



### CONTENTS

#### CASE REPORTS

Argentina	1	Pakistan	15
Bolivia	6	South Africa	23
Brazil	9	Syria	25
Guatemala	9		

#### ACTIVITIES OF LAWYERS ASSOCIATIONS

Sudan Bar Association	28
Association of Latin American Lawyers	31
LAWASIA	33
Union Internationale des Avocats	34
English Bar	35
American Bar Association	36

#### UN RESOLUTIONS 36

#### APPENDIX

Report on the Independence of Judges and Lawyers by Dr. L.M. Singhvi	39
---	----

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

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

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

### **Affiliation**

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

### **Individual Contributors**

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

### **Subscription to CIJL Bulletin**

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

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

## CASE REPORTS

### A R G E N T I N A

#### Impeachment of a Judge, Legal Opposition to the State of Siege and other Developments

The CIJL has recently received from a former Argentine judge striking evidence of the extent to which guarantees of judicial independence have deteriorated under the military government which seized power in March 1976. The testimony is that of Dr. Carlos Santiago de Coulon, former member of the Tribunal Superior de Justicia, the highest court of Santa Cruz Province. He was appointed to the court in October 1976 and considered himself a supporter of the military government. Impeached in August 1979 and threatened with criminal prosecution, he fled the country and now lives in Switzerland. He does not deny committing the acts for which he was impeached, using an official car for private purposes and making a false declaration when taking the car across the border.

There were two impeachment proceedings against Dr. de Coulon. The first concerned a provincial law providing for the removal from office of any judge who three times delivered judgment beyond the time limit imposed by law. The law caused much concern among the heavily burdened judges. Studying the text Dr. de Coulon realised it was identical to a law previously held unconstitutional by the "Camara Nacional en lo Civil" of Buenos Aires, and declared it unconstitutional. The first complaint charged him with having "put himself above the governor" by declaring the unconstitutionality of this law.

Under the law of Santa Clara Province impeachment proceedings should be brought in the legislature, with half of the legislature acting as prosecutor and the other half acting as judge. There has been no legislature since the coup of 1976, however, and this function, like other legislative functions, has been assumed by the provincial executive. When the first complaint was made against Dr. de Coulon a prosecutor was named and three members of the Law Faculty of the University of Buenos Aires were appointed by the

governor to constitute the "Tribunal de Enjuiciamiento". The first proceeding resulted in an acquittal.

A second complaint comprising 105 separate charges was filed by a prosecutor in the employ of the provincial government. All charges were rejected by the tribunal except one, that in 1977 and 1978 he used an official car to make a personal voyage during a holiday weekend, and that these voyages involved crossing the border where the judge signed customs forms falsely stating that the voyage was for official purposes.

Serious violations of the rights of the defence are alleged to have occurred during these proceedings. In Argentine practice, both parties prepare in writing questions to be put to the witnesses. The questions are given to the court in a sealed envelope, and the judge opens the envelope during trial and poses the questions to the witnesses. Dr. de Coulon states that the envelope containing his questions was opened before trial and important questions removed.

The defence arguments were that the offence was so minor that it did not constitute sufficient grounds for impeachment, that personal use of official cars was commonplace and that customs officials told him that the declaration in question was only a formality. He states that his case was seriously prejudiced by the exclusion of an essential witness, a chauffeur who was prepared to testify that on numerous occasions he made all the necessary arrangements for other judges making similar trips, including filling out the incriminatory forms.

Thirdly, Dr. de Coulon argues that no proper record of the proceedings was made. The hearing was recorded on magnetic tape rather than in writing. When he objected, he was told that a transcription would be made. When he examined the dossier to verify the accuracy of the transcription, however, he found that none had been made. He also noticed that the defence questions had not been formally added to the record. When he objected to these irregularities and pointed out the risk of parts of the record being lost or

altered, the clerk stated that express instructions had been given to maintain the dossier in this manner. Approximately one month later a decision was announced impeaching the judge and ordering the matter transferred to the appropriate criminal jurisdiction.

Shortly thereafter Dr. de Coulon's wife reported that in his absence a provincial judge came to their home looking for him. He arrived at midnight, carrying a machinegun, in the company of another man who waited in a car with the motor running. The same judge later sent a summons ordering Dr. de Coulon to appear before him "for purposes which will be made known". Fearful that he might suffer the same fate of so many of his compatriots who disappeared or were taken to clandestine places of imprisonment, Dr. de Coulon remained in hiding and attempted to procure a transfer of the criminal prosecution to a federal court. The provincial judge did not reply to the communiques of the federal court, and Dr. de Coulon left the country. The Supreme Court refused to hear an appeal of the impeachment tribunal on the ground that it is not an ordinary court.

Dr. de Coulon believes that his removal was motivated by his independent stand in three cases. The first was the case in which a provincial law was ruled unconstitutional, a ruling which he says was a great shock to the governor. The second involved proceedings by the province to recover possession of land sold to a private purchaser in 1963, in which he ruled that the government could not use an administrative proceeding against a private individual. The third involved the case of a pregnant criminal defendant, the mother of four children, whom he transferred to house arrest for humanitarian reasons. In these cases Dr. de Coulon says that he received clear messages from various colleagues indicating that he should 'give the government what it wanted'. He also alleges that on three separate occasions he was told that all charges against him would be dropped if he resigned from office, and that various financial offers were made in order to induce him to accept resignation. On the final occasion he quotes the intermediary as saying "Everyone has his price... What is yours?"

These events underline the danger of eliminating structural guarantees of judicial independence, and in particular of giving the executive control over disciplinary proceedings. The misconduct for which this judge was impeached was indeed minor, and the circumstances, such as the successive proceedings, the large number of unproved charges, and the attempts to induce resignation, all indicate that the decision to proceed against Dr. de Coulon was not based on an impartial application of the law. One wonders whether the parliament, faced with the same facts, would have decided that such proceedings were required. The effect of these proceedings upon other members of the judiciary can only be to create a feeling of insecurity and vulnerability.

Dr. de Coulon, appointed after the coup and the purge of the judiciary which accompanied it, was not subjected to these proceedings because of political disagreement with the government or because of decisions touching major governmental interests. This case indicates the extent to which increasing the powers of the executive at the expense of the other two branches of government constitutes a menace to the entire corps of the judiciary, and affects the quality of justice in all branches of the judicial system.

#### Lawyers' Opposition to the State of Siege and other Measures

The activities of Argentine lawyers' associations on behalf of return to constitutional government and respect for the fundamental rights of citizens continue and assume new importance. A 1979 resolution of the Congress of lawyers of the Province of Buenos Aires, setting forth certain conditions which must be respected if the realisation of justice and practice of law is to be possible, was reported in CIJL Bulletin No. 5. In May of this year, the president and secretary of the Argentine Federation of Bar Associations met the Minister of Justice, General A. Harguindeguy, to express the association's concern about these issues. They presented the Minister with a document containing ten demands, including repeal of the provisions of the Law of Security restricting freedom of information, presentation

of every person 'detained at the disposition of the national executive power' before a constitutional judge, elimination of delays in the trials of persons charged under emergency decrees, answering all inquiries concerning disappeared persons, freeing of all persons subject to house arrest or release upon condition, full implementation of due process, respect for the right of every detained person to adequate treatment and respect for 'the noble mission of the lawyer'. The document, which was released to and reported by the Argentine press, argues that the conditions necessary for full return to the rule of law and institutional normalisation already exist, and that progress towards these goals must be made without delay.

The "Asociacion de Abogados" of Buenos Aires, one of the two principal organisations of lawyers of that province, has issued a statement calling for an end to the state of siege in effect since 1974. In this statement, published in Sera Justicia on 15 August 1980, the association eloquently summarises thereasons for the legal community's opposition to the state of siege. It states:

"... the National Constitution permits ... in cases of the utmost gravity and necessity, the declaration of a state of siege of limited duration and geographic scope ... But the state of siege in no way authorises setting aside everything civilisation has created for the defence of human dignity and liberty and the rule of law. Its purpose is to assure 'the functioning of the National Constitution and the authorities created thereby', not to oblige persons to give testimony against themselves, to shackle or impede the rights of the defence in criminal trials, to torture or to convert jails into onerous punishments for the persons detained there. Nor does it authorise retroactive application of criminal law or trial by special commission or by tribunals not having jurisdiction over the crime at the time it was committed ..."

The association concludes that the state of siege now in effect has created a condition of juridical incertitude, is inconsistent with the constitution and must be rescinded.

The "Asociacion de Abogados" has also announced its opposition to law 22-192 which transfers control over disciplinary proceedings against lawyers from bar associations to the Supreme Court. The association considers the creation of the "Tribunal de Etica Forense", whose members are to be appointed by the Supreme Court, inconsistent with the constitution and the lawyers' right to be judged by their peers. The concern which this development has caused must be viewed in light of the fact that the military junta replaced all members of the Supreme Court in March 1976 and enjoys plenary power over the appointment and discipline of its members.

## B O L I V I A

### Effects of the military coup on judges and lawyers

On 17 July 1980 the government of Ms Lidia Gueiler was removed from power by a military coup. This interim government had been installed in November 1979 replacing a 16-day military government which abdicated in the face of widespread popular and international pressure. The mandate of this government was to organise a national election, which it did on 29 June 1980. The unwillingness of some elements of the military to respect the outcome of the elections, which gave a victory to the centre-left Popular Democratic Union, was the immediate cause of the July coup.

The coup followed closely the Argentine and Chilean pattern, with an estimated two thousand persons taken into custody and with numerous incidents of torture and assassination being reported. In a resolution dated 25 July, the Permanent Council of the Organisation of American States deplored the "indefinite suspension of the process of democratic institutionalisation" and expressed "deep concern with the loss of human life and serious violations of the human rights of the Bolivian people" which followed the coup.

During the presidency of Ms Gueiler and for the first time in several years the Supreme Court was appointed by the House of



Deputies, as the constitution provides. The government announced on 9 September that all members of the Supreme Court would be replaced the following day. This was called by a government spokesman the "first step of a total renovation of the judicial power at all levels". Later reports indicated that the presidents of all district courts were also dismissed. \*) This grave interference in the independence of the judiciary indicates the junta's lack of confidence in the legality of the methods it has employed or intends to employ.

A judge was among those arrested in the wake of the coup. Dr. José Decker Morales, president of the Supreme Court in Cochabamba and professor of law at the University of San Simon, was arrested on 25 July.

Lawyers involved with trade unions and human rights activities were also among the first victims of the coup. Among the persons arrested were:

Añibal Aguilar Peñarrieta, legal advisor to the National Confederation of Bolivian Workers (C.O.B.) and noted human rights lawyer. He was arrested on the day of the coup. Prior to the coup he had publicly denounced human rights violations by military leaders, notably Colonel Luis Arce Gomez who after the coup became Minister of the Interior.

