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CONTENTS

CENTRE FOR THE INDEPENDENCE OF JUDGES AND LAWYERS

April 1985

Editor: Ustinia Dolgopol

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

The Centre for the Independence of Judges and Lawyers was created by the International Commission of Jurists in 1978 to promote the independence of the judiciary and the legal profession. It is supported by contributions from lawyers organisations and private foundations. The work of the Centre has been supported by generous grants from the Rockefeller Brothers Fund and the J. Roderick MacArthur Foundation, but its future will be dependent upon increased funding from the legal profession. A grant from the Ford Foundation has helped to meet the cost of publishing the Bulletin in English, French and Spanish.

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

Affiliation

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

Individual Contributors

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GUATEMALA

The Undermining of Judicial Independence

On 3 May 1984 the Guatemalan head of state, General Oscar Mejia Victores, removed from office the President of the Supreme Court, Licenciado Ricardo Sagastume Vidaurre. No explanation was given for the removal, except for a terse comment that it was done to "expedite the application of justice".

At present the head of state has the authority to remove a judge at will; he does not have to give any explanation and there is no right to a hearing or an appeal. This situation represents a clear and direct threat to the independence of the judiciary.

Although the precise motivations for the removal are unknown, there is some suggestion of a link between Justice Sagastume Vidaurre's removal and the decision of the Supreme Court to hear, against the advice of the government, writs of habeas corpus and amparo filed by the Guatemalan Commission on Human Rights. When the court announced its decision to hear the cases, a government spokesman stated it would make no difference as the court would be unable to give effect to any judgment rendered in favour of the detainees.

A group of ten judges and alternates as well as ten officials of the Court resigned in protest against the removal of the President. The Bar Association criticised his removal and has since organised a series of working parties on constitutional issues, including the independence of the judiciary.

The Inter-American Commission on Human Rights has been very critical of both the executive and the judiciary with respect to the protection of and adherence to judicial

independence. In a 1983 report the Commission described the judiciary in Guatemala as a "dependent, subordinated and submissive entity". At that time, Justice Sagastume Vidaurre defended the court and the judiciary saying that there was little interference by the executive with judicial functions. This was said despite the suspension by the government of the writ of habeas corpus in order to prevent the courts from inquiring into the conditions and lawfulness of detention. Justice Sagastume Vidaurre argued that there were other articles of the Constitution that had not been suspended that could be used to protect the fundamental rights of detainees. This statement was in stark contrast to the reality of the situation. Not a single claim made under the article of the Constitution referred to had ever been successful, nor had any petition for habeas corpus or amparo. On several occasions the Supreme Court had refused to hear cases on the ground that the particular article had been suspended.

At the time of his departure from office, Justice Sagastume Vidaurre changed his position and stated that pressure had in fact been put on the judiciary as well as on him personally, particularly by members of the military and the executive branch, in order to induce the court to act in favour of their interests. He also noted that abuses had been committed against the population and against the judicial authority, and that most of the abuses stemmed from groups linked to police and military circles. Among the abuses directed against the court were the attempts to force court employees to participate in civil defence patrols and the imprisonment of persons without judicial warrant.

Unfortunately, there has been little improvement in this situation and the judiciary remains subservient to the Executive.

N A M I B I A

Economic Harassment Threatens Independence of Lawyers

CIJL Bulletin no. 14 reported on the arrest and subsequent release of two Namibian lawyers, Hartmut Ruppel and Anton Lubowski, during June and July of 1984. Both are well-known for their defence of persons charged with security offences and they have been successful in bringing to light conditions in Namibian prisons and exposing the extensive use of torture. Both of them have criticised the security laws and their effect on the Rule of Law in Namibia.

Since their release, other forms of harassment have been directed at the two attorneys. Each has had economic pressure brought to bear against him. Mr. Ruppel is a member of the firm of Lorentz and Bone, one of the country's most respected law firms. For thirty years the firm has been doing the conveyancing work for the City of Windhoek. On 24 October 1984 the City Council decided that the firm should not be given the conveyancing work for future urban extensions but should only continue to act for the City with respect to existing towns and urban areas already allotted to them.

The decision of the Council to limit the work of the firm received a great deal of publicity in Namibia as the apparent cause was an anomyous letter accusing the firm of having pro-SWAPO sentiments, alluding to the firm's representation of SWAPO members in court actions. Some of the Council members spoke openly of wanting to change firms because of the alleged association with SWAPO, while others denied that it had affected their decision. All of the Council members agreed that the firm had been doing good work. Some of those in opposition to the move noted that a previous proposal to rotate the conveyancing work had been defeated, with those now supporting the move having voted against it.

Concern about this decision and the motives behind it were expressed by the Secretary-General of the ICJ in a letter to the Mayor of Windhoek on 14 November 1984. He stated:

> "It is an essential principle of the Rule of Law that members of the legal profession must be willing to offer their legal services to anyone in need of them, no matter how unpopular the client may be. Indeed, it is above all in cases where the client is unpopular that the duty of lawyers to give skilled legal representation is highest. Once members of the legal profession come to be identified with their clients, or once they refuse to represent clients on political grounds, the Rule of Law is seriously undermined."

The Secretary-General then asked the Council to reconsider its decision.

A reply was received from the Mayor on 7 December which basically reiterated the arguments made during the Council session that the decision was a business one and was not motivated by political considerations. However, this response is difficult to accept in light of the fact that no suggestion was made that the Council could achieve better or less expensive results elsewhere and that the Council had previously defeated a motion to circulate the work on the basis that Lorentz and Bone were doing very satisfactory work and that rotation of the work might cause considerable confusion.

Mr. Lubowski has also been under economic pressure because of his work on behalf of SWAPO members charged with offences. However, this pressure has not emanated from the government, but from some solicitors in Windhoek who are refusing to engage him as a barrister on a brief even when clients specifically request his services. (Mr. Lubowski is one of the better known advocates in Namibia.) Such action on the part of lawyers is

particularly disturbing. The independence of the entire profession will be undermined if lawyers begin to use subtle forms of pressure in an attempt to dissuade their colleagues from representing certain groups of clients.

P A K I S T A N

Continued Detention of Lawyer Raza Kazim

CIJL Bulletins nos. 13 and 14 reported on the case of Raza Kazim. Since then it has been learned that he has been put on trial at Attock Fort along with 17 members of the military and is charged with sedition and other offences against the state. Little information is available about the trial, as all those participating have taken an oath not to divulge information; a breach of the oath can result in prosecution under the Official Secrets Act.

The trial began in late January and was adjourned in early February. During this time it was reported that Raza Kazim was in poor physical and mental health. The CIJL wrote to the authorities requesting that he be transferred to a hospital in order to receive proper treatment. He has now been transferred to a hospital in Lahore. His health remains poor, and although his family has been allowed to visit him, they have not been given any substantive information about his medical condition.

The trial continues despite Raza Kazim's absence. It is expected that the prosecution's case will conclude shortly and that the defence will then present its case. It is not clear whether Raza Kazim's lawyer will have to go forward with the defence despite his client's absence from court and despite his inability to discuss the case with his client.

S Y R I A

Continued Detention of Lawyers

The CIJL continues to be concerned about the detention without charge or trial of lawyers in Syria. Thirteen of the lawyers arrested in April/May 1980 following a general strike called for by the Syrian Bar Association and several other professional bodies remain in prison, with no indication that they will be either released or charged and brought to trial.

They are:

Salim 'Aqil
Thuraya 'Abd al-Karim
'Abd al-Majid Manjouneh
As'ad 'Ulabi
George 'Atiyeh
Dibo 'Abbud
'Adnan 'Arabi
Muhammad Hamdi al-Khorasami
Bahjat al-Missouti
Michel 'Arbash
'Abd al-Karim Jurud
Haitham Malih
Sa'id Nino

Ten of the 13 are in Adra prison outside Damascus. The whereabouts of George Atiyeh, Dibo Abbud and 'Abd al-Karim Jurud are unknown.

As reported in Bulletin no. 6, the strike was initiated by the Damascus Bar Association after the government's failure to respond adequately to calls for the ending of the state of emergency in force since 1963, the abolition of emergency courts, the freeing of those arbitrarily detained, the cessation of torture and other forms of cruel or degrading treatment and the strengthening of the judiciary. These issues were first raised in

a resolution passed by the Damascus Bar Association in June 1978 and subsequently endorsed by the Syrian Bar Association during its General Congress from 27 to 29 June 1978. The resolution of the Congress also called for the Council of the Bar to work with the competent authorities to achieve their objective.

Accordingly, the Bâtonnier of the Bar wrote to the Prime Minister requesting that the Bar and government work together to secure "a climate of freedom and safeguarding the sovereignty of law", and proceeded to set out steps the Bar believed needed to be taken in this regard. In December 1978 an extraordinary general session of the Syrian Bar took place and a resolution was passed which again called for the authorities to work to restore general freedoms, to guarantee the principle of sovereignty of law and the independence of the judiciary, to repeal all exceptional laws, to release or bring to trial all detainees, to guarantee freedom of opinion, expression and publication, to respect the privacy of the individual and of groups and to prohibit torture and cruel and degrading treatment. The Bar Council was again authorised to work with the government.

As no action had been taken on any of the issues raised by the two Bar Associations, in January 1980 the Damascus Bar passed a resolution called for a general strike of the courts.

On 31 January 1980 the Bâtonnier of the Syrian Bar, the Minister of Justice and the new Prime Minister met to discuss the lawyers' demands. Because of the government's seeming willingness to negotiate the strike was postponed, but the lawyers decided that they would again call for a strike and ask other associations to join if no serious efforts were made to resolve the situation by the government. Promises were made by the authorities that the cases of untried detainees would be reviewed and that steps would be taken to ensure fundamental rights.

During February and March 1980 a number of professional associations passed resolutions calling for the ending of the state of emergency, abolition of special courts, release of arbitrarily arrested detainees, the ending of torture and the restoration of fundamental rights and freedoms.

Despite its promises, the government continued to try detainees in the state security courts and several persons were alleged to have been sent to a special detention centre for execution without trial.

The Damascus Bar then called for a strike, which took place on 31 March and was participated in by the associations of medical practitioners, engineers and architects. In some cities, trade unions also participated. The army intervened in a number of cities to end the strike.

