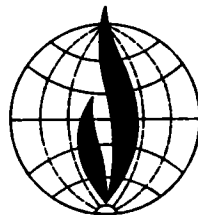


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Editorial

The African Charter

The ICJ welcomes the coming into force on 21 October 1986 of the African Charter on Human and Peoples' Rights. On its adoption in June 1981, 26 ratifications were needed for the Charter to come into force. This is considerably above the norm for international treaties.

After the first 15 ratifications had been deposited there followed a lull. In order to overcome this and to try to obtain the 11 ratifications still necessary for the Charter to come into force, the ICJ organised a conference of leading African jurists in Nairobi in December 1985. The Nairobi Conference and the follow-up action to it stimulated a new wave of ratifications. At the time of entry into force there was a total of 31 ratifications, ie, 60% of the member states. This augurs well for the future of the Charter.

It is anticipated that at the next summit of the Heads of State and Government of the OAU, the 11 members of the African Commission of Human and Peoples' Rights, set up under the Charter, will be elected. The Commission is an independent body charged with the promotion and protection of human rights in Africa within the framework of the Charter.

Limburg Principles

This issue of the ICJ Review contains an unusual number of documents relating to human rights.

In April 1984 a group of 31 international lawyers from all regions met in Siracusa, Sicily, and formulated the Siracusa Principles on the limitation and derogation provisions in the International Covenant on Civil and Political Rights. These were published in United Nations document E/CN.4/1984/4, in Vol. 7, number 1 of February 1985 of the Human Rights Quarterly (together with the working papers and commentaries and the Covenant), and in ICJ Review No. 36, of June 1986 (together with the Covenant).

In June 1986 another group of international lawyers met in Maastricht, Netherlands, under the sponsorship of the ICJ, the American Association for the ICJ, the University of Limburg and the Urban Morgan Institute for Human Rights. They formulated the Limburg Principles on the implementation of the International Covenant on Economic, Social and Cultural Rights. The principles are in two parts. The first describes the nature and scope of the legal obligations of States Parties to the Covenant. The second part examines and makes recommendations on the preparation and consideration of States Parties reports under the Covenant, and on international cooperation between the UN Committee on Economic, Social and Cultural Rights and other UN bodies, in particular the Specialised Agencies, for its implementation.

The Limburg Principles are reproduced as a Basic Text in this issue of the ICJ Review. They will also be reproduced as a UN document for the next session of the UN Commission on Human Rights, and in the May 1987 issue of the Human Rights Quarterly together

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with the working papers and commentaries. It is obtainable from the John Hopkins University Press, Journals Publishers Division, Baltimore, Maryland 21218, USA.

The International Commission of Jurists attaches considerable importance to this document. There has been a tendency on the part of some international lawyers in the West to play down the Covenant on Economic, Social and Cultural Rights, suggesting that it does not impose any real obligations upon States Parties and is merely a statement of good intentions. This was not the view of the participants at the Maastricht meeting, who spelt out in detail the nature of these obligations. They also made a number of creative suggestions about the States Parties' reports to the new ECOSOC Committee and on international cooperation for more effective implementation of the Covenant, in particular with the Specialised Agencies, such as ILO, UNESCO, UNICEF and WHO.

For the convenience of the reader, the text of the Covenant is also reproduced in this issue.

Milan Principles

Also reproduced are the 'Milan Principles', or to give them their full title, the Basic Principles on the Independence of the Judiciary. This document was adopted by consensus at the 7th UN Congress on the Prevention of Crime and the Treatment of Offenders in Milan in August/September 1985, and later in the year was approved by the General Assembly of the United Nations in G.A. Resolution 40/32.

The International Commission of Jurists and its Centre for the Independence of Judges and Lawyers played a significant role in the formulation of these principles. Their importance is that they constitute the first inter-governmental legal instrument relating to the supremely important issue of the independence of the judiciary, and that they have been accepted unanimously by the UN General Assembly as being applicable under all systems of law. They can serve as a useful tool for lawyers seeking to strengthen the independence of the judiciary in their country.

Human Rights in the World

Bangladesh

An article in *ICJ Review* no. 30 (July 1983) urged that martial law in Bangladesh be lifted so as to create an 'atmosphere in which the political parties and interested professionals can tackle the urgent socio-economic problems of the country'.

Since then, without lifting martial law, General Ershad, the President and Chief Martial Law Administrator, has held a referendum on the question of whether he should continue as President, followed first by elections for the local councils and the Parliament and then by a presidential election.

Between 1983 and 1985, scheduled parliamentary elections were postponed three times because the two main opposition alliances refused to participate in the elections while martial law remained in force. Following the third postponement in March 1985, General Ershad held a referendum on the question of whether or not he should continue as President. The referendum did not offer the voters any alternative and according to official figures 94.14 per cent voted in favour of the President.

The referendum was followed in May 1985 by the elections for local councils. Both the opposition groupings campaigned for cancellation of the local council elections. In spite of their protest, the election went ahead, leading to violent incidents and many reports of irregularities.

The local council elections were followed in May 1986 by the parliamentary elections. When announcing these elections, General Ershad proclaimed certain measures to create 'a congenial atmosphere' for the elec-

tions. These included the resignation of ministers seeking election, the abolition of the offices of regional martial law administrators, and of military courts, and a ban on the use of state facilities for campaigning. These moves succeeded in persuading the opposition alliance led by the Awami League to participate in the elections. However, the alliance led by the Bangladesh Nationalist Party continued its boycott.

In the elections held in a violent atmosphere, the pro-government Jatiya Party won a majority of the 300-member parliament. The Awami League accused the government of rigging the elections. This allegation has been supported by independent reports. For example, the *Far Eastern Economic Review* reported that, 'it was undoubtedly the most disorderly of Bangladesh's three parliamentary elections since independence...'

A three-member British 'observer team', invited by the Awami League to observe the elections, consisted of Lord David Ennals, a former Labour Minister, Martin Brandon Bravo, a Conservative M.P., and David Lay, of the B.B.C. On the day of the election, they visited several polling stations and reported on the irregularities they had witnessed. Lord Ennals reported that 'in two polling stations I actually saw polling officers busily stamping ballot forms in favour of the Jatiya Party and placing them in the ballot boxes when no voters were present.' Mr. Martin Bradon Bravo reported that in a polling station young boys were engaged to stamp the ballot papers. Based on what they saw, they described

the election as a 'tragedy for democracy'.

The parliamentary election was followed by a presidential election in October 1986, which the two opposition alliances boycotted. General Ershad was accordingly re-elected. He was opposed by mostly obscure candidates. Following this victory, General Ershad announced that the presidential election was the last part of the process of restoring democracy and that he would lift martial law soon.

However, the opposition alliances have stepped up their campaign against General Ershad, and it is clear that the election, rather than contributing to a political consensus, has exacerbated the tensions. Meanwhile, the country is faced with serious economic problems. According to a report prepared by the Norwegian Human Rights Project, about 60 percent of the population live in absolute poverty and unemployment is widespread among the landless population who constitutes nearly 50 percent of the population; the nutritional situation for most people has deteriorated and only about 85 percent of the population can read and write.

The holding of proper and fair elections and genuine democratisation would help to create a political atmosphere in which progress could be made in dealing with the grave economic and social problems of the country. Regrettably, this has not been achieved. For the future, the Norwegian report referred to above concludes that:

"An assessment of the possibilities for a genuine democratisation process in Bangladesh is difficult. The basic instability of the elitist political system and the strong disagreements over basic rules for the conduct of political affairs are constant factors. A certain danger exists therefore that every electoral procedure and every election will be considered as illegitimate by important sections of the population. It is also difficult to pin the responsibility for this state of affairs on particular actors on the political scene. The regime's men may seem half-hearted in their belief in democracy, but the two opposition parties derive their heritage from regimes which were at least periodically quite authoritarian."

Colombia

Colombia is a democracy beset by social problems, many of which result from its sheer size (it has a population greater than all Central American countries combined) and from its having had one of the most violent histories in the region over the last 40 years.

Civil peace was one of the main goals of

former President Betancur. Initiating a significant effort to improve the human rights situation, he lifted the state of siege and passed an amnesty law in 1982. A government statement published on February 19, 1984, signed by the Ministers of the Interior and of Defence, announced the beginning of meetings of representatives

of the Peace Commission established between the government and the guerrillas. According to government officials more than 1,000 of the estimated 7,000 members of the main guerrilla organizations like M-19, FARC, ELN, EPL and ADO, accepted the amnesty offer which was understood by them to represent a permanent truce enabling a national dialogue for social justice to take place. The main factor in making this dialogue possible was President Betancur's insistence, from the beginning of his mandate, on a government which would support respect for the rule of law and civil control of the army. However, the guerrillas always expressed the fear that if they surrendered their arms completely, they would be executed by the army and para-military groups. These fears grew stronger with the assassination of Carlos Toledo Plata, the leader of the M-19 guerrilla group, on 19 August 1984, and the armed attack a few days later on guerrilla leaders on their way to the peace talks. In spite of this, a peace agreement with a cease-fire was signed in Corinto on 23 August 1984.

In May 1985, the state of siege was declared again, as a consequence of the assassination of the Minister of Justice, Lara Badilla, and a series of attacks and threats against the government and diplomats in Colombia. These attacks were seen by some as a reaction to the intensification of the government's anti-drug campaign. Government officials suspected that some of the main drug-traffic organizations could have strengthened their defences by linking up with guerrillas who had not accepted the cease-fire.

On 21 June 1985, M-19 declared that the peace pact was broken and started offensive action, citing constant military harassment against it and a plan to assassinate its 14 leaders. On 6 November 1985, an armed group of M-19 guerrillas took

over the Palace of Justice, the seat of the Supreme Court of Colombia. A large number of hostages were taken including judges and Supreme Court justices. The Palace was eventually freed following an army assault which lasted for 30 hours and resulted in the deaths of at least 95 people, including 17 judges, among them the President of the Supreme Court, Alfonso Reyes Echandia, members of the staff, visitors to the building, and all but four of the guerrillas. The assault was mounted on the decision of the Minister of Defence and the Chief of Police, to whom President Betancur had left the decision. Separate reports on the incident were released on 18 June by the Attorney-General and by the Special Investigative Commission appointed by the Supreme Court.

The investigations were difficult, *inter alia* because all the bodies were removed by the army and the police immediately after the fighting and buried in common graves. Although the Attorney-General had proposed to the Congress that it impeach the President in order to establish the extent, if any, of his responsibility for the decision to launch the assault, the Special Investigative Commission concluded that the President had acted within his constitutional powers. However, it criticised the refusal of the President to answer repeated phone calls from the President of the Supreme Court urging negotiation with the guerrillas who were threatening to kill all the inmates if the building was attacked. The President referred all these calls to army officers. According to statements made by Enrique Parejo, Minister of Justice, the Cabinet also asked the Chief of the Police to suspend the attack until an attempt at dialogue was made with the guerrillas in the Palace. The army did not do so and went ahead with its attack.

According to both reports there were unaccounted for disappearances from the

Palace of Justice. Fourteen people in the Palace at the time of the assault have not been found and their bodies were never identified among the victims. There was unwarranted interference by the army with the evidence. Army officials did not wait for the judicial authorities to examine and then remove the bodies, but gathered them all together on the first floor of the building and some had even been washed.

As a result of the serious revelations of the reports, on 19 June 1986 the National Association of Judicial Civil Servants and Employees demanded the resignations of the Minister of Defence, General Vega Uribe and the Chief of the Police, General Delgado, but nothing came of this.

Two months later, a general election was held and on 7 August 1986, the new president of Colombia, Virgilio Barco, a member of the Liberal Party, was sworn in. President Barco stated that the Armed Forces must abide strictly by the law and respect human rights and not use illegal methods, pointing out that if they adopt terrorist methods the state loses its legitimacy. He also said that the state of siege, which has been used almost continuously for the last 40 years, should be regarded as an extreme and exceptional measure.

Since 1956, when a pact was signed between the liberal and conservative parties, members of both parties have taken part in all succeeding governments. However, the conservatives have now refused to participate in President Barco's government. As the solutions to many of Colombia's human rights problems would seem to depend largely on political will, this first internal crisis does not augur well for the future.

During July 1986 a debate started in Colombia about who was responsible for the many cases of disappearances. The Minister of Defence, General Vega Uribe stated that the army was not involved in the serious human rights violations often denounced in

Colombia, including torture, disappearances and summary executions. The Attorney-General, Carlos Jiménez, however, asserted that members of the army and police were responsible for cases of torture and disappearances, citing the case of two guerrilla members of M-19, who, according to the two official reports on the assault on the Palace of Justice, walked out of the Palace alive in the custody of the police and then disappeared. According to Amnesty International, Americas Watch and various Colombian sources, 600 Colombians were kidnapped and assassinated by the armed forces, police, and gunmen acting with them in the first six months of 1986.

In December 1985, many common graves were discovered, especially in the Cauca region, containing the bodies of men, women and children showing signs of beatings and torture. By September 1986, about 200 bodies had been discovered in such graves. Paramilitary groups, unknown civilians and guerrillas have in turn been blamed for these assassinations. Javier Delgado, leader of a small guerrilla group called Ricardo Franco, declared to the press in January 1986 that he had ordered the death of 164 members of his group whom he claimed were army personnel who had infiltrated the group. The majority of other guerrilla groups condemned the massacres of the Ricardo Franco guerrillas, but the kidnapping and killing of civilians is still, in general, one of the guerrillas' practices and M-19 claimed responsibility for the attempt against the life of the Minister of the Interior, Jaime Castro on 19 June 1986.

On 10 April 1985, the Colombian government signed the U.N. Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and on 5 July 1986 accepted the compulsory jurisdiction of the Inter-American Court of Human Rights.

Czechoslovakia

'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.'

Article 19(2) UN International Covenant on Civil and Political Rights

In December 1975, Czechoslovakia ratified the UN International Covenant on Civil and Political Rights (ICCPR). By this act it bound itself to respect and implement the rights in that document, including article 19(2) cited above. In its Second Periodic Report under the provisions of the ICCPR, the government of Czechoslovakia states that freedom of expression, speech and the press is guaranteed under the Constitution. In addition, it states that article 16 of that Constitution provides that 'the State, together with the peoples' organisations, shall give *all possible support to creative activity in science and art*, shall endeavour to achieve an increasingly high educational level among the working people and *their active participation in scientific and artistic work*, and shall see to it that the results of this work serve all the people.' (emphasis added).

However, the recent 'Jazz Section' case serves as a gloss on the above claims and gives a somewhat different picture of the government's interpretation of the provisions of article 19(2).

The background of the case is as follows.

In 1971 a group of jazz enthusiasts applied to the Ministry of the Interior for permission to set up a Union of Czech Jazz Musicians. The group subsequently operated legally as a branch of the Czech Musicians' Union and was affiliated, through Unesco, with the International Jazz Federation.

According to certain reports, an oversight resulted in no provision being made to ensure that the Section's chairman was appointed by the Ministry (as was usually the

case). In addition, perhaps because the activities and interests of the Section were thought of as rather esoteric and of limited appeal, it was allowed to publish for its members periodicals and newsletters, which were not subjected to rigorous censorship procedures. In view of these two factors, as might have been expected, the publications put up by the section became a haven for non-conformist authors unable to find other channels for expression.

The activities of the Section became increasingly irritating to the government. Its concerns had become wider than jazz, with publications covering rock music, literature and all forms of art and its paperback series called *Jazzpetit* was said to have a readership of up to 100,000. This interest in 'decadent' art-forms allied to its popularity among the young and a certain overlap in its membership and ideals with Charter '77, the Czechoslovak civil rights movement, led to intensified official harassment over the last six years. Indeed, the government did everything possible to disband the Section, initially through pressurizing the Czech Musicians' Union to close it down and subsequently by issuing a decree in October 1984 which abolished the Section.

Paragraph 3 of Article 19 of the ICCPR states that:

'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'.

There appears to have been no suggestion that it was necessary to abolish the Jazz Section on any of these grounds and it is difficult to see how it could have been necessary.

