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CENTRE FOR THE INDEPENDENCE OF JUGES AND LAWYERS

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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 and the Netherlands Association of 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.

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CASE REPORTS

ARGENTINA

Decrease in the Number of Detained Lawyers

In recent years Argentina is one of the countries where the independence of lawyers has been most seriously threatened. This has taken many forms, from harassment and intimidation to imprisonment, exile, assassination or "disappearance".

In some cases imprisonment is the result of detention without charge 'at the disposal of the executive' * pursuant to the state of siege in effect since 1974; in other cases it results from conviction for political offences in trials where elementary guarantees of due process are lacking. In either case the result is to eliminate lawyers involved in the defence of political dissidents, civil liberties and trade union rights, and to contribute to the feeling of insecurity among other members of the bar.

The number of imprisoned lawyers has fallen sharply. This may be due in part to the steady pressure exerted by lawyers' organisations both within the country and abroad. A joint mission by the Bar Association of the City of New York and the Union Internationale des Avocats in April 1979, which met with high-ranking members of the government, published a list of 99 imprisoned lawyers. During the November 1980 Buenos Aires Convention of the International Association for the Protection of Intellectual Property (AIPPI) a delegation of concerned members of the association met with high-ranking government officials to discuss the question of imprisoned lawyers. The delegation was able to verify the release of thirty lawyers, although a large number of those released had been exiled or remained under house arrest or "conditional liberty".

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* Commonly referred to in Argentina by the acronym 'PEN'; this is a form of detention provided for by the constitution during a state of siege. It is of indefinite duration, and the courts systematically refuse to inquire into the validity of the grounds for such detention. The constitution provides that persons subject to such detention have a qualified "right of option", i.e. a right to choose exile rather than detention.

More recently, in April 1981, the Argentine Federation of Colleges of Advocates indicated that the number of lawyers remaining in detention had been reduced to eleven, and urged their immediate release. According to other sources, the number of lawyers presently subject to detention is slightly larger.

Numerous problems remain, notably the inability of exiled lawyers to return, the lack of information about the more than 90 lawyers who have "disappeared" since the 1976 military coup and the existence of various laws restricting the lawyer's ability to defend his clients freely and effectively.

The reduction of the number of detained and imprisoned lawyers is a welcome development, as is the fact that the released lawyers have been allowed to resume the practice of law, with the exception of those who are released on condition that they accept exile.

Representative Cases of Lawyers Remaining in Detention

Héctor Rosendo Chavez, a 46 year old lawyer and legal advisor to a trade union confederation in Mendoza Province, has been detained since March 1976. Since the expiration of a four-year sentence in 1980 he has been detained 'at the disposal of the executive'.

Norberto Hugo Foresti, a 34 year old lawyer and advisor to a trade union in San Luis, has been detained since May 1975. A series of trials, retrials and appeals concluded in April 1981 with convictions for "illicit association" and "attempting to alter or overturn the institutional order ... by unconstitutional means". The 6 year sentence which was imposed expired in May 1981. Since then he has remained in prison 'at the disposal of the executive'.

Eduardo Y. Jozami is a 44 year old former professor of law, defender of trade unionists and political prisoners, member of the Argentina Lawyers' Guild and journalist. Imprisoned since June 1975, he was tried in 1977 and sentenced to eight years imprisonment for "illegal association". His health has deteriorated appreciably

during imprisonment, he is semi-paralysed and may be suffering from cancer of the spine. He became eligible for parole in March 1981. The government of Sweden has indicated he would be given permission to reside there if permitted to leave Argentina, and several internationally known cancer specialists have offered to provide whatever treatment would be required. The AIPPI delegation sought permission to visit him to ascertain the state of his health in November 1980 but was not permitted to do so.

Carlos Miguel Kunkel is a former Deputy for Buenos Aires in the National Assembly, lawyer, and legal advisor to the "Agrarian Leagues of Corrientes". Imprisoned since September 1975, he was acquitted of criminal charges in 1978. Despite this he remains in prison 'at the disposal of the executive'. He has been given permission to move to Belgium should he be released on condition that he accept exile.

Jorge Mario Marca has been detained 'at the disposal of the executive' since November 1974. It is believed that he has not been tried on any charges during this time.

Ramon H. Torres Molina, lawyer and former official of Santa Cruz Province, has been detained since April 1976. He is detained 'at the disposal of the executive', and it is believed that he has not been brought to trial on any charges since his detention in 1976.

Ricardo Ripodas, lawyer and former officer of the bar association of Tucuman, was active in the defence of political prisoners and in certain widely publicized cases involving allegations of torture. Arrested in September 1974, he was convicted of the crime of "illicit association" only in April 1979. Charges of possession of explosives and auto theft were dismissed for lack of evidence. He was sentenced to six years imprisonment, which expired in September 1980. He was not released at the expiration of his sentence, however, but was detained 'at the disposal of the executive'. During imprisonment he suffered serious injuries, including broken bones, as a result of physical abuse. United States authorities have indicated that he would be permitted to emigrate there should

he be released on condition that he exercise the constitutional "right of option".

Juan A. Rojo, legal adviser to the newspaper El Independiente of La Rioja, has been imprisoned since May 1976. Sentenced to four years imprisonment for "illegal association", he remained in detention 'at the disposal of the executive' at the expiration of his sentence. He was detained incommunicado for a period of 13 months, and has suffered physical and psychological mistreatment. He has repeatedly sought to exercise the constitutional right of persons detained 'at the disposal of the executive' to opt for exile rather than detention, but without success.

Mario J. Zaraceansky, a former member of the Law Faculty of the University of Cordoba and practitioner of labour law, has been detained 'at the disposal of the executive' since July 1977. He was detained incommunicado for a period of 15 months, and has repeatedly attempted without success to exercise his option to leave the country. His wife and child now reside in the United States, and the U.S. government has indicated that he would be permitted to join them there if permitted to leave Argentina.

Except for Mr Jozami, for whose release there are compelling humanitarian reasons, each of the lawyers mentioned above is imprisoned without conviction or after the expiration of a sentence. Each has been in prison for four and a half years or more. After such a period of time, there can be no justification for continuing the detention of these lawyers, and they should be promptly and unconditionally released.

C H I L E

United Nations Report Describes the Deterioration of Judicial Independence

Since 1975 the United Nations has published a series of reports on human rights problems in Chile. Initially prepared by a five-member Ad Hoc Working Group of the U.N. Commission on Human Rights, they have been entrusted since 1979 to a Special Rapporteur, Mr Abdoulaye Dieye of Senegal. The report [1], submitted to the U.N. Economic and Social Council in November 1981, contains a wealth of information on judicial independence in Chile and constitutes one of the most detailed examinations by a U.N. authority of the protection of judicial independence in a given country. It describes, inter alia, the following:

The New Constitutional Court

In September 1980 a plebiscite was held in Chile to approve a new constitution drafted by a commission of experts appointed directly by the military junta. The conduct of the plebiscite was criticised because of the lack of democratic debate and the military's complete control over the ballotting. Portions of the constitution entered into effect in April 1981, as did 29 far-reaching transitional provisions, some of which will remain in effect until 1997.

The constitution creates a new Constitutional Court whose broad powers substantially undermine the preeminent position of the Supreme Court. The new court has jurisdiction over all questions concerning the constitutionality of laws, draft laws, draft constitutional reforms, treaties and decrees. It also has the power to rule on the incapacities and grounds for dismissal of Ministers and Members of Parliament (when parliament is restored), to declare organisations and political parties or movements unconstitutional and

(1) U.N. Doc. A/36/594

to deprive persons accused of violating the constitution of citizenship. There is no appeal from its decisions, and its rulings are binding even upon the Supreme Court.

With the increase of presidential powers and weakening of other civil and governmental institutions, the report states, the armed forces and Constitutional Court are the only effective counterweights to the presidency. Unfortunately, the new court is not endowed with sufficient guarantees of its independence. Three of its seven members are nominated by the Supreme Court. Of the four remaining members, one is appointed by the president, one by the Junta, and two by the National Security Council.

The National Security Council itself is composed of the president and the four members of the Junta together with two civilians: the president of the Supreme Court and president of the Council of State. Thus a majority of the members of the Constitutional Court are appointed, directly or indirectly, by the president and the Junta. Five members of the Court constitute a quorum, and decisions are made by a simple majority. The term of office is eight years.

The Special Rapporteur also finds the membership of the president of the Supreme Court in the National Security Council inconsistent with the independence of the judiciary. He notes that

> *"in organisational terms it (the judiciary) will become part of an agency performing tasks devolving exclusively upon the executive. Its (the National Security Council's) functions relate to 'internal security', in other words, its purpose is to keep a check on activities critical of, or opposed to, the government. As a member of a body concerned with 'the internal security of the state', the highest-ranking member of the judiciary will be involved in duties that normally fall to the Executive ..." (2)*

Restrictions on Jurisdiction to Enforce Human Rights

The new constitution also effects changes in the courts' jurisdiction to enforce constitutional or legal rights, particularly in

(2) Ibid., para. 25, quoting a previous report of the Special Rapporteur, U.N. Doc. E/CN.4/1428, para. 30.

times of emergency. There is a hierarchy of states of exception in Chile, including the state of war, state of general alert or state of assembly, state of siege and state of emergency. The significance of the courts' ability to enforce human rights in time of emergency is highlighted by the fact that legal normalcy has not prevailed in Chile since 1973.

