politics of reconciliation among a variety of polar opposites: communal and religious, regional and ethnic as well as institutional and structural."

# Liberia

Less than two weeks after the coup d'état of 12 April 1980 which brought Sergeant-Major Samuel Doe to power in Liberia, the International Commission of Jurists issued a press statement deploring the summary trials and executions of former ministers, government party leaders and the president of the supreme court. This statement in no way sought to defend the former elitist government, but it was clear from official statements that the accused were tried on vague charges which did not constitute offences at the time. They were condemned and executed in violation of all accepted international standards which prohibit penal sanctions for acts or omissions which were not crimes in national or international law at the time they took place. Moreover, the members of the military tribunal acted as prosecutors, abandoning any pretence of impartiality, no defence counsel were allowed and there was no right of appeal.

It is true that by overthrowing the government of William Tolbert, the army and the supporting intelligentsia brought to an end an American-Liberian oligarchy that had ruled the country for a century and a half. But very soon the population that had applauded the change of government began to be disenchanted as, in spite of American aid and substantial credits from the IMF, the economic situation of Liberia continued to deteriorate. The human rights situation equally became day by day more worrying. Already in August 1981, five members of the Council of National Resurrection were executed, as well as eight soldiers accused of attempting to overthrow the government. These executions took place notwithstanding an undertaking of the government on 29 April 1980 that there would be no more executions in Liberia. Moreover,

this undertaking had been followed some months later by the release of political prisoners, including members of the family and staff of former President Tolbert.

On 13 April 1981, one year after the army came to power, it was officially announced that the government was going to establish a commission to draft a constitution with a view to a return to civilian rule. This commission had 25 members under the chairmanship of Dr. Amos Sawyer, then head of the department of political science at the University of Liberia.

In November 1983, the Commander-in-Chief and Head of State, General Samuel K. Doe, announced the discovery of a plot to overthrow the government, of which the principal architect was said to be Major-General Thomas Quiwonkpa. He and twelve other army officers, who were alleged by the President to be involved in the plot, were called upon to surrender within 48 hours. General Quiwonkpa succeeded in fleeing the country. The other twelve officers and seven civilians were tried by a military tribunal in January 1984. Thirteen of them were found guilty of high treason and condemned to death. The other six were acquitted. However, the sentences of ten of the thirteen condemned to death were commuted by President Doe.

In February 1984, it was announced that the prohibition of political activities following the 1980 coup would be lifted on 12 April 1984, that elections would take place in January 1985 and that a civilian legislature would be inaugurated on 12 April 1985. These dates were later changed to "allow the population to be informed of the provisions of the draft constitution". Finally, a referendum of 3 July 1984 approved the new constitution which was designed to ensure a return in 1985 to a civil-

ian government and the holding of multi-party elections.

On 21 July 1984, the Council of National Resurrection (CNR) was dissolved and a provisional national assembly was established, composed of the former members of the CNR and 35 civilians appointed by the Head of State, as representing "various political subdivisions". This new Assembly was presided over by President Doe.

The ban on political activities was lifted by a decree on 26 July 1985 which authorised the formation of political parties. However, the President declared in a message to the nation that political activity should be "left to the politicians" and that those engaged in political activities in schools or universities would be arrested and detained without trial. As a result of the lifting of the ban on political activity, eleven parties were formed. However, it was far from the case that Liberia was to embark upon a democratic process with free elections and a transfer of power to civilians. On 20 August 1984, the President announced the arrest of Dr. Amos Sawyer, two officers and a university professor who were said to intend to establish a socialist government in Liberia after setting fire to the capital, Monrovia, and proceeding to mass arrests. Two days later, the University students organised a peaceful demonstration to protest against the arrest and imprisonment of Dr. Sawyer, which they regarded as an attempt by General Doe to discredit his principal rival to the presidency. Troops were ordered to disperse the demonstration by force of arms. According to witnesses, hundreds of students were beaten with batons, women were raped and other students were shot and immediately buried in a common grave. University staff were stripped of their posts. The Liberian ambassador in London stated that only three people were injured when the troops fired in the air to disperse the demonstra-

tors. Eventually, the official number of victims was 102 wounded, but tracts were circulated claiming that 16 were killed and at least 200 wounded.

General Doe announced publicly that the events in the university would in no way affect the process of the return to civilian government. In any event, in the following days other arrests were made, including that of Major-General Podier. In the eyes of observers, these arrests were a means for General Doe to get rid of those who could cause him difficulties in the elections.

On 22 November 1984, a significant event occurred. The Supreme Court of the People, sitting at Monrovia, found the Minister of Justice, Mr. Jenkins Scott, guilty of contempt of court and suspended for two years his right to practice law in Liberia. The Minister had threatened to close the court if contempt proceedings were taken against him. He had apparently set free two suspects detained on the order of a civilian court in a matter of debt, and had made some disrespectful remarks about the Liberian judiciary in an interview for the *New Liberian* newspaper. On 26 November, it was reported that the Head of State had ordered the President of the Supreme Court to restore immediately Mr. Scott's right to practise. This injunction by the Head of State to the President of the Supreme Court was a serious interference in the sphere of the judiciary which made its independence little credible.

Another subject of concern is the threat to the journalists' profession due to Decree 88A which hardly contributed to freedom of expression during the elections. This decree forbids any citizen or group to criticise the government or any of its officials. As a result of this decree, it is impossible to comment upon the administration of public affairs without running the risk of being arrested under the pretext of having spread



"rumours, lies and disinformation". The case may be cited of the detention without charge or trial of the editor of *Footprints* and of one of the journalists of this daily newspaper for a period of 55 days for having, according to Western sources, described the corruption in one of the ministries. Independent newspapers, opposition political parties and the Liberian Council of Churches have denounced this decree and demanded its repeal. The opposition party leaders have stated that it restricts their ability to conduct effective political campaigns in that they cannot criticise the government.

Other factors are also posing difficulties for the opposition parties, in particular the deposit of \$150,000 demanded by the Special Elections Commission, nominated by General Doe, in order to be allowed to participate in the elections. Five opposition parties have succeeded in meeting this financial burden, which is nonetheless severe in a country where the per capital annual income is \$400. In spite of this, only three of the parties could take part in elections (the Liberian Action Party - LAP, the Unity Party - UP, and the Liberian Unification Party - LUP). The other two (the Liberian People's Party - LPP, led by Dr. Amos Sawyer, and the United People's Party - UPP) were banned two months before the elections on the grounds that they advocated 'foreign ideologies' (an expression used in Liberia to describe socialist or communist policies). Moreover, Dr. Sawyer's right to take part in political activities was already suspended from February 1985, pending the result of an audit of the accounts of the National Constitutional Commission over which he had presided, although this commission had been dissolved for over a year.

All these difficulties encountered by the opposition parties did not prevent the holding of elections on 15 October 1985.

But contrary to General Doe's assurance that the elections would be 'free and fair', there were irregularities at the time of the polls as well as at the counts. *Le Monde* of 22 October 1985 reported the existence of unofficial voting in the military barracks throughout the country. Although the electoral law drafted by the Special Elections Commission (SEC) and approved by the government had encouraged the presence of representatives of the participating parties at the count in the polling stations, the results of these counts were not made known because the President of the SEC decided that they were invalid on the grounds that an opposition party had infiltrated the staff of the polling stations. Consequently, the SEC President appointed a committee of 50 members to recount the votes in private, although this procedure was not provided for in the electoral law. Allegations were made that a considerable number of ballot papers were removed from the ballot boxes and burned. In spite of the protests of the opposition parties, the official results were announced on 29 October 1985 and General Doe was declared to have won the presidential election with 50% of the votes. His party, the National Democratic Party of Liberia - NDPL, won 80% of the seats in the legislature. All the opposition parties denounced the illegality of the voting procedures and complained of electoral fraud. The LAP and the UP declared that they would not take their seats in the Parliament (but four of their members decided in February 1986 to take their seats in spite of the party boycott).

A fortnight after the elections, General Quiwonkpa, who had been living in exile since November 1983, returned to Liberia and failed in an attempt to overthrow the government. In three days' fighting over 1,000 people were reported killed, though the Minister of Justice reduced the figure

to 600. Troops loyal to General Doe did not hesitate to fire upon the crowds rejoicing in the streets of the capital after the initial announcement that the coup had succeeded. On the next day, several opposition personalities were arrested, including Mrs. Ellen Johnson-Sirleaf of the LPA. In September 1985, she had been condemned by a military tribunal to ten years imprisonment for sedition, and then pardoned by the Head of State some weeks later. In March 1986 the International Commission of Jurists expressed its concern about the fate of Mrs. Johnson-Sirleaf who had been detained since November 1985 without charge or trial in violation of the International Covenant on Civil and Political Rights, as well as of the African Charter of Human and Peoples' Rights, which has been ratified by Liberia. It was only on 2 April that the grand Jury of the Monrovia Criminal Court charged Mrs. Johnson-Sirleaf with "full participation in the invasion forces and attempt to overthrow the government of Liberia", an offence punishable with death.

The return to civilian government in Liberia needs a calmer climate, if the country is to recover from the economic chaos in which it is plunged. The annual report of

the World Bank states that during 1985 exports stagnated while debt servicing payments increased and the situation of the country deteriorated, both with regard to its budget and its balance of payments. In his inaugural speech on 6 January 1986, President Doe made an appeal for reconciliation with his political opponents. This initiative is certainly praiseworthy, but if it is to have a favourable response certain measures have to be taken, of which the most urgent would be:

- the unconditional release of all political prisoners, in particular the civilians arrested following the attempted coup of General Quiwonkpa;
- the repeal of Decree 88A; and
- the safeguarding of the independence of the judiciary and the legal profession.

The adoption of these measures could lead to a favourable climate for a dialogue between all the political forces and to respect for and enjoyment of human rights. Violations of these rights have till now deprived the Liberian nation of the contribution of many of its citizens who have been forced into exile.

## **Persecution of the Ahmadiyya Community in Pakistan**

The Ahmadiyya community or Ahmadis are, to use Western terminology, a religious sect which derive their name from their founder Mirza Ghulam Ahmed. The sect whose members are known as Quaddianis after the birth place of its founder, was

founded in 1889. Of its nearly ten million followers, four million are in Pakistan.

The Ahmadis consider their founder to be another prophet of Islam, as well as the second incarnation of Jesus Christ and the Hindu God Krishna. In general they worship

Allah in the same way as Muslims, with the faithful being summoned to prayer five times a day and following the same rites and rituals. In view of this they consider themselves to be part of the broad spectrum of Islam.

However, devout Muslims who consider Mohammed as the last and final prophet, resent Mirza Ghulam Ahmed's claim to prophetic status and his reinterpretation of the Koran. They consider that for the Ahmadis to call their founder a prophet is a heresy and that they thereby cease to be Muslims. According to the Ahmadis this should not make them non-Muslims since finality of the Prophethood of the Prophet Mohammed is not one of the five fundamental tenets of Islam and is nowhere stated in clear terms in the Koran. The doctrine of finality depends upon an interpretation of one of the verses. They also point out that there are numerous sects in Islam, many of them contending that others are outside the pale of Islam.

The theological differences and the controversy whether the Ahmadis are Muslims or not has given rise to political and legal problems for the Ahmadis, who accuse the government of Pakistan of discriminating against them.

According to the government, Pakistan was created as an Islamic State which commits every government to creating an Islamic society. Therefore in an Islamic State there cannot be two contradictory versions of the basic tenets of Islam and it cannot tolerate Islam being replaced by another religion posing as Islam. Moreover they contend that the religious practices of Ahmadis constitute a grave affront to the religious sentiments of Muslims and pose a threat to public order and safety. To support its case the government of Pakistan refers to the widespread riots in 1953 in the Province of Punjab leading to the imposition of Martial Law in the Province, and

the May 1974 riots in many towns of Pakistan, which were directed against the Ahmadis.

Following the May 1974 riots the opposition parties demanded that the government should classify the sect as non-Muslim, and organised a general strike in support of their demands. The then Prime Minister Bhutto announced that he would place the question before the National Assembly. On 30 June the National Assembly turned itself into a Special Committee to decide whether the Ahmadis should be officially regarded as Muslims. The deliberations were kept secret. On 7 September the Assembly unanimously adopted a constitutional amendment to declare as non-Muslims those persons not believing in the 'absolute and unqualified finality of Prophethood of Mohammed or claiming to be a prophet or recognising such a claimant as a prophet or religious reformer'. In addition the Ahmadis were included among the non-Muslim minorities, such as the Christians and Hindus, for the purposes of election to the Provincial Assemblies. The Constitution provided for a small number of reserved seats for these minorities.

According to the Ahmadis the practical effects of these amendments were limited, since they were not prohibited from calling themselves Muslims. Such a prohibition was made in April 1984 by President Zia-ul-Haq when he promulgated Ordinance No. 20.

The Ordinance, entitled 'Anti-Islamic Activities of the ... Ahmadis', stated that,

"Person of Quadiani group, etc., calling himself a Muslim or preaching or propagating his faith. — Any person of the Quadiani group or the Lahori group (who call themselves 'Ahmadis' or by any other name), who, directly or indirectly, poses himself as a Muslim, or calls, or refers to, his faith as Islam, or

preaches or propagates his faith, or invites others to accept his faith, by words, either spoken or written, or by visible representations, or in any manner whatsoever outrages the religious feelings of Muslims, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine."

The Ordinance also authorises Provincial governments to seize any books or documents containing any matter prohibited by the Ordinance and to forfeit the security deposit of any printing press that prints such materials.

The Ahmadis claim that as a consequence of the Ordinance, the attacks on them have reached a dangerous level. Their mosques are seized or desecrated by Muslim extremists and at times the police take part in such actions. Ahmadis have been assaulted and even killed and medical treatment has been refused to the injured in government hospitals. Under the Ordinance Ahmadis can be arrested even for exchanging the traditional Muslim greeting. Many books and publications of the Ahmadis have been banned and confiscated. Admission to schools or universities is denied if an Ahmadi applicant refuses to sign a statement that he is a non-Muslim. The same applies to their voting rights, they cannot register for voting unless declared as non-Muslims. As they refuse to do so, this leads to disenfranchisement of the whole community. The Ahmadis also accuse the government of discriminating in employment and even asking private employers to dismiss Ahmadi employees. The Ahmadis have cited examples of government departments being instructed to prepare lists of Ahmadis employed in the concerned department.

The Ahmadis contend that President Zia's ordinance was motivated by a desire to restore his waning popularity, and that

he is seeking support by an open anti-Ahmadi policy. As an example, they cite his message to an anti-Ahmadi conference held in August 1985, in which he stated "In the last few years in particular, the government of Pakistan has taken several stringent administrative and legal measures to prevent the Ahmadis from masquerading as Muslims, and from practising various Islamic practices. We will persevere in our effort to ensure that the cancer of Ahmadiyya is eliminated".

The Federal Shariat Court when upholding Ordinance No. 20 in October 1984, held that, the 1974 Constitutional amendment declared the Ahmadis as non-Muslims to which they are bound and the Ordinance No. 20 only reiterates the principle that they cannot call themselves or pose as Muslims in any manner directly or indirectly; and the Ordinance is covered by the exception in Article 20 of the Constitution which confers the right to profess, practise and propagate one's religion subject to law, public order and morality. Interestingly the Court also took the view that Article 18 of the Universal Declaration of Human Rights does not 'give to the citizens of a country the right to propagate or preach his religion'.