In particular Dr. Aguilar had been investigating the death of Fr. Luis Espinal, with the intention of preparing, together with a human rights organisation a formal complaint. Fr. Espinal, a human rights activist and friend of Dr. Aguilar, was killed on 22 March 1980. His body bore signs of torture. Having collected information concerning the circumstances of Fr. Espinal's kidnapping and death, Dr. Aguilar publicly accused Col. Arce and two other officers of complicity in the death. He claimed to have received a copy of a list of other intended victims, and to have located a large number of persons who had also been tortured and would be willing to give

---

\*) The same measures were taken by the Argentine junta immediately after the 1976 coup (see CIJL Bulletin No. 1).

testimony. Col. Arce was said to be implicated also in some of these other cases of torture. The list of persons to be assassinated was said to be part of a strategy to destabilise the country, an analysis which seems to be borne out by subsequent events. Dr. Aguilar demanded that the government conduct a full investigation of these matters.

Dr. Aguilar himself had been the target of two bomb attacks, but in both cases he escaped injury. While attending a legal conference abroad, his office was entered and documents relating to the Espinal case were taken. After making the above-mentioned charges he was arrested and charged with concealing evidence in the Espinal case, but was released prior to the coup. He also criticised the government for failing properly to investigate the attempts on his life, saying that in the case of the bomb attack on his home he could identify the authors of the attack if given photos of government security agents.

Dr. Manuel Morales Davila was Controller General of the Republic, faculty member of the Universidad Mayor de San Andrés and president of the National Confederation of University Professionals. He was also active in human rights and on behalf of the Confederation had submitted to the United Nations several communications regarding human rights violations. He was arrested on 24 July and was reported to be detained in the "Miraflores" military establishment in La Paz.

Dr. José Trigo Andina, rector of the University of San Simon, is another lawyer arrested after the coup. The government has not officially admitted his arrest.

## B R A Z I L

### Terrorist Attacks Against the Legal Community

Among the targets of a series of terrorist attacks which began in July 1980 are the bar association and some of its members. The first victim was Dolmo Dallari, prominent attorney and former president of the Justice and Peace Commission of the Catholic diocese of Sao Paulo. On the eve of Pope John Paul II's visit to Sao Paulo in July, he was kidnapped and attacked by four men. He suffered multiple knife wounds but survived.

A few days later the offices of lawyers Airton Soares and Luis Eduardo Greenhalg were attacked. Both lawyers were known for their defence of political prisoners and involvement with trade union activities including the important Sao Paul metal workers' strike which took place earlier this year. Mr Soares is also a Deputy in the National Assembly and a member of the Workers' Party, whose offices have also been the subject of attacks. Other human rights lawyers reported having received threats during July, including José Carlos Dias, current president of the Justice and Peace Commission.

In September a letter bomb was delivered by post to the offices of the bar association of Rio de Janeiro and resulted in the death of the secretary of the association. Six other persons in the office were injured by the explosion. The bar association had in recent years issued pronouncements on human rights questions, but the precise reasons for this attack, the first fatal bombing in Brazil in seven years, remain unknown. The president of the bar association issued a press statement criticising the government's failure to discover the culpable parties and characterised police investigative activities as "leaving much to be desired".

## G U A T E M A L A

### Campaign of Assassination and Intimidation Continues

For the third consecutive time the CIJL is forced to report the assassination of judges and lawyers in Guatemala. The October 1979

issue of the Bulletin reported the deaths of four lawyers and two judges, while Bulletin No. 5 of April 1980 reported the death of 3 more.

Since then the Centre has learned of the deaths this year of an additional seventeen lawyers. The available details are as follows:

Johnny Dahintin Castillo, member of the law faculty at San Carlos University and member of the 'Bufete Popular', an office which provides legal assistance to the poorer sectors of the population, was assassinated on 9 April 1980.

Eduardo Arturo Beteta Mazariegos, an active practitioner of administrative law, was assassinated in Guatemala City on 5 May.

Carlos René Recinos Sandoval was a forty-nine year old member of the University of San Carlos law faculty, member of the University's 'Bufete Popular' and labour lawyer. As he left the 'Bufete' on 26 May for his office he was shot by men in one or more vehicles using large calibre weapons. Several weeks earlier he had been the subject of an attack in which men in a pick-up truck threw a grenade at his residence.

Francisco Navarro Mejia another faculty member at the same university was assassinated in Guatemala City on 28 May.

Carlos Humberto Figueroa Aguja, another member of the University of San Carlos law faculty and the 'Bufete Popular', was machinegunned as he drove to work in Guatemala City on 9 June 1980.

Carlos Humberto Martinez Perez, a member of the same law faculty was killed the same day and in the same manner as Carlos Humberto Figueroa Aguja, in a separate incident.

Octavio Neftaly Paredes Rodriguez, a member of the 'Bufete Popular', was assassinated near his office in the centre of Guatemala City on 12 June. He was the fourth member of the office to be killed since the killing of Mr Dahintin on 9 April.

José Antonio Valle Estrada was shot in his car in Guatemala City in a separate incident on 12 June.

Francisco Monroy Paredes, dean of the law faculty of the University Centre of the West in Quezaltenango, was ambushed and machinegunned by a group of men while driving his car. His wife who accompanied him was also killed in the attack, which occurred in Quezaltenango on 14 June.

The following day, an office shared by two lawyers in Quezaltenango suffered an incendiary attack which resulted in the loss of valuable legal documents.

In the weeks following the assassination of Dr. Monroy, the University Centre of the West was the site of two bomb explosions. Several other lawyers connected with this campus of the national university had received death threats and at least three of them, including the director and former director, had left the country. Large numbers of students were also reported to have left the university centre.

Jesus Marroquin Castaneda, a thirty-seven year old faculty member at the University of San Carlos and member of the 'Bufete Popular' was assassinated on 18 July. He was well-known for his activities in both labour law and criminal law, as well as for his defence of the land rights of the members of the Santa Maria Xalapan rural community. A communique published by the 'Secret Anti-Communist Army' on the day of his death declared him guilty of "having freed in a fraudulent way the known guerilla Victor Manuel de Leon Chacar ... in this way making a joke of the laws of Guatemala ..." This makes it crystal clear that he was assassinated by reason of his professional activities. He was machinegunned by several men moments after leaving his office at midday in Guatemala City. Mr. Marroquin had been injured in a previous assassination attempt in 1979.

Victor Guzman Morales, a member of the pro-government MLN, was machinegunned from two passing automobiles on 18 July in Guatemala

City. His bodyguard was also killed in the attack, and a companion was seriously injured.

José Antonio Pimentel Martínez, a practicing lawyer and former Legal Adviser and Chief of Personnel of Guatemala City, was assassinated on 25 July. He was machinegunned by men in two cars while going to his office at 8:45 in the morning in Guatemala City.

José Francisco Buenafe was shot while parking his car outside his home in Guatemala City on 31 July.

Irma Yolanda Reyes y Reyes, a thirty-one year old lawyer employed in a criminal court was assassinated on 4 August. While returning home from work at 3:30 in the afternoon she was shot in the back numerous times by a group of two or more men. She had recently left her position as instructor at the University of San Carlos.

Victor Hugo Rodriguez Tello, a forty-six year old practitioner was assassinated on 12 August in the city of Coban. He was shot by two men as he left his office at 3:00 in the afternoon, receiving at least ten bullets. He was one of the co-founders of the Socialist Party, but was said to have given up political activities.

Rosalinda Cabrera Munoz de Cardona, a forty year old practicing lawyer and instructor in the law department of the University Centre of the West, was assassinated on 12 August in the municipality of San Pedros Sacatepéquez. She was machinegunned by a group of men in a pick-up truck as she left her home for work at 8:20 in the morning. A bystander was also killed.

Héctor Ramos Alvarado, a practicing lawyer of sixty-two years of age, was assassinated in Coban on 19 August. A group of men entered his office at 11:35 in the morning and shot him numerous times. His office was located in a busy section of the city only a few doors from the office of Victor Hugo Rodriguez Tello, killed several days earlier. Mr Ramos was a former deputy and member of the Social Democratic Party, although it was reported that he had been politically inactive for some time. It was also reported that

numerous other members of the legal community in Coban, including those who had never participated actively in political life, had also received death threats.

Other facts brought to the attention of the CIJL include the names of three additional lawyers reported killed during the first part of 1980, one attempted assassination of a lawyer and one kidnapping.

Francisco Javier Hernandez Santizo was reported shot in front of his home in Quezaltenango on 5 February.

Axel Donaldo Coronado Santizo was kidnapped in March. His body was found on 12 March, having multiple bullet wounds.

Julio Alfonso Figueroa, a lawyer employed as Director of the Institute of Social and Economic Research at the University of San Carlos, was killed on 26 March. His wife was seriously injured in the same attack.

Julio Rodolfo Lopez Lopez was reported kidnapped on 2 June.

Luis Felipe Samayoa, a well-known member of the law faculty of the University Centre of the West, was the target of an assassination attempt on or about 19 August. Three men fired upon his car as he was returning home at 9:15 in the evening. Fortunately, the only injuries suffered were from the automobile windows shattered by the bullets. Mr Samayoa is one of the few remaining instructors in the law faculty. He also writes a column in a local newspaper.

The CIJL has received a copy of a remarkable letter from the office of the Vice-President of Guatemala responding to an inquiry regarding violence against the legal profession. The letter notes that, according to statistics compiled by the Vice-Presidency, 1200 persons had been killed, kidnapped or exiled from 1 January to 15 July 1980. It continues:

"The violence directed against the university community has increased in frequency and has assumed new forms, in keeping

with the situation in general. This increase includes the assassination of 15 members of the legal profession; together with the one lawyer kidnapped this brings to 16 the number of victims thus far this year [i.e. to 15 July]. Likewise there have been raids on 'bufetes populares', such as those in the city of Escuintla, terrorist attacks against individual law offices and assaults and raids against national courts."

The letter concludes with the hope that this information will contribute to a proper understanding of the problem and eventually the creation of instruments capable of reducing or eliminating such violence. The letter was dated 10 August; on 1 September the Vice-President resigned his office citing differences with the president over the government's human rights policies.

The number of lawyers reported killed in Guatemala this year is now twenty-three. This represents a most serious threat to the independence of the legal professions, as well as a grievous human tragedy. Lawyers of all types have been victimised, but those practicing labour law or serving the underprivileged sectors of society in 'bufetes populares' have been particularly affected. In some cases, the death notices issued clearly serve the purpose of dissuading lawyers from engaging in certain types of legal practice. In at least some areas the legal profession has already been affected by a climate of fear, and the law faculties experience difficulty in functioning. The similarity of many killings suggest a well coordinated campaign of assassination. The government has proved singularly ineffective in preventing the assassination of threatened individuals or in bringing to justice the culpable parties.

On 18 June the CIJL issued a circular letter urging lawyers associations to express their concern about these developments to the Head of State, whose address is:

Exmo. General Fernando Romeo Lucas Garcia  
Presidente de la Republica de Guatemala  
Palacio Presidencial  
Guatemala City, Guatemala



The Centre also furnished information concerning these developments to the United Nations pursuant to Resolution 32 (XXXVI) of the U.N. Commission on Human Rights which decided to keep the human rights situation in Guatemala under review.