There are three important remedies for the protection of human rights in Chilean law: the remedy of 'protection' (proteccion), amparo and habeas corpus. 'Protection' permits an injured party to apply to a court of appeal for the enforcement of a wide variety of rights, ranging from the right to life and inviolability of the home to the right to work and rights of copyright. Amparo permits an appeal to a court on behalf of an arrested, imprisoned or detained person to ensure "that legal forms be respected and ... to provide the necessary protection (for the rights of) the party concerned". (3) Habeas corpus permits appeal to the courts simply to ensure that an arrested persons is arraigned before a judge.

The new constitution provides that the remedy of protection is not available for actions of the government "taken in accordance with the Constitution and the laws" (4) and which infringe rights suspended or restricted by virtue of a state of emergency. It is expressly provided that the courts may not examine the factual basis for such governmental action. (5) Judicial review is thereby reduced to a mere formality, confirming and making obligatory a practice which had already become widespread as a result of judicial conservatism. When an individual's rights are adversely affected by the action of a governmental authority during a state of emergency, the court may inquire whether there exists some law or decree authorising it. The court may not inquire whether there is any factual basis for the measure in question, however, and

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(3) Article 21

(4) Article 41, para. 3

(5) ibid.

judgment on the constitutionality of the law or decree is ultimately reserved for the government-dominated Constitutional Court.

The remedy of amparo is not available during a state of general alert or state of siege, nor with respect to persons detained, exiled or subject to 'internal exile' by virtue of presidential orders made under the exceptional powers granted the president in the 24th temporary provision of the constitution (see below). In addition, as with the remedy of protection, it is expressly provided that the courts may not, during these states of exception, examine the factual grounds for actions infringing an individual's rights.

The constitution also states that there shall be no remedy for actions taken pursuant to the 24th transitional provision of the constitution, other than a request to the same authority to reconsider its decision. This transitional provision, in effect until 1989, permits detention, exile or internal exile, and restrictions on the press and on freedom of assembly by simple presidential order whenever the president declares a state of exception.

The Special Rapporteur concludes that "judicial protection in a state of emergency is severely limited" under the new constitution, and that "the lack of protection is virtually absolute in the case of measures taken under the 24th transitional provision". (6)

The Weakening of the Supreme Court and Abolition of Habeas Courts

Two further constitutional provisions affecting the Supreme Court are reported. While the previous constitution of 1925 required a two-thirds vote by the Supreme Court for removal of one of its members, the new constitution provides for removal by a simple majority vote. (7) The question of removal of a member of the Court is put before the Court by the President of the Republic.

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(6) E/CN.4/1428, para. 48.

(7) Article 77

The Supreme Court's control over the judicial system has been undermined. The 1981 constitution provided for the adoption of new 'organic laws' defining the administration and powers of the courts. The Supreme Court's consultative role in the creation of such organic laws, has been abolished, although it does retain a consultative role in subsequent amendments. In addition, the creation of the Constitutional Court has preempted the Supreme Court's role in examining the constitutionality of changes affecting the courts.

The result is illustrated by the controversy over the abolition of the Labour Courts, which had long been opposed by the Supreme Court. The Junta decreed that the specialised labour tribunals be transformed into civil or "mixed" civil-commercial courts in March 1981, just prior to the entry into force of the new constitution. Judges of the Labour Appeals Courts complained in the Supreme Court that the action was unconstitutional because the Supreme Court had not been properly consulted. With the entry into effect of the new constitution, however, the matter was placed before the Constitutional Court and the abolition of the courts upheld.

The Special Rapporteur concludes that the abolition of these courts, together with related changes in the Labour Code

> *"deprives workers of the special protection they used to derive from a procedure for the speedy, understanding and skilful settlement of the disputes which daily confront those belonging to the most disadvantaged sectors of the population. The abolition of these courts simply means that workers will have to wait their turn in the civil courts, which deal with cases of every kind, in order to obtain payment of sums due to them or recognition of rights which they claim, even though such payments or the recognition of such rights is of major importance to feeding and supporting themselves and their families." (8)*

The Subjective Component of Judicial Independence

While paying tribute to the independence shown by some individual judges, and by higher judicial bodies on rare occasions, the Special Rapporteur describes how the judiciary as a whole has

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(8) E/CN.4/1428, para. 423.

accepted or even anticipated restrictions on its independence. A Chilean journalist's interview with Judge Eyzaguirre, member and former president of the Supreme Court, is quoted at length, and illustrates how common legal doctrines can be distorted to justify accommodation with a regime which is as illegal in its origins as it is repressive in its methods of governing. Portions of it are reproduced here:

"Question: *Public opinion gives the rather general impression that our judiciary is neither as independent as is claimed nor as independent as it should be ...*

Answer: *It is an absolutely false impression. The judiciary is basically independent and it has proved this throughout its history under every regime, including the current regime: it has handed down judgments that go against the interests of the State.*

Question: *But in political matters, Mr President, it never goes against the wishes of the Executive.*

Answer: *In politics, the situation is very different. It should not be forgotten that ample legislation directly connected with political questions has been laid down. The courts must comply with that legislation. The courts are there to apply the laws; they cannot break them ...*

Question: *If the courts are responsible for dispensing justice, would they not be under a moral obligation to indicate when the laws or regulations tend to favour injustices or are likely to be misused?*

Answer: *One has to be very cautious on this point. Most of these laws are political and the courts are not allowed to engage in any political activity whatsoever. If they consider a law to be inappropriate, the courts have to inform the Government through the Ministry of Justice. The opinions we give on that point are sometimes listened to and sometimes ignored, since the establishment or amendment of laws forms part of the prerogatives of the co-custodians of the legislature.*

Question: *Under the previous regime, the Court pointed out that the Government placed itself above the law because it did not comply with all judicial decisions. Why has it not shown similar zeal under the current regime? Or has there been no cause for admonition?*

Answer: *The reason is very simple: the present Government has implemented all the judicial decisions even when they*

were against it. (9)

Question: *Would you say without the slightest reservation in practice the Chilean judiciary functions satisfactorily and is fully autonomous?*

Answer: *The Chilean judiciary is completely independent, except in the financial sphere where it is subject to action of the co-custodians of the legislature.*

Question: *If the Court is so independent, how can it be explained that it rejected nearly all the applications for amparo on behalf of persons who were detained or have disappeared during the first phase of the military regime?*

Answer: *The purpose of an application for amparo is to terminate a detention. If the Minister of the Interior states that the person on whose behalf the application is made is not being detained, the application cannot be entertained.*

...

Question: *What is your personal opinion regarding the 24th transitional provision which authorises the President of the Republic to arrest persons, expel them from the country, prohibit their entry into national territory, assign them to enforced residence, restrict the right of assembly and so on?*

Answer: *I cannot pass judgment on the 24th transitional provision. I have to confine myself to applying it. The text was approved by a large majority in the course of a referendum and, if the country agreed to it, it is not my place to criticise the universal suffrage whereby such a provision was approved ...*

Question: *Let us leave Chile. What would you think of a country whose legislation placed in the hands of a single person the power to expel persons from the national territory, assign them to enforced residence, prohibit the entry into national territory of citizens of that country, without those powers being subject to any recourse, save to the very authority which took the decision?*

Answer: *Such a situation is obviously dangerous, but everything depends on the wisdom with which the person exercising the power uses the options available to him. In the*

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(9) The Special Rapporteur states in a footnote: "President Eyzaguirre seems to forget the innumerable cases in which the Executive did not implement judicial decisions ... (and) the repeated refusal of members of the security services to come before the courts even though they were required to do so by a judicial decision." Several examples are given.

case of the 24th transitional provision, the entire Constitution, both the permanent and the transitional provisions, was the subject of a referendum and was endorsed by the country. That means that the country agreed to entrust those powers to the President of the Republic.

Question: *The lawyer Juan Agustin has argued that the courts adjudicate in favour of the authorities by virtue of laws proclaimed by those same authorities.*

Answer: *At the present time, power in the country is concentrated in the hands of the Head of State and of the Government Junta, who are the co-custodians of legislative power. If these authorities enact such laws, the courts have no other role than to apply them. (10)*

...

The Special Rapporteur points out that the judge in substance admits that the courts "never hand down a judgment contrary to the wishes of the government if political questions are involved". With respect to the President's powers under the 24th transitional provision of the Constitution, the judge admits that the powers recognised are dangerous, but maintains that the judiciary can do nothing because of the referendum and that, in any case, the decisive factor is the "wisdom of the President" in the exercise of these broad discretionary powers. "This", the Rapporteur states, "is tantamount to admitting that, if the power were in the hands of others, the judges would oppose the application of the provision ... Such a response constitutes a political position and offers proof of the lack of independence of the judge quoted." This political position consists of "accepting a political regime which has eliminated the separation of powers and under which the enjoyment of human rights depends exclusively on the arbitrary decision of the armed forces which dominate all the country's institutions." (11)

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(10) E/CN.4/1428, para 235. The interview was originally published in El Mercurio, 24 May 1981.

(11) Ibid.

U R U G U A Y

Institutional Act No. 12 has not Restored the Independence of the Judiciary

The 1967 Constitution established a system which properly guaranteed the independence and impartiality of the judiciary and enabled magistrates to discharge their function of resolving conflicts of interests in strict compliance with the law and protecting human rights. For several decades this system worked to the complete satisfaction of judges, lawyers and parties involved in litigation. Whenever changes were needed to adapt it to the requirements of the times, they were made in accordance with the procedures embodied in the national legal system. The adoption by the government, in July 1977, of Institutional Act No. 8 put an end to the independence of the administration of justice - which had already been in jeopardy since the replacement of civilian by military courts in 1972 (1) - as the Judiciary lost its status as a branch of the authority of the state and became subordinate to the Executive in many ways.