The Shariat Court decision and the arguments of the government referred to earlier raise the question of the extent to which a State can, under international law interfere in the religious practices of a group and whether Ordinance 20 can be justified for maintenance of public order, security, etc. Defenders of the government refer to Article 18(3) of the International Covenant on Civil and Political Rights (which Pakistan has not ratified). This states "Freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others". Government representatives con-

tend that if the Ahmadis are allowed to continue to pose as Muslims it will lead to widespread and uncontrollable violence.

As to this the Ahmadis argue that it is almost a hundred years since the sect was founded and there have been only a few clashes, and these were instigated by a small group of Muslim extremists and were not supported by the majority. They contend that they are a peaceful community and even after the passing of Ordinance 20 and other attacks on them, they have remained passive and not indulged in provocative actions. They also state that many prominent Pakistanis have been and are Ahmadis including the first Foreign Minister Mohammed Zafarullah Khan and later President of the International Court of Justice, and Pakistan's only Nobel Prize winner Dr. Abdul Salam.

As to the 1953 riots which the government of Pakistan cites as an example of a threat caused by the Ahmadis to public security, the Ahmadis contend that the inquiry report by two judges on the riots blamed a fanatical group called the Majlis-e-Ahrar and the Ahmadis were mainly victims. The Ahmadis also argue that the opposition to the sect has a political and economic basis, since their influence is considered disproportionate to their number. Further they state that the 1974 riots were supported by the opposition parties as a means of embarrassing Prime Minister Bhutto, who in turn amended the Constitution to appease the opposition. Similarly they argue that President Zia promulgated Ordinance No. 20 as a means to obtain public support.

The Ahmadis argue that the actions of the government are politically motivated and by declaring that Ahmadis may not call themselves Muslims and must abandon Islamic methods of worships, it has usurped their right to their own faith. Further, they contend the government of Pakistan has a

duty to ensure that all persons in its jurisdiction enjoy the right to practise their religion as they, not the government, deem fit.

The relationship between a State and religions was dealt with by Arcot Krishnaswami, the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, in his report (E/C.N.4/Sub.2/200/Rev.1) published in 1961. He concluded that,

“however strong the desire of a government to refrain from interfering in the management of religious affairs, circumstances can compel such authorities to take a stand, not only on questions of internal administration, but sometimes also on matters of faith, ritual or doctrine. This has occurred in countries of all types, including those in which the State and religion are separate. But it is clear that not all interventions by the State in the management of religious affairs can be considered proper.

The line between legitimate interference and undue pressure is in many cases extremely thin. When there are rival claimants to the headship of a religion, or where two elements of a single faith claim the exclusive right to perform a certain ritual and there is a possibility that the organisation may be torn by strife, or that a breach of the peace may occur, the State assuredly has the right to intervene at a certain stage, and even to pronounce its views on matters of internal administration, faith, ritual or doctrine. However, when such a situation arises because the public authorities themselves have created the conflict or have sponsored one or more elements in the dispute in order to achieve extra-religious ends – even though the real nature of their action is thinly veiled – this might not only be a serious case of discrimination but might even amount

to a denial of religious and other human rights and fundamental freedoms."

In view of the accusations made by the Ahmadiyya community that the actions of the government of Pakistan are politically motivated and are a denial of religious and other human rights, it is to be hoped that

the government of Pakistan will ratify the International Covenant on Civil and Political Rights. In that case the Human Rights Committee established under the Covenant can receive evidence and pronounce upon the legality of its actions under international law.

# COMMENTARIES

## UN Commission on Human Rights

The 42nd Session of the Commission was held in Geneva from 3 February to 14 March 1986.

The open ended Working Group to draft a Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Human Rights, had its first pre-sessional meeting this year. There was general agreement that the draft declaration should not attempt to create new rights and responsibilities nor should it cut across interpretation of existing rights. There was a general but inconclusive debate on the status of the individual under international law and on the meaning of 'organs' of society.

Speaking before the Working Group the ICJ Secretary-General stated that "what is needed is recognition by the organs of society responsible for law enforcement, security and public order of the fact that human rights activists and organisations undertake their work with a view to improving the lives and securing the rights of disadvantaged sectors of society, and not with a view to destabilising the government". The pre-sessional working group is due to continue next year.

As on previous occasions, the Commission began by discussing at length the situation in the Israeli occupied territories, the right to self-determination, and South Africa and apartheid. In the resolutions concerned with these subjects the Commission reiterated its earlier position. Under the item on self-determination the Commission adopted a new resolution 'on the use of mercenaries as a means to impede the exer-

cise of the right of peoples to self-determination'. This resolution recognising that mercenarism is a threat to international peace and security and, like genocide, is a crime against humanity, called upon States to ensure that their territory and their nationals are not used for the recruitment, assembly, financing, training or transit of mercenaries.

### Elimination of all forms of intolerance and of discrimination based on religion or belief

Unlike previous years, there was a lengthy debate on this agenda item, with 23 members and 17 NGOs making statements on the subject. This was largely due to the proposal made to the Commission by the United States to appoint a Special Rapporteur to monitor the implementation of the 'UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief'.

During the debate opinions were expressed about the appropriateness of appointing a Special Rapporteur on such a sensitive subject. For example the representative of the Commission of the Churches of International Affairs of the World Council of Churches in his statement cautioned the Commission with regard to the nature of the mechanism to be created and stated that

"Questions related to intolerance based on religion are different in nature from violations such as torture, disap-

pearances or summary executions. In the case of the latter, the World Council of Churches has repeatedly called for exposure and unreserved condemnation.

In order to combat religious discrimination however, the World Council of Churches' almost 40-year experience has taught that a different kind of approach will achieve more long-standing results. Such an approach should enable and promote tolerance and be positive and constructive, rather than denunciatory.

The emphasis of whatever resolution this Commission may adopt should be one of dialogue. The Commission should seek means by which dialogue may be promoted between religious communities and their governments, as well as among religious communities themselves. The Commission should enquire into and analyse the causes which might lead to or exacerbate discrimination or intolerance based on religion or belief."

The Commission decided in favour of the appointment for one year of a Special Rapporteur to report on incidents of religious intolerance and to recommend remedial measures including the promotion of dialogue between religious communities and their governments. The resolution invites the Special Rapporteur to bear in mind the need to be able to respond effectively to credible and reliable information and to carry out his work with discretion and independence.

### **The Sub-Commission**

The Commission recommended to the ECOSOC that members of the Sub-Commission should be elected from 1987 onwards for a term of four years with half of the members being elected every two years. The Commission also supported the Sub-

Commission's request that the meeting of the pre-sessional Working Group on Indigenous Populations be increased from five to eight days.

Based on the Sub-Commission's report the Commission adopted resolutions which

- urged the Working Group on Indigenous Populations to intensify its efforts in carrying out its plan of action and to continue the development of international standards based on a review of situations and aspirations of indigenous populations throughout the world;
- took note of the report of the Working Group on Traditional Practices Affecting Health of Women and Children and requested the UN Secretary-General to transmit the report to governments, competent organisations and specialised agencies drawing their attention to the recommendations contained in the report;
- asked the Sub-Commission to consider at its next meeting the final report of the Special Rapporteur on the right to leave and return;
- welcomed the completion of the study on the independence of judges, jurors, assessors and lawyers and asked the Sub-Commission to submit its final recommendations;
- strongly urged all States, as well as relevant organs and agencies of the UN system and competent intergovernmental organisations to submit broader, fresh information to the UN Working Group on Slavery and to participate more actively in it;
- expressed its admiration for the report of Mr. Louis Joinet for his study on Amnesty Laws and recommended to the ECOSOC that it be disseminated as widely as possible; and
- decided not to take any action on the Sub-Commission resolution concerning



the draft declaration against unacknowledged detention of persons and invited the Sub-Commission to reconsider the question with a view to submitting a new text.

The Commission elected Mr. Theo van Boven (Netherlands) as a member of the Sub-Commission and Mr. C. Flinterman as his alternate in place of Mr. Marc Bossuyt (Belgium) who resigned from the Sub-Commission.

### The Administration of Justice and the Human Rights of Detainees

The Commission discussed Mr. Kooijman's report<sup>1</sup> on 'Torture and other cruel, inhuman or degrading treatment or punishment'. Mr. Kooijman concluded that 'torture is still widespread and occurs in a rather systematic way in a number of countries' and has classified the countries where torture takes place as follows:

- countries in which torture appears to have been institutionalised and harsh and brutal treatment has become an habitual concomitant of interrogation during detention;
- countries where torture takes place as a consequence of passivity on the part of the authorities;
- countries where torture is used for stamping out all traces of opposition and as a tool of 're-education' or as a punishment if 're-education' fails to have the desired effect. Hence torture is systematic in the sense of being part of the political system; and
- countries where infliction of severe physical pain is part of the penal system and considered a necessary part of re-

pressive as well as preventive justice.

The Rapporteur has recommended that governments should ratify the Convention against Torture and in the meantime should enact laws giving their judicial authorities jurisdiction to prosecute and punish persons who have committed torture.

He also recommended that:

- all judicial systems should contain provisions under which evidence extracted under torture cannot be admitted;
- incommunicado detention should be kept as short as possible and should not exceed seven days;
- habeas corpus or amparo procedures should be strictly respected and should never be suspended;
- interrogation of detainees should only take place at official interrogation centres, and
- all security and law enforcement personnel should be provided with the Code of Conduct of Law Enforcement Officials and receive instruction on its requirements.

The Commission invited the Special Rapporteur, in carrying out his mandate for another year, to bear in mind the need to be able to respond effectively to credible and reliable information that comes before him and to carry out his work with discretion.

Under this agenda item the Commission adopted a resolution recommending that where a consensus exists other interested regions should consider the possibility of preparing a draft convention containing ideas similar to those set out in the draft Optional Protocol to the draft Convention against Torture, and to defer consideration of the draft Optional Protocol until 1989.

1) E/C.N.4/1986/15.

This resolution was proposed by Costa Rica, at the suggestion of the ICJ, in view of the progress made in the Council of Europe in examining the Draft European Convention for protection against torture, which provides for a system of periodic visits by a Committee of Experts to places of detention within the jurisdiction of States Parties.

In a separate resolution the Commission expressed alarm at the growing number of cases of hostage taking throughout the world and the odious form they take and strongly condemned those responsible. It called upon States to take any measures necessary to prevent and punish the taking of hostages and to put an immediate end to cases of abduction and unlawful restraint.

## Missing and Disappeared Persons

The Working Group on Disappearances in its report<sup>2</sup> stated that

“the number of people victimised by this phenomenon is still increasing in proportion to the population in the affected areas...”

The occurrence of disappearances appears to be closely linked to the level of political and social stability in a given country.

The grief and anguish, not to mention the social and economic hardship, which are the sorry lot of relatives of missing persons, have long been recognised as a corollary of this mode of repression. An increasing number of reports indicate that family members, particularly those who have organised themselves or have otherwise been strident in their quest for justice, have become the targets of harassment and ill-treatment.

In some cases relatives have even been callously killed or have disappeared themselves.”

The Working Group recommended that the Sub-Commission should be requested to advise on the need for and feasibility of drafting an international instrument on enforced or involuntary disappearances and the Commission should consider again the possibility of renewing the Working Group's mandate for a period of two years.

The Working Group's report included a separate report on its second visit to Peru in June 1985, by two of its members. This analyses the context of violence in which disappearances have occurred, the nation's legal and institutional framework, characteristics of individual cases of disappearances, and the social and economic consequences. The report has concluded that

“In the short term, it would occur to the members of the mission that a number of measures could be considered that might alleviate some of the aspects of the problem of disappearances. First of all, security and personal safety seem of the essence, so that the people in the towns and countryside will no longer feel threatened by violence from all sides. Secondly, members of the police and the armed forces operating in the area should be taught the basic concepts of the Peruvian legal system and be trained in human rights matters. Thirdly, both the judiciary and the Office of the Attorney-General need to be effectively guaranteed the co-operation of all branches of the executive, notably the armed forces, as well as the resources to carry out their functions properly. Lastly, in the light of the acute hardship of the many relatives of disappeared people,

2) E/C.N.4/1986/18.

it would appear that some form of relief programme is called for in order to ease their sorry lot."

The Commission expressed its appreciation to the Working Group for the way in which it has done its work and extended its mandate for two years.

## Chile

In his report<sup>3</sup> on Chile Professor Fernando Volio Jimenez concluded that

"unlawful coercion, along with abominable forms of physical and mental torture, is normally practised during the periods in which the persons involved are under interrogation. ... For the purpose, or under the pretext, of searching out individuals accused of being subversives or with the aim of preventing the organisation of public protests in the streets of Santiago or of dismantling groups participating in the protests, government security forces utilise an unnecessary and excessive apparatus of intimidation and repression and carry out raids, beat up, injure and arrest the residents and even cause deaths among them. ... Lawyers engaged in defending persons accused of breaches of the security of the State and other similar offences are subjected to threats against their physical safety so as to discourage them and leave their clients without a proper defence. This is a particularly serious situation and has a profoundly adverse affect on the enjoyment of human rights. ... Generally speaking, the Judiciary does not fulfil its duties to safeguard human rights."

The rapporteur recognises, however, that

the excessive, improper and harmful power of the Executive in judicial matters constitutes a serious obstacle to normal exercise of the powers of the Judiciary.

A draft resolution was submitted by the Chairman of the Commission as a compromise text to the ones submitted by the United States and another jointly by Algeria, Mexico and Yugoslavia. The Chairman's draft, which made only minor changes in the US text, was adopted without a vote and strongly urged the Chilean government, *inter alia*, to

- put an end immediately to all forms of physical and psychological torture;
- investigate all reports of torture, killings, kidnappings, or other human rights violations by the security forces and take appropriate action against those found guilty;
- amend legislation including laws authorising states of emergency and siege and to bring it into conformity with guarantees of basic human rights as defined in applicable international agreements;
- end the practice of ordering internal banishment without recourse to the judicial system and allow the return of all Chilean citizens now living abroad who wish to return and recognise their continuing right to enter and leave freely; and
- respect activities related to the defence and promotion of human rights.

The Commission decided to extend the mandate of the Special Rapporteur for another year.

## Gross violations

The Chairman announced that situations relating to Albania, Haiti, Paraguay, and

3) E/C.N.4/1986/2.

Zaire were under consideration under the confidential Resolution 1503 procedure and that the Commission had decided to discontinue the consideration of Gabon, Philippines and Turkey.

In the public discussion under this agenda item, the Commission had before it reports by Special Rapporteurs on Afghanistan, El Salvador, Guatemala and Iran.

### *Afghanistan*

Mr. Ermacora's report<sup>4</sup> on Afghanistan concluded that "the only solution to the human rights situation in Afghanistan is the withdrawal of the foreign troops, because more than one third of the Afghan population is now outside and is unwilling to return while foreign troops control it". The Special Rapporteur has recommended that before the withdrawal of foreign troops, those areas which are not under government control should be declared neutral zones where specialised agencies of the UN and NGOs, including the ICRC, can offer humanitarian services for the benefit of the population.