The Section appealed against this decree to the Constitutional Court on the grounds that the Ministry had no power to abolish a cultural organisation without evidence of subversive activity, and also petitioned the Municipal Court to quash the decree. This petition was rejected *ab initio* and on appeal. The case before the Constitutional Court has not been heard and seems unlikely to be as the Constitutional Court has not yet been constituted.

Despite these measures, the Jazz Section, on the advice of its lawyer, continued to operate pending the result of the appeal. The authorities reacted on 2 September 1986 by arresting the Chairman of the Section and seven of its committee members and conducting searches of their homes, the Jazz Section premises and their workplaces resulting in the confiscation of some 800 books, several hundred magazines and an exhibition of drawings on display at the Jazz Section headquarters.

The charges against the eight Jazz Section officials were outlined in a Press Release issued by the Czechoslovak Embassy in London which states that the Jazz Section had 'continued in its unlawful publishing activity; the prices for selling publications, books and pamphlets had not been sanctioned by the relevant authorities; and the tax audit discovered arrears of payment amounting to 5,233.699 Czechoslovak Crowns.' The defendants 'were arrested on the basis of this financial fraud on 2 September 1986.'

At the time of writing the accused have spent three months in detention; bail has

been refused and no trial date has been fixed. If the fears of their supporters are realised, they face terms of imprisonment of up to eight years.

State reaction to the Jazz Section case shows the measure of control the authorities wish to have over artistic life in Czechoslovakia. This is amply illustrated by two passages taken from the official press release referred to above.

The first is the authorities' claim that the Jazz Section became a member of the International Jazz Federation 'without the consent of the relevant Czechoslovak authorities.' In fact no state authorisation is required by the International Jazz Federation for granting such membership and despite the displeasure of the authorities, the Jazz Section has remained a member of the Federation. This has brought the Section an international status and attention abroad (despite its being officially non-existent at home).

Indeed, Karel Srp, the Section's Chairman, went to Budapest to present the Section's plight at the 1985 meeting of the Helsinki review conference on cultural matters. The persecution of the Section was condemned by Western delegates and it has been mooted that the September arrest of the Section's officials was designed by the authorities to prevent a repetition of this unwelcome international attention at the forthcoming CSCE follow-up meeting in Vienna.

The second illustration from the press release is the statement, chilling in its simplicity, that after 'the dissolution of the Jazz Section, the Czech Ministry of Culture drew up the *system of measures in the sphere of jazz music*, including an advice service for groups and individuals' (emphasis added).

In its desire for control, the Czechoslovak Government seems to be trying to dam up the creativity of its people, only allowing

a controlled trickle to nourish the artistic needs of the community. It all seems so unnecessary. The officials of the Jazz Section were careful never to indulge in or publish anything that could be labelled subversive. Their main 'sin' seems to have been that they had a certain freedom and popu-

larity which fed the sense of insecurity of the authorities. As one member of the Section's Board put it, 'The fact that we don't stick to official coverage of the arts means that we are opposing those who do...'

A sad epitaph for a group that brought pleasure to thousands.

El Salvador

With a population of 5 million, El Salvador is the smallest and most densely populated country in the Americas and for almost seven years it has been racked by internal conflict between the army and the guerrillas. The principal guerrilla group is the Farabundo Marti Liberation Front (FMLN) with some seven thousand members who are committed to overthrowing the government by force. In 1982, after the longest uninterrupted period of military rule in Latin America (the last civilian president had been overthrown in 1931) El Salvador started a democratisation process with the election of a Constitutional Assembly followed by the preparation of a new Constitution in 1983 and the election in 1984 of President José Napoleon Duarte.

In October 1984, President Duarte announced a meeting with guerrilla leaders which took place at La Palma, followed by a second round of talks which started on 30 November 1984. During these meetings, the FMLN proposed the formation of a broad-based transition government, to include representatives of the guerrillas as well as of Duarte's government and new elections. Duarte's government countered by proposing that the guerrillas disarm, recognise the government and thereafter participate peacefully in the established political

system. The dialogue broke down and the third round of talks never took place.

The prolonged conflict of close to seven years has had an adverse effect on human rights in El Salvador. Economic production dropped 25% between 1978 and 1983, and the real standard of living fell by one-third. Coffee production represents more than 60% of the country's exports but since 1979 coffee production has fallen 20%, and the fighting has resulted in 57% of the former coffee producing lands being abandoned. Added to this fall in production is the destruction, especially in the countryside, of the country's infrastructure (roads, schools, churches, bridges, etc.) as a result of the fighting. Some officials estimate the damage at \$1.214 billion over the seven years.

Another of the harrowing effects of the fighting is the number of displaced persons who have fled the countryside to seek security in the cities. Some estimate that 700,000 people have been displaced, which increases the existing housing problem in the largest cities where about 3 million people live in shanty towns in inadequate conditions and where unemployment may be as high as 70%. In addition, more than 700,000 Salvadorans have taken refuge in other Central American countries and in

Mexico and the USA. These refugees represent close to 20% of El Salvador's population.

There are also human rights violations which spring directly from the conflict itself. These range from massacres in rural areas to indiscriminate bombings and death squad killings. Over 40,000 Salvadorans are estimated to have been killed in violence of this kind since 1979.

Even though there were no reports of large massacres by the army in 1985, residents in the countryside have been harassed by the army strategy of depopulating guerrilla-controlled areas or areas of conflict. Civilians are forced to leave their belongings and crops behind during these displacements which are forced and often accompanied by aerial bombardments, strafing, use of mortars and army ground operations that terrorise the civilian population. All this in spite of the prohibition on such attacks by President Duarte. In January 1985, Archbishop Arturo Rivera charged that two bombs had been dropped within seven kilometres of him on the first day of his visit to the rebel-held territory in Chalatenango. The failure of the Salvadoran Armed Forces to respect the neutrality of medical and relief operations make the situation even worse.

The resurgence of the activities of the death squads is a further troubling development. In the first six months of 1985, the office for human rights of the Roman Catholic Archdiocese of San Salvador reported 173 death squad killings.

Also on the increase in 1985 and 1986 were reports of the continuing selective use of torture, particularly beatings and electric shocks, by the security forces. In June 1986, Maria Teresa Tula, a leader of one of the Mothers' Committees for the Disappeared, reported to the press that during her detention in early May by the Treasury Police she was repeatedly raped and then

slashed in the stomach by her captors. She was interviewed by several human rights groups who saw the wounds resulting from her ill-treatment.

During May 1986, there was a wave of arrests of human rights workers which started with the arrests of ten people working for the non-governmental Human Rights Commission and the Committee of Mothers and Relatives of Political Prisoners, the "Disappeared" and Killed. On 30 May, after ten days of detention in the Treasury Police Headquarters, one of them, Michele Salinas, appeared at a press conference organised by the Treasury Police. She confessed that she had been, along with many other people, involved in relief work and human rights monitoring in El Salvador, which was affiliated with armed opposition groups. She charged that these groups grossly exaggerate human rights violations and channel food and money from international aid agencies to the guerrillas. She also declared she was placing herself voluntarily in the custody of the Treasury Police, and charged Archbishop Rivera y Damas and other church authorities of cooperating with the guerrillas in spreading propaganda and diverting relief supplies. A government official stated that none of the ten detainees were arrested for their human rights related work but for terrorist activities.

One of the factors contributing to the flourishing of human rights abuses in El Salvador is the continuing failure of the judicial system to prosecute and punish criminal acts by members of the Salvadoran armed forces. The judiciary is faced with serious problems coming from long-standing patterns of intimidation, corruption and mismanagement. In September 1984, President Duarte formed a special Investigative Commission to enquire into several human rights-related cases such as the murder of Archbishop Romero, and the 1983 Indian massacre of Las Hojas, but the Commission

and the Attorney General failed to take convincing action. In 1985 a judicial reform was launched by the Salvadoran government with the aid of foreign governments to improve the administrative, technical and legal performance of El Salvador's justice system, with an emphasis on criminal justice. An Investigative Commission, which replaced the 1984 Commission, was created under this plan. This Commission comprised an Investigative Institute and a forensic unit to impartially gather and process evidence. However, during the first six months of 1985 it only undertook one investigation, that of an attack on a café in San Salvador on 19 June, for which the Revolutionary Party of the Central American Workers claimed responsibility.

The civil authorities seem to lack any effective control over the armed forces, indeed, in March 1985, a former top Salvadoran intelligence officer told the press that top military officials who sat in the Committee for National Security had given orders to officers to work with death squads to purge the government of leftists. The situation would seem to be well illustrated by the case of a group of high ranking military officers suspected of operating a kidnapping ring that had abducted wealthy businessmen and collected big ransoms over a three-year period. The investigation of this case has been perfunctory, certain of the main witnesses have been assassinated and at least one of the officers under investigation has left the country. There have also been cases of military officers linked to the death squads, who have been posted abroad and then promoted.

The number of army personnel on trial for murder in 1985 remained at 35, the same as in 1982. Even though, according to the Justice and Peace Commission of the Archbishop, 1,740 persons were killed, disappeared or kidnapped by the armed forces

and death squads, in 1985.

Trade union activists have also been victims of the failure of the civilian government to control the armed forces. From September 1985 to February 1986, 28 trade unionists, who had taken part in strikes and demonstrations against the dismissals of striking trade unionists and against government economic policies, faced arbitrary detentions and house searches. Some unionists, like Mauricio Atilio Cea, a member of the National Union of the Ministry of Agriculture and Livestock Workers, who was arrested with his wife and children by the National Guard in April 1985, have stated that they were forced under torture to sign false statements admitting links with opposition forces or that they belong to the Communist Party. They have said that the lack of effective investigation of the supposed charges shows that they have been made to frighten them and weaken the trade unions' image. This charge is supported by the fact that some of these statements have been video-taped and publicised on national television.

The guerrillas also are accused of serious human rights violations. During 1985, the Justice and Peace Commission of the Archbishop reported 173 cases of persons killed, disappeared or kidnapped by the guerrillas. This is the highest number ever recorded since the civil war started.

During 1985, the image of the guerrillas suffered because of the increase of attacks on civilians, including the kidnapping of 30 mayors and the daughter of the President and the shooting of bus and truck passengers during nation-wide transportation stoppages.

Many of the deaths attributed to the guerrillas are due to land mines, laid, without proper precautions, to protect guerrilla-controlled territories. Such land mines also injured 170 other civilians during 1985.

Malaysia

In October and November 1985, two journalists were convicted and fined under the Official Secrets Act in Malaysia. One was the local bureau chief of the *Far Eastern Economic Review*, who was charged under the Act with publishing classified information on Malaysia's trade policy with China. The second was a reporter of the English language daily, *New Straits Times*, who was charged with receiving a secret military document on the purchase of planes for defence purposes. In September 1986, the government banned the distribution of the *Asian Wall Street Journal* for three months and expelled two of its journalists. No specific reasons were given, but a Home Ministry statement claimed that the government had always adopted a liberal attitude towards newspapers and 'this must be reciprocated by the papers with a sense of responsibility and accountability'. However, human rights groups allege that the government is using the existing laws concerning journalists and newspapers to prevent the publication of articles critical of its policies. According to them, the reason for the action against the *Asian Wall Street Journal* was an article it ran on 'cronyism' in Malaysian banking and mismanagement in economic affairs. In October, the Supreme Court quashed the expulsion order of one of the journalists, stating that the government should have given reasons for the revocation of his work permit.

In addition to the existing laws that restrict freedom of the press, the government, in 1984, made the National News Agency the sole distributor of all news and prohibited foreign news agencies from dealing directly with local newspapers and radio and television stations. This move, which was described officially as a strengthening of the news network, was criticised by the

Malaysian Newspaper Publishers Association as having 'wide implications for the free flow of news'.

The relevant laws that have direct bearing on freedom of the press are the Printing Presses and Publication Act of 1984, the Internal Security Act, the Sedition Act and the Official Secrets Act.

Under the Printing Presses and Publication Act, all newspapers are required to obtain a publishing permit which has to be renewed yearly. The permit can be revoked at any time by the government and there is no appeal to the Courts. In addition, the Act provides for (1) making a journalist and newspapers liable to prosecution for a variety of offences, including the publication of items considered to be prejudicial to the public or national interest; (2) imposing a levy of an unspecified sum on foreign publications as a deposit which would be forfeited if they commit an offence; and (3) the prosecution of members of the public for the possession of even a single copy of a banned publication unless it is proved that possession was for a purpose other than reproduction.

Under the Internal Security Act and the Sedition Act, any publication can be banned where it appears to the Minister responsible for publications that it contains material threatening public order or promoting ill-feelings or hostility between different races or classes of the population. Under the Official Secrets Act, any person who receives or publishes any classified information is presumed until the contrary is proved to have done so for purposes prejudicial to the interests of the country. There is a remarkable provision containing a presumption of subversive intent in these words: "In any prosecution for an offence under this Act, unless the context otherwise re-

quires - (1) It shall not be necessary to show that the accused person was guilty of a particular act tending to show a purpose prejudicial to the safety or interests of Malaysia; (2) notwithstanding that no act as stated in subsection (1) is proved against him, the accused person may be convicted if, from the circumstances of the case, his conduct or his known character as proved, it appears that his purpose was a purpose prejudicial to the safety or interests of Malaysia."

A recent amendment to the Official Secrets Act has made it an offence to 'receive or disseminate government information' and the offence is subject to a mandatory prison sentence. Commenting on the amendments, the Malaysian National Union of Journalists stated that the Act, even before these amendments, was 'crippling enough to inhibit journalists from performing their duties truthfully'. One of its effects is said to be the reluctance of government officials to talk with journalists, con-

sequently reducing the flow of information on government policies and programmes. According to a study made by the *New Straits Times* on the implications of the amended Official Secrets Act, the law is so stringent that a journalist could be committing an offence just by asking for information not made public by the government.

According to ALIRAN, a social organisation in Malaysia, "the most disturbing aspect of these laws is that they... have helped to make newspapers servile and submissive."

In October 1986, participants at a meeting organised by ALIRAN and attended by 17 organisations, including trade unions, opposition parties and social organisations, called for the repeal of the Printing Presses and Publication Act of 1984 and the Official Secrets Act, and the establishment of a Press Council managed by journalists, based upon a Code of Ethics embodied in a Press Charter.

Mauritania

The last few months have seen a worrying decline in respect for human rights in Mauritania. The situation is paradoxical since Colonel Moaouia Ould Sidi Mohamed Taya, whose coup d'état overthrew President Haidalla on 12 December 1984, stated in his first interview, in February 1985, that his three principal objectives were the promotion of national unity, respect for human rights and the elimination of corruption. President Taya also stated that the people needed to be 'educated' before the country returned to democracy. The democratic procedures originally instituted at in-

dependence in 1960 were abolished by the armed forces when they overthrew the civil government in 1978. The armed forces also dissolved Parliament and the only existing political party and forbade the constitution of opposition groups and political parties.

Since the 1978 coup, the Structure for the Education of the Masses (SEM), set up in 1982, has been the only link between the people and the Government. Its principal task is to explain government policies to the masses, to educate them and to mobilise them with regard to issues of general interest concerning their economic and social

development. It is thought by some that the SEM could become a future political party.

In order to achieve his declared objective of respect for human rights, President Taya introduced a number of measures including:

- the amnesty of December 1984 for all persons in Mauritania or in exile who had been found guilty of political crimes. The amnesty was seen as an invitation to opposition groups in exile to return freely to Mauritania since, of the 169 political prisoners detained at that time in Mauritania, 160 had been freed;
- the abolition of the exit visas required for nationals of Mauritania who wished to travel abroad;
- efforts to eradicate the consequences of slavery;
- the ending of arbitrary arrest and maltreatment.

These measures have led to the regaining of confidence in the government. However, a number of rights are still flouted or are restricted, for example, the authorities can use administrative detention without trial against any person considered to constitute a threat to national security. Thus, former President Haidalla is still kept under house arrest and a number of his colleagues who were arrested during the coup d'état of December 1984 have been in detention since then and no charges have been made against them.