Institutional Act No. 12 of 10 November 1981

Institutional Act No. 12 amends some thirty articles of the chapter of the Constitution concerning the judiciary. The government of Uruguay maintains that the amendments introduced in Institutional Act No. 12

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(1) The "Institutional Acts" were a new category of legal norm for which no provision was made in Uruguayan law. They were promulgated by mere decrees of the Executive, known as Constitutional Decrees. Consequently, their approval was subject to fewer legal requirements, and involved fewer authorities, than any ordinary law. Nonetheless they amend the Constitution without following the procedure established in the Constitution for that purpose, and more importantly, without submitting the amendments to the approval of the electorate in a plebiscite as required by law. The twelve Institutional Acts enacted so far are based explicitly on the doctrine of national security, a notion whose emergence became possible only after the military coup d'état of June 1973, which brought to power an authoritarian regime, opposed to the rule of law.
Bulletin No. 2 of the CIJL (September 1978) contained an analysis of the application of military justice in Uruguay.

restore the institutional standing of the judiciary as a branch of government, and give the country once again an independent judiciary. According to the preamble to the Act, the causes which had once given rise to the adoption of Institutional Act No. 8 have disappeared. While rescinding Institutional Act No. 8, however, it retains many of the norms which it contained.

The lawyers of Uruguay represented by the College of Lawyers (Colegio de Abogados) of Uruguay - the only such association in the country - disagree radically with the government's claim. In a statement made on 9 December 1981 they had the following to say on the matter:

> *"Institutional Act No. 12 has not given the country an independent Judiciary but merely, under that name, a set of organs which are subordinate on fundamental matters to the other branches of government, in particular to the Executive; this means that conditions necessary for the full effectiveness of the essential guarantees contained in the constitutional norms have not been established. ... The new formulas are not compatible with the rule of law."*

Under the new form of government the role of the military is predominant. In addition, when Institutional Act No. 8 was adopted in 1977, the College of Lawyers of Uruguay stated that "the method of constitutional reform which had been applied ran counter to the principle of national sovereignty and ... representative democracy". The same objection could, of course, be made to the present Institutional Act.

The Supreme Court and the Superior Council of the Judiciary

Legal theory universally recognises that one of the main requirements for the proper administration of justice and for its protection against circumstantial political pressures is the guarantee of the independence and impartiality of judges. In the last resort, the protection of the individual and the integrity of his fundamental rights depends on the existence of a professional, independent and courageous judiciary. Article 1 of Institutional Act No. 12 acknowledges this point when it provides that "The members of the magistrature shall be absolutely

independent in the discharge of their jurisdictional function and shall not be liable to dismissal as long as their conduct remains good". However, the norms actually embodied in Institutional Act No. 12 do not offer sufficient guarantees of the independence of the judges.

Under Article 2 of the Institutional Act No. 12, the members of the Supreme Court are to be appointed by the Council of the Nation, a body which is dominated by the armed forces, as will be seen below. The President of the Republic is to propose three candidates for each vacant post, and the Council is to elect one of them. The new procedure for the appointment of the highest judicial authorities is clearly a step backwards from the system established in the 1967 Constitution, which provided that the members of the Supreme Court be appointed and dismissed by Parliament.

Institutional Act No. 12 creates a new organ, the Superior Council of the judiciary, endowed with various administrative functions which the Constitution previously entrusted to the Supreme Court, and which Institutional Act No. 8 had transferred to the executive.

These include the power to

- supervise, direct, advise and discipline all judges, as well as certain senior officials of the courts;
- appoint, promote and transfer magistrates and judges of all categories, to apply to them the disciplinary sanctions provided for by law, and to dismiss them in cases of incompetence, neglect or conduct punishable by law;
- to determine the salaries of judges and senior personnel of the judicial organs.

The remaining officials of the judiciary - technical, administrative and other personnel - are appointed directly by the executive and are subject to the supervision of the Ministry of Justice. Under the 1967 Constitution, the appointment, promotion, transfer, punishment and dismissal of all judges and employees of the judiciary were all under the authority of the Supreme Court. As the College of Lawyers also points out in its statement of November 1981, judges and magistrates in charge

of courts "lack authority over their personnel, with all the risks which such a situation entails for functional relations and the proper functioning of the service".

In order fully to appreciate the effect of these provisions, one must take into account the politico-institutional situation in Uruguay. A military coup d'état was followed by the establishment of an authoritarian regime under which no elections of any sort have been held for the past eleven years, and where there is no elected Parliament. The only democratic consultation occurred in the 1980 plebiscite, when a new constitution proposed by the government was rejected by the electorate. Serious violations of human rights have repeatedly occurred.

The Council of the Nation, which, as has been seen, has powers of appointment and dismissal over the members of the Supreme Court, consists of the thirty-five members of the Council of State - another new organ intended as a replacement for Parliament and whose members are appointed directly by the President of the Republic - and by the twenty-eight officers with the rank of general in the armed forces. The armed forces are clearly predominant within it, not only because of the timidity of the civilian politicians in the post-coup period, but also because a majority of two thirds is required for its decisions. Moreover, the President of the Republic himself is also appointed by the Council of the Nation; the post is currently held by a general who played a prominent role in the coup d'état and in the political repression which preceded and followed it. The President, it will be recalled, is the person who submits lists of candidates for membership of the Supreme Court to the Council of the Nation.

The Uruguayan Superior Council of the Judiciary, empowered to supervise, appoint and discipline judges, is made up of seven members: the Minister of Justice, the Court Prosecutor (Fiscal de Corte), the State Prosecutor for Administrative Litigation (Procurador del Estado en lo Contencioso Administrativo), the President of the Supreme Court, the President of the Court for Administrative Litigation, a legislator appointed by the Council of State and a member of the Courts of Appeal. (2) Thus

(2) Institutional Act No. 12, Article 12 and 9.

three of the members are appointed by the executive, two by the Council of the Nation, one by the Council of State and the seventh by the Superior Council of the Judiciary. Bodies of this sort, in democratic countries, can be helpful as a means of guaranteeing the independence and the proper functioning of justice. The Consejo General del Poder Judicial, established by the Spanish Constitution of 1978, is an example. Uruguay, however, is not a democratic country at the present time, and the mere presence of five judges on the Council is not a sufficient guarantee of independence in the present circumstances.

Administrative Justice

Another negative aspect of Institutional Act No. 12 - and one which involves a significant limitation on the principles of the rule of law - is that it leaves in force the provisions of Institutional Act No. 8 whereby a whole series of administrative actions are exempted from any review of their legal propriety. Henceforth, administrative courts, the most important of which is the Court for Administrative Litigation (3), may no longer examine, as they could under the 1967 Constitution, a challenge by a private individual to the legality or juridical regularity of any administrative act which affects his interests.

Under the terms of Article 23 of Institutional Act No. 12, no review may be made of the following:

- political acts and acts of government;
- acts based on reasons of national security;
- acts in the public interest, declared to be such by law;
- the conformity of discretionary acts to the criteria adopted by the administrative power itself.

This means that the administration is empowered to act in a manner contrary to the law, while not being subject to review on the part of

(3) The Court for Administrative Litigation shares with the Supreme Court the highest rank in the jurisdictional hierarchy (Article 1); its members are also appointed by the Council of the Nation.

those concerned, whenever it considers that the act is of a political nature, or one involving reasons of national security, or the public interest, or one of a discretionary nature. These qualifications have at various times actually been used for the purpose of dismissing public officials who have instituted proceedings on the grounds that their dismissal was due to political persecution.

Military Jurisdiction

Institutional Act No. 12 reaffirms the provisions of Institutional Act No. 8 in much the same terms, amending Article 253 of the Constitution and allowing the Legislature (now replaced by the Council of State) full freedom to determine which forms of conduct are regarded as "military offences", without regard to any of the limitations formerly prescribed by the legal system of Uruguay. Institutional Act No. 12 confers on the military jurisdiction exclusive competence to judge military offences, including those now known as "offences against the State" (delitos de lesa Nacion), which are a type of political offence, as well as those which may in future be added by the legislature.

These provisions consolidate a process which began in 1972 whereby, on the one hand, the ordinary civil courts were gradually replaced by military courts in cases involving political offences, while, on the other hand, the possibility of broadening the competence of military jurisdiction is gradually expanded. Besides removing from the Judiciary an entire sector of its natural competence, the act seeks to confer regular legal status on the practice which has gradually come into being whereby civilians may be tried by military courts and under military law in violation of provisions of the Constitution. The experience of all these years has shown that the application to civilians of military jurisdiction in Uruguay has given rise to a whole series of abuses and irregularities, and to very serious limitations of the rights of the defence and of the right to a just and fair trial. (4) Military justice

(4) See e.g. Report of the Human Rights Committee to the U.N. General Assembly (U.N. Doc. A/35/40) containing the Committee's findings to this effect in five cases submitted to it pursuant to the Optional Protocol of the International Covenant on Civil and Political Rights.

is subordinate not to the judiciary, but to the executive, through the Ministry of National Defence; its judges and officials are not experts in law, but military officers for whom such work is a purely transitory assignment; they are not independent, as they are rigidly bound by their orders; and they cannot be viewed as impartial, as they have been directly involved in the struggle. Moreover, the military codes are primarily an instrument for internal discipline, and they do not function properly when applied outside the context for which they were drawn up. It has been calculated that about five thousand military trials of political opponents have so far been held in Uruguay. The position adopted in Institutional Act No. 12 in this regard must, therefore, be considered as wholly negative.

Associations of Civil Servants

Article 30 of Institutional Act No. 12 forbids judges, members of the Public Prosecutor's Department and senior officials of the administration of justice, "under penalty of immediate dismissal, to belong to or to join associations of civil servants". Besides marking a step backwards in Uruguayan legislation, as the Constitution freely recognises the right of association, the Act violates norms contained in the International Covenant on Civil and Political Rights, as well as Conventions adopted by the International Labour Organisation and endorsed or ratified by Uruguay.