The Commission resolution expressed again its profound distress and alarm at the widespread violations of the right to life, liberty and security of person, including torture and summary executions as well as increasing evidence of a policy of religious intolerance. Called once again upon the parties to the conflict to apply fully the principles and rules of international humanitarian law and to admit international humanitarian organisations. The mandate of the Special Rapporteur was extended for another year.

### *El Salvador*

Mr. A. Pastor Ridruego's report<sup>5</sup> noted

4) E/C.N.4/1986/24.

5) E/C.N.4/1986/22.

6) E/C.N.4/1986/23.

that the general situation has not changed significantly with regard to economic, social and cultural rights, and that political murders, abductions and disappearances by agents of the State apparatus continue. The actions of the Salvadoran army continue to result in unjustified deaths and injuries among the civilian population and damage to property.

The Commission while extending the mandate of the Special Rapporteur expressed its deep concern at the serious adverse effect of warlike activities on the enjoyment by the Salvadoran population of undisputed political, civil, economic, social and cultural rights and made a special appeal to both parties to continue to adopt measures intended to humanise the conflict.

### *Guatemala*

Lord Colville's report<sup>6</sup> on Guatemala noting the transfer of power to a new civilian government in January 1986, stated that the new policies that are relevant to deal with his recommendations constitute important changes which would help to establish and maintain human rights in Guatemala.

His optimism is not supported by some of the NGOs. His report was severely criticised by an American NGO, Americas Watch and by the Committee for Justice and Peace of the Guatemalan Churches.

In its resolution, the Commission welcomed the process of democratisation and return to constitutionality and expressed its satisfaction at the Guatemalan government's declared intention of promoting respect for human rights and the measures it has taken to that end. The Commission decided to terminate the mandate of the Special Rap-

porteur but requested the Chairman of the Commission to appoint a Special Representative to receive and evaluate information concerning the situation in Guatemala and submit a report to the Commission at its next session.

## Iran

Following the resignation of Mr. Andrés Aguilar, the Commission had before it only the interim report which he had submitted to the Third Committee of the General Assembly in November 1985. In this report<sup>7</sup>, while welcoming the positive step taken by the government of Iran by providing him with a 'Report on the performance of the Islamic Republic of Iran in 1985', he notes that no reply has been given to his specific questions and to the detailed allegations concerning summary and arbitrary executions and the death of persons due to ill-treatment. He concluded, therefore, that these allegations cannot be dismissed as groundless unless proved to be so on the basis of detailed information which the government is in the best position to collect and provide.

The Commission's resolution endorsed the conclusion of the Special Representative that specific and detailed allegations concerning grave human rights violations cannot be dismissed and appealed to the government of Iran to respond satisfactorily to these allegations. The Chairman was asked to appoint a new Special Representative.

Speaking under the agenda item on gross violations the Secretary-General of the International Commission of Jurists welcomed the changes in Haiti, the Philippines and Sudan and commented upon the situation in Sri Lanka.

7) A/40/874.

8) E/C.N.4/1986/21.

## Summary and arbitrary executions

Mr. Amos Wako's report<sup>8</sup> disclosed the names of the countries to which he had transmitted the allegations received by him, namely Afghanistan, Angola, Chile, Colombia, El Salvador, Guatemala, Indonesia, Iran, Iraq, Nigeria, Paraguay, Peru, Philippines, South Africa and Sri Lanka.

He concluded that one of the ways in which governments can show that they want this abhorrent phenomenon of arbitrary or summary execution eliminated is by investigating, holding inquests and prosecuting and punishing those found guilty. There is therefore a need to develop international standards designed to ensure that investigations are conducted into all cases of suspicious death and in particular those which appear to have been at the hands of the law enforcement agencies. Such standards should include an adequate autopsy. Any death in custody should be regarded as *prima facie* a summary or arbitrary execution, and investigated immediately. The results of these investigations should be made public.

The Commission strongly condemned the large number of summary or arbitrary executions and decided to renew the mandate.

## Economic, Social and Cultural Rights

Under this item the Commission discussed the draft Declaration on the Right to Development which had been sent to it by the General Assembly for further discussion. Many members of the Commission expressed the hope that the Declaration would be adopted by the General Assembly

on the basis of the draft submitted by Yugoslavia.

Speaking under the item the representative of Ireland stated that

"The experience of decades of operational activities for development suggests strongly that the type of development strategy adopted is more decisive for the level of enjoyment by all sectors of a population of economic, social and cultural rights than is the level of overall economic development reached. The same experience has illustrated the inadequacy of a development strategy which seeks to promote one set of rights at the expense of the other. The suppression of political participation has been shown to be an important factor in the non-realisation of economic and social rights. It is increasingly realised that participation is of fundamental importance as a means for the exercise of all human rights. Development has come to be understood in the broad sense as a process designed progressively to create conditions in which every person can enjoy, exercise and utilise under the Rule of Law all his human rights. ... Rather than being a new primary right, its value resides in its being potentially, a useful tool for effecting a synthesis of economic, social, cultural, civil and political rights which would serve to strengthen all human rights at the international level."

The ICJ Secretary-General, in addition to supporting the Yugoslav draft, emphasised the need for protection of cultural rights, which deserves more attention than it has received till now. It is linked closely with many other rights, including rights of minorities, rights of indigenous peoples, the right to education and the right to freedom of thought, conscience and religion. He drew attention to the denial of cultural

rights of the Arab minority in the State of Israel, and in particular the restriction order imposed on Mr. Saleh Baransi, founder and Chairman of the Research Centre for Arab Heritage.

The Commission strongly urged the General Assembly to give the highest priority to consideration of the draft Declaration on the Right to Development with a view to its adoption, and resolved to convene the Working Group on the Right to Development for three weeks in January 1987 to study the measures necessary to promote the right.

In another resolution the Commission welcomed the establishment of the new ECOSOC Committee on Economic, Social and Cultural Rights and requested the UN Secretary-General to continue his efforts to organise a training course on the preparation of reports concerning the implementation of the Covenant.

In a separate resolution it noted that the objectives of the International Year of Shelter for the Homeless in 1987 are related to the realisation of the economic, social and cultural rights contained in the Covenant and decided to continue consideration of the question of the right to housing against the background of the International Year.

### **Human Rights and Scientific and Technological Developments**

The Commission adopted four separate resolutions on this subject. One invited the UN University to study both the positive and negative impacts of scientific and technological developments on human rights. Another called upon all States to prohibit propaganda for war, in particular nuclear war; another resolution again asked the Sub-Commission to undertake a study on "The use of the achievements of scientific and technological progress to ensure the

right to work and development". The fourth urged the Sub-Commission to allocate sufficient time to its sessional working group to enable it to complete its consideration of the draft principles, guidelines and guarantees concerning persons detained on the grounds of mental disorder.

### Measures against Totalitarian Ideologies

Under this item the ICJ Secretary-General referred to the doctrine of national security, as being that of a modern form of totalitarianism with a certain resemblance to Nazism. He further stated:

"The central idea is the need for society to protect itself against a supposed threat of subversive Marxist aggression, internal or external. According to its theorists, we are already living in an undeclared Third World War between East and West. As the democratic system of government is considered incapable of facing up to such aggression, recourse must be had to the armed forces: war is a matter for the military. They alone must have the responsibility for preserving national security. This they will achieve by destroying the internal enemy, which is to be tracked down in universities, schools, churches, political parties and trade unions. In order to achieve economic development, order and tranquility must be imposed in both the social and political fields, with a return to a 19th century ultra-liberal model of development. ...

Democratic constitutions are suspended. Legislative and judicial powers are all concentrated in the hands of the

executive under military control. Councils of National Security, composed of leading members of the armed forces, assume all powers of political decision. Among the instruments of its repression are torture, extra-judicial execution, and disappearances. ...

The ideology of national security is totalitarian, is based on terror and injustice, and implies the systematic denial of human rights."

In a resolution on Advisory Services the Commission took note with interest of the UN Secretary-General's efforts to solicit voluntary contributions for the implementation of projects within the programme of advisory services and called upon all governments, intergovernmental and non-governmental organisations to make voluntary contributions on Development of Public Information Activities. It also requested the Secretary-General to continue to work on a draft teaching booklet on human rights which could serve as a broad and flexible framework which could be adapted to meet national circumstances. Another resolution recognised that regional arrangements may make a major contribution to the promotion and protection of human rights and invited the Secretary-General in cooperation with the Economic and Social Commission for Asia and the Pacific (ESCAP) to hold a training course in that region on teaching of human rights.

The Commission's Working Groups on the Draft Convention on the Rights of the Child and on the Draft Declaration on the Rights of Minorities made further progress and are due to continue their work next year.

# The Convention of the Rights of the Child: Time for a New Look at Implementation

A draft of a Convention on the Rights of the Child was submitted to the UN Commission on Human Rights by the government of Poland in 1978 to mark the International Year of the Child. Later that year the General Assembly decided to establish a pre-session working group of the Commission for the purpose of elaborating the text of the Convention. The Working Group met for the first time in 1979.

Discussions on the substantive articles of the text are drawing to a close, and it is hoped that the attention of the Working Group will turn to the question of implementation during the 1987 meeting. Several proposals are before the group. They include a revised draft submitted by Poland, a draft submitted by Canada and a series of recommendations submitted by the Ad Hoc Group of Non-governmental Organisations on the Convention on the Rights of the Child. This group was formed by interested NGOs in 1982 for the purpose of following the work of the UN Group in a coordinated fashion. Beginning with the UN Working Group session in 1984, the NGO Ad Hoc group has been submitting suggested articles for inclusion in the Convention.

The following commentary outlines the proposals now before the Working Group and then examines in detail the recommendations of the NGOs – which, although based on existing instruments and practices, bring an innovative approach to the question of implementation. They seek to further the process of implementation by combining active monitoring of compliance with the provision of technical assistance to States Parties.

## The Polish and Canadian Proposals

The original Polish proposal on implementation gave the responsibility for overseeing implementation of the Convention to the Economic and Social Council (ECOSOC). The revised proposal calls for the establishment of a group of Governmental Experts who would be responsible for examination of triennial reports to be submitted by the States Parties. This group would report to ECOSOC which would make observations and suggestions to the States Parties as well as the General Assembly. The proposal would also allow ECOSOC to request States Parties to submit additional reports on specific issues relating to the Convention.

Canada has taken an active interest in this question, and has submitted several proposals. The one now before the group calls for the submission to a Group of Experts to be elected by the ECOSOC of reports every five years on measures adopted and progress made in achieving the observance of the rights protected by the Convention. The group would prepare "appropriate comments" on every report for transmission to the State Party concerned. The ECOSOC would be empowered to make observations and suggestions on implementation to the General Assembly, and the State Parties and the specialised agencies would be invited to submit their comments on the observations made by the Group of Experts to the ECOSOC. The proposal envisages a role for the specialised agencies, giving them a chance to report on efforts made at implementation within the scope of their mandates.



Although the Polish proposal allows for additional reports on specific issues and that of Canada calls for "appropriate comments" on all reports submitted by the States Parties, neither differs significantly from existing implementation mechanisms. In contrast, the NGOs have, in their recommendations, focused on the affirmative steps to be taken in implementing the Covenant, such as providing technical assistance to States Parties and the creation of a role for UNICEF in order to make use of its practical experience.

### The NGO Recommendations

The NGOs chose not to draft specific articles, but rather to put forward a series of recommendations on monitoring and on means of encouraging implementation. In doing this the NGOs hoped that their proposals would influence government perceptions about the role of a monitoring body and that their ideas would be incorporated into the final text of the Convention. Their recommendations seek to combine the innovative with the practical, utilising the experience gained under existing international instruments to formulate a new approach to implementation.

Specifically, the NGOs have proposed the establishment of a Committee of Experts whose members are to have competence in children's affairs. It is suggested that the committee receive comprehensive reports on a periodic basis from each State Party, covering existing legislation, policies and practices, as well as planned initiatives and progress made since any prior report, and any difficulties affecting a State Party's ability to carry out its obligations. The States Parties are encouraged to publicise their reports nationally before their appearance in front of the Committee. Further, the Committee would be given the power

to request reports on specific articles of the convention for the purpose of formulating general comments, and establishing, in consultation with the specialised agencies, programmes of action.

The NGO proposal envisages an active dialogue between the States Parties and the Committee, and this is reflected in the powers suggested for the Committee. They include, among others, the ability to communicate comments and recommendations to the States Parties, to request additional information from States Parties in order to clarify aspects of their reports, to seek and receive information from reliable sources and to issue requests for clarification when information in its possession suggests repeated or serious violations of the Convention. The Committee would also be empowered to seek technical or other assistance for itself or for the States Parties when requested by a State Party. It is also suggested that the specialised agencies be given an active role in the implementation process, perhaps with observer status on the Committee.

Another important aspect of the NGO proposal is the special role to be given to UNICEF. Suggestions as to its functions include the provision of technical assistance to the States Parties and the Committee, the ability to request other specialised agencies to join in the provision of technical assistance, suggesting, on its own initiative programmes of technical assistance, putting forward ideas for subjects to be covered in the special reports of States Parties and working with the Committee to formulate general comments on the States Parties' reports, UNICEF would also be called on to cooperate with NGOs in carrying out this mandate.

The need to publicise the Convention and the rights protected by it nationally and internationally is also emphasized by the NGOs, as is the importance of establishing

national mechanisms to promote and protect children's rights. Further, the NGOs suggest that optional protocols to the Convention be considered for the purpose of allowing either individual or group complaints as well as inter-state complaints. Finally, the NGOs recommend that the proposed implementation procedure be financed from the general fund of the United Nations.

## Discussion

Although aware of the financial difficulties facing the United Nations, the NGOs have called for the creation of a new monitoring body because no existing body treats the wide range of rights covered by the Convention on the Rights of the Child, nor does any existing body have the necessary competence to assess whether these rights are being realised. This is perhaps the first time that the United Nations has attempted to create a convention which would touch upon all the rights belonging to one particular group and define a State's obligations towards that group. Special competence in children's rights and protection is needed if members are to have a meaningful dialogue with the States Parties. With respect to the use of general revenues, the world community has already recognised its special obligation to children in such documents as the Declaration on the Rights of the Child. The NGOs argue that it would be a negation of that special obligation if children's rights were left to the vagaries of the financial resources of states ready to become parties to the Convention. The majority of the world's children live in the developing countries and the realisation of their rights should not have to await the financial wherewithal of their countries to ratify the Convention.

The Committee's functions as set out by the NGOs would be oriented towards the identification of problems being faced by a country in the implementation or realisation of the rights protected by the proposed Convention and the mobilisation of technical assistance for the purpose of devising more effective programmes of action. Experience under the Covenant on Economic, Social and Cultural Rights led the NGOs to conclude that active participation by the specialised agencies in the work of a monitoring body would not occur unless a specific mandate were given to the Committee to work with them and to call upon them to assist the States Parties. This is the element missing from articles 16 to 22 of the Economic Covenant which clearly envisage a role for the specialised agencies in both the monitoring of compliance and in devising more effective programmes of action.