Freedom of association was suspended in 1978, and has still not been restored. Only the Union of Mauritanian Workers is permitted a certain amount of freedom and it is reported that a number of its activities are indirectly financed by the Government. Recognition of trade unions is conditional on their accepting a director-general nominated by the authorities. This practice is

widespread in many African states.

Furthermore, the Shari'a (the Islamic code) introduced in 1980, has given rise to a certain amount of opposition among blacks and women who consider that it tends to favour Arab culture and to restrict the role of women. In addition, the fact that all sentences have to be approved by the President appears to be an interference in the administration of justice and could adversely affect judicial independence.

The strict interpretation of the Shari'a that was enforced immediately after its introduction has been toned down by the moderate attitude adopted by the Government of President Taya in order to preserve the unity of the people of Mauritania. This does not, however, prevent a number of black Mauritanian intellectuals from continuing to complain that "in Mauritania, in the field of justice, everything that is not Arab and Islamic has been swept away. African customs are not recognised under the pretext that they are not of Arab and Islamic origin. In the whole of Mauritania, the only black Mauritanian *Cadi* (Mohammedan judge) is the one for Boghé. *Cadis* play an important role in judgements concerning a number of types of disputes between blacks and Beydanes (land for cultivation, slavery, etc.)." This statement is taken from a paper entitled "The Manifesto of the Oppressed Black Mauritanian" which, when it was distributed in Mauritania and elsewhere, gave rise to many arrests in September of last year. A number of those who were arrested were released after being interrogated. Around 20 others were charged with "non-authorised public meetings and the distribution of literature constituting a threat to national unity". Most are black intellectuals, with only two Arabs among them, one of whom is a businessman and the other a diplomat. The literature that was distributed denounced "discrimination between Arabs and the Black

African ethnic groups" and called for "the institution of a just and equal political system under which all the present components of the country would be recognised." Those charged were detained without bail and subsequently sentenced to periods of imprisonment from six months to five years. There are reports that during the trial at first instance, the rights of the defence were restricted by the presiding judge and that some of those detained, and members of their families, had been ill-treated or tortured. The defendants appealed, but on 13 October 1986, the appeal court upheld their sentences. Reports of ill-treatment continue.

At the beginning of October acts of violence against public and private targets were committed in Nouakchott and Nouadhibou in the north. In a statement to the press, the Director-General of the Police said that "these terrorist acts" were linked to "the recent events during which members of an organisation which was planning acts of

violence in Mauritania were arrested and sentenced to terms of imprisonment." (This is the case referred to in the previous paragraph).

The Government is making an attempt at financial restructuring to try to solve the country's economic problems, which have been exacerbated by several years of drought, threatening the country with famine. It would be regrettable if violence and the denial of human rights were to sabotage this attempt and hinder dialogue between the Arab and black African community who are "condemned to live together" and whose mutual cooperation is needed in order to cement national unity.

In June 1986, Mauritania ratified the African Charter on Human and Peoples' Rights. It is to be hoped that this is an indication of the Mauritanian authorities' wish to achieve a stable social situation by greater respect for human rights as outlined in the Charter.

Sudan

During September/October 1985 the International Commission of Jurists and its Centre for the Independence of Judges and Lawyers sent a mission to Sudan to enquire into and report on the legal system and the administration of justice, with particular reference to laws affecting human rights and the status of negotiations with those representing the interests of the South. The preliminary report of the mission was published in November 1985 and the final report in July 1986.

A member of the mission returned to Sudan during November 1986 and discussed

the mission's recommendations with members of the government, the Bar Association, nongovernmental organisations and interested observers, as well as obtaining information about recent developments. Meetings were held with the Prime Minister, the Attorney-General, Judges of the Supreme Court, the Minister of Commerce, the Speaker of the Assembly, representatives of the Ministries of Foreign Affairs and of the Interior, the President and Council of the Bar Association, the National Alliance for National Salvation, the Sudan Council of Churches, faculty members of

the University of Khartoum and numerous individuals. Further discussions were held with the Ministers of Commerce and Education while they were in Geneva.

NEW DEVELOPMENTS

Supreme Court Decision in the Mohamed Taha case

Mahmoud Mohamed Taha, the 76 year old leader of the Republican Brothers Movement was executed on 18 January 1985 following a trial by the Decisive Justice Courts. On appeal he was convicted of apostasy, an offence with which he had not been charged and which is unknown to the Penal Code. Under the Judicial Sources of Law Act, judges were given a discretion to formulate charges based on their interpretation of the Shari'a (Islamic Law). His execution was the subject of much discussion within Sudan and the outrage it engendered among the populace was probably one of the factors that led to the downfall of President Nimeiri.

After the overthrow of the Nimeiri government, Mohamed Taha's daughter and one of his co-defendants filed a suit seeking a declaration that the procedures used during the trial violated the 1973 Constitution then in force. On 19 November 1986 the Supreme Court ruled in their favour, finding that articles 64 (concerning fair trials), 70 (prohibiting retroactive criminal laws and punishments) and article 71 (prohibiting double jeopardy in criminal cases) had been violated.

The Supreme Court held that the offence of apostasy was not properly before the Appeal Court, that the Act could not be used to add charges at the appellate level and that the Supreme Court had wrongly been deprived of its ability to review the Appellate Court's decision or to express

itself on 'certain laws which are controversial locally or internationally.'

The court's decision has been warmly welcomed in Sudan and testifies to the commitment of the Supreme Court to uphold the Rule of Law by ensuring the fairness of the trial process.

Proposed constitutional amendments

The government is considering putting before Parliament a series of amendments to the transitional constitution. As negotiations are still underway within the Council of Ministers and among the political parties a definitive text of the amendments is not available. However, certain "core" amendments have been agreed to, of which the following are of particular interest.

Article 11

A proposal has been made to amend article 11 which now reads: "The State and every person, natural or legal, official or not, shall be subject to the rule of law as applied by the courts." The proposed amendment would add: "The government shall be subject to all laws, unless expressly provided for its exemption therefrom."

Although there is no suggestion that members of the present government have the intention of utilising this exception to commit human rights violations, it must be noted that the amendment's misuse could lead to such violations. The amendment would enable the government to select those laws it wishes to obey and to exempt itself from the application of those it does not find convenient to adhere to. The executive should not be the sole and final arbiter concerning its obedience to the law. Laws touching on fundamental rights must be obeyed by everyone.

In all states governments can do things forbidden to individuals, such as the taking of property for state purposes. If this is what the government wishes to protect, it should be clearly spelt out in the text. In its present form the proposed amendment is disturbingly broad.

Articles 16A and 33

A new article 16A which would exempt whole categories of legislation from judicial review is also proposed. This makes reference to the April 1985 overthrow of the Nimeiri government and the National Charter adopted shortly thereafter, and states that in response to these the government shall take all measures necessary to fulfill the following objectives:

- “(a) to liquidate the traces of the May regime;
- (b) to secure the representative democracy regime and protect its organs and constitutional institutions;
- (c) to rescue the national economy, protect it, and punish those who have caused its destruction;
- (d) to rescue citizens from the greed of parasitic classes and protect them;
- (e) to reform the public service organ;
- (f) to protect public property whether immovable or moveable and organise the manner of utilising the same.”

Legislation passed for the purpose of attaining these objectives would not be subject to challenge before the Court as being unconstitutional or for any other reason.

Also, an amendment to Article 33 adds the objectives in Article 16A to the grounds upon which constitutional rights may be derogated from.

The government has put forward several justifications for these amendments, in particular, the need to act quickly to rectify

the economic situation inherited from Nimeiri and to reorganise the government bureaucracy in an efficient manner, notably by ridding it of those people who were appointed for improper motives. During conversations with the Prime Minister, the Ministers of Commerce and Education, the Attorney-General and the Speaker of the Constituent Assembly repeated references were made to the right of a government to exempt “ministerial acts” from judicial review. It was asserted that the amendments would do no more than adopt in Sudan the practice of civil law systems in which acts of state are not reviewed by the courts.

This argument ignores the system of administrative tribunals in civil law countries such as France and the ability to have executive actions reviewed by such tribunals as well as by the Conseil d’Etat. Executive acts are not exempt from review as they would be under the proposed amendments; they are reviewed by more specialised tribunals. In addition, there are procedures whereby proposed legislation may be submitted for review by a Constitutional Council. Also, the judiciary does have jurisdiction in certain cases involving violation of fundamental rights and freedoms.

Reaction of the Bar Association

The Bar Association has criticised the proposed amendments on the basis that they will authorise unchecked executive action, undermine the rule of law and democratic government, and represent an attack on the independence of the judiciary. With respect to the proposed amendment to Article 11, the Bar observes: “The rule of law is meaningless if the state itself is not made subject to it.”

Also severely criticised is the proposed text of Article 16A. The Bar takes the position that this article would be better placed in a statement of goals or a charter. It then

suggests that the government's objectives could be carried out by amending existing legislation. While noting its approval of the underlying purpose of the amendments, the Bar makes clear its disapproval of the amendments themselves.

Conclusion

The proposed amendments would permit legislation to be passed which violates the most fundamental of rights as long as its stated purpose was the fulfilment of one of the objectives set out in article 16A. The government's response to this objection has been that the legislation would have to be passed by the Constituent Assembly, an elected body, and that this would ensure that no draconian legislation was enacted. This observation does not take account of the proposed amendments to article 67 and the suggestion for a new article 100B whereby the head of state would be able to issue provisional decrees which had the effect of law while the Constituent Assembly was out of session, and that this period of time could be for as long as three months. Another relevant factor is the use to which such provisions were put during the Nimeiri government and the possibility that the transitional constitution may become a working document for officials other than those of the present government.

Also overlooked in the government's position is its obligations under the Covenant on Civil and Political Rights which it ratified earlier this year. Article 2, paragraph 3 imposes on each state the duty to ensure that persons who suffer violations of their rights are to have an effective remedy and that in claiming such a remedy they "shall have [their] 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". The competent authorities are to ensure that such remedies are enforced when granted. This article makes clear that some recourse for violations of protected rights must be provided by state parties to the Covenant.

There has been some suggestion that article 16A might be used to pass retroactive criminal legislation. Such legislation would be in violation of article 15 of the Covenant which prohibits retroactive criminal laws and penalties even in times of emergency.

Also, the United Nations Basic Principles on the Independence of the Judiciary state: "the judiciary shall have jurisdiction over all issues of a judicial nature..." Disputes between individuals and the state, especially disputes concerning alleged violations of fundamental constitutional rights, are matters of a judicial nature.

The good faith of the present government is not being called into question. There are serious problems facing the country and there are people who were active in the former government who have tried to undermine the efforts of the present government to return Sudan to democracy. However, the Rule of Law is to be supported not only by good intentions, but also by the creation of structures which ensure basic rights to all as well as the opportunity for redress of grievances. One of the essential elements of a society based on the rule of law is an independent judiciary and respect for that independence by the executive and the legislature. The proposed amendments are too broad and leave open the possibility of abuse. We urge the government to reconsider them and to find a narrower and more focused method of handling these issues. In this connection use could be made of the United Nations Advisory Services Programme as well as consultations with the Bar Association.

ISSUES OF CONTINUING CONCERN

The "September Laws"

A major source of concern to the ICJ and CIJL mission was the failure of the transitional government to repeal a series of provisional orders issued by President Nimeiri which became known as "the September Laws". These laws were enacted ostensibly to bring the country's legislation in line with the Shari'a. The mission had been concerned with the Penal Code 1983, the Code of Criminal Procedure of 1983, the Judiciary Acts of 1983 and 1984, the Evidence Act of 1983 and the Judicial Sources of Law Act, 1983.

Of these, the Penal Code, sections of the Code of Criminal Procedure and the Judicial Sources of Law Act remain in effect. The report of the mission recommended their repeal as they undermined the Rule of Law in Sudan and weakened the protection of human rights.

The Attorney-General has submitted drafts of new penal and criminal procedure codes to the Prime Minister. These are under review and according to both the Attorney-General and Prime Minister the new texts eliminate the more objectionable features of the existing codes.

Although the Prime Minister, the Attorney-General and other members of government expressed their desire to resolve these issues, there appeared to be some hesitancy about moving forward with purely secular laws. The government is faced with the difficult task of resolving conflicting social and political viewpoints. Some groups within the country and certain segments of the population wish the law to reflect or at least give acknowledgement to their religious beliefs. Others want a totally secular legal system. The approach which has been suggested by the Prime Minister is to have a conference between the various religious,

cultural and political groups and to have this conference agree on the text of a law.

A close reading of the Umma party platform prior to the election, as well as the Government statement delivered in July 1986 to the Constituent Assembly, the Prime Minister's lectures at Chatham house during October 1986 and his press statements during various conferences demonstrate that the Prime Minister has consistently taken the position that such discussions are necessary and that he rejects proposals for either a purely Islamic or a purely secular text as being too simplistic. He firmly believes that the interests of all groups can be accommodated and hopes that the solution ultimately reached will serve as a model to other countries having similar difficulties.

This approach would be useful if all parties could be brought to the conference table. However, a number of southern representatives have indicated their unwillingness to begin negotiations when the status quo leaves intact laws they perceive as being an attack on their cultures and on their religions and beliefs. The type of debate being suggested by the Prime Minister and others would perhaps better be held at the constitutional conference as it is at this conference that lasting decisions will be made as to the permanent structures of government and as to national policies.

Another solution would be to repeal the existing laws and accept that the measures enacted in their place would be temporary. This would allow for an open debate and without the added tension of an ongoing war. The longer debates continue over pieces of legislation, the longer it will be before a final and peaceful resolution of the problems is reached.

The hesitancy of the government and particularly of the Prime Minister to go forward with the repeal of these laws in difficult for many to understand as he was im-

prisoned by former President Nimeiri for referring to the laws as a "perversion of Islam" and continued to insist on their repeal during the transitional year.

Another complicating factor is the effect certain government pronouncements have had on southern representatives. A number of them have been alienated by the Government statement to the Constituent Assembly in which it asserted its commitment "to introduce proper Islamic laws". Such declarations make it appear that the government is not open to negotiation and that it represents one particular interest within the country and not the country as a whole.

As repeal of the remaining "September laws", particularly the penal code and the remaining provisions of the criminal code and the Judicial Sources of Law Act, would assist immeasurably in the process of national reconciliation, and as the laws themselves represent a threat to the protection of human rights and the Rule of Law in Sudan, the government is urged to take up this issue as a matter of priority.

The Southern Conflict

The war in Southern Sudan continues with an ever mounting cost in terms of human lives and damage to the country's economy. Civilians have been severely affected by the war. No accurate statistics exist as to the total number who have been displaced by the war or killed in the cross-fire between government troops and the SPLM. The arming of tribal groups has complicated the situation and has perhaps made a peaceful solution more difficult to attain.

As time passes, the intentions of both the government and the SPLM are being called into question.

The National Alliance for National Salvation¹ has continued to act as a go between. It is committed to finding a peaceful and lasting solution to the conflict in the south. During March 1986 the Alliance and the SPLM/SPLA² signed the Koka Dam Declaration in which they set out the steps that they thought needed to be taken before a constitutional conference could be convened. They are:

- a) A declaration by all political forces and the government of the day of their commitment to discuss the *Basic Problems of Sudan* and not the so called problem of Southern Sudan and that shall be in accordance with the Agenda agreed upon in this "Declaration".
- b) The lifting of the State of Emergency.
- c) Repeal of the "September 1983 Laws" and all other laws that are restrictive of freedoms.
- d) Adoption of the 1956 Constitution as amended in 1964 with incorporation of "Regional Government" and all other such matters on which a consensus opinion of all the political forces shall be reached.
- e) The abrogation of the military pacts concluded between Sudan and other countries and which impinge on Sudan's National Sovereignty.
- f) A continuous endeavour by the two sides to take the necessary steps and measures to effect a cease fire.

Also agreed upon was an agenda for the conference.

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- 1) A coalition of various professional unions and trade unions formed during the April 1985 uprisings and which served as a forum for debate during the transitional year and which has consistently worked for a peaceful solution to the conflict in Southern Sudan.
 - 2) The Sudan People's Liberation Movement and its army.

