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THE INDEPENDENCE AND IMPARTIALITY OF THE JUDICIARY, JURORS AND ASSESSORS AND THE INDEPENDENCE OF LAWYERS

Report on the independence of the judiciary and the protection of practising lawyers, prepared by Mr. Louis Joinet pursuant to resolution 1990/23 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities

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INTRODUCTION

1. By its resolution 1990/23 of 30 August 1990 the Sub-Commission on Prevention of Discrimination and Protection of Minorities decided inter alia "to entrust Mr. Joinet with the preparation of a report:

(a) To make a system-wide analysis of the advisory service and technical assistance programmes of the United Nations as regards the independence of the judiciary and the protection of practising lawyers, propose means by which the cooperation between the programmes could be enhanced, and set forth guidelines and criteria to be taken into account in the provision of these services;

(b) To bring to the attention of the Sub-Commission information on legislative or judicial measures or other practices which have served to strengthen or to undermine the independence of the judiciary and the protection of practising lawyers in accordance with United Nations standards" (para. 4).

Origins of the report

2. In 1989, at its forty-first session, the Sub-Commission, by its resolution 1989/22, invited Mr. Louis Joinet to prepare a working paper on means by which the Sub-Commission could assist in ensuring respect for the independence of the judiciary and the protection of practising lawyers, as requested by the Commission on Human Rights in its resolution 1989/32 of 6 March 1989.

3. This report is based on the working paper presented to the Sub-Commission at its forty-second session. 1/ The General Assembly, in its resolution 45/166 of 18 December 1990 on human rights in the administration of justice, welcomed the Sub-Commission's decision to entrust Mr. Joinet with the preparation of this report. The Commission on Human Rights at its forty-seventh session, in resolution 1991/39 of 5 March 1991, endorsed "the decision of the Sub-Commission to entrust Mr. Joinet with the preparation of that report" (para. 3).

Aims of the report

4. The aims of this report were explained in the working paper mentioned above. The objective is on the one hand to set up means for the international monitoring of favourable practices (the "constitution, legislative and practical protection" implemented by many States) and of adverse practices ("violations of international norms") affecting the independence of the judiciary and the protection of lawyers, 2/ and on the other to improve international "promotion activities [i.e. activities promoting such safeguards] such as training courses, seminars and other forms of education". 3/

5. In its resolutions 1989/32 and 1990/33 the Commission on Human Rights suggested that competence should be shared as follows: standard-setting and the submission of periodic reports by States should be left to the Crime

Prevention and Criminal Justice Branch of the United Nations Office at Vienna and associated bodies, and the Sub-Commission should focus its efforts on monitoring. 4/

6. This dual approach seems to us particularly sound inasmuch as the standard-setting activities of the Crime Prevention and Criminal Justice Branch have increased considerably in recent years. 5/ Moreover, with the adoption by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders of the Basic Principles on the Role of Lawyers and the Guidelines on the Role of Prosecutors, 6/ the periodic reporting procedures incumbent upon the Crime Prevention and Criminal Justice Branch have proliferated. 7/ In this connection it has been emphasized that the system of periodic reports "must, by its nature, be limited to collecting reports provided by those States which respond, as well as reports provided by other sources. It cannot exercise a true monitoring function, nor can it bring to the attention of the international community cases in which legislative or practical measures have served to strengthen the independence of the judiciary (and the protection of practising lawyers) or, on the contrary, measures or situations which constitute extreme violations of these principles". 8/

Interpretation and field of application of the terms of reference

7. The analysis of advisory service and technical assistance programmes as regards the independence of the judiciary and the protection of lawyers will cover the entire United Nations system.

8. In addition to this analysis, the terms of reference include a formal aspect, relating to the enhancement of "cooperation" within the system, and a practical aspect, that of setting forth guidelines and criteria for the provision of these services.

9. Those terms of reference which require that information on measures or practices should be brought to the attention of the Sub-Commission call for clarification as follows:

10. First of all, the expression "To bring to the attention of the Sub-Commission information* on ..." implies an essentially informative approach. It seems to be that the word "information", or "cases", should cover the following:

Information on individuals ("case-by-case");

Cases of countries;

Cases by type of measures or practices, i.e. cases by topic.

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* Translator's note. Where Sub-Commission resolution 1990/23, para. 4, subpara. (b), refers in English to "information", the French text speaks of "cases".

11. The expression "legislative or judicial measures or other practices", which is non-limitative, characterizes the variety of the information to be provided. It implies a fortiori that all available sources of information should be used. It should be noted in this connection that the Sub-Commission has requested the Secretary-General to seek information from the "traditional" correspondents - States and intergovernmental and non-governmental organizations - but also from professional associations of judges and lawyers. 9/

12. The expression "measures or practices which have served to strengthen or weaken ..." covers a priori those whose aim is to strengthen or weaken.

13. Moreover it should be pointed out that the criteria adopted by the Sub-Commission to characterize measures and practices as "strengthening" or "weakening" the independence of the judiciary and the protection of lawyers are those laid down in "United Nations standards".

14. Lastly we have taken the view that, inasmuch as the terms of reference aim at bringing information on both favourable and adverse cases to the Sub-Commission's attention, this implies the adoption of an adversary method, allowing States to make their observations on or corrections to the information received.

15. The concepts of "the independence of the judiciary" and "the protection of practising lawyers" were the subject of a study entitled "Study on the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers", by our distinguished former colleague Mr. L.M. Singhvi. 10/ It will be recalled that, on the basis of a systematic analysis of national normative provisions, Mr. Singhvi identified the most frequently recorded characteristics of the independence of the judiciary and the protection of lawyers. Most of them are now condified in a number of United Nations instruments (see below). In addition reference may be made to the decisions of the Human Rights Committee, 11/ and above all to the decisions of the European Court of Human Rights. 12/

An inventory of "United Nations standards"

16. Under paragraph 4 (b) of Sub-Commission resolution 1990/23, favourable or adverse practices affecting the independence of the judiciary and the protection of lawyers are to be examined and evaluated in the light of "United Nations standards".

17. A large number of United Nations instruments state the general principle of the right to a fair trial, and in particular the right to be heard by an independent and impartial tribunal and to be defended by a lawyer; they do so in terms close to those of the Universal Declaration of Human Rights (arts. 7, 8, 10 and 11) and the International Covenant on Civil and Political Rights (arts. 2, 14 and 26). 13/ However, the United Nations now has several instruments that establish a specific regime guaranteeing the independence of the judiciary and the protection of lawyers. These are the Basic Principles on the Independence of the Judiciary. 14/ together with the Guidelines on the Role of Prosecutors and the Basic Principles on the Role of Lawyers adopted by the Eighth United Nations Congress on the Prevention of Crime and the

Treatment of Offenders and confirmed by the General Assembly at its forty-fifth session. 15/ In addition, in its resolution 1989/32, the Commission on Human Rights invited Governments to "take into account", in implementing the "Judiciary Principles", the principles set forth in the draft Declaration on the Independence and Impartiality of the Judiciary, Jurors and Assessors and the Independence of Lawyers prepared by Mr. L.M. Singhvi in the course of his study. 16/ 17/

18. We shall not revert to the contents of the rules laid down in the "Judiciary Principles", 18/ which are supplemented by the draft Declaration, except to stress that they cover both the personal 19/ or collective 20/ aspects of the independence of the judiciary and its functional 21/ or institutional 22/ independence.

19. Similarly the "Prosecutor Principles" guarantee the personal, collective, functional and institutional independence of prosecutors. 23/ There are 24 principles, concerning the qualifications, selection and training, status and conditions of service, freedom of expression and association, role in criminal proceedings, discretionary functions, alternatives to prosecution, cooperation with other government agencies or institutions, and disciplinary proceedings. It should be noted in particular that the personal independence of prosecutors is guaranteed by the duty of States to ensure that prosecutors are able to perform their functions without hindrance, and, if necessary, to provide physical protection for them and their families when their safety is threatened. 24/ Another fundamental guarantee of the independence of prosecutors is the principle that they should "give due attention" to the prosecution of crimes committed by public officials, in particular where violations of human rights are involved. 25/ The duty not to use evidence obtained through violations of human rights, indeed not to use them against anyone other than those who used such methods, is another guarantee of particular interest to us. 26/

20. The text adopted for the "Lawyer Principles" follows the main lines of the draft principles described in our previous study. 27/ It should be emphasized that certain guarantees traditionally provided for individuals in criminal proceedings (the right of everyone to be informed immediately of his right to be assisted by a lawyer, be visited by and to communicate and consult with him without delay, and so on) are laid down in the Principles as so many guarantees of the lawyer's free performance of his functions. They should be supplemented by the right of every detained person to challenge the lawfulness of his detention, for example through recourse to habeas corpus or amparo, as recently affirmed in the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. 28/ In the spirit of the "Lawyer Principles", this right should be construed as an essential guarantee of the protection of lawyers. In addition, with regard to the protection of lawyers during a state of emergency, it should be stressed that principle 14 of the "Lawyer Principles" requires that lawyers shall at all times 29/ act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession". This provision, which is based on the same reasoning as that applied by the Inter-American Court of Human Rights in connection with habeas corpus, 30/ should prompt the Sub-Commission to consider the indefensible nature of the rights of the defence as a means of guaranteeing respect for other indefensible rights.

21. We stated in our working paper that the "Judiciary Principles" "represent the first intergovernmental standards spelling out the minimum standards of judicial independence and are the acknowledged yardstick by which the international community measures that independence". 31/ Without prejudice to the controversial question of the degree of independence of prosecutors, there is no doubt that this comment applies equally to the "Prosecutor Principles" and the "Lawyer Principles". The rules laid down by these instruments are based on conventional international standards: the right to be heard and tried by an independent and impartial tribunal and the right to be assisted by a lawyer or, more generally, the right to a fair trial, for which those standards constitute the regime of application. At the least, this regime reflects the common spirit of national normative provisions on the subject and very often merely repeats specific provisions of municipal law; Mr. L.M. Singhvi made this eminently clear in his study. 32/ We are thus justified in concluding that the rules laid down in these three instruments form general principles of international law within the meaning of Article 38, paragraph 1, subparagraph (c), of the Statute of the International Court of Justice.

22. The "Judiciary Principles", the "Prosecutor Principles" and the "Lawyer Principles" lay down the United Nations standards concerning the independence of the judiciary and the protection of lawyers. Consequently we shall refer primarily to these instruments and supplement them with other relevant standards. In this connection, let us mention at the outset the general standards that are essential in the context of this report: the right to physical integrity, in particular the right to life, and the right to liberty and security of the person, which constitute - to say the least - the first prerequisites for the independence of the judiciary and the protection of lawyers.

Method

23. Our analysis for Part Two was based on documents from various sources containing concordant information.

24. In this connection we have referred primarily to the replies to the Secretary-General's note verbale which have been transmitted by Governments, NGOs and professional organizations as follows:

(a) States: Austria, Belgium, Brunei Darussalam, Bulgaria, Canada, Colombia, Cuba, Finland, Mauritius, Monaco, Norway, Pakistan, Philippines, Turkey, Tuvalu, Western Samoa, Yugoslavia;

(b) Intergovernmental organizations

(i) United Nations bodies, departments, institutes, specialized and other agencies:

United Nations Department of International Economic and Social Affairs, Office of Legal Affairs, Office of the Director-General for Development and International Economic Cooperation, Department of Public Information, Crime Prevention and Criminal Justice Branch and Office for Special Political Affairs, FAO, IAEA, IBRD, ILO, International Court of Justice, UNAFEI, UNDP, UNESCO, WHO, WIPO and WMO;

(ii) Other organizations and bodies: ASEAN, European Parliament, Inter-American Commission on Human Rights, Inter-American Court of Human Rights, INTERPOL;

(c) Non-governmental organizations: International Commission of Jurists; International Federation of Human Rights; International Sociological Association; Isle of Man Lawyers Committee for Human Rights; Regional Council of Human Rights in Asia; Service, Justice and Peace in Latin America;

(d) Professional associations of judges and lawyers: Canadian Bar Association, Czech Bar Association, General Council of the Bar, International Association of Lawyers, International Union of Lawyers, Japan Federation of Bar Associations, National Lawyers Order of Belgium, Philippines Bar Association.

25. We have also made a systematic examination of United Nations documents on the subject, in particular the reports of the Sub-Commission and the Commission, the periodic reports of States parties to the Human Rights Committee and the summary records of the sessions of these bodies. In addition we have conducted traditional research by consulting several libraries and data banks and following the press as closely as possible. Lastly, we have attended several symposia.

26. In short, the quantity of information collected far exceeds the scope for its use in this report, which is already a long one owing to the two very different tasks entrusted to us.

27. Out of concern to uphold the principle of audiatur et altera pars, 33/ we have communicated the information received from non-governmental sources to the States concerned.

PART ONE: ADVISORY SERVICES AND TECHNICAL ASSISTANCE PROGRAMMES AS REGARDS THE INDEPENDENCE OF THE JUDICIARY AND THE PROTECTION OF LAWYERS

28. In the course of our investigations we have found that United Nations departments, specialized and other agencies and institutes undertake, in accordance with their respective terms of reference, a substantial number of promotional and training activities which concern the independence of the judiciary and the protection of lawyers. These activities include seminars, training courses, workshops, technical assistance and cooperation, fellowships and internships. Among the organizers of the activities are the Centre for Human Rights (Geneva); the Crime Prevention and Criminal Justice Branch of the United Nations Centre for Social Development and Humanitarian Affairs (Vienna); and the United Nations crime prevention institutes, chiefly the United Nations Interregional Crime and Justice Research Institute (UNICRI) in Rome (Italy); the Latin American Institute for the Prevention of Crime and the Treatment of Offenders (ILANUD) in San José (Costa Rica); and the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) in Tokyo (Japan).

29. In addition UNHCR and WIPO organize in their respective fields seminars and training courses which are regularly attended by judges, prosecutors and lawyers. Lastly, the Department of Technical Cooperation for Development, which manages the ordinary technical cooperation programme of the United Nations, 34/ and UNDP participate in technical cooperation projects directly or indirectly relating to the subject.

30. After establishing these facts, we thought it would be useful to analyse the programmes undertaken first in the field of human rights (section I) and then in other fields (section II), identifying appropriate criteria of evaluation for each type of activity concerning our subject. As the study proceeds we shall examine cooperation within the United Nations system on advisory services and technical assistance.

I. ADVISORY SERVICES AND TECHNICAL ASSISTANCE IN THE FIELD OF HUMAN RIGHTS

31. The United Nations advisory service and technical assistance programme in the field of human rights is based on General Assembly resolution 926 (X), adopted on 14 December 1955, which provides that the entire programme shall be known as "advisory services in the field of human rights" and authorizes the Secretary-General to make provision at the request of Governments, and with the cooperation of the specialized agencies where appropriate, for the following assistance: seminars, advisory services of experts, fellowships and scholarships; in 1967 and 1986 regional and national training courses were added to the programme. Implementation priorities are identified by the Commission on Human Rights in its annual resolutions and by the Secretary-General, both in his general policy reports on human rights (e.g. medium-term plans of activities) and in his reports to the Commission.

32. However, the procedures for implementing the programme do not appear to have been exhaustively defined for each of its components, although the Secretary-General has since 1990 been endeavouring to rationalize technical assistance.

33. There is no programme specifically devoted to the independence of the judiciary and the protection of lawyers. On the other hand, especially since 1988, the advisory services programme on the administration of justice has very frequently taken up this subject, both during seminars, workshops and training courses and in the context of the advisory services and technical assistance rendered to certain States by the Commission on Human Rights and the Centre for Human Rights, the management of fellowships and the organization of internships at the Centre. 35/

34. Given the absence - as matters stand now - of reports specific to each of the activities, we shall refer to the Secretary-General's annual reports on advisory services and technical assistance to the Commission on Human Rights, as supplemented by the Centre's internal files.

A. "Training courses", "workshops" and "seminars"

35. In order to analyse activities of this type, the objective of the seminar, the choice of participants and speakers, content and follow-up (report, evaluation) and cooperation between units of the United Nations system should, in our opinion, be the chief criteria.

1. In 1988

36. A national training course on the application of international standards was held at Lomé (Togo) from 8 to 15 April. The participants included four magistrates and eight lawyers. The course covered eight different topics, including human rights in the administration of justice, from the standpoint of the functioning of criminal justice. In the absence of a report on the training course, 36/ reference will be made to the evaluation by the Togolese National Commission on Human Rights (CNDH), to the effect that:

> "The training course provided an opportunity for members of the CNDH, magistrates, lawyers, senior Gendarmerie and police officers, and officials from the Ministry of Foreign Affairs to familiarize themselves with the various United Nations bodies dealing with human rights and their implementation." 37/

37. A second national training course on the administration of justice was held at Tunis (Tunisia) from 26 September to 1 October. It was attended by 51 participants, including 12 judges, together with 14 lawyers representing either NGOs or bar associations. The following were among the topics discussed: due process and the administration of justice; independence of judges and lawyers; and protection of persons detained or imprisoned. The objectives of the seminar were, in particular, "to promote better understanding of the international system" for the protection of human rights,

and "to emphasize the need to strengthen national infrastructures designed to promote and protect human rights and fundamental freedoms". In the absence of a more detailed report on this course, 38/ we are unable to evaluate its results.