With respect to the latter, article 22 of the Economic Covenant calls on ECOSOC to bring to the attention of the specialised agencies furnishing technical assistance, matters in the reports of States Parties which might assist the agencies in devising measures which would contribute to the "effective progressive implementation of the Covenant". Although the specialised agencies have taken a number of steps within their mandates to assist in the implementation of the Covenant, there has not been a sustained dialogue on this issue either between them and ECOSOC or between them and ECOSOC's sessional working group which was charged with the initial examination of reports under the Covenant.<sup>1</sup>

Nor has there been any attempt at coordinated action in a given area, in part, because there has not been an opportunity to examine in depth the situation in one particular country nor to look at the across-

1) This may change with the creation of a new Committee on Economic, Social and Cultural Rights.

the-board implementation of particular rights or a particular group of rights. This type of overview is crucial to the effective implementation of the rights protected by the proposed Convention on the Rights of the Child, and the mandate given to the Committee under the NGO scheme, along with the ability of the Committee to call for reports on specified articles of the Convention, will ensure that it takes place and that the specialised agencies are an integral part of the process. Furthermore, the NGOs hope that the emphasis on technical assistance will provide an incentive for ratification of the Convention.

Tied to the emphasis on technical assistance and the encouragement of coordinated action by the specialised agencies are the functions given to UNICEF in the NGO proposal. UNICEF, as noted by V. Tarzie Vittachie, UNICEF Deputy Director for External Relations, in his speech before the UN Working Group in 1986, is "the UN agency created for monitoring and supporting survival, protection and development of children" and both its mandate and its operations are intimately "intertwined with the rights of the world's children". Because of this, UNICEF must be given a special place in the implementation of the rights guaranteed by the proposed Convention. Its expertise in children's issues will be invaluable to the Committee when it comes to the formulation of programmes of action either for individual States Parties or on the global level. As noted above, designating the specialised agencies as assistants in the implementation of an international instrument is not new. Articles 16 to 22 of the Economic Covenant were included with the expectation that the specialised agencies would play an active role in the implementation process, and such a role was given to UNESCO in the Convention for the Protection of Cultural Property in the Event of Armed Conflict, whereby the

States Parties may call on UNESCO to assist in implementing their obligations.

UNICEF has recognised the importance of the Convention to the protection of children, and the importance of its being an active partner to States Parties, to other specialised agencies and to the Committee, and of its using its knowledge of practical programmes of benefit to children to assist in the development of more comprehensive schemes for the realisation of their rights. It has stated its willingness to assist immediately in "advocacy and awareness building", particularly in mobilising support for ratification, and in assisting the UN work by providing professional input and technical support services. It has also stated its willingness to provide support to governments wishing to review their national legislation to improve compliance or to establish new or improved programmes to address Children's rights issues. The expertise and goodwill of UNICEF should be harnessed by the world community to ensure the full realisation of the rights of the child.

Another aspect of implementation stressed by the NGOs is the need to enhance public awareness of rights belonging to children, and to mobilise the public in the process of realising those rights. It is for this reason that the NGOs have suggested that States Party reports be circulated nationally and comments from relevant NGOs sought prior to the State Parties appearance before the Committee. Also in this regard, it is important that the Committee be empowered to seek and receive information from reliable sources. Of additional significance is the need to place an affirmative duty on States Parties to make the text of the Convention widely known and to encourage the establishment of national institutions for the furtherance of the implementation of the Convention. Responsibility should also be given to UNICEF and UNESCO for dissemination of the

Convention and materials on children's rights. The importance of public awareness and dissemination of information has been stressed by the Human Rights Committee, which routinely asks States Parties to the Covenant on Civil and Political Rights what steps they have taken to publicise both the Covenant and their appearance before the Committee.

National institutions for the promotion and protection of human rights have an important role to play in the development of public awareness and in the fuller realisation of the rights protected by the proposed Convention. Full implementation can only be achieved when people understand and assert their rights. It is for this reason that the NGOs have suggested that an explicit provision be included in the Convention

whereby states would recognize the important role of national institutions in its implementation.

The NGO recommendations are aimed at ensuring that systematic and continuous attention will be given to the problems being faced daily by the world's children and that positive steps will be taken to further the realisation of their rights. They are rooted in the practices and experience under existing international instruments, and seek to cull from those practices and experience an approach that would give practical effect to the promises contained in the proposed Convention. It is to be hoped that governments will seriously consider these proposals and incorporate them into the text of the Convention.

## Transnational Corporations in South Africa and Namibia

In ICJ Review No. 27 (December 1981) there was an article by President Thomas M. Franck on disinvestment in South Africa, and at the December 1985 ICJ Conference on the Implementation of Human Rights in Africa, held in Nairobi, the participants agreed unanimously a resolution which, *inter alia*, called for disinvestment in South Africa.

This article summarises the Report and Recommendations of the panel of eminent persons, appointed by the UN Secretary-General to conduct hearings and examine the activities and operations of transnational corporations in South Africa and Namibia. The recommendations propose conditions under which they should operate, failing which they should disinvest.

\* \* \* \* \*

There are over 1,000 transnational corporations active in South Africa and some illegally in Namibia. These companies provide the crucial link between the industrialised world and South Africa and Namibia, and they play a key role in the economies of both. A substantial part of South Africa's foreign debt of over \$20 billion is owed to transnational banks and three of the country's four oil refineries are owned by transnational corporations, which also own over four-fifths of South Africa's retail outlets for petroleum. Transnational corporations are the market leaders in computers and electronics and supply over half the country's computer imports. Most major transnational corporations in the motor vehicles industry are active in South Africa. The two largest banking organisations in South Africa and Namibia are affiliates of transnational corporations. In Namibia, three transnational corporations hold approximately 90 percent of the country's mining assets in base metals, uranium and diamonds – industries which account for about half of Namibia's GDP and over three-quarters of its exports.

During the public hearings, representatives of all points of view on the role of transnational corporations in South Africa and Namibia presented their views, either individually or collectively. The transnational corporations were represented by the International Chamber of Commerce and a number of them submitted written materials. In addition, the business community was represented by the South African Chamber of Commerce and the South African Federated Chamber of Industries.

The panelists were provided with extensive evidence of the inhumanity and the injustices of the *apartheid* system. Evidence brought before them indicated that the situation had deteriorated and particular concern was expressed regarding the decision of the government to deprive most of the

country's black population of its South African citizenship.

It was suggested that any international action taken against transnational corporations in South Africa or Namibia would also have an immediate adverse impact on the black population, particularly that portion employed by transnational corporations. Neighbouring States would also face some economic difficulties.

However, it was pointed out that the same process of involvement by transnational corporations sustained the apartheid system and the occupation of Namibia, directly or indirectly. By providing capital and technology, transnational corporations benefited and strengthened the minority regime and provided it with the resources to enforce apartheid. Also, it was pointed out that the neighbouring States had publicly and collectively announced that they were willing to share with black South Africans the burden of eliminating apartheid.

Several points were given special mention. First, under the National Key Points Act, a company in South Africa can be required to maintain a security force far larger than required for its own protection. Such security forces are equivalent to an armed militia and can be called upon by the government as required. This tight integration of transnational corporations into the security apparatus of the country through such legislation as the Key Point Act is an arrangement unique to South Africa; it conditions the role and impact of transnational corporations in the country and on the system of apartheid.

Second, transnational banks, although they may have only a minor presence within the country, are critical sources of finance, particularly at the present time. The recent refusal of the transnational banks to extend further credit and to roll over their loans to South Africa had a major immediate impact on the government of South

Africa. It demonstrated that the international financial community has the power to exert influence on the apartheid system.

Third, the economic and political systems in South Africa are inextricably linked – a fact that should be recognised by both public and private-sector financial institutions when considering loans to South Africa. It was suggested that countries should make the abolition of apartheid a condition of any future loans.

Fourth, while the presence of transnational corporations may have ameliorated the living and working conditions of their black employees, they are nowhere near internationally recognised labour standards.

Fifth, the worsening business climate in South Africa coupled with pressure for withdrawal by stockholders, consumers and the public at large has led a number of transnational corporations to decrease their involvement in South Africa or to disinvest.

Sixth, examples of transnational corporations that have circumvented the United Nations embargo on sales of military equipment to South Africa have been documented.

Seventh, attention was drawn to the fact that the General Assembly had called for an oil embargo and that the major oil-exporting countries have prohibited trade in petroleum with South Africa. Nevertheless, supplies continue to reach the country, and the government is developing domestic substitutes for oil by investing in coal gasification and liquefaction. Transnational corporations are among the suppliers of crude oil and they operate the country's refineries and are involved in coal mining there.

Finally, transnational corporations ignore the authority that the United Nations Council for Namibia has with regard to the territory. This has special reference to the depletion of that country's natural resources. The corporations were also shown to be contributing, directly or indirectly,

to the continuation of South Africa's illegal occupation of the country.

The panelists expressed their solidarity with the commitment of the international community to ending apartheid and the occupation of Namibia and said that this commitment must now be translated into decisive action in which transnational corporations must play their part. Representing the transnational corporations operating in South Africa, the international business community took the position during the hearings that apartheid is "morally indefensible, economically counter-productive and irreconcilable with the principles of free enterprise". However, business leaders in the headquarters of transnational corporations have not yet brought pressure to bear on the government of South Africa to abolish the system of apartheid and permit the self-determination of Namibia, despite their full awareness of this basic violation of human rights.

The panelists considered that whatever the precise balance of the impact of transnational corporations in South Africa and Namibia, transnational corporations must change their attitudes fundamentally to contribute to the abolition of apartheid and the freeing of Namibia. Only then can they justify their continued presence there.

The panelists felt that the policies and measures already being implemented are inadequate to achieve their objective. The necessary changes in South Africa and Namibia could be promoted more effectively by a concerted programme of international action, endorsed by the whole international community, pursued in a systematic manner by governments and other concerned bodies, and supported by monitoring and follow-up activities.

Consequently, the panelists identified a series of complementary and mutually reinforcing measures that they recommend as the basis for an international programme of

action to be implemented immediately and simultaneously. Their recommendations are structured around four aspects of the role of transnational corporations: the military sector, the energy sector, Namibia, and general economic issues.

### **The military, police and security sector**

They recommend that all transnational corporations producing for this sector disinvest immediately and that the mandatory arms embargo be expanded immediately to include dual-use items, i.e. items serving military and civilian purposes. This category should include motor vehicles, computers and electronic equipment.

They also recommend that parent companies and their South African affiliates should refuse to comply with orders under the Key Points and Security legislation.

### **The energy sector**

They recommend that the voluntary oil embargo be made mandatory so that transnational corporations that export or ship petroleum, its by-products or natural gas to South Africa or Namibia will be prohibited from doing so. Further, there should be no licensing of technology, including oil-from-coal technology, and no supplies of equipment and services to this sector. Any corporation that does not comply with these recommendations should be subjected to disinvestment and divestment action.

### **Namibia**

As South Africa has established a system of laws in Namibia similar to apartheid, the recommendations applying to South Africa

also apply to Namibia. Because of the illegal occupation of Namibia by South Africa, the Panel recommend that Decree No. 1 of the United Nations Council for Namibia be implemented by all State Members of the United Nations immediately and, among other measures, all foreign affiliates terminate their business activities in Namibia unless their parent corporations have concluded a contract or entered into other appropriate arrangements with the United Nations Council for Namibia.

### **General economic issues**

The Panel recommend the following measures: no new investment by transnational corporations in South Africa; no new loans to South Africa; any involvement of multilateral financial institutions with South Africa to be conditional on the abolition of apartheid; no new licensing of technology; no export credits or guarantees, or other official trade promotion to be extended to enterprises doing business with South Africa; and imports of gold from South Africa to be prohibited.

The Panel stressed that transnational corporations remaining in South Africa should adhere strictly to certain minimum standards of behaviour. The first of these are that transnational corporations and their affiliates in South Africa should not supply the military, the police or other security forces in South Africa with computers, motor vehicles, aircraft or other material that could be used to enforce, directly or indirectly, apartheid or the occupation of Namibia.

A second set of standards relates to labour practices. Minimum standards, some of which are in opposition to the existing laws of South Africa, must be observed. For instance, foreign affiliates should allow their workers to live permanently with their

families and ensure that full, desegregated housing and related facilities are provided to all workers and their families within reasonable distance of the workplace. This is to be understood as a refusal to comply with the Group Areas Act and the Influx Control Laws.

The Panel also recommend that transnational corporations that continue to operate in South Africa issue a standardised semi-annual report describing their compliance with the minimum standards.

If there is no major sign of progress by 1 January 1987, the Panel recommend that a programme of disinvestment from South Africa be effected and the Security Council should immediately adopt a resolution to this effect. It recommends that the Secretary-General monitor closely both the im-

plementation of the report and the progress made in South Africa towards the abolition of apartheid and the ending of the illegal occupation of Namibia.

As stated by Mr. Malcolm Fraser, former Prime Minister of Australia and Chairman of the Panel, before the Second Committee of the General Assembly: "... the situation in South Africa and Namibia still permits a peaceful solution – *but time is running out, and it is running out rapidly*. Recent events in South Africa clearly demonstrate that the situation can no longer be ignored. It is the duty of the international community to act more decisively and in a concerted manner to assist and accelerate the process of change in Southern Africa, before the option of peaceful change disappears."



# ARTICLES

## The United States Withdrawal from the General Compulsory Jurisdiction of the International Court of Justice\*

Mr. Chairman, the Independent Commission on Respect for International Law (ICRIL), a newly organized private commission of international law specialists, is committed to enhancing respect for the world rule of law among both governments and the general public. Accordingly, the members of the Commission, whose names and affiliations are appended hereto, greatly appreciate the opportunity to present the following statement for the record of this hearing on the vital topic of adherence by governments, in particular the Government of the United States, to the compulsory jurisdiction of the International Court of Justice (ICJ), popularly known as the World Court. It is respect – or lack of respect – for international law, we believe, that in the end will determine the fate of the Earth. For nations to operate outside the rule of law in their international relations is, quite simply, to invite disaster in our nuclear age.

### Statement

We of the newly established Independent Commission on Respect for International Law wish to express our deepest professional and personal concern over President Reagan's decision to withdraw the United

States from the general compulsory jurisdiction of the International Court of Justice. We share deeply the belief, written into the foundations of our Republic and proclaimed by every administration since our Republic's inception, that the good society is the society that is governed by the due process of law. We agree with the Founding Fathers that ours must be "a government of laws, not of men," and we believe that this viewpoint can benefit international society as a whole. As President Eisenhower said, already many years ago: "The world no longer has a choice between force and law. If civilization is to survive, it must choose the rule of law."

President Reagan, we surmise, agrees with this overall viewpoint, given in particular his declaration before the United Nations General Assembly earlier this year that the United States seeks "to replace a world at war with one where the rule of law will prevail." Yet, on October 7, without prior public notice or debate, let alone approval, the Secretary of State, by executive notice on behalf of the United States Government, reversed a 39-year commitment of the United States – made and endorsed by earlier administrations and the Congress – to the general compulsory jurisdiction of the International Court of Jus-

\* A statement made on October 30, 1985 by the Independent Commission on Respect for International Law to the Subcommittee on Human Rights and International Organizations of the United States House of Representatives.

tice. This action, we believe, raises some deeply troublesome questions about what the President and his administration have in mind when he talks about the rule of law in world affairs. Does he mean the rule of law based on reciprocal tolerance and mutual forbearance in relation to the rest of the international community? Or does he mean the rule of law imposed unilaterally by dint of American power? We hope the former.