In the declaration the SPLM also indicated its belief that the transitional military government, then in power, should dissolve itself and be replaced by an interim government to include the SPLM. Since the elections in April the SPLM has not been as insistent on this point, and has indicated that it will not insist on points d and e. Based on this position, the sole remaining obstacle, appears to be point c, the repeal of the September laws.

A meeting between the elected government and the SPLM was organised by the alliance. Unfortunately this meeting, held during July, did not yield any concrete results. Then, the shooting down of the Sudan Air flight by the SPLM on 16 August brought all discussions to a halt. Particularly irksome to the government were SPLM statements indicating a lack of remorse for the killing of the civilian passengers. As a result the government forbade all contacts with the SPLM.

Recently the government relaxed its position and on 15 November the Prime Minister gave his assent to a reopening of communications and to the efforts by a church delegation to reestablish a dialogue between the two sides. This effort has been warmly welcomed by many Sudanese who fear that the longer the war continues the more elusive peace becomes.

Many people are concerned by repeated government statements to the effect that the SPLM is not an independent movement but is under the control of the government of Ethiopia, and consider that there is little use in making comments about the SPLM's bargaining stance until the conference is actually in progress. Rather than discrediting the SPLM the government statements

are seen as an obstacle to the peace process.

Also worrying are government references to the possibility of "militarising the situation". During his meeting with the church leaders the Prime Minister indicated that if a peaceful solution could not be found shortly "the military option" would have to be tried. This cannot be reconciled with previous statements in which he recognised that there is no military solution.

Another factor which needs to be considered when making policy decisions is the under-representation of southerners in the Constituent Assembly due to the impossibility of carrying out elections in all of the southern districts. This means that votes and debates may be skewed in a particular direction. As a result the government is placed in a sensitive position. Care must be taken to ensure that its actions are not interpreted as wilful neglect or heavy-handedness. It has already been criticised for not giving significant ministerial portfolios to southerners and not including southerners in the National Defence Council.

The government's motives and good intentions may not be obvious to all. For historical reasons southerners do not place much confidence in the central government and this mistrust has been carried over to the present government. Whether or not their perceptions are well-founded many southerners question the respect some members of the government have for their distinct cultural and ethnic identity.

The government and the SPLM are again urged to enter into serious negotiations for the purpose of bringing about a cease fire and beginning the constitutional conference.

Tunisia

The boycott of the 2 November 1986, Tunisian national elections by all the opposition parties raises questions as to the existence of a pluralistic democracy in Tunisia. According to Article 22 of the Tunisian Constitution the representatives of the Chamber of Deputies, along with the president, are to be elected every five years. President Habib Bourguiba, however has been declared president for life. The 1981 election was the first since independence to allow opposition parties to run against the ruling Destourian Socialist Party. The three official opposition parties condemned this election for its "irregularities and fraud". Tunisia's commitment to human rights is found in the Constitution's preamble, which proclaims the determination of the Tunisian people "to remain faithful to the human values common to the peoples which cherish human dignity, justice and freedom". This article reviews the exercise in Tunisia of the rights of freedom of assembly, association and the press, which are specifically guaranteed by article 8 of the Constitution. In addition, Tunisia has ratified the International Covenant on Civil and Political Rights which establishes these rights within the framework of international law. Article 32 of the Tunisian Constitution provides that 'duly ratified treaties shall take precedence over internal law.'

Freedom of Assembly

Tunisia contends that public meetings may be held freely. However, advance notice must be given and a committee established by the organisers is responsible for "maintaining order and preventing any breach of the law." In addition, the 'responsible authorities' reserve the right to

prohibit by decree any 'demonstration likely to be detrimental to public safety or law and order' and the security authorities assign an official to attend each public meeting.

The restriction of the right to freedom of assembly is illustrated by the case of Ahmed Mestiri who was arrested on 16 April 1986 after taking part in a peaceful procession which was protesting against the United States' raid on Libya and expressing solidarity with the Libyan people. All the official opposition parties took part in the procession, including Mestiri's own party the Social Democratic Movement, and two unrecognised but tolerated opposition parties. An estimated 300 people were present at the assembly, which was broken up almost immediately by Public Order Brigades. About 30 people were interrogated at the police station, all of whom were later released except for Ahmed Mestiri. He was tried and sentenced to four months imprisonment for organizing an unauthorized assembly. When responding to questions whether the march had been authorised, Mr. Mestiri referred to the existence of a double standard in this regard. He pointed to a march held by the young lawyers' organisation which had not passed through the official authorisation procedures and yet had not been broken up by the security officials. There were worrying political overtones to this case, not least the fact that Mr. Mestiri's sentence of four months imprisonment made him ineligible as a candidate in the 2 November 1986 elections because of legislation forbidding the candidature of any person sentenced to more than three months imprisonment.

Another incident that stemmed from the same period was the arrest of Mr. Mouldi Fakem of the Progressive Socialist Alliance who was subsequently sentenced

to eight months imprisonment for distributing allegedly illegal material before the protest march on the American raid.

The Tunisian League for Human Rights stated in a communiqué relating to this case that the peaceful assembly of popular and political organizations in reaction to the United States action was not only a legitimate response but one which was preferable to spontaneous and often uncontrollable action.

Freedom of Association

Trade Union rights are under threat in Tunisia, not least by the continuing attempts of the government to exercise some form of control over the powerful Tunisian General Trade Union Federation (UGTT). This union showed the extent of its influence in January 1978 when it organised a general strike which was brutally repressed by the government and resulted in at least 50 deaths, the imprisonment of hundreds of unionists and the sentencing of UGTT's Secretary-General, Habib Achour, to 10 years forced labour (which was subsequently reduced). The government subsequently, made approaches to this union with its membership of over 350,000 which resulted in the union actually supporting the government in the 1981 elections. This support extended to canvassing on the government's behalf and even putting up union 'candidates' under the government's banner. However, the union then attempted to distance itself from the government, resulting in a reintroduction of repression vis-à-vis its activities and its Secretary-General. The government eventually succeeded in ousting Achour who was convicted of usurping union authority and mis-managing funds of an insurance company which was a member of the trade union's corporation. He is currently facing other charges. Achour has been replaced by Ismaél Lajéri, a candi-

date favoured by the Chamber of Deputies who is reported to be more compliant and less independent than Achour.

Freedom of the Press

The existence of all opposition parties in Tunisia is dependent on the government which also controls their effectiveness, largely through the application of strict press laws. Tunisia boasts one of the most diversified medias on the African continent. However, the five daily newspapers and dozen weekly publications that have an essentially political and social focus are very much subject to the power of the state and the controlling party. The press laws require that the first printed copy of each edition be submitted to a censorship authority empowered to censor partially or completely any publication it receives. The state also reserves the right to ban any publication that defames the president or the state as well as any publication deemed to have passed false information. The press laws have been used extensively in recent years. For example, 'Ach Chaab, a UGTT publication was banned for six months in September 1985. The international weekly *Jeune Afrique* was banned for three months in October 1984. After the American raid in Libya the weekly publications *Réalités*, the Tunisian Communist Party's *Tarig el-Jadid*, and the Social Democratic Movement's *El-Moustaq-bal* were all banned for spreading allegedly false news and for defamation. *Réalités* was suspended for six months in July after having published an article on "the repression of the left" in Tunisia, which the authorities considered to be defamatory and likely to cause public unrest. In addition to the press laws the state subsidizes the Tunisian Journalists Association (AJT) which has at present a membership of approximately 270. In reference to press policies in Tunisia, a radio editor stated that

"under state domination AJT members stop being journalists and become agents of the executive working against their opinions and living shamefully with their contradictions".

The Tunisian League for Human Rights has repeatedly appealed to the state for the observance of the guarantees of freedom of the press and publication. It is noteworthy that scholarly research is not subject to interferences.

Conclusion

There is concern about the direction that democracy and the respect for human

rights will take on the retirement of President Bourguiba, aged 83. The refusal of the opposition to participate in the local 1985 elections and the more recent national elections is indicative of a growing dissatisfaction and unrest that needs to be abated if the transition from the Bourguiba regime is to be smooth. An important start would be for a decisive effort to be made to give full effect to the rights of freedom of assembly, association and the press. This would fulfil Tunisia's obligation under its own domestic law and under international law, and provide a constructive atmosphere for the changes that are doubtless to come.

COMMENTARIES

Human Rights Committee

States Parties to the Covenant

Three additional states have ratified the Covenant during the period October 1985 to July 1986¹. They are: Niger, San Marino, and Sudan; both Niger and San Marino have also ratified the optional protocol. The number of states parties to the Covenant is now 83 and to the optional protocol, 37. The number of states having made the declaration under article 41 remains at 18.

Effects of UN Financial Crisis

As with other United Nations bodies the financial crisis has affected the work of the Committee, perhaps unfairly so. Although there were to be 10% across-the-board cutbacks within the United Nations system, the 10% cutbacks in the human rights field seemed to have affected the expert bodies *disproportionately*. The Committee was asked not to hold its October 1986 meeting, essentially cutting its operations by 30%. The Committee reluctantly agreed to this cancellation, but made clear its views that this must be seen as an emergency measure, as the existing number of meetings, three weeks during the spring, summer and fall, was barely adequate to carry out the Committee's functions. It also noted that as a treaty body the Committee had the right

to make independent decisions about its operations and that conditions could not be imposed by the General Assembly.

Another area of concern was the General Assembly request to certain treaty bodies, including the Committee, to dispense with summary records. The Committee noted that these records were indispensable to its work and to the States Parties. However, in a spirit of cooperation the Committee indicated that it would organise its work so that summary records would be necessary for only two of each three week session. This would result in a 30% saving to the U.N. Nevertheless, the UN secretariat has proposed to the General Assembly that it should renew its request to dispense with summary records.

A further step taken in response to the crisis was the decision to hold the March/April meeting in Geneva rather than New York. The Committee noted, however, that at least one meeting per year needed to be held in New York, as many states were not represented at the UN offices in Geneva.

Other decisions relating to cost reductions were to have only one pre-session working group to review cases under the Optional Protocol as well as draft the list of issues for second periodic reports and general comments, to reduce the size of the annual report, and not to put decisions under the Optional Protocol in the Yearbook.

1) The twenty-sixth, twenty-seventh and twenty-eighth sessions of the Committee are covered in its annual report to the General Assembly contained in General Assembly official Records, 40th session, supplement No. 40(A/41/40).

Report Under Article 40

During its twenty-sixth, twenty-seventh and twenty-eighth sessions the Committee considered the initial report of Luxembourg and the second periodic reports of Sweden, Finland, Mongolia, the Federal Republic of Germany, Czechoslovakia and Hungary. The Committee was also to have considered the initial report of the Congo and the second periodic report of Tunisia but did not to do so because of each States Parties' inability to send representatives to meet with the Committee.

Overdue reports continue to be of great concern. A meeting was convened by the Committee at UN headquarters for representatives of States Parties whose reports were more than 3 years overdue. The meeting was attended by representatives of Bolivia, the Central African Republic, Guinea, the Islamic Republic of Iran, Madagascar, Saint Vincent and the Grenadines, Viet Nam and Zaire. The States Parties discussed the difficulties they were facing in fulfilling their reporting obligations and the majority stated that progress was being made. Discussions were held with some representatives about the possibility of assistance to countries in the preparation of their reports.

The members of the Committee urged the States Parties not to delay in filing their reports, and noted that the Committee did not sit in judgement of States Parties but fulfilled its obligations under the Covenant by carrying on a dialogue with States Parties and giving assistance with respect to means of improving implementation of the rights guaranteed by the Covenant at the national level.

The article on the Committee in Review 35 makes reference to the delay by El Salvador in submitting the additional information requested by the Committee in order to complete consideration of that State

Party's initial report. The information was submitted by the State Party on 19 June 1986.

During its twentieth to twenty-second sessions the Committee decided to create, on a trial basis, a working group to draw up a list of issues to be discussed with States Parties during the consideration of their second periodic reports. This practice has continued to be used by the Committee. The lists, after review by the full Committee, are provided to the States Parties prior to their appearance before the Committee. The States Parties are advised that the lists are not exhaustive and that members may put additional questions. State Party representatives are asked to comment on the issues section by section and reply to any additional questions raised by members.

A procedure for handling additional information has now been adopted by the Committee. Information submitted shortly before or at the same time as the next periodic report will be considered with the report. When additional information is received at other times, the Committee will decide on a case by case basis how it will be treated by the Committee. Where there is a delay on the part of the States Parties, the Bureau of the Committee is to consider sending appropriate reminders and the secretariat, when notifying a State Party of the date for submission of its next periodic report, is to remind the State Party of its promise to send additional information.

Forthcoming Reports

The next session of the Committee will be held during March/April 1987 in Geneva. The initial report of the Congo as well as the second periodic report of Tunisia, Poland and Ecuador will be considered. The Committee will also complete consideration of the initial report of El Salvador, now

that that State Party has submitted the additional information requested by the Committee.

General Comments

The Committee again considered the text of a proposed general comment pertaining to minority rights as set out in article 27, but was unable to come to an agreement. Some members suggested that additional information from States Parties was needed before an appropriate comment could be formulated. Therefore, it was decided that particular attention would be given to article 27 in the consideration of States Parties' reports in the future. An extensive general comment on the position of aliens under the Covenant was adopted. It emphasises the obligation of States Parties to insure equality of treatment between citizens and aliens and points out that States Parties have *not paid sufficient attention in their reports* to their obligations to "ensure the rights in the Covenant to 'all individuals within (their) territory and subject to (their) jurisdiction' and to ensure that the rights apply to everyone "irrespective of reciprocity, and irrespective of his or her nationality or statelessness." Note is taken of article 25 which applies only to citizens and article 13 which applies only to aliens. The Committee observes however that its experience "shows that in a number of countries other rights that aliens should enjoy under the Covenant are denied to them or are subject to limitations that cannot always be justified under the Covenant."

Reference is made to the lack of constitutional protections for aliens. The Committee notes that the constitutions of most countries define rights as being applicable only to citizens, with only a few making reference to aliens and the rights applicable to them. Still fewer provide for equality

between citizens and aliens. Although this lack of constitutional protection is offset in some states by legislative measures and case law which provide for the requisite equality, the Committee remarks that some states have failed to implement this part of their obligations. The Committee then asks that the States Parties give attention in their reports "to the position of aliens, both under their law and in actual practice". The Committee also refers to the obligation of States Parties to make known to aliens the provisions of the Covenant and the rights of aliens under it.

With respect to entry into the territory of a State Party, the Committee notes that the Covenant does not guarantee a right of entry or of residence and that the decision to admit or not is left to the State Party. It then states: "however, in certain circumstances an alien may enjoy the protection of the Covenant even in relation to entry or residence, for example, when considerations of *non-discrimination, prohibition of inhuman treatment and respect for family life arise.*"

Similarly the Committee notes that States Parties are permitted to impose conditions for entry such as those relating to employment, but then states that "once aliens are allowed to enter the territory of a State Party they are entitled to the rights in the Covenant." These rights are enumerated in the general comments.

Specific reference is also made by the Committee to article 12 (freedom of movement). The rights guaranteed under this article can only be restricted in accordance with paragraph 3, and any differences in treatment between aliens and nationals must be justified by the provision of the paragraph. Any such restriction "must, *inter alia*, be consistent with other rights recognised in the Covenant, a State Party cannot, by restraining an alien or deporting him to a third country, arbitrarily prevent his return to his own country (article 12,

paragraph 4).

The Committee also discusses the protections accorded aliens under article 13, which refers to the expulsion of aliens and the procedures to be followed. Reports of the States Parties have not given sufficient detail on the implementation of this article. The strictures of article 13 apply to all procedures which would result in the obligatory departure of an alien and if an alien is arrested he/she is entitled to all safeguards relating to deprivation of liberty (article 9 and 10). If the alien is to be extradited, due regard is to be given to the provisions of national and international law.

The Committee also observes that although article 13 applies only to aliens lawfully in the territory of a State Party, "if the legality of an alien's entry or stay is in dispute, any decision on this point leading to his expulsion or deportation ought to be taken in accordance with article 13". Decisions are to be made in observance of the requirements of the Covenant, particularly equality before the law.