38. A third training course, on the administration of justice in the countries of Eastern Europe, was held in Moscow (USSR) from 21 to 25 November. The participants included Governments - which were represented by eight judges among others - and professors of international law; the lecturers were Soviet officials, international civil servants, and members of the Sub-Commission and the Human Rights Committee. The first day of the course was devoted to an outline of the United Nations functions of legislation, implementation and information in the field of human rights; the second was taken up with statements on the protection of human rights during police investigations and before the examining judge, the rights of persons detained or imprisoned, and human rights in court, on appeal and in non-institutional treatment of offenders. The publication by the United Nations of a report on this course 39/ is welcomed, notwithstanding the scanty nature of its contents. The course's objectives which were expressed in very general terms, may have been attained (they were to "familiarize participants with the international standards" and "with the experience of United Nations experts" 40/), but in the absence of any follow-up and evaluation of the course we are unable to provide more details.

39. The Centre, in cooperation with the International Institute of Humanitarian Law, organized a fourth training course for Central American countries at San Remo (Italy) from 12 to 16 December. The participants were "officials from six countries". In addition to the international system for the protection and promotion of human rights, the question of "the basic requirements for the administration of justice, including the role of the police," was discussed. 41/

40. A national workshop on Human Rights and the Administration of Justice was held at Manila (Philippines) from 5 to 7 December. This "workshop" was attended by over 200 persons, including some 50 judges and lawyers, 30 or so representatives of NGOs, and 60 military and police officials. The extent to which the National Commission on Human Rights and the Government were involved in preparations for the workshop testifies to the importance which the authorities attached to it. In this connection, the joint participation of those chiefly responsible for the administration of justice and law enforcement - judges, lawyers, NGOs, the army and the police - was of particular note. In the context of the times, such an event was undoubtedly more in the nature of a national symposium than a workshop. In addition, despite the general nature of the information provided in the Secretary-General's report to the Commission on Human Rights concerning the objectives 42/ and content 43/ of the workshop, it is evident from the working papers at the disposal of the Centre that the discussions were very fruitful and gave rise to commitments on the part of all the sectors represented. Among the subjects discussed were the need to alert the judiciary to the importance of dealing promptly with cases of human rights violation, and of protecting lawyers when their physical safety is threatened. Commitments were made on these points by the authorities concerned, and the establishment of guiding principles for the protection of human rights lawyers was proposed.

The working method was interesting in that members of the armed forces came together with lawyers in three working groups; they identified problems and possible solutions relating to visits to detainees and prisoners, the conduct of inquiries, and procedures for arrest and detention - all particularly relevant topics in the national context. This makes it even more regrettable that there was no report on the workshop and no evaluation or follow-up of the "programme of action and assistance" which the workshop adopted. Furthermore, the Centre and the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) could usefully have organized this workshop in a coordinated manner, if not jointly, since both institutions held a seminar on the subject on the same dates (see below).

41. From 5 to 9 December the Centre for Human Rights organized in Geneva an international seminar on the teaching of human rights. One of the three topics discussed was the teaching of human rights through training of law enforcement personnel, lawyers and judges. According to the scanty information at our disposal, 44/ "Over 70 participants representing 38 States, 4 specialized agencies and other United Nations bodies, the Council of Europe and 15 non-governmental organizations took part in the Seminar."

2. In 1989

42. The Centre held a national training course on the application of international standards at Conakry (Guinea) from 17 to 22 April. The topics included human rights and the administration of justice, and the rights of detained or imprisoned persons. Among the 60 participants were "officers in charge of the administration of justice". 45/ This is all the information we have on this course.

43. A human rights workshop for the Andean countries was organized by the Centre jointly with, in particular, the Ecuadorian Human Rights Institute and the Ecuadorian League of Human Rights at Quito (Ecuador) from 8 to 12 May. It was attended by representatives of the Inter-American Institute of Human Rights, the International Commission of Jurists and the Andean Commission of Jurists, and by a number of judges. The independence of the judiciary was the subject of one of three lectures. Working groups on "international standards", "human rights and the police", and "the teaching of human rights" - topics chosen "for their potential usefulness for Governments of the Andean Pact in their integration policies" 46/ - made a number of interesting recommendations, including: the institution of a rapid and effective judicial procedure in both ordinary and special courts in the event of violations of human rights; the grant to the judicial authorities of powers of control over the executive in a state of emergency; and the conducting of an intensive training campaign, in particular for judges and lawyers, in order to give effect to the recommendations made. Unfortunately these recommendations do not seem to have been made public. In the absence of a follow-up procedure, we are unable to assess whether the recommendations have been applied.

44. From 31 July to 4 August the Centre held at Manila (Philippines) a national workshop on human rights for peace and development. The workshop was attended by "300 middle-level representatives of agencies and institutions of the Philippines"; 47/ including 30 lawyers, half of them engaged in legal aid work, 10 prosecutors, 15 judges and a score of members of the armed forces.

The workshop, like that just described, was divided into working groups. Group III, on human rights and the justice system, discussed the following topics: "gaining a common perspective of the justice system"; "identifying and discussing substantive and procedural issues relating to human rights"; "from arrest to filing of complaints with the fiscal's/prosecutor's office"; "from preliminary investigation to the filing of information"; and "from trial proper to promulgation of decision". The working group submitted a draft resolution on substantive and procedural issues relating to human rights, in particular the access of persons arrested to the services of a lawyer or to legal aid. The workshop's general conclusions related in particular to the role of the courts and the judicial system in the promotion of human rights. 48/ According to our information, the results of the workshop held in 1988, and in particular the commitments to which it gave rise, were not taken into account in the preparation of the 1989 workshop. We are unable to say what became of the workshop's conclusions and recommendations.

3. In 1990

45. From 9 to 13 July the Centre held at Montevideo, Uruguay, a national training course on the implementation of international instruments and the administration of justice. The objectives of the training course - here again, stated in very general terms - were to make the officials concerned aware of the terms and conditions for application of human rights instruments and of the obligations deriving therefrom. The participants included 16 judges and some 60 police and army officers but no lawyers or NGOs. The speakers were judges, members of international and regional bodies for the protection of human rights, a member of the permanent staff of the International Commission of Jurists, and officials of the Centre for Human Rights, the United Nations Crime Prevention and Criminal Justice Branch and WHO. The topics discussed included the responsibility of judges in applying international human rights instruments at the national level, the duties of a judge while a sentence is being served, and the rights of the convicted offender. 49/ The recommendations adopted, but not published, deal with the setting up of an information and evaluation unit to assist the courts; closer cooperation between, in particular, the judges, the Public Prosecutor's Department and the lawyers; and better treatment for detainees. Here again, we have no report on this training course. After the course, the Government reportedly proposed to the Centre a technical assistance project covering, in particular, expert services and the organization of training courses.

B. Advisory services rendered to certain States by the Commission on Human Rights

46. The expression "advisory services of experts in the field of human rights" has never been properly defined. However, the meaning is clear from the objective of such activities, from perusal of the Commission's resolutions and from the experts' interpretation of their respective terms of reference: the purpose is to recommend to Governments policies and measures that they might adopt for the protection and promotion of human rights and to make recommendations to the competent United Nations bodies on the desirability of and procedures for rendering advisory services and technical assistance. These recommendations are based on an evaluation of the human rights situation in the country, whether such an evaluation has been expressly requested by the

Commission or the need for it has been inferred by the expert himself from his terms of reference. These three elements - (1) evaluation; (2) recommendations to the Government; (3) recommendations to the Commission - will be the main criteria we shall apply in examining the Commission's advisory services.

47. It will be recalled that the question of the desirability of rendering advisory services and technical assistance to Guatemala, for example, was the subject of lively debate because of the persistence, and indeed aggravation, of massive violations of human rights in that country. The alternatives for possible action by the Commission - the monitoring procedure and/or the grant of assistance - have varied, depending in particular on whether the violations were, as some maintained, committed by the Government or, as others claimed, by the military and paramilitary groups alone. 50/

48. Three States have received advisory services from the Commission on Human Rights since 1988: 51/ Guatemala, Haiti and Equatorial Guinea. While the independence of the judiciary has received the experts' attention, the protection of practising lawyers has never been directly addressed.

1. Guatemala

49. In 1989 the Expert on Guatemala, after appraising the situation of the judiciary and finding that it was powerless, nevertheless proposed that advisory services and technical assistance to judges should be continued, in particular through training courses. In this first report he confined himself to making general recommendations. 52/

50. In 1990 the Expert observed, firstly, that "the judicial apparatus is not functioning properly", secondly that "the Government has not done everything it could have done to control the serious human rights violations", and lastly that the army has impulses towards independence. He nevertheless maintained his proposal that the Commission should be recommended to continue rendering advisory services and technical assistance on the grounds that they "seek to encourage a human rights culture, non-existent in Guatemala, and to change attitudes". In that connection he advocated the holding of training courses and seminars for judges. Again this year he made only general recommendations to the Government on other matters. 53/

51. In 1991 the newly appointed Expert closely scrutinized the operation of the judicial system, in particular in dealing with cases of involuntary disappearance and summary execution; he drew on the studies made by the Commission's special rapporteurs and the excellent work done in connection with technical assistance in 1990, (see below). Noting the Government's lack of vigour in relation to "criminal violence", the "unsatisfactory, almost meaningless" action taken by the Public Prosecutor's office and the judiciary, and the persistent "independence" of the army, the Expert observed that, without continued international assistance, the "fundamentally new policy orientations" taken by the Government had little chance of success. Relatively specific recommendations were made to the Government regarding the administration of justice; on the other hand no indication was given as to the form that advisory services and technical assistance might take. 54/ If the

human rights situation in this country should deteriorate further, neither advisory services nor technical assistance could be resumed without a risk of impairing their quality. What is needed is a remedy, not an endorsement.

2. Haiti

52. In 1989 the Commission's Expert on Haiti painted a particularly gloomy picture of the administration of justice in that country. He concluded that the system of justice "did not play its role", that it was "ineffective", and that the necessary measures had been taken neither by the judiciary nor by the Government of the day, despite the Government's declarations of intent. He recommended to the Commission that a monitoring procedure should be instituted rather than the provision of advisory services to Haiti, and he made no recommendations to the Government. However, he insisted that, should the Commission not follow his advice, priorities for the provision of technical assistance should include strengthening and improving the judiciary to enable it to fulfil its mission with complete independence. 55/

53. The Haitian experience led the Expert to propose that the Commission should begin an overall consideration of the goal of advisory services, in particular to determine:

> "whether minimum standards of respect for international norms should not be required in order for a country to benefit from United Nations advisory services". 56/

We shall return to this fundamental proposal.

54. The Expert's mandate was extended in a slightly amended form, and in 1990 he submitted to the Commission an assessment of the human rights situation and of the functioning of justice which was as sombre as that of the previous year. In particular he observed that:

> "The independence of the judiciary is still not assured and its powers remain limited, since it has been unable to clear up a single one of the many serious crimes which have been committed during recent years."

55. The Expert made the same recommendations to the Commission as in the previous year, but emphasized in 1990 what we consider a fundamental condition for the grant of advisory services: the consent and request of the national authorities. In this connection it is worthwhile to quote the Expert at some length:

> "The assertion in the 1989 report that the judiciary does not play its role in Haiti, either out of incompetence, or lack of will or independence, owing to its links with Duvalierism, or even out of corruption, remains valid. It is striking to note that the judges of the Court of Cassation, to whom the Expert proposed the organization of a seminar on human rights, could see absolutely no need for such a seminar, indicating that the Centre for Human Rights could not do anything for them. They were unconcerned ... by the fact that all the atrocities in recent years have gone unpunished, a circumstance which they largely explain by the failure of the victims or their families to come forward

with complaints. They regard themselves as independent of the Executive, and have absolutely no feeling of any kind of responsibility on the part of the judicial authorities. In such conditions, is it possible to go on offering advisory services to people who do not want them?" 57/

3. Equatorial Guinea

56. In the case of Equatorial Guinea there is a feeling that the advisory service programme is somewhat inadequate for lack, apparently, of a proper assessment of the human rights situation there and of the country's real ability to protect human rights.

57. For example in 1990 the consultation held by the Centre to assess the Government's implementation of the Plan of Action drawn up by the Secretary-General in the early 1980s 58/ revealed how far the authorities had fallen behind, in particular as regards the administration of justice. It is true that recommendations have been made to the Government with regard to the implementation of the Plan of Action and to the United Nations bodies concerned regarding the advisory services and technical assistance to be rendered. 59/ In our view, however, any such consultation should in future be supplemented by a study of the causes of the delay observed.

58. In his 1991 report and in his submission to the Commission, the Expert on Equatorial Guinea expressed regret at the lack of cooperation from the Government. He noted also "that since his first visit to Equatorial Guinea in 1979, representative democracy has still not been established in the country and that consequently there is no adequate institutional framework for the protection of human rights". 60/ Although these remarks are general and unsubstantiated, they nevertheless constitute an assessment, albeit a brief one, of the situation in Equatorial Guinea - an assessment that was sorely needed - and at the same time a finding that the advisory services rendered to Equatorial Guinea have missed their mark. The remarks should be read in conjunction with the view expressed by Amnesty International, among others, to the Commission that after 10 years the most fundamental human rights are still not respected in Equatorial Guinea, in particular the administration of justice. Consequently the Commission should give the Government better assistance in finding rapid and effective means of putting an end to violations. 61/

59. At its forty-seventh session, in 1991, the Commission requested the Secretary-General to extend and strengthen the mandate of the Expert by requesting him to study the human rights situation in that country. 62/ We propose that the Sub-Commission should support such a measure, which should serve as the starting-point and guideline for the implementation of any programme of advisory services.

C. Technical assistance rendered to certain States by the Centre for Human Rights

60. We suggest that the following criteria should be taken into account in assessing the assistance rendered: the request from the Government; the logistic and substantive ability of the Centre to carry out and evaluate the projects concerned; cooperation with other United Nations bodies involved in

the projects; and, where appropriate, the priorities assigned (explicitly or implicitly) by the Expert whom the Commission on Human Rights has appointed to render advisory services, by the special rapporteurs and by the treaty bodies. For want of adequate documentation, we shall restrict ourselves to setting out a few ideas derived from the accounts of activities presented to the Commission on Human Rights each year.

61. Since 1988 the Centre for Human Rights has been providing technical assistance particularly concerned with the independence of the judiciary and the protection of lawyers to Colombia, Guatemala, Equatorial Guinea, Paraguay and Romania.

1. Technical assistance to Colombia

62. The programme of "technical cooperation" with Colombia, lasting two years, began in 1988; it was run by the Centre for Human Rights in conjunction with UNDP. 63/ The objective of the project was to strengthen the national institutions and the relevant infrastuctures in Colombia responsible for protecting and promoting human rights. The programme included the following activities of relevance to this report:

(a) Provision of the advisory services of international experts to train judges for a newly established court to handle, in particular, extrajudicial executions;

(b) The grant of fellowships to enable judges to attend annual training courses at the International Centre for Social, Penal and Penitentiary Research and Studies at Messina, Italy;

(c) The organization of training activities, such as a national training course for officials responsible for the promotion and protection of human rights.

(a) Advisory services of experts

63. In 1988 an Expert (a former judge) was sent to assist the newly established body of judges. His work programme included numerous activities relating to the independence of the judiciary, including an evaluation of the system of criminal procedure, a study comparing Colombian legislation on extrajudicial executions with other legislation on the subject, and improvements in judges' working methods. The Expert spent more than a month in Colombia, met senior officials in the executive and judiciary, and gave lectures to some 100 judges and law enforcement officials at Bogotá, Medellín and Cali; his services were provided in cooperation with the Crime Prevention and Criminal Justice Branch. In 1989 the Colombian authorities took new steps in connection with the independence of the judiciary, while the Supreme Court handed down the important ruling that, even during a state of emergency, civilians should not be tried by military tribunals; according to the Secretary-General, most of these steps had been recommended to the authorities by the Expert. Unfortunately no specific report on the Expert's activities has been published.

64. In 1990 the Centre provided the Office of the Presidential Adviser for Human Rights with the services of an expert to assist the authorities with the procedures to follow in the event of forced or involuntary disappearances. Once again attention is drawn to the inadequacy of the information available on the services rendered.

(b) Fellowships

65. A fellowship was granted in 1988 to enable a judge to attend courses at the Messina Centre for Research and Studies, which that year were organized for the benefit of police forces; in 1989 four fellowships were granted for "judges and police officers" to attend those courses. It appears that in future such fellowships may be granted in a less empirical manner. We do not have enough information to draw any conclusions on this point.