## PAKISTAN

### Struggle over the independence of the judiciary

The Secretary of the CIJL visited Quetta, capital of the province of Baluchistan, in July 1980 to observe hearings in the lengthy trial of former Attorney-General Yahya Bakhtiar (see CIJL Bulletin No. 5). This mission also gave the Secretary the opportunity to gather information about some recent developments concerning the judiciary in Pakistan. The picture which emerges from an examination of judgments and other documents and meetings with members of the provincial High Court, a member of the Supreme Court and various members of the bar, is a disturbing one. It is a striking illustration of the danger which prolonged states of exception, expanding the power of the executive, hold for the independence of the judiciary.

### Executive Decrees Amending the Constitution

The present government came to power in July 1977. At that time General Mohamed Zia assumed the post of Chief Martial Law Administrator and placed the country under martial law. In September the following year he assumed the presidency as well. The announced purpose of the coup was to prevent implementation of the 1977 general elections, widely regarded as having been marked by election rigging, and to conduct fair elections as soon as feasible. In November 1977 in a unanimous decision the Supreme Court gave its approval to the new martial law regime calling it an "extra-constitutional step necessitated by the complete breakdown and erosion of the constitutional and moral authority of the Bhutto government ...".

More recently the government has cited the need to reorganise the nation according to Islamic precepts as its raison d'etre.

Two decrees purporting to amend the constitution have caused major changes in the legal system. The first was Presidential Order No. 21 of October 1979 amending Article 212 of the constitution. In its original version this article permitted the establishment of administrative tribunals, immune from judicial review, having exclusive jurisdiction over narrowly defined areas such as the employment of civil servants and claims in tort against the government. The tribunals could be created by the national or provincial legislatures.

A new article 212-A expands this authority beyond recognition, providing for the establishment of military tribunals for the trial of offences under martial law "or any other law, including a special law". Cases begun in the ordinary courts may be transferred to the military tribunals, and no civilian court, including appellate courts, may make any order regarding any matter brought in or transferred to a military court. The power to create such military tribunals rests not with the legislature but with the Chief Martial Law Administrator.

The power to establish such courts has been exercised, and in effect there are two systems of justice in the country. Defendants in military tribunals are not entitled to legal representation, military judges are not required to be members of the bar, and it is alleged that violations of the basic rights of the defence occur. The CIJL Secretary attempted to visit such a tribunal, which in principle is open to the public, but permission to do so was denied by the provincial Martial Law authorities.

The second decree was Presidential Order No. 21 of 1980 promulgated on 27 May, which purports to add three provisions to Article 199 of the constitution. In its original form this article grants the High Courts jurisdiction over writs of mandamus and injunctions to national, provincial and local officials, over writs of habeas corpus, over actions to enforce the fundamental rights set

forth in the constitution and actions challenging the vires of official acts.

The first provision of the amendment bars High Courts from entertaining any proceeding or making any order regarding the validity or effect of any martial law order or regulation, any sentence or judgment of a military court, any matter under consideration by a military court or any "thing done or action taken or intended to be done or taken" pursuant to a martial law order or regulation. The provision further bars the High Courts from issuing process against any person acting under the authority of Martial Law Administrators.

The second provision declares that this denial of jurisdiction is retroactive, abating cases pending in the High Courts and voiding such orders, issues and process issued prior to promulgation of the order. Having effectively eliminated all judicial authority over such matters, the third provision simply declares the legality of the coup of July 1977 and all ensuing presidential orders, chief martial law administrator orders and martial law orders and regulations.

#### The Legal Profession Responds

The legal profession, which had conducted campaigns against infringements of the independence of the judiciary and other human rights violations of the previous regime, responded by calling a one-day strike on 1 June 1980. Published reports indicate that 5,000 lawyers participated in all the major cities of Pakistan. The protests continued as two to three thousand lawyers, calling themselves the All Pakistan Lawyers' Convention, met in Lahore on 19 June. Resolutions were adopted condemning the two purported constitutional amendments, and calling for an end to martial law, release of political detainees and holding of elections. The resolutions were subsequently adopted by all four provincial bar organisations. A street demonstration led by three women lawyers took place and culminated in the arrest of eighty lawyers. They were later released after another strike was threatened.

A second convention attended by 1,000 lawyers took place in Karachi in August. Another march led to a smaller number of arrests and some injuries. The arrested lawyers are reportedly charged with violation of a martial law ban on political activity, and face a military trial and possible sentences of imprisonment and 15 lashes. Lawyers in two provinces conducted a strike protesting against the detention of these lawyers. A national action committee has been organised to promote the lawyers' goals of a return to elections, civilian rule and withdrawal of the two amendments. All lawyers have been called upon to refuse governmental retainers, by which the government is represented in a large number of legal proceedings.

#### Judicial Challenges to the Amendments

In several consolidated cases challenging convictions in military courts (Suleman et al v. President, Special Military Court No. 3 et al and related cases, 12 July 1980), the High Court of Baluchistan rendered an important decision declaring the orders of no effect.

The court first ruled that it necessarily had the power to decide the cases, notwithstanding the retroactive and self-executing tenor of the orders:

"We have no doubt in our mind that there is one jurisdiction enjoyed by this court, which need not be specifically conferred by the constitution and the law; such jurisdiction is inherent in the judicial system, which flows from the judicial power; and that is the jurisdiction to determine its own jurisdiction to hear, or not to hear a cause. We would therefore hold that this court has always the power to examine the question whether this court has lost jurisdiction after the promulgation of Presidential Order No. 21 of 1979 and Presidential Order No. 1 of 1980, whereby Article 212-A and Clauses 3A, 3B and 3C in Article 199, were added to the Constitution, including the validity of the instruments through which such amendments were brought about."

This ruling rested in part on the case of Yusuf Ali v. West

Pakistan Bar Council Tribunal (P.L.D. 1972 LAH 404), in particular the following passage on the independence of the judiciary in the Islamic state:

"... The (this) superior judiciary is clothed with this jurisdiction as a delegate of the Sovereign who, in the Islamic Republic of Pakistan, is God Almighty Himself exercising His will and Sovereignty through the people of this country. It is hardly possible to deny that the making of laws, their implementation and their interpretation are three separate functions performed by three independent delegates of the Sovereign in respect of its own particular field. The Legislature exercises that delegated sovereign power of the Sovereign to make laws and the Executive exercises it to implement them; the Judiciary does, in the same manner, exercise the delegated power of the Sovereign to interpret laws made in pursuance of the exercise of the Legislative part of the powers of the Sovereign by the Legislature. The right to interpret and enunciate laws is an inalienable jurisdiction of the superior Judiciary delegated to it by the Sovereign which can neither be curbed nor can it be taken away."

The court then turned to the question whether the doctrine of necessity, which the Supreme Court in 1977 found to validate martial law, justified the two challenged decrees. It noted that the installation of military rule had been justified by the loss of constitutional and moral authority on the part of the government, but that the authority of the judiciary had not been found lacking. Thus it concluded there was no recognised necessity to interfere with its independent functioning. Secondly, the court recalled that the concept of necessity inherently implies non-permanence. This principle is incompatible with permanent alterations of the constitution made without recourse to the usual process of amendment. Lastly, the court noted that the military seizure of power had been deemed necessary to accomplish certain defined objectives, notably the organisation of fair elections, and that the challenged decrees had no relationship to such objectives.

At least one provincial court has recognised the validity of the two amendments. Unless they are withdrawn by the government, the Supreme Court will presumably render the final decision on this controversy.

#### Harassment of Judges

This case was heard by the full High Court of Baluchistan, consisting of three judges. Ten days after the unanimous decision was announced, each judge received notice that alleged inequalities in their income tax returns were being investigated.

There is general agreement in the legal community that these and other equally unsubtle tactics are being employed to influence the conduct of judges. Another well known case is that of Supreme Court Justice Safdar Shah, one of the dissenting judges in the Bhutto case, who was particularly outspoken in his criticism from the bench of the trial proceedings. He was charged with falsifying the date of his birth and obtaining fraudulent educational qualifications, and was made to face an inquiry before the Supreme Judicial Council, composed of high-ranking judges and presided by the Chief Justice of the Supreme Court. He resigned in October 1980, stating that to submit to proceedings before the Council would result in "irreparable damage" to the Pakistan judiciary. He maintained his innocence, however, and stated that the proceedings were unconstitutional, having been brought at the behest of the executive rather than the Council. Mr Justice Saraf, Chief Justice of the Azad Kashmir High Court, resigned in similar circumstances earlier this year.

Another incident concerns one of the most controversial cases in Pakistan since the Bhutto case, the case of Ret. Air Marshal Asghar Khan. Air Marshal Khan, the head of an opposition political party, filed a constitutional petition in Lahore High Court challenging the ban on political activity, martial law and the constitutional amendments. After argument had been completed and the decision was expected, two of the judges in the case were transferred without prior notice, one to a new federal Sharia Court, the other to become

an acting Supreme Court justice. It is reported that both judges were told they must take their oath within 24 hours, and that if they failed to accept the transfers they would not be permitted to return to their posts on the High Court. The following day Presidential Order No. 21, removing High Court jurisdiction over constitutional petitions, was enacted. The circumstances of the transfer have created the impression, shared by many members of the bar, that the transfers were intended to prevent delivery of a decision in the Asghar Khan case.

### The Bakhtiar Case

It will be recalled that Mr Bakhtiar, former Attorney-General and Mr Bhutto's defence counsel, was one of sixteen persons being investigated by the Elections Commission for election rigging during the March 1977 elections. The constitution of Pakistan provides that no election shall be called into question except by a petition to the Election Tribunal in such manner as determined by Parliament, and the relevant act of Parliament permits elections to be called into question only by a candidate in that same election. Mr Bakhtiar is, however, being prosecuted pursuant to Presidential Order No. 16 of 1977, promulgated in November 1977, in which the government assumes the power to initiate prosecutions by the appointment of a special court and special prosecutor, irrespective of the limitations contained in the constitution and existing law. Although the government maintains that there was massive misconduct during the 1977 elections, Mr Bakhtiar is the only person being tried for such offences. The initiation of this prosecution was announced as Mr Bakhtiar was engaged in preparation for appeal of the conviction of the late president Bhutto.

The trial, which began in June 1979, has been conducted intermittently and in widely separated cities despite the financial burden this imposes on the defendant and despite his heart condition which makes such travel hazardous. In June 1980, when the defendant, who has conducted his own defence, was unable to travel because of this condition, the judge appointed a counsel to represent him and continued the proceedings in his absence.