Noting that article 13 does not deal with grounds for expulsion, the Committee goes on to state that the provisions of article 13 would prohibit arbitrary expulsions, and, as it requires a decision in each individual case, it "would not be satisfied with laws or decisions providing for collective or mass expulsions" and "an alien must be given full facilities for pursuing his remedy against expulsion." This right may only be departed from "when compelling reasons of national security so require". The Committee further observes that "discrimination may not be made between different categories of aliens in the application of article 13."

Statement of Views Under the Optional Protocol

Four final views were adopted by the

Committee during this period. Two of the cases concerned Zaire, another Uruguay and the fourth Venezuela. Both cases against Zaire involved attempts by the authors of the communications to form new political parties.

The communication in *Ngalula Mpan-danjila, et al v. Zaire*, No. 138/1983 was submitted by two Belgian lawyers on behalf of 12 Zairian parliamentarians and a Zairian businessman. The 12 parliamentarians had submitted an "open letter" to the president of the Republic which led to their being expelled from the party, deprived of their seats in Parliament and being forbidden to hold public office for five years. In addition some of them were detained, were placed under house arrest or had administrative banning orders issued against them. Although an amnesty decree issued in January 1981 was meant to cover them, they were not released until December 1981. Then in 1982 while negotiating with representatives of the President about the formation of a new political party, the twelve were again arrested and brought to trial. The thirteenth victim, a businessman, was also brought to trial on charges of having secreted documents concerning the formation of the new political party. The 12 were sentenced to 15 year prison terms and the businessman was sentenced to 5 years. Appeals against the verdict failed; before the Supreme Court the appeal was dismissed for failure to pay the court fees.

After a May 1983 Amnesty Decree two of the 12 parliamentarians rejoined the party. The Human Rights Committee was asked to suspend consideration of the case until the position of the authors became clear. Then, when the lawyers received information that administrative banning orders had been issued against a number of the victims, the Committee was asked to resume its consideration of the case. These victims had been deported to remote regions

of the country. Consideration of the case resumed on behalf of 9 authors. Evidence concerning the ill-treatment of those who had been served with banning orders was also submitted to the Committee.

In its views the Committee found that the State Party had violated article 9 as the complainants were subjected to arbitrary arrest and detention and were not released for almost a year after an amnesty decree had been issued, article 10 because they were subjected to ill-treatment during their banishment, article 12 because they were deprived of their freedom of movement for long periods during the administrative banishment, article 14 because they were denied a fair and public hearing, article 19 because they suffered persecution as a result of their opinions, and article 25 with respect to the 8 former members of Parliament, because they were deprived of their right equally to take part in the conduct of public affairs. The Committee calls on the State Party to take effective measures to remedy the violations and to grant the victims compensation, to conduct an enquiry into the circumstances of their ill-treatment and to take appropriate actions and ensure similar violations do not occur in the future. In reaching its decision the Committee took account of the failure of the State Party to furnish the information and clarifications necessary for the Committee to facilitate its tasks.

In the second case, *Mpaka-Nsusu v. Zaire*, No. 157/1983 the author had presented himself as a candidate for the presidency of the sole party, the Mouvement Populaire de la Révolution (MPR), and for Zaire. When it was rejected he submitted a proposal for the formation of a new political party. He was then arrested, detained without trial from 1 July 1979 till 31 January 1981, and after his release was banned to his village of origin. He fled the country in 1983.

In response to the Committee's request for information the State Party on two oc-

casions indicated that an investigation into the case was in progress and that it would reply to the Committee's inquiries within a month or two. The requested information was not forthcoming. The Committee found that violations existed with respect to article 9, because the author was arbitrarily arrested and detained without trial, article 12 because he was banished to his village of origin for an indefinite period, article 19 because he suffered persecution for his political opinions, and article 25 because, notwithstanding his entitlement to stand for the Zairian presidency, he was not permitted to do so.

Arzuaga Gilboa v. Uruguay, No. 147/1983 involved events during the military government in Uruguay. The Committee found violations of article 7, because she was subjected to torture and cruel and degrading treatment during the period 15 to 30 June 1983, and article 10, paragraph 1, because she was held incommunicado for 15 days and subjected to inhuman prison conditions for 14 months.

The fourth case, *Alberto Solórzano v. Venezuela*, No. 156/1983, also involved violations of article 10, due to ill-treatment while in detention as well as violations of article 9, paragraph 3, and article 14, paragraph 3(c), because the victim was not brought promptly before a judge nor tried within a reasonable time and because he was kept in detention without judgement for 7 years. The latter finding was based on the failure of the State Party to proceed with charges against the victim. Although charges were laid in December 1977, they were interrupted in 1979 and at the time of his release in December 1984 as a result of a presidential decree the case still had not been completed.

Decisions on Inadmissibility

Five cases were declared inadmissible and the Committee decided to make public its

views in all of them. Two concerned Canada and in both individual opinions were submitted by members of the Committee. In *Y.L. v. Canada*, No. 112/1981, the author alleged violations of article 14, paragraph 1 (right to a fair trial) and article 26 (denial of equality before the law). The facts underlying the claim concerned the author's dismissal from the Canadian army and his subsequent attempts to claim pension benefits before various administrative tribunals.

In determining whether the claim was admissible the Committee had to determine whether the claim of the author amounted to a "suit at law" which would bring article 14 into play. In deciding that the claim did reach the level of a "suit at law" the Committee made the following observations:

In the view of the Committee the concept of a "suit at law", or its equivalent in the other language texts, is based on the nature of the right in question rather than on the status of one of the parties (governmental, parastatal or autonomous statutory entities), or else on the particular forum in which individual legal systems may provide that the right in question is to be adjudicated upon, especially in common law systems where there is no inherent difference between public law and private law and where the courts normally exercise control over the proceedings either at first instance or on appeal specifically provided by statute or else by way of judicial review. In this regard, each communication must be examined in the light of its particular features.

In the present communication, the right to a fair hearing in relation to the claim for a pension by the author must be looked at globally, irrespective of the different steps which the author had to

take in order to have his claim for a pension finally adjudicated.

However, the Committee declared the case inadmissible on the grounds that the right to seek judicial review of the decisions of the relevant tribunals meant the government did ensure to the author the right to a fair hearing.

The authors of the individual opinion would have found the complaint inadmissible on the basis that the author's claim did not constitute a "suit of law".

In *J.B. et al v. Canada*, No. 118/1982, the Committee had to decide whether article 22 of the Covenant which guarantees the right to freedom of association including the right to form and join a trade union encompassed the right to strike. The Committee having reviewed the travaux préparatoires could not conclude that the rights in article 22 were meant to encompass the right to strike and declared the case inadmissible. Five members of the Committee filed an individual opinion disagreeing with the findings of the majority; they considered that the travaux préparatoires were not determinative of the matter and would have relied more heavily on interpretations given to trade union rights by the ILO Committee on Freedom of Association. The same set of facts had gone before the ILO Committee which had on four occasions determined that the legislation of the province of Alberta prohibiting strikes among public employees was a restriction on the exercise of trade union rights, specifically those guaranteed in ILO Convention 87.

In *J.M. v. Jamaica*, No. 165/1984 the Committee reviewed its previous decision on admissibility and, on the basis of information provided by the State Party and unrefuted by the author, it determined that the communication was inadmissible as it could not conclude that the author was a citizen of Jamaica. Another claim con-

cerning the right to nationality papers, H.S. v. France No. 184/1984 was declared inadmissible for failure to exhaust domestic remedies.

E.H. v. Finland, No. 170/1984 was dismissed as a result of the author's failure to substantiate her claim.

Membership

Five members of the Committee decided not to run for re-election; their terms will expire in December 1986. They are, Mr. Nejib Bouziri, Mr. Rodger Errera, Mr. Bernhard Graefrath, Mr. Torkel Opsahl and

Mr. Christian Tomuschat. Messieurs Graefrath, Opsahl and Tomuschat have been with the Committee since its inception and all have made significant contributions to the work of the Committee and have played a vital role in establishing the Committee as one of the most respected bodies in the United Nations system.

Messieurs Cooray, Dimitrijevic, N'Diaye, and Prado Vallejo were re-elected to the Committee. The five new members are Mr. N. Ando (Japan), Miss C.H. Chanet (France), Mr. O. El-Shafei (Egypt), J.A. Mommersteeg (the Netherlands) and Mr. B. Wennegren (Sweden).

Human Rights and the United Nations

Non-governmental organisations heard with profound concern in July that the 1986 session of the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities had been cancelled because of the financial crisis in the UN.

The Secretary-General of the ICJ, as Chairman of the Geneva NGO Special Committee on Human Rights, had written to the UN Secretary-General in March on behalf of the Special Committee specifically urging that such a 'harmful proposal' not be contemplated and pointing out the vital role the Sub-Commission, as a body of independent experts, has come to play in the promotion and protection of human rights. He noted that less than 1% of the UN bud-

get is devoted to the human rights work of the UN whereas the primary importance of human rights and the rule of non-discrimination is mentioned in no less than five articles of the Charter. International cooperation in promoting and encouraging respect for human rights features prominently as one of the four purposes of the UN. He concluded 'the interruption of the essential work of the Sub-Commission would constitute a serious threat to the activities of one of the most productive and innovative sources of human rights action in the UN system and represents a serious blow to the cause of human rights'.

Nevertheless, the cancellation went ahead and in response the NGO Special

Committee, following an initiative of the Anti-Slavery Society, sponsored a Seminar on Human Rights in the United Nations in Geneva from 8 to 10 September 1986.

The topics which were discussed were:

- the role of the UN in the field of human rights and the relationship between human rights and the other objectives of the UN;
- the activities of the various UN human rights organs and the Centre for Human Rights;
- the priorities of these activities in the light of the present crisis of the UN;
- possible further contributions that can be made by NGOs, universities, research institutes and individual experts.

Fifteen members of the UN Sub-Commission (from Argentina, Bangladesh, Canada, Colombia, Cuba, Ecuador, France, Greece, India, Netherlands, United Kingdom, USA, USSR, Yugoslavia and Zambia), and three former Presidents of the UN Commission on Human Rights, attended the meeting together with eleven other experts, the representatives of 52 international NGOs, seven international organisations (the UN, ILO, UNHCR, UNICEF, International Red Cross Committee, Inter-Parliamentary Union, and the League of Red Cross Societies), and 47 Permanent Missions to the UN.

Three background papers were made available to participants:

- Strengthening UN Human Rights Capacity, by Theo van Boven
- Responding to the Financial Crisis: Approach and Priorities, by Asbjorn Eide, and
- Human Rights in the UN: A Mission in Distress, by the Anti-Slavery Society.

After an opening plenary session and the introduction of the working papers, the

participants split into two working groups as follows:

Working Group I: The role of human rights within the UN and its relation with and impact upon other UN programmes, including specialised agencies;

Working Group II: The UN Commission and Sub-Commission: with particular reference to standard-setting and implementation procedures of universal application, including 1503, working groups, special rapporteurs, etc.; and: Other UN activities: including - studies; seminars; reporting procedures and control organs of Conventions (HR Committee, ECOSOC Committee on E.S.C. Rights, CERD, Committee on Status of Women); Advisory Services, etc.

At the concluding session, chaired by the Secretary-General of the ICJ, an outstanding report of the seminar, including important conclusions and recommendations, was agreed unanimously by the participants and has been widely distributed at the United Nations General Assembly.

The conclusions and recommendations of the seminar were circulated widely to members of the UN General Assembly and on Friday, 21 November 1986, a delegation from the Geneva NGO Special Committee on Human Rights travelled to New York to present them to the UN Secretary-General. The members of the delegation were Michel Blum, President of the Special Committee and President of the International Federation of Human Rights; Niall MacDermot, Secretary-General of the ICJ; Peter Davies, Director of the Anti-Slavery Society; and Gerald Knight, former President of the New York NGO Special Committee on Human Rights and Representative to the UN of the Baha'i International Community. The delegation was honoured to be accompanied by Ambassador Calero

Rodriguez, former President of the UN Commission on Human Rights. The following is the text of the statement made to the

UN Secretary-General by Niall MacDermot on behalf of the delegation with a summary of the Secretary-General's response.

Statement of the Delegation of the NGO Special Committee on Human Rights to the UN Secretary-General

May I first say how grateful we are to you for agreeing to receive this deputation, knowing how many demands are made upon your time.

May I also express our warm thanks to Ambassador Calero Rodriguez for consenting to accompany us and demonstrate by his presence that the seminar held in Geneva in September was far more than an NGO activity. Among the active participants were three former Presidents of the UN Commission on Human Rights, a majority of the present members of the Sub-Commission, the present and former Directors of what is now the Centre for Human Rights, as well as many other independent experts.

The crucial issue is the degree of priority to be accorded to human rights programmes within the United Nations. Article 1 of the Charter proclaims four purposes of the organisation. In brief, these are peace, international cooperation, development and human rights. It has repeatedly been affirmed in resolutions that all these four purposes are interdependent. Nevertheless, throughout the 40 years history of the UN, human rights have been the poor relation in the UN family. Depending on how the calculation is made, the budget for human rights amounts to between 0.7% and 1% of the UN budget. Frankly, we think this is a ridiculously low proportion.

We appreciate that this is not the moment to increase it, but we do urge strongly that it is also not the moment to decrease it. That is not to say that economies cannot be made. In our document we have

made several suggestions for the more efficient and economic use of resources.

In the last 10-15 years the main emphasis for UN human rights programmes has rightly shifted from standard-setting to implementation, and many new organs and procedures have been devised, with the result that the effectiveness of the UN in the field of human rights has reached its highest level. These organs and procedures constitute an organic whole, and none of them can be eliminated (as happened this year to the Sub-Commission) without having an immediate impact on the work of the others.

The role of NGOs in the field of human rights is unique. It is no exaggeration to say that the NGO contribution is essential to the functioning of the UN system. The former director of the Centre says that during his 5 years, 85% of all the information on which the implementation activities of the Centre were based came from NGOs. The reason is simple. States do not wish to accuse each other openly, unless they have some political purpose for doing so. Accordingly, it is left to NGOs to supply most of the information needed. However, NGOs cannot make this contribution if budget cuts fall upon the various procedures for implementation, including the complaint procedures, special rapporteurs and pre-sessional working groups, such as those on indigenous peoples and slavery-like practices. In this connection, we regret the recent decision to truncate the reports of the Special Rapporteurs. In addition, NGOs have made considerable contribution to standard-setting and

to promoting new activities and procedures.

We NGOs do not share the negative attitudes of many people towards the human rights activities of the United Nations. Both in the field of promotion and protection they are at their most influential, and given the resources, can increase their effectiveness in other directions. Owing to the interdependence of the four UN goals, human rights are relevant to all other programmes. When we see better times, and more resources can be made available, it is essential that human rights become an integral part of all relevant programmes of the UN system, including the specialised agencies, and starting perhaps with development. For example, the new ECOSOC committee on economic, social and cultural rights can make an immense contribution, but the present provision for only one three-week session per year is wholly inadequate for the tasks allotted to it.

Response of the Secretary-General

The Secretary-General, in welcoming the delegation, spoke of his personal concern for human rights, and indicated that he had on many occasions taken up human rights cases with governments. This had to be done confidentially. Any publicity would have a counterproductive effect.

He indicated that he was aware of the reaction to the cancelling of this year's session of the Sub-Commission, and of its negative effect going beyond the work of the Sub-Commission itself.

He invited the delegation to indicate what were their particular concerns.

In response to the various points raised by the delegation he said that it would be impossible for him to declare that human rights programmes should be excluded from any economy measures. To do so would provoke numerous pleas for other exceptions to be made. He was, however, aware of the inter-

These developments will not be easy, owing to the hostility in many quarters even to the term human rights. Some years ago when I told the then director of the UNDP of our programmes related to development, his answer was, "Excellent, my dear fellow, excellent; but whatever you do, don't call it 'human rights'."

