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THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES:
STUDY ON THE INDEPENDENCE AND IMPARTIALITY OF THE JUDICIARY,
JURORS AND ASSESSORS AND THE INDEPENDENCE OF LAWYERS

Final Report by the Special Rapporteur, Mr. L.M. Singhvi */

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XI. RECOMMENDATIONS

382. The conclusions of the Special Rapporteur are stated and discussed in the relevant sections of the study and are not reproduced or summarized in this chapter. The conclusions and the discussion leading to them suggest what ought and needs to be done, in what manner and by whom. Those conclusions are themselves recommendations meant for and addressed to authorities at different levels and to organizations and individuals whose dedication and commitment will provide the motive force for building up a world movement to translate the basic norms of the independence of justice into a living reality in every society. One and all must act in concert to achieve that noble objective.

383. The Special Rapporteur submits for the consideration of the Sub-Commission a draft body of basic principles on the independence of justice with a draft preamble. ^{1/} These basic principles are at present put in the form of a Declaration. If necessary, the Special Rapporteur's draft can be recast in the form of an international convention.

384. The draft of the proposed Universal Declaration on the Independence of Justice is based on the formulation reached at several successive international meetings, many of which were especially held to assist the Special Rapporteur in the preparation of the draft to be submitted to the Sub-Commission. A large number of non-governmental organizations were represented at many of these meetings. Diverse legal systems were represented and experiences of the working of different systems were brought to bear on the formulation of the principles. The Universal Declaration on the Independence of Justice adopted at the World Conference in Montreal on 10 June 1983 represented in a real sense the culmination of world-wide efforts to prepare a universally acceptable set of principles covering the entire mandate of the Special Rapporteur. Before the proceedings of the World Conference at Montreal, a meeting of experts was held in Paris which systematically tabulated, compared and pooled the principles prepared in different forms at Syracuse, Noto, Tokyo, Jerusalem and New Delhi. Delegates from five continents and over 20 international organizations and professional bodies including the International Court of Justice attended the Conference which had five commissions, each dealing with international judges, national judges, lawyers, jurors and assessors.

385. It may be stated here that soon after the Special Rapporteur commenced the present study and presented his preliminary report, another valuable input in the formulation of basic principles was provided by the Centre for Social Development and Humanitarian Affairs pursuant to resolution 16 of the Sixth United Nations Congress on the Prevention of Crime and Treatment of Offenders and Economic and Social Council decision 1984/153. The draft guidelines on the independence of the judiciary formulated by the Committee on Crime Prevention and Control were finalized at the Interregional Preparatory Meeting of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders.

386. The Special Rapporteur was closely associated with the meeting at Syracuse, Noto, New Delhi, Paris, Montreal and Varenna. The basic principles contained in the Universal Declaration on the Independence of Justice adopted at Montreal in June 1983 and those embodied in the guidelines on the independence of the judiciary finalized at the interregional preparatory meeting at Varenna are substantially analogous. The Special Rapporteur has endeavoured to put them together with a view to ensure that nothing material or significant is left out.

^{1/} See annex II.

387. The responses to the Special Rapporteur's questionnaire and his own independent research and study of the subject fully support and confirm the principles set forth in the draft annexed to this study. These principles represent respect for different legal systems and an approach of moderation and restraint. A comparative approach to the constitutions of the world and the basic norms acceptable to or articulated in different legal systems are reflected in the principles. A balance has also been struck between excessive detail and extreme brevity.

388. The Special Rapporteur suggests that a Universal Declaration on the Independence of Justice or preferably an International Convention on the Independence of Justice should be adopted by the United Nations. With the adoption of a declaration or a Convention, the main dimensions of the principles of impartiality and independence would be more directly and effectively reflected in the work of different bodies of the United Nations. A Convention would obviously have greater efficacy.

389. The purpose of this study was to assist in the task of standard setting. Its framework was essentially conceptual, based on history, comparative constitutional law and a certain measure of empirical and behavioural analysis and evaluation. Country profiles included in this study are not meant to investigate country reports on the state of the judiciary or the justice system in different countries probing lapses, or finding faults. The perspective of realistic appraisal of the system as it operated is vital to a study such as this, but it had to be kept in the background in a cave of anonymity lest the objective to assist in standard setting and the formulation of principles should be lost in the welter of disputed facts and emotive defences. The Special Rapporteur recommends that specific investigative studies on the violations of the independence of justice should be undertaken from time to time so that the basic human right of "independent justice" guaranteed in article 10 of the Universal Declaration of Human Rights may be protected more effectively and consistently.

390. The subject of independence of justice is at present dealt with in the Sub-Commission under the agenda item called "The administration of justice and the human rights of detainees". The Special Rapporteur suggests that it should be taken as a distinct agenda item. It is true that the eclipse of or interference with, the independence of justice inevitably leads to the problem of involuntary detention, but detentions and imprisonment do not and cannot cover the entire range of problems which arise when the independence of judges and lawyers is undermined or impaired. It is a subject which stands by itself and would lend itself to more comprehensive scrutiny if it is dealt with separately and not merely as an adjunct of a related phenomenon.