Prior to the CIJL mission, Mr Bakhtiar filed and argued in Baluchistan High Court a constitutional petition challenging the proceedings in the Special Court. Among the matters of which he complains are that conducting the trial in various places has prevented him from effectively defending the case, that he is being tried under a law (Presidential Order No. 16 of 1977) not in effect when the crime allegedly occurred, that prosecution under this law when investigation by the Election Commission was underway subjects him to double jeopardy and violates constitutional provisions on prosecution for electoral offences, and that subjecting him alone to prosecution under Presidential Order No. 16 of 1977 renders such prosecution discriminatory and mala fide.

Since the return of the mission and during an adjournment of the trial proper, the High Court rendered a decision on the constitutional petition declaring the prosecution discriminatory, mala fide and without lawful authority. The government filed a petition for leave to appeal and application for interim relief in the Supreme Court on 23 September. In an ex parte proceeding the same day, Justice K.E. Chauhan granted interim relief, suspending the judgment of the High Court and permitting the Special Court to proceed with the trial and to pronounce judgment, but not to implement it. Mr Bakhtiar has criticised these proceedings on two grounds. First, important rights are at stake and there was no need to take the extraordinary step of proceeding ex parte, thus denying him an opportunity to be heard. Secondly, in similar cases, the Court would normally permit the prosecution to proceed but would not authorise the pronouncement of judgment, which raises the inference that authorising pronouncement of judgment is motivated by political considerations.



## SOUTH AFRICA

### Lawyers Detained

Five lawyers belonging to the Democratic Lawyers Association, an affiliate of the International Commission of Jurists, were arrested on 6 June 1980. The Association is a body of practicing lawyers, nearly all Africans or Asians, dedicated to equality before the law, independence of the judiciary, the rights of the defence, legal aid, freedom from torture and ill-treatment and opposition to apartheid. The arrested lawyers were M.J. Naidoo, B. Pillay, R. Bugaween, C. Sewpershad and S. Morgan. They were initially held pursuant to Section 22 (1) of the General Law Amendment Act of 1966, which provides for detention up to fourteen days for purposes of interrogation. They were subsequently detained under Section 10 (1) (a) bis of the Internal Security Act of 1950 pursuant to a determination by the Minister of Justice that they "engaged in activities which endangered or were calculated to endanger the maintenance of public order".

The Minister's decision was reviewed and approved by a review committee consisting of three persons (in this case three jurists, although it is only required that one be a jurist) appointed by the State President. This review process should not be confused with review by an independent judicial tribunal, however. There is no right to appear before the committee, either in person or by legal representative. The detainee has no right to examine the evidence against him or to call his own witnesses. Records of the committee's proceedings are closed to all but government officials. No review or judicial challenge to the committee's decision is permitted, and the committee's decision is only advisory; the final decision is that of the Minister of Justice.

It is obvious that preventive detention is warranted in some circumstances and that lawyers are not by reason of their profession exempt from laws applicable to the general population. However, laws authorising lengthy periods of detention with no meaningful

statement of the reasons therefore, no meaningful opportunity to contest the detention order and no access to judicial review are prone to abuse. Detaining lawyers without stating the factual basis for the decision, without permitting the legality of the decision to be challenged has a chilling effect on the bar and thus an adverse effect on the independence of lawyers. Therefore the CIJL in a letter dated 17 June 1980 invited lawyers' organisations to communicate their concern about these detentions to the Minister of Justice. Among the organisations to do so were the bar associations of Ghana, Nepal, Norway and Sweden, the Union of Turkish Bar Associations, the Union of Arab Jurists and the Lawyers' Committee for Civil Rights Under Law (USA). All five lawyers were released after more than fifty days of detention.

It has since been learned that these five lawyers were among six members of the Natal Law Society detained at this time, and the Society convened a special general meeting on 26 June to discuss these detentions, which it called "a matter of grave concern to this Society". A resolution of protest was passed and a memorandum on this subject prepared. Representatives of the Society met the Minister of Police on 8 August to present the memorandum and convey their concern about the detentions.

The CIJL also received news of the arrest on 10 June 1980 of a Cape Town attorney, Rachaad Khan. Like the others, he was detained first under Section 22 of the General Law Amendment Act and then under Section 10 of the Internal Security Act.

According to the information received, Mr Khan was arrested the day after he had agreed to represent seven school children charged with participating in certain demonstrations. He affirms that he had no record of involvement in political matters, and that he agreed to undertake their defence because of the duty incumbent upon every attorney to render legal services conscientiously and without partiality to all who request them.

On 18 July 1980 a letter was sent to the Minister of Justice expressing concern about the effect detention might have on Mr

Khan's legal practice and on the willingness of lawyers to represent all those who request their services, and requesting that unless Mr Khan be charged that he be released forthwith. He was released on or about 10 August 1980.

#### Criticism of Inroads into the Independence of the Judiciary

A confidential memorandum prepared by a South African judge severely criticises efforts of the government to reduce the independence and authority of the judiciary in that country. The memorandum was written to oppose the suggestion of the Hoexter Commission that an intermediary appellate court be created to lessen the work load of the Supreme Court. In the memorandum, which was reprinted in large part in the Natal Mercury of 14 October 1980, Mr Justice Didcott of Natal refutes in detail the arguments put forward by the Commission in favour of the creation of this new court. He concludes: "It is the suspicion, rife in the ranks of both the judiciary and the legal profession, that ... the establishment of intermediate Courts is not envisaged as an end in itself, that it is intended to be but the means to an end and that the end is to cut the Supreme Court down to the size the planners want it to have."

As examples of other measures already taken in pursuit of this goal, the judge cites the creation of mandatory sentences which deprive the court of discretion to impose punishment fitting the crime, the elimination of part of the jurisdiction of the Supreme Court by the creation of special tribunals, immunizing various administrative acts from judicial review, indemnities protecting officials who have acted unlawfully and, most importantly, suspension of the writ of habeus corpus for large categories of prisoners or detainees.

#### S Y R I A

The Damascus Bar Association in January 1980 called for a one-day strike of its members in support of demands for dissolution of the Court of State Security, termination of a state of emergency

declared in 1963, liberation of all detainees held pursuant to the state of emergency and transfer of all other detainees to prisons under civilian control. The strike was set for 31 January. In response to government indications that the demands would be considered and assurances that trials before the Court of State Security would be suspended while these demands were studied, the bar agreed to postpone any action until 31 March.

However, it was reported that between 17 and 27 February twenty-seven persons were tried in the Court of State Security under the summary procedures in force there and that five other detainees were transferred to a certain prison "for execution without trial". The details of these allegations were transmitted by the International Commission of Jurists to the government of Syria, which neither confirmed nor denied them.

The government's evident unwillingness to implement the return to a normal legal order led the Damascus and Syrian Bar Associations to proceed with its plans for a strike on 31 March. They were supported by the associations of medical practitioners, engineers and architects. About the same time, certain trade unions called a general strike in a number of cities, such as Aleppo, Hama Deirezan and Ihib. In some instances, these continued for several weeks.

In response to this situation, over one hundred members of the participating professional organisations were arrested, and the councils of the organisations were dissolved by government decree for allegedly 'exceeding their mandate'. Twenty-four leading members of the bar are known to have been detained. Their places of detention were not made public, and they were not allowed visits by their families or lawyers.

In areas where a general strike had been launched, the army intervened to end the strike. In Djisr El Chougour three hundred persons were reported killed, and in Hama the head of the local medical practitioners' association was among the persons killed.

The situation has continued to deteriorate. President Assad was wounded in an assassination attempt and the lawyer chosen by the government to replace the elected president of the Damascus Bar was assassinated, it was said by members of the Moslim Brotherhood. The government in turn adopted a law making membership in this organisation punishable by death, and several reports have been received of extra-judicial execution of opponents.

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 unprecedented 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 the law, not to the government.

The CIJL sent two letters to lawyers' associations on 12 May and 18 June urging them to communicate to the Syrian authorities their concern about this matter. The response of the international legal community has been overwhelmingly in support of the Syrian bar. The Council of the Union of Arab Lawyers, representing the bars of all Arab states, refused during the 14th Congress of the Union in Rabat to recognise the lawyers appointed by the government as being the legitimate representatives of the Syrian Bar Association. A resolution condemning the government's actions was adopted at the Congress of the Inter-African Union of Lawyers in May in Dakar, and the Joint Emergency Committee of the Union Internationale des Avocats, the International Bar Association and the Association Internationale des Jeunes Avocats sent a telegram to the president of Syria, urgently protesting against the government's actions. The CIJL and the Union of Arab Lawyers both brought this matter to the attention of

the U.N. Sub-Committee on Prevention of Discrimination and Protection of Minorities which adopted a resolution affirming the role of bar associations in the promotion of human rights and calling upon all governments to respect the right of lawyers "freely and without interference (to) form and participate in professional organisations" (see p. 37).

In June 1980 it was reported that the president of the Syrian Bar Association was released from detention, but there has been no news regarding the remaining detained lawyers or re-instatement of the elected bar council.

#### ACTIVITIES OF LAWYERS' ASSOCIATIONS

##### SUDAN BAR ASSOCIATION

Article 62 of the Constitution of the Sudan states: "Advocates shall defend the Constitutional rights of the citizens and shall adhere to the ethics of the profession in accordance with law." This provision as interpreted by the Sudan Bar Association not only describes a duty incumbent upon the lawyer as an individual, but imposes a duty upon the bar association actively to defend the rights and liberties of the citizens as a whole. For this reason, the bar has been petitioning the government since 1977 for the repeal of certain laws restricting the constitutional rights of the Sudanese and the independence of the judiciary. In 1977 and 1978 memoranda were sent to the President of the Republic setting forth the position of the bar, and in 1979 a similar memorandum was sent to the Attorney-General encouraging him to use his constitutional authority to propose to the People's Assembly a bill repealing the laws in question. The president of the bar personally met the President of the Republic and was assured that the bar's proposal would be given thorough consideration. Its proposal was referred to a high ranking advisory

commission, but no bill was submitted to the legislature. When in 1979 no action had been taken, the position of the bar was spelt out in a pamphlet widely distributed in the Sudan.

The bar's principle objection is to The Permanent Constitution of Sudan (Amendment) Act, 1975, adopted by the People's Assembly on 16 September 1975, several days after an abortive military coup. Article 41 of the Constitution guaranteeing freedom of movement and Article 66 prohibiting arrest without warrant and guaranteeing prompt access to a court after arrest were amended by the addition of clauses permitting the legislature to create a system of preventive detention and to provide for assignment of residence. The legislature is empowered to create special procedures for notifying a person detained or assigned to residence of the reasons for such an order and the manner in which he shall receive a hearing, but the act specifies that such procedure shall be followed only 'when possible'.

When the act was passed in 1975, a system of preventive detention was already in operation under the State Security Act of 1973. This amendment was seen as designed to eliminate the possibility that the Supreme Court would declare unconstitutional these provisions of the Act, which were already being challenged.

The Act is judged unacceptable on two other grounds. Articles 81 and 82 of the Constitution, defining the President's duties towards the nation, were amended by the addition of a clause permitting him to make decisions having the force of law. This is considered inconsistent with Article 118 of the Constitution which gives the legislative power to the legislature and the President jointly.