Over 100 members of the participating professional organisations were arrested, including 23 leading members of the Bar Association. On 7 April 1980 a presidential decree was issued authorising the Cabinet to dissolve the councils of the various professional associations, which the Cabinet then did on 9 April.

Numerous organisations have condemned this action on the part of the Syrian government, including the Union of Arab Lawyers, the Inter-African Union of Lawyers and the Joint Emergency Committee of the Union Internationale des Avocats, the International Bar Association and the Association Internationale des Jeunes Avocats. This matter is of continuing concern to these organisations.

The CIJL considers that it is part of the normal duty of lawyers and bar associations to comment upon laws and practices affecting the rights of citizens. The Bar demanded a return to a legal order which would permit lawyers to defend effectively the rights of citizens. This was done in a responsible manner, and the response of the government appears unwarranted.

If there were grounds to suspect any of the detained lawyers of illegal activities they should have been charged and given a trial consistent with the obligations Syria has accepted by ratifying the Covenant on Civil and Political Rights. Such extensive detention of lawyers and interference in the internal affairs of the Bar can only be intended to intimidate and render subservient the Bar, which by its very nature owes its primary duty to law, not to the government. The continued detention without charge or trial of these lawyers is a further demonstration that this was the intent of the government.

T U N I S I A

Dissolution of Tunisian Association of Young Magistrates and Suspension of 26 of its Members

On 15 April 1985, the Tunisian government dissolved the Association of Young Magistrates and suspended from office 26 of its members. The property of the Association has been sequestered by the government.

The members of the Association had engaged in a strike on 11 and 12 April in order to protest against the level of remuneration and their conditions of work. Apparently the Association had tried to discuss these issues with the government prior to calling the strike, but had not received a satisfactory response. Both these issues affect the ability of the judiciary to maintain its independence.

A number of professional associations have joined in a resolution supporting the magistrates: the Council of the Bar Association, the Tunisian Association of Young Lawyers, the Association of Engineers, the Tunisian League for the Defence of Human Rights and the Union of Arab Journalists. Their resolution deplores the dissolution of the Association of Young Magistrates, requests that those

suspended from their functions be allowed to return to work and states that the issues raised by the Asssociation are of valid concern to them and that their resolution is necessary to protect the independence of the judiciary.

Both the Universal Declaration on Justice (CIJL Bulletin no. 12) and the Draft Principles on the Independence of the Judiciary (CIJL Bulletin no. 8) recognise that it is essential for the independence of the judiciary that judges be free to form and join associations of judges which can represent their collective interests and that these associations should be able to take positions on matters which affect judges' interests. The Universal Declaration on Justice states further, in article 2.09, that "Judges may take collective action to protect their judicial independence".

The CIJL has urged lawyers' and judges' associations to write to the government of Tunisia requesting the government to reconsider its decision to dissolve the Association and suspend the 26 magistrates, and to work with the Association to resolve the problems.

T U R K E Y

Constitutional Court Decision a Step Forward for Independence of Legal Profession, and Recent Developments in the Case of Lawyer Orhan Apaydin

Several of the laws passed during the period of martial law in Turkey affected the ability of lawyers to practice their profession free from harassment. One of these was article 154 of law 3003 which required the suspension from practice of any lawyer against whom legal proceedings had been commenced. In cases where the Bar Association did not take action within 2 months of the proceedings being commenced, the Minister of Justice was authorised to intervene and prohibit the lawyer from practicing.

This statute effectively deprived lawyers of their livelihood without providing any guarantees of due process of law. Lawyers were punished before any determination of guilt or innocence had been made. Neither the severity of the offence nor the relationship between the offence and the lawyer's fitness to continue to practice were considered. No procedure existed for reviewing an individual case nor was there a right of appeal and cases often continued for years.

This statute also impinged upon the independence of the Bar Association, depriving it of its ability to supervise the conduct of its members and to take disciplinary action against them.

In cases where a lawyer was convicted of an offence and received a sentence of imprisonment greater than six months, the law required that he be disbarred. No discretion was given to the local Bar Association, and in cases where the Bar refused to take action against an attorney, the Minister of Justice had the authority to enter an order prohibiting the attorney from continuing to practice.

In what must be seen as a victory for the independence of the profession and the Bar, the law was recently declared unconstitutional by the Constitutional Court of Turkey. No details of the decision are yet available, but it has been warmly welcomed by the Turkish Bar Association.

Recent Developments in the Case of Lawyer Orhan Apaydin

Bulletins nos. 9 and 11 reported on the arrest and trial of former president of the Istanbul Bar Association, Orhan Apaydin. He was tried under articles 141 and 142 of the Turkish Penal Code because of his involvement in the Turkish Peace Association. He was accused of being a member of an illegal organisation and of having engaged in communist propaganda. He was convicted by a military court of membership in an illegal organisation but was acquitted on the propaganda charge. He received a five-year sentence of imprisonment.

The trial of the leaders of the Turkish Peace Association has been widely criticised. The organisation was lawful until the military coup d'état in September 1983 when all political organisations were banned. All the acts referred to in the indictment and at the trial took place prior to the date of the coup.

Mr. Apaydin and the other defendants appealed against the verdict. On appeal the military prosecutor requested that the sentence be quashed and that Apaydin, along with several others, be released. On 29 August 1984 the Military Court of Appeal of Ankara issued its decision; it did not follow the recommendation of the prosecutor, but instead referred the case back to the court of first instance, for further proceedings, stating that there had been procedural flaws. On 8 November 1984 the trial court rendered its decision, upholding its original verdict and provisionally released the six defendants with 5 year sentences, which included Mr. Apaydin, and one other defendant. This decision is again under appeal.

Mr. Apaydin, although originally held in prison, was released on 24 December 1982 after widespread protest on his behalf and was allowed to remain at liberty while his trial was pending. There was an attempt by a few members of the Istanbul Bar Association to have him suspended from practice under article 154 discussed above, but the motion was defeated. The Bar took the position that the law was passed after the case against Mr. Apaydin was commenced and therefore did not apply to him.

Y U G O S L A V I A

Detention of Lawyer Vladimir Seks

The CIJL previously reported on the case of Yugoslav lawyer, Vladimir Šeks, in Bulletin no. 13. Mr. Šeks is at present imprisoned in Stara Gradiska prison, having reported to the police on 13 February 1985.

The CIJL's concern about this case stems from procedural irregularities in Mr. Šeks' trial, the failure of the Supreme Court of the State of Croatia to undertake the thorough review of the case ordered by the Federal Court, and its having instead reduced the sentence to a period under one year which deprived the Federal Court of further jurisdiction over the case. The failure of the State Court is viewed as particularly troublesome in light of the suggestion that the charges against Šeks were made because of his work on behalf of those accused of political crimes and those with cases against government officials, and work he undertook while a deputy district attorney.

Convinced of Mr. Šeks' innocence, the Bar Council of Croatia worked for his release, making several appeals on his behalf. Numerous appeals for his release have come from bar associations around the world.

Shortly after being put into prison, Mr. Šeks commenced a hunger strike and was sent to Zagreb hospital where he remained for a number of days. When he was first hospitalised the authorities refused to allow him to receive visits from his wife and lawyer. However, his wife was eventually given permission to see him. The CIJL has not received any information about his health since his return to prison. Mr. Šeks is known to suffer from angina pectoris and to have an ulcer.

On 22 April the CIJL issued a circular letter requesting lawyers' and judges' associations to write to the President of Yugoslavia to urge that, on humanitarian

grounds, he give favourable consideration to including Mr. Šeks in the list of persons to receive an amnesty in early May to mark the ending of World War II.

The government of Yugoslavia has traditionally amnestied prisoners during these celebrations. As this is the fortieth anniversary of the war's end, it is likely that a substantial number of prisoners will be amnestied. It is also important for Mr. Šeks that the amnesty should include a provision allowing him to resume his law practice. He has been disbarred under a provision in Croatian law which calls for the automatic disbarment of anyone who has received a term of imprisonment greater than six months.

INTEGRATED BAR OF THE PHILIPPINES

Petition to have Presidential Decrees Declared Unconstitutional

A petition to have four presidential decrees and a proclamation declared unconstitutional has been filed by the Integrated Bar of the Philippines. The decrees are: No. 1834, which increases the penalties for certain crimes including the crime of sedition; No. 1835, which increases the penalty for membership in a subversive organisation; No. 1838, which defines the conditions under which the President may issue orders of arrest or commitment during a period of martial law or where the privilege of the writ of habeas corpus has been suspended; and No. 1877, which provides for detention without charge or trial, called a preventive detention action. Also challenged is proclamation 2045 as amended by proclamation 2045-A. This suspends the privilege of writs of habeas corpus for a list of crimes which do not involve violence.

It is alleged that:

1. Decree 1834 violates the constitutional guarantees of freedom of expression, assembly and association,

2. Decree 1835 is a bill of attainder and would allow for the deprivation of life, liberty or property without due process of law and also violates the constitutional prohibition against the imposition of cruel or unusual punishment,*

3. Decree no. 1836 violates the right to due process of law, the right to a speedy trial, the right to be presumed innocent until proven guilty, and the right to be bailable by sufficient sureties,

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* During May 1985 the decree was amended so as to eliminate the death penalty. The President stated that the amendment was made to assist efforts at national reconciliation.

4. Decree no. 1877 is so vague and broad that its implementation could easily put persons twice in jeopardy of punishment for the same offence, and

5. that proclamation 2045 violates the Constitution which guarantees the writ of habeas corpus.

Prior to filing the petition, the Integrated Bar of the Philippines (IBP) asked the President and the Parliament to reconsider the decrees, stating that they undermined national unity and posed a clear and present threat to civil and political rights. The case is still pending in the Supreme Court.

Included in the petition is a statement of the IBP's interest, which is worth repeating in full:

> "The IBP is suing as the national organisation of lawyers on behalf of all lawyers of the Philippines and of all organisations and groups equally committed to uphold the Rule of Law and defend the Constitution against erosion or onslaughts from whatever source. In its general objectives, the IBP is mandated among others, to improve the administration of justice and enable the Bar to discharge its public responsibilities more effectively. In its purposes, the IBP is committed among others, to assist in the administration of justice; foster and maintain on the part of its members high ideals of integrity, learning, professional competence, public service and conduct; safeguard the professional interests of its members; and provide a forum for the discussion of law, jurisprudence, law reform, pleading, practice and procedure, and the relations of the Bar to the Bench and to the public, and publish information relating thereto."