(c) Training courses

66. The Centre collaborated in the organization by the United Nations Interregional Crime and Justice Research Institute (UNICRI) of a training course for Colombian judges on human rights and criminal procedure that was held at Castelgandolfo, Italy, from 11 to 22 September 1989. The selection of judges taking part, of whom there were 35; the purpose of the course (to train judges so that they could themselves train others); the selection of topics tackled, which were notable for their technical nature and relevance to Colombian problems (modern investigation and research techniques and instruments needed to analyse facts and evidence; terrorism and drug-related crime; comparative criminal procedure; and international machinery to protect human rights); and the training method adopted, emphasizing practice over theory (on-the-spot study of Italian procedure and presentations by many specialist members of the Italian judiciary), made this course a model of its type. Its success clearly owed much to the special competence of the Institute in criminal procedure and its skill in organizing acitivities of this kind. Furthermore the Colombian authorities' precise definition of what the judges needed made it possible to restrict the training to the most important problems encountered by the judiciary. Again, the course was subjected to detailed post facto evaluation by the Colombian authorities (who are to be congratulated on this), and by participants, as regards both substance and organization. Lastly, their evaluation and almost all the proceedings of the course were published. 64/

(d) Evaluation of the project by the United Nations

67. The implementation of the project was evaluated in 1990 by an independent consultant, who concluded in particular that the training programme for judges had been "one of the main successes of the project". 65/ We still wonder, even so, how much coordination there was between the different parts of the project relating to the independence of the judiciary, notably the advisory services for the new body of judges and the training course: were those who received the advisory services the same as those who attended the training course? Were the two activities mutually complementary in content? Furthermore we consider it essential that lawyers, who are vital factors in the independence of the judiciary and a major target of attacks made on that independence in Colombia, should henceforth be involved in such projects.

2. Technical assistance to Guatemala

68. Since 1988 the Centre for Human Rights has been engaged, in collaboration with UNDP among others, in a programme of technical assistance to Guatemala in order to "assist the Government in strengthening its infrastructure to protect and promote human rights". 66/

69. Among the activities provided for in the project, the following were of particular relevance to the independence of the judiciary and the protection of lawyers:

(a) the provision of advisory services on procedures in cases of disappearances;

(b) the organization of training activities.

(a) Advisory services of experts

70. In 1989 an Expert (the Professor of Penal Law at the University of Buenos Aires, Argentina) spent a month in Guatemala to assist the authorities, in cooperation with the Crime Prevention and Criminal Justice Branch, in handling and impartially investigating cases which had occurred under dubious circumstances. 67/ Among other activities, he held courses for judges.

71. In 1989 an Expert (Head of the Legal Department, Vicaría de la Solidaridad, Santiago, Chile) was appointed to evaluate the quality of the investigations conducted in Guatemala into enforced or involuntary disappearances. 68/

72. The Experts' conclusions with regard to the independence of the judiciary are well buttressed by evidence. 69/ Thus the Expert on disappearances concluded that there were "inadequate relations between the courts and police officials" that were due mainly to "shortcomings in the working methods of both the courts and the police" and to the inadequacy of the role played by the Public Prosecutor's Department, which "does nothing very much in the investigatory stages of the case", particularly as regards the initiation of criminal proceedings. The Expert on impartial procedures called into question the inquisitorial-type criminal procedure and, in particular, the merging of the functions of prosecutor with those of examining magistrate, which in the national context "are not appropriate to a State subject to the rule of law nor, indeed ... in keeping with the various human rights conventions". At the beginning of 1991 the Commission on Human Rights Expert on Guatemala affirmed on the same lines that:

> "...the action taken by the police, the Public Prosecutor's Office and the judiciary is clearly unsatisfactory, almost meaningless. There is an urgent need, on the basis of a determined resolve of the Government, to ... make the work of the Public Prosecutor more effective and streamline judicial proceedings in criminal cases by putting into force the new Code of Criminal Procedure" 70/ (whose adoption by Congress was pending in February 1991).

73. The publication of a very detailed report on activities 71/ is noteworthy, although it must be said that the services rendered were not adequately evaluated.

(b) Training courses

74. A first national training course was organized by the Centre in collaboration with ICRC from 14 to 18 November 1988. The purpose of the course was to familiarize instructors, principally from the army and the police but also from the bench, with international standards and machinery for the protection of human rights and with humanitarian law, in part by means of practical exercises. 72/ The 60 participants included seven judges and three representatives of NGOs. The course covered, in particular, impartial investigations in cases of death in suspicious circumstances and the protection of persons held in custody or imprisoned.

75. A second national training course was organized by the Centre in cooperation with ICRC from 23 to 27 October 1989 with the same participants, in order to assess the dissemination and teaching of human rights. We are not in possession of enough information to tell whether the second course provided an opportunity - as would have been desirable - to evaluate the results of the first.

76. Attention has been drawn to the inadequacy of coordination between the programmes affording expert services in the administration of justice (no less than six programmes of bilateral intergovernmental cooperation and international technical assistance were in progress in Guatemala at the same time in 1990, 73/ not to mention the activities of the many NGOs represented in the country).

3. Technical assistance to Equatorial Guinea

77. The main activity of the Centre in respect of Equatorial Guinea since 1982 has been to send consultants to the country 74/ in order to "assist the Government ... with the implementation of the Plan of Action" and determine how far the Plan has been implemented. 75/

78. In response to a very broad request from the Government in March 1990 for technical assistance to "review legislation, draw up the civil and criminal codes and train judges and magistrates", two experts - a judge and a lawyer - were sent to assist the Government in:

(a) "codifying the basic civil and criminal laws" and

(b) "[codifying] the procedural laws necessary for the operation of the courts". 76/

79. The experts were struck by the poor legal training of members of the judiciary. Their report was still not available in May 1991. The Centre further decided to provide 15 fellowships in 1991 for the training of judicial personnel.

4. Assistance to Paraguay

80. Since 1990 the Centre has been organizing a technical assistance programme in cooperation with UNDP, the aim being "to assist the Government in creating the necessary infrastructure for promoting and protecting human rights" following the events of February 1989. The main objective of this assistance is the establishment of a Human Rights Office. The functions of the Office, which will be attached to the Ministry of Justice and Labour, will include encouraging those responsible for the administration of justice to adopt "alternative procedures of control ... in order to assure the respect of the human rights of persons arrested, detained or imprisoned". 77/

81. Against this background a national seminar on the application of international human rights instruments and the administration of justice was organized by the Centre in cooperation with UNDP of Asunción from 18 to 20 July 1990. The 130 participants included many representatives of non-governmental organizations and trade unions but less than a dozen judges and no lawyers. The speakers - members of international bodies, national and international civil servants, notably from the Crime Prevention and Criminal Justice Branch, ILO and UNHCR - gave presentations on international and regional instruments for the protection of human rights, stressing - and this is noteworthy - the protection of vulnerable groups (women, children and refugees) and the roles of NGOs and the police. The last-mentioned presentations, together with that of the Interregional Adviser on Crime Prevention and Criminal Justice relating to human rights in the penitentiary system, were the only ones directly concerned with the admistration of justice. The seminar resulted in the publication of an interesting report including the proceedings and, in an annex, a large number of international agreements on human rights in the administration of justice. 78/

82. The Centre also provided the Government with the advisory services of an expert (a member of the Sub-Commission) for an in-depth training course (21 October - 2 November 1990) for 30 officials, including some judges, applying for posts in the Human Rights Office. The course dealt, "through very practical exercises", with international procedures and the functioning of a national human rights office. 79/

5. Assistance to Romania

83. In 1990 the Centre for Human Rights organized consultations in connection with the drafting of the new Constitution, first by receiving in Geneva the members of the Parliamentary Commission responsible for the drafting and then, in 1991, by providing the advisory services of experts 80/ who went to Romania. The consultations are concerned, among other subjects, with the independence of the judiciary and the protection of lawyers.

6. Assistance to the Mongolian authorities

84. A programme of cooperation with the Mongolian Government was put into effect in November 1990 to help the officials responsible to draft a new Constitution. In the absence of more detailed information it is not possible to say whether the independence of the judiciary and the protection of lawyers were taken into account during these consultations. 81/

D. Fellowship and internship programme

1. Fellowships

85. Every year the Secretary-General awards some 30 fellowships to candidates nominated by their Governments. 82/ The number of applications has greatly increased in recent years. 83/ The Secretary-General has given further information on the fellowship programme in his annual reports to the Commission since the restructuring of the fellowship programme in 1988, and more particularly since 1990.

86. Under the General Assembly resolutions, preference has to be given to candidates from developing countries and to women, in addition to the application of the usual geographical criterion. Furthermore the candidates selected have to be persons who are or will in the near future be performing functions directly concerned with human rights, particularly in the field of the administration of justice. They may for example be members of national commissions on human rights and authors of periodic reports to treaty bodies. In practice, most of the fellows are lawyers or members of the judiciary.

87. The Centre's selection from among the candidates nominated by Governments is made by the advisory group on advisory services and technical assistance. 84/ The fellowship-holders' motives and needs are apparently now being taken into account.

88. As to the content of the programme, the fellows spend two weeks at the Centre for Human Rights receiving briefings by staff of the Centre and the specialized agencies, attending several days' meetings of the Human Rights Committee and working groups of the Sub-Commission, and exchanging experience. They go to the International Institute of Human Rights at Strasbourg for three weeks' training in the American, African and European human rights protection systems.

89. It is important, for a better understanding of the international system, to combine theory and practice. It is questionable, however, whether it is worth attending a session of the Committee and of a working group for so short a time. This stage of the course would become quite pointless if it turned out that the fellows could attend the whole session as representatives of their Governments.

90. The practical arrangements for the fellows' stay are made by the Department of Technical Cooperation for Development on the basis of guidelines from the Centre. The Department manages 5,000 fellowships a year under the United Nations regular programme of technical cooperation. This is an excellent example of United Nations inter-agency cooperation, which could be developed further.

91. So far as the substance is concerned, the Centre proposes 21 subjects for fellows to choose among; eight of them are directly concerned with the administration of justice. 85/ In exceptional cases, the Centre also awards special fellowships adapted to the holder's needs. 86/

92. At the end of their stay, fellows are required to submit a comprehensive report. These reports sometimes contain interesting analyses, in particular on the question of the relationship between international law on human rights and the municipal law of the fellow's home State. These reports could be used by the Centre both as a means of assessment and as a source of information to the Commission on the results of the fellowship programme.

2. Internships

93. Every year the Centre for Human Rights awards internships, mostly to law students who are planning to take up a legal career. They are granted to "outstanding students" to enable them to "gain first-hand knowledge ... through active participation in the work of the Centre ... under the direct supervision of senior officials". 87/

94. Internships, unlike fellowships do not entail any expenditure by the United Nations. The intern thus has to finance himself, which amounts to a "selection" criterion in two ways: firstly, by excluding de facto many students from developing countries, who can hardly afford to support themselves in Geneva for several months (the fellowship programme remedies this situation to some extent); secondly, by requiring them in practice to be absolutely committed, because the internship will generally call for a great financial effort on their part.

95. Furthermore, the internship programme is conducted on an ad hoc basis: the interns have no status and hence no protection.

96. Despite these obstacles, lawyers of the younger generation have shown increased interest in the international system: the number of interns spending time at the Centre for Human Rights has tripled over the past three years, from about 30 in 1988 to 95 in 1990. 88/

97. In the circumstances the United Nations has a duty to make the experience as worthwhile as possible for its interns, and with that aim in view the Centre set about restructuring the internship programme in 1990. 89/

98. To achieve that end, it is essential that the staff of the Centre should select candidates with great care and take complete charge of them.

99. So far as selection is concerned, internships are open to "outstanding graduate students". In practice, although the selection has long been made on an empirical basis, in recent years the interns selected have generally been highly qualified.

100. Given the large number of interns and their qualifications, it would be desirable for the Centre to institutionalize a selection procedure based on its own needs, provided however that the staff responsible for the files take complete charge of the interns.

101. The present system of responsibility for the interns therefore needs to be further improved.

102. In this connection the limitations of the Centre's facilities should also be borne in mind as a selection criterion. Firstly, with 30 or so Professional staff, the Centre obviously does not have the resources to direct and train 90 interns a year. Secondly, from a purely physical standpoint, the Centre has not enough room to accommodate the interns properly.

103. The content of the internships should be determined according to their goal, which is to enable the interns to gain "first-hand knowledge". The aim should be, in fact, to match the Centre's requirements with interns' expectations and needs.

104. To that end, the interns' activities should be defined and agreed upon before they arrive at the Centre, which does not seem to be the general practice at present. The Centre could accordingly send candidates its table of organization and details of its activities, documentation on United Nations activities in the field of human rights and documents of more particular interest to the individual candidate.

105. In addition a procedure could be introduced for evaluation of the internship both by the intern himself and by the Professional staff member in charge of his internship. Lastly, there should also be a procedure for following up former interns.

II. ADVISORY SERVICES AND TECHNICAL ASSISTANCE RENDERED IN OTHER FIELDS

106. The aim of this section is twofold: firstly to identify the United Nations activities which relate to the independence of the judiciary and the protection of lawyers, and secondly to analyse the methods of work applied to advisory services and technical assistance.

A. Technical cooperation in the field of crime prevention

107. The essential aim of those responsible for "technical cooperation" is to enable developing countries to acquire the means to become self-reliant by developing their human resources. Technical cooperation in the field of crime prevention - which is designed in particular to assist Member States to reduce crime, achieve minimum standards in the administration of justice, etc. - is concerned in many respects with the independence of the judiciary and the protection of lawyers, as can be seen from an analysis of the activities of the Crime Prevention and Criminal Justice Branch, the Interregional Adviser and the United Nations Institutes. 90/

1. Activities of the Crime Prevention and Criminal Justice Branch

108. The branch is the central source, in the United Nations system, of specialized knowledge on crime prevention and criminal justice, criminal law reform and the major criminological problems.

109. Among its activities that are relevant to our subject, the Branch:

(a) acts as coordinator for international action decided on by United Nations bodies in this field;

(b) serves as a centre for the exchange of information among members of a worldwide network of institutes, research workers and professionals working in the criminal justice system;

(c) promotes technical cooperation activities requested by Governments, in particular by providing the advisory services of the Interregional Adviser (see below). We may mention for example the projects on criminal justice and drug abuse control executed jointly by the Branch, UNDP and the United Nations Fund for Drug Abuse Control (UNFDAC) with a view to training members of the judiciary and the police (Uganda), setting up special courts (Bolivia) or providing greater protection for judges and witnesses (Latin America). 91/

Mention may also be made of the following fields of activity:

(a) Status, selection and training of criminal justice personnel, including judges and prosecutors; functional analysis, organization and structure of judicial organs;

(b) Role of lawyers, and of court-appointed lawyers in particular;

(c) Reform of the criminal law; criminal procedure and the rights of the accused; the taking of evidence; arrest procedures and protection of human rights;

(d) Steps to make the judicial process more efficient and fairer;

(e) Easier access to justice for the poor, etc.

110. The recognition by the United Nations Congress of the important role played in development by crime prevention and criminal justice led it to introduce a novel procedure for the submission of Governments' requests for technical cooperation in crime prevention: the Congress suggested that Governments should include activities for improving the system of crime prevention and criminal justice in programmes being executed or to be executed for them by UNDP. This procedure is also important in practical terms, since in most cases the UNDP coordinators in charge of the projects plan their activities according to the priorities set by the State itself.

111. Most of the activities of the Crime Prevention and Criminal Justice Branch concerned with the independence of the judiciary and the protection of lawyers are carried out in collaboration with the Interregional Adviser and the United Nations Institutes.

2. Interregional advisory services

Terms of reference

112. The Interregional Adviser 92/ comes under the United Nations Department of Technical Cooperation for Development and acts in collaboration with the Crime Prevention and Criminal Justice Branch. His main task is to help countries to put the United Nations standards into practice and to introduce follow-up programmes to ensure that they continue to be applied. His functions, undertaken at Governments' request and with due regard for the

economic, social and cultural context, include formulating or guiding national policy, programming staff training plans and assisting the United Nations Institutes with their training courses.

Activities

113. The requests made by Governments to the Interregional Adviser and the advice he has given have related, so far as we are concerned, to such varied questions as the training of judges in the administration and management of the judicial system, the training of lawyers in the administration of criminal justice, access to the courts for the poorest members of society, the strengthening of the systems of judicial prosecution and enforcement of sentences, and the rights of persons detained or imprisoned.

114. Each time he has given advice, 93/ the Adviser has recommended to the Government policies and programmes to be followed in order to apply the United Nations standards, particularly the "Judiciary Principles" and more recently the Lawyer Principles, together with the various rules for the protection of persons subjected to any form of detention or imprisonment. The programmes consist of "traditional" activities, such as training courses and advisory services of experts.

115. The inseparability of economic development and social justice has led the Adviser to propose machinery to guarantee the independence of the judiciary under structural adjustment programmes supported by the United Nations. Giving reform of the law and the judicial system greater prominence in development activities supported by international organizations is regarded as a priority.

116. Between 1987 and 1990 the Adviser carried out more than 80 missions to Member States, regional institutes, United Nations regional commissions and some potential donor countries. Between April 1988 and April 1990 he visited more than 30 countries at their request and rendered advisory services to the following countries: Argentina, Brazil, China, Costa Rica, Cyprus, Egypt, Ethiopia, Haiti, Iraq, Jordan, Kuwait, Malawi, Mauritius, Paraguay, Saudi Arabia, Spain, Swaziland, Syrian Arab Republic, Thailand and Uganda.

117. The Secretary-General has confirmed the impact of these services, noting that many Governments have taken the legislative and political action recommended or have embarked on the technical cooperation activities they were advised to undertake.