391. Another recommendation which the Special Rapporteur would like to make relates to a term of reference added by the Sub-Commission in 1983 to the original mandate for this study. It also arises out of the study itself, being a fundamental matter of approach. The recommendation which the Special Rapporteur would like to make, is in respect of a regular long-term technical assistance package programme in the United Nations system, specifically with the twin objectives of (a) assisting in the development of legal and judicial institutions and (b) creating world-wide awareness and solidarity in respect of human rights and fundamental freedoms. The Special Rapporteur is of the view that a massive effort is required for the fulfilment of these two objectives if a new world order responsive to

human rights is to be created. Relatively little has been done in this matter of supreme importance although it is axiomatic that the ultimate safeguard for human rights and fundamental freedoms is not merely to be found in formal declarations or in legal instruments; that safeguard is to be created in the minds of men and in the sinews of the institutional framework in each country.

392. Obviously, the new international economic order should accord a high priority to human rights and should provide for bilateral and multilateral programmes of assistance for the development of legal institutions with a view to promoting social as well as economic development with a human face and a humane outlook. It is now generally accepted that development is an inclusive process with many facets which interact and cross-fertilize; and that it is not merely a matter of physical targets in terms of gross national product. Legal institutions are a part of the infrastructure necessary for economic development. It is important that the larger objectives which legal institutions are meant to serve are not lost sight of. It is also well to remember that the growth and development of legal institutions has a logic of its own which inexorably helps in creating a climate conducive of human rights and which creates perceptions of human dignity and defences of human rights in the minds of men and women who have imbibed the ethos of legal education and the culture of law and legal institutions.

393. The proposed package programme of technical assistance for the development of legal institutions should cater to the diverse needs of different legal systems. In some countries, there are no basic infrastructural facilities for legal education; in others the existing facilities are inadequate, or need to be augmented or upgraded. This is an infrastructural facility of the most basic importance. Countries where there are no law schools should be assisted bilaterally or by the United Nations to establish and maintain them so as to bring about indigenous legal development and to broaden the access to legal education which is vital to the independence of justice. Universities in the third world countries and in the more developed countries should offer special programmes for the transitional period for students from countries where no such facilities are at present available. The United Nations University and the UNESCO should also address themselves to the problems of legal education in the less developed countries of the world and to the question of human rights content in educational curricula generally and in the curriculum of legal education in particular.

394. To disseminate human rights education and research, there should be centres of human rights education in universities, schools, adult education institutions and Bar associations and centres of professional legal education. These should be encouraged in all parts of the world. Human Rights institutes should be established on national and regional basis - with the assistance of the United Nations, including the co-operative involvement of United Nations University and UNESCO. Such an institute for Asia and for Africa would be of immense value. Particular attention should be paid to the development of professional competence in the field of legislative drafting, advocacy, judicial administration and law reform. The package programme should aim at imparting professional skills, improving the levels of excellence and inculcating a deeper awareness of the role of judges and lawyers and of their professional ethics and social responsibilities. International and national professional organizations should sponsor these programmes which should also be organized on a bilateral and multilateral basis.

395. National, regional and international seminars and exchange programmes for lawyers, judges, draftsmen, law officers and members and staff of law reform commissions on a sustained basis with a composite approach inclusive of the twin objectives of the technical assistance plan proposed by the Special Rapporteur would be highly beneficial in a variety of ways. The Special Rapporteur suggests a Five-Year Integrated Plan for the Development of Legal Institutions and Promotion of Human Rights as a part of development process.

396. The Special Rapporteur is of the view that non-governmental organizations can make the most fundamental and far-reaching contribution in collecting, analysing, interpreting and evaluating information from different countries in terms of institutional and operational developments and in bringing them to the attention of the international community. Documents prepared and submitted by non-governmental organizations provide a valuable basis for a clinical understanding of the maladies of human rights violations. They are imbued with a concern for human rights; they have a certain expertise and continuity in the field of their special interest. They have an opportunity to explain and advocate their point of view. Many of them have had a special interest in the working of judicial and legal institutions and in the protection and defence of personal liberty. Some of them are essentially lawyers' organizations. Between them they represent all the major geographical regions and ideological shades as well as a wide range of human rights concerns. One of them, the International Commission of Jurists has created the Centre for the Independence of Judges and Lawyers. These different non-governmental organizations in consultative status can play an important role in disseminating an awareness of the basic principles of the independence of justice, throughout the world, by establishing or encouraging their affiliates in different countries to take up the cause of the independence of judges, jurors, assessors and lawyers, as a part of the human rights movement. Many more national and international non-governmental organizations specially interested in the independence of justice should come forward for consultative status. These non-governmental organizations should prepare country studies and investigative reports in respect of events and occurrences in different legal systems.

397. There is need for a representative world organization specially wedded to the cause of independence of justice. Such an organization would have a special role in promoting and protecting the independence of judges, jurors, assessors and lawyers and in creating world-wide solidarity and may not only provide a clearing house of information and a specialized institute of education and research on the subject of independence of justice but also a rallying point for the principle of independence of justice as a fighting faith.