IPB - Davao del Sur Chapter

The IBP Davao del Sur Chapter has sponsored the creation of The Legal Aid and Human Rights Institute for

Mindanao (LAHRIM) which will undertake to provide assistance in the areas of public service, research and education, publication of materials on legal rights, special projects and the development of library materials in the field of human rights. LAHRIM began operating in October 1984.

Other work in the field of human rights undertaken by the Davao del Sur Chapter includes a fact-finding mission in August 1984 to investigate the circumstances surrounding a wave of killings in the Mandung area, and the sponsoring of a dialogue between the military/police, government prosecutor and the Chapter to discuss efforts being undertaken by each to observe human rights and uphold the rule of law.

FREE LEGAL ASSISTANCE GROUP OF THE PHILIPPINES (FLAG)

During its 10th anniversary celebration FLAG adopted a position paper on the judiciary entitled: "Towards an Independent, Competent and Honest Judiciary". Parts of the paper are reproduced below:

> "Democracy cannot survive without the rule of law. And the rule of law cannot exist without an independent, competent and honest judiciary. Fairness is the essence of the rule of law; but to be fair, judges must have, first, the moral fibre to resist all forms of pressure, from the temptations of money, promotion or fame, to the fears of blackmail or death threats, whether these come from inside or outside the government, that is, judges must be independent and honest; and second, judges must not only interpret and apply the rules of law with an even hand in every case, they must also know what rules to apply in each case, that is, judges must be competent.
>
> "Judicial independence, integrity and competence are distinct but not autarkic qualities. On the contrary, they are related to and reinforce each other. An incompetent judge cannot long remain independent.

A dependent judge, sooner or later, turns dishonest. And a dishonest judge is an abomination.

"How does Philippine judiciary measure up to these standards ? In its ten years of existence, FLAG has noted, to its sorrow, that each year our people's faith in the judiciary becomes progressively less. An obvious reason is that the national political system is authoritarian, not democratic. And by definition, an authoritarian government can not afford an independent judiciary.

"Yet the signs are clear that authoritarianism's days are numbered. Our people's demand for the total restoration of democracy is too strong to be ignored for long. In anticipation of the day when our people will enjoy authentic democracy, true freedom and real independence, FLAG has sought on this its tenth anniversary to identify the causes of our people's loss of confidence in the judiciary and to propose practical, effective remedies.

"One cause - the judiciary's lack of independence - has already been mentioned. The other causes can be classified under four broad headings: corruption, incompetence, ineptitude and structural defects in the legal and political systems.

"The fundamental premise of all proposals for change is the termination of authoritarianism and the reinstitution and enhancement of democratic structures.

"The more specific remedies that we propose are as follows:

"To restore the independence of the judiciary:

1. Effect a total revamp of the existing judiciary. Those who obtained their appointments by political connections and who lent themselves morally to the dictatorship should be removed and replaced by persons who exhibit firm commitment to the Rule of Law.

2. A body like the Commission on Appointments should be set up in the Legislature to screen nominations for judicial appointments.

3. An independent Office for Judicial Administration to supervise the judiciary, possibly with authority to give examinations, the passing of which may be a requirement for nomination, should be set up.

4. The Integrated Bar of the Philippines and other lawyers' groups should play a more active part in the selection of judges. They should conduct their own investigations and present their findings to appropriate bodies on all proposed appointments.

"To combat corruption:

1. Strict enforcement of anti-graft legislation.

2. Increase the compensation of the judges and Justices to respectable levels in accordance with prevailing standards of the community, and index judges' compensation with the fluctuations in the value of currency.

3. Exempt judges' and Justices' salaries from income taxation.

4. Address the subjectivity of judges and Justices by orientation seminars and similar activities that stress the service aspect of the judiciary and the moral values that inhere in a system of justice under law.

5. Prohibition on judges and Justices from joining social and civil organisations and the acceptance of awards from any person or organisation except the IBP and the judiciary itself.

"To solve the problem of incompetence:

1. A re-examination of legal education in the country, e.g., curriculum method of instruction, competence of professors, etc.

2. Examination requirement for appointment to the judiciary.

3. A more effective continuing legal education programme. To this end, state supported law centres in every region of the country should be considered.

4. Only those who have practiced law for five years shall be eligible for appointment in the judiciary.

5. The state must set up an adequate law library in each province and a prompt and efficient system of transmitting decisions of the Supreme Court to these libraries must be set up.

"To counter the trend towards ineptitude:

1. The IBP and other lawyers' groups, and members of the academe should be vigilant in their monitoring of Supreme Court decisions, to point out frequent inconsistencies in their decisions, that lead to the instability and confusion in rules of law.

2. The Supreme Court should be required to give at least a summary of legal reasons for not giving due course to petitions and actions instead of the current practice of issuing minute resolutions that leave both lawyers and clients guessing as to what is wrong.

3. The computerisation of the Supreme Court decisions.

4. Require the Supreme Court to act always en banc rather in two divisions.

5. Since ineptitude only differs in shade of meaning from incompetence, the setting up of

regional law centres and adequate library facilities in all provinces, and the setting up of a mechanism for prompt transmittal of Supreme Court decisions and other legal materials would help solve this problem.

"To address defects which inhere in the structure of the judiciary and the political system:

1. A full restoration of democracy in the country is essential to the re-establishment of the judiciary as an independent co-equal body.

2. The regionalisation or the circuitisation of the Intermediate Appellate Court and the Sandiganbayan.

3. Reversion to the former one municipality-one arrangement."

TANGANYIKA LAW SOCIETY AND UNIVERSITY OF DAR-ES-SALAAM LEGAL SERVICES

The draft principles on the independence of the legal profession state that "it is a necessary corollary of the concept of an independent legal profession that its members will seek to make their services available to all sectors of society, and to promote the cause of justice by protecting the human rights, economic, social and cultural, as well as civil and political, of individuals and groups." Numerous bar associations and lawyers' organisations have undertaken to fulfil their "social responsibility" by organising legal service centres which offer services either free of charge or at a minimal cost. Law faculties at several universities have also tried to meet this responsibility by establishing legal service clinics.

The Tanganyika Law Society is one of the bar associations which has established such a programme. It has operated in Dar-es-Salaam since shortly after Tanzania gained its independence, and recently expanded its

services to the rural areas through the use of legal centres. In addition to offering traditional legal aid (the handling of cases), the centres also use para-legals to assist in educating people about their rights, offer "law camps" in which lawyers, students and para-legals set up a camp in convenient areas and offer instruction, answer questions, take up new cases and sometimes engage in dispute settlement. The work of the programme is limited to civil matters, as there is a separate government sponsored programme for indigent defendants in criminal cases.

The University of Dar-es-Salaam also operates a legal services clinic. Both members of the Faculty and students participate in the clinic. Its services are also limited to civil matters. The work of the clinic may be divided into five general categories: (1) clinical counselling; (2) case work, including litigation; (3) advice through correspondence; (4) affidavits and attestations; (5) legal literacy.

Anyone wishing additional information about either of these programmes may contact the CIJL.

UNION OF ARAB LAWYERS - 15TH CONGRESS

The Union of Arab Lawyers held its 15th Congress in Sousse, Tunisia, from 2 to 5 November 1984. 1984 marked the 40th anniversary of the Union, which held its first Congress on 12 August 1944. The 15th Congress divided into working groups two of which were attended by the Secretary of the CIJL, one on human rights and the other on the independence of the judiciary and the legal profession.

The working group on the independence of the judiciary and legal profession discussed the role of lawyers in society and the need to ensure an independent profession and the need for greater protection of bar associations. There was some discussion of the Universal Declaration on the Independence of Justice adopted in Montreal (CIJL Bulletin no. 12), and the group decided that it was

necessary to work on the development of principles applicable to the Arab countries.

First International Conference on Arab and African Women

The Standing Committee on the Status of Women of the Union of Arab Lawyers held the "First International Conference on Arab and African Women" in Cairo from 25 to 28 February 1985. The Committee was created during the Congress in Sousse.

The Conference examined the economic, political and social status of Arab and African women, particularly in the light of changes affecting their status during the past ten years, and the International Women's Decade. There were also discussions on the support necessary for the Arab/African struggle. A part of the Conference was devoted to the forthcoming UN World Conference on the Decade for Women, to be held in Nairobi. Numerous papers were prepared and presented, and a series of resolutions were adopted. The resolutions are too numerous to report, but anyone wishing further information should contact the Union of Arab Lawyers.

PETITION FILED BY ISTANBUL LAWYERS

Over 60 lawyers from the Istanbul Bar Association filed a petition with the President and Prime Minister on 4 April 1984 alleging violations of the Turkish Constitution, the Universal Declaration on Human Rights and the European Convention on Human Rights with respect to the treatment of persons in custody and the rights of the defence. Thus far no action has been taken by the Government on the issues raised in the petition.

Among the violations enumerated with respect to the rights of the defence are:

-- banning lawyers from certain prisons;

-- monitoring conversations between lawyers and clients at Metris prison. In some cases the information gathered in this way has been used in court against the defendant;

-- manacling and chaining detainees when they are brought to court;

-- confiscating petitions prepared by prisoners concerning prison conditions, as well as copies of the indictments against them; and

-- denial of materials necessary to prepare their defence, including paper and pens, as well as relevant legal texts.

With respect to the treatment of those in detention, the lawyers raised the following issues:

-- holding prison searches at all hours of the day and night, and the destruction of prisoners' property during the searches;

-- denial of newspapers and magazines;

-- playing music until the early hours of the morning through loudspeakers, disturbing sleep;

-- beating persons held in "preventive detention" and subjecting them to degrading punishment;

-- separation of prisoners based on such characterisations as "independents" or "for the state"; privileges are granted to prisoners on the basis of these classifications; and

-- inability of courts or tribunals to inquire into the prison conditions.