3. Activities of the United Nations interregional and regional Institutes for the Prevention of Crime and the Treatment of Offenders

(a) United Nations Interregional Crime and Justice Research Institute (UNICRI)

118. It will be recalled that, among other activities connected with this subject, UNICRI has organized in conjunction with the Centre for Human Rights a training course for Colombian judges as part of a technical assistance project (see above).

119. In addition a training and information seminar on the administration of justice and democratic development in Italy and Latin America, which was held at Santo Domingo from 24 November to 8 December 1989, was principally organized by the Interregional Institute, the Latin American Institute (ILANUD) and the Association Internationale des Magistrats. A large number of judges took part.

120. Since 1988, the Institute has also participated in the first stage of an important project carried out by ILANUD on "trends and prospects in the development of juvenile courts in Latin America". The results should be published.

121. Furthermore UNICRI has recently extended coordination on drugs within the United Nations system by setting up a Scientific Committee in which WHO and the United Nations drug control programme are participating, and which met in February 1991. The Centre for Human Rights has also been invited to participate. This activity could prove relevant to the training of judges and prosecutors involved in the struggle against drug traffickers.

(b) United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI)

122. Under its regular training programme UNAFEI organized between 1985 and 1989 eight training courses and four international seminars attended by 220 participants from 60 countries and mainly concerned with the administration of justice, and a number of national seminars on crime prevention, in particular in China, Singapore and Sri Lanka.

123. In 1988 it also organized, in conjunction with the United Nations Economic and Social Commission for Asia and the Pacific, a seminar for national officials in the Philippines on the administration of criminal justice, which was attended by almost 200 participants including a score of Supreme Court judges and a number of lawyers and army officers. The subjects covered were concerned directly with the independence of the judiciary. At the outcome of the seminar, a report was published to which - a point worth emphasizing - the working papers submitted by participants were annexed. 94/

124. In conclusion it should be noted that the technical assistance activities of UNAFEI regularly give rise to special publications supplementing the six-monthly Institute Bulletin. 95/

(c) United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders (ILANUD)

125. ILANUD organizes, on average, five regional activities a year for judges. They are generally concerned with the administration of criminal justice, reforms in criminal procedure and modern methods of prosecution. In 1988 and 1989 ILANUD successfully conducted:

(a) a meeting of Chief Justices of Latin American and Caribbean Supreme Courts, held in Costa Rica;

(b) a regional course for prosecutors, in Peru;

(c) a study tour for 13 Latin American judges on the administration of criminal justice in the United States.

126. We took particular note of ILANUD's national activities. The Insitute has organized 34 national courses and seminars, attended by 1,830 judges and prosecutors at all levels, police superintendents, other law enforcement officials and university teachers of law. In 1988 and 1989 such activities were carried on in Latin America and Europe, the main subjects being: the role of the prosecution and of justices of the peace; criminal procedure; alternatives to pre-trial detention; law reform in general, and the reform of criminal law in particular.

127. ILANUD also carries out a large number of technical assistance projects, which are of interest to us by reason both of their content and of the methods employed.

128. In 1988 ILANUD prepared projects on the strengthening of criminal justice systems for Costa Rica, Guatemala and Honduras, and in 1990 for Ecuador. In 1988 and 1989 projects on the management of court records and criminal statistics were carried out by ILANUD, particularly for judges, in the Dominican Republic, Honduras, Costa Rica and Guatemala and, at the request of the Supreme Court, in Nicaragua. It is also making a study, in collaboration with UNICRI, on the reform of juvenile courts in Argentina, Colombia, Costa Rica, Guatemala, Uruguay and Venezuela.

129. The Sub-Commission's attention is drawn to the project entitled "Systems of criminal justice and human rights for development" 96/, which has been proceeding in Latin America since 1988. This project is of particular interest to us by reason of the method of execution: it is financed by UNDP, executed by ILANUD in collaboration with the Department of Technical Cooperation for Development, and followed up by the Crime Prevention and Criminal Justice Branch. Moreover the two programmes under the project were initially composed of pilot or demonstration activities, which were followed by evaluation of national policies.

130. Since late 1990 ILANUD has been engaged in preparing a major project to carry on from the results of earlier activities in providing "support for the criminal justice system in the context of State reform". It is planned to extend over three years and concerns the following countries: Argentina, Barbados, Bolivia, Colombia, Costa Rica, Cuba, Ecuador, El Salvador, Haiti, Mexico, Nicaragua, Panama, Paraguay, Peru and Venezuela. Based mainly on an evaluation of the independence of the judiciary in these countries in the context of their changing political and social situations, the project would involve in particular the judiciaries of the States concerned as prime agents in the development advocated by the Institute.

131. Lastly, mention should be made of the Institute's research activities proper, which give rise to publications essential for the training of judges and lawyers. 97/

B. Activities in other fields

132. According to the information received or collected by the Rapporteur, UNDP, UNHCR and WIPO are also organizing activities relating to the independence of the judiciary and the protection of lawyers.

133. In addition to the activities it carries on in common with other units of the United Nations system (see above), UNDP is conducting independently several technical cooperation programmes on the promotion of judicial reform and the improvement of procedures which, while not directly concerned with the independence of the judiciary, serve to strengthen it. The reply transmitted to us by UNDP gives several examples of this.

134. In Uruguay UNDP is helping the Government to rationalize the administration of justice. 98/ The project includes an assessment of the state of the administration of justice, assistance in civil law reform, and training activities for judges. In this connection seminars, workshops and training courses are held on modern methods of court management; criteria for the selection of judges; qualifications, methods of appointment and promotion, and conditions of service of judges, etc.

135. In Brazil, under the project for the modernization of the federal judicial system, 99/ UNDP is to identify the institutional and administrative obstacles to access to justice for the underprivileged, and to propose a remedial programme.

136. In Colombia the project "Jurisdictional and Administrative Decentralization of Criminal Justice" 100/ aims particularly at:

(a) improving the criminal information system for judges and lawyers;

(b) the development of legal aid, especially to prisoners;

(c) and, above all, the adoption of specific measures to ensure the physical safety of judges.

On this last point UNDP is providing logistic support for the Ministry of Justice in order to improve its ability to prevent and punish the murder of civilians in "zones of critical violence". The project covers such matters as the provision of vehicles for judges dealing with such cases. 101/

137. In 1989 and 1990 UNHCR organized several seminars and courses to train lawyers and judges in the application of international standards regarding the protection of refugees, especially in the industrialized countries. It is a welcome feature that NGOs are frequently associated with these activities. UNHCR also organizes evaluation and follow-up seminars on past activities, particularly in Asia. The Centre for Human Rights and UNHCR collaborated in 1990 in sponsoring a joint seminar in Chile. 102/

138. WIPO devotes particular attention to activities of cooperation with developing countries in order to enable their specialists, including judges and lawyers, to improve their knowledge of international protection of intellectual property. This cooperation takes the form of individual or collective training courses, consultations, and national or regional seminars organized in cooperation with the regional intergovernmental organizations and NGOs concerned. In 1989 for example, these activities covered both normative aspects and the conduct of proceedings concerning patents. With regard to method, the main point to note is that WIPO draws on the services of experienced legal specialists, that detailed reports are made on all activities, and that all working papers are published. 103/

PART TWO: INFORMATION FOR THE SUB-COMMISSION ON SOME CASES OF MEASURES AND PRACTICES THAT HAVE SERVED TO STRENGTHEN OR WEAKEN THE INDEPENDENCE OF THE JUDICIARY AND THE PROTECTION OF LAWYERS

I. CASES OF MEASURES AND PRACTICES AIMED AT STRENGTHENING THE SAFEGUARDS OF INDEPENDENCE AND PROTECTION

139. This section will deal mainly with measures and practices reported to us by Governments in their replies to the Secretary-General's note verbale.

A. Austria

140. In its reply the Government states that the independence of judges in the performance of their functions is guaranteed by article 87, paragraph 1, of the Federal Constitution. Hence they are not required to comply with instructions from any other source in the performance of their functions. In order to guarantee the independence of judges, cases are distributed in advance among the judges of a single court by decision of the chambers. Furthermore judges are irremovable up to the legal age of retirement. They cannot be suspended from their functions, dismissed, transferred or retired against their wishes except in the cases and by the procedures prescribed by law or by virtue of a peremptory court order. Furthermore the proceedings before the civil and criminal courts are oral and public, and the people is associated with the administration of justice in assize courts and criminal chambers.

141. The judges of ordinary law courts are appointed by the President of the Republic, acting on nominations by the Federal Government, or by the Minister of Justice acting on the authority of the President of the Republic.

142. Independent exercise of the profession of lawyer is assured by the Act on the Status of Lawyers, RGBI No. 96/1868. According to the Government, measures directed against lawyers, such as those mentioned in paragraphs 34-36 of the working paper, 104/ are unknown in Austria.

B. Belgium

143. In its reply the Government forwards to the Rapporteur the provisions of the Constitution and Judicial Code concerning the independence of judges and lawyers, together with draft Act No. 974-1 of 28 May 1990 to improve the conditions of recruitment and training of judges.

144. With regard to the bar, the Government is preparing amendments to some provisions of the Judicial Code relating to the calling of lawyers to the bar, their probation, and disciplinary proceedings applicable to lawyers of the Court of Cassation with a view to ensuring full respect for the rights of the defence in such proceedings.

C. Brunei Darussalam

145. In its reply the Government indicates that the Supreme Court Act lays down the conditions of appointment of judges, the duration and terms of their tenure, and their salaries.

D. Bulgaria

146. In its reply the Government states that some major changes have been made in the existing Constitution for the purpose of ensuring the independence of the judiciary pending the adoption of a new Constitution and a new Organization Act on the subject. The changes are as follows:

(a) Abolition of the leading role of the Communist Party and proclamation of a democratic and parliamentary State based on law;

(b) Explicit proclamation of the separation of powers and the principle of legality as the basis for State action;

(c) Establishment of the principle that the functions of judges and prosecutors are incompatible with the holding of leadership posts in the elective organs of political parties: article 14 of the new Act makes it unlawful for a judge or prosecutor to belong to a political party or to an organization, a movement or a coalition having political objectives. Judges already in office before the adoption of this supplementary provision were required to certify in writing within 30 days that they were not members of such organizations, or to leave them. Failure to do so would have resulted in their removal from office.

147. Under the existing Act on the organization of the courts, judges are elected by Parliament, which is at present drafting a new Constitution and a new Court Organization Act. The Parliamentary Constituent Commission has already examined the principles on which the independence of the judiciary should be based:

(a) Independence from the executive and the legislature;

(b) Irremovability of judges and prosecutors;

(c) Self-administration of the judicial system by a democratically established High Council of the Courts;

(d) Judges' and prosecutors' salaries and pensions to be fixed by law.

148. The Government states that the Parliamentary Constituent Commission is based on the Basic Principles on the Independence of the Judiciary. So far as incompatibility with membership of political organizations is concerned, however, it should be borne in mind that according to principle 8: "members of the judiciary are like other citizens entitled to freedom of ... association ... provided ... that ... judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary".

E. Canada

149. In its reply the Government states that the principle of independence of the judiciary is rooted in constitutional history. The 1867 Constitution recognizes the specific character of the concept in laying down the conditions of service and tenure of judges. The institutional independence of the

judiciary from the executive and the legislature is implicitly affirmed in the Canadian Charter of Rights and Freedoms, which forms part of the Constitution, and in the Canadian Declaration of Rights. Furthermore the law, the courts and the literature have long recognized and applied the concept.

150. The Supreme Court of Canada recently interpreted the principle of independence by specifying three essential conditions (or objective criteria) for the independence of a court: security of tenure for the judges, financial security, and institutional independence as regards the administrative aspects of performance of the judicial function. In the Court's view, financial security means that judges' salaries may not be changed except by being increased. Likewise the Government emphasizes that the complexity of the procedure for fixing the salaries of federal judges, which entails successive actions by an independent Commission, the Federal Ministry of Justice, Parliament and the Federal Commissioner for Judicial Affairs, is designed to safeguard independence from the executive.

151. The Government further states that the constitutional provisions relating to the tenure and the conditions of suspension, transfer or dismissal of judges safeguard their independence: they cannot be removed from office without their consent before retirement age, which is set at 75, save after an independent inquiry conducted by the highest judicial authorities and after approval by the Canadian Judicial Council and by Parliament. Furthermore judges enjoy civil immunity, as was recently reaffirmed by the Supreme Court of Canada.

152. Judges are appointed on merit by the Governor-General on the recommendation of the Cabinet. Appointments of federal judges are made only after prolonged consultations and assessment of the qualifications of candidates in each Province by an independent committee composed of judges, representatives of the Canadian Bar Association, the Law Society and the Provincial Government, and a person chosen by the Federal Minister of Justice to represent the interest of society. Candidates are required to satisfy conditions with regard to competence and experience. The Governments, both Federal and Provincial, are making every effort to ensure that the younger generation on the bench reflects the cultural and racial diversity of Canada and to increase the proportion of women judges.

153. As to promotion, the Basic Principles on the Independence of the Judiciary have been widely circulated to professional bodies and institutions, and judges can participate in information and training activities organized by those bodies. Furthermore a Canadian Judicial Centre was established in 1987 to provide judicial training services for federal and provincial judges.

154. In its reply to the Secretary-General's letter, the Canadian Bar Association transmitted to us some summary reports it has produced on "The independence of the judiciary in Canada", "The appointment of judges in Canada", and "The independence of federal administrative agencies and courts in Canada", which contain recommendations aimed at strengthening the independence of the judiciary.

F. Colombia

155. In its reply the Government sketches in broad outline the general rules governing the independence of the judiciary, which are based on the constitutional principles of separation of powers and their "harmonious collaboration in pursuit of the objectives of the State".

156. After observing that "the independence of judges has been undermined by intimidation, threats or the latent risk of reprisals on the part of criminal organizations which have economic influence and great capacity for action", the Government draws our attention to the special provisions made to ensure the physical safety of judges "called upon to examine and try acts or offences deemed to be violations of public order". Thus Decrees No. 2790 of 1990 and No. 0099 of 1991 are designed to maintain the anonymity of judges or magistrates in cases with which they are concerned. For example, the High Court of Public Order now allots cases within its purview to judges in accordance with a procedure laid down for the purpose in its rules of procedure. Likewise judgements handed down are signed, but are communicated in copies which bear no signature. Moreover the venue of a hearing may be changed if there are serious grounds for belief that the physical integrity of the judge is in danger. Furthermore the Special Rapporteur on Summary or Arbitrary Executions noted that the Government had set up, in August 1989, a fund to pay for effective protection of judges and members of their families. 105/ The Government makes no mention of this in its reply to the Secretary-General's note verbale. The Special Rapporteur also mentioned Decree No. 1855, issued in August 1989, which "is intended to meet the needs of the judiciary as far as facilities, the acquisition and supply of material, the provision of services and loans are concerned". 106/

157. It will be well to await the completion of the recently undertaken reform of the 1987 Constitution before attempting to appraise the new rules governing the status of judges. According to information received, the reform is likely to involve significant changes: the fourth commission of the Constituent Assembly, which is responsible for the administration of justice and the machinery of prosecution, is reported to have already adopted substantial amendments relating to criminal law and the organization of the courts, and to have proposed the establishment of a human rights department in the Department of Public Prosecutions.

158. The exercise of the profession of lawyer is governed, in particular, by Decree No. 196 of 1971 and Decrees Nos. 050 and 053 of 1987. They regulate the tasks of lawyers and of the legal profession, access to the profession, incompatibilities and the disciplinary code, provide for a public defence lawyer to render legal aid to the poorest, etc.

159. Precise details on safeguards for lawyers engaged in criminal cases are provided by the Government in the context of the Secretary-General's report on detention, submitted pursuant to Sub-Commission resolution 7 (XXVII). 107/ The paragraphs dealing with the right to be informed of the reasons or grounds for arrest or detention, the right to communicate with a lawyer, and the rights of the defence will be found useful.

G. Cuba

160. In its reply the Government states that the independence of the judiciary is guaranteed by the Constitution and the Acts of 1973 (amended in 1977) and 1991 on the organization of the judicial system.

161. Article 125 of the Constitution provides that "Judges, in their function of administering justice, are independent and owe obedience only to the law".

162. Judges, whether professional or not, are elected for five years by the competent assemblies of people's power: Supreme Court justices are elected by the National Assembly, provincial court judges by the provincial assemblies, and those of municipal courts by the municipal assemblies. Candidates for posts as professional judges, as distinct from candidates for lay posts, must first pass a competitive examination. Moreover, pursuant to the Constitution and the Organization Act in force, all courts render an account of their activities to the assembly that elected them, and judges may be recalled by the electing organ.

163. Lay judges have the same rights and duties as professional judges and participate in all cases, criminal and civil alike, at both the hearing and the sentencing stage. According to a constitutional principle, their participation is fully justified "in view of the social importance of their judicial functions"; the law therefore stipulates that the courts shall function in a collegiate form.

164. The law also lays down the "principle of legality", in particular by placing State agencies, other public bodies and all private natural and legal persons under a duty to abide by and carry out the judgements and other final decisions of the courts, whether they are directly affected by those decisions or, although having no direct interest in their application, are bound to enforce them.