The truth is that respect for human rights is at a low level in many countries and the UN programmes will, at times, be an embarrassment to them. This calls for leadership from the Secretariat. Mr. Secretary-General, while welcoming and congratulating you upon the renewal of your mandate, may we express the hope that under your leadership all those assisting you on the 38th floor will strive to see that the relevance of human rights to other programmes is understood and promoted, and that the implementation procedures of the UN are supported and not eroded.

relationship of different human rights programmes and would do his best to limit any restrictions upon them and to ensure that any measures that did have to be taken would have the minimum effect upon these programmes.

He referred to the relationship between human rights and other purposes of the United Nations, stressing in particular the relationship between Human Rights and Peace.

He expressed appreciation of the role and work of non-governmental organisations in the field of human rights and the necessity for close cooperation between them and the Centre for Human Rights.

He concluded by inviting the delegation to bring to his attention any special concerns they might have in the future about the human rights programmes.

ARTICLE

The United Nations Fund for Torture Victims: The First Years of Activity*

by
Hans Danelius**

In theory almost everyone is against torture, nevertheless torture is widely practised in many countries, sometimes systematically and often with the approval or acquiescence of the governments of the countries concerned. The recent report of Amnesty International, "Torture in the Eighties", provides frightening details about the character and magnitude of the problem.

Torture is clearly outlawed under international law. A number of international conventions and declarations prohibit it in unambiguous terms, most recently the International Convention against Torture and Cruel, Inhuman and Degrading Treatment which was adopted in 1984 by the United Nations General Assembly.

Although the primary objective of the international community must always be the eradication of torture, the tragic situation of the victims cannot be forgotten as long as torture does in fact occur. Bringing the victims back to a normal life is a difficult task which in many places cannot be properly carried out due to lack of both financial resources and expert knowledge.

In recent years, however, there has been a growing awareness of the problems of those who have undergone the traumatic

experience of being tortured. With the support and encouragement of human rights groups and organizations, and sometimes with the financial help of the authorities, medical doctors and staff have developed programmes to aid victims of torture. Special medical centres, entrusted with the task of helping torture victims, have been set up, or are in the process of being set up, in a number of countries, such as Belgium, Canada, Denmark, France, the Netherlands, Sweden, and the United States. In the United Kingdom a charitable foundation has been created to make medical help available to torture victims throughout the country. In countries and regions where torture is being practised or has been practised in the recent past, special programmes have often been organized by humanitarian groups in order to alleviate the plight of the victims.

The United Nations is also responding to the challenge of helping torture victims. In 1981 the General Assembly decided to set up a Voluntary Fund for Victims of Torture. The task of the Fund is to solicit voluntary contributions from governments, nongovernmental organizations, and individuals and then to distribute these funds

* This is an abbreviated version of an article appearing in the *Human Rights Quarterly* published by The John Hopkins University Press.

** Swedish ambassador in the Netherlands and Chairman of the Board of Trustees of the UN Voluntary Fund for Victims of Torture,

as humanitarian, legal, and financial aid to torture victims and their families. Acting on the advice of a Board of Trustees composed of five individuals from different parts of the world, the Secretary-General of the United Nations decides which projects falling within the Fund's mandate will be awarded grants. In practice the Board of Trustees makes very specific and concrete proposals to the Secretary-General who, as a rule, adopts the Board's proposals. At the beginning of 1983 the Board of Trustees started its work and has held five sessions to date. The Board already has gained a great deal of experience and consequently the time is ripe to summarize what has been achieved so far and to draw conclusions from it.

It is indeed desirable and in the interest of the Fund to make available as much information as possible about the Fund and its activities. Since the Fund depends entirely on voluntary contributions, it is important that both those who have contributed to the Fund and those who consider contributing know what use has been made, or will be made, of their contributions. Confidence in the work of the Board of Trustees and of the Secretary-General as administrator of the Fund is an important factor in ensuring that the Fund receives further contributions in the future. Such confidence can only be created if there is a reasonable degree of openness about the activities of the Fund.

Understandably, however, complete disclosure is not possible with regard to all the proposals for help projects submitted to the Fund. Indeed, some groups or organizations seeking financial support from the Fund work under difficult conditions in countries where their further work, or even their physical safety, might be endangered by publicity. It is usually possible, however, to give information about the nature of these projects without identifying the

applicant or the country concerned.

The contributions received so far have come mainly from governmental sources. In August 1985, twenty-six Governments had contributed to the Fund, or pledged contributions to the Fund; some have contributed on more than one occasion. The following states have contributed: Australia, Belgium, Brazil, Cameroon, Canada, Cyprus, Denmark, Finland, France, the Federal Republic of Germany, Greece, Ireland, Jordan, Kenya, Liechtenstein, Luxembourg, the Netherlands, New Zealand, Norway, San Marino, Sweden, Switzerland, the United Kingdom, and the United States. The total sum of the government contributions received so far is more than 2 million United States dollars.

Needless to say the Board of Trustees considers it important to receive contributions – even small contributions – from as many states as possible. Not only is the money needed, but also the support of many states representing different parts of the world and different political and social systems adds to the Board's credibility and can facilitate its work in many respects.

In addition to governmental contributions, the Fund has received financial support from a number of nongovernmental organizations and from private individuals. The Board hopes that these private contributions will increase and has taken measures to accomplish this end. A postal account has been opened in Geneva for European contributions (postal account number 12-2809-0, Geneva). In the United States, the United Nations Association of the United States of America receives, on behalf of the Fund, contributions of not less than 50 United States dollars and forwards them to the Fund. In the Netherlands, through a private initiative, a bank account has been opened for the deposit of contributions to the Fund (account number 448241188 at the AMRO Bank in Leyden

in the name of the Nederlands Juristen Comité voor de Mensenrechten). Contributions can also be paid by cheque to the United Nations Centre for Human Rights either in Geneva or New York.

The Board of Trustees has received a considerable number of applications for grants from the Fund and has decided to give financial support to a number of projects. These grants can be divided into different categories:

- A. grants to centres for treatment and rehabilitation of victims of torture,
- B. grants to regional programmes to help victims of torture in the region,
- C. grants to programmes to help victims of torture in specific countries.

A. Centres

The Board of Trustees has received applications from centres in different countries which give aid to torture victims. These centres are mostly medical facilities and are often attached to existing hospitals and are organized by doctors and other medical personnel. They have been set up in various Western countries, and usually benefit refugees who have been tortured in their countries of origin and subsequently escaped. Since there is already a reasonable financial base for the activities of many of these centres, the Board of Trustees is reluctant to give substantial grants which would merely relieve the financial burden of a government or a private source. The Board of Trustees, however, wants to encourage the establishment of these centres and furthermore, wants to cooperate with them, once they have been set up. In some cases, it is important for a centre and for persons participating in centre activities, to be able to indicate that it is supported by, or cooperates with the United Nations Vol-

untary Fund.

On the basis of these considerations it has become the policy of the Board of Trustees:

1. to give substantial financial support to a centre when such support would help develop certain special activities of the centre which would not otherwise be developed, or
2. to support the centre in a more modest way.

From the Fund's inception, the Board of Trustees cooperated with the pioneer among the centres, the Copenhagen Centre for the Rehabilitation of Torture Victims. Initially the Board financed, wholly or partly, a number of international seminars organized by the Copenhagen Centre with the participation of medical personnel from many countries. The purpose of these seminars was to make the special knowledge and experience of the Copenhagen staff available to doctors and medical personnel from other countries, particularly from areas where torture is practised and aid to victims therefore is needed urgently.

The Board has a different mode of cooperation with the International Centre for the Investigation and Prevention of Torture in Toronto. The Board of Trustees believed this Centre could offer valuable help not only to tortured refugees in Canada but also to tortured persons in certain parts of Latin America. The Board therefore encouraged the Centre to extend its activities to other countries and decided to give financial support to such activities.

The British charitable foundation, Medicine and Human Rights, is an institution of a different nature. It does not operate a medical centre, but instead serves torture victims in the United Kingdom by referring them to doctors and medical facilities within reach of their place of residence. As an

expression of its appreciation, the Board of Trustees has given the foundation a modest grant in support of its activities.

Contacts with centres in other countries have been established. Limited financial support has been given to the Swedish Red Cross Rehabilitation Centre for Tortured Victims, to the French organization Comède and to a medico-psycho-social centre in Belgium for political refugees and victims of torture. The Fund has also given a grant to the organization SOS Torture in Geneva in order to help that organization give assistance to torture victims in emergency situations.

B. Regional Projects

During the last several years, Central America has been a region with much political unrest. Violence and violations of human rights, including torture of political opponents, have been frequent occurrences, and the refugee problems have been serious. Under the supervision and with the support of the United Nations High Commissioner for Refugees (U.N.H.C.R.), assistance programmes became operative first in Costa Rica and then in Panama, the Dominican Republic, and Belize. The beneficiaries of these programmes are refugees who are the victims of torture or violence and come from various countries in the region. The programmes involve individual and group therapy as well as physical rehabilitation. Community involvement in developing group activities for improving social and individual adjustment in transit centres is another important aspect of the programmes.

While these programmes were first developed under the aegis of the U.N.H.C.R., the Voluntary Fund has agreed to give financial support, and the projects are now joint ventures of the U.N.H.C.R. and the Voluntary Fund.

The need to give aid to torture victims does not exist only in Central America but also in South America. After the changes of regimes in Argentina and Uruguay, it has become easier to address these problems openly, and plans have been developed for regional seminars focusing on the most effective ways of assisting and treating the numerous victims of torture in the region. The Board of Trustees favours these seminars but recommended that the organizers combine their efforts to avoid duplication of work and unnecessary expense. Already one seminar was held in Argentina to which the Fund gave a substantial grant.

It is likely that more regional projects will be developed for the benefit of torture victims. While the international centres have been concentrated in the Western world, the Board of Trustees is prepared to encourage the establishment of regional centres in other parts of the world as well. However, the initiatives must come from persons or groups in those areas, and where such initiatives are taken, the Board of Trustees might be willing to provide financial support. The Board might also be willing to support other regional projects of a more modest scope. As a very preliminary step, the Board has decided to finance visits of representatives of the Copenhagen Centre to Africa and Asia to assist different groups in preparing for regional or local action.

C. Projects Relating to Specific Countries

In some countries where torture is practised it is difficult to bring effective help to torture victims. In essence, victims will only benefit from organized help programmes if they manage to leave their own country and go to a country of asylum where such help is offered.

However, this is not the situation in all countries. In fact there are a number of countries where torture takes place but at the same time medical or other groups are able to offer help to the victims. Although the authorities may not approve of such help action, they tolerate it. However, the groups responsible for the help often work under difficult conditions which require them to avoid too much publicity about their work.

A special situation arises in countries where there has been a change of regime, often through a *coup*, and the new regime condemns the torture practised under the old one. This is usually a good climate for operating aid programmes for the torture victims, and it is usually possible to count on the cooperation and support of the government. The Board of Trustees has experienced this situation in Argentina and Uruguay in Latin America, in Guinea in Africa and in the Philippines in Asia.

A survey of the projects supported hitherto by the Voluntary Fund is given below. Due to the circumstances, certain countries receiving Fund support cannot be identified by name.

1. Argentina

During the years when there was a military regime in Argentina, there were many persons who were subjected to torture, and there were others who, after being arrested, disappeared. While some disappearances were temporary, other arrested persons never came back and their fates remain unknown.

Torture victims and their families, as well as the family members of those who never came back, have often needed help reintegrating into a normal life. A number of assistance projects were organized in Argentina, particularly after the country's return to democracy. Some of these projects

have been supported by the Voluntary Fund. Since many of the disappeared persons were also tortured, the Board of Trustees considers it justifiable, and consistent with the mandate of the Fund, to support projects of this kind. In Argentina to date, the following projects have been supported financially by the Fund:

- a) One project provides psychological assistance to children of disappeared or tortured parents. Some of the children themselves had been tortured or had been missing temporarily. The project which the Fund supports is aimed at helping many of these children. Services include contact with family members and therapeutic conversations within the family group.
- b) Another project established "mutual help workshops" for families affected by disappearances and repression. Such workshops have been and will continue to be set up at a number of places in different parts of Argentina. The workshops provide regular activities designed to enhance the social rehabilitation of the families. The families are also given medical and psychological assistance to enable them to cope with different parts of their lives including school, work, and leisure time. Creativity is encouraged, teaching is provided and the workshop is also a forum for discussing shared problems.
- c) A third project supported by the Fund is a *Medico-Psycho-Social Centre* set up in the province of Mendoza. Its aim is to provide comprehensive assistance to approximately 50 persons who are either direct or indirect victims of torture to promote their integration into their families and society. The participants are examined medically, and referred, whenever needed, to specialized assistance centres. Group activities are arranged

such as painting workshops, physical expression sessions, theatre, work therapy, gardening, group excursions and trips. Participants are interviewed, tested, given advice, and psychological guidance. They also receive individual and family psychotherapy.

- d) The Fund has also supported the setting up of a documentation and investigation centre for the search for and the return of children who have disappeared for political reasons in Argentina.

Finally it should be added that financial support has been given to a U.N.H.C.R. project in Argentina aimed at assisting Latin American refugees, many of whom have been tortured in their home countries. The refugees are to be given psychological assistance, their mental disorders are to be treated and their local integration facilitated.

2. Uruguay

In Uruguay the situation is in many respects similar to that of Argentina. Under the previous regime there were large numbers of torture victims and consequently many are now in need of help. At the present time many organizations and groups are active in providing such help, but more economic support is often needed and in some cases has been provided by the Voluntary Fund. The projects which the Fund has supported can be described as follows:

- a) One human rights organization has developed a programme to help former political detainees and relatives of disappeared persons by providing them both with legal aid and with medical and psychiatric assistance for their social resettlement. In supporting this programme, the Fund has indicated that its grant should be used to provide medical and psychi-

atric assistance.

- b) An association of families of political prisoners along with medical and religious groups, have developed a comprehensive and large-scale medical care programme for ex-prisoners and their families. A special committee is responsible for administering the programme. Although the project aids a large number of persons, the project costs have been kept at a fairly low level.
- c) The Fund has given financial support to a religious organization for a small-scale treatment programme for ex-prisoners as well as spouses and children of disappeared persons. The programme involves 14 cases (individuals or families) and includes medical, dental, psycho-therapeutic, and psychological treatment as well as legal aid.
- d) The Fund has also supported an association that provides psycho-social preventive treatment and social advancement training to families. The association has an interdisciplinary team of psychologists and social workers who are assisted, whenever needed, by psychiatrists, lawyers, sociologists, and social researchers. The programme includes direct assistance as well as research. Following an interview with a social assistant, direct care is offered to individuals, couples, or families by a team of professionals who coordinate their work to provide comprehensive care. One of the goals of psycho-social preventive care is to address problems which compromise the normal development of family members and inhibit their integration into society.
- e) A religious organization has established a project of "pilot farms" as a method of rehabilitating ex-political prisoners who have been the victims of torture. The programme will serve 30 released prisoners wishing to make a fresh start

in society by settling with their families in rural areas to work on farms. The participants, for the most part, will be persons from the interior of the country with previous experience in rural work.

- f) Two other projects, which have been supported by the Fund, are aimed at giving medical or other assistance to released prisoners or other victims of torture.

3. Guinea

In 1984, there was a change of government in Guinea. Many persons imprisoned under the previous regime were released. Many of them had been tortured and had suffered severely from this treatment. The facilities available within Guinea to give effective help were limited, and the new government therefore welcomed whatever help could be provided from abroad.

A group of French doctors organized a help programme in close cooperation with the Guinean authorities. A treatment centre was set up at one of the hospitals in Conakry which was operated by the French team together with doctors and medical personnel from Guinea. The ex-prisoners were invited through radio announcements to visit the treatment centre. As a result a considerable number of persons were examined and given treatment, in most cases with good result. In some cases assistance was also given to family members of the former detainees. In order to reach ex-prisoners outside Conakry, missions were sent to assist in the more remote parts of the country.

Since continued assistance is urgently needed, the Voluntary Fund has agreed to give financial support to the continuation of the programme.