Institutional Act No. 12 does not restore the independence of the judiciary to the level guaranteed by the Constitution of 1967. While Institutional Act No. 8, which had turned the judiciary into an organ subordinate to the political power, was repealed, many of its norms were retained and embodied in Institutional Act No. 12, whilst others, which limited the independence of the judiciary to an equal extent, were added.

TURKEY

Arrest of the President of the Istanbul Bar Association and Difficulties Experienced by Defence Attorneys

The CIJL is concerned by the arrest of the noted defence lawyer and President of the Istanbul Bar Association, Mr Orham APAYDIN, as well as by the persistence of conditions which make it extremely difficult for defence lawyers to provide effective representation to real or suspected opponents of the present government. In March 1982, it issued an appeal to lawyers' organisations, inviting them to convey to the government of Turkey their concern about the deterioration in the independence of the legal profession.

Background

In September 1980, the armed forces overthrew the elected civilian government, which it accused of being incapable of ending a wave of terrorism. At that time terrorism by both left and right extremists was claiming an average of 20 victims per day. In fairness - and in contrast to many military governments which have used terrorism as a pretext for overturning civilian rule - it must be said that the problem of assassination has been largely eliminated.

Unfortunately, the measures adopted by the government have not been restricted to bringing terrorists to justice, but have affected a broad spectrum of political, trade union, religious and cultural activities which the government has assimilated to terrorism. (The Minister of Foreign Affairs recently stated: "In Turkey there are no political prisoners, only 20,000 imprisoned terrorists". El Pais, 2 February 1982.) The methods employed include detention without charge, prosecution for activities prior to the coup which were legal according to then prevailing legal norms, trial of civilians before military tribunals under wartime procedures, and the holding of mass trials, one of which involves 447 defendants.

One of the most important political trials since the coup is the

trial of 52 leaders of the DISK trade union federation, an obvious attempt to destroy the 500,000 member organisation. The defendants are charged with a capital offence, namely "attempt(ing) to change, deteriorate or abolish by force the Constitution of the Republic of Turkey either in part or in its entirety, or to destroy The Grand National Assembly founded on this Constitution, or to prevent it from fulfilling its function, ...". There is an obvious irony in this, since it is the military government itself which has suspended the National Assembly and the Constitution and has nominated a body to draw up a new constitution which will exclude all existing political parties.

The charges relate more specifically to various strike and other trade union activities, which in themselves were perfectly lawful at the time they were committed. The Procurator-General, however, in an extraordinary accusation of over 800 pages in length, seeks to establish that the DISK was a secret communist political party, and therefore illegal under the existing penal code. He then goes on to ask the court to infer that the strike and other trade union activities were an attempt to overthrow the Constitution and introduce a marxist-leninist state. The basis of this charge has appeared far-fetched in the extreme to all international observers.

Conditions Limiting the Conduct of the Defence

The importance of the DISK trial attracted many foreign observers who have reported on the trial conditions. It is believed that they are indicative of conditions prevailing throughout the country in politically-motivated trials.

Although the defendants were arrested in September and October 1980 and 42 of them have remained in prison since that time, the indictment was given to the defendants more than a year later, in November 1981. Pursuant to a law promulgated on 7 November 1980, the detained defendants were subject to a 90 day period of interrogation by military authorities without the right of access to a lawyer. Some of the defendants have alleged that they were tortured during this period. In a number of cases, declarations made by defendants (as opposed to the investigators' record of the defendants' statements during interrogation) proved later to have

disappeared from the file. In one instance, a military judge who entered into the record statements regarding torture during detention, and who in several cases ruled that there were insufficient grounds for detention, was transferred. (Swedish attorney T. Rothpfeffer, Report to the European Trade Union Confederation and the International Confederation of Free Trade Unions, pp. 11-12.)

When attorney's visits were permitted, they took place under lamentable conditions. One observer reported: "Each attorney has only been permitted to visit the prison twice a week. Each visit is limited to a maximum of 10-15 minutes and applications to extend the length of the individual visits have been rejected. The attorneys may only take a blank piece of paper and a pen into the prison. Conversations with their clients must be conducted while standing and through double security grilles between which guards are posted. Papers may not be passed between attorney and client. ... Discussions of torture are stopped by the guards." (Rothpfeffer, pp. 13-14.)

Even during the trial itself the defendants were not permitted to communicate freely with their attorneys: "The 52 accused were not allowed to sit beside their defence counsel either in groups or individually. All communication between the accused and their defence counsel in court took place over a barrier set up in the court room, patrolled by armed soldiers, while the defence counsel and the accused had to raise their voices to make themselves heard. Exchange of written documents was totally prohibited here as elsewhere." (Norwegian lawyer K.N. Dahl, Report to the ETUC and ICFTU, p. 60.)

The Arrest of Mr Apaydin

The DISK trial began on 24 December 1981 with a disagreement regarding the number of lawyers who would be allowed to participate in the defence. Mr Apaydin took the lead in arguing that the defendants' right to be represented by counsel of their choice meant that each defendant was entitled to his own attorney, and that additional attorneys should be allowed because the trial was expected to last six months or more. The court insisted on the apparently unprecedented application of "wartime" regulations which would have greatly reduced the number of

lawyers allowed the 52 defendants, and expelled Mr Apaydin from the courtroom when he insisted on arguing the point. The other lawyers present left the court in protest against his expulsion. In the following week two other lawyers were expelled in a similar incident. Eventually a compromise was reached permitting each defendant to be representated by one attorney.

In an astonishing departure from universally accepted principles regarding the independence of lawyers, Procurator-General TAKKECI remarked during the proceedings that lawyers having represented DISK either before or after the coup would be prosecuted. (French lawyer F. Weyl, Preliminary Report to the International Association of Democratic Lawyers, p. 7.)

Similarly, another observer to the DISK trial quotes a military prosecutor as stating that an unspecified number of lawyers defending the DISK leaders would be charged with similar offences because "these lawyers, in accepting the defence of their clients have also adhered to their ideology". (Report of Belgian lawyer F. van Drooghenbroeck, observer for the World Confederation of Labour, 28 January 1982, p. 9.) His statement suggests that the lawyers' very defence of their clients is considered by the government as evidence of the lawyers' beliefs, and indicates that lawyers are, at best, detained or prosecuted for crimes of opinion.

Mr Apaydin has also stated that on more than one occasion prosecutors have threatened him with prosecution because of his legal activities on behalf of the DISK trade union organisation. On 26 February 1982, during a lengthy adjournment of proceedings, he was arrested. Charges have not been placed, but the authorities have stated that he is under arrest as a member of the Peace Committee in 1976-77. Forty-one other members of this Committee have also been arrested. Mr Apaydin has charged that the real purpose of the arrest is to prevent him from continuing as representative of the DISK defendants. Whatever the true motives for his arrest, they will obviously deprive the bar association of a president deeply committed to the defence of legality and the rule of law, and will have an intimidating effect on the legal community as a whole.

Arrest of DISK Legal Adviser

Mrs Oksan Yardimci, legal adviser to DISK, was also involved in the defence of the DISK leaders arrested in September and October 1980. She was herself arrested in January 1981, and confined in the Métris military prison for women in Istanbul. On 1 March 1981 she was reportedly admitted to the Haydarpasa military hospital in a coma and with fractures of the legs as the result of beatings inflicted on her during interrogation. It is alleged that the interrogations and physical abuse resumed upon her return from the military hospital to the prison on 20 April, to the point that she again required hospitalisation. It is further reported that she was denied regular visits by her family, that her glasses were broken and she was not allowed to replace them, and that for more than 10 months her lawyers were denied access to the 'dossier' containing the information relevant to the charges against her and the justification for pre-trial detention. At one point, she and other inmates of the women's prison engaged in a hunger strike in protest against the treatment received.

The government states that she is charged with "usurpation (sic) and resistance to the forces of order", and that she is a member of an illegal organisation called the "Voie Partisane". Her supporters charge that police interrogators forced her to sign a paper, presumably a confession, without reading it, and that the government's actions against her violate trade union freedoms. A formal complaint to this effect has been submitted to the International Labour Organisation by the DISK trade union's international representative. A response has been received from the government and the matter remains under consideration.

It is to be hoped that Mrs Yardimci, who has been detained for well over a year in conditions which apparently violate the most fundamental rights of the individual, will be promptly given the right to have her guilt or innocence adjudicated in a fair and public trial, and that prompt action be taken to investigate the charges of torture and inhuman treatment.

I R A N

Repression Against Lawyers

CIJL Bulletin No. 4 (October 1979) contained an article describing the threatened arrest of Mr Martine-Daftary, noted Iranian defence lawyer, Vice-President of the Bar Association of Teheran and member of the executive committee of the Association of Iranian Jurists, an association of lawyers committed to human rights created prior to the 1979 revolution. Since then, unfortunately, the human rights situation in Iran has deteriorated seriously.

The CIJL has recently received from Mr Martine-Daftary an appeal issued by the Independent Committee of Iranian Lawyers in Exile, which describes the effect of the general wave of repression on the legal community.

Interference with the Bar Association and Arrest of Four Members of the Bar Council

The Bar Association of Teheran comprises the vast majority of Iranian lawyers. It is directed by a Bar Council composed of 12 members and 6 alternates. Elections to the Council take place every two years.

In June 1980 the new government prevented the scheduled elections from taking place, citing the need to "purge" the bar before elections could be permitted. A number of members of the Council had already left the country at that time, but those who remained were permitted to remain in office, although their authority was obviously reduced considerably.