With respect to the judiciary, Part VIII, Chapter 2 of the Constitution has been amended to permit the creation of one or more courts of state security. Previously the only exception to the judiciary's exclusive exercise of the judicial function was the existence of Courts Martial. In this regard, two other laws are also mentioned. The Armed Forces (Amendment) Act, 1976, permits the President, with the approval of the president of the Supreme Court,

to order civilians to be tried jointly with military personnel in Courts Martial. This is considered to be inconsistent with the rights of every citizen to be tried in normal courts applying normal law and normal procedure. The bar also seeks the repeal of Article 131 of the Code of Criminal Procedure which regulates the President's power to create special courts for crimes against the security of the state.

The power to detain and to prosecute before special courts was widely employed in the wake of attempted coups of September 1975 and of July 1976. Many persons were detained, some for very long periods. At least 150 persons implicated in the coups were brought before state security courts, and according to Amnesty International approximately one hundred of them were executed.

These courts fell into disuse in mid-1977, and during 1977 and 1978 a thousand detainees were amnestied. However, in mid-1979, the government began again to employ both the power to detain and the courts of state security. In this instance these powers were employed primarily against communists or trade unionists involved in agitation over economic issues and Baathists opposed to the government's moderate position on the middle east question. This illustrates the danger that exceptional powers properly adopted in emergency situations, if left in existence after the end of the original emergency, may eventually be used for purposes different than those for which they were adopted.

Another measure whose abolition is sought by the bar is The Exercise of Political Rights Act, 1974, which is judged incompatible with the constitution and the principle of the equality of citizens. Paragraph 5 of the Act empowers the Sudanese Socialist Union, the sole authorised political party, to deprive a person of his political rights including the right to be a candidate, the right to belong to constitutional organisations and the right to vote. The reasons for which such deprivation may be imposed range from conviction of certain crimes to formation of fractions within the SSU or to "lukewarmness" towards the interests of the state. Although candidacy for



governmental posts is not restricted to party members, this provision gives the party an effective power of veto over candidates. The fact that the individual's constitutionally recognised rights can be withdrawn with no right of judicial review is particularly disturbing.

The final measure criticised by the bar is the State Security Amendment Act, 1976 which permits the Attorney-General to attach all property, movable or immovable, of persons charged with offences under the Act. A 1979 amendment extends the power of attachment to all officials charged with committing crimes in their official capacity. While provisional seizure of assets may well be justified in cases where corruption or misapplication of public funds is suspected, application of this measure to a large category of persons still presumed innocent could cause serious hardship and injustice.

Sudan's constitutional recognition of the right and duty of lawyers to protect the fundamental rights of citizens is a landmark in constitutional jurisprudence, and reflects a principle which is only recently being recognised at the international level (see recent resolution of U.N. Sub-Committee, p.37). The government is to be congratulated on the way it has respected this right and engaged in a dialogue with the legal community. It is to be hoped that their suggestions, based on respect for the constitution of the Sudan and the principles of equality of citizens and the independence of the judiciary, will be acted upon by the government.

ASSOCIATION OF LATIN AMERICAN LAWYERS FOR THE DEFENCE OF  
HUMAN RIGHTS (AALA)

This association, founded in Sao Paulo in November 1979, held its biannual general assembly in Lima in April 1980. The Association is composed of lawyers committed to the cause of human rights, and has sections in Bolivia, Brazil, Colombia, Chile, Paraguay and Peru. Its purposes are to encourage the legal profession to use its talents in the defence of human rights, to aid in the defence of lawyers

committed to the cause of human rights, to develop permanent programmes to communicate and to make public human rights violations and to undertake pertinent studies, seminars and congresses.

The formation of an organisation of committed lawyers and its concern with the defence of the lawyers reflect the difficult circumstances for the profession prevailing in much of the continent. The final declaration adopted by the lawyers in Lima states:

"... human rights in Latin America are constantly and systematically abused by ruling governments, civil or military, in ways ranging from the maintenance of generally oppressive conditions of life to the execution of criminal acts such as kidnapping, 'disappearances', torture, and death. In an effort to give legitimacy to the violation of these rights, the governments of this continent use the Doctrine of National Security, which expresses itself fundamentally in the creation of states of siege, the imposition of emergency measures, the promulgation of laws of internal security and the submission of civil jurisdictions to military jurisdictions. The application of such measures not only limits the action of lawyers in the defence of political prisoners and the service of community and labour organisations, but these lawyers are themselves often the victims of the repressive policies of their governments. ..."

The Declaration of Lima calls upon all Latin American governments to promulgate an unconditional amnesty for all political prisoners and defendants, and demands the abolition of all states of siege, laws of internal security and all trials of civilians in military courts. A special resolution on the death penalty called for its abolition and for an end to extra-judicial executions. A resolution addressed to the government of Colombia demanded an end to the torture and arbitrary use of detention said to occur there. One addressed to the government of Bolivia denounced the existence of para-military terrorist groups and the attacks against Dr. Anibal Aguilar (see p. 7 ) and called for the abolition of the code of military justice, said to be used to limit the rights of civilians.

## LAWASIA HUMAN RIGHTS COMMITTEE BEGINS WORK

LAWASIA, an organisation of lawyers from eighteen nations of Asia and the Western Pacific region, authorised at its September 1979 conference the creation of a Human Rights Standing Committee. At its first meeting in Hong Kong in March 1980, the committee decided that it would receive and investigate complaints of human rights violations forwarded by lawyers, bar associations and "other responsible voices of opinion" within the region. The committee will examine facts, seek comments from the parties concerned and "present a report referring to both comments, together with its own conclusions". The committee also sent an observer to the trial in Taiwan of three lawyers charged with sedition (see CIJL Bulletin No. 5).

It decided to request from all governments of the region policy statements in respect of the independence of judges and the freedom of lawyers to act in human rights cases. It also decided to write to all governments of the region to encourage them to include suitable human rights curricula at all levels of education and to encourage them to ratify the U.N. covenants on human rights.

LAWASIA's interest in the creation of regional human rights mechanisms was reflected in two decisions, one proposing a regional human rights seminar to be sponsored jointly by the United Nations and LAWASIA, the other resolving to work towards the eventual establishment of a Human Rights Commission for Asia, as well as a Human Rights Centre, the latter body to have primarily an educative function. The committee also resolved to establish contacts with other regional initiatives in human rights, including those conducted by lawyers' groups and church groups, and to work towards coordinating such initiatives at the 7th LAWASIA Conference to be held in Bangkok in 1981.

An important statement of principles regarding the implementation of human rights in the LAWASIA region was also adopted. Recognising the different levels of economic development existing within the region as well as differences of culture, religion,

historical progress and educational standards, and taking full account of the existence from time to time of emergencies threatening the life of the nation, the committee established a list of rights which all countries within the region should respect at the present time. The list includes the right to life, the right of accused persons to a fair and public trial and to counsel of his choice, equality before the law, freedom from torture and degrading treatment, the right of detainees to prompt review by an independent and impartial tribunal, and the right of every person to legal assistance.

The co-chairmen of the committee, which meets annually, are Mr F.S. Nariman, a former solicitor general of India, and Mr Patrick Downey, Chief Human Rights Commissioner, New Zealand.

MEETING OF THE COUNCIL OF THE UNION INTERNATIONALE  
DES AVOCATS (UIA)

The Council of the UIA meeting in Oslo on 4 to 6 September 1980 heard a report by former UIA president Albert Zurfluh of Paris recounting the growing importance of attacks on the independence of lawyers throughout the world and the activities undertaken by the UIA and other organisations on behalf of the independence of lawyers. Considering it necessary to reinforce such efforts and to improve cooperation between organisations concerned with the independence of the legal profession, the Council adopted a resolution which states:

"Since the Brussels Manifesto [a UIA document of January 1971 concerning the independence of the legal profession] the shameful exactions of authoritarian regimes have not ceased: concentration camps, silenced oppositions and deliberate rejection of human rights have multiplied. Everywhere these violations of the U.N. Charter and crimes against humanity have as a corollary the most perfidious attacks against lawyers. Bar associations are deprived of their disciplinary powers, regularly elected officials of the bar are deprived of their posts by the government of the day, lawyers are imprisoned, administratively

detained, assassinated or tortured. In suppressing them the freedom of the defence is withdrawn and proud and free voices are annihilated. Dictatorship, with its most abhorrent aspects, ineluctably passes by the destruction of the defence.

For this reason, the Council of the Union Internationale des Avocats, meeting in Oslo the 5 September 1980,

- considers necessary a regrouping of efforts of all organisations world-wide struggling for the defence of human rights;
- proposes the union of all for the defence of the independence and freedom of lawyers, and
- declares itself ready to cooperate with all national or international organisations following the same goal, and makes a solemn appeal to this effect."

The UIA has begun implementation of this resolution by proposing a meeting of international lawyers, jurists and human rights organisations to take place in Geneva at a date not yet determined.

#### ENGLISH BAR ADOPTS RESOLUTION ON PERSECUTION OF LAWYERS

Despite opposition from some quarters, the English Bar approved by a large majority a resolution empowering the Bar Council to intervene on behalf of persecuted judges or legal practitioners. On 29 July the adjourned Annual General Meeting of the Bar resolved "that the Bar Council in its discretion take all appropriate steps, by way of public protest or otherwise, to support the just cause of judges and legal practitioners abroad where there is reason to believe that they have been harassed or persecuted because of their proper professional conduct in the administration of justice".

ACTIVITIES OF THE AMERICAN BAR ASSOCIATION

The American Bar Association adopted in 1975 a resolution authorising its president to intervene on behalf of lawyers arrested, detained or prosecuted by reason of their professional activities. Eight such interventions have been made, in cases involving Argentina (twice), India, the Soviet Union, South Korea, Swaziland, Uruguay and Yugoslavia. A 'Sub-Committee on the Independence of Lawyers in Foreign Countries' evaluates reports of such persecution and makes appropriate recommendations. The Sub-Committee has recently created a 'Concerned Correspondents Network' to circulate information concerning persecution of lawyers to individual lawyers wishing to receive it. Those wishing to participate in this Network should contact the Sub-Committee's chairman, Mr. S. Klitzman, 2238 Decatur Place, N.W., Washington, D.C. 20008.

UNITED NATIONS AUTHORISES STUDY ON THE INDEPENDENCE OF  
JUDGES AND LAWYERS

Growing awareness of problems concerning the independence of judges and lawyers and recognition of the importance of an independent judiciary and legal profession in the protection of the fundamental rights and freedoms of all persons has led the United Nations to authorise a report on this subject. The Special Rapporteur, Dr. L.M. Singhvi of India, submitted a preliminary report to the United Nations Sub-Commission on the Prevention of Discrimination and Protection of Minorities in August 1980. The importance of Mr Singhvi's report has persuaded us to publish it in its entirety in the appendix which follows.