The petition also contains a statement describing the role of lawyers in society. The authors remind the government that it is the duty of lawyers to defend their clients' rights, and that they are not to be identified with their clients' causes nor are they to be considered

as "subversives" for undertaking the defence of those accused of political crimes. They observe that it is also a part of a lawyer's duty to defend the rule of law and to protect human rights and thus the democratic order of the society. Continuing in this vein, they state:

> "It is to no-one's advantage, not least the society's, to put lawyers in a position in which they confront wrongdoings of the administration.
>
> "Particularly in states of exception, lawyers have the added burden of defending in political trials.
>
> "(If lawyers are prevented) from exercising their rights derived from the constitution, laws and jurisprudence, or if lawyers are wary of pressing for the fullest implementation of the rights of their clients, then what the lawyer is practicing can hardly be called the exercise of his profession.
>
> ...
>
> "The importance and the sensitivity of the functions of the lawyer will be better understood if it is assumed that it is always possible that those who wield political power today could end up as defendants and would no doubt require the benefits derived from a fully evolved mechanism of defence rights."

THE ADMINISTRATION OF JUSTICE IN GHANA

by Professor Cees Flinterman*

During June and July 1984, Professor Cees Flinterman undertook a mission to Ghana on behalf of the International Commission of Jurists. A substantial portion of his report concerns the administration of justice, particularly the relationship between the ordinary courts and the Public Tribunals which were established when the present government came into power in 1981. While in Ghana, Professor Flinterman had an opportunity to interview the Head of State, Flight Lieutenant Jerry Rawlings, various government officials, lawyers, magistrates, members of Public Tribunals, professors, student leaders, trade union leaders, church leaders, journalists, businessmen, members of the Workers Defence Committees and members of human rights organisations. He also had an opportunity to attend several sessions of the Public Tribunals.

Below is the section of his report on the administration of justice. The complete report is available from the International Commission of Jurists.

* * * *

Historical Background

From 1957, the year of independence, to 1966, Ghana knew a dual system of courts, inherited from colonial times. Under this system the Chief Justice administered all courts except the local courts presided over by local magistrates. The local courts were at various times administered by the Minister of Justice or the Minister of Local Government.

In 1966, a single system of courts under the Chief Justice was introduced in Ghana by the Courts Decree, 1966. This Decree was suspended by the 1969 Constitution which vested the judicial power of the State in the judiciary with jurisdiction in all matters civil and criminal. The present structure of the courts is still founded on this Constitution despite the various military coups; the proclamations establishing the various military regimes invariably made all courts continue until provision was otherwise made by law. Thus PNDC** Proclamation 1981 provides that "notwithstanding the suspension of the 1979 Constitution and until provision is otherwise made by law - (a) all courts in existence immediately before the 31st day of December 1981, shall continue in existence with the same powers, duties and functions under the existing law subject to this Proclamation and Laws issued thereunder..."

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* University of Limburg, Maastricht, Netherlands; formerly a law lecturer at the University of Ghana.

** Provisional National Defence Council; the name taken by the military government when it came to power on 31 December 1981.

The judiciary now consists of the superior courts of record called the Superior Court of Judicature, comprised of the Supreme Court, the Court of Appeal and the High Court of Appeals, and also such inferior and traditional courts as the Parliament or the body exercising its functions, may by law establish. The inferior courts recognised are the Circuit Courts, District Courts Grades I and II, and Juvenile Courts. No attempt will be made here to describe the various jurisdictions of these courts. It suffices to say that there is a statutory right of appeal in all cases. In some instances where the penalty is either the death penalty or imprisonment for life, the trial must by law be by jury of seven lay men and women. The District Courts, Circuit Courts and Juvenile Courts are in general one-judge courts. In trials upon indictment undertaken by the Circuit Court, the judge is, however, aided by three assessors; in these cases the judge determines the question of guilt, but after ascertaining the opinions of the assessors which are intended to assist him in arriving at his own conclusion. All courts are manned by judges who are highly trained and qualified in law.

As said before, the judicial power in Ghana is vested in the judiciary, later on also referred to as the regular courts, with jurisdiction in all matters civil and criminal. During its history of independence, Ghana has also occasionally known special tribunals exercising criminal jurisdiction. During the First Republic a Special Court was established to deal with state security. During the NLC regime military tribunals were set up which, despite the name, have exercised a substantial jurisdiction over ordinary civilians. these tribunals were set up under the Subversion Decree, 1972, to try a number of offences specified by that Decree. Some of the offences could be subsumed under the heading of treason which was already made punishable by the Criminal Code, 1960; others were purely economic crimes. The supervisory jurisdiction of the regular courts was almost completely ousted by the Subversion Decree; moreover there was no statutory right of appeal. A final example of special courts exercising criminal jurisdiction may be found in the Special Courts during the AFRC regime.

With the coming to power of the PNDC regime on 31 December 1981 the judiciary came under severe criticism. The PNDC already announced in its Proclamation the establishment of Public Tribunals, independently of the regular courts, for the trial and punishment of offences specified by law. The criticism of the regular courts will be discussed in the following section.

The Public Tribunals

Introduction

Very soon after the PNDC regime took power, a system of Public Tribunals was set up by the Public Tribunals Law (PNDCL 24, 1982, recently replaced by PNDCL 78, 1984). These Public Tribunals were established to try criminal offences referred to it by the PNDC, certain offences under the Criminal Code 1960 (Act 29), and offences listed under

the above-mentioned Public Tribunals Law, 1982. The tribunals have attracted a great deal of attention and criticism, both inside and outside Ghana. It is of relevance to state first the reasons that led the PNDC government to establish the tribunals and to survey their personnel, jurisdiction, and procedures. In a final section an appraisal of these tribunals will be presented.

The main reason for the establishment of the Public Tribunals seems to be that the PNDC regime was extremely dissatisfied with the existing legal system. In its opinion the legal system of Ghana did not achieve the aims and objectives which legal systems are required to achieve; rather it has created social indiscipline and lawlessness; it benefited only the rich. This general criticism of the existing legal system is founded on the following more detailed arguments.

The judiciary, in the opinion of the present-day rulers of Ghana, has created two different standards of justice, one for the poor and one for the rich. Lawyers did not play their role as officers of the court and did not use their skills to let justice prevail; they rather used their skills to obtain tricky victories, thereby creating doubt and suspicion in the minds of people about the integrity of lawyers. Neither did lawyers work to achieve the role expected of them by using the law as an instrument of social change and to avoid protracted litigation; they rather sought adjournment upon adjournment in the courts which resulted in cases, sometimes affecting the very foundation of the economy, dragging on for years.

Another argument put forward by the government is that the legal system inherited from the British is full of legal technicalities and rigid rules. This is especially so in the field of the law of evidence. These rules of evidence are rigidly interpreted by the judiciary and have consequently made the attainment of justice impossible. The regular courts are unable, because of this, to achieve revolutionary legality. The regular courts over-protect the rights of the accused, especially where they are able to afford a (team of) lawyer(s), and under-protect the rights of the injured party and especially of the state.

The argument that the courts have created one set of rules for the rich and one set of rules for the poor seems to be the main objection. It is argued that instant justice has always been given to the poor, whereas cases concerning rich persons have been deliberately made to drag on as the first step of stage managing injustice. Thereafter continued adjournments tend to frustrate witnesses and complainants.

The government finally alleges that lawyers have been notorious tax-evaders. In 1982, it published a long list of names of lawyers alleged to have evaded taxes. Lawyers' offices and lawyers themselves were harassed but only a handful of cases were actually enquired into.

It was in this atmosphere of mistrust of the legal profession as a whole that the government established the Public Tribunals. They were meant to be a beginning of major

changes in the legal profession and in the administration of justice.

Personnel

The Public Tribunals Law provides for the establishment of a Board of Public Tribunals, to be appointed by the PNDC. This Board consists of 15 members, at least one of whom shall be a lawyer. The Board is responsible for the administration of justice of all Public Tribunals. It selects the panels to constitute the various tribunals. The members of the Board are also eligible to sit on the tribunals in addition to members of the public appointed by the PNDC to sit on the tribunals. It is from these persons that the Board selects panels to sit on tribunals from time to time and at places the PNDC may direct. A tribunal is composed of at least three but not more than five persons.

The recently enacted new Public Tribunals Law (PNDCL 78, 1984) now provides for a three-tier system of Public Tribunals: one National Tribunal, Regional Tribunals and District and Community Public Tribunals. As this Law had not yet come into force during the visit of the author of this report, reference will be made to it only where appropriate. Here it is of interest to note that according to this new Law, whereas the PNDC appoints the National Tribunal and the Regional Tribunals, the District and Community Public Tribunals are appointed by the Board of Public Tribunals. The Chairman of the Board of Public Tribunals is a lawyer; this was also the case with the tribunals the author attended. The PNDC government has tried to find experienced senior lawyers for these functions, but in light of the negative attitude of the legal profession vis-à-vis the Public Tribunals, which will be discussed in more detail below, the PNDC had to fall back on lawyers who could not pride themselves upon a long and outstanding career.

Members of Public Tribunals can be removed if it is proved that they are corrupt or incompetent. The new Public Tribunals Law (PNDCL 78, 1984) explicitly provides that the Board may remove at any time a member of a Public Tribunal on grounds of proven misconduct, counter-revolutionary activity, or inefficiency or inadequacy in the performance of his functions as a member of a Tribunal.

Jurisdiction

The jurisdiction of the tribunals comprises certain offences under the Ghana Criminal Code, 1962 (Act 29), any offence under any act referred to it by the PNDC, any offence relating to price control, rent control, exchange control, revenue (whether central or local) or imports or exports. The Public Tribunals Law also creates certain offences which fall under the exclusive jurisdiction of the tribunals. These offences are specified in article 3(2):

a) any person or group of persons who, while holding high office of State or any public office in Ghana, corruptly or dishonestly abuses or abused the office

for private benefit or benefit of any person or group of persons who, not being holders of such office, act or acted in collaboration with any person or group of persons holding such office in respect of any acts specified under this paragraph;

b) any person or group of persons who act or acted in breach of the mandatory provisions of any Constitution or Proclamation under which Ghana has been governed or is being governed while that Constitution or Proclamation was or is in force;

c) any person or group of persons who acted or omitted to act, in breach of statutes or other laws of Ghana whereby financial loss was caused to the State, or the security of the State was endangered or damage was caused to the welfare of the sovereign people of Ghana;

d) any person who intentionally did or does any other act or omission which is shown to be detrimental to the economy of Ghana or to the welfare of the sovereign people of Ghana.