In May 1981 the offices of the bar association, located in the Palais de Justice, were occupied by force. The archives, library and funds of the association were all confiscated.

The latest step in the repression of the bar association was the arrest on 30 January 1982 of the President of the Bar Council, Mr Abdul-Hamid ARDALAN, together with the Secretary of the Council, Mr

Batoul KEYHANI, Mr Mohammad-Taghi DAMGHANI, a member, and Mr Jahanguir AMIRHOSSEIMI, an alternate member of the Council. They were reportedly arrested by order of an Islamic Revolutionary Court, whose disregard for fundamental rules of justice is notorious. No reasons for their arrests have been publically stated.

It is believed that as many as twenty other lawyers may be similarly detained.

Executions of Lawyers

The ICJ Review No. 27 (December 1981) described how a newly qualified lawyer, Mr Mohsen JAHANDAR, was condemned and executed by a firing squad in August 1981 for having defended persons on trial in revolutionary tribunals. Newly received information contains the names of six additional lawyers executed within the last six months.

Mohammad Reza KHASAR BAKTIARI, lawyer and partisan of the progressive Islamic organisation OPMI, became an examining magistrate in March 1979. Shortly afterwards he lost this post as the result of a purge conducted by Khomeini loyalists, and turned his energies to the defence of political prisoners. He was executed on 1 November 1981, according to official reports solely for having undertaken the defence of enemies of the regime. Ironically he was first imprisoned, in 1963, for having distributed a pro-Khomeini tract.

Manouchehr MASSOUDI, former legal advisor to President Bani-Sadr, is another of the lawyers reported to have been executed.

The four others reported executed are Mr Manouher GHAEMMAGHAMI, Mr Zia MODARESS, Mr AMIN-AMIN and Mr MADJZOUB. No further details are given regarding the circumstances of their executions.

Appeal issued by CIJL

In March 1982 the CIJL sent to Bar associations and other lawyers' organisations a circular letter inviting them to write to the government,

expressing their concern about the situation described above, and in particular requesting

- that the Bar Association of Teheran be allowed to function normally and without interference within the limits set by the constitution and laws of Iran;
- that all imprisoned lawyers, including the four officials of the Bar Council mentioned above, be promptly released or afforded a public trial with representation by defence counsel and full opportunity to present a defence, as required by Islamic law and international agreements to which Iran is a party;
- that the right of every defendant to legal assistance, recognised by the regulations governing revolutionary tribunals * be respected and that no lawyer be prosecuted for undertaking the defence of any individual.

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* These regulations are described in ICJ Review No. 25, December 1980, p. 22

C Z E C H O S L O V A K I A

Disbarment of Jan Cernogursky

In late 1981 the CIJL learned that Dr. Jan Cernogursky, has been disbarred and prohibited from accepting any form of legal employment by reason of his defence of a political dissident.

The case which precipitated his disbarment was that of Mrs D. Sinoglova, charged with possession of illegal literature. His client was tried in District Court of Znojmo in September 1980, convicted and sentenced to one year's imprisonment. The conviction was affirmed by the Regional Court in Brno in December 1980. Dr. Cernogursky represented her at the trial and on appeal. Except for certain members of the accused's family the public was not permitted to attend the trial, and during the proceedings one family member was removed from the court for taking notes. Dr. Cernogursky defended the innocence of his client vigorously, arguing inter alia that the literature in question was not anti-socialist and that intent to distribute it was not shown. He protested against the violation of the right to a public trial and in his closing speech emphasized the need to respect the Helsinki Agreements.

A letter from the Regional Lawyers Association in Bratislava gives the following reasons for his disbarment:

> *"... Because from May 23, 1980 to December 17, 1980, while defending Drahomira Sinoglova during her trial for the criminal offence according to para 100 of the Penal Code - inciting - at the District Court in Znojmo and at the Regional Court in Brno, he acted in variance with the legal rules, the socialist legal consciousness, the interests of the socialist society and economic principles of providing legal assistance, and due to the fact that he seriously neglected his duties prescribed in para 133/75/Sb. with regard to legal practice, he was expelled from the Association in Bratislava and his membership ceased on April 15, 1981 ...".*

Having received this information, the CIJL wrote to the bar association, with copies to governmental authorities, inquiring as to the

precise factual basis for these charges . No answer was received. Similarly the CIJL has been unable to verify an allegation that Dr. Cernogursky was not permitted to present a defence against the disbarment charges.

Dr. Cernogursky was a lawyer well-known for the defence of persons charged with political offences, one of the few remaining lawyers willing to provide such clients with a vigorous and independent defence. The official view in such cases is that the lawyer's duties to his client and to society are best reconciled by persuading the client to accept his guilt, or at least error, and to reform his anti-social behaviour. Rather than plead the innocence of the client's behaviour, which could hardly be done without questioning the legitimacy of important political and legal presumptions, the function of the defence is largely restricted to arguing mitigating circumstances and the defendant's aptitude for rehabilitation.

Dr. Cernogurksy's disbarment is difficult to reconcile with his 'Professional and Political Assessment' issued by the lawyers association the same day as his disbarment. In it he is described as having the required theoretical and practical knowledge, a hard worker who achieves good results and is trusted by his clients. It further states that he has no political affiliation and does not participate in party political activities.

In these circumstances Dr. Cernogursky's disbarment must be seen as an attempt to deprive unpopular political defendants of the conscientious, independent representation to which every criminal defendant is entitled and/or retaliation against lawyers who provide such a defence. It will be recalled that another Czechoslovak lawyer was disbarred and sentenced to two terms of imprisonment for similar reasons, one in 1979 and one in 1980. In May 1980, after numerous interventions on his behalf by lawyers organisations throughout the world, he obtained an early release from prison by virtue of a presidential amnesty (see CIJL Bulletin No. 5, p. 9; CIJL Bulletin No. 6, p. 38).

For these reasons, the CIJL issued a circular letter in January 1982 requesting bar associations and other lawyers' organisations to

write to the appropriate authorities inquiring as to the precise factual basis for Dr. Cernogursky's disbarment, pointing out the adverse effects of such disbarments on the independent practice of law, and urging that prompt consideration be given to the restoration of his right to practice law.

ACTIVITIES OF LAWYERS' ORGANISATIONS

The Indian Centre for the Independence of Judges and Lawyers

The Indian Centre for the Independence of Judges and Lawyers was inaugurated on 14 December 1981. Founded at the initiative of Dr. L.M. Singhvi, U.N. Special Rapporteur on the independence of judges and lawyers, it has become the first affiliate of the CIJL.

The organisation has two purposes: to "foster citizen education and awareness on the role and ramifications of the independence of judges and lawyers, and to undertake and promote research and case studies on and development of the independence of the judiciary and the legal profession in India and other countries of the world and will disseminate and circulate research data, findings and information on the subject".

It commenced its educational activities by sponsoring four speaking engagements in various parts of India by Lord Justice Templeman of the English Court of Appeal, who spoke on "The Independence of Judges and Lawyers". Lord Justice Templeman also addressed the inaugural meeting of the ICIJL, as did its President, Dr. Singhvi, Mr Hidayatullah, Vice-President of India and Honorary Member of the ICIJL, Mr Sen, President of the Supreme Court Bar Association, and Mr Sorabjee, Vice-President of the ICIJL and former Solicitor-General of India.

The address of the ICIJL is B8, South Extension-II
New Delhi 110049
India.

The CIJL is proud to welcome the ICIJL as its first affiliate, and wishes it every success in the important tasks it has set for itself.

Dutch Meeting on Lawyers and Human Rights

A national meeting alternatively referred to as "Lawyers for Lawyers" and "Free Lawyers" took place in The Hague on 28 November 1981. Organised by the Netherlands Jurists Committee for Human Rights (a national section of the International Commission of Jurists) and the Dutch Section of Amnesty International, it also enjoyed the support of the Netherlands' Order of Advocates. Representatives of all sectors of the legal profession participated.

The main speakers were Arnoldo Murua, an Argentine lawyer who spoke about lawyers' efforts to protect human rights and the repression of lawyers in that country; Martin Ennals, former Secretary-General of Amnesty International, who spoke on the repression of lawyers throughout the world and the need for better mechanisms for combatting this repression, and the Secretary of the CIJL, who gave an address entitled "Lawyers, Lawyers' Organisations and Human Rights". The second part of the programme consisted of panel discussions and comments from the audience, which focussed in particular on the lawyers' duty to protect human rights, the ways lawyers should fulfil this duty, and the role of bar associations in protecting the human rights of lawyers and the public.

A resolution was adopted concerning violations of the human rights of lawyers in Argentina, Guatemala, South Africa and the USSR. A public march followed during which copies of the resolution were delivered to the embassies of two of these countries.

The meeting was an important success, both in promoting discussion of these issues within the legal community and in heightening public awareness of these problems.

A R T I C L E

THE COURTS AND THE PROTECTION AND ENFORCEMENT OF HUMAN RIGHTS IN AFRICA

by the Hon. Mr. Justice R. Hayfron-Benjamin*

Africa is a vast and complex continent; the mere fact that the vast majority are distinguished from the rest of the world by the colour of their skins should not becloud its immense diversity. It covers a land area of nearly 11.5 million square miles or 29.8 million square kilometres, a quarter of the land surface of the globe, it has an estimated population of over 300 million which is projected to double by the turn of the century. The population is relatively young and active. About one tenth is already urbanised and this trend is growing, rapidly placing immense strains on the provision of amenities that go with urbanisation. About one thousand indigenous languages are spoken in Africa in addition to four main foreign languages, namely Arabic, Portuguese, French, and English. The official language of many African states depends on its previous colonial connection. Proceedings of the O.A.U. and other inter-African conferences are conducted in these foreign languages. Parliamentary debate and business is usually conducted in these languages. The press and other media of mass communication are to a large extent conducted in these languages. Meaningful participation in any official activity requires a knowledge of these languages. The political and social consequences of these facts are of immense importance in the protection and enforcement of human rights.