Our principal objections to the Administration's withdrawal from the general compulsory jurisdiction of the World Court are three. First, we believe it is based on selective history about, and false perceptions of, the World Court. Second, we believe it is based on political assessments and motives that are far more likely to do harm than good to the United States over the long run, possibly even the short run. Finally, we believe that it is based on a conception of foreign policy decision-making that raises serious questions for our constitutional democracy. The consequence is to render the Administration's action illogical, unwise, and at least morally questionable. The withdrawal, we contend, was not consistent with our national interests.

### *1. Selective History and False Perception*

The Honorable Abraham D. Sofaer, Legal Adviser to the Department of State, has presented arguments in defense of the United States withdrawal from the World Court's compulsory jurisdiction. These arguments, we submit, are premised on shaky historical and perceptual foundations.

#### *a) Claim that the ICJ's Compulsory Jurisdiction Has Been an Historical Failure*

Judge Sofaer first argues that

the hopes originally placed in the compulsory jurisdiction by the architects of the Court's Statute have never been realized, and will not be realized in the foreseeable future. The compulsory jurisdiction of the Court reflects a compromise struck by the framers of the UN Charter. Acceptance of compulsory jurisdiction was not made mandatory, but left to the option of States. We had hoped that widespread acceptance of compulsory jurisdiction, and its successful employment in actual cases, would eventually lead to its universal acceptance... Currently only 46 of the 161 States entitled to accept the Court's compulsory jurisdiction have done so... What is more, many of the States that do accept compulsory jurisdiction have attached reservations to their acceptances so as to deprive them of much of their meaning.

In this account, however, the Legal Adviser omits several key facts clearly evident in the historical record. In addition to disregarding that most of the Court's judgments have won respect and compliance, he ignores that the majority of the drafters of the Court's Statute wanted compulsory jurisdiction to be mandatory, not optional. He ignores, too, that it was primarily the governments of the United States and the Soviet Union that resisted the idea of compulsory jurisdiction and that it was consequently these same governments that helped to force the compromise to which he refers. And he ignores that it was the United States, by its 1946 declaration of acceptance of the Court's compulsory jurisdiction, including the well known Connally Amendment, that set the model for other countries in making disabling reservations to that jurisdiction.

In other words, never having fully accepted the World Court's compulsory jurisdiction in the first place, it was to no small

degree the United States itself, by virtue of its unchallenged supremacy in the world community immediately following World War II, that contributed significantly – and, we believe, unwisely – to the erosion of the World Court's compulsory jurisdiction. As eminent jurists and others have observed on repeated occasions, the reservations attached by the United States to its 1946 declaration of acceptance of the Court's compulsory jurisdiction substantially undercut the example the United States tried to set for other governments by its act of acceptance.

Thus the Administration's dubious logic is revealed: the compulsory jurisdiction of the International Court of Justice is a desirable goal; it has not, however, lived up to its potential because some powerful governments, including the United States, have not thrown their full weight behind it; therefore, the United States, in the name of justice, should not put any weight behind it. It may be noted that it is a similar, if not identical, illogic that underwrote, at least in part, the United States withdrawal from continued participation in the case brought by Nicaragua against the United States and now pending *ex parte* before the World Court (pursuant to Article 53 of the ICJ Statute). The United States ostensibly supports acceptance of the Court's compulsory jurisdiction and therefore, logically, should have been eager to endorse Nicaragua's claim to such acceptance. But it was not thus eager and did not so endorse. Instead, despite the Court's finding of such acceptance by Nicaragua and notwithstanding that the Court's Statute (to which the United States is a party) requires any dispute about the Court's jurisdiction to be settled exclusively by the Court, the United States, claiming the Court's decision to be, according to Judge Sofaer, "insupportable as a matter of law," chose to discontinue its participation in the case.

b) *Claim that the ICJ Has No Role in International "Political" Conflicts*

The Legal Adviser further argues that the World Court has no role in controversies involving use-of-force and self-defense issues, that such "political" issues are assigned by the UN Charter to the UN Security Council alone, and that, in the matter of Nicaragua, the Security Council has delegated the responsibility for peacemaking exclusively to the so-called Contadora Process. However, apart from the vital question of how realistic it was to expect the Contadora Process to discharge this responsibility, it is important to note that Article 24 of the UN Charter clearly states that the "members confer on the Security Council primary (i.e., not exclusive) responsibility for the maintenance of international peace and security." Also, thirty years ago the United States itself argued vigorously this non-exclusive interpretation of Article 24 to support the successful Uniting for Peace Resolution giving peacekeeping powers to the UN General Assembly. Now the United States argues in reverse direction, ironically reiterating the Soviet Union's contentions of thirty years ago. In so doing, it also argues contrary to the ruling that it championed and that was actually rendered in the manifestly "political" *Iranian Hostages Case*. Patent violations of international law are simply not classifiable, properly, as political questions.

c) *Claim that the ICJ is a Threat to U.S. National Security*

Finally Judge Sofaer argues that, following the World Court's assumption of jurisdiction in the Nicaragua case, "acceptance of the Court's compulsory jurisdiction (became) an issue of strategic significance." He states:

To the extent that the Court were to make decisions that limited our ability to confront Soviet expansionism, we would be bound by those principles even though the Soviets could and would do as they pleased.

In short, because not all States — in particular the Soviet Union — do not accept the Court's compulsory jurisdiction, the United States, in doing so, would be surrendering this nation's right to guarantee the safety and security of its people and allies.

We respectfully disagree. Putting aside the validity of the implied proposition that U.S. national security is threatened in Nicaragua, such an interpretation of the UN Charter and the Statute of the International Court of Justice strains credibility. No one, least of all the Major Powers, has ever expected or intended that World Court decisions would or should impair "the inherent right of individual and collective self-defence" guaranteed by UN Charter Article 51. Moreover, though we never would endorse the United States vetoing a World Court judgment, both because such an action would likely be contrary to UN Charter Article 27 and because it would establish the United States as the moral equivalent of the USSR, it must be candidly acknowledged that the United States, as a superpower and permanent member of the Security Council, enjoys advantages not readily available to other sovereign States. In short, the United States would be in no strategic danger from accepting the compulsory jurisdiction of the World Court. Furthermore, if the aim of the United States is to end Soviet expansionism in part by convincing the Soviet Union of the benefits of the world rule of law, it seems doubtful that it will achieve this goal by withdrawing from the Court's compulsory jurisdiction. Pragmatism as well as idealism

favours arguing from a posture of moral supremacy.

One further, related point. In connection with the pending Nicaragua case, the United States has contended that acceptance of the World Court's compulsory jurisdiction would have severely compromised the evidence that, the Administration claims, establishes Nicaragua's "aggression" against its neighbors. That is, the pertinent evidence is of such a highly sensitive intelligence character that to have accepted the Court's compulsory jurisdiction would have been to jeopardize U.S. national security interests because it would have required making the evidence public or otherwise available to two judges from Warsaw Pact nations. In response, it may be noted that, by virtue of the precedent *Corfu Channel Case*, (1949) ICJ Rep. 4 (Merits), the United States would not have been obliged to disclose secret information it did not want to disclose nor to disclose the exact source of its information. Furthermore, because of the large amount of pertinent information already publicly and widely known, it is likely that the Court would have been able to gather sufficient evidence without having to resort to highly classified sources. In any event, in keeping with its own rules, the Court would have declined to decide the case had there not been evidence sufficient to support it.

## *2. Damaging Political Assessments and Motives*

Whatever the official explanations, the real reasons behind the United States withdrawal from the World Court's compulsory jurisdiction would appear to be two. The first suggests political assessments damaging to United States interests; the second, political motives damaging to United States interests.

### a) *Damaging Political Assessments*

The Reagan Administration appears to have concluded that, in the pending Nicaragua case, the World Court will find the United States in violation of international law as generally understood and that the humiliation of this probable judicial defeat can best be reduced by an attack in advance on the World Court itself. Some States have done this in the past, and to most outward appearances they have not suffered greatly as a result, at least not in the short run.

Nevertheless, the Administration's withdrawal action seems extremely shortsighted on at least three critical counts:

*first*, withdrawing from the World Court's compulsory jurisdiction risks undermining the Administration's efforts to ensure in other settings – for example, when dealing with arms control, with human rights, with terrorism, or with claims against American foreign investment – that other governments, including the Soviet Union, fulfill their obligations under international law;

*second*, because many Americans want their government to uphold and promote international law, especially when dealing with a small country seeking to determine its own political destiny, boycotting the World Court in the context of Nicaragua risks legitimizing civil protest within the United States, and the more so if the Administration opts also to defy the World Court's substantive ruling in the Nicaragua case, expected in early 1986; and

*third*, while attempting to deny the World Court any authority to decide any political conflict tends to put the United States on the plane of principle, generally boycotting the World Court is nevertheless more likely to be received as "sour grapes" in relation to our Nicaragua policy, not least among those governments that are

sympathetic to Nicaragua's revolution and that now may feel more encouraged to cause the United States some serious diplomatic embarrassment.

Beyond this, in its effort to portray the Hague justices as anti-American, Marxist, or hostile to Western values, the Reagan Administration can scarcely be seen as winning converts to its side. For in fact the reality is quite different. Most informed observers regard the behaviour of the World Court as very professional, especially when compared to any other major organ of the United Nations system. Although its fifteen judges are not elected to their nine-year terms without the acquiescence of their own governments, nominations are carefully screened to assure that professional standards are met, and overwhelmingly they have been. If anything, as distinguished jurists with a tendency to respect acquired legal rights, the Court has been conservative overall. Additionally, many of the judges hail from countries that are military allies of, or otherwise maintain close ties with, the United States.

### b) *Damaging Political Motives*

Taking into account the overall foreign policy of the United States since 1980 especially, there appears to be yet another explanation for our withdrawal from the compulsory jurisdiction of the World Court, namely, a disturbing inclination to avoid international affiliations and obligations save where they serve the direct and special interests of the United States as defined by the administration in power. The U.S. withdrawal is of a piece with a now long list of foreign policy moves that suggest a preference for unilateral self-help over multilateral cooperation whenever supposed American interests are believed threatened or compromised. In the last several years, the United States has stood alone in the

World Health Organization against attempts to improve the usage of baby formula; reneged on a pledge to increase funding for the International Development Association; similarly notified UNCTAD; withdrawn from UNESCO; refused an elaborately negotiated revision of the laws of war; held up and refused to sign an even more elaborately negotiated Law of the Sea Treaty, and later refused to pay UN assessed dues for the Treaty's implementation; held that UN peacekeeping forces in Lebanon were part of the problem rather than, as traditionally understood, part of the solution; and so on.

In fairness, the Reagan Administration's withdrawal action may not be as much of a departure from earlier American practice as at first it might seem. It is hard to know how the Kennedy, Johnson, Nixon, Ford, and Carter administrations would have responded to equivalent challenges, say, from Southeast Asia or the Middle East.

Still, the recent years will be noted for their go-it-alone style, a period during which the United States has moved decisively from being a champion of law and internationalism to being an abettor of an old-fashioned unilateralism that refuses to be tied down by legal restraints, that treats laws like fences, made to be climbed. And nowhere, perhaps, is this better demonstrated than in the reactions of the United States to the Nicaragua case itself. For example, despite the Court's preliminary orders calling upon Washington to "ensure that no action of any kind is taken which might aggravate or extend the dispute submitted to the Court," the United States subsequently issued a trade embargo against Nicaragua, contravening not only the Court order but also Article 14 of a 1958 Treaty of Friendship, Commerce and Navigation between the United States and Nicaragua. Similarly, despite an obligation under Article 36(6) of the ICJ Statute to defer to

the Court's jurisdictional finding, the United States chose to boycott the suit and for the next two years to refuse to accept the Court's jurisdiction in respect of any cases arising from U.S. actions in Central America.

Thus, the withdrawal by the United States from the general compulsory jurisdiction of the World Court is but the latest in a series of foreign policy moves that in the end invites the use of force to resolve international conflicts and signals to all political actors that "justice" is a matter of "winning." As such, it deals a blow to the struggle for enhanced international third-party decision-making techniques and procedures, and it compels at least the thoughtful among us to ask how roughly we really want to act in this nuclear age.

### 3) *The Limits of Presidential Power*

There remains a final concern: did the President have the authority to deny to his fellow citizens and their representatives the opportunity to be consulted about this basic reversal of international public policy?

It is, we acknowledge, an open constitutional question whether the Executive Branch can terminate without Congressional approval an international obligation of the sort involved here. Technically, perhaps, our 1946 declaration of acceptance of the compulsory jurisdiction of the World Court did not constitute a treaty commitment *stricto sensu* and for this reason did not constitute a part of the "supreme Law of the Land" binding upon the Executive Branch. It was, however, adopted by more than two-thirds of the Senate as if it were a treaty and it has in fact been relied upon for thirty-nine years by other States to their juridical detriment. Surely, therefore, the Congress had a fundamental institutional concern to be at least consulted

about this drastic change of international commitment. And surely, too, in this last half century of expanding human rights law especially, when the United States in particular has championed the universal human right of everyone "to take part in the government of his country, directly or through freely chosen representatives," the American people had the right to be at least advised.

In the withdrawal by the United States from the general compulsory jurisdiction of the World Court we have the negation of a fundamental commitment essential to the integrity and progress of the international system. That integrity and progress is vital to the interests of United States citizens in a peaceful and just democracy. Respect for the rule of law both at home and abroad should have dictated vigorous public discussion and debate at the very minimum.

## Recommendations and Conclusion

If one is to take seriously the arguments put forward by the Administration to justify the United States withdrawal from the general compulsory jurisdiction of the International Court of Justice, then it follows that no State should accept that jurisdiction. For the sake of a peaceful and just future, however, we of the Independent Commission on Respect for International Law earnestly hope that such a dangerous course will not be taken. The wisdom of binding oneself to the world rule of law transcends national boundaries and interests.

It is well known that the peoples and governments of this planet live today in an increasingly interdependent and interpenetrating global society. It also is well known, however, that this global society is in an extremely fragile state at this historical time, requiring for its general stability and progress — indeed, its very survival — a

large commitment to the world rule of law. In our view, it is not in our national interest nor in the interest of the world community as a whole for the United States to give even the appearance of contempt for international law. But such an appearance is inherent, we believe, in the act of withdrawal taken by the Reagan Administration on October 7, 1985.

Accordingly, Mr. Chairman, the Independent Commission on Respect for International Law urges that the United States reverse its October 7 decision, that it re-establish itself as a champion of the compulsory jurisdiction of the World Court, and that it make every effort to persuade other governments and peoples to do likewise. Specifically, we urge the United States Government to adopt a new instrument of general adherence to the compulsory jurisdiction of the World Court but without the types of qualifications and reservations which in the past, as the Department of State admits in its own testimony before this Subcommittee, have weakened the Court and the ability of the United States to resort to it.