This list of offences to be tried by Public Tribunals is even further widened by article 4 of the said Law, which among others lists as offences sabotage of the economy of Ghana, the overthrow of the Government, the alteration of the revolutionary path of the people of Ghana, and the expression of hostility to the Government of Ghana. Finally, the Tribunals have power to try criminal offences arising out of findings by Committees of Enquiry.

The new Public Tribunals Law (PNDCL 78, 1984) by and large maintains this wide jurisdiction for the National Public Tribunal. The jurisdiction of the Regional Tribunal is somewhat more restricted. The jurisdiction of the District and Community Public Tribunals is even more limited. This new law also provides for an appeal system; this right of appeal, which was lacking hitherto, shall be discussed below.

It is also noteworthy that under the new law the jurisdiction of the Tribunals is limited to criminal matters. Civil matters are still under the exclusive jurisdiction of the regular courts. Attention should also be drawn to the open-ended character of the offences created by the Public Tribunals Law.

Penalties

Until recently all Tribunals could impose the death penalty for such offences as were specified in writing by the PNDC and in respect of cases where the Tribunal was satisfied that very grave circumstances meriting such a penalty had been revealed. "In practice, the death penalty has been regularly imposed. Until recently there was no right of appeal. A person sentenced to death could, however, petition the Head of State, i.e. the Chairman of the PNDC, to review the sentence and grant him clemency. Clemency was rarely granted and the offender was almost invariably executed. Under the new Law, the District and Community Tribunals no longer have the power to impose the death penalty."

A person convicted by a Tribunal of any offence is liable to a minimum term of imprisonment of not less than three years or

to pay such fine as the tribunal may determine, or to both such imprisonment and fine. The tribunal has, however, discretion to impose a lesser term, if the minimum term, in light of the special circumstances relating to the offence or the offender, would be too harsh.

Communal or manual labour may also be imposed in addition to or in lieu of the sentence. The general practice of the tribunals has been to impose severe penalties.

Mode of trial

The Law states as the central rule relating to the mode of trial that the tribunal will be guided by the rules of natural justice. These rules, dating back to times immemorial, mean that every person must be given an opportunity to defend himself in the face of accusation and that the opportunity must be fair. Secondly, it means that the accusers must not be judges in the same cause, to avoid bias or likelihood of bias.

The tribunals are not bound by the Evidence Decree of 1975, which is the relevant law in Ghana relating to criminal evidence. The tribunals try to be flexible and simple as far as possible. This entails, among other things, that a tribunal will only reject evidence if it is in the interest of justice to do so. The standard of proof required by the tribunal is that the prosecution has to prove to the "satisfaction of the tribunal" that the accused committed the offence. This means that a tribunal has to be sure to its satisfaction that the accused has done what he is said to have done.

The general rule is, thus, that in every trial before the tribunal, it is for the prosecution to prove that the accused has committed the offence; if the prosecution fails the accused shall be acquitted. There is, however, one important exception to this rule: where any accused is charged before the tribunal with an offence found by a Committee of Enquiry, then all the prosecution has to do is to show the tribunal a copy of the preliminary findings made against the accused; it shall then be for the accused to show that he should not be punished for the offence.

The Law explicitly provides that a person tried by a tribunal is entitled to be represented by counsel of his own choice. The Bar officially boycotts the tribunals (see below); some lawyers are, however, appearing before the tribunals.

Criticisms of the Public Tribunals

The Board of Public Tribunals had its inaugural sitting on 15 September 1982. One week later the Ghana Bar Association met in Kumasi and resolved that lawyers in private practice should not appear before the tribunal. This boycott is still in effect today, despite its non-observance by some lawyers.

The reasons put forward by the Bar were:

1. the tribunals represented a misguided attempt to supplant the ordinary criminal courts;

2. the lack of a right to appeal;

3. the lack of a right to invoke the supervisory jurisdiction of the High Court of Justice to protect accused persons from breaches of natural justice;

4. the jurisdiction which has been given to the tribunals, extending all the way to power of life and death is already vested in the ordinary courts; and

5. it is prejudicial for the tribunals to decide in advance that technicalities will not be tolerated.

The background of this firm stand of the Bar Association may be found in article 2 of its Constitution which states as one of its objects and aims, that the Association is committed to the protection of human rights and fundamental freedoms as defined under the United Nations Universal Declaration of Human Rights.

The Bar still maintains its position, despite the introduction of a right of appeal in the new Public Tribunals Law (PNDCL 68, 1984). This Law introduces a right of appeal from decisions of the Regional Tribunal to the National Tribunal and from decisions of the Community and District Tribunals to the Regional Tribunals. No appeal shall, however, lie against the decision of a Regional Public Tribunal in the exercise of its jurisdiction, except with leave of either that Regional Public Tribunal or the National Public Tribunal. The decision of a Regional Public Tribunal or the National Public Tribunal to refuse leave to appeal shall be final and shall not be subject to appeal.

The new Law, however, still ousts the supervisory jurisdiction of the regular courts in very clear words: "No court or other tribunal shall have jurisdiction to entertain any action or proceedings whatever for the purpose of questioning any decision, finding, ruling, order or proceeding of a Public Tribunal set up under this Law; ..." (article 27(1) PNDCL 1984).

It is clear that also under the new Law the ordinary courts are still standing on the side-line. No right of appeal lies to the ordinary courts and the supervisory jurisdiction of these courts is completely ousted. It is highly likely that the Bar will lift its boycott only when the Law provides for these mechanisms of control. Those lawyers who break the boycott are considered by their colleagues to be the renegades of the profession.

The boycott does not mean that the Bar or the members of the regular courts do not share some of the criticisms which led the PNDC to the establishment of a dual system of courts, but they insist that other solutions should be found

for these points of criticism. They point in particular to the lack of facilities for the regular courts, e.g. modern office equipment (much is still being done in long-hand writing) and the inadequate number of judges. Some even do not object to the existence of special tribunals as such (as mentioned earlier, such tribunals have previously existed in Ghana), provided that a right of appeal lies to the ordinary courts and that their supervisory jurisdiction is left intact. The criticism that the legal system has created separate standards for the poor and for the rich is rejected by both lawyers and judges. They underscore, however, that Ghana is badly in need of a fully-fledged system of legal aid; at present, legal aid is only provided for in certain narrowly described cases.

Personal observations

During his stay in Ghana, the author of this report attended several sessions of the Public Tribunal in Accra. The cases tried concerned among others nine persons accused of sabotaging the economy of Ghana. Five lawyers were present to defend the accused. After the charges were read, the first witness was called and sworn in. After replying to the questions of the prosecutor, the witness was cross-examined by counsel. The tribunal was chaired by a legally qualified person in a flexible, but diligent way. There was an impression of an apparent search for the truth, which also characterised the other sessions of the Public Tribunal the observer attended.

Such attendance does not provide a legitimate basis for any positive or negative judgment about the public tribunals system in Ghana. It befits an outsider to refrain from any definite judgment. He may, however, make some general comments in the light of Ghana's commitment to universally agreed principles of the administration of justice, taking into account the relevant aspects of Ghana's history. Before embarking on such an appraisal of the Public Tribunals, some remarks will, however, be made on the present role of the regular courts and on prison conditions in Ghana. The last section of this chapter will be devoted to some general comments on the present-day administration of justice in Ghana.

The Regular Courts

The regular courts have been severely criticised by the PNDC, as was explained in the previous section. The establishment of the Public Tribunals by the PNDC gave rise to the fear that it was the ultimate aim of the PNDC to dismantle the system of regular courts in Ghana and to replace it by a hierarchical system of Public Tribunals. This fear has been allayed by various government statements. On 12 January 1984 the Chairman of the PNDC, Flight-Lieutenant J.J. Rawlings, sent a message to the Annual Conference of the Ghana Bar Association in which he stated that the aim of the Public Tribunals is "to deal with certain areas of social misconduct as an alternative judicial system (author's emphasis) for the prompt and effective assessment and adjudication of specified matters".

The recent passage of the new Public Tribunals Law (PNDCL 1984) also seems to underline this limited aim.

The regular courts are, thus, allowed to fulfil their traditional functions. In the criminal law field, however, the line of division between the jurisdiction of the regular courts and the Public Tribunals is not drawn in an unequivocal and precise way. Some criminal cases are referred to the regular courts, whereas others are referred to the Public Tribunals. Criminal cases arising out of reports of Committees of Enquiry are invariably referred to the Public Tribunals, but in most other instances it is not clear which criteria are being used.

For the accused, this lack of clarity regarding the exact competences of the Public Tribunals and the regular courts, and regarding the reference of cases to them, is disturbing for various reasons. The punishments imposed by tribunals are often heavier than those imposed by the regular courts; moreover, the standard of proof required by the regular courts is stricter than that required by the tribunals. Also relevant in this respect is that till very recently there was no right of appeal from convictions by tribunals, whereas such a possibility of appeal exists as of right from decisions of the regular courts.

The proper functioning of the regular courts was made very difficult during the first years of the PNDC regime. Most noticeable was the murder of three High Court judges and a retired army officer in June 1982. These murders are considered to be one of the darkest pages in Ghana's history of independence.

A Special Investigation Board was set up to enquire into the murders. After having published an Interim Report it issued a final report in March 1983, and five people, including a former member of the PNDC, were subsequently tried and sentenced to death by a Public Tribunal (four, including a PNDC member, were actually executed). Nevertheless, this affair has caused a great deal of anxiety among the members of the Bench in Ghana. Several judges who had temporarily fled the country after the murder decided not to return and accepted posts elsewhere. In general there still is the feeling in Ghana that the whole truth of this matter, especially the implication in the murder of other members of the PNDC or its close advisers has not yet been revealed.