Educational facilities are not widespread and they are in a vast area limited to the education of children and the youth. The place of the youth, particularly the literate among them, is likely to be significant. The exuberance of youth is likely to be more manifest in political activity in Africa than in the more

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* This is a shortened version of an address presented by Mr. Justice Hayfron-Benjamin, then Chief Justice of Botswana, to the Fourth Biennial Conference of the African Bar Association in Nairobi, in July 1981.

stable communities of Europe and North America.

There are over 3,000 different tribes in Africa with varying social and customary arrangements, from highly centralised tribal kingdoms, to highly decentralised tribes with no chiefly authority whatsoever. The haphazard boundaries bequeathed at independence have left tribes divided amongst two or more states and with a possible exception of Lesotho, there is no state in Africa inhabited by one homogeneous tribe. The colonial past has left Africa severly Balkanised with over fifty independent states with varying degrees of political connection with the previous colonial countries.

The economic and social conditions in Africa are, however, similar. They are characterised by extremes of poverty, illiteracy, and ignorance. Subsistence agriculture and communal living are the predominant patterns of living. Of the labour force in Africa, 80% are engaged in subsistence agriculture and their lifestyles are communal. As has been said there is an alarming drift into the urban area, largely by the educated and semi-educated youth. The gap between food production and consumption is increasing alarmingly, because of the rapid change in lifestyle, increased urbanization and the massive social dislocation brought about by the horrendous refugee problem. The comparative decline in African agriculture has highlighted the effects of droughts and floods, and the incidence of famine is on the increase in several parts of Africa. These catastrophes are relevant considerations in any programme for human rights enforcement.

The patterns of industry, trade and mineral development, dominated as they are by multinational corporations having their bases in Europe, America and Asia, also pose their own problems for human rights enforcement and protection. The corruption of political leadership is not unrelated to the almost total absence of any controls, legislative or otherwise, on the activities of these corporations. Subsidiaries are incorporated to operate in African countries, but the parent companies who take the decisions are completely beyond the jurisdiction of any African state.

The historical past of Africa is relevant to African attitudes towards authority, and to the enforcement and protection of human rights. Certain periods must stand out in any survey of African history: the Arab conquest of Northern Africa, the period of slavery and the slave trade, the period of the Mfecane or the dispersal of the peoples in southern Africa, and of course the period of colonial rule. These periods were characterised by wanton cruelty and oppression on a colossal scale. They cover a period of over 500 years and the extent to which this lengthy period of deprivation and stupendous suppression has conditioned Africans towards needless suffering and submission to arbitrary and irresponsible exercise of authority must, until further research, be left to inspire conjecture. A learned writer has, however, observed that -

> "People's willingness to sit down under petty official tyranny and accept it, is a problem which is to a large extent part of the unfortunate colonial heritage, with its accompanied mentality of authoritarianism and subservience. For the colonial administrative style was characterised by authoritarianism and arrogance towards the public and this heritage of authoritarian administration is one which has bedevilled many ex-colonial countries.
>
> It makes people unaware of their rights as free citizens of a free country and if by chance they know, then they lack the self-confidence which comes from the consciousness that in fighting to uphold this right, they would be supported by a community which understands the issues at stake."

All these conditions provide fertile grounds for human rights abuse and violation, and pose stupendous problems for any programme for their meaningful enforcement and protection. The degree of respect for human rights within the domestic forum must depend to a large extent on the application of public law by the courts. Notwithstanding the existence of these

unique conditions, we can point to no judicial initiatives or innovative principles which have evolved since independence to ensure that the protection of human rights is advanced on the continent. We are witnesses to tremendous advances in the field of private law where, at least in West Africa, the doctrines of estoppel and res judicata have been adapted to deal with the problem arising out of the communal nature of land ownership, and where standing to sue on behalf of the community has become, or is becoming, rationalised. No comparable advance can be found in public law. There the religious application of doctrines inherited from England is the pattern.

Africans are constantly bemoaning the destablising effects of the activities of multinational corporations and the stranglehold these conglomerates have on the economies of African states. Yet we hold tenaciously to and are mesmerized by the English law doctrine of the separate legal entity of a limited liability company. The fact that the subsidiaries or associate companies operating in African states are the alter ego and or auxiliaries of the parent companies headquartered in the metropolitan countries has not persuaded the Courts to have a fresh look at the question whether the parent companies themselves cannot be said to be carrying on business through the subsidiaries in the countries where the subsidiaries carry out the instructions of these parent bodies. It is said that there would be difficulties in enforcing judgments against the parent companies which may have no assets in the country. This however is naive. A judgment against the parent company on the basis that it carries on business through subsidiaries can be enforced by the attachment of the parent company's interests in other subsidiaries operating in other African States. A most powerful weapon would thus be forged to deal with the considerable activities of multinational corporations. A mere casual reading of the Bingham Report* on the sanctions busting by some of the multinational oil

*Ed. This refers to a report by Mr. Thomas Bingham, Q.C. to the British Government on the breaking of oil sanctions against Rhodesia by British firms, published 19 September 1978, by Her Majesty's Stationery Office.

conglomerates will reveal that the whole scheme for the breach of sanctions rested on the concept of separate legal identity of the subsidiary companies. This concept has proved equally useful in tax avoidance schemes and other foreign exchange control evasions. All the noise being made for the imposition of sanctions and other embargos against South Africa are likely to come to nothing unless the Courts in Africa take a realistic fresh look at corporate organisation and management and impose liability on the real decision makers.

The non-entrenchment of fundamental rights in the constitution is taken to mean that they are not binding and therefore not enforceable at the suit of a victim of human rights violation. Even where these rights were made a part of the Presidential Oath, the Ghana Court of Appeal held that they are not legally binding imperatives. The nauseating aspect of this judgment is that it went on to give the President royal and monarchial attributes, by comparing the Oath to the Coronation Oath. Why the non-entrenchment of fundamental rights can possibly lead to the conclusion that they are not enforceable is of course one of the dangerous doctrines inherited from English law, and which cannot possibly apply in any part of Africa. The English Parliament, according to Blackstone and Dicey, has power to pass whatever legislation it likes. There is no known constitution in Africa where the legislature is given power to pass any law it pleases. Everywhere, including South Africa, the legislative power is to pass laws "for the peace, order and good government of the country." The interpretation of these words to invest omnipotent and irresponsible power in the legislature is derived from English law and cannot be justified.

In considering human rights, African lawyers have tended to adopt different approaches to different states. They have classified African states into -

- multi-party, one party, and no party states;
- civilian controlled, military controlled, and uncontrolled states;

- secular and religious states; Muslim and Christian states;
- francophone and anglophone states;
- socialist and capitalist states;
- black-ruled and white-ruled states; and
- minority and majority-ruled states.

These classifications invariably carry the suggestion that the political structures of one category in each classification are more favourable to the protection of human rights than the other category in the same classification. Interminable arguments have gone on as to whether human rights are better protected in a one party state or in a multi-party state, in a socialist or a capitalist state, in a religious or secular state, in anglophone or francophone states. (Not much argument has been wasted on the relative merits of military and civilian rule, of course - although it should be pointed out that the record of some military rulers in the field of human rights protection compares favourably with that of some civilian rulers.) If these classifications had been adopted to enable constitutional doctrines to be fashioned to facilitate the enforcement of human rights and protection of the individual, some purpose would be served by them. The evidence as disclosed by the law reports, however, is that the courts continue to apply the same consititutional principles to all categories of states, notwithstanding these classifications.

A political party, for example, is juridically considered a voluntary and private law association of like-minded individuals, and not an institution of public law, notwithstanding that it has been declared the sole party in the state and accorded supremacy over other public institutions. Thus elections to office within these sole parties, the dismissal from membership and the functioning of these parties are not subjected to any legal or judicial controls or supervision.

Under military rule, a soldier is considered as a mere soldier, notwithstanding that the military is in government.

There are instances where soldiers have killed civilians and the courts, in actions brought against the state for compensation, have considered whether the soldier was acting in the course of his employment so as to make the state under the jackboots of the military vicariously liable. The fact that the whole military machine has moved into government and that each soldier feels he must show "power" or the "authority" of the armed forces, has not persuaded the courts to view every act of brutality by soldiers under a military administration as an act intended to uphold military rule, and therefore attributable to the military government. Every soldier under military rule considers himself an agent of the ruling junta, and is so considered by the civilian population. The courts too must consider him as such.

The reality of African political power is that it has proved irremovable through the ballot box. The classifications, notwithstanding their possible utility for scholarship, tend to obscure this central and conspicuous political fact in Africa. No political party whether in a multi-party state, a one party state, a francophone or anglophone state, in a socialist or capitalist orientated state has been removed from power by the vote at a general election in any African State.

Every change in political leadership has come about through death, voluntary abdication or forcible overthrow, usually by military intervention. The control of the electoral machinery of every country in Africa is in the hands of the ruling party, whether it is the sole party or not. In some one party states, the manipulation of the party organization also has assumed Machiavellian proportions, making it impossible even for party members to challenge the leadership. The removal of African representation in the Parliament of South Africa and the later abolition of the coloured vote is proof - if proof there need be - that the malevolent pollution of the electoral process is not confined to Black-ruledStates in Africa.