In addition, we urge the Congress to reaffirm its support of the world rule of law and, to this end, to support House Joint Resolution 417 of October 8, 1985 calling for the establishment of a bi-partisan "United States Commission on Improving the Effectiveness of the United Nations" which, we understand, could be charged with improving the effectiveness of one of the UN's principal organs, the International Court of Justice. If problems exist in respect of the World Court — for example, in connection with the selection or character of its judges — such a bi-partisan commission can investigate the problems, make recommendations to solve them, and thereby enhance the prospects for the world rule of law. The Statute of the International Court of Justice gives the Court the power

to suggest amendments. The Court would no doubt welcome all constructive suggestions for its improvement.

The time is long overdue for governments of all political and socio-economic persuasions to commit themselves to the world rule of law and, to this end, to the enhancement of the International Court of Justice. It is not in the first instance our independence of action that is in jeopardy in-

ternationally, but, rather, our world public order. If that order breaks down, our freedom will be lost and so, too, will the prospects for greater justice for all humankind. A calm, objective look at the U.S. national interest verifies, we believe, that our full participation in the World Court as well as other international institutions and procedures is a good bargain, win or lose.

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# **BASIC TEXTS**

## **The Siracusa Principles**

### **on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights**

#### **Introduction**

A group of 31 distinguished experts in international law, convened by the International Commission of Jurists, the International Association of Penal Law, the American Association for the International Commission of Jurists, the Urban Morgan Institute for Human Rights, and the International Institute of Higher Studies in Criminal Sciences, met in Siracusa, Sicily, for a week in Spring 1984 to consider the limitation and derogation provisions of the International Covenant on Civil and Political Rights. The participants came from Brazil, Canada, Chile, Egypt, France, Greece, Hungary, India, Ireland, Kuwait, Netherlands, Norway, Poland, Switzerland, Turkey, the United Kingdom, the United States of America, the United Nations Centre for Human Rights, the International Labour Organization (ILO), and the sponsoring organizations. A list of the participants is given at the end of the principles.

The participants were agreed upon the need for a close examination of the conditions and grounds for permissible limitations and derogations enunciated in the Covenant in order to achieve an effective implementation of the rule of law. As frequently emphasized by the General Assembly of the United Nations, a uniform interpretation of limitations on rights in the Covenant is of great importance.

In examining these limitations and derogations, the participants sought to identify:

- a) their legitimate objectives,
- b) the general principles of interpretation which govern their imposition and application, and
- c) some of the main features of the grounds for limitation or derogation.

It was recognized that other criteria determine the scope of rights in the Covenant, e.g., the concept of arbitrariness, but time was not available to examine them. It was hoped that it might be possible to examine these other limits on some future occasion.

The participants were agreed that:

- a) there is a close relationship between respect for human rights and the maintenance of international peace and security; indeed the systematic violation of human rights undermines national security and public order and may constitute a threat to international peace; and
- b) notwithstanding the different stages of economic development reached in different

states, the implementation of human rights is an essential requirement for development in the broadest sense.

These principles are considered by the participants to reflect the present state of international law, with the exception of certain recommendations indicated by the use of the verb "should" instead of "shall."

## **The Siracusa Principles\***

### *I. Limitation Clauses*

- A. General Interpretative Principles Relating to the Justification of Limitations
- B. Interpretative Principles Relating to Specific Limitation Clauses
  - i. "prescribed by law"
  - ii. "in a democratic society"
  - iii. "public order (ordre public)"
  - iv. "public health"
  - v. "public morals"
  - vi. "national security"
  - vii. "public safety"
  - viii. "rights and freedoms of others," or "rights and reputations of others"
  - ix. "restrictions on public trial"

### *II. Derogations in a Public Emergency*

- A. "Public Emergency Which Threatens the Life of the Nation"
- B. Proclamation, Notification, and Termination of a Public Emergency
- C. "Strictly Required by the Exigencies of the Situation"
- D. Non-Derogable Rights
- E. Some General Principles on the Introduction and Application of a Public Emergency and Consequent Derogation Measures
- F. Recommendations Concerning the Functions and Duties of the Human Rights Committee and United Nations Bodies

### *I. Limitation Clauses*

#### *A. General Interpretative Principles Relating to the Justification of Limitations\*\**

1. No limitations or grounds for applying them to rights guaranteed by the Covenant are permitted other than those contained in the terms of the Covenant itself.

\* UN Document E/CN.4/1984/4.

\*\* The term "limitations" in these principles includes the term "restrictions" as used in the Covenant.

2. The scope of a limitation referred to in the Covenant shall not be interpreted so as to jeopardize the essence of the right concerned.
3. All limitation clauses shall be interpreted strictly and in favour of the rights at issue.
4. All limitations shall be interpreted in the light and context of the particular right concerned.
5. All limitations on a right recognized by the Covenant shall be provided for by law and be compatible with the objects and purposes of the Covenant.
6. No limitation referred to in the Covenant shall be applied for any purpose other than that for which it has been prescribed.
7. No limitation shall be applied in an arbitrary manner.
8. Every limitation imposed shall be subject to the possibility of challenge to and remedy against its abusive application.
9. No limitation on a right recognized by the Covenant shall discriminate contrary to Article 2, paragraph 1.
10. Whenever a limitation is required in the terms of the Covenant to be "necessary," this term implies that the limitation:
  - (a) is based on one of the grounds justifying limitations recognized by the relevant article of the Covenant,
  - (b) responds to a pressing public or social need,
  - (c) pursues a legitimate aim, and
  - (d) is proportionate to that aim.
 Any assessment as to the necessity of a limitation shall be made on objective considerations.
11. In applying a limitation, a state shall use no more restrictive means than are required for the achievement of the purpose of the limitation.
12. The burden of justifying a limitation upon a right guaranteed under the Covenant lies with the state.
13. The requirement expressed in Article 12 of the Covenant, that any restrictions be consistent with other rights recognized in the Covenant, is implicit in limitations to the other rights recognized in the Covenant.
14. The limitation clauses of the Covenant shall not be interpreted to restrict the exercise of any human rights protected to a greater extent by other international obligations binding upon the state.

## *B. Interpretative Principles Relating to Specific Limitation Clauses*

### *i. "prescribed by law"*

15. No limitation on the exercise of human rights shall be made unless provided for by national law of general application which is consistent with the Covenant and is in force at the time the limitation is applied.
16. Laws imposing limitations on the exercise of human rights shall not be arbitrary or unreasonable.
17. Legal rules limiting the exercise of human rights shall be clear and accessible to everyone.
18. Adequate safeguards and effective remedies shall be provided by law against illegal or abusive imposition or application of limitations on human rights.

### *ii. "in a democratic society"*

19. The expression "in a democratic society" shall be interpreted as imposing a further restriction on the limitation clauses it qualifies.
20. The burden is upon a state imposing limitations so qualified to demonstrate that the limitations do not impair the democratic functioning of the society.
21. While there is no single model of a democratic society, a society which recognizes and respects the human rights set forth in the United Nations Charter and the Universal Declaration of Human Rights may be viewed as meeting this definition.

iii. *"public order (ordre public)"*

22. The expression "public order (ordre public)" as used in the Covenant may be defined as the sum of rules which ensure the functioning of society or the set of fundamental principles on which society is founded. Respect for human rights is part of public order (ordre public).

23. Public order (ordre public) shall be interpreted in the context of the purpose of the particular human right which is limited on this ground.

24. State organs or agents responsible for the maintenance of public order (ordre public) shall be subject to controls in the exercise of their power through the parliament, courts, or other competent independent bodies.

iv. *"public health"*

25. Public health may be invoked as a ground for limiting certain rights in order to allow a state to take measures dealing with a serious threat to the health of the population or individual members of the population. These measures must be specifically aimed at preventing disease or injury or providing care for the sick and injured.

26. Due regard shall be had to the international health regulations of the World Health Organization.

v. *"public morals"*

27. Since public morality varies over time and from one culture to another, a state which invokes public morality as a ground for restricting human rights, while enjoying a certain margin of discretion, shall demonstrate that the limitation in question is essential to the maintenance of respect for fundamental values of the community.

28. The margin of discretion left to states does not apply to the rule of non-discrimination as defined in the Covenant.

vi. *"national security"*

29. National security may be invoked to justify measures limiting certain rights only when they are taken to protect the existence of the nation or its territorial integrity or political independence against force or threat of force.

30. National security cannot be invoked as a reason for imposing limitations to prevent merely local or relatively isolated threats to law and order.

31. National security cannot be used as a pretext for imposing vague or arbitrary limitations and may only be invoked when there exist adequate safeguards and effective remedies against abuse.

32. The systematic violation of human rights undermines true national security and may jeopardize international peace and security. A state responsible for such violation shall not invoke national security as a justification for measures aimed at suppressing opposition to such violation or at perpetrating repressive practices against its population.

vii. *"public safety"*

33. Public safety means protection against danger to the safety of persons, to their life or physical integrity, or serious damage to their property.

34. The need to protect public safety can justify limitations provided by law. It cannot be used for imposing vague or arbitrary limitations and may only be invoked when there exist adequate safeguards and effective remedies against abuse.

viii. *"rights and freedoms of others" or the "rights or reputations of others"*

35. The scope of the rights and freedoms of others that may act as a limitation upon rights in the Covenant extends beyond the rights and freedoms recognized in the Covenant.

36. When a conflict exists between a right protected in the Covenant and one which is not, recognition and consideration should be given to the fact that the Covenant seeks to protect the most fundamental rights and freedoms. In this context especial weight should be afforded to rights not subject to limitations in the Covenant.

37. A limitation to a human right based upon the reputation of others shall not be used to protect the state and its officials from public opinion or criticism.

*ix. "restrictions on public trial"*

38. All trials shall be public unless the Court determines in accordance with law that:

- (a) the press or the public should be excluded from all or part of a trial on the basis of specific findings announced in open courts showing that the interest of the private lives of the parties or their families or of juveniles so requires; or
- (b) the exclusion is strictly necessary to avoid publicity prejudicial to the fairness of the trial or endangering public morals, public order (ordre public), or national security in a democratic society.

## II. Derogations in a Public Emergency

### A. "Public Emergency which Threatens the Life of the Nation"

39. A state party may take measures derogating from its obligations under the International Covenant on Civil and Political Rights pursuant to Article 4 (hereinafter called "derogation measures") only when faced with a situation of exceptional and actual or imminent danger which threatens the life of the nation. A threat to the life of the nation is one that:

- (a) affects the whole of the population and either the whole or part of the territory of the State, and
- (b) threatens the physical integrity of the population, the political independence or the territorial integrity of the State or the existence or basic functioning of institutions indispensable to ensure and protect the rights recognized in the Covenant.

40. Internal conflict and unrest that do not constitute a grave and imminent threat to the life of the nation cannot justify derogations under Article 4.

41. Economic difficulties per se cannot justify derogation measures.

### B. Proclamation, Notification, and Termination of a Public Emergency

42. A state party derogating from its obligations under the Covenant shall make an official proclamation of the existence of a public emergency threatening the life of the nation.

43. Procedures under national law for the proclamation of a state of emergency shall be prescribed in advance of the emergency.

44. A state party derogating from its obligations under the Covenant shall immediately notify the other states parties to the Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and the reasons by which it was actuated.

45. The notification shall contain sufficient information to permit the states parties to exercise their rights and discharge their obligations under the Covenant. In particular it shall contain:

- (a) the provisions of the Covenant from which it has derogated;
- (b) a copy of the proclamation of emergency, together with the constitutional provisions, legislation, or decrees governing the state of emergency in order to assist the states parties to appreciate the scope of the derogation;
- (c) the effective date of the imposition of the state of emergency and the period for which it has been proclaimed;
- (d) an explanation of the reasons which actuated the government's decision to derogate, including a brief description of the factual circumstances leading up to the proclamation of the state of emergency; and

(e) a brief description of the anticipated effect of the derogation measures on the rights recognized by the Covenant, including copies of decrees derogating from these rights issued prior to the notification.

46. States parties may require that further information necessary to enable them to carry out their role under the Covenant be provided through the intermediary of the Secretary-General.

47. A state party which fails to make an immediate notification in due form of its derogation is in breach of its obligations to other states parties and may be deprived of the defences otherwise available to it in procedures under the Covenant.

48. A state party availing itself of the right of derogation pursuant to Article 4 shall terminate such derogation in the shortest time required to bring to an end the public emergency which threatens the life of the nation.

49. The state party shall on the date on which it terminates such derogation inform the other states parties, through the intermediary of the Secretary-General of the United Nations, of the fact of the termination.

50. On the termination of a derogation pursuant to Article 4 all rights and freedoms protected by the Covenant shall be restored in full. A review of the continuing consequences of derogation measures shall be made as soon as possible. Steps shall be taken to correct injustices and to compensate those who have suffered injustice during or in consequence of the derogation measures.

### C. "Strictly Required by the Exigencies of the Situation"

51. The severity, duration, and geographic scope of any derogation measures shall be such only as are strictly necessary to deal with the threat to the life of the nation and are proportionate to its nature and extent.

52. The competent national authorities shall be under a duty to assess individually the necessity of any derogation measure taken or proposed to deal with the specific dangers posed by the emergency.

53. A measure is not strictly required by the exigencies of the situation where ordinary measures permissible under the specific limitations clauses of the Covenant would be adequate to deal with the threat to the life of the nation.

54. The principle of strict necessity shall be applied in an objective manner. Each measure shall be directed to an actual, clear, present, or imminent danger and may not be imposed merely because of an apprehension of potential danger.

55. The national constitution and laws governing states of emergency shall provide for prompt and periodic independent review by the legislature of the necessity for derogation measures.

56. Effective remedies shall be available to persons claiming that derogation measures affecting them are not strictly required by the exigencies of the situation.

57. In determining whether derogation measures are strictly required by the exigencies of the situation the judgment of the national authorities cannot be accepted as conclusive.

### D. Non-Derogable Rights

58. No state party shall, even in time of emergency threatening the life of the nation, derogate from the Covenant's guarantees of the right to life; freedom from torture, cruel, inhuman or degrading treatment or punishment, and from medical or scientific experimentation without free consent; freedom from slavery or involuntary servitude; the right not to be imprisoned for contractual debt; the right not to be convicted or sentenced to a heavier penalty by virtue of retroactive criminal legislation; the right to recognition as a person before the law; and freedom of thought, conscience and religion. These rights are not derogable under any conditions even for the asserted purpose of preserving the life of the nation.

59. States parties to the Covenant, as part of their obligation to ensure the enjoyment of these rights to all persons within their jurisdiction (Art. 2(1)) and to adopt measures to secure an effective remedy for violations (Art. 2(3)), shall take special precautions in time of public emergency to ensure that neither official nor semi-official groups engage in a practice of arbitrary and extra-judicial killings or involuntary disappearances, that persons in detention are protected against torture and other forms

of cruel, inhuman or degrading treatment or punishment, and that no persons are convicted or punished under laws or decrees with retroactive effect.

60. The ordinary courts shall maintain their jurisdiction, even in a time of public emergency, to adjudicate any complaint that a non-derogable right has been violated.