Another event causing anxiety among the judiciary was the occupation of the Supreme Court building in June 1983 by Workers Defence Committees of Accra and Tema (Accra's harbour township). It was made virtually impossible for the judges and lawyers to enter the building. The claim was made by people speaking on behalf of these Workers Defence Committees that the time had come to abolish the old judicial system and to replace it by what they called "a more dynamic and egalitarian people's judicial system". They also called for the dissolution of the Judicial Council and for the abolition of the post of Chief Justice. A few days later

the Attorney-General announced, however, on behalf of the PNDC that F.K. Apaloo would remain Chief Justice and that his post would not be abolished.

Members of the Bench frequently pointed out to the author of this report that the judiciary lacks adequate facilities. They mentioned in this regard the inadequate office facilities and the permanent shortage of even basic materials, such as stationery. They also referred to the inadequate number of judges and qualified court personnel. In contrast, they underlined that the Public Tribunals receive ample personnel and office equipment. At various times the urgent need for a legal aid system was mentioned. Such a legal aid system was already suggested by a Bench-Bar-Faculty Conference in 1975, but so far no official action has been taken; the Bar Association is now taking a private initiative to set up a modest legal aid system.

The judiciary prides itself on its independence vis-à-vis the government. It was emphatically denied that there was any government interference with the functioning of the courts. Doubts were, however, expressed about the independence of the Public Tribunals from the government. Various instances were cited of direct or indirect government interference with their functioning.

Judicial Review

The regular courts were deprived of the power to review cases of preventive detention on the first occasion on which they were petitioned to do so.

The PNDC has repeatedly used its powers under the Preventive Custody Law to take persons into preventive custody. Many of them stayed in jail for periods of up to 17 months without charges being preferred against them. Early in August 1984 a habeas corpus application was filed in the Accra High Court by the Bar Association on behalf of 35 persons. On 15 August 1984 the Director of Public Prosecutions produced an unnumbered and unpublished PNDC Law to the Court, prohibiting the Court from enquiring into the grounds by which detention under the Preventive Custody Law is authorised by the PNDC. The Director, therefore, raised a preliminary objection to further consideration of the application.

Counsel for the applicants attacked the so-called PNDC Law stating that it could not be considered a valid enactment, because it was neither numbered nor published. The Director of Public Prosecutions countered this by pointing to Section 4(6) of the PNDC Proclamation which makes the PNDC's enactments effective on the day they are made. On 20 August 1984, the Judge announced his ruling: he dismissed the application because of the contents of the PNDC Law produced by the Director of Public Prosecutions and because of Section 4(6) of the PNDC Proclamation. The PNDC Law has since been numbered 91 and published in the Gazette.

The application for habeas corpus by the Bar Association on behalf of the 35 detainees was certainly a deed of courage and fully in accordance with article 9 of the Universal Declaration of Human Rights, which states that "(no)one shall be subjected to arbitrary arrest, detention or exile". The swift action of the PNDC to deprive the judiciary of the power to enquire into the grounds for taking a person into preventive custody, must occasion strong disapproval. The new Habeas Corpus (Amendment) Law (PNDC 91, 1984) gives the PNDC virtually unlimited powers to detain any person whom they consider a threat to national security.

When the question of persons detained under the Preventive Custody Law was raised with government officials, it was alleged that investigations against these persons were under way. Due to the nature of the crimes involved and the inadequate equipment of the investigative branch, these investigations sometimes take a long time. However, in the opinion of the author, these arguments do not justify the violation of the basic rights of the individual, that he shall be informed of any charges against him and that he shall be entitled to trial within a reasonable time or to release.

Appraisal

In the previous sections the author has tried to present an objective analysis of the emergence of a dual courts system in Ghana, the regular courts and the Public Tribunals. In this section he will make an effort to appraise the role of the Public Tribunals in light of the universally agreed principles of the administration of justice to which also Ghana has committed itself.

Article 10 of the Universal Declaration of Human Rights provides that "(e)veryone is entitled to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him". In article 14 of the International Covenant on Civil and Political Rights (ICCPR), to which Ghana regrettably is not a party, the word "competent" (in section 5) is added before Tribunal; this article also provides that "(e)veryone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law". The Universal Declaration further provides, in article 11, that "(e)veryone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence". Section 2 of this same article further states that "(n)o one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed".

The main question is whether Ghana's Public Tribunals meet these universal criteria. As was made clear earlier on, the tribunals were established because of criticisms of the

regular courts system. The main aim of the tribunals would seem to be to provide for a speedy form of criminal justice. It seems that no objection can be put forward against the establishment of special tribunals, such as Public Trinunals, provided that all necessary guarantees are created for their impartiality and independence, for the fairness of their procedures and for a right of appeal against the imposed sentence. Otherwise, the Public Tribunals may just be an instrument of gloom and terror, as was aptly pointed out in one of the author's interviews.

Are the Public Tribunals truly impartial and independent from the Ghana government ? A definite answer to this question can not, of course, be given after a two-week stay in Ghana. But this does not mean that some matters of concern should not be raised. There are first the various instances mentioned in Ghana about the direct or indirect interference of the government with the functioning of the tribunals. The tribunals are generally regarded as an organ of the executive. Moreover, the members of the Board of Public Tribunals and the tribunals themselves are appointed by the PNDC; previously the Law did not provide for any specified term. The new Public Tribunal Law (PNDCL 78, 1984) provides that members of the District and Community Public Tribunals shall be appointed by the Board of Public Tribunals for a term not exceeding two years and shall be eligible for re-appointment. The Law does not state any specific criteria for the selection of the members. It contains, however, a provision for the removal of a member of a Tribunal by the Board on grounds of proven misconduct, counter-revolutionary activity, or inefficiency or inadequacy in the performance of his functions as a member of the Tribunal. No provisions are, however, made for the procedure to be followed in such removals. Neither the very limited term of service, nor the vaguely defined grounds for removal, appear to create the necessary guarantees for the impartiality and independence of the tribunals.

It is striking that the Public Tribunals Law of 1984 specifies neither the terms of service of members of the National or Regional Tribunals nor the grounds of their possible removal. It just mentions that the members of these tribunals are composed of members of the Board of Public Tribunals, which are appointed by the PNDC, and such other persons the PNDC may appoint. The Law, again, does not specify the qualifications for membership for the Board or for that matter of the Tribunals. This may also militate against an impartial and independent attitude of the members of these Tribunals.

Another concern which may be raised in this respect is that the Law does not provide for any specific criteria as to which cases should be brought before the Public Tribunals and which cases before the regular courts. This decision seems to rest entirely in the hands of the investigating authorities and easily lends itself to abuse. This aspect is particulary worrying in light of the fact that the sentencing policies of the regular courts and the tribunals vary widely. The regular courts are bound by

the Criminal Code which specifies maximum sentences for offences described in the legislation creating them as first or second degree felony, misdemeanour, etc.; and the courts are free to impose a lesser sentence. The Public Tribunals have, however, both under the former and the present Public Tribunals Law, a wide discretion. The present Law provides, as did the former Law, for a minimum term of three years imprisonment except where the Tribunal deems this too harsh.

A final concern to be raised with regard to the impartiality and independence of the Tribunals is the lack of legal training of its members. It must be pointed out here that it was very difficult for the government to attract qualified lawyers to serve on the tribunals because of its earlier policies of victimization of the legal profession and because of the Bar Association's boycott of the Tribunals. Moreover, the former Public Tribunals Law provides that at least one lawyer of not less than five years' standing shall be a member of the Board. The new Law contains a similar provision but has dropped the five years' standing requirement. However, neither the former nor the new Law provide explicitly that the Chairman of any tribunal shall be a lawyer. In practice, however, a qualified lawyer now presides over each Tribunal.

The fact that members of the Tribunals lack any legal training is particularly worrying in light of the decision-making process of the tribunal. The Law provides that the decision of a Public Tribunal shall either be unanimous or by a majority, except that a decision to impose the death penalty for an offence shall be unanimous (and shall be subject to confirmation by the PNDC). It is noteworthy that the new Public Tribunals Law states that District and Community Tribunals do not have the power to impose the death penalty. Lack of legal training may in this kind of decision-making process indeed be an impediment to an impartial and independent attitude.

At present, the mode of trial of the Public Tribunals seems in general to be fair. A criminal defendant is presumed innocent until proved guilty. In cases arising out of findings of a Committee of Enquiry, there is a shift of the burden of proof. In such cases the accused has to show that he should not be punished for the offence. If the evidence on which the adverse findings of the Committee of Enquiry are based were led in the presence of the person accused and he was given an opportunity of freely testing that evidence by cross-examination, the author would not hold that accepting the adverse findings of a Committee of Enquiry as prima facie evidence of guilt, if the facts establish guilt, was violative of any just or fair procedure or as offensive of notions of justice.

Accused persons appearing before the tribunal are by Law entitled to counsel of their own choosing. In the session of the Accra Public Tribunal the author attended, the defendants were in fact all represented by counsel. It is of the utmost importance that the Ghana Government,

given the wide jurisdiction and sentencing powers of the tribunals, ensures that all defendants will be afforded such legal representation. This may, however, only be possible if the Government of Ghana tried to reach an understanding with the legal profession which still maintains its boycott of proceedings of the Public Tribunals.

The standard of proof applied by the Public Tribunals gives rise to concern. It is not clear whether the standard used at present, namely "satisfaction of the tribunal" is synonymous with the standard of "beyond a reasonable doubt" applied by the regular courts in Ghana. It is highly desirable and indeed necessary, that the standard of proof be further clarified.

The most critical feature of the system of Public Tribunals until recently was the lack of a right of appeal. No policy reason was ever articulated for the avowed denial of a right of appeal to persons convicted by Public Tribunals. The only conceivable reason must have been that conferring such a right would be productive of delay. With the passage of the new Public Tribunals Law of 1984, the Government of Ghana has corrected this lacuna. A hierarchical system of Public Tribunals has been set up, as was shown above, and a right of appeal has been introduced. It is highly questionable, however, whether the appeal system now provided for is sufficient in the light of the concerns expressed about the impartiality and independence of the tribunals in general and the National and Regional Public Tribunals in particular.

As long as the independence and impartiality of the Tribunals are not adequately guaranteed, it would seem that a genuine right of appeal should lie only to the regular courts of Ghana. As one of the informants of the author put it: The introduction of the right of appeal makes very little difference to the human rights situation because the qualifications of the appeal remain the same; recently in one such appeal tribunal the Chairman was also the Chairman of the tribunal from which the appeals were coming. Moreover, the ordinary supervisory jurisdiction of the regular courts of Ghana over the Public Tribunals should be restored; this supervisory jurisdiction would empower the regular courts to review the Public Tribunals' decisions if they are made without jurisdiction or in breach of the rules of natural justice, or if they exhibit an error of law on the face of the record.