After consideration of the report, the Sub-Commission authorised Mr Singhvi to collect relevant information including "comments, views or materials, including constitutional, legislative or administrative provisions and practice, and decisions of courts and tribunals", from both governmental and non-governmental sources. Of particular

interest are articles or treatises treating this topic on a national or regional basis, pertinent legal texts or decisions and bibliographical references. Lawyers' associations or individual lawyers having such material are encouraged to send it to the CIJL which has agreed to assist in collecting it.

The same resolution requests the U.N. Secretary-General to consider organising a seminar on this topic under the advisory services' human rights programme. The Sixth U. N. Congress on the Prevention of Crime and Treatment of Offenders held recently in Caracas also adopted a resolution inviting the Secretary-General to expand technical assistance programmes designed to reinforce the impartiality and independence of the judiciary.

Discussion of the Singhvi report led the Sub-Commission to adopt a resolution stating that "freedom of association is ... vested with particular importance for these professions", and calling upon all states "fully to respect and guarantee the right of all judges and lawyers freely and without interference to form or participate in professional organisations of their own."

FURTHER DEVELOPMENTS IN CASES PREVIOUSLY REPORTED

On 15 June 1980 the CIJL issued a circular letter concerning the detention without charge in Swaziland of defence attorney Musa Shongwe. A large number of lawyers' associations responded to this request for intervention on his behalf. On 1 July 1980 the CIJL learned of Mr Shongwe's release.

On three occasions the CIJL has sent circular letters concerning Joseph Danisz, a Czechoslovak lawyer sentenced to a term of imprisonment and five years disbarment as a result of his representation of political dissidents. A large number of lawyers' organisations also responded to these calls for interventions. It has been learned that he was freed from prison as a result of a May 1980 presidential amnesty. He remains disbarred, however, and in effect has been reduced to the status of an unskilled labourer.

Bulletin No. 5 contained an article concerning the suspension of Me. Yann Chouq of France for 'délit d'audience'. On 14 May the third Correctional Chambre of the Court of Appeals of Rennes overturned the decision of the trial court citing "procedural ambiguities" which made it impossible to determine whether the suspension should be considered as penal or administrative in nature.

Letters have been received from both the Central Board of the Bar Association of Poland and Dr. Lis-Olszewski, the attorney whose involuntary retirement and pension problem were reported in Bulletin No. 4. He writes that he was offered the additional pension to which he claimed to be entitled, but refused to accept it demanding instead to be allowed to resume legal practice. The bar association states that this is not possible, because once a lawyer over the age of 70 has been involuntarily retired there is no procedure permitting re-admission. It also denies that the decision to retire Dr. Lis-Olszewski was unreasonable or mala fides, and points out that in 1976 and 1977 he did receive one year postponements of retirement.



## A P P E N D I X

### Study on the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers

#### Preliminary report prepared by the Special Rapporteur,

Mr. L.H. Singhvi

#### I

1. The present Special Rapporteur received the intimation of Economic and Social Council decision 1980/24, of 2 May 1980, in the third week of May 1980, authorizing the Sub-Commission on Prevention of Discrimination and Protection of Minorities to entrust him with the preparation of a report on the independence and impartiality of judiciary, jurors and assessors and the independence of lawyers, to the end that there shall be no discrimination in the administration of justice and that human rights and fundamental freedoms may be maintained and safeguarded, in the light of the comments made in the Sub-Commission at its thirty-second session. Since the intervening period before the present session of the Sub-Commission was extremely short and the Special Rapporteur was away from New Delhi for a considerable length of time owing to previous commitments, it was not possible for the Special Rapporteur to have the benefit of consultations with the Division of Human Rights. A brief interim preliminary report is, however, submitted, outlining the background, the issues and methodology, and eliciting the guidance of the Sub-Commission.

#### II

2. It is widely recognised in the world today that the concept of independence and impartiality of judiciary, jurors and assessors and the concept of the independence of lawyers are composite and complementary. These concepts are integrally and inextricably interwoven with the contemporary ethos and culture of human rights and are indispensable for preventing discrimination in the administration of justice.
3. The perennial and tenacious quest of mankind for justice and human rights has helped to evolve the jurisprudence of rule of law and has given rise to a wide variety of remedial institutions and procedures in different countries of the world. In most countries of the world, judges and lawyers have notably striven to give content to the ideals of rule of law and to make those remedial institutions and procedures work in live situations. The credibility and the efficacy of the judicial function lies in the integrity, impartiality, and the independence of the judge and the juror; equally, the advocacy and the articulation of human rights and fundamental freedoms and the due discharge of judicial functions to maintain and safeguard those rights and freedoms depend on the independence and integrity of the legal profession.
4. These premises and postulates have become the common heritage of mankind in the arduous struggle for human rights in the history of civilization and are universally acknowledged as a body of general propositions and broad principles. They are regarded, by and large, as the sheet-anchor of rights, freedom and justice in modern societies. Ancient and mediaeval societies in the East as well as in the West consistently proclaimed the sanctity of the judicial function and the need for ensuring its impartiality and independence. The proclamations of that principle did not, however, always match the reality of performance and thus the principle of independence came to be subverted, compromised and undermined on many occasions. In the long perspective of history, the principle has survived those pressures and onslaughts. Even in modern times, when the principle has come to be regarded as universal and axiomatic and is enshrined in constitutional documents of different States and in solemn international declarations, its violations are many, varied

frequent and extensive. In effect, in the age of its triumph, the principle of "independence" finds itself periliously embattled in the field of actual performance. Moreover, theoretical, ideological and empirical marks of interrogation have also been posed to question the very concept of "independence" as well as to demonstrate its limitations.

### III

5. The pioneering Study of Equality in the Administration of Justice by my distinguished predecessor, Mr. Mohammad Ahmed Abu Rannat, who was appointed the Special Rapporteur in 1963, was published in 1972. <sup>1/</sup> It sums up the historical background and the contemporary rationale of the principle of "independence"; it also formulates issues and principles of fundamental importance at the national and international levels.

6. Mr. Mohammad Ahmed Abu Rannat prepared a preliminary report (E/CN.4/Sub.2/22 and Corr.1), three progress reports (E/CN.4/Sub.2/246, E/CN.4/Sub.2/253 and E/CN.4/Sub.2/266), and outline draft report (E/CN.4/Sub.2/289) and a final report (E/CN.4/Sub.2/296). In August-September, 1969, at its twenty-second session, the Sub-Commission considered the final report and transmitted it to the Commission on Human Rights for its "earliest practicable consideration". In the following year - 1970 - at its twenty-third session, the Sub-Commission considered, and revised the draft principles contained in paragraph 596 of the Report of the Special Rapporteur and adopted (as revised) the "Principles on Equality in the Administration of Justice" by resolution 3 (XXIII) and transmitted them to the Commission on Human Rights for examination with regard to the advisability of preparing a convention or a declaration, or both, on equality in the administration of justice, or several instruments dealing with various aspects of the problem, and for decision as to subsequent action. In its resolution 5E (XXXI) of 13 September 1978, the Sub-Commission decided to request the Secretary-General to prepare "a preliminary study with regard to such measures as have hitherto been taken and the conditions regarded as essential to ensure and secure the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers, to the end that there shall be no discrimination in the administration of Justice", for submission to the Sub-Commission at its thirty-second session in 1979. One of the purposes of the Secretary-General's preliminary report was to submit to the Sub-Commission proposals concerning the outline and the main orientations of a comprehensive study of the problems involved.

### IV

7. The preliminary report of the Secretary-General (E/CN.4/Sub.2/428) provides a fresh starting point, a framework of methodology and a contextual setting for the task entrusted to the present Special Rapporteur. As pointed out in paragraph 7 of the preliminary report of the Secretary-General, the substance and geographical scope of information available to the Secretariat was so limited that it could not constitute a sufficient basis for a truly comparative study of the subject. A closer analysis of the information contained in documents E/CN.4/Sub.2/430 and Add.1 E/CN.4/Sub.2/394, 408 and 431 shows that a fuller survey of relevant provisions

---

<sup>1/</sup> United Nations publication, Sales No. E.71.XIV.3

in different legal systems and a comparative study of the subject would not only be useful but essential. To make such a study truly meaningful, it would be necessary to go beyond the mere compilation of the textual provisions; it would be necessary to perceive those provisions and systems in action, to examine the texture of reality and to evaluate the strength and effectiveness of the existing safeguards. In consonance with the general directions of the Sub-Commission on preparation of studies, in resolution B, contained in paragraph 97 of document E/CN.4/703 (E/CN.4/Sub.2/L.61, adopted on 15 January 1954), the Special Rapporteur would like to draw upon studies of publicists and scholars and to apply the critical and interdisciplinary apparatus of social sciences in preparing the study. The Special Rapporteur would also utilize the reports of international conferences, seminars and other meetings on the lines mentioned in paragraph 5 of the preliminary report of the Secretary-General.

#### V

8. The Special Rapporteur proposes to consider the problem of defining the concept of "independence" as applicable to the judiciary, jurors, assessors and the legal profession and to identify the contextual concomitants of that concept viewed in its broad spectrum. These concepts and concomitants would be dealt with in terms of their rationale and justification as well as in terms of problems and solutions. In this connexion, it is necessary to mention that philosophers as well as empiricists have occasionally questioned the very concept of independence. There is considerable literature on the subject. There are some who assert that the concept of independence is a myth, there are others who point out, on the basis of behaviouristic studies, how the "politics of the judiciary" is conditioned. There is, however, a large majority of opinion which holds the view that despite the conditioning constraints of social and ideological affiliations and subjective and individual predilections, it is possible to achieve a high degree of objectivity, neutrality, impartiality, access and independence in the performance of the judicial function. The same is true in greater or lesser measure of jurors and assessors.

9. The problem of "independence" in respect of the legal profession assumes a different aspect. A lawyer represents his clients and there is bound to be a strong element of partiality in that representational role. In the discharge of that professional representational role, independence is indispensable. If a lawyer is to represent his client faithfully, he must be "independent" of all kinds of impediments in the form of pressure, duress, threat, intimidation, inducement and conflict of interest, whatever the source or mode of such impediment. The legal profession must also be accountable in terms of its professional ethics, etiquette and discipline; it has also to be accountable in larger social terms in facilitating the access of individuals and institutions to the system of justice. The Special Rapporteur submits that in the context of current juristic controversies, it is necessary to restate the case for "independence" and to formulate a viable equation between "independence" and "accountability".

#### VI

10. The Secretary-General had, in paragraph 10 of his preliminary report, pointed out that the term judiciary has a restricted as well as a generic connotation. In most systems, there are bodies of public officials (or institutions), who play an important role in the administration of justice, in resolving disputes and in protecting human rights. They may not strictly belong to the cadres of the judiciary

in the strict and conventional sense of the word. The Secretary-General had sought the guidance of the Sub-Commission as to whether and to what extent, the various officials and institutions exercising judicial functions and powers should be included within the scope of the study. The Special Rapporteur seeks the same guidance, particularly with regard to the institution of administrative or quasi-judicial tribunals, e.g. Prokuratura, Parliamentary Commissioner or Ombudsman Ministerio Publico, arbitrators and similar authorities, who may not be formally endowed with the status of judge. In a narrower compass, it may also be clarified if persons other than lawyers, i.e. other than those formally enrolled as lawyers, performing representational functions in specific disputes should be included in the study from the point of view of safeguarding the independence of such persons.