African lawyers have not given sufficient consideration to the implications of this phenomena. No legal formula can

wrest control of the ballot box from the ruling party in a one party state, and in a multi-party state it has proved equally impossible. African lawyers must therefore give serious consideration to other procedures that would provide some sanction against outrageous political behaviour. A procedure that readily comes to mind is impeachment. The chief advantage of such a procedure is that it does not require consent of the ruling party for its initiation, and, because it is directed against one official, it may prove more difficult for the party to close ranks, than in a vote of no confidence, where the whole future of the government is placed in jeopardy. As in many aspects of the law, the Nigerian lawyers have taken the lead, and the first case of impeachment has been brought, with success, against a state governor. This is a precedent which merits careful study. It may well be, however, that impeachment proceedings against the head of state may not be feasible in any African state at the present time.

Another area which may be fruitfully explored is in the recognition or expansion of the scope of the tort or delict of breach of constitutional duty and/or infringement of a constitutional right. Both in English and Roman Dutch law the breach of statutory duty is recognised as a tort, albeit subjected to stringent rules as to proof of special damage and as to whether the legislature in imposing the duty intended that it should be enforceable by an ordinary civil action, or that it intended that some other remedy, civil or criminal, should be the only one available. There should be little difficulty in recognising a tort or delict for breach of constitutional duty giving rise to action for civil remedies. The maintenance of the integrity of the Constitution demands that it be protected by all the weapons available in the legal armoury. A cynic has suggested that in working out the rules for such a tort the Courts may with profit consider criteria for distinguishing politicians and officials who are ferae naturae and those who are mansuetae naturae; between those who are normally vicious and those who are normally reasonable. The liability of the former should require no proof of damage and should be actionable per se.

There can be little doubt in which category many members of secret and/or security agencies in Africa would fall. The attractions of such an actionable tort are that the initiation of such proceedings would not depend on the fiat of a politician and the proceedings would normally be in public. It would undoubtedly provide in some, if not all, cases a conspicuous sanction against the irresponsible exercise of public power.

African political leadership has more of the attributes of traditional chieftaincy than is usually conceded in constitutional comment. Like traditional African chiefs, they are in practice elected for life, and there is no question of their tenure of office being made dependent or subject to meaningful periodic renewal by the public. General elections assume the aspect of traditional festivals where the people are expected to bring gifts, in this case votes, to renew their loyalty. Cabinet Ministers are elders, and party officials the retinue. Government policy is not necessarily formulated by them or even by the party as a whole. It may emanate from the closet and it is usually policy emanating from the closet that is most damaging to the liberties of the citizen. An African chief usually had his medicine man, who was even more influential than the elders or members of the chief's retinue. He usually operated from the closet, and was consulted privately by the chief. The advice of the medicine man carried more weight than that of the elders. Where the chief became converted to Christianity, the missionary took the place of the medicine man. The influence wielded by certain missionaries cannot be explained except on this basis. Many modern African leaders, whether of one or multi-party states, also have their medicine men; they wield more influence than cabinet ministers and even than party officials. Nkurumah had his Geoffrey Bing*, and it has been said that Amin had his Bob Astels; no doubt similar characters could be found in many African

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Ed: Geoffry Bing was an expatriot advisor and Attorney-General to Nkrumah during the later period of his rule and was alleged to be responsible for some of the excesses of that period. Bob Astles, Amin's notorious expatriot collaborator, was tried for murder in Uganda after the fall of Amin.

states. Their role in distorting representative government in Africa and in encouraging ruthless and largely irresponsible authoritarianism would make a fascinating study. Whether they come as expert advisers, or are recruited as civil servants, the effect of their role has been the same, namely to downgrade cabinet government and insulate political leadership from the main streams of public opinion by playing on the vanity of the political leadership.

To enable the legal profession in Africa to play a more meaningful role in the enforcement and protection of fundamental rights, there must be agonising reappraisal of our approach to the application of constitutional and public law doctrines inherited from our colonial past. It must be agonising because we are brought up on these doctrines. No-one is suggesting that Africa should reject these doctrines outright. The plea is that these doctrines must be re-examined against the background of the needs of Africa both nationally and internationally. In re-examining these doctrines, reference can usefully be made to the jurisprudence of other States where the English common law has been adapted, or is being adapted, to local conditions. The jurisprudence of India and, to a lesser extent, Pakistan, are useful sources for ideas; but the most relevant sources are to be found in the jurisprudence of the United States of America. Now no-one is advocating supplanting the Pax Britannica with the Pax Americana, but the fact remains that it is only in the United States that there has been a determined effort, though not wholly successful, to adapt the principles of English law to the eradication of inequities, based on race and other cultural differences, and to promote some form of unity based on integration. The multiplicity of tribes, religions, languages, races and colours pose problems of unity and equality in the midst of diversity. Lawyers and judges can gain a lot from a study of the American judicial record.

However, not all the judicial issues raging in the United States or elsewhere are relevant to Africa. The ongoing controversy between judicial activism and judicial self-restraint in other parts of the world, particularly in the U.S.A. and

England is largely meaningless in Africa.

In England, the judges have gone to the very limits of self-restraint and have denied themselves the right to review legislative acts. Several reasons have been advanced in support of this approach. The fact, however, is that a country with an imperial parliament making laws for a far-flung empire cannot permit the edicts of such a parliament to be challenged in any court. It is interesting to note that with the demise of the empire, powerful voices are being heard in Britain for a bill of rights with power of judicial review and judicial invalidation of legislation. In Africa, the choice is between judicial activism or a total abdication of the judicial function.

Where, as in Africa, the political leadership is irremovable, Herculean efforts are necessary and required to sustain the independence of the judiciary. The maintenance of judicial independence is primarily the function of the legal profession and more particularly of the judges themselves.

This independence is justified by the nature of the judicial function itself. The judicial function has three main aspects. It involves adjudication, supervision and protection. Judges are there to decide cases. They are there also to supervise all other officers of state who are charged with the duty of making decisions affecting the interests of the public, and see that they obey the law. They are also there to protect the individual against the arbitrary and unreasonable exercise of power by the other branches of government. Where the governing party is irremovable, it is ridiculous to look to it for the maintenance of that independence.

Independence can only be secured by the way the judiciary discharges its functions and more particularly, the way the public sees it discharging its functions. Where the public sees the judiciary as just an appendix of the ruling party, support for the maintance of judicial independence would be at best lukewarm. The maintenance of the security of the state and the protection

of the interests of the State is the responsibility of the people and of each branch of government, and the judiciary is as responsible for this as any of the other branches of the government. The method of discharging this responsibility is, however, different. The judiciary discharges this function by administering justice and in no other way. A clear distinction must be drawn and maintained between state policy, which is binding on the judges, and government policy, which at best is persuasive; between state interests, which the courts are in duty bound to protect, and government interests, which they may respect. State policy is enshrined in the constitution and the security of the State is never synonymous with the security of the Government. If the independence of the judiciary is to be maintained, especially where the government is irremovable by peaceful means, then the judiciary must uphold and be seen to uphold the principles of state policy at all times even where they are in conflict with government policy. Otherwise the judiciary would soon appear as mere agents or auxiliaries of the government, and any talk of judicial independence would, in the circumstances, be meaningless.

Instances from elsewhere show that even where the stand of the judiciary is unpopular with the people - as was the case with the American Supreme Court under the early years of the New Deal when Roosevelt's court-packing plan misfired badly and hurt him politically - where the judicial stand leading to the confrontation with the government is on the enforcement of the Constitution and the fundamental law of the land, there is no way the judiciary as an institution can suffer in the long run. We must always remember that Lord Coke was imprisoned in the Tower and nearly had his head chopped off; that Marshall, the legendary Chief Justice of the United States, barely escaped impeachment and that, in recent years, there was a move to impeach Earl Warren, the distinguished American Chief Justice. The legacy of these judges and their uncompromising stand on constitutional rights have enriched the law and social life, but above all have served to enhance the prestige and the power of the judiciary.

Legal history teaches us that the judiciary rather suffers where the judges are bent on avoiding confrontation by avoiding

constitutional issues. They do this in cases where the parties are considered unimportant persons, or where the case does not involve a challenge to an act or decision of a holder of a political office. What is often not appreciated is that no government in Africa has as yet done away with its Attorney-General or his chambers.

The law officers advise the government on what the government may legitimately do, and in doing so, are guided by the view the courts are likely to form of the legality of the government's action if this is challenged. A judiciary which is silent on constitutional issues and/or questions is not likely to provide much guidance for any Government. It is especially important that in new and developing countries, the judiciary should provide leadership in mapping out the parameters of permissible Governmental action.

Confrontation is rather avoided by deciding all constitutional issues more particularly in the small insignificant cases in which the government has no direct interest. The views of the courts would be known and the government would take this into account in deciding to take any particular course of action. No government, except the absolutely perverse, would try to achieve by illegal means what it can achieve by legal and constitutional means. Many of the great landmarks in both English and American constitutional law have involved the rights of nonentities. Somerset was a simple black slave when he appeared before Chief Justice Mansfield. Not many people even in America know anything about the Brown who featured in the historic decision of Brown v Board of Education. Legal and academic commentators have shown that in almost every landmark constitutional case, the constitutional issue could have been avoided. It is good for mankind that they were not.

An important function of the judiciary, as has been said above, is to afford protection for the individual against the exercise of power by the other auxiliaries of state.

There can be no justification for the courts, by their

decisions, to enhance or increase the powers of the executive or the legislature, especially where the government is irremovable through elections. Dispensing with proof by the creation of irrational presumptions should be frowned upon. Where a person is presumed innocent until he is proved guilty, the competence of the legislature to dispense with such proof of facts by the creation of presumptions should not be readily conceded. Legislative in-roads into judicial authority by the prescription of minimum sentences should equally be discouraged. It not only places added power into the hands of the government, but enables the government to use the courts for their own purposes. Where a minimum sentence is prescribed, it is the legislature which in reality is carrying out the sentencing function; where judicial authority is constitutionally vested in the courts, such in-roads must be invalid.