In concluding this section, the author would like to make some general remarks. The criticism made of the regular courts of Ghana is not a matter peculiar to Ghana. Similar criticisms are heard in other countries. Some of these criticisms are fair and genuine. They may lead to an improvement of the existing system of administration of justice.

An important criticism made in Ghana concerned the matter of delays in the regular courts. It is important to emphasise in this respect that delay in the field of criminal justice is not per se objectionable but only

excessive delay. It is true that the public interest demands that justice must be administered with dispatch. But it is also true that justice will rarely result if the criminal process is too hasty. It is important to bear in mind that trial, especially in criminal matters, is a meticulous process and that slowness, if not delay, is unavoidable.

In Ghana, the Public Tribunals are already facing delay in the handling of their workload. It is undeniable that such delays will occur more often with the introduction of the right of appeal. Acknowledging the need for a speedy trial by special Public Tribunals for certain specific widespread crimes and misdemeanours in present-day Ghana, provided they do not depart in their procedures from universally agreed upon principles, one may wonder why the Government of the Republic of Ghana has not opted for a further strengthening of the regular courts. This could have been done, for example, by increasing court personnel and court facilities, by providing incentives for hardworking and devoted officers to be attracted to judicial work and by reforming and reviewing procedural rules. In that manner the regular courts would have been in a position to deal in an efficient but prudent way with possible appeals from Public Tribunals and to exercise, equally efficiently and prudently, their supervisory jurisdiction, provided that the Law made this possible.

The Ghana Government has instead opted for another solution by establishing a hierarchical system of Public Tribunals which, as has been indicated above, has given rise to concern about their impartiality and independence. In having established in this way a dual system of courts in the field of criminal law, the Government of the Republic of Ghana has created serious doubts about its attachment to the Rule of Law, as formulated inter alia in the Universal Declaration of Human Rights, in relation to the promotion and protection of the rights of the accused persons.

Recommendations

...

3. The government should reconsider the establishment of a hierarchical system of Public Tribunals parallel to the regular courts. It is urged to introduce a right of appeal from the Public Tribunals to the regular courts and to restore the supervisory jurisdiction of the regular courts over the Public Tribunals. In the alternative the government is asked to consider the establishment of a Public Tribunal of Appeals, whose members should be elected by the Chief Justice from members of the Bench.

4. With regard to the operation of the Public Tribunals, the government is asked to clarify the standard of proof to be applied by Public Tribunals and to review the sentencing powers of these tribunals. The division of competence between the Public Tribunals and the regular courts should be made clear by the government. Alternatively, the criteria to be used in sending a particular case to either a Public Tribunal or to the regular courts should be stated publicly. Provision should be made by law with regard to the

qualifications required for members of Public Tribunals, for a fair procedure in cases of removal of members of such tribunals, and for a legally qualified person to chair a Public Tribunal. Finally, the government should seek an arrangement with the Bar Association so as to provide all accused persons appearing before a Public Tribunal with counsel of their own choosing.

...

6. ... The basic right to apply for a writ of habeas corpus should be restored, so that the grounds of any detention can be enquired into by the courts. ...

7. It is the author's impression that up to very recently a mood of deep pessism was all pervasive in Ghana. With the somewhat improved economic situation and the government's sincere efforts in this field, there seems to be a first glimmering of hope and optimism. These feelings of hope and optimism may be reinforced if the government of Ghana will meet its responsibilities under the international law of human rights and the Rule of Law, as laid down in the Universal Declaration of Human Rights. In such efforts the government of Ghana is entitled to the full support of the world community of nations.

Maastricht, November 1, 1984.

REPORT OF THE HUMAN RIGHTS COMMITTEE OF THE FEDERAL COUNCIL OF THE ORDER OF ADVOCATES OF BRAZIL

Violence directed against the legal profession in Brazil has reached alarming proportions. Between 1977 and 1984 at least 30 lawyers were victims of assassination or attempted assassination. For the most part, they were lawyers working with the rural poor or organisations representing the rural poor.

The Human Rights Committee of the Federal Council of the Order of Advocates has been investigating this situation. In September 1984 it produced a preliminary report which documents 120 cases of persecution and harassment. In the belief that this report merits a wider readership, the introductory section of the report and a number of the individual case reports are reproduced. Those wishing the full text of the report, available only in Portuguese, may contact the CIJL.

* * * * * *

To H.E., The President of the Federal Council of the Order of Advocates of Brazil, Dr. Mário Sérgio Duarte Garcia.

The Human Rights Committee of the Federal Council of the Order of Advocates of Brazil, entrusted by Your Excellency with preparing a report concerning harassment and persecution of lawyers because of the exercise of their professional duties, submit this preliminary report.

The Committee limited its work to those cases where the attacks were known to be due to the lawyer's exercise of his profession and did not take up those communications where investigation would have been necessary to determine the motivation behind the attacks. Similarly, acts of

harassment considered of little consequence were excluded, despite the fact that even these do show disrespect for the profession.

Generally, the sources of information were the State sections of the Order of Advocates, responding to requests made by the Order.

The report is obviously incomplete as it is the result of work started three months ago and there remain communications from several sections which need further enquiry. Unfortunately, it appears that when the Committee completes its task, its final report will contain an even greater number of cases. And even this number will not represent the total, as it is known that many victimized colleagues did not seek the help of the Order. The publication of this report will certainly prompt others to bring their cases to the attention of the Committee.

The decision to examine closely the problem of violence against lawyers was due to the realisation that it had grown to frightening proportions, as was evident from reports in the newspapers and the large number of complaints before the Committee.

As shown in the report, lawyers were not only subjected to threats and interference with their professional activities, but more than 30 were victims of homicide or attempted homicide.

Lawyers have been killed by the use of firearms and sometimes by the use of bombs, in order to prevent cases being brought before or resolved in the courts.

These killings are part of a practice which represents a violent reaction to any modification of the country's social structure.

Even a superficial reading of the report makes it obvious that there are two crucial issues affecting

Brazilian society: the use of violence by the police and the violence arising out of disputes over land ownership and distribution.

The homicides almost always are committed against colleagues willing to give legal assistance to victims of police violence or, as is more often the case, lawyers giving assistance to those involved in land disputes or to trade unionists. These clients always come from lower social classes, such as posseiros (persons cultivating land, without necessarily having title to it, but who might acquire title through adverse possession), rural workers, prospectors and squatters in urban or rural areas.

It has to be noted and reflected upon that the violence against lawyers increased immediately after procedures were put in hand for the return to democracy. While authoritarianism and the use of force to contain popular demands was diminishing, violence against lawyers willing to take these demands before the courts increased.

The easing of authoritarianism brought into focus the calamitous social situation in the country, and those with conflicting interests brought their cases before the courts. The acrimonious nature of these disputes is shown by the frightening number of lawyers killed and physically abused for exercising their profession.

Although there are difficulties relating to sociological and scientific proof which do not allow for a categoric affirmation, the report does indicate that the repression which swept the country for two decades aggravated excessively the differences of interests among the social classes, causing such vertical divisions in the social structure that they cannot now be remedied by mere paliative measures.

Having chosen a national development scheme based upon the concentration of property, the authoritarian government suppressed legitimate social demands, thus paving the

way for divisions which threatened to turn into a social conflict on the lines of a class struggle.

The violence being directed against lawyers serves to prevent judicial solutions to these conflicts. The lawyers representing both collective and individual interests who attempted to solve these problems through legal means became the targets of hired assassins. Another aspect that becomes evident from the report is that efforts by the police to bring to trial those responsible for this violence are rare. The guilty often act with impunity as the authorities either fail to complete the investigation, or do not publicly identify those responsible or apprehend them.

All these aspects deserve to be noted, and call for reflection. The violence directed against lawyers demonstrates unequivocally both the seriousness of the resistance to any change in the social structure, as well as the constant and growing pressure of the lower social classes for change.

It is recognised that a part of the lawyer's role is to work for improvements in the legal system, as it is the legal system which governs the ordering of relations within a society. It is also the role of the lawyer to represent his client to the best of his ability and to press all available legal arguments.

The lawyer is an instrument of the system of administration of justice because he represents before the court one of the sides in a dispute.

Without doubt, the lawyer, in pursuing his role as the defender of his client's interests, will put forward arguments which highlight contradictions in the laws underpinning the present social structure, and these arguments may bring about the permanent transformation of institutions in the social and political fields.

For this reason, the lawyer in the democratic system is a pacifying agent in social conflicts, because he prevents the domination of unjust laws and assists in seeking redress of grievances for the community, seeking the solution of social conflicts through civilised means, that is, the humanistic, and mainly juridical, culture.

The results of this preliminary investigation lead to the conclusion that the social conflict in this country has taken on extremely dangerous aspects, where lawyers, as instruments of the system of administration of justice, are being killed for their involvement in professional activities which favour the democratisation of the Brazilian society.

The fight against this criminal activity merits the same energy and efficiency as the fight against threats to the public order and the judicial institutions of the country.

Please accept the assurances of my highest consideration.

Rio de Janeiro, 17 September 1984
Arthur Lavigne
Secretary-General of the Human Rights
Committee of the Federal Council of
the Order of Advocates of Brazil

Cases

Olavo Berquó - attempted homicide

Lawyer - victim of Messrs. Waldomiro Rodrigues, Roman Gomes Pereira and Rui Carmo dos Santos in 1978. He was shot with three bullets at the door of his residence because he acted in a case of land division and demarcation in the region of Trindade, Goias.

Alceu Dantas Maciel - homicide

Lawyer assassinated during the exercise of his profession on 19 July 1979 at 11.20 a.m. in the region of Uruaçu, Goias, by military policemen, i.e., Sargent Miguel de Souza Luz, Otacélio Carlos Veloso, Juarez Pereira da Silva and Waldir Ferreira Marques.