## VII

11. The concept of the independence of the judiciary and the legal profession has many ingredients and multiple facets. The proposed study should spell out those ingredients and facets in conceptual and operational terms. It appears that, in the context, the conclusion of the International Congress of Jurists on the Role of Law in a Free Society, held in New Delhi in 1959, is apposite in a basic sense. It states that the independence of the judiciary implies freedom from interference by the Executive or Legislative with the exercise of the judicial function, but asserts that that does not mean that the judge is entitled to act in an arbitrary manner. His duty is to interpret the law and the fundamental principles and assumptions that underlie it. The role of the judge and of judicial review however, is so complex and far-reaching that it has frequently been the source of the most fierce constitutional controversies and political conflicts. The frontiers of judicial review cannot be easily or clearly defined and delimited. The struggles for balance of power in different systems give rise to complex and sometimes intractable problems with regard to the independence as well as the accountability of the judiciary and the legal profession. The groundnorms of such accountability as well as of independence from subtle and not so subtle pulls and pressures, and well as from outrageously crude and gross interference by the executive and the legislature, have to be defined on a world-wide basis with a measure of flexibility so as to allow sufficient play in the joints of different systems and yet not allow "l'intime conviction du juge" to be smothered or the integrity of the judicial function to be atrophied. The question of safeguarding the independence of the judiciary is thus not merely a theoretical issue but an intensely practical problem. It involves, inter alia, institutional safeguards, safeguards of ethos, tradition, culture and conventions, safeguards of international standards and of national and international public opinion, safeguards of reporting, monitoring and objective appraisal by national and international agencies, safeguards of professional and hierarchical scrutiny and safeguards of procedural nature. The Special Rapporteur would like to have the benefit of the views of the Sub-Commission in the matter of the different kinds of safeguards and the extent to which they may be accepted as common denominators.

## VIII

12. As the preliminary report of the Secretary-General demonstrates, there are wide-ranging differences in the world in the way judges are selected, appointed and trained, in the matter of tenure, transfer, retirement and removal of judges, in the way the legal profession is organized and disciplined, in the way the ethics of the legal profession is defined, in the manner that jurors and assessors are

chosen and the roles that are ascribed to them. There are also radical differences in the relations between the Bench and the Bar. What is more, the nature of the problems and the actual experiences are different from country to country. Notwithstanding such differences, there is an almost universal common area of agreement on the basic principles, because these principles are inherent in the very nature and purpose of a system of justice. The Special Rapporteur proposes to put together these common basic principles while taking full note of differences and divergences of institutions and experiences in order that a universally acceptable and a reasonably flexible model with different options appropriate to each system may be put forward.

## IX

13. Conditions necessary for the impartiality and the independence of judges, jurors and assessors and for the independence of lawyers have been discussed in the study prepared by Mr. Ramnat as well as in the preliminary report of the Secretary-General. The Special Rapporteur proposes to survey, analyse and evaluate different systems and focal issues relating to the training of judges, selection and appointment of judges, judicial oath of affirmation, tenure of judges, transfer of judges, selection and appointment of judges, salaries, perquisites and pensions of judges, provisions for retirement and post-retirement benefits, privileges and immunities of judges, contempt of court, problems of judicial review, non-judicial activities of the judiciary and of judges, disqualification, impeachment and removal of judges, protection of judges against improper influences and pressures to which they may be subjected, sanctions applicable to judges for failure to display independence and impartiality in the performance of their functions, judicial ethics and code of conduct, role of judicial service commissions or superior councils of the judiciary and that of similar bodies, special courts and military tribunals especially under regimes of emergency or exception, selection of jurors, jurors' oath of affirmation, immunities of jurors, incompatibility of certain activities with service as jurors, protection against improper influences to which jurors may be subjected, sanctions applicable to jurors failing to display independence and impartiality and similar questions relating to assessors.

14. Similarly, the Special Rapporteur would also examine different systems and central issues relating to training for and access to the legal profession, the role of professional organizations, the relationship between lawyers and their organizations, the relationship between the Bench and the Bar, the relationship between lawyers and the State including lawyers engaged or appointed by the State, the status and role of ministers of law and justice, attorneys-general, advocates general, prosecutors and other lawyers representing the State, conflicts of interests, conventions, ethics, the etiquette and code of conduct of the legal profession, disciplinary proceedings, privileges of lawyers, limitations on the non-professional activities of lawyers, the role of lawyers and lawyers' organizations in the political-constitutional system, provisions for the protection of confidentiality in client-counsel relations, immunity of lawyers from prosecution and detention for discharging professional obligations, access of lawyers to the judiciary, and sanctions applicable to lawyers for failure to observe independence.

15. Each one of the above-mentioned facets of independence raises further vital questions of institutional and procedural safeguards and the manner in which conflicting points of view on questions of such safeguards may be accommodated at a proper, pragmatic and principled balance struck. In this vast area of diversity and complexity, the Special Rapporteur seeks the benefit of the views of the members of the Sub-Commission.

X

16. Of particular relevance to the proposed study is the manner in which the independence of judges, jurors assessors and lawyers is abridged, undermined, attacked and invaded in our own day and time. The plateau of perils to the impartiality and independence of judges, jurors and assessors and to the independence of the legal profession should be mapped carefully and elaborately to enable us to negotiate the terrain and overcome its hazards successfully by a combination of written constitutional and legal provisions, institutional, cultural, procedural other appropriate safeguards.

17. It is suggested that among several reported factors and occurrences affecting the impartiality and independence of judges, the following may be noted and discussed and other factors and categories of occurrences not noted below may be further catalogued in the light of the discussions in the Sub-Commission:-

(a) Dismissal, which sometimes involves removal or dismissal of an individual judge for refusal to decide a particular case in a particular manner, and sometimes involves collective removals and dismissals of judges or the abolition of entire courts when they are perceived as obstructing the projects or ambitions or objectives of the executive power. Amendment of laws affecting the tenure of judges so as to permit their dismissal or removal at the discretion of the executive is a related menace to the independence of judge

(b) Transfer is known to be used either to punish a judge or remove him from a jurisdiction where his independence is considered a problem by the executive. Examples of the latter include the transfer from criminal to civil court of judge who displayed sympathy for accused belonging to a racial minority, or transfer of a courageous civil libertarian from a court of general jurisdiction to a tax court.

(c) Appointment of judges for a limited term or on an acting or officiating basis, and confirmation of judges in permanent posts and tenures on political considerations.

(d) In countries where promotion or confirmation of judges proceeds by established rules or conventions rather than by exercise of executive discretion, abrogation of rules or conventions for promotion may be considered as a variant of the punitive use of transfers.

(e) Assassination and "disappearance" of judges, although less common than assassination and "disappearance" of lawyers, occurs with sufficient frequency and must be considered as a problem affecting the independence of the judiciary.

(f) Emergency measures occurring during states of exception which deprive the judiciary of its power to consider certain questions of constitutional law, to enforce its decisions or to try certain categories of cases and to curb and curtail the judicial function also impinge on the independence of judges. In some cases these aspects of their jurisdiction simply cease to exist, while in other cases they are transferred to military courts or other specially constituted courts whose partiality and whose lack of independence, juridical knowledge and experience is alarming.

(g) Adverse publicity, embarrassing accusations in public, and populist pressures to deflect the judiciary from its appointed role.

(h) Indirect and/or selective executive patronage.

18. The Special Rapporteur would like the Sub-Commission to comment on the factors and categories of occurrences mentioned above and to add to and amplify the list so that each kind of interference may be matched by a corresponding set of safeguards.

19. A similar exercise on a somewhat limited scale should be attempted in respect of interference with the independence and impartiality of jurors and assessors.

### III

20. A catalogue similar to that attempted and envisaged above for judges, jurors and assessors is in the contemplation of the Special Rapporteur in respect of the whole range of interference with the independence of lawyers. The phenomenon of such interference appears to have assumed larger proportions and wider incidence in the recent past. In any event, it is being documented and reported more systematically and purposefully, particularly after the establishment of the Centre for the Independence of Judges and Lawyers. The mapping of the problem areas of interference with the independence of the legal profession is somewhat more difficult as compared to a similar exercise in respect of judges, jurors and assessors. Obviously, it is no less important. Equally pressing is the need for safeguarding the independence of the legal profession from all forms of impediments and interference.

21. It is suggested that among several reported factors and occurrences affecting the independence of lawyers, the following may be noted and discussed, and other factors and categories of occurrences not noted below may be further catalogued in the light of the discussions in the Sub-Commission:-

(a) Disciplinary proceedings, disbarment, suspension from practice or prosecution of lawyers for acts within the proper scope of their professional duties, such as filing complaints about police mistreatment of a client, challenging the impartiality of a judge, challenging the legality of a law or administrative action, or defending the legality of a client's behaviour or statements;

(b) Threats, intimidation, disbarment, suspension from practice, contempt or breach of privilege proceedings, or prosecution of lawyers for statements made in legal proceedings or outside the context of a legal proceeding for criticising individuals or regimes or proposing changes in the administration of justice;

(c) Selective and motivated prosecution, including raids, searches, seizures and other kinds of harassment, application of administrative sanctions against lawyers known for their defence of civil liberties, political defendants or social groups such as peasants, trade unions, or racial or religious minorities and for offences purportedly and ostensibly unrelated to these activities;

(d) Detention without charge or trial. Although security authorities normally do not offer reasons for such detention, it is often the case that a number of lawyers are detained at the same time and the lawyers selected are known for their activities as defence attorneys or advocates and advisers to opposition groups or disadvantaged of the society. The effect, and presumably the purpose of such detention is to punish and intimidate lawyers who have demonstrated the willingness to provide such services, and to subdue and suppress the Bar as a whole;

(e) Physical liquidation or "disappearance" of lawyers has been a serious problem in recent years in certain countries. In some cases the reasons for assassination are not known, but in others death threats or subsequent communiqués confirm that legal activities on behalf of certain individuals or groups was the reason. In some countries this has led to the result that no political defendant is able to find an independent and experienced criminal lawyer willing to defend him. Systematic assassination or "disappearance" of lawyers must therefore be considered not only a violation of the individual's right to life and liberty, but also a threat to the independence of the profession and a threat to human rights and fundamental freedoms;

(f) Lawyers are expressly barred from practice for political reasons in a small number of countries. For example, in one country, membership in certain political or professional organizations is considered as proof that the applicant does not support the "basic constitutional order", while in another country lawyers may be barred from practice despite commendable and notable professional records because they have not demonstrated sufficient support for the current political leadership of the country;

(g) Political patronage and preference by the State and hostile discrimination by the State on political grounds.