165. The function of administering justice is vested in the people and is exercised on its behalf by the People's Supreme Court, the people's provincial courts, people's municipal courts and military courts.

166. The military courts have their own separate territorial and functional structure which reflects the chain of command in the armed forces, and are governed by their own criminal laws. They are, however, linked to the Supreme Court through the military affairs chamber of the People's Supreme Court.

167. The People's Supreme Court, through its Governing Council composed of judges and prosecutors (the Minister of Justice has only advisory status there), has the power to initiate legislation and regulations. It also draws up mandatory instructions aimed at standardizing court practice with regard to the interpretation and application of the law. The result is that, in accordance with article 122 of the Constitution, the courts enjoy complete functional independence of all other local bodies. This independence is confirmed by the fact that the administration of justice has its own budget.

168. With regard to lawyers, Decree Law No. 81 of 8 June 1984 governs the practice of the profession and the nationwide organization of law firms. The practice of the profession is unrestricted; lawyers are independent and subject only to the law. They enjoy all the legal rights and safeguards to plead the case entrusted to them, "contribute to the administration of justice by the maintaining and strengthening socialist legality" and contribute to the "social education" of the individuals they represent and of all citizens, and to respect for the social rights stated in the law.

H. Finland

169. In its reply the Government states that the independence of the judiciary is guaranteed by the Constitution. Judges enjoy a wide degree of autonomy with regard to the distribution of cases and the management of the courts in general. Judges cannot be removed; they can be transferred only with their consent or in the course of reorganization of the system.

170. Judges' salaries and conditions of employment are the subject of collective bargaining. The Government notes that this practice is not in keeping with the "Judiciary Principles", according to which these matters are to be "secured by law". At all events, an observation to this effect was made by the Parliamentary Ombudsman in the case of Möller v. Laineenkare (26 September 1989, DN:0 357/4/89), after which the Government undertook a reform aimed at having the salaries and working conditions of members of the Supreme Court and Supreme Administrative Court secured by law; this reform will enter into force in July 1991. The level of judges' salaries has recently fallen in comparison with the earnings of other legal professions, making the career less attractive. The judges' professional association is seriously concerned by this trend and has several times considered calling a strike.

171. The employment of "temporary judges" in some lower courts, in order to lighten the excessive workload, and the recourse to "auxiliary judges" as replacements have also been criticized by the Ombudsman, where these judges also serve as officers of justice, on the grounds that such double employment may be prejudicial to the image of a justice that claims to be independent.

172. Since November 1989 the regional administrative courts have been separated from the regional executive bodies; according to the Government, that separation ought to be taken further in terms of procedure, in view of the Government's traditional superiority over the individual in that sphere.

173. Lastly, in May 1990 the Government acceded to the European Convention on Human Rights, which has gained "quasi-constitutional" force since it was ratified by Parliament. Municipal law is currently being revised for consistency with the Convention, particularly article 6 thereof.

174. With regard to lawyers, mention is made of the importance of the Bar Association, which enjoys a status and protection unique in public law.

I. Mauritius

175. In its reply the Government of Mauritius informs us that the independence of the judiciary is one of the pillars of the national Constitution. Protection of lawyers is provided through the national Bar Association.

J. Monaco

176. In its reply the Government states that the system is based on the separation of administrative, legislative and judicial functions; the Monarch therefore refrains from interfering in the sphere of justice in any way, directly or indirectly, in accordance with article 88, paragraph 2, of the Constitution, which states the principle of the independence of the judiciary.

177. Act No. 783 of 15 July 1965 governs the organization, competence and functioning of the courts and the status of judges; under article 88, paragraph 3, of the Constitution, these are matters to be settled by law. Judges are irremovable. Disciplinary measures may be applied to them by the Director of Judicial Services and the Review Court in cases of grave professional misconduct. No decision is taken on that subject until the defendant judge has been heard in person or duly summoned.

178. Act No. 1047 of 28 July 1982 on the professions of defence lawyer and lawyer lays down the conditions for admission to the practice of those professions, the standards governing the Association of Defence Lawyers and Lawyers, their rights and obligations, disciplinary rules, rules governing replacement in cases of physical incapacity or disciplinary measures, etc. But the profession is given its cohesion by the Council of the Association. The purpose of this body is to monitor the maintenance of discipline and compliance with the Acts, Ordinances and Regulations concerning its members, to avert or settle any differences between members of the Association or between members and third parties, to uphold the professions of defence lawyer and lawyer and, whenever required, to apply sanctions. It is the profession's managerial and regulatory body and the organ for the defence and protection of its specific character.

K. Norway

179. In its reply the Government states that the Constitution of 17 May 1814 lays down the principle of separation of powers, which is still in force even though the principle of parliamentary government was introduced in 1884.

180. The judiciary is open, on a competitive basis, to lawyers of all professional origins. Judges are appointed by the King on the recommendation of the Minister of Justice. Judges are irremovable up to retiring age. They may be removed from office by a court ruling in the event of criminal proceedings or a civil action being brought against them, for example in case of permanent incapacity for satisfactory service due to illness, or in case of insolvency. Precedents are very rare.

181. The ordinary courts are competent to rule on the legality of administrative decisions; they also try cases relating to abuse of powers. In virtue of constitutional customary law, the courts may set aside texts adopted

by Parliament if they are deemed unconstitutional. Lastly, the Court of Impeachment is competent to hear any proceedings instituted against Government Ministers, members of Parliament and Supreme Court justices for offences committed in the performance of their functions.

182. The professional title of lawyer is awarded by the Minister of Justice to candidates who satisfy the required conditions of competence. Lawyers subscribe to the Professional Guarantee Fund.

L. Pakistan

183. In its reply the Government states that the independence of the judiciary is guaranteed by the Constitution, which lays down the principle of the separation of powers.

184. The functions of the judiciary are defined in the Constitution with the aim of preventing arbitrary or despotic action by the executive and in order to gain the trust of the people. The institution of the independent judiciary guarantees the rule of law.

185. As to the protection of lawyers, everyone has unrestricted access to the assistance of a lawyer. The Government provides lawyers with protection against unwarranted hindrance and pressures in the practice of their profession. Any restrictions aimed at preventing lawyers from practising and from founding professional associations without fear of penalty or prosecution are prohibited. Lawyers may communicate with their clients in confidence or openly. They are given the opportunity and the means to interview clients who are in custody or prison.

M. Philippines

186. In a very detailed reply the Philippine Commission on Human Rights presents on behalf of the Government the body of rules protecting the independence of the judiciary, the keystone of which is the 1987 Constitution. Although of only recent adoption, its provisions are largely based on long-established rulings of the Supreme Court aimed at guaranteeing the administration of justice in conformity with the principle of the independence of the judiciary. 108/

187. Article VIII of the 1987 Constitution, entitled "The Judicial Department", is based, according to the Government, on seven principles designed to ensure the independence of the judiciary; among these, the following in particular should be noted:

(a) Separation of powers, the essential function of the judiciary being to see that the limits to the exercise of executive and legislative power as defined in the Constitution are respected. The Supreme Court's "power of review" includes establishing, at the request of any citizen, whether there is a sufficient factual basis for the proclamation of a state of emergency or the suspension of the remedy of habeas corpus;

(b) Budgetary autonomy of the judiciary: the budget may not be less than that of the previous year and is to be regularly and automatically increased;

(c) The irremovability of judges;

(d) Appointment of judges by an independent procedure;

(e) Non-reduction of judges' salaries;

(f) Incompatibility of judicial office with "administrative or quasi-judicial functions".

188. The Supreme Court has sole power to regulate the practice of the legal profession and accordingly to ensure the protection of lawyers. This function of the Supreme Court, which has been regularly reaffirmed by case law 109/ and confirmed by the 1987 Constitution, is based on the idea that, since the practice of law is a judicial matter, it cannot be governed by the executive or the legislature. It is therefore the Supreme Court's prerogative to regulate the operation of the "Integrated Bar" established in January 1973. According to the Court, this "integration" means that the bar participates in all managerial procedures involved in the administration of justice in order to preserve its independence; for example, lawyers are associated with the appointment of judges or with disciplinary proceedings instituted against them; integration aims in particular "to protect lawyers and laymen against abuses by tyrannical judges and prosecuting officers".

189. The Government recognizes the existence of "certain risks which lawyers may run in practising their profession", in particular when defending persons held in custody or in cases of violation of human rights. In this connection the Government mentions the steps taken to ensure their protection, namely:

(a) Act No. 857 of 16 June 1953, which penalizes any official who prevents lawyers from exercising, forbids them to exercise or otherwise interferes with their exercise of the right to visit and converse with a person under arrest;

(b) The signature on 6 May 1988 by the senior defence, police, security and judicial authorities of a "Joint Declaration". This records their undertaking "strictly to observe and apply" the "Declaration on Human Rights" of the National Commission on Human Rights 110/ and the Guidelines on visiting, conduct of the inquiry, arrest, detention and other related activities, also drawn up by the National Commission. This "Joint Declaration" testifies to the political will of the highest competent authorities to respect the independence of the judiciary and the protection of lawyers. The Government states further that the judiciary may order police protection for lawyers whose safety is threatened. It will be recalled that according to principle 16 of the "Lawyer Principles" it is for "Governments" in general to ensure that lawyers are able to perform all their professional functions without intimidation, hindrance, harassment or improper interference, and that according to principle 17 it is for the "authorities" to safeguard lawyers adequately where their security is threatened as a result of discharging their functions.

190. We were also given an opportunity to appraise the investigative work of the National Commission on Human Rights - a body with a constitutional mandate to inquire, ex officio or in response to complaints, into any form of violation of civil and political rights: in this instance, any encroachment upon the protection of lawyers. 111/

N. Western Samoa

191. In its reply the Government states that the principle of the independence of the judiciary is guaranteed by the 1962 Constitution and by the Judicature Act of 1961. Since becoming independent, the State has enhanced the independence of the judiciary by such measures as:

(a) The Public Defender Act of 1969, very similar to legislation adopted by other Commonwealth countries;

(b) The Law Practioners Act of 1976, which established the Bar Association;

(c) Improved public access to justice.

192. On the other hand, the Government states that the independence of the judiciary is in certain circumstances called into question by:

(a) the fact that the Chief Justice of the Supreme Court is appointed by the Prime Minister, which may make appointment to and the exercise of this office dependent on political considerations;

(b) adverse publicity in the local media regarding the performance of judicial functions;

(c) substantial criticism of judicial decisions by high-ranking politicians.

O. Turkey

193. In its reply the Government states that the independence of the judiciary is guaranteed by the Constitution. Under article 138 thereof, judges make their decisions in accordance with the Constitution, the law and their personal convictions, free from pressure of any kind. For example, a case sub judice may not be the subject of questions, discussion or statements in the Legislative Assembly.

194. Article 139 of the Constitution provides that judges and prosecutors may not be removed from office before reaching the age fixed by the Constitution, or be deprived of their salary and status-linked advantages even if their post is eliminated.

195. The rules governing the qualifications, appointment, rights and duties, salaries and privileges of judges and prosecutors, together with their promotion, disciplinary procedure, conditions for removal and suspension, and

functions incompatible with their office are laid down by law. Retirement age is 65. For administrative purposes, judges and prosecutors come under the Ministry of Justice.

196. Lawyers perform their functions in complete freedom. The profession is governed by the various Bars. The legislature and executive may not interfere with a lawyer's professional activities in defence of a client. The services of legal counsel are included among the rights of the defence and therefore constitute an inalienable right.

P. Tuvalu

197. In his reply the Attorney-General of Tuvalu states that the independence of the judiciary is guaranteed by the Constitution of 1986, which institutes the separation of powers and lays down the conditions for the appointment and service of High Court judges. Judges are appointed by the Head of State on the recommendation of the Cabinet, which also determines the length of their term of office. The term of office may be ended before the due date only by Parliament acting on the recommendation of an independent tribunal. The appointment and conditions of service of lower court judges are decided upon by the Public Service Commission, an independent body of the executive established by the Constitution, and with the approval of the Chief Justice of the High Court. The Charter of Human Rights, which has constitutional force, spells out the right of every individual to a fair trial within a reasonable time by an independent and impartial tribunal established by law.

198. As to prosecution, the Constitution provides that the Attorney-General of Tuvalu, the Government's principal legal adviser, shall be independent with regard to the conduct of prosecutions; the way in which he performs his functions can be determined only by the law and the decisions of the courts. The Attorney-General is appointed by the Head of State on the recommendation of the Cabinet and after consultation with the Public Service Commission. He may be removed from office before the end of his term by the Head of State on the recommendation of an independent tribunal appointed by the Head of State and after consultation with the Prime Minister.

199. The mandate of the People's Lawyer, whose post was established by an Act of 1988, is to render legal aid and to represent any person who is the subject of criminal or civil proceedings. He is appointed by the Head of State on the recommendation of the Public Service Commission. He may be removed from office under the same conditions as the Attorney-General. Save from the administrative point of view, as in the case of any other public authority, the People's Lawyer is independent in carrying out his duties. He is also bound by jurisdictional directives, for example in regard to legal aid and representation.

200. The budgets of the judiciary, the Attorney-General and the People's Lawyer are managed separately by the Prime Minister, who is also the Minister of Justice. The budgets are approved by Parliament within the limits of an economy dependent on international aid.

201. In 1990 the Pacific Islands Law Officers' and Ministers' Meeting instructed the Attorney-General of Tuvalu to take steps to remedy the lack of qualified magistrates at the local level. In addition, the possibility of publishing legal texts in the Tuvalu language rather than only in English is being explored.

Q. Yugoslavia

202. In its reply the Government states that, since it last transmitted information to the United Nations on the subject, amendments to the Constitution have been or are being adopted and international cooperation has been developed in order to strengthen the independence of the judiciary. Amendments IX-XLVIII to the Federal Constitution, adopted in 1988, were concerned with the independence of the judiciary.

203. As to the length of judges' terms of office, the draft amendments to the Constitution submitted for adoption provide for scrapping the current system (term of eight years with unlimited possibility of re-election) on the grounds that it permitted denial of the right to re-election without explanation, thus threatening the independence of the judiciary.

204. Furthermore studies of comparative law and international law have been made with a view to incorporating recognized international standards in municipal legislation. The Basic Principles on the Independence of the Judiciary and other international documents have been published in the specialized journals. In addition judges have had an opportunity to take part in international conferences on the subject, for example the workshop on the independence of the judiciary organized at Bled in February 1991 by, among others, the American Bar Association, the Federal Secretariat of Justice and the Secretariat of Justice of the Slovene Republic. Following that workshop and pursuant to the recommendations adopted there, an amendment has been proposed to drop moral and political suitability as a condition of eligibility for judges. In addition an amendment provides that the principles governing the establishment and composition of ordinary courts and the appointment and dismissal of judges should be laid down by federal law.

205. These amendments have passed the first stage of parliamentary procedure and are at present being reviewed in the light of the discussions held in the Federal Assembly.

206. The wording of the amendments is based on the Basic Principles on the Independence of the Judiciary, some of which - those relating to the courts and judicial proceedings - have already been taken into account in Yugoslav legislation.

II. CASES OF MEASURES AND PRACTICES THAT HAVE WEAKENED THE SAFEGUARDS OF INDEPENDENCE AND PROTECTION

207. In our working paper last year we recapitulated the typology of obstacles to the independence of the judiciary and the protection of lawyers which had been developed by Dr. Singhvi in his study. He identified 26 types of deviance relating to judges and another 26 relating to lawyers. 112/

208. It can never be overemphasized that, according to the information received at the preliminary stage of this report, physical pressure remains the chief obstacle to independence and protection in most of the cases that have been reported to us. In fact, the summary or arbitrary execution, enforced or involuntary disappearance, arbitrary detention or torture of judges and lawyers do not simply weaken the safeguards of independence and protection; they utterly destroy them. In addition to cases of violations of physical integrity and encroachment on pesonal freedom and safety, which are banned by the "ordinary law" guarantees of human rights, there are cases of threats, harassment, hindrance, etc. against judges and lawyers which are forbidden by the "specific regime of protection".

209. As to the other safeguards provided by the "specific regime", and again according to the information received, some seem to have been weakened more than others by restrictive national measures and practices.

210. In the case of judges, the following would appear to have been weakened:

(a) Safeguards against pressure, threats, harassment, etc.;

(b) Safeguards against infringements of statutory conditions 113/ and tenure;

(c) Safeguards against encroachments on freedom of expression.

In the case of lawyers, the following appear to have been weakened:

(a) Safeguards against pressure, threats, harassment, etc.;

(b) Guarantees of protection against identification with the client or with his cause;

(c) Safeguards in criminal matters (e.g. possibility of applying for habeas corpus, or protection against persecution for having done so);

(d) Safeguards against encroachments on freedom of association, in particular professional association;

(e) Safeguards against encroachments on freedom of expression.

211. Most of the obstacles to the independence and protection of judges and lawyers, covered by safeguards under both ordinary law on human rights and the "specific regime of protection", arise in the context of states of emergency or are based on emergency measures.