The most direct and obvious legislative in-road into judicial authority, of course, is the ouster of the courts jurisdiction in specified matters or causes. Several reasons are normally given for such ouster of jurisdiction. It is said that the courts are ill-equipped to deal adequately with certain matters of administration; that adversary procedures are not suitable for the resolution of certain other matters. Administrative bodies are more suitable. The real and unstated reasons underlying the cooperative attitude shown by the courts in highly industrialised states in this regard are likely to have more to do with the over-crowded workloads than the inability of the courts to adapt their procedures to suit particular circumstances.

Litigation can prove to be a grave social evil, but an even worse and graver evil is the denial of the right to litigate. Over-crowded workloads might persuade the courts to cooperate with the other branches of government to discourage litigation by accepting or supporting legislative short-cuts designed to reduce these workloads. These short-cuts should never, however, include the ouster of the jurisdiction of the courts, or the denial to any person with a grievance a right of access to courts. Over-crowded workloads should not be reduced by the devices and

procedures designed to reduce or limit the number of cases coming before the courts, but rather by adopting procedures making for the expeditious dispatch of the business that has come before the Courts.

At present, where a lawyer is consulted by a lay client in a civil cause, the lawyer must decide whether to commence proceedings by taking out an ordinary summons, an originating summons, submit a petition or serve an originating notice of motion. A wrong decision may cost the client dearly, and the best of lawyers occasionally do make mistakes. In the prevailing conditions in Africa, the case for a drastic simplification of procedure is a strong one. The only decision that a lawyer should be called upon to make at the initial stage is whether the matter in hand is urgent or not. All urgent matters, and these would usually include cases in respect of human rights infringement, should be commenced by motion and all the non-urgent matters by action. In almost all countries, suits against the state are brought against the Attorney-General who is usually entitled to at least one month's notice of the intention to commence proceedings. Infringement of fundamental rights is usually likely to be by some public officer and it is desirable that this requirement for prior notice be applicable only to actions in non-urgent cases. The law's delays were identified by Shakespeare as one of those "slings and arrows of outrageous fortune that serve to make death itself a consummation devoutly to be wished". Simple procedure would make for the expeditious dispatch of the business of the courts.

The case for liberalization of the law relating to judicial remedies available in respect of state action is overwhelming. In every African state, the government is the largest employer. Where the government is in practice irremovable through elections, the prospects for nepotism and victimisation are almost unlimited. To contend in the circumstances that a person whose career in the public service has been terminated or otherwise wrongfully dismissed cannot claim reinstatement but must confine his claim to damages is unrealistic. The reason supporting the reluctance of the courts to decree reinstatement

in private employment do not readily apply to reinstatement in public employment.

Additionally, the restriction of the remedies against the state for the wrongful acts of its servants to monetary claims for compensation and declaratory relief requires re-examination. In almost every country, injunctive relief is not available against the state. Of course, there are sound reasons supporting this rule. There is no reason why, in a case where a serious or persistent violation of the fundamental rights of a citizen is established against a particular public officer, the courts should not be able to order the dismissal of such an officer from the public service. Abuse of office is made a criminal offence in several African States, but its prosecution is usually made dependant on the fiat or consent of the Attorney-General.

Furthermore, prosecutions for such abuse have usually been in cases where the officer had derived some personal gain from such abuse. The right of the citizen to seek protection against abuse of public power should not be made dependant on the consent of a public officer, or on any gain derived from the abuse by a particular public officer. The right to determine who shall work in the public sector properly belongs to the executive but courts should not readily abdicate their own powers to supervise the functions of the executive and protect the rights of the individual.

In the conditions of the modern world where terrorism is widespread and crime has become increasingly over-sophisticated, the maintenance of that order required for peaceful existence cannot be achieved without an efficient police and other security and law-enforcement agencies. Peace cannot prevail unless crime is detected and the culprits apprehended, expeditiously dealt with and adequately punished. In these self-same conditions, tyranny is impossible unless the government has at its service an over-enthusiastic and unchecked police or other security agencies. No tyranny is possible unless the power to arrest and prosecute for crime degenerates into a power to harass, fabricate

evidence and persecute, and the power to award adequate punishment against the guilty becomes a power to impose barbaric, irrational and indiscriminate punishment.

Of all institutions of state, the judiciary is charged with the mandate of checking the development of such conditions. This mandate cannot be effectively discharged by going to sleep and occasionally rising up to do battle with a monster. The price of liberty, it has been said, is eternal vigilance. Justice cannot be secured at a lesser price.

BRIEF REVIEW OF MATERIALS RECEIVED

Judicial Independence in Nigeria, by Niki Tobi, Dean of the Faculty of Law, University of Manduguri, Nigeria, International Legal Practitioner, Vol. 6 (ii), July 1981, pp 62-66. Describes the history and structure of the Nigerian judicial system, including the effect of military rule from 1966 to 1979 on judicial independence, and the condition of the judiciary since the restoration of civilian rule. During the period of the military rule, the independence of the judiciary was seriously constrained by the inclusion in numerous decrees of "ouster clauses", providing that no court should inquire into alleged infringements of constitutional rights perpetuated pursuant to such decrees. The rulings of the courts in cases concerning the vires or constitutionality of military decrees is also examined, which lead the author to conclude that the courts enjoyed only a limited independence during this period. The repeal of most such decrees in 1978 and the adoption of a new constitution in 1979 are described as going a long way towards restoring the independence of the judiciary, and subsequent decisions of the courts are said to reveal a new independence of spirit. Subsisting restrictions on the justicibility of certain constitutional provisions are, however, criticised.

Available from the International Bar Association, Byron House, 7/9 St. James Street, London SW1A 1EE, United Kingdom.

Jornadas de Estudio Sobre el Consejo Général del Poder Judicial, Madrid, December 1981. An excellent collection of papers by Spanish magistrates on the new General Council of the Judiciary including its legal status, relations between it and the executive branch, and its role in defending the jurisdiction of the courts.

Available from the Consejo Général del Poder Judicial, Paseo de la Habana 140, Madrid 16, Spain.

Judicial Staff, Yugoslav Survey, Vol. XXII, No. 4, November 1981, pp 85 to 94. Describes the appointment, tenure, training and the legal responsibilities and immunities of "judicial officers" (a term which

includes judges, public prosecutors and attorneys for governmental bodies), as well as statistics on their sex, ethnic background, and party membership.

Available from Yugoslav Survey, Mose Pijade 8/I, P.O. Box 677, Belgrade, Yugoslavia.

LAWASIA Standing Committee on Human Rights "Report on Meeting with Asian Human Rights", August 1981, 16 pages. A summary of statements by lawyers from eight Asian countries about lawyers and the protection of human rights. "Recent Trends in Human Rights", August 1981, 23 pages. Five papers concerning human rights developments in India, Japan, Australia, New Zealand and Sri Lanka.

Available from LAWASIA, 170 Phillip Street, Sydney, N.S.W. 2000, Australia.

Legal Profession: Code of Ethics and Disciplinary Procedures, by Abdullah bin Datuk Abdul Rahman, The Malayan Law Journal, December 1981, pp. CXCV to CXCIX.

Masters in Their Own House, by Justice Jules des Chenes, Chief Justice of Quebec, with Mr Carl Baar, Montreal, September 1981, 500 pages. An exhaustive study of the Canadian judicial systems, federal and provincial, with proposals for constitutional and administrative reforms.

Published by the Canadian Judicial Council, Ottawa, Canada.

La Organizacion Judicial y la Formacion de los Jueces, by Dr. Nicasio Barrera, Professor of Law at the National University in Tucuman, Argentina. A thorough study of the law and practice concerning the organisation of the judiciary and the appointment and training of judges in France.

Published by the National University at Tucuman, April 1981, 222 pages.

Professional Independence and the Associate in a Law Firm: A French Case Study, by Tong Thi Thanh Trai Le, The American Journal of Comparative Law, Vol. XXIX, No. 4, Fall 1981, pp 647-670. A good description for non-initiates of the structure of the french legal profession, which also

raises interesting questions about the viability in a changing society of the tradition of law as a liberal profession.

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RECENT ICJ PUBLICATIONS

Human Rights in Islam

Report of a seminar in Kuwait, Geneva, 1982, 95 pp.
Available in english (ISBN 92 9037 014 9) and french (ISBN 92 9037 015 7),
Swiss Francs 10, plus postage.

The purpose of this seminar was to provide a forum for distinguished moslem lawyers and scholars from Indonesia to Senegal to discuss subjects of critical importance to them. It was organised jointly with the University of Kuwait and the Union of Arab Lawyers. The Conclusions and Recommendations cover such subjects as economic rights, the right to work, trade union rights, education, rights of minorities, freedom of opinion, thought, expression and assembly, legal protection of human rights and women's rights and status. Also included are the opening addresses, a key-note speech by Mr. A.K. Brohi and a summary of the working papers.

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Development, Human Rights and the Rule of Law

Report of a Conference held in The Hague, 27 April–1 May 1981, convened by the ICJ.
Published by Pergamon Press, Oxford (ISBN 008 028951 7), 244 pp.
Available in english. Swiss Francs 15 or US$ 7.50.

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

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Ethnic Conflict and Violence in Sri Lanka

Report of a mission to Sri Lanka in July-August 1981 by Professor Virginia A. Leary
of the State University of New York at Buffalo.
Geneva, December 1981, 88 pp. (ISBN 92 9037 011 9).
Available in english, Swiss Francs 7 or US$ 3.50, plus postage.

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

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