4. The Philippines

The Fund has given financial support to two different programmes in the Philip-

pin. In regard to one programme, which in itself included physical, neurological and psychiatric treatment as well as research and education, the Fund decided to support those parts which related to medical aid. Another programme, which was also supported by the Fund, has been set up in Mindanao. It involves treatment and rehabilitation of torture victims in a special institution where psychiatrists as well as social workers are available.

5. Other countries

In several other countries, which are not to be named at the present time, support has been given to programmes of religious, humanitarian or human rights groups for the benefit of torture victims either within the country or abroad for those in exile. They include rehabilitation programmes giving physical, neurological or psychological treatment and in some cases social assistance or legal aid. Medical assistance sometimes has to be continued for a long period after release from detention.

Conclusions

The experiences gained during the first years of the Voluntary Fund have justified the conclusion that the Fund is a workable and useful instrument for supplementing the existing international machinery for the protection of human rights. A number of the projects referred to above could not have been implemented as successfully without the financial support of the Fund. It is clear that these projects can help people who, as a consequence of serious human rights violations, find themselves in distress.

At the same time, a project should not entirely depend on the Fund, since this would make the project very vulnerable if the Fund becomes unable to continue its

support. The Board of Trustees therefore finds it preferable in most cases to assume only a part — although in some cases a very substantial part — of the costs for a certain project. Even so, the Fund's initial support may create the expectation of continued grants. To prevent the termination of valuable projects, the Board must be able to provide continuing support for such projects. Contributors to the Fund should bear this in mind.

The Board of Trustees is anxious to keep administrative costs as low as possible. To this end the Fund generally holds its sessions during times when one or more of its members are already in Geneva or New York on other business. This reduces travel expenses. To further reduce administrative costs, the Board of Trustees holds its sessions at fairly long intervals. This, however, has some disadvantages, since it can delay the Fund's application deliberations and discussion with applicants. In urgent cases, however, a procedure has been developed to process applications even between sessions. Furthermore, the Board of Trustees has entrusted its chairman with certain powers to act on behalf of the Board when, for instance, it is necessary to renew grants previously approved by the Board.

In examining applications, the Board is anxious to satisfy itself that the projects are serious and urgent and that the organiz-

ing group or association has the capability of putting their proposals into effect. Unless the applicant is already well-known to the Board of Trustees or to the Centre for Human Rights of the United Nations, the Board often makes enquiries to ensure that the application comes from a bona fide organization and deserves the support of the Fund.

In the same spirit, the Board of Trustees finds it important to monitor the implementation of the grants by the beneficiaries. Grant recipients invariably are asked to submit reports and accounts of their projects. No new grant is given for a further period until the Board of Trustees has received satisfactory documentation permitting it to evaluate the manner in which the previous grant has been used.

What the Fund will be able to achieve in the future will of course depend to a large extent on the financial resources put at its disposal. It seems fair to say, however, that the Fund has made a promising and encouraging start and that, even with limited resources, it has been able to finance important human rights activities in Africa, America, Asia, and Europe. Its existence is also a reminder to all governments that torture is a serious human rights problem which is of special concern to the United Nations and to the international community.

BASIC TEXTS

The Limburg Principles

on the Implementation of the International Covenant on Economic, Social and Cultural Rights

Introduction

A group of distinguished experts in international law, convened by the International Commission of Jurists, the Faculty of Law of the University of Limburg (Maastricht, the Netherlands) and the Urban Morgan Institute for Human Rights, University of Cincinnati (Ohio, USA), met in Maastricht on June 2-6 1986 to consider the nature and scope of the obligations of States parties to the International Covenant on Economic, Social and Cultural Rights, and international co-operation under Part IV of the Covenant.

The 29 participants came from Australia, the Federal Republic of Germany, Hungary, Ireland, Mexico, Netherlands, Norway, Senegal, Spain, United Kingdom, USA, Yugoslavia, the United Nations Centre for Human Rights, the International Labour Organization (ILO), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the World Health Organization (WHO), the Commonwealth Secretariat, and the sponsoring organizations. Four of the participants were members of the ECOSOC Committee on Economic, Social and Cultural Rights.

The participants agreed unanimously upon the following principles which they believe 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 Limburg Principles

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Part I: The Nature and Scope of States Parties' Obligations

A. General Observations

1. Economic, social and cultural rights are an integral part of international human rights law. They are the subject of specific treaty obligations in various international instruments, notably the International Covenant on Economic, Social and Cultural Rights.

2. The International Covenant on Economic, Social and Cultural Rights, together with the International Covenant on Civil and Political Rights and the Optional Protocol, entered into force in 1976. The Covenants serve to elaborate the Universal Declaration of Human Rights: these instruments constitute the International Bill of Human Rights.

3. As human rights and fundamental freedoms are indivisible and interdependent, equal attention and urgent consideration should be given to the implementation, promotion and protection of both civil and political, and economic, social and cultural rights.

4. The International Covenant on Economic, Social and Cultural Rights (hereafter the Covenant) should, in accordance with the Vienna Convention on the Law of Treaties (Vienna, 1969), be interpreted in good faith, taking into account the object and purpose, the ordinary meaning, the preparatory work and the relevant practice.

5. The experience of the relevant specialized agencies as well as of United Nations bodies and intergovernmental organizations, including the United Nations working groups and special rapporteurs in the field of human rights, should be taken into account in the implementation of the Covenant and in monitoring States parties' achievements.

6. The achievement of economic, social and cultural rights may be realized in a variety of political settings. There is no single road to their full realization. Successes and failures have been registered in both market and non-market economies, in both centralized and decentralized political structures.

7. States parties must at all times act in good faith to fulfil the obligations they have accepted under the Covenant.

8. Although the full realization of the rights recognized in the Covenant is to be attained progressively, the application of some rights can be made justiciable immediately while other rights can become justiciable over time.

9. Non-governmental organizations can play an important role in promoting the implementation of the Covenant. This role should accordingly be facilitated at the national as well as the international level.

10. States parties are accountable both to the international community and to their own people for their compliance with the obligations under the Covenant.

11. A concerted national effort to invoke the full participation of all sectors of society is, therefore, indispensable to achieving progress in realising economic, social and cultural rights. Popular anticipation is required at all stages, including the formulation, application and review of national policies.

12. The supervision of compliance with the Covenant should be approached in a spirit of co-operation and dialogue. To this end, in considering the reports of States parties, the Committee on Economic, Social and Cultural Rights, hereinafter called "the Committee", should analyse the causes and factors impeding the realization of the rights covered under the Covenant and, where possible indicate solutions. This approach should not preclude a finding, where the information available warrants such a conclusion, that a State party has failed to comply with its obligations under the Covenant.

13. All organs monitoring the Covenant should pay special attention to the principles of non-discrimination and equality before the law when assessing States parties' compliance with the Covenant.

14. Given the significance for development of the progressive realization of the rights set forth in the Covenant, particular attention should be given to measures to improve the standard of living of the poor and other disadvantaged groups, taking into account that special measures may be required to protect cultural rights of indigenous peoples and minorities.

15. Trends in international economic relations should be taken into account in assessing the efforts of the international community to achieve the Covenant's objectives.

B. *Interpretative Principles specifically relating to Part II of the Covenant.*

Article 2(1): *"to take steps... by all appropriate means, including particularly the adoption of legislation"*

16. All States parties have an obligation to begin immediately to take steps towards full realization of the rights contained in the Covenant.

17. At the national level States parties shall use all appropriate means, including legislative, administrative, judicial, economic, social and educational measures, consistent with the nature of the rights in order to fulfil their obligations under the Covenant.

18. Legislative measures alone are not sufficient to fulfil the obligations of the Covenant. It should be noted, however, that article 2(1) would often require legislative action to be taken in cases where existing legislation is in violation of the obligations assumed under the Covenant.

19. States parties shall provide for effective remedies including, where appropriate, judicial remedies.

20. The appropriateness of the means to be applied in a particular state shall be determined by that State party, and shall be subject to review by the United Nations Economic and Social Council, with the assistance of the Committee. Such review shall be without prejudice to the competence of the other organs established pursuant to the Charter of the United Nations.

"to achieve progressively the full realization of the rights"

21. The obligation "to achieve progressively the full realization of the rights" requires States parties to move as expeditiously as possible towards the realization of the rights. Under no circumstances shall this be interpreted as implying for States the right to defer indefinitely efforts to ensure full realization. On the contrary all States parties have the obligation to begin immediately to take steps to fulfil their obligations under the Covenant.

22. Some obligations under the Covenant require immediate implementation in full by all States parties, such as the prohibition of discrimination in article 2(2) of the Covenant.

23. The obligation of progressive achievement exists independently of the increase in resources; it requires effective use of resources available.

24. Progressive implementation can be effected not only by increasing resources, but also by the development of societal resources necessary for the realization by everyone of the rights recognized in the Covenant.

"to the maximum of its available resources"

25. States parties are obligated, regardless of the level of economic development, to ensure respect for minimum subsistence rights for all.

26. "Its available resources" refers to both the resources within a State and those available from the international community through international co-operation and assistance.

27. In determining whether adequate measures have been taken for the realization of the rights recognized in the Covenant attention shall be paid to equitable and effective use of and access to the available resources.

28. In the use of the available resources due priority shall be given to the realization of rights recognized in the Covenant, mindful of the need to assure everyone the satisfaction of subsistence requirements as well as the provision of essential services.

"individually and through international assistance and co-operation, especially economic and technical"

29. International co-operation and assistance pursuant to the Charter of the United Nations (arts. 55 and 56) and the Covenant shall have in view as a matter of priority the realization of all

human rights and fundamental freedoms, economic, social and cultural as well as civil and political.

30. International co-operation and assistance must be directed towards the establishment of a social and international order in which the rights and freedoms set forth in the Covenant can be fully realized (cf. art. 28 Universal Declaration of Human Rights).

31. Irrespective of differences in their political, economic and social systems, States shall co-operate with one another to promote international social, economic and cultural progress, in particular the economic growth of developing countries, free from discrimination based on such differences.

32. States parties shall take steps by international means to assist and co-operate in the realization of the rights recognized by the Covenant.

33. International co-operation and assistance shall be based on the sovereign equality of states and be aimed at the realization of the rights contained in the Covenant.

34. In undertaking international co-operation and assistance pursuant to article 2(1) the role of international organizations and the contribution of non-governmental organizations shall be kept in mind.

Article 2(2): Non-discrimination

35. Article 2(2) calls for immediate application and involves an explicit guarantee on behalf of the States parties. It should, therefore, be made subject to judicial review and other recourse procedures.

36. The grounds of discrimination mentioned in article 2(2) are not exhaustive.

37. Upon becoming a party to the Covenant states shall eliminate *de jure* discrimination by abolishing without delay any discriminatory laws, regulations and practices (including acts of omission as well as commission) affecting the enjoyment of economic, social and cultural rights.

38. *De facto* discrimination occurring as a result of the unequal enjoyment of economic, social and cultural rights, on account of a lack of resources or otherwise, should be brought to an end as speedily as possible.

39. Special measures taken for the sole purpose of securing adequate advancement of certain groups or individuals requiring such protection as may be necessary in order to ensure to such groups or individuals equal enjoyment of economic, social and cultural rights shall not be deemed discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different groups and that such measures shall not be continued after their intended objectives have been achieved.

40. Article 2(2) demands from States parties that they prohibit private persons and bodies from practising discrimination in any field of public life.

41. In the application of article 2(2) due regard should be paid to all relevant international instruments including the Declaration and Convention on the Elimination of all Forms of Racial Discrimination as well as to the activities of the supervisory committee (CERD) under the said Convention.

Article 2(3): Non-nationals in developing countries

42. As a general rule the Covenant applies equally to nationals and non-nationals.

43. The purpose of article 2(3) was to end the domination of certain economic groups of non-nationals during colonial times. In the light of this the exception in article 2(3) should be interpreted narrowly.

44. This narrow interpretation of article 2(3) refers in particular to the notion of economic rights and to the notion of developing countries. The latter notion refers to those countries which have gained independence and which fall within the appropriate United Nations classifications of developing countries.

Article 3: Equal rights for men and women

45. In the application of article 3 due regard should be paid to the Declaration and Convention on the Elimination of All Forms of Discrimination against Women and other relevant instru-

ments and the activities of the supervisory committee (CEDAW) under the said Convention.

Article 4: Limitations

46. Article 4 was primarily intended to be protective of the rights of individuals rather than permissive of the imposition of limitations by the state.

47. The article was not meant to introduce limitations on rights affecting the subsistence or survival of the individual or integrity of the person.

*"determined by law"**

48. No limitation on the exercise of economic, social and cultural 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.

49. Laws imposing limitations on the exercise of economic, social and cultural rights shall not be arbitrary or unreasonable or discriminatory.

50. Legal rules limiting the exercise of economic, social and cultural rights shall be clear and accessible to everyone.

51. Adequate safeguards and effective remedies shall be provided by law against illegal or abusive imposition on application of limitations on economic, social and cultural rights.

"promoting the general welfare"

52. This term shall be construed to mean furthering the wellbeing of the people as a whole.

*"in a democratic society"****

53. The expression "in a democratic society" shall be interpreted as imposing a further restriction on the application of limitations.

54. The burden is upon a state imposing limitations to demonstrate that the limitations do not impair the democratic functioning of the society.

55. 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.

"compatible with the nature of these rights"

56. The restriction "compatible with the nature of these rights" requires that a limitation shall not be interpreted or applied so as to jeopardize the essence of the right concerned.

Article 5

57. Article 5(1) underlines the fact that there is no general, implied or residual right for a state to impose limitations beyond those which are specifically provided for in the law. None of the provisions in the law may be interpreted in such a way as to destroy "any of the rights or freedoms recognized". In addition article 5 is intended to ensure that nothing in the Covenant shall be interpreted as

* The Limburg Principles 48-51 are derived from the Siracusa Principles 15-18, UN Doc. E/CN.4/1984/4, 28 September 1984 and 7 Human Rights Quarterly 3 (1985), at p. 5.

** Compare Siracusa Principles 19-21, *ibid.*, at p.5.

impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

58. The purpose of article 5(2) is to ensure that no provision in the Covenant shall be interpreted to prejudice the provisions of domestic law or any bilateral or multilateral treaties, conventions or agreements which are already in force, or may come into force, under which more favourable treatment would be accorded to the persons protected. Neither shall article 5(2) be interpreted to restrict the exercise of any human right protected to a greater extent by national or international obligations accepted by the State party.

C. Interpretative Principles specifically relating to Part III of the Covenant

Article 8: "prescribed by law"***

59. See the interpretative principles under the synonymous term "determined by law" in article 4.

"necessary in a democratic society"

60. In addition to the interpretative principles listed under article 4 concerning the phrase "in a democratic society", article 8 imposes a greater restraint upon a State party which is exercising limitations on trade union rights. It requires that such a limitation is indeed necessary. The term "necessary" implies that the limitation:

- a) responds to a pressing public or social need,
- b) pursues a legitimate aim, and
- c) is proportional to that aim.

61. Any assessment as to the necessity of a limitation shall be based upon objective considerations.

"national security"

62. 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.

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

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

65. The systematic violation of economic, social and cultural 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.

"public order (*ordre public*)"

66. The expression "public order (*ordre public*)" as used in the Covenant may be defined as the sum of rules which ensures the functioning of society or the set of fundamental principles on which a society is founded. Respect for economic, social and cultural rights is part of public order (*ordre public*).

67. Public order (*ordre public*) shall be interpreted in the context of the purpose of the particular economic, social and cultural rights which are limited on this ground.

*** The Limburg Principles 59-69 are derived from the Siracusa Principles 10, 15-26, 29-32 and 35-37, *ibid.*, at. pp. 4-7.

68. 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.

"rights and freedoms of others"

69. 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.

D. Violations of Economic, Social and Cultural Rights

70. A failure by a State party to comply with an obligation contained in the Covenant is, under international law, a violation of the Covenant.

71. In determining what amounts to a failure to comply, it must be borne in mind that the Covenant affords to a State party a margin of discretion in selecting the means for carrying out its objects, and that factors beyond its reasonable control may adversely affect its capacity to implement particular rights.