### *E. Some General Principles on the Introduction and Application of a Public Emergency and Consequent Derogation Measures*

61. Derogation from rights recognized under international law in order to respond to a threat to the life of the nation is not exercised in a legal vacuum. It is authorized by law and as such it is subject to several legal principles of general application.

62. A proclamation of a public emergency shall be made in good faith based upon an objective assessment of the situation in order to determine to what extent, if any, it poses a threat to the life of the nation. A proclamation of a public emergency, and consequent derogations from Covenant obligations, that are not made in good faith are violations of international law.

63. The provisions of the Covenant allowing for certain derogations in a public emergency are to be interpreted restrictively.

64. In a public emergency the rule of law shall still prevail. Derogation is an authorized and limited prerogative in order to respond adequately to a threat to the life of the nation. The derogating state shall have the burden of justifying its actions under law.

65. The Covenant subordinates all procedures to the basic objectives of human rights. Article 5(1) of the Covenant sets definite limits to actions taken under the Covenant:

Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

Article 29(2) of the Universal Declaration of Human Rights sets out the ultimate purpose of law:

In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

These provisions apply with full force to claims that a situation constitutes a threat to the life of a nation and hence enables authorities to derogate.

66. A bona fide proclamation of the public emergency permits derogation from specified obligations in the Covenant, but does not authorize a general departure from international obligations. The Covenant in Articles 4(1) and 5(2) expressly prohibits derogations which are inconsistent with other obligations under international law. In this regard, particular note should be taken of international obligations which apply in a public emergency under the Geneva and ILO Conventions.

67. In a situation of a non-international armed conflict a state party to the 1949 Geneva Conventions for the protection of war victims may under no circumstances suspend the right to a trial by a court offering the essential guarantees of independence and impartiality (Article 3 common to the 1949 Conventions). Under the 1977 additional Protocol II, the following rights with respect to penal prosecution shall be respected under all circumstances by states parties to the Protocol:

- (a) the duty to give notice of charges without delay and to grant the necessary rights and means of defence;
- (b) conviction only on the basis of individual penal responsibility;
- (c) the right not to be convicted, or sentenced to a heavier penalty, by virtue of retroactive criminal legislation;
- (d) presumption of innocence;
- (e) trial in the presence of the accused;

- (f) no obligation on the accused to testify against himself or to confess guilt;
- (g) the duty to advise the convicted person on judicial and other remedies.

68. The ILO basic human rights conventions contain a number of rights dealing with such matters as forced labour, freedom of association, equality in employment and trade union and workers' rights which are not subject to derogation during an emergency; others permit derogation, but only to the extent strictly necessary to meet the exigencies of the situation.

69. No state, including those that are not parties to the Covenant, may suspend or violate, even in times of public emergency;

- (a) the right to life;
- (b) freedom from torture or cruel, inhuman or degrading treatment or punishment and from medical or scientific experimentation;
- (c) the right not to be held in slavery or involuntary servitude; and,
- (d) the right not to be subjected to retroactive criminal penalties as defined in the Covenant.

Customary international law prohibits in all circumstances the denial of such fundamental rights.

70. Although protections against arbitrary arrest and detention (Art. 9) and the right to a fair and public hearing in the determination of a criminal charge (Art. 14) may be subject to legitimate limitations if strictly required by the exigencies of an emergency situation, the denial of certain rights fundamental to human dignity can never be strictly necessary in any conceivable emergency. Respect for these fundamental rights is essential in order to ensure enjoyment of non-derogable rights and to provide an effective remedy against their violation. In particular:

- (a) all arrests and detention and the place of detention shall be recorded, if possible centrally, and made available to the public without delay;
- (b) no person shall be detained for an indefinite period of time, whether detained pending judicial investigation or trial or detained without charge;
- (c) no person shall be held in isolation without communication with his family, friend, or lawyer for longer than a few days, e.g., three to seven days;
- (d) where persons are detained without charge the need for their continued detention shall be considered periodically by an independent review tribunal;
- (e) any person charged with an offence shall be entitled to a fair trial by a competent, independent and impartial court established by law;
- (f) civilians shall normally be tried by the ordinary courts; where it is found strictly necessary to establish military tribunals or special courts to try civilians, their competence, independence and impartiality shall be ensured and the need for them reviewed periodically by the competent authority;
- (g) any person charged with a criminal offence shall be entitled to the presumption of innocence and to at least the following rights to ensure a fair trial:
  - the right to be informed of the charges promptly, in detail and in a language he understands,
  - the right to have adequate time and facilities to prepare the defence including the right to communicate confidentially with his lawyer,
  - the right to a lawyer of his choice, with free legal assistance if he does not have the means to pay for it,
  - the right to be present at the trial,
  - the right not to be compelled to testify against himself or to make a confession,
  - the right to obtain the attendance and examination of defence witnesses,
  - the right to be tried in public save where the court orders otherwise on grounds of security with adequate safeguards to prevent abuse,
  - the right to appeal to a higher court;
- (h) an adequate record of the proceedings shall be kept in all cases; and,
- (i) no person shall be tried or punished again for an offence for which he has already been convicted or acquitted.



## *F. Recommendations Concerning the Functions and Duties of the Human Rights Committee and United Nations Bodies*

71. In the exercise of its power to study, report, and make general comments on states parties' reports under Article 40 of the Covenant, the Human Rights Committee may and should examine the compliance of states parties with the provisions of Article 4. Likewise it may and should do so when exercising its powers in relevant cases under Article 41 and the Optional Protocol relating, respectively, to interstate and individual communications.

72. In order to determine whether the requirements of Article 4(1) and (2) have been met and for the purpose of supplementing information in states parties' reports, members of the Human Rights Committee, as persons of recognized competence in the field of human rights, may and should have regard to information they consider to be reliable provided by other intergovernmental bodies, non-governmental organizations, and individual communications.

73. The Human Rights Committee should develop a procedure for requesting additional reports under Article 40(1)(b) from states parties which have given notification of derogation under Article 4(3) or which are reasonably believed by the Committee to have imposed emergency measures subject to Article 4 constraints. Such additional reports should relate to questions concerning the emergency insofar as it affects the implementation of the Covenant and should be dealt with by the Committee at the earliest possible date.

74. In order to enable the Human Rights Committee to perform its fact-finding functions more effectively, the committee should develop its procedures for the consideration of communications under the Optional Protocol to permit the hearing of oral submissions and evidence as well as visits to states parties alleged to be in violation of the Covenant. If necessary, the states parties to the Optional Protocol should consider amending it to this effect.

75. The United Nations Commission on Human Rights should request its Sub-Commission on Prevention of Discrimination and Protection of Minorities to prepare an annual list of states, whether parties to the Covenant or not, that proclaim, maintain, or terminate a public emergency together with:

- (a) in the case of a state party, the proclamation and notification; and,
- (b) in the case of other states, any available and apparently reliable information concerning the proclamation, threat to the life of the nation, derogation measures and their proportionality, non-discrimination, and respect for non-derogable rights.

76. The United Nations Commission on Human Rights and its Sub-Commission should continue to utilize the technique of appointment of special rapporteurs and investigatory and fact-finding bodies in relation to prolonged public emergencies.

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# International Covenant on Civil and Political Rights

## Preamble

*The States Parties to the present Covenant,*

*Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,*

*Recognizing that these rights derive from the inherent dignity of the human person,*

*Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,*

*Considering the obligations of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,*

*Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,*

*Agree upon the following articles:*

## Part I

### Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

## Part II

### Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdic-

tion the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the Present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

### Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

### Article 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

### Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

## Part III

### Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

### Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

### Article 8

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

3. (a) No one shall be required to perform forced or compulsory labour.

(b) Paragraph 3(a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

(c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:

(i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court,

or of a person during conditional release from such detention;

- (ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;
- (iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;
- (iv) Any work or service which forms part of normal civil obligations.

#### Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

#### Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise

treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

#### Article 11

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

#### Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

#### Article 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

#### Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall

be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

#### Article 15

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

#### Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

#### Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

#### Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

#### Article 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

#### Article 20

1. Any propaganda for war shall be prohibited by law.

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

#### Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

#### Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as to pre-

judice, the guarantees provided for in that Convention.

#### Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

2. The right of men and women of marriageable age to marry and to found a family shall be recognized.

3. No marriage shall be entered into without the free and full consent of the intending spouses.

4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

#### Article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

2. Every child shall be registered immediately after birth and shall have a name.

3. Every child has the right to acquire a nationality.

#### Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country.

#### Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

#### *Article 27*

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

### **Part IV**

#### *Article 28*

1. There shall be established a Human Rights Committee (hereinafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.

2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.

3. The members of the Committee shall be elected and shall serve in their personal capacity.

#### *Article 29*

1. The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in article 28 and nominated for the purpose by the State Parties to the present Covenant.

2. Each State Party to the present Covenant may nominate not more than two persons. These persons shall be nationals of the nominating State.

3. A person shall be eligible for renomination.

#### *Article 30*

1. The initial election shall be held no later than six months after the date of the entry into force of the present Covenant.

2. At least four months before the date of each election to the Committee, other than an election to fill a vacancy declared in accordance with article 34, the Secretary-General of the United Nations shall address a written invitation to the States Parties to the present Covenant to submit their nominations for membership of the Committee within three months.

3. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties to the present Covenant no later than one month

before the date of each election.

4. Elections of the members of the Committee shall be held at a meeting of the States Parties to the present Covenant convened by the Secretary-General of the United Nations at the Headquarters of the United Nations. At that meeting, for which two thirds of the States Parties to the present Covenant shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

#### *Article 31*

1. The Committee may not include more than one national of the same State.

2. In the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems.

#### *Article 32*

1. The members of the Committee shall be elected for a term of four years. They shall be eligible for reelection if renominated. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these nine members shall be chosen by lot by the Chairman of the meeting referred to in article 30, paragraph 4.

2. Elections at the expiry of office shall be held in accordance with the preceding articles of this part of the present Covenant.

#### *Article 33*

1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the United Nations, who shall then declare the seat of that member to be vacant.

2. In the event of the death or the resignation of a member of the Committee, the Chairman shall immediately notify the Secretary-General of the United Nations, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

#### *Article 34*

1. When a vacancy is declared in accordance with article 33 and if the term of office of the member to be replaced does not expire within six months of the declaration of the vacancy, the



Secretary-General of the United Nations shall notify each of the States Parties to the present Covenant, which may within two months submit nominations in accordance with article 29 for the purpose of filling the vacancy.

2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the States Parties to the present Covenant. The election to fill the vacancy shall then take place in accordance with the relevant provisions of this part of the present Covenant.

3. A member of the Committee elected to fill a vacancy declared in accordance with article 33 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that article.

#### Article 35

The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities.

#### Article 36

The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant.

#### Article 37

1. The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.

2. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

3. The Committee shall normally meet at the Headquarters of the United Nations or at the United Nations Office at Geneva.

#### Article 38

Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously.

#### Article 39

1. The Committee shall elect its officers for a term of two years. They may be reelected.

2. The Committee shall establish its own rules of procedure, but these rules shall provide, *inter alia*, that:

(a) Twelve members shall constitute a quorum;

(b) Decisions of the Committee shall be made by a majority vote of the members present.

#### Article 40

1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights:

(a) Within one year of the entry into force of the present Covenant for the States Parties concerned;

(b) Thereafter whenever the Committee so requests.

2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.

3. The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.

4. The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.

5. The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this article.

#### Article 41

1. A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance to the following procedure:

(a) If a State Party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation, or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter.

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State.

(c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged.

(d) The Committee shall hold closed meetings when examining communications under this article.

(e) Subject to the provisions of sub-paragraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in the present Covenant.

(f) In any matter referred to it, the Committee may call upon the States Parties concerned, referred to in sub-paragraph (b), to supply any relevant information.

(g) The States Parties concerned, referred to in sub-paragraph (b), shall have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing.

(h) The Committee shall, within twelve months after the date of receipt of notice under sub-paragraph (b), submit a report:

(i) If a solution within the terms of sub-paragraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;

(ii) If a solution within the terms of sub-paragraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by

the States Parties concerned shall be attached to the report.

In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when ten States Parties to the present Covenant have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

#### Article 42

1. (a) If a matter referred to the Committee in accordance with article 41 is not resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of the States Parties concerned, appoint an *ad hoc* Conciliation Commission (hereinafter referred to as the Commission). The good offices of the Commission shall be made available to the States Parties concerned with a view to an amicable solution of the matter on the basis of respect for the present Covenant;

(b) The Commission shall consist of five persons acceptable to the States Parties concerned. If the States Parties concerned fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission concerning whom no agreement has been reached shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States Parties concerned, or of a State not party to the present Covenant, or of a State Party which has not made a declaration under article 41.

3. The Commission shall elect its own Chairman and adopt its own rules of procedure.

4. The meetings of the Commission shall normally be held at the Headquarters of the United Nations or at the United Nations Office at Geneva. However, they may be held at such other convenient places as the Commission may determine

in consultation with the Secretary-General of the United Nations and the States Parties concerned.

5. The secretariat provided in accordance with article 36 shall also service the commissions appointed under this article.

6. The information received and collated by the Committee shall be made available to the Commission and the Commission may call upon the States Parties concerned to supply any other relevant information.

7. When the Commission has fully considered the matter, but in any event not later than twelve months after having been seized of the matter, it shall submit to the Chairman of the Committee a report for communication to the States Parties concerned:

(a) If the Commission is unable to complete its consideration of the matter within twelve months, it shall confine its report to a brief statement of the status of its consideration of the matter.

(b) If an amicable solution to the matter on the basis of respect for human rights as recognized in the present Covenant is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached;

(c) If a solution within the terms of sub-paragraph (b) is not reached, the Commission's report shall embody its findings on all questions of fact relevant to the issues between the States Parties concerned, and its views on the possibilities of an amicable solution of the matter. This report shall also contain the written submissions and a record of the oral submissions made by the States Parties concerned;

(d) If the Commission's report is submitted under sub-paragraph (c), the States Parties concerned shall, within three months of the receipt of the report, notify the Chairman of the Committee whether or not they accept the contents of the report of the Commission.

8. The provisions of this article are without prejudice to the responsibilities of the Committee under article 41.

9. The States Parties concerned shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.

10. The Secretary-General of the United Nations shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States Parties concerned, in accordance with paragraph 9 of this article.

#### Article 43

The members of the Committee, and of the

*ad hoc* conciliation commissions which may be appointed under article 42, shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

#### Article 44

The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures prescribed in the field of human rights by or under the constituent instruments and the conventions of the United Nations and of the specialized agencies and shall not prevent the States Parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

#### Article 45

The Committee shall submit to the General Assembly of the United Nations, through the Economic and Social Council, an annual report on its activities.

### Part V

#### Article 46

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

#### Article 47

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

### Part VI

#### Article 48

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant.

2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited

with the Secretary-General of the United Nations.

3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed this Covenant or acceded to it of the deposit of each instrument of ratification or accession.

#### Article 49

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

#### Article 50

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

#### Article 51

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General of the United Nations shall thereupon communicate any proposed amendments to the State Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the

event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

#### Article 52

Irrespective of the notifications made under article 48, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph 1 of the same article of the following particulars:

(a) Signatures, ratifications and accessions under article 48;

(b) The date of the entry into force of the present Covenant under article 49 and the date of the entry into force of any amendments under article 51.