Paulo Cesar Fontelles - imprisoned

The facts surrounding the illegal imprisonment of Dr. Fontelles, which took place in Pará, were presented to the Committee of Human Rights by Carlos Henrique Tibiriça Miranda of the Committee for the Defence of the Amazone. The President of the Federal Council of the Order of Advocates of Brazil contacted the President of the Pará Section which then adopted resolutions in favour of the immediate release of the above-mentioned lawyer.

Joaquim das Neves Norte - homicide

Lawyer shot dead on 12 June 1981 in Naviraí, Mato Grosso do Sul. The victim worked in favour of rural workers, posseiros and tenant farmers from the municipality of Naviraí. He was a lawyer for the Pastoral Commission on the Land (Comissao Pastoral da Terra) and the Union of Rural Workers. According to information from the National Association of Lawyers for Agricultural Workers (ANATAG), Dr. Joaquim had previously been threatened in January 1980 because of a court order he had obtained to slow down the destruction of the crops of posseiros by the owners of the Fazendas Jequitibá (large estates) between Rios and Agua Doce.

The Section of Mato Grosso do Sul nominated two lawyers to follow the police enquiry noting the precariousness of the enquiry and the absence of concrete indications as to the identity of the perpetrator of the crime - Declaration to the Council of Defence of the Rights of the Human Person on 22 September 1981.

Belonte Schizzi - restriction of professional activity

This lawyer was prevented from communicating with a client detained in the Department of the Federal Police. The President of the Sub-Section of the Order of Advocates of Brazil in Foz de Iguaçu went to the Federal Police offices with the lawyer. The President was prevented from

communicating with the detainee. He was told by Dr. Antonio Rodrigues de Castro, Chief Delegate of the Federal Police of Foz de Iguaçu that: "as long as I am the Delegate in Foz de Iguaçu, no one will talk with the prisoner before he has been questioned". When the detainee was set free it was noted that he had been severely beaten.

Waldir de Paiva Carneiro - death threat

Lawyer registered as a member of the Order of Advocates of Brazil - Rio de Janeiro under no. 37556. He was threatened by policemen of the 24th DP (Police Division) after having denounced torture suffered by his client Paulo Cesar Aguiar de Souza while in the custody of the police. After having noted the lesions which were visible on his client, the lawyer went to see the head of the Delegacia, who refused to receive him. He then called upon the Head Officer, Dr. Wanderley Silveira who said he would do nothing, that all was in order and that he was within the limits of his functions. The lawyer then went to the central Police Station and described what had happened. The Supervisor immediately phoned the 24th DP requesting information and demanding an examination of the physical injuries. The lawyer also stated in his letter to the Rio de Janeiro Section that another detainee was beaten on the same day in the corridor of the 24th DP. Because of these actions, the lawyer and his client, Paulo Cesar, were threatened with death by the police. Dr. Waldir requested guarantees for his life and that of his client. The Commission of Human Rights and Legal Assistance of the Rio de Janeiro Section sent a copy of this request to the Minister for State Security and to the Procurator General. An official letter was sent by the organisation on 13 April 1984 to the Minister of Justice requesting the setting up of a Commission of Enquiry.

Afrânio de Oliveira e Silva - death threat

Lawyer of the Federation of Agricultural Workers of Minais Gerais, was threatened with death and the kidnapping of his children because of the part he played in legal actions taken by the Federation against large landholders of the northern part of the Minas Gerais (Valley of Sao Fancisco and Valley of Jequetinhonha) cited in the Bulletin of Agrarian Reform of September-October 1981.

Vanderley Caixe - attempted homicide

Attempt was made on 13 February 1982 in Joao Pessoa - Paraiaba (Pb). Dr. Vanderley is a lawyer and coordinator of the Centre for the Defence of Human Rights, Assistance and Popular Education, an organisation which provides assistance, advice and legal representation for people with low incomes. The major part of the Centre's cases concern conflicts over land. Because of their activities, the organisation has received numerous threats. Dr. Vanderley has previously been the victim of two criminal attacks, both involving the burning of his car. On the second occasion the vehicle was completely destroyed.

The denunciation of the case was presented by the Order of Advocates of Brazil - Paraiaba. The Human Rights Committee was officially informed on 15 June 1982.

Antonio de Albuquerque - death threat

On 26 November 1981, while exercising his profession by defending his client, Assis Silva, who considered he was illegally detained, the above-mentioned lawyer was threatened with death while inside the 6th Police Sub-Division of Foz de Iguaçu by a policeman called Cezar Alencar Souza whose nickname is "Caveira" (death's head) and who threatened him with a pistol after the lawyer noticed that his client had been beaten up.

Irene Bricati da Silva - attempted homicide

On 1 May 1983 an attempt was made against the life of this woman lawyer because of her professional involvement in the municipality of Alta Floresta (Minas Gerais) where she worked in favour of 6,000 prospectors who were threatened with expulsion from the grounds they were working on, despite the fact that the case was under review in the 3rd Civil Court of Cuiaba and in the Federal Tribunal of Appeal. The case was officially submitted to the Council of the Defence of the Rights of the Human Person on 23 August 1983.

Teresinha de Brito Braga - attempted homicide

Woman lawyer, victim of a bomb attack at her home in Campina Grande (Paraiba). This colleague is a member of the Commission of Justice and Peace of Campina Grande and a lawyer for posseiros and small land owners in land conflicts. According to a report made by Ms. de Brito Braga before the Federal Council of the Order of Advocates of Brazil, the motives of the attack derive from the exercise of her profession and also from the denunciations she made against policemen belonging to the "Death Squad". After the death of the trade union leader Margarida Alves from Alagoa Grande, who was murdered by hired gunmen, the death threats intensified. According to the colleague, these threats are related to a conflict about land between the homesteaders of the "Amazonas" farm and its owner, Ismael da Cruz Gouveia Filho.

Zelita Rodrigues - restriction of professional activity

Woman lawyer in Sergipe and representative of the Commission of Defence and Guarantees of Rights of the Human Person. In a communication presented to the Order of Advocates of Brazil, she stated that she had been prevented from exercising her profession. She was declared "persona non grata" in the local Police Station after having denounced cases of torture which she had personally witnessed. Dr. Zelita affirms in her correspondence that there are increasing levels of violence in the Nordeste and that Salvador is a city under siege, and that Alagoas is a torture centre.

Pedro Marques da Cunha - attempted homicide

Lawyer of the rural workers in the State of Acre. The Brazilian Association of Agricultural Reform (ABRA) requested "energetic measures" from the governor of Acre after the criminal attempt on the lawyer's life. In its telegram sent to the governor, ABRA stated that "at the time when the Federal Government is developing an extensive campaign of self-promotion concerning the law of Usucaption (Civil Law)(or the law of Adverse Possession (Common Law)), it is unacceptable that the criminal attempts against rural workers and their lawyers continue".

José Alves da Silva - homicide

Denunciation received by the Order of Advocates of Brazil through a telex sent by the Alagoana Society of Defence of Human Rights about the climate of violence and insecurity reigning in this State. The above-mentioned telex said that lawyer José Alves da Silva was assassinated in the city of São José da Tapera, together with other people.

José Edvaldo Lacerda Ribeiro - attempted homicide

Labour lawyer who received six bullets at point-blank range in Montes Carlos, Minas Gerais, on 4 May 1984. This occurrence was denounced to the Human Rights Committee by José Leonel Povoa, a relative of the victim, on 20 August 1984. The victimized lawyer practices in the rural areas. Prior to the homicide attempt, he had been subjected to threats. Mr. José appeared before the Committee after having learned from a report published by the "Jornal do Brasil" on 19 August 1984 of the concern of the Order of Advocates about violence directed against lawyers in the exercise of their duties.

Eduardo José Dias Santos - homicide

Lawyer of the Union of Rural Workers of Mata de São João, Bahia, killed on 26 July 1984 at the door of his residence by three hired gunmen because of his involvement in the defence of 3,000 families of posseiros of the region. The crime was denounced to the Federal Council of the Order of Lawyers of Brazil in a telegram sent by the President of CONTAG, Mr. José Francisco da Silva, on 27 July 1984.

Eliezê Santos - attempted homicide

Lawyer and counsel of the Section of Bahia. On 3 August 1983 he was the victim of an attempted homicide around 7 pm (19 00 h.) in front of his residence in the city of Vitória da Conquista. The attempt was made by a professional gunman, José Orlando Pereira Lopes. The victim suffered serious physical lesions and had to undergo a series of surgical interventions. To date he has not fully recovered. The reason for the criminal act was his professional involvement in successfully bringing

several lawsuits against the large landholder Fábio Ferraz de Araújo Gomes at the request of the Bank of Brazil and other clients.

The author of the attempted homicide admitted while in prison to have been contracted by Fábio Ferraz de Araújo Gomes, co-author and inspirator of the crime. The criminal case is in its investigatory stage. A precatory mandate was sent to the 2nd Criminal Court of Salvador, Bahia, which took the testimony of Dr. Eliezê Santos and forwarded it to the court in Vitória da Conquista. The Human Rights Committee regrets that Fábio Ferraz de Araújo Gomes remains at liberty, the decree of administrative detention having been revoked by the criminal judge of Vitória da Conquista.

José Amaral Costa - attempted homicide

During the exercise of his duties the lawyer was the victim of an attempted homicide by José Geraldo Fonseca Naback in October 1983 in the city of Tres Corações, Minas Gerais. The Minas Gerais Section designated the lawyers Lauro Limborço and Marcio Nogueira to take on the case as assistants to the prosecution.

Sebastião Campos Lopes - prison

Lawyer victimised during the exercise of his professional duties when he went to the Police Station of Teofilo Otoni, Minas Gerais, to liberate various political prisoners of the PMDB who were detained in Pescador. Not only was the above-mentioned lawyer detained but his attaché case was seized.

Max Botelho Victor Rodriguez - attempted homicide

Lawyer attacked in the court house of Paracatu, Minas Gerais on 1 February 1984 by a man called Roberto Homem da Rocha Faria. The Minas Gerais Section designated the lawyer Vice-President of the 31st Sub-Section to take on the case during the police enquiry.

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Human Rights in Ghana

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

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

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

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

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

★ ★ ★

Academic Freedom Under Israeli Military Occupation

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

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

★ ★ ★

The Philippines: Human Rights After Martial Law

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

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

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