72. A State party will be in violation of the Covenant, *inter alia*, if:

- it fails to take a step which it is required to take by the Covenant;
- it fails to remove promptly obstacles which it is under a duty to remove to permit the immediate fulfilment of a right;
- it fails to implement without delay a right which it is required by the Covenant to provide immediately;
- it wilfully fails to meet a generally accepted international minimum standard of achievement, which is within its powers to meet;
- it applies a limitation to a right recognized in the Covenant other than in accordance with the Covenant;
- it deliberately retards or halts the progressive realization of a right, unless it is acting within a limitation permitted by the Covenant or it does so due to a lack of available resources or *force majeure*;
- it fails to submit reports as required under the Covenant.

73. In accordance with international law each State party to the Covenant has the right to express the view that another State party is not complying with its obligations under the Covenant and to bring this to the attention of that State party. Any dispute that may thus arise shall be settled in accordance with the relevant rules of international law relating to the peaceful settlement of disputes.

Part II. Consideration of States Parties' Reports and International Co-operation under Part IV of the Covenant.

A. Preparation and submission of reports by States parties

74. The effectiveness of the supervisory machinery provided in Part IV of the Covenant depends largely upon the quality and timeliness of reports by States parties. Governments are therefore urged to make their reports as meaningful as possible. For this purpose they should develop adequate internal procedures for consultations with the competent government departments and agencies, compilation of relevant data, training of staff, acquisition of background documentation, and consultation with relevant non-governmental and international institutions.

75. The preparation of reports under article 16 of the Covenant could be facilitated by the implementation of elements of the programme of advisory services and technical assistance as proposed by the chairmen of the main human rights supervisory organs in their 1984 report to the General Assembly (UN Doc. A 39/484).

76. States parties should view their reporting obligations as an opportunity for broad public discussion on goals and policies designed to realize economic, social and cultural rights. For this pur-

pose wide publicity should be given to the reports, if possible in draft. The preparation of reports should also be an occasion to review the extent to which relevant national policies adequately reflect the scope and content of each right, and to specify the means by which it is to be realized.

77. States parties are encouraged to examine the possibility of involving non-governmental organizations in the preparation of their reports.

78. In reporting on legal steps taken to give effect to the Covenant, States parties should not merely describe any relevant legislative provisions. They should specify, as appropriate, the judicial remedies, administrative procedures and other measures they have adopted for enforcing those rights and the practice under those remedies and procedures.

79. Quantitative information should be included in the reports of States parties in order to indicate the extent to which the rights are protected in fact. Statistical information and information on budgetary allocations and expenditures should be presented in such a way as to facilitate the assessment of the compliance with Covenant obligations. States parties should, where possible, adopt clearly defined targets and indicators in implementing the Covenant. Such targets and indicators should, as appropriate, be based on criteria established through international co-operation in order to increase the relevance and comparability of data submitted by States parties in their reports.

80. When necessary, governments should conduct or commission studies to enable them to fill gaps in information regarding progress made and difficulties encountered in achieving the observance of the Covenant rights.

81. Reports by States parties should indicate the areas where more progress could be achieved through international co-operation and suggest economic and technical co-operation programmes that might be helpful toward that end.

82. In order to ensure a meaningful dialogue between the States parties and the organs assessing their compliance with the provisions of the Covenant, States parties should designate representatives who are fully familiar with the issues raised in the report.

B. Role of the Committee on Economic, Social and Cultural Rights

83. The Committee has been entrusted with assisting the Economic and Social Council in the substantive tasks assigned to it by the Covenant. In particular, its role is to consider States parties reports and to make suggestions and recommendations of a general nature, including suggestions and recommendations as to fuller compliance with the Covenant by States parties. The decision of the Economic and Social Council to replace its sessional Working Group by a Committee of independent experts should lead to a more effective supervision of the implementation by States parties.

84. In order to enable it to discharge fully its responsibilities the Economic and Social Council should ensure that sufficient sessions are provided to the Committee. It is imperative that the necessary staff and facilities for the effective performance of the Committee's functions be provided, in accordance with ECOSOC Resolution 1985/17.

85. In order to address the complexity of the substantive issues covered by the Covenant, the Committee might consider delegating certain tasks to its members. For example, drafting groups could be established to prepare preliminary formulations or recommendations of a general nature or summaries of the information received. Rapporteurs could be appointed to assist the work of the Committee in particular to prepare reports on specific topics and for that purpose consult States parties, specialized agencies and relevant experts and to draw up proposals regarding economic and technical assistance projects that could help overcome difficulties States parties have encountered in fulfilling their Covenant obligations.

86. The Committee should, pursuant to article 22 and 23 of the Covenant, explore with other organs of the United Nations, specialized agencies and other concerned organizations, the possibilities of taking additional international measures likely to contribute to the progressive implementation of the Covenant.

87. The Committee should reconsider the current six-year cycle of reporting in view of the delays which have led to simultaneous consideration of reports submitted under different phases of the cycle. The Committee should also review the guidelines for States parties to assist them in preparing reports and propose any necessary modifications.

88. The Committee should consider inviting States parties to comment on selected topics

leading to a direct and sustained dialogue with the Committee.

89. The Committee should devote adequate attention to the methodological issues involved in assessing compliance with the obligations contained in the Covenant. Reference to indicators, in so far as they may help measure progress made in the achievement of certain rights, may be useful in evaluating reports submitted under the Covenant. The Committee should take due account of the indicators selected by or in the framework of the specialized agencies and draw upon or promote additional research, in consultation with the specialized agencies concerned, where gaps have been identified.

90. Whenever the Committee is not satisfied that the information provided by a State party is adequate for a meaningful assessment of progress achieved and difficulties encountered it should request supplementary information, specifying as necessary the precise issues or questions it would like the State party to address.

91. In preparing its reports under ECOSOC-resolution 1985/17, the Committee should consider in addition to the "summary of its consideration of the reports", highlighting thematic issues raised during its deliberations.

C. Relations between the Committee and Specialized Agencies, and other international organs

92. The establishment of the Committee should be seen as an opportunity to develop a positive and mutually beneficial relationship between the Committee and the specialized agencies and other international organs.

93. New arrangements under article 18 of the Covenant should be considered where they could enhance the contribution of the specialized agencies to the work of the Committee. Given that the working methods with regard to the implementation of economic, social and cultural rights vary from one specialized agency to another, flexibility is appropriate in making such arrangements under article 18.

94. It is essential for the proper supervision of the implementation of the Covenant under Part IV that a dialogue be developed between the specialized agencies and the Committee with respect to matters of common interest. In particular consultations should address the need for developing indicators for assessing compliance with the Covenant; drafting guidelines for the submission of reports by States parties; making arrangements for submission of reports by the specialized agencies under article 18. Consideration should also be given to any relevant procedures adopted in the agencies. Participation of their representatives in meetings of the Committee would be very valuable.

95. It would be useful if Committee members could visit specialized agencies concerned, learn through personal contact about programmes of the agencies relevant to the realization of the rights contained in the Covenant and discuss the possible areas of collaboration with those agencies.

96. Consultations should be initiated between the Committee and international financial institutions and development agencies to exchange information and share ideas on the distribution of available resources in relation to the realization of the rights recognized in the Covenant. These exchanges should consider the impact of international economic assistance on efforts by States parties to implement the Covenant and possibilities of technical and economic co-operation under article 22 of the Covenant.

97. The Commission on Human Rights, in addition to its responsibilities under article 19 of the Covenant, should take into account the work of the Committee in its consideration of items on its agenda relating to economic, social and cultural rights.

98. The Covenant on Economic, Social and Cultural Rights is related to the Covenant on Civil and Political Rights. Although most rights can clearly be delineated as falling within the framework of one or other Covenant, there are several rights and provisions referred to in both instruments which are not susceptible to clear differentiation. Both Covenants moreover share common provisions and articles. It is important that consultative arrangements be established between the Economic, Social and Cultural Rights Committee and the Human Rights Committee.

99. Given the relevance of other international legal instruments to the Covenant, early consideration should be given by the Economic and Social Council to the need for developing effective consultative arrangements between the various supervisory bodies.

100. International and regional intergovernmental organizations concerned with the realization of economic, social and cultural rights are urged to develop measures, as appropriate, to promote the implementation of the Covenant.

101. As the Committee is a subsidiary organ of the Economic and Social Council, non-governmental organizations enjoying consultative status with the Economic and Social Council are urged to attend and follow the meetings of the Committee and, when appropriate, to submit information in accordance with ECOSOC resolution 1296 (XLIV).

102. The Committee should develop, in co-operation with intergovernmental organizations and non-governmental organizations as well as research institutes, an agreed system for recording, storing and making accessible case law and other interpretative material relating to international instruments on economic, social and cultural rights.

103. As one of the measures recommended in article 23 it is recommended that seminars be held periodically to review the work of the Committee and the progress made in the realization of economic, social and cultural rights by States parties.

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International Covenant on Economic, Social and Cultural 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 freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights,

Considering the obligation 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

Part II

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.

Article 2

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

3. Developing countries, with due regard to human rights and their national economy, may

determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

Article 4

The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

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 to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant.

2. No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted 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. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

Article 8

1. The States Parties to the present Covenant undertake to ensure:

(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;

(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

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 would prejudice, the guarantees provided for in that Convention.

Article 9

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

Article 10

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

Article 11

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures,

including specific programmes, which are needed:

(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

Article 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(a) The provision for the reduction of the still-birthrate and of infant mortality and for the healthy development of the child;

(b) The improvement of all aspects of environmental and industrial hygiene;

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Article 13

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

(a) Primary education shall be compulsory and available free to all;

(b) Secondary education in its different forms, including technical and vocational secondary edu-

cation, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 14

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

Article 15

1. The States Parties to the present Covenant recognize the right of everyone:

- (a) To take part in cultural life;
- (b) To enjoy the benefits of scientific progress and its applications;
- (c) To benefit from the protection of the

moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.

4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

Part IV

Article 16

1. The States Parties to the present Covenant undertake to submit in conformity with this part of the Covenant reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein.

2. (a) All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit copies to the Economic and Social Council for consideration in accordance with the provisions of the present Covenant;

(b) The Secretary-General of the United Nations shall also transmit to the specialized agencies copies of the reports, or any relevant parts therefrom, from States Parties to the present Covenant which are also members of these specialized agencies in so far as these reports, or parts therefrom, relate to any matters which fall within the responsibilities of the said agencies in accordance with their constitutional instruments.

Article 17

1. The States Parties to the present Covenant shall furnish their reports in stages, in accordance with a programme to be established by the Economic and Social Council within one year of the entry into force of the present Covenant after consultation with the States Parties and the specialized agencies concerned.

2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Covenant.

3. Where relevant information has previously been furnished to the United Nations or to any specialized agency by any State Party to the

present Covenant, it will not be necessary to reproduce that information, but a precise reference to the information so furnished will suffice.

Article 18

Pursuant to its responsibilities under the Charter of the United Nations in the field of human rights and fundamental freedoms, the Economic and Social Council may make arrangements with the specialized agencies in respect of their reporting to it on the progress made in achieving the observance of the provisions of the present Covenant falling within the scope of their activities. These reports may include particulars of decisions and recommendations on such implementation adopted by their competent organs.

Article 19

The Economic and Social Council may transmit to the Commission on Human Rights for study and general recommendations or, as appropriate, for information the reports concerning human rights submitted by States in accordance with articles 16 and 17, and those concerning human rights submitted by the specialized agencies in accordance with article 18.

Article 20

The States Parties to the present Covenant and the specialized agencies concerned may submit comments to the Economic and Social Council on any general recommendation under article 19 or reference to such general recommendation in any report of the Commission on Human Rights or any documentation referred to therein.

Article 21

The Economic and Social Council may submit from time to time to the General Assembly reports with recommendations of a general nature and a summary of the information received from the States Parties to the present Covenant and the specialized agencies on the measures taken and the progress made in achieving general observance of the rights recognized in the present Covenant.

Article 22

The Economic and Social Council may bring to the attention of other organs of the United Nations, their subsidiary organs and specialized agencies concerned with furnishing technical assistance any matters arising out of the reports referred to in this part of the present Covenant which may assist such bodies in deciding, each within its field of competence, on the advisability

of international measures likely to contribute to the effective progressive implementation of the present Covenant.

Article 23

The States Parties to the present Covenant agree that international action for the achievement of the rights recognized in the present Covenant includes such methods as the conclusion of conventions, the adoption of recommendations, the furnishing of technical assistance and the holding of regional meetings and technical meetings for the purpose of consultation and study organized in conjunction with the Governments concerned.

Article 24

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 25

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 V

Article 26

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 the present Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 27

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 28

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

Article 29

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 shall thereupon communicate any proposed amendments to the States 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 As-

sembly 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 30

Irrespective of the notifications made under article 26, 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 26;

(b) The date of the entry into force of the present Covenant under article 27 and the date of the entry into force of any amendments under article 29.

Article 31

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 26.

Ratifications

88 ratifications: Afghanistan, Argentina, 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., Greece, Guinea, Guyana, Honduras, 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, Niger, Norway, Panama, Peru, Philippines, Poland, Portugal, Romania, Rwanda, Saint Vincent & Grenadines, San Marino, Senegal, Solomon Islands, Spain, Sri Lanka, Sudan, Suriname, Sweden, Syrian Arab Rep., Tanzania, Togo, Trinidad & Tobago, Tunisia, Ukrainian SSR, USSR, United Kingdom, Uruguay, Venezuela, Vietnam, Yugoslavia, Zaire, Zambia.

Entry into force: 3 January 1976.

The Milan Principles

Introduction

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

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

Basic Principles on the Independence of the Judiciary

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

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

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

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

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

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

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

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

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

The following basic principles, formulated to assist Member States in their task of securing and promoting the independence of the judiciary should be taken into account and respected by Governments

within the framework of their national legislation and practice and be brought to the attention of judges, lawyers, members of the executive and the legislature and the public in general. The principles have been formulated principally with professional judges in mind, but they apply equally, as appropriate, to lay judges, where they exist.

Independence of the judiciary

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

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

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

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

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

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

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

Freedom of expression and association

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

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

Qualifications, selection and training

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

Conditions of service and tenure

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

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

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

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

Professional secrecy and immunity

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

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

Discipline, suspension and removal

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

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

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

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

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Report of an ICJ mission to Sudan in October 1985 by A. Halasa, J. D. Cooke and U. Dolgopol. Published by the ICJ, Geneva, 1986. Available in English. ISBN 92 9037 031 9. Swiss Francs 10, plus postage.

The report is based on meetings with a wide range of members of Sudanese society, from members of the Transitional Military Council to trade unionists and prison officials. It gives an historical overview of the situation in the country followed by chapters on the problems facing the new government, the Southern conflict, legislation affecting human rights, and other constitutional and human rights issues. The report ends with a set of 28 recommendations.

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Human Rights and Mental Patients in Japan

Report of an ICJ mission to Japan in May 1985 by Dr. T.W. Harding, Judge J. Schneider, Dr. H. M. Visotsky and Dr. C. L. Graves. Published by the ICJ, Geneva, 1986. Available in English. ISBN 92 9037 032 7. Swiss Francs 10, plus postage.

This mission to Japan reviewed and made recommendations on the legislation and practices for the treatment of mental patients. Many grave abuses in Japanese mental hospitals have been reported. The mission did not investigate these but commented that "the present structure and function of the Japanese mental health services create conditions which are conducive to inappropriate forms of care and serious human rights violations on a significant scale." The members of the mission, distinguished experts in the field, had discussions with government bodies and officials as well as many professional and concerned individuals. They visited several mental hospitals. Their report ends with 18 conclusions and recommendations pin-pointing the main areas of concern as a lack of legal protection for patients during admission and hospitalisation and a preponderance of long-term institutional treatment allied to a relative lack of community treatment and rehabilitation.

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Report of a Conference held in Nairobi in December 1985, convened by the ICJ. Published by the ICJ, Geneva, 1986. Available in English and French. ISBN 92 9037 028 9. Swiss Francs 10, plus postage.

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