## XII

22. The Special Rapporteur proposes to study conditions necessary for the independence of the legal profession as well as those necessary for the independence and impartiality of judges and jurors, *inter alia*, on the basis of the Ramat Study, the preliminary report of the Secretary-General, reports of Law Commission, comparative studies and writings of scholars and publicists on the following lines:

(a) A system of appointment and training which is designed to provide judges with the requisite qualities of learning, humanity, integrity and moral courage and which, as far as possible, excludes political influence and proneness to any form of pressure or inducement, and ensures that women and persons from national and racial minorities and under-privileged classes are not unfairly excluded from the judiciary;



- (b) A system of remuneration, perquisites, pensions and post-retirement benefits which permits judges to resist improper pressures on professional independence;
- (c) Guarantees of tenure and guarantees against any change in emoluments and conditions of service adverse to serving judges;
- (d) Immunity for acts done in judicial capacity and special procedures in respect of any restraints on a judge;
- (e) The right to form or participate in national and international professional organizations.
- (f) Public image and opinion of judges, jurors, assessors and lawyers.
- (g) Recognition of the right of litigants and lawyers to contest the partiality of judges without fear of adverse consequences.
- (h) Moderation of laws relating to the power to punish for contempt of court;
- (i) An adequate education in law, including the study of human rights and legal ethics, which is essential to the development of the subjective component of "independence" for the purpose of maintaining human rights, promoting fundamental freedoms and preventing discrimination;
- (j) A financial structure of the profession which permits lawyers to serve conscientiously all sectors of the society, including the indigent and the disadvantaged, and which also permits the lawyer to resist improper attempts to influence his professional integrity;
- (k) Effective safeguards to ensure that the legal profession is open to all and does not become a closed preserve of privileged classes. Effective access to the legal profession should be provided to women, national and racial minorities and under-privileged classes;
- (l) The right to form and maintain professional associations free from governmental interference as an essential element of professional independence. Free exchange of information, ideas and assistance in the framework of local, national and international organizations provides important reinforcement of the professional competence and moral integrity of lawyers, especially in areas where practitioners are few in number or function in difficult and onerous conditions;
- (m) In areas where the small size of the legal community renders lawyers particularly susceptible to informal pressures, systems or agreements permitting lawyers from other states to assume responsibility of cases on an ad hoc basis would reduce the burden on the local Bar and reinforce the independence of the profession;
- (n) Legal aid, advice and assistance as an aid to "independence".

(o) Regulation of relationship between the State and the legal profession, including the law officers of the State;

(p) An international reporting and monitoring system, consultative status to the national organizations of the Bar and the Bench in the United Nations system and a specific international complaints procedure or the establishment of an international forum or tribunal for the purpose of looking into complaints of gross and persistent violation of the impartiality and the independence of judges, jurors and assessors and that of the legal profession.

### XIII

23. The Special Rapporteur has mentioned several points on areas of concern and issues of importance which require further study. He proposes to update available information, to analyse the information which has already been collected, to make a fuller comparative study of the constitutional and legal provisions in different countries and to utilize available documentation and scholarly work. It is also proposed to study the philosophical and empirical questions raised in respect of the concept of independence and to restate the case for independence. It is proposed to study further the factors having an adverse impact on the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers, including their effect on the protection afforded by other rights set forth in the Universal Declaration of Human Rights, the international covenants on civil and political rights, and on economic, social and cultural rights, and the draft body of principles for the protection of all persons under any form of detention or imprisonment.

24. It is proposed to study and scrutinise the provisions and evaluate the methods adopted in different systems to prevent interference with the impartiality and independence of judges, jurors and assessors and with the independence of lawyers. The Special Rapporteur considers it important to examine the significance of the rights set forth in the Universal Declaration and the International Covenants and to consider what judges and lawyers can do to strengthen the fabric of fundamental freedoms and human rights and what can be done in this regard by means of an international reporting and monitoring system on a voluntary non-governmental basis as well as in the United Nations system. The question of a specific and effective complaint procedure would also be examined. It is also proposed that the role of the organized Bar, the image of the legal profession and the judiciary, the impact of public opinion and awareness in matters concerning the independence of the judiciary and the legal profession and the question of the accountability of the legal profession and the judiciary should be examined. The Special Rapporteur proposes to suggest methods and measures for the United Nations system as well as for national legal systems for optimising the independence and impartiality of judges, jurors and assessors and the independence of lawyers. Following the consideration of such steps and measures by the Sub-Commission the Special Rapporteur would like to propose Draft Principles and submit the draft of an international declaration or covenant to effectuate the concept of "independence."

## MEMBERS OF THE INTERNATIONAL COMMISSION OF JURISTS

KEBA M'BAYE (President)	President of the Supreme Court of Senegal; former President U.N. Commission on Human Rights
ELI WHITNEY DEBEVOISE (Vice President)	Attorney at law, New York
T.S. FERNANDO (Vice President)	Former Attorney General, President of the Court of Appeal and High Commissioner of Sri Lanka
ANDRES AGUILAR MAWDSLEY	Professor of Law, Venezuela; former President Inter-American Commission of Human Rights
GODFREY L. BINAISA	President of Uganda
ALPHONSE BONI	President of Supreme Court of Ivory Coast
BOUTROS BOUTROS GHALI	Minister of State of Foreign Affairs, Egypt
ALLAH BAKHSH K. BROHI	Former Law Minister, Pakistan
WILLIAM J. BUTLER	Attorney at law, New York
JOEL CARLSON	Attorney at law, New York; formerly attorney in South Africa
HAIM H. COHN	Supreme Court Judge; former Minister of Justice, Israel
ROBERTO CONCEPCION	Former Chief Justice, Philippines
CHANDRA KISAN DAPHTARY	Senior Advocate; former Attorney General of India
TASLIM OLAWALE ELIAS	Judge of International Court of Justice; former Chief Justice of Nigeria
ALFREDO ETCHEBERRY	Advocate; Professor of Law, University of Chile
EDGAR FAURE	Former Prime Minister of France
FERNANDO FOURNIER	Attorney at law, Costa Rica; former President of the Inter-American Bar Association; Professor of Law
HELENO CLAUDIO FRAGOSO	Advocate; Professor of Penal Law, Rio de Janeiro
LORD GARDINER	Former Lord Chancellor of England
P. TELFORD GEORGES	Professor of Law, University of the West Indies; former Chief Justice of Tanzania
JOHN P. HUMPHREY	Professor of Law, Montreal; former Director, U.N. Human Rights Division
HANS HEINRICH JESCHECK	Professor of Law, University of Freiburg, Fed. Rep. Germany
LOUIS JOXE	Ambassador of France; former Minister of State
P.J.G. KAPTEYN	Councillor of State, Netherlands; former Professor of International Law
SEAN MACBRIDE	Former Irish Minister of External Affairs and U.N. Commissioner for Namibia
RUDOLF MACHACEK	Member of Constitutional Court, Austria
FRANCOIS-XAVIER MBOUYOM	Procureur Général, United Republic of Cameroun
MRS NGO BA THANH	Member of National Assembly, Vietnam
TORHEL OPSAHL	Professor of Law, Oslo; Member of European Commission
GUSTAF B.E. PETREN	Judge and Deputy Ombudsman of Sweden
SIR GUY POWLES	Former Ombudsman, New Zealand
SHRIDATH S. RAMPHAL	Secretary General of the Commonwealth Secretariat; former Attorney General, Guyana
DON JOAQUIN RUIZ-GIMENEZ	Professor of Law, Madrid; President, Spanish Justice and Peace Commission
MICHAEL A. TRIANTAFYLIDIS	President Supreme Court of Cyprus; Member of European Commission
J. THIAM HIEN YAP	Attorney at Law, Indonesia
MASATOSHI YOKOTA	Former Chief Justice of the Supreme Court of Japan

## HONORARY MEMBERS

Sir ADETOKUNBO A. ADEMOLA, Nigeria	W.J. GANSHOF VAN DER MEERSCH, Belgium
ARTURO A. ALAFRIZ, Philippines	JEAN FLAVIEN LALIVE, Switzerland
GIUSEPPE BETTIOL, Italy	NORMAN S. MARSH, United Kingdom
DUDLEY B. BONSAI, United States	JOSE T. NABUCO, Brazil
VIVIAN BOSE, India	LUIS NEGRON FERNANDEZ, Puerto Rico
A.J.M. VAN DAL, Netherlands	Lord SHAWCROSS, United Kingdom
PER FEDERSPIEL, Denmark	EDWARD ST. JOHN, Australia
ISAAC FORSTER, Senegal	

## SECRETARY-GENERAL

NIALL MACDERMOT

## **The West Bank and the Rule of Law**

*A study by members of Law in the Service of Man (LSM), a group of Palestinian lawyers affiliated to the International Commission of Jurists (ICJ), published jointly by the ICJ and LSM, Geneva, October 1980, 128 pp. (ISBN 92 9037 005 X). Available in english. Swiss Francs 10 or US\$ 6, plus postage.*

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

★ ★ ★

## **Human Rights in Nicaragua: Yesterday and Today**

*Report of a mission by Professor Heleno Claudio Fragoso of Brazil, and by Dr. Alejandro Artucio, a legal officer of the ICJ Secretariat, Geneva, September 1980, 86 pp.*

*Available in english or spanish. Swiss Francs 6 or US\$ 4, plus postage.*

The report describes the legal framework and major human rights violations under Somoza's regime and discusses the human rights situation under the present regime. It comments favourably on the new government's commitment to the rule of law and the legal protection of human rights, but it urges the government to resolve the problem of the 7,000 "somocistas" still in detention by accelerated releases and improved trial procedures.

★ ★ ★

## **Persecution of Defence Lawyers in South Korea**

*Report of a mission by Adrian W. DeWind, former President of the New York City Bar Association and John Woodhouse, Secretary, Centre for the Independence of Judges and Lawyers, published by the International Commission of Jurists, Geneva, November 1979, 68 pp. Swiss Francs 4 or US\$ 2.50, plus postage.*

This report describes the prosecution and punishment or harassment of nine lawyers arising out of their defence of political prisoners. These cases indicate the harassment accorded to "the small body of civil rights attorneys who have attempted to carry out their obligation to be vigilant in the protestation of human rights." As a background to these cases, the authors describe the general nature of the political repression and the undermining of the independence of the judiciary in South Korea.

★ ★ ★

## **ICJ Newsletter**

*Quarterly report on ICJ activities,  
published January, April, July and October.*

*Annual subscription: 20 Swiss Francs (surface mail), 25 Swiss Francs (airmail).*

This informative quarterly publication describes the activities of the ICJ, its seminars, initiatives in the United Nations, observer missions, publications, press releases, interventions and reports on conference attended by members of the ICJ staff. The Appendices include working papers and other documents produced by the ICJ secretariat.

*Publications available from: ICJ, P.O. Box 120, CH-1224 Geneva  
or from: AAICJ, 777 UN Plaza, New York, N.Y. 10017*