A. Measures and practices that have weakened the application of the safeguards against "physical pressure" on judges and lawyers 114/

1. Violations of physical integrity

212. Consistent statistics transmitted to us by the Centre for the Independence of Judges and Lawyers (CIJL) of the International Commission of Jurists 115/ and by the Lawyers Committee for Human Rights 116/ indicate that there were:

- 34 summary or arbitrary executions of judges and lawyers between January 1988 and June 1989;

- 64 summary or arbitrary executions of judges and lawyers between July 1989 and June 1990.

For 1990 the latest information transmitted to us reports 57 summary executions and 7 disappearances.

213. It will be noted that, despite the efforts of the authorities, a substantial number of these cases reportedly occurred in Colombia. According to the Special Rapporteur on Summary or Arbitrary Executions, a Minister of Justice, an Attorney General of the Nation, several Supreme Court justices and many judges and judicial officials have figured among the victims in recent years; one-fifth of the 4,379 judges serving in Colombia are under threat of death. 117/ The NGOs put the number of judges and judicial officials murdered in Colombia since 1980 at 300, including 37 between July 1989 and June 1990. Recent statistics indicate the murder or disappearance of 13 judges and 29 lawyers between May 1990 and May 1991.

214. The murders and disappearances would appear to be aimed at both high-court and lower-court judges if their activities involve drug traffickers or if they endeavour to detect or prosecute the perpetrators of human rights violations.

215. The case of María Elena Díaz Pérez, Third Public Order Judge at Medellín, who was murdered on 28 July 1989 despite the protection she was receiving through the authorities, is topical. Judge Díaz was investigating the massacre of employees on a banana plantation north of Uraba; she was replacing Judge Marta Lucía González, who had fled the country after receiving death threats when she ordered the arrest of several leaders of the Medellín Cartel and two army officers, and whose father was to be murdered in Bogotá on 4 May 1989. 118/ Judge Díaz was murdered after issuing warrants for the arrest of three members of the army, two leading drug traffickers and the mayor of a village. 119/

216. On 27 June 1990 Samuel Alonso Rodríguez Jacome, Second Public Order Judge at Bucaramanga, 120/ was murdered with his wife. He had been assigned to investigate the death of three persons during a military operation and was reportedly accused by the army of belonging to the ELN guerrilla group. He had also received death threats from a guerrilla group which he was investigating.

217. Another example is that of Carlos Campo Donado, High Court judge at Barranquilla, who was murdered on 13 August 1990. The same day Carlos Enrique Castillo, Lucas Morales Duque and Abraham Nader, judges in the same town, were reported to have received telephone threats that they would meet the same fate.

218. Public prosecutors are also targeted. Thus María Esther Restrepo, Regional Prosecutor for the municipality of Apartado, was murdered with her bodyguard on entering her office on 24 July 1990. She was supervising the inquiry into the murder of 42 peasants at Pueblo Nuevo on 17 January 1990,

after which disciplinary proceedings were instituted by the authorities against army officers suspected of complicity with the paramilitary group responsible for the executions.

219. The Special Rapporteur on Summary or Arbitrary Executions regularly reports murders of lawyers in Colombia. 121/ Concordant information received in connection with the present report gives the impression that lawyers are equally as exposed as, if not more exposed than, judges in Colombia, particularly those engaged in defending human rights.

220. Among the cases reported are executions and disappearances, such as that of Alirio de Jesús Pedraza Becerra; there is credible evidence linking certain sections of the security forces with his abduction in a Bogotá suburb on 4 July 1990 by men posing as judicial police officers. Reference may also be made to the cases of execution and disappearance of the following lawyers: Bohada Bernal (murdered on 24 June 1989), Saul Baguero Tinsa (30 June 1989), César Arcadio Cerón (10 June 1989), Abelardo Daza Valderrama (2 August 1989), Guillermo Gómez Murillo (16 September 1989), María Mercedes Marenco (27 November 1989), Alberto Jaime Palaez (19 January 1990), Francisco Morales Valencia (15 February 1990), Tarcisio Roldán Palacios (13 March 1990), Isias Cuadros (24 May 1990), Blanca Elisa Cabra (2 June 1990), Alvaro Caicedo Millán (9 July 1990), Flavio Hernando Merino Porras (7 September 1990), etc.

221. At a time when, thanks to a sense of responsibility on both sides, the guerrilla movements have joined, or are discussing joining through popular participation, the campaign for democracy, the Rapporteur wishes at this point to pay a tribute to the initiative taken by the Government (see above, Part One) and to the spirit of cooperation increasingly displayed by the political forces involved.

222. In Peru the judges and lawyers who most frequently fall victim to murder are apparently those investigating cases of terrorism or defending persons charged with acts of terrorism, and those involved in proceedings concerning violations of human rights, whether those violations are attributed to insurgent groups, paramilitary groups, or the security forces and the army.

223. In this connection reference may be made to the case of the lawyer Luís Fernando Colonio Arteaga. A former member of the Executive Committee of the Ayacucho Bar, he was murdered at about 2 a.m. on 20 July 1990. He had apparently been defending students at the National University in cases of violations of their human rights and had in particular, it seems, made a point of defending students accused of having links with the guerrillas. The day before he died, he reportedly denounced, at a public conference in Ayacucho, the involvement of the armed forces in several cases of disappearance, massacres and other atrocities and urged the restoration of civil authority in the zones which had been in a state of emergency since December 1982. According to the Special Rapporteur on Summary or Arbitrary Executions, this murder was committed at a time when only the security patrols were allowed on the streets, which would appear to implicate paramilitary groups or the security forces. 122/ The same information has been brought to our attention.

224. Another example is that of Angel Escobar Jurado, lawyer and Vice-President of the Huancavelica Committee on Human Rights, who was reportedly abducted by the security forces. Certain reports refer to the inclusion of his name on a list of "persons to be be liquidated" dated August 1989 and attributed to the Comando Rodrigo Franco paramilitary group.

225. Among the other cases of murders of lawyers reported to us for 1990, particular reference may be made to those of Oswaldo Calderón Almoncio (murdered on 5 October 1990), Máximo Rico Bazán (19 July 1990) and Luís Volán (3 September 1990).

226. As to members of the judiciary, the reports received refer to violations of physical integrity aimed particularly at justices of the peace and prosecutors working at the local level. Particular note has been taken of the cases of: Francisco Flores (justice of the peace, murdered in October 1989), Delfín Morales (justice of the peace, 31 October 1989), Jorge Padín Aragón (justice of the peace, 16 April 1990), Dario Quispilaya Yauri (justice of the peace, murdered on 26 September 1990), César Alberto Ruiz Trigoso (judge of the eighth examining court, murdered on 16 November 1990), Javier Suclupua Meneses (justice of the peace, 29 Sepember 1989), Abel Vidal Flores (justice of the peace, murdered on 13 October 1990), Arturio Zapata (justice of the peace, murdered on 18 January 1990), Fausto Gutarra Guerra (prosecutor, murdered on 2 July 1990), Omar León Vásquez (prosecutor, reportedly beaten by armed men who broke into his home on 25 August 1990), and Orlando Zamalloa Alcocer (senior prosecutor, reportedly shot and seriously wounded by unidentified men on 11 December 1990).

227. In the Philippines, despite the efforts made, there again, by the authorities (see above, Part One), the situation continues to cause concern. Apart from the case of Gervancia Cadavos, Regional Court judge in Leyte murdered on 26 March 1989, and that of Gil Getes, prosecutor, murdered on 4 March 1990, the reports received or compiled, for the period 1986-1990 relate mainly to lawyers. The Special Rapporteur on Summary or Arbitrary Executions cites the murder of Oscar Tonog, Vice-President of the Philippine Bar, on 21 March 1989, and of Alfonso Surigao in June 1988. For the purposes of the present report we have received and collected information from governmental and non-governmental sources on the cases of David Bueno (murdered on 22 October 1987), Vicente Mirabueno (6 February 1988), Ramos Cura (18 June 1988), Emmanuel Mendoza (2 July 1988) and Eliodoro Gonzales (9 October 1989).

228. In the case of Sri Lanka, the Special Rapporteur on Summary or Arbitrary Executions directly links the murders of certain lawyers and the death threats received by others "to the habeas corpus applications they had made to the courts on behalf of persons illegally detained or persons who had disappeared". He cites several cases in which the security forces would appear to be involved. 123/ These concerns are shared by the Working Group on Enforced or Involuntary Disappearances, which attributes the striking decline in the number of habeas corpus applications concerning disappeared persons to the recent murders of three lawyers. These three alone had filed 400 applications. 124/ In addition, the information received for the present report refers to the murder, disappearance or death resulting from treatment

suffered in custody of about 10 lawyers between the end of 1988 and mid-1990. Particular reference may be made to the cases of Wijedasa Liyanarachchi, Neville Nissanka and Sam Tambimuttu.

229. In Turkey on 20 April 1990 three lawyers, Sezin Atmaci, Dilek Bosut and Rasim Os, were reportedly beaten by police officers while making their way to the Security Court at Ankara, in which they were to defend two communist leaders. In August and September 1990 four lawyers, Ulutan Gün, Fethiye Peksen, Hasan Hüseyin Reyhan and Hedii Yarayici, were reported to have been beaten for trying to visit their detained or imprisoned clients. Some NGOs link these incidents to the fact that in June 1990 the Ministry of Justice issued a circular restricting lawyers' visiting rights and, in some cases, forbidding any direct communication.

2. Arbitrary arrests and detentions of lawyers

230. The statistics prepared on the basis of information originating from NGOs 125/ indicate that there were 165 cases of arbitrary arrest and detention of administrators of justice - chiefly lawyers - in some 50 countries between July 1989 and June 1990. In 1990 alone, 193 cases of arbitrary detention were reported.

231. These practices are sometimes on a massive scale, and associated. Thus in Nepal, according to consistent reports, some 15 lawyers, members of the Bar of the Western Regional Court, were arrested on 24 September 1989 while attending a conference on human rights and the Constitution and were detained for short periods without being charged. In addition, during the first quarter of 1990, 70 lawyers, including the President and former President of the National Bar and eight members of the Bar Executive Committee, were reportedly arrested and held without charge for periods ranging from a few days to several weeks under the public safety legislation. Most of them were apparently arrested in February and March, after the National Bar had called a general strike on 20 February, and released in late May.

232. In Nigeria the lawyer Olu Onagoruwa was reportedly arrested in June 1990 while leaving Lagos High Court still wearing his gown. According to reports received, he had just refused to withdraw a complaint against the Government for unlawful detention of a client. He was held for 10 days, on the basis of Decree No. 2 of 1984 on State Security, which authorizes the administrative detention for six weeks (renewable), by a decision not subject to challenge in the courts, of any person suspected of being a threat to national security.

233. In the Sudan, reports received refer to the arbitrary arrest and detention of 28 lawyers since July 1989 on the basis of Emergency Decree No. 2 of 30 June 1989 which, here again, authorizes the Government to arrest any person without a warrant and to hold him in administrative detention without charge, and which does not provide for the possibility of challenging the detention in court. Most of the cases reported to us concern lawyers who protested to the Government after it banned their professional organizations. Cases of detention incommunicado and torture have also been reported to us. Among the cases reported, reference may be made to those of Kamal al-Gizouli (arrested on 10 August 1989), Gelal El Din al-Sayid (29 July 1989), Adnan Zahir al-Sadat (4 January 1990), Abdel Azim Awad Surur (15 September 1989) and

Abdel Rahman al-Zain (7 December 1989), together with and those of Santino John Akot, Al Sir Khider Abdel Aziz, Bakri Mohamed Gibril Babiker, Shams El Din Abdalla Kahlil, Abu Taleb Mohamed Osman, Saleh Mahmoud Mohammed Ousman and Mohamed Abdullahi Saleh, whose date of arrest is not known. As far as is known, all the above mentioned lawyers are still in detention today.

234. Fears have been expressed about the number of arbitrary arrests of lawyers in the Israeli-occupied territories. Under the emergency regime, the Minister of Defence and certain army officers are reportedly empowered to issue warrants for administrative detention, with or without charges, whenever such a course is justified on "security grounds". Broad interpretion of these grounds and the absence of any requirement of charges would appear to be behind the arrest and detention of lawyers by reason of their professional activities in this field.

235. The cases of Adnan Abu Leila, Shaher Aruri and Mohammed Abdul Rahim Shadid would appear to be topical. These lawyers, who are reportedly involved in the defence of persons held in administrative detention, have, it seems, themselves been placed in administrative detention on internal security grounds. They have in fact been suspected of belonging to banned organizations, but have never had access to their files, which are classified as confidential, and adversary evidence of their guilt has apparently never been produced owing to the secret nature of the files.

236. Other cases of arbitrary detention and encroachment upon the independence of judges and lawyers are so numerous as to require a thorough study which could not be fitted into this report.

3. Other cases of national measures and practices

237. Among the cases on which we have received or collected information, we shall bring to the Sub-Commission's attention those of two countries where the measures and practices in force are relevant in terms of the international standards.

(a) Measures and practices in Peru

238. Apart from the branches of the "specific regime of protection" considered above in relation to physical integrity, "pressure" on judges and lawyers is attributed to insurgent groups (Shining Path, Tupac Amaru Revolutionary Movement, etc.), paramilitary groups (Comando Rodrigo Franco, etc.) and, in certain cases, the security forces. Most would appear to occur in the zones under a state of emergency, which in 1990 covered nearly half the 183 provinces of Peru.

Allegations of "pressure" within the meaning of the "specific regime of protection"

239. The "pressure" reported to us consists mainly of "threats", 126/ both verbal (death threats over the telephone, for example) and active (going as far as bomb attacks).

240. The following lawyers are said to have received death threats: José Burneo Labrín (from February to May 1990), Wilfredo Mujica Contreras (February 1990), Wilker Ruiz Vela (since the beginning of 1990, when he reportedly filed charges against police officers) and Francisco Soberón (since March 1990). 127/

241. Among judges, mention may be made of the cases of: Cesar Fernández Arce, Chief Justice of the Supreme Court, who reportedly received many death threats before being elected to that office on 6 December 1990 owing, according to certain reports, to his commitments to take up cases of corruption within the judiciary; and Omar León Vásquez (see above) who was reportedly threatened with death on 25 August 1990 unless he abandoned his office, which he was finally forced to do.

242. Several cases of bomb attacks on lawyers and judges were reported to us. Thus on 27 October 1990 the home of the lawyer Johnny Lescano Anzieta was reportedly dynamited; the same thing happened to the home of justice of the peace Ernesto Castro on 9 February 1990. The prosecutor, José Maceda Tito is said to have been wounded on 14 July 1990, when a bomb placed beside his house exploded; and so on.

Other obstacles

243. The regime of the state of emergency and the arrangements for the administration of military justice appear to be important factors militating against the safeguards afforded by the "specific regime". Other potential obstacles have been brought to our attention: the weakness of judicial control over the actions of the executive and the military, mainly in the case of applications for habeas corpus or amparo, 128/ and the methods of appointing judges. Given the special nature of the political climate, it should be noted that the irremovability instituted as a safeguard for the independence of the judiciary might in places tend to make judges more vulnerable to attempts at corruption and to institutional pressure.

244. Certain reforms are apparently being undertaken which should make it possible to fill some gaps in the safeguards; for example, the protection of lawyers in criminal justice could be improved by amending the provisions governing emergencies.

(b) Measures and practices in the Philippines

Alleged persistence of "pressure" on lawyers within the meaning of the "specific regime of protection"

245. In addition to cases of arbitrary executions of lawyers and judges (see above), concordant information received from NGOs 129/ lists 52 cases of "intimidation, hindrance, harassment or improper interference" directed at lawyers 130/ between August 1986 and January 1991 (12 cases in 1990-1991). "Unsigned" bomb attacks and raids by the military on lawyers' homes and offices are aparently tending to diminish, but anonymous murder threats by telephone or letter and shadowing by cars with no number plates are said to be still very frequent. The following have also been reported: the circulation by a paramilitary group of lists of lawyers "to be liquidated" and by military

security of lists ("orders of battle") that include lawyers' names; death threats uttered by an an army officer against a lawyer while he was visiting a client in custody; and burglary of a lawyer's home, during which files were searched or destroyed.

246. The lawyers most frequently targeted appear to be those who defend persons suspected of being communists or persons in detention or, more generally, who have in their keeping files on violations of human rights. Special attention is drawn to the cases of Romeo Capulong, Solema P. Jubilán and Nerio G. Zamora.

247. The information received shows that these lawyers are very often "identified with their clients or their clients' causes". 131/

Potential normative obstacles in other areas

248. The information received from NGOs 132/ and the reports submitted to the Commission by the Special Rapporteur on Torture and the Working Group on Disappearances 133/ draw attention to several potential obstacles to the application of the "specific regime of protection". These are, in particular, Republic Act No. 1700, which increases the risk of lawyers' being identified with their clients' causes 134/ or even of being treated as criminals alongside them; Executive Order No. 272 and some recent Supreme Court decisions which may lessen the safeguards in criminal justice matters; 135/ and Presidential Decree No. 1850, which is liable to extend the jurisdiction of military courts to non-military offences. 136/ Since these obstacles were the subject of detailed comment at the session of the Commission on Human Rights, we shall merely refer the reader to the reports on the visits of the Special Rapporteur and two members of the Working Group on Disappearances 137/ and to the summary records of the meetings.

B. Measures and practices that have weakened the application of the safeguards relating to the statutory conditions and tenure of judges 138/

249. A number of reports agree that a situation in which the independence of the judiciary and the protection of lawyers are systematically violated has prevailed in the Sudan since 1989. The biggest obstacles are said to be encountered in applying the safeguards regarding judges' conditions of service and tenure. Lawyers too, it appears, are by no means spared by the measures and practices in force. The source of the obstacles to the independence of the judiciary and the protection of lawyers appears to be the state of emergency in force.

The context: emergency measures totally at odds with the "specific regime of protection".

250. According to information made available to the Rapporteur, the Revolutionary Command Council of National Safekeeping announced on 30 June 1989 the entry into force of Decree No. 2, which declared a state of

emergency throughout the territory and is still in force today. If this is the case, the information received reflects a complete contradiction between the provisions of this Decree and the "special regime".

251. Firstly, the independence of the judiciary appears to have been weakened by the establishment of emergency courts. These courts, dubbed "special military courts" in Decree No. 2 and rebaptised "courts of revolutionary security" in September 1989, 139/, were declared competent to try civilians arrested under the emergency legislation, in open contradiction of principle 5 of the "Judiciary Principles" and paragraph 5 (f) of the "draft Declaration". 140/ Moreover the judgements are apparently not subject to appeal before the ordinary courts, contrary to principle 4 of the "Judiciary Principles" and paragraph 5 (f) of the "draft Declaration". Moreover, while the special courts were composed of military personnel, the same is not necessarily true of the security courts and military courts set up to deal with officials suspected of sedition and corruption, in which the judges may be "any other competent person". In any event, it is apparently the Revolutionary Command Council's sole prerogative to appoint the judges. These provisions are contrary to principle 10 of the "Judiciary Principles" and paragraphs 9-11 of the "draft Declaration".

252. Moreover the protection of lawyers is said to have been greatly weakened by the elimination of the basic safeguards in criminal justice matters. It appears that Decree No. 2, which authorizes the authorities to arrest and detain any person likely to represent a danger to political and economic security, also authorizes them to arrest any person without a warrant and place him in administrative detention for an indefinite time without having to file any charges and with no opportunity for that person to challenge his detention in court, since the Decree makes no provision for such a procedure. These provisions seem to preclude the application of principles 5-8 of the "Lawyer Principles" and principle 32 of the Body of Principles for the Protection of all Persons Under Any Form of Detention or Imprisonment.

253. According to the information received, the procedure laid down for the emergency courts established by Decree No. 2 and by later legislation has suspended, or at least seriously limited, the right to the assistance of a lawyer, contrary to principle 1 of the "Lawyer Principles" and principle 6 of the "Judiciary Principles".

254. Lastly, Decree No. 2 apparently also bans professional organizations of lawyers, including the Sudanese Bar Association and the Sudanese Legal Aid Association, contrary to principle 23 and, more specifically, principles 24 and 25 of the "Lawyer Principles".

Practices destroying the independence of the judiciary

255. The opposition among judges to these institutional changes was apparently sporadic at first, giving rise to the removal of a few judges by the Revolutionary Command Council in August 1989. In addition the case of Judge Nimeiri of Omdurman has been drawn to our attention; reportedly he was arrested in the summer of 1989 for his opposition to the measures taken by the Government and is still under detention.

256. At that time, determined to safeguard their independence, judges are said to have reacted in increasing numbers. There was a judges' strike on 21 August 1989; on 25 August a letter signed by 50 judges was sent to the Revolutionary Command Council demanding in particular that the decrees establishing the emergency courts and procedures should be immediately rescinded, their judgements declared null and void and the cases transferred to the ordinary courts which had previously had jurisdiction; and that the Government should give an undertaking to recognize and safeguard the independence of the judiciary, the rule of law, the separation of powers and respect for the general principles concerning human rights.

257. On 27 August, reacting to these protests, the Government apparently removed, suspended or retired 58 judges of all grades. The movement would appear to have gained momentum in 1990, when 70 judges underwent the same fate. 141/

258. According to the information received, the Government's decisions are not accompanied by any explanation but simply conveyed to the person concerned without any formal proceedings. Although in most cases the action taken seems to have been forced retirement, it amounts to de facto removal, or at any rate rejection.

259. The replacement judges appointed were apparently selected by the Revolutionary Command Council on the sole criterion that they accepted the measures taken since 1989 and were willing to apply the Sharia; some of them, it is said, have no legal training.

260. The judges whose names follow are said to have been among the 128 members of the judiciary removed from office in 1989 and 1990:

In 1989 142/

Supreme Court Justices

Hakeem al-Tayeb
Sayed Abdalla Attoam
Salil al-Sharif
Al-Tahir Zain al-Abdin
Hassan Mahmoud Babiker
Abd El Aati al-Asad
Obied Gismalla

Appeal Court judges

Nadir al-Sayed Abbas
Al-Rayyah Widatalla
Abd Elhafiz al-Fadi al-Hassan
Kamal Eddin Ali Suleiman
Alamin al-Tayeb Abu Qanaya
Abderahman Mohammed
Abdelsadik
Ibrahim Ali Gadalla

Province judges

Mohammed Abdalla Ata
Mohammed al-Hafiz Mahmoud
Mahdi Mohammed Agied
Babikr al-Grayie
Abdelmoniem Khorasani
Hamza Amin Ahmed
Salah Hussein
Abdel Aziz Hamatto
A'mna Awad Mahmoud
Ahmed al-Tigani al-Tahir

First class judges

Ahmed Ahmed Abu Bakr
Bashier Ahmed al-Mustafa
Abdel Hamed Abelde Kadir
John LualBabikr Saad Tashin
Yousif Mohammed Dakien
Anwar Izzeddin
Mohammed Ahmed Mustafaabu Raida
Mamoon Mekkawi Babikr
Hashim Ibrahim Ahmed
Haseeb Mansoor ali Haseeb
Fadlalla al-Amin
Saif-Eddola Hamadnalla
Bashier Maaz
Abdelmoniem Swar-Eddahab
Tag-Eddin Nouri
Taha Ahmed Taha Sorig
Atalla al-Imam
Al-Nimeiri al-Hag al-Nimeiri
Mohamed Mustafa Elhag
Mohamed El-Hassan Mohamed Osman
Sediq Hakiem
Elfatih Mohamed Maghtar

Second class judges

Abdediem Osman Ahmed
Ahmed Mohammed Ahmel al-Magbool

Third class judge

Husham Babikr Abdalla el-Shaikh

In 1990:

Supreme Court Justices

Abdel Meniem al Zik al Nahas
Mahdely Mohamed Ahmed (Khartoum)
al Ashry riad Sakla Shakaek (Khartoum)
Mohamed Mohamed al Hassan (Khartoum)
Ahmed Gadin al Zahzahi (Khartoum)
Moustafa Hasab Alla (Khartoum)
Abdel Wahab al Mubarak (Khartoum)

Appeal Court judges

Ahmed Ibrahim Mahmoud (Madani)
Hashim Mahgoub al Said (Al Madamer)
Ahmed Hamed al Teni (Fiala)
Abdel Rahman Karh Starah (Khartoum)

Province judges

Atta al Manaf Mohamed Ahmed Saad
Mohamed al Meky Abu al Khir
Hassan al Mahl

District judges

Nadia Mousa (Obdurman)
Salah Kasamalla (Al Hasahis)
Abdel Razik Abdel Rahim Abu Akla (Rashad)
Tarek Said Ahmed Abdel Alla (Madani)
Abdel Alla (Madani)
Salah al Sidik Abdel Habaki (Berker)
Mohamed Abdella Ismail (Kialla)
al Sheikh Hassan Fadlalla (Al Abiad)
Ahmed Salah al Din Awoodah (Madani)
Abdel Elah Mohamed Osman (Madani)
Amal Gilati (Madani)
Salwa Houssin Yosti (Obdurman)
Tahani Abdel Wahab (Obdurman)
Khadija al Hegaz (Obdurman)
Magdi Zin al Abedin (Port Sudan)
Salah Abuli al Fateh Hagg al Nour (Tendelty)
Abubaker Omar Ahmed (Al Katina)
Houssin al Gala (Al Damer)
Idris Saleh Farah (Atbara)
Osman Fadl al Mawla Abbas AbdelKader Blah (Kosty)
Ismail al Tag Moustafa (Atbara)

261. It will be recalled that, according to the "Judiciary Principles", "the term of office of judges, their independence, security ...[and] conditions of service ... shall be adequately secured by law" (principle 11) and that "Judges ... shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists" (principle 12); moreoever "Judges shall be subject to suspension or removal only for reasons of incapacity or behaviour rendering them unfit to discharge their duties" (principle 18); they should then be dealt with fairly in appropriate disciplinary proceedings (principles 17, 19 and 20).

262. Furthermore the "Judiciary Principles" guarantee the freedom of expression of judges, with the sole proviso that they should "conduct themselves in such a manner as to preserve the dignity of their office and the ... independence of the judiciary" (principle 8).

Practices that weaken the protection of lawyers

263. According to information received, the Bar Association and the Legal Aid Association addressed a memorandum to the Government on 1 August 1989 requesting that the dissolution of the professional organizations imposed by Decree No. 2 of 30 June 1989 should be rescinded and that the ratified international treaties guaranteeing freedom of association should be complied with. In July, August and September 1989 the principal signatories of the memorandum were reportedly arrested pursuant to Decree No. 2; most of them are still detained without charge or trial to this day.

264. In all, we have been notified of the cases of 28 lawyers arbitrarily arrested and detained (see above). The release of only six of them has been confirmed, one in October 1990 and the others in 1991.

C. Measures and practices that have weakened the application of the safeguards relating to the freedom of association and expression of lawyers 143/

265. Among the cases on which we have received or collected information, we would draw the Sub-Commission's attention to those of three countries where the measures and practices in force seem significant in relation to international standards.

(a) Practices in Indonesia

266. The information received points to growing interference by the executive in the legal profession, reacting to the activities of certain professional organizations in support of a State based on law and human rights, and aimed in particular at the Bar Association of Indonesia (IKADIN).

267. The executive is said to have recently pressed for the establishment of a single professional organization of lawyers in order to "harmonize the profession" and "improve the quality of legal services". This organization, the Federation of Law Associations of Indonesia, is said to have been established, in the teeth of severe criticism, during national meetings held at Cipanas, western Java, from 7 to 10 May 1991 and inaugurated by several members of the Government: the Minister of Justice, the Minister

of the Interior and the Commander of the Armed Forces. On that occasion Djazuli Bahar, the President of the Indonesian Association of Judges (IKAHI), reportedly refused to regard what he dubbed a "political creation" as a professional organization. Likewise four of the ten professional associations of lawyers - IKADIN, PUSBADHI, PERADIN and BBH - apparently announced their refusal to participate in that organization. Fears have been expressed as to whether these organizations will be able to continue their activities. In that connection, several meetings of IKADIN have reportedly been banned without a legitimate reason.

268. It is pointed out that principle 23 of the "Lawyer Principles" guarantees lawyers freedom of association and assembly.

(b) Measures and practices in Kenya

269. Information received refers to an increase in encroachments on lawyers' freedom of expression in 1990. The reported legal basis for these encroachments is very often the "Act on the Maintenance of Public Safety", which is said to authorize detention without charge or trial "for as long as is necessary for the maintenance of public order". Such detention is said to be legal once the detention order appears in the official gazette; there is reportedly no way to contest its legality in the courts.

270. One of the cases brought to our attention was that of Gitobu Imanyara, a lawyer and editor-in-chief of the Nairobi Law Monthly, which deals with legal problems and human rights in East Africa. In March 1990 he was reportedly accused by a member of the Government of "constantly deriding" him by publishing "subversive" articles about the independence of the judiciary and human rights in Kenya. On 22 March he reportedly refused to obey a national security officer who had asked him, without producing a warrant, to go along with him. Apparently he was detained under the "Act on the Maintenance of Public Order" from 5 to 25 July and kept in isolation during that time. The day after his release he was re-arrested for sedition - a charge seemingly linked to the publication in his magazine of an article on multi-party politics - and for non-observance of the rules on the registration of publications laid down in the law on books and magazines. He was released on bail on 1 August. His monthly journal was banned on 8 October, and Imanyara obtained a stay of execution of the measure pending a court ruling on the legality of the Government's action. He was again arrested on 1 March 1991 and was refused bail. By early May 1991 no trial date had been set.

271. Another example is that of Mohamed K. Ibrahim, a Kenyan lawyer of Somali origin who reportedly refused on 10 April 1990 to respond to a national security summons concerning an article published in the Nairobi Law Monthly of November 1989, in which he had described as discriminatory and unconstitutional the obligation on all Kenyans of Somali origin to hold a distinctive identity card. On 5 July 1990 he was reportedly arrested and detained under the "Act on the Maintenance of Public Safety" for trying to overthrow the Government. He was released 20 days later without once having been allowed the assistance of a lawyer.

272. It is pointed out that principle 23 of the "Lawyer Principles" provides that "Lawyers like other citizens are entitled to freedom of expression ...".

(c) Measures and practices in Turkey

273. According to information received, encroachments on lawyers' freedom of professional association have been major obstacles to the protection of lawyers. The information also refers to attacks on the safeguards against "pressure" and other safeguards in criminal justice matters.

Alleged encroachments on freedom of association

274. In July 1990 the Attorney-General in Istanbul reportedly instituted proceedings aimed at removing from office the members of the executive committee of the Istanbul Bar Association. This action reportedly arose because in 1986 the executive committee had agreed to recall to the Bar a lawyer who had just served a term of imprisonment after being convicted by a military court of belonging to the Turkish Workers' Party. The committee had based its decision on the fact that the judgement against him had no bearing on the practice of law. However, according to certain sources, the committee had revoked its decision in 1987 at the request of the Minister of Justice. In 1989, after examining a new application from the lawyer for enrolment, the committee recalled him to the Bar; that decision reportedly triggered the authorities' action. The case was heard in November and December 1990 in the presence of international observers; the charges brought against the members of the executive committee were dropped on the grounds that their term of office had expired and a new committee had been elected. It is pointed out that the "Lawyer Principles" guarantee lawyers the right to form self-governing professional associations, and guarantee the members of such associations the right to elect their executive body, which "shall exercise its functions without external interference". 144/

Alleged encroachments on the safeguards in criminal justice matters

275. The information received also mentions several instances of encroachments on the safeguards in criminal justice matters, chiefly on the right of all persons arrested or detained to have access to a lawyer, in any case within 48 hours, as guaranteed by the "Lawyer Principles". 145/ In this connection, particular mention has been made of the state of emergency in force in the Kurdish provinces of Turkey reinforced by Decree-Law No. 430 of March 1990 which, by sanctioning detention for several weeks, makes access to a lawyer more difficult. More generally, we have been informed of encroachments on the rights of the defence under the criminal procedure applicable to hearings before military courts. It is pointed out that, according to the "Lawyer Principles", lawyers "shall at all times act freely" (principle 14): in other words, even during a state of emergency.

Allegations of "pressure" on lawyers

276. The following cases have been brought to our attention:

(a) The indictment of the lawyer Emin Deger for "insulting the police" and his sentencing to 10 months' imprisonment in December 1990. Apparently he had simply submitted a request for clarification to the police on behalf of his client, who claimed to have been tortured by police officers. It is pointed out that, according to the "Lawyer Principles", lawyers are under a

duty to assist clients in every appropriate way and enjoy penal immunity for relevant statements made in good faith in their appearances before any legal or administrative authority; 146/

(b) The arrest on 28 May 1990, followed by the indictment, of Hasin Sahin and Gurbuz Ozaltinli for belonging to a banned organization. Fears have been expressed that these lawyers were in fact arrested because clients of theirs belonged to political parties on the extreme left. The "Lawyer Principles" prohibit identification of lawyers with their clients or their clients' causes. 147/

(c) The explosion of a bomb placed in a public litter-bin opposite the home of Orhan Dogan on 22 June 1990. That action has been interpreted as a threat aimed at this lawyer, since a court had just convicted an army officer who had forced clients of Dogan's to eat excrement in January 1989. It is pointed out that the "Lawyer Principles" make it the duty of Governments to ensure that lawyers are able to perform their functions without intimidation, hindrance or harassment, and to safeguard lawyers where their security is threatened. 148/

D. Measures and practices that have weakened the application of the safeguards during the administration of military or emergency justice 149/

277. Information received on measures in force in Myanmar mentions a number of major obstacles to the application of safeguards on this subject, with regard both to the rules of jurisdiction and to the procedures followed by military courts.

278. Martial Law Decree No. 1/89 of 17 July 1989, proclaimed by the State Law and Order Restoration Council, is said to have conferred on the military authorities the power to set up military courts throughout the country and to try before them, in summary proceedings, any person who contravenes martial law. On the basis of this decree, 15 courts were reportedly set up in the three military regions, supplemented by ad hoc military committees to administer justice at the local level.

Jurisdiction of military courts

279. The jurisdiction of these courts is said to have been defined by Martial Law Decree No. 2/89 of 18 July 1989; among other things, it is the responsibility of the military courts to deal with all actions which "appear to violate orders and decrees of the military authorities", whether they are offences under the Criminal Code or not. This decree a fortiori authorizes the military courts to try civilians.

280. Information brought to our attention mentions wide use of existing legislation by these courts with the aim of eradicating any opposition, even non-violent, without having to confront the spirit of independence of the ordinary system of justice. The following provisions in particular have reportedly been used to this effect: the Illegal Associations Act, the State

of Emergency Act, the Act on Protection of the State against the Dangers of Destructive Elements and the articles of the Criminal Code on treason and the public peace.

Rules of procedure

281. As to the procedures followed, we have been informed that the members of the courts, who are all military personnel, are empowered by Decree No. 2/89 to reject "unnecessary witnesses" and to deny a fresh hearing to witnesses already heard. Moreover the courts can apparently convict the accused without hearing the charges or examining the prosecution's evidence when their members are "thoroughly convinced" that the offence has been committed. Furthermore the proceedings are held in camera and the rights of the defence are eliminated. The judgements are said to be final; although the decree apparently affords opportunities for appeal in the case of certain offences, these amount in reality to an appeal for a pardon to the military authority under whose jurisdiction the court was established. Lastly, the courts are reportedly not bound by the principle of legality of sentences.

282. With regard to the rules of jurisdiction, our concerns are on the same lines as those voiced by the Human Rights Committee in its comments on article 14 of the International Covenant on Civil and Political Rights. The Committee affirms that the existence, in many countries, of military or special courts competent to try civilians could present serious problems so far as the equitable, impartial and independent administration of justice is concerned; in the Committee's view, while the Covenant does not prohibit military or special courts, its provisions nevertheless clearly indicate that the trying of civilians by such courts should be very exceptional and should afford the full guarantees stipulated in article 14. 150/

283. With regard to the "specific regime of protection" it is pointed out that principle 5 of the "Judiciary Principles" provides that "Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals". These provisions are supplemented by those of the draft Declaration to the effect that "No ad hoc tribunals shall be established to displace jurisdiction properly vested in the courts" (para. 5 (b)); moreover, in times of grave public emergency, "the State shall endeavour to provide that civilians charged with criminal offences of any kind shall be tried by ordinary civilian courts" (para. 5 (e)); in any case, "The jurisdiction of military tribunals shall be confined to military offences ..." (para. 5 (f)).

284. With regard to the rules of procedure, the "Judiciary Principles" state that "The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected" (principle 6). With regard to possible remedies, the "Judiciary Principles" invest judicial authorities with the right of review (principle 4); the draft Declaration provides that "There shall always be a right of appeal from [military] tribunals to a legally qualified appellate court or tribunal or a remedy by way of an application for annulment" (para. 5 (f)).

285. With regard to the ties existing between the military courts and the executive, the reader is again referred to principles 1 and 2 of the "Judiciary Principles".

CONCLUSIONS

A. Advisory services and technical assistance as regards the independence of the judiciary and the protection of lawyers

1. Training courses, workshops and seminars organized by the Centre for Human Rights

286. In the absence of the resources which the Centre has constantly requested, the corresponding absence of follow-up is not surprising. It means in particular that these activities are rarely covered by a fuller report than the Secretary-General's annual report to the Commission. As to evaluation, the questionnaires completed by participants 151/ are not a sufficient basis for evaluating the subsequent implementation of recommendations adopted or commitments made by participants.

287. We also note that insufficient distinction is made between seminars, workshops and training courses; they do not have the same objectives - for the former, to be informative and thought-provoking; for the latter, to provide training - and consequently require different types of follow-up.

288. We would emphasize that not enough lawyers and representatives of NGOs attend.

289. We saw scope for improving cooperation within the United Nations system 152/ and noted that many sectors were ready to take the initiative to that end.

2. Advisory services of the Commission on Human Rights

290. It became apparent - at least in the sector with which we were concerned - that advisory services were pointless when rendered to States that did not satisfy the conditions of minimal respect for human rights: infrastructure, a clearly and regularly affirmed political will, and so on. Quite apart from questions of ethics, such a minimum is indispensable if such services are to be effective.

3. Technical assistance in the field of human rights

291. The appropriateness and preparation of technical assistance and its method of delivery, content and follow-up should satisfy more specific criteria and not merely those put forward by the Government concerned. The Sub-Commission's attention is drawn particularly to the initiative taken by the Centre, which recently produced an excellent paper based on UNDP practice - the "Guidelines for project formulation" mentioned in the latest report by the Under-Secretary-General for Human Rights to the Commission. 153/

292. It is clear from this source that:

(a) Technical assistance cannot be granted to a country that does not satisfy certain conditions with regard to respect for minimal standards of human rights;

(b) Equal importance attaches to the preparation, content and follow-up of projects;

(c) Cooperation between United Nations departments, institutions, agencies and institutes should be the general practice as soon as the project submitted by a Government comes up for examination, not only so as to bring to bear the particular competence of the various members of the system but also to prevent overlapping of activities.

4. Technical cooperation in the field of crime prevention

293. The institution of the Interregional Adviser in Crime Prevention is particularly interesting not only from the standpoint of the function he performs and the spirit behind it but also from that of the Adviser's place in the Organization, his activities and their results.

294. The numerous activities of the Institutes in recent years, when not directly concerned with the independence of the judiciary and the protection of lawyers, have afforded opportunities to train members of these professions and have enabled them to exchange experience. Furthermore, in virtue of their physical location, the regional Institutes maintain close contact with Governments and are well versed in national problems. Lastly, as we have already indicated, the Institutes possess special technical competence with regard to the administration of justice. These are three good reasons for extending cooperation between the Centre for Human Rights and these Institutes in the course of their respective activities, particularly when they are concerned with the independence of the judiciary and the protection of lawyers.

5. Cooperation within the system

295. As we have seen, the Centre for Human Rights has since 1988 been organizing, in conjunction with several agencies of the United Nations system, activities concerned with the independence of judges and the protection of lawyers or, more generally, the administration of justice.

296. Recently the Under-Secretary-General for Human Rights, having been instructed by the Commission to coordinate United Nations advisory services and technical assistance in the field of human rights, has taken a number of steps to try to institutionalize cooperation between the agencies of the system.

297. For example since 1989 he has convened an annual inter-agency meeting for that purpose. The March 1990 meeting provided an opportunity for an exchange of ideas; 154/ but these meetings, which for the time being are confined to taking stock of past cooperation, could provide occasions for working out strategies.

298. In October 1989 the Under-Secretary-General for Human Rights was also co-signatory with the Administrator of UNDP of a letter sent to all UNDP Resident Representatives asking them for ideas on possible forms of cooperation between UNDP and the Centre on current UNDP projects. Some answers have been received, but the exercise is too recent for the results to be apparent as yet.

299. Another noteworthy step to improve inter-agency cooperation has been the very recent establishment of a Centre/ILO ad hoc working group. 155/

300. It is, however, clear from the Secretary-General's reports to the Commission that inter-agency cooperation is still based on the highly empirical case-by-case principle. The conclusion is inescapable at the present stage of our work that the institutionalization of system-wide cooperation is an enormous task in consequence of the wide differences between terms of reference and the huge number of activities involved.

B. Measures and practices that have served to strengthen or weaken the independence of the judiciary and the protection of lawyers

301. It has not been our aim to provide the Sub-Commission with exhaustive information. The few cases cited, however significant, are intended merely to illustrate, from the standpoint of method, what a report on the subject might cover in relation to the international standards.

302. Moreover, bearing in mind the dual nature of our terms of reference, we thought that priority should be given to the part concerned with advisory services and technical assistance. At all events, the information received or collected concerning Part Two is too abundant to be dealt with in a single report. While we have highlighted what seemed to us the main favourable measures - for example the normative, and especially the constitutional, safeguards - and the major obstacles - especially physical pressure - the Sub-Commission ought perhaps to be provided with fuller information on other measures and practices, both favourable and adverse. For example, it would be well to analyse the judicial reforms undertaken as part of the process of democratization taking place in many regions of the world; or again, the independence of the judiciary and the protection of lawyers during states of emergency, in the administration of military justice, or in the struggle against organized crime. With more particular reference to the independence of judges, some specific safeguards deserve thorough study: for example those concerning (apart from the independence of prosecutors, the scope of which may give rise to controversy) the statutory conditions of judges - irremovability, terms of selection and promotion, immunities, disciplinary measures, etc; those concerning the material independence of the judiciary - the justice budget and judges' salaries; those concerning the role of prosecutors in criminal procedure, etc. As to the protection of lawyers, the cases covered in the present report deal with only some of the safeguards provided by the international standards; it would be useful to analyse others - for example, minimum guarantees of access to the assistance of a lawyer.

RECOMMENDATIONS

A. Advisory services and technical assistance as regards the independence of the judiciary and the protection of lawyers

1. Training courses, workshops and seminars

303. The organization of these activities by the Centre for Human Rights might conform to the following guidelines:

(a) A more precise definition of the objective and, accordingly, the theme and content of, and methods of organizing, "seminars", "workshops" and "training courses". To this end it would be desirable for teaching activities (workshops and training courses) to take into account: (i) the precise needs of the intended beneficiaries; it might be suggested that teaching activities should be undertaken only under technical assistance projects; (ii) activities already undertaken by the United Nations in the country or region; (iii) the resolutions or recommendations, if any, adopted concerning them;

(b) Content: Seminars, workshops and training programmes on "human rights in the administration of justice" should deal systematically with the independence of the judiciary and the protection of lawyers, which constitute the primary guarantees of satisfactory administration of justice; this approach is particularly important now that the United Nations has a specific regime of protection in this area;

(c) Participants: Increased participation by judges as such (i.e., not as representatives of their Governments), by lawyers and by representatives of NGOs. In choosing the participants, priority should be given to professionalism. The Crime Prevention and Criminal Justice Branch and the United Nations Institutes should participate whenever possible.

(d) Speakers: More scope should be given to professional bodies of judges and lawyers - following the example of WIPO - and to NGOs; the participation of members of international bodies should be widened; and whenever possible officials of United Nations departments, agencies, institutions and institutes should be associated with the seminars, particularly when technical subjects are discussed;

(e) Method: Regular use might be made of working groups during workshops and training courses. Conclusions and recommendations should be systematically drawn up and published;

(f) Follow-up: Two approaches are suggested:

(i) Every course, workshop and seminar should be the subject of a specific report so that the results may be evaluated by a regular procedure. The report should be published;

(ii) The evaluation procedure would comprise a first stage covering the organization of local activities to be pursued during the year following the course, workshop or seminar - for example a discussion group on the extension of the independence of the

judiciary, the status of lawyers, etc. A year later, one of the speakers would be asked to conduct a short seminar (of two or three days) to evaluate and, if necessary, encourage action to give effect to the recommendations of the course, workshop or seminar held two years previously. Such a method would also ensure protection for participants involved in the process of change and consequently exposed to possible difficulties.

2. Advisory services of the Commission on Human Rights

304. In order to strengthen the Commission's action in rendering advisory services, it is suggested that it should take into consideration the following guidelines:

(a) Establishment of conditions for granting or maintaining advisory services, including:

(i) The existence in the country concerned of conditions of minimal respect for standards of human rights, in particular those concerning the independence of the judiciary;

(ii) The cooperation of the professionals for whom the advisory services are intended, and no longer merely that of the Government concerned;

(b) Systematic evaluation of the human rights situation in, and the needs and capacities of, the country as a basis for the formulation of recommendations by the expert. For this purpose, maximum use of the data already collected by units of the United Nations system - which are often copious - is recommended;

(c) Systematic recommendations to the Government and, where appropriate, to the Secretary-General on the advisability of providing subsequent technical assistance and how it should be done;

(d) Systematic reference to the "specific regime of protection" for the independence of the judiciary and the protection of lawyers in evaluating the situation and in making recommendations to Governments;

(e) Better coordination with the units of the United Nations system, in particular the Crime Prevention Branch and the Institutes, especially at the stage of formulating recommendations.

3. Technical assistance

305. The "Guidelines for project formulation" should be applied as efficiently and as soon as possible. To this end it would be helpful to bring them to the attention of all States concerned and of the NGOs and other parties with which the United Nations has dealings in the context of technical assistance. The Commission on Human Rights has itself called for "transparency of the criteria applied and of the rules of procedure to be followed" in carrying out technical cooperation projects. 156/

4. Improvement of cooperation within the United Nations system

306. In the interests of greater efficiency, the provision by the United Nations human rights bodies of advisory services and technical assistance as regards the independence of the judiciary, the protection of lawyers and, more generally, the administration of justice should be closely coordinated with the United Nations bodies concerned with crime prevention. Should further steps be taken? When Governments discuss at Vienna the effectiveness of the crime prevention and criminal justice programme, 157/ it might perhaps be desirable to reconsider the existing links between the Centre for Human Rights and the Crime Prevention Branch, and even to consider attaching the Branch to the Centre. It would be interesting to learn the Sub-Commission's views on this suggestion.

307. With particular reference to the office of Interregional Adviser, it would be well to consider whether an Interregional Adviser for Human Rights should be appointed.

308. Unless the Sub-Commission decides otherwise, we propose to study this question in our next report and to make proposals on the subject.

309. As an experiment, cooperation within the system might initially be confined to a restricted field such as the administration of justice, which accounts for a sizeable share of the system's activities.

310. In addition, in order to determine who is cooperating with whom and on what, it is necessary in a first stage to have precise information on future United Nations activities. 158/ In this connection, the Secretary-General's reports to the decision-making bodies might be expanded to facilitate more efficient circulation of information. The practice of the Crime Prevention and Criminal Justice Branch, which provides in its Newsletter 159/ a "Profile of projects for which technical assistance is requested", deserves mention in this connection. On the same lines we may mention the practice of holding bilateral meetings of the Centre/ILO type. Since such meetings require greater availability, the Centre for Human Rights will need additional staff.

311. Once the "areas of common interest" have been identified, three different modes of cooperation between the Centre for Human Rights and units of the system can be envisaged:

(a) Participation by United Nations units in the activities of the Centre:

(i) This might take the form of increasing the "involvement" of such units in the activities of the Centre, for example by increasing the number of their contributions to the discussion at seminars, workshops and training courses and by expanding their participation in technical assistance projects. The involvement of the Crime Prevention and Criminal Justice Branch, the Interregional Adviser and the Institutes in the Centre's activities could be stepped up; 160/

(ii) Consideration could also be given to the "delegation" of some of the Centre's activities to other United Nations units where their logistic or substantive experience or their resources exceed those of the Centre. They would take over the pursuit of the activities concerned, chiefly under the heading of technical assistance;

(b) Participation by the Centre in the activities of other United Nations sectors: on various occasions the Commission has urged the Secretary-General to extend cooperation with United Nations bodies concerned with economic and social development. In this connection, the Under-Secretary-General for Human Rights has mentioned the possibility that the Centre for Human Rights might train officials from the development sectors of the United Nations in the international law of human rights. It would also be possible, as suggested by the UNDP delegate at the annual inter-agency coordination meeting of 18 April 1991, to systematize the use of UNDP Resident Coordinators. They might, for example, draw attention to situations in which projects might be undertaken and urge States, when preparing their applications to UNDP for technical assistance, to include a heading "administration of justice" on the model of the procedure adopted by the Economic and Social Council with reference to crime prevention. At all events the Centre should be more closely associated with UNDP activities relating to the administration of justice. In addition it would be desirable to increase the Centre's participation in the activities of the Department of Technical Cooperation for Development and to consider cooperation with UNCTAD, whose secretariat has been given "human rights" responsibilities under the Programme of Action for the LDCs adopted at the Paris Conference.

(c) Execution of joint projects by the Centre and other United Nations units: for example the ILO indicated in its reply to the Secretary-General's note verbale that joint Centre/ILO action might be contemplated on access to the professions of judge and lawyer; on the recruitment and conditions of employment of judges; where political criteria are imposed; in cases of identification of lawyers with their clients or their clients' causes; and on freedom of association, these fields being covered by both United Nations and ILO standards. 161/ It is clear that such joint projects would entail the use by United Nations units of identical criteria of selection, execution and follow-up. "Guidelines for human rights project formulation" modelled on those of UNDP would provide the beginnings of a solution to this problem.

B. Measures and practices that have served to strengthen or weaken the independence of the judiciary and the protection of lawyers

312. We recommend that this part of our terms of reference should be renewed to enable us to provide the Sub-Commission with the fullest possible information on cases of measures and practices that have served to strengthen or weaken the independence of the judiciary and the protection of lawyers by reference to United Nations standards.

Notes

1/ E/CN.4/Sub.2/1990/35.

2/ Ibid., paras. 72, 74 and 75.

3/ Ibid., para. 73.

4/ Ibid., paras. 65-69; the system of periodic reports is explained in our working paper, paras. 17-26.

5/ See Report of the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August-7 September 1990 (A/CONF.144/28).

6/ Ibid., instrument 3 and resolution 26. These Principles were confirmed by the General Assembly at its forty-fifth session; see resolution 45/166 of 18 December 1990.

7/ Ibid., instrument 3, para. 5 and resolution 26, para. 8.

8/ E/CN.4/Sub.2/1990/35, para. 75.

9/ Resolution 1990