#### Article 53

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 48.

## Ratifications

81 ratifications: Afghanistan, Australia, Austria, Barbados, Belgium, Bolivia, Bulgaria, Byelorussian SSR, Cameroon, Canada, Central African Rep., Chile, Colombia, Congo, Costa Rica, Cyprus, Czechoslovakia, Denmark, Dominican Rep., Ecuador, Egypt, El Salvador, Finland, France, Gabon, Gambia, German Dem. Rep., Germany/Fed. Rep., Guinea, Guyana, Hungary, Iceland, India, Iran, Iraq, Italy, Jamaica, Japan, Jordan, Kenya, Korea/Dem. Peop. Rep., Lebanon, Libyan Arab Jama., Luxembourg, Madagascar, Mali, Mauritius, Mexico, Mongolia, Morocco, Netherlands, New Zealand, Nicaragua, Norway, Panama, Peru, Poland, Portugal, Romania, Rwanda, Saint Vincent & Grenadines, San Marino, Senegal, Spain, Sri Lanka, Suriname, Sweden, Syrian Arab Rep., Tanzania, Togo, Trinidad & Tobago, Tunisia, Ukrainian SSR, USSR, United Kingdom, Uruguay, Venezuela, Vietnam, Yugoslavia, Zaire, Zambia.

Entry into force: 23 March 1976.

# Optional Protocol to the International Covenant on Civil and Political Rights

*The States Parties to the present Protocol,*

Considering that in order further to achieve the purposes of the Covenant on Civil and Political Rights (hereinafter referred to as the Covenant) and the implementation of its provisions it would be appropriate to enable the Human Rights Committee set up in part IV of the Covenant (hereinafter referred to as the Committee) to receive and consider, as provided in the present Protocol, communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant,

*Have agreed as follows:*

## Article 1

A State Party to the Covenant that becomes a party to the present Protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant. No communication shall be received by the Committee if it concerns a State Party to the Covenant which is not a party to the present Protocol.

## Article 2

Subject to the provisions of article 1, individuals who claim that any of their rights enumerated in the Covenant have been violated and who have exhausted all available domestic remedies may submit a written communication to the committee for consideration.

## Article 3

The Committee shall consider inadmissible any communication under the present Protocol which is anonymous, or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of the Covenant.

## Article 4

1. Subject to the provisions of article 3, the Committee shall bring any communications submitted to it under the present Protocol to the attention of the State Party to the present Protocol alleged to be violating any provision of the Covenant.

2. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy,

if any, that may have been taken by that State.

## Article 5

1. The Committee shall consider communications received under the present Protocol in the light of all written information made available to it by the individual and by the State Party concerned.

2. The Committee shall not consider any communication from an individual unless it has ascertained that:

(a) The same matter is not being examined under another procedure of international investigation or settlement;

(b) The individual has exhausted all available domestic remedies.

This shall not be the rule where the application of the remedies is unreasonably prolonged.

3. The Committee shall hold closed meetings when examining communications under the present Protocol.

4. The Committee shall forward its views to the State Party concerned and to the individual.

## Article 6

The Committee shall include in its annual report under article 45 of the Covenant a summary of its activities under the present Protocol.

## Article 7

Pending the achievement of the objectives of resolution 1514 (XV) adopted by the General Assembly of the United Nations on 14 December 1960 concerning the Declaration on the Granting of Independence to Colonial Countries and Peoples, the provisions of the present Protocol shall in no way limit the right of petition granted to these peoples by the Charter of the United Nations and other international conventions and instruments under the United Nations and its specialized agencies.

## Article 8

1. The present Protocol is open for signature by any State which has signed the Covenant.

2. The present Protocol is subject to ratification by any State which has ratified or acceded to the Covenant. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Protocol shall be open to accession by any State which has ratified or acceded

to the Covenant.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

#### *Article 9*

1. Subject to the entry into force of the Covenant, the present Protocol shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or instrument of accession.

2. For each State ratifying the present Protocol or acceding to it after the deposit of the tenth instrument of ratification or instrument of accession, the present Protocol shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

#### *Article 10*

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

#### *Article 11*

1. Any State Party to the present Protocol may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Protocol with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when

they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendment which they have accepted.

#### *Article 12*

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations. Denunciation shall take effect three months after the date of receipt of the notification by the Secretary-General.

2. Denunciation shall be without prejudice to the continued application of the provisions of the present Protocol to any communication submitted under article 2 before the effective date of denunciation.

#### *Article 13*

Irrespective of the notifications made under article 8, paragraph 5, of the present Protocol, the Secretary-General of the United Nations shall inform all States referred to in Article 48, paragraph 1, of the Covenant of the following particulars:

(a) Signatures, ratifications and accessions under article 8;

(b) The date of the entry into force of the present Protocol under article 9 and the date of the entry into force of any amendments under article 11;

(c) Denunciations under article 12.

#### *Article 14*

1. The present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States referred to in article 48 of the Covenant.

## **Ratifications**

36 ratifications: Barbados, Bolivia, Cameroon, Canada, Central African Rep., Colombia, Congo, Costa Rica, Denmark, Dominican Rep., Ecuador, Finland, France, Iceland, Italy, Jamaica, Luxembourg, Madagascar, Mauritius, Netherlands, Nicaragua, Norway, Panama, Peru, Portugal, Saint Vincent & Grenadines, San Marino, Senegal, Spain, Suriname, Sweden, Trinidad & Tobago, Uruguay, Venezuela, Zaire, Zambia.

Entry into force: 23 March, 1976.

# *Judicial Application of the Rule of Law*

## **Bandhua Mukti Morcha (Bonded Labour Liberation Front) vs. Union of India and Others**

ICJ Review no. 29 (June 1983) contained an article by Prof. Upendra Baxi describing how the Supreme Court of India is evolving new methods to provide justice to the poor. A recent decision delivered by the Court in the above case further illustrates the innovative methods that are being evolved by the Court as part of its judicial activism.

The case arose out of a letter written to the Court on 25 February 1982 by a non-governmental organisation, the Bonded Labour Liberation Front. This letter, based on a survey conducted by the organisation, explained in detail the inhuman and intolerable conditions of workers in some of the stone quarries of the Faridabad district near the city of Delhi.

The letter included a statement by some of the labourers that they were held in bondage. The letter also highlighted other problems, such as denial of minimum wages to the labourers, deduction of 30% from their meagre wages as commission to the middlemen who brought them to the quarries, unsafe working conditions contributing to fatal injuries, lack of first aid or medical facilities, denial of compensation for injuries or death, and lack of basic amenities, such as drinking water, housing and a school.

The letter was treated by the Court as a writ petition under Article 32 of the Constitution which empowers the Supreme Court to issue directions or orders or writs

for the enforcement of fundamental rights conferred by the Indian Constitution.

The Court issued notice on the writ petition and appointed two lawyers to visit the stone quarries to ascertain from the workers whether they were working willingly and also to enquire about the conditions under which they were working.

The two lawyers submitted a report to the Court on 2 March 1982 in which they confirmed the allegations made in the letter as to their intolerable living and working conditions. The report also identified by name some of the workers who were providing forced labour, since they were not free to seek employment elsewhere or leave the quarries.

The Court ordered that the report be supplied to the respondents to the petition. The Court also appointed a Dr. Patwardhan to carry out a socio-legal research on the condition of workers in the stone quarries and to put forward a scheme for improving these conditions. The state of Haryana where the stone quarries are located was ordered by the Court to bear the expenses for this investigation.

The Court stated that after the scheme was submitted it would hear the parties "with a view to evolving a final scheme with the assistance of the State of Haryana for the purpose of economic regeneration of these workmen".

The report submitted by Dr. Patwardhan was later described by the Court as a com-

prehensive and well-documented socio-legal study with constructive suggestions and recommendations for improving the living and working conditions of the workers in the stone quarries.

When the petition came up for hearing after completion of the investigation, two preliminary objections were raised, one by the State of Haryana, and the other by one of the respondent lessees of the quarries. The first objection was that even if what is alleged in the letter is true, it cannot support a writ petition under Article 32 of the Constitution because no fundamental right can be said to have been infringed.

In answer to this objection, the Court referred to its judgment in the case of *Francis Mullen vs. Union of India* in which the Court had interpreted Article 21, which is one of the fundamental rights enshrined in the Indian Constitution providing for 'right to life', to include right to live with 'human dignity and free from exploitation'. The Court said that the present complaint of the workers that they are bonded and are living in miserable conditions was evidence of a violation of a fundamental right. The Court also said that under Article 256 of the Constitution, the executive power of every state should be exercised to ensure compliance with the laws made by the Parliament and other existing laws and in the present case, the state government must therefore ensure that the mine lessees or contractors, to whom it is leasing its mines for stone quarrying operations, are observing social welfare and labour laws enacted for the benefit of the labourers and that this is a constitutional obligation which can be enforced under Article 32 of the Indian Constitution.

The second objection, raised by the respondents, was that the Court had no power to appoint either the two lawyers or Dr. Patwardhan as commissioners and the reports made by them had no evidentiary val-

ue, since what was stated in these reports was based only on *ex parte* statements which had not been tested by cross-examination.

To this objection, the Court said: "rule 6 or Order XLVII of the Supreme Court Rules, 1966, provides that nothing in those Rules "shall be deemed to limit or otherwise affect the inherent powers of the court to make such orders as may be necessary for the ends of justice". "We cannot therefore accept the contention... that the Court acted beyond its power in appointing [the Commissioners]...".

The Court also said that clause (2) of Article 32 of the Constitution is not confined to issuing high prerogative writs. It includes powers to issue any directions, orders or writs which may be appropriate for enforcement of a fundamental right. Further, the Court is not obliged to follow an adversarial procedure, especially when the problems of the poor and the disadvantaged come before the Court. The Supreme Court would be failing in its duty if it refused to intervene because a petitioner belonging to an underprivileged section is unable to produce the relevant material before it. The Court said:

"... it is for this reason that the Supreme Court has evolved the practice of appointing commissions for the purpose of gathering facts and data in regard to a complaint of breach of a fundamental right made on behalf of the weaker sections of the society. The Report of the commissioner would furnish prima facie evidence of the facts and data gathered by the commissioner and that is why the Supreme Court is careful to appoint a responsible person as commissioner to make an inquiry or investigation into the facts relating to the complaint."

"... Once the report of the commissioner is received, copies of it would be



supplied to the parties so that either party, if it wants to dispute any of the facts or data stated in the Report, may do so by filing an affidavit and the Court [will] then consider the report of the commissioner and the affidavits which may have been filed and proceed to adjudicate upon the issue arising in the writ petition."

Having disposed of the preliminary objections, the Court held that all the provisions of the Mines Act of 1952 were applicable to the stone quarries and stone crushing units referred to in the original letter. It followed from this that the owner, agent and manager of these enterprises were responsible for complying with the provisions of the Act and the state of Haryana was bound to take action to enforce the Act, which covers the health, safety, hours of employment and minimum wages of the employees.

On the allegation made in the letter that many of the workmen were bonded, the respondents argued that to come within the purview of the Bonded Labour System (Abolition) Act of 1976, it must be shown that the workmen had incurred a debt or could be presumed to have incurred a debt. It is not sufficient to say that these workmen are providing forced labour because they were not allowed to leave the premises of the establishment. Further, it was agreed that even if some of the workers had filed an affidavit to the effect that they were providing forced labour because of the advances received, this is not sufficient evidence, since the employers had no opportunity to cross-examine these workers.

On these contentions, the Court said that it would be impossible for the labourers to provide independent evidence that they are bonded labourers since they would have no documents to show that they received any advance or other economic ben-

efits. Further, employment of bonded labour being a penal offence under the Act, no employer will admit to the fact that he advanced money to keep a labourer under bondage.

The Court further said that no labourer would provide forced labour for no wage or for a minimal wage, unless he had received some advance or other economic consideration from the employer. Therefore, whenever it is shown that a labourer is made to provide forced labour, the Court could presume until the contrary was shown that he is required to do so in consideration of an advance or other economic benefit and he is, therefore, a bonded labourer as defined under the Act. A state government cannot be permitted to repudiate its obligations under the Act to identify, release and rehabilitate bonded labourers on the plea that it owes no obligation until the labourers prove through an appropriate legal proceeding that they are bonded labourers.

In view of the stand taken by the state government that there are no bonded labourers in the stone quarries, the Court ordered a further enquiry by a central government official in the Ministry of Labour. The Court directed this officer to visit the stone quarries in question and interview workers individually, without the presence of the employers, to ascertain whether they were bonded or not and to find out from those who were bonded, whether they wanted to go back to their original homes and, if so, to make the necessary arrangements for their transportation through the district magistrate. The state government was ordered to make the requisite funds available to the district magistrate for this purpose.

The Court also gave the following directions:

- 1) Within six weeks of the Judgment, the state government was to constitute a

Vigilance Committee in each sub-division of a district, as required under the Bonded Labour System (Abolition) Act, 1976;

- 2) The state government was to instruct every district magistrate to take up the work of identifying and releasing bonded labourers. The state government, district magistrates and vigilance committees were to accept the assistance of non-political social action groups for the purpose of ensuring the implementation of the Bonded Labour (Abolition) Act;
- 3) On the basis of the guidelines set out by the Secretary to the Central Government Labour Ministry, the state government was to draw up a programme within three months for rehabilitation of bonded labourers and implement it to the extent found necessary;
- 4) The central and state government were to take all necessary measures to ensure that minimum wages are paid directly to the workers in the stone quarries. If the wages are paid on the basis of stones loaded on the trucks, to ensure that the workers are not cheated appropriate officers should measure each truck and inscribe how many cubic feet of stone it can contain. Regular checks should also be made to see that the trucks are not overloaded;
- 5) The Central Board of Workers' Education were to organise camps to educate stone quarry workers in the district on the labour and social welfare laws and make a quarterly report to the Court on the progress made;
- 6) The central and state governments were to ensure that the owners of stone quarries make the necessary arrangements to avoid dust pollution. Also, to ensure

that pure drinking water is made available and conservancy facilities in the shape of latrines and urinals are provided to the workers in the stone quarries;

- 7) The central and state governments were to ensure that appropriate and adequate medical and first-aid facilities, including free medical treatment and maternity benefits, were provided to the workers;
- 8) Inspecting officers of appropriate departments were to visit the stone quarries at least once a fortnight to enquire whether any worker was injured or suffering from disease or illness and to take steps for providing medical and legal assistance.

The Court also ordered a joint Secretary in the central government's Ministry of Labour to submit a report on the implementation of the above directives.

The Court also observed as follows:

"We have given these directions to the Central Government and the State of Haryana and we expect the Central Government and the State of Haryana to strictly comply with these directions. We need not state that if any of these directions is not properly carried out by the Central Government or the State of Haryana, we shall take a very serious view of the matter, because we firmly believe that it is no use having social welfare laws on the statute book if they are not going to be implemented. We must not be content with the law in books but we must have law in action. If we want our democracy to be a participatory democracy, it is necessary that law must not only speak justice but must also deliver justice."

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### Human Rights in Ghana

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

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

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

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

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

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### Academic Freedom Under Israeli Military Occupation

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

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

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### The Philippines: Human Rights After Martial Law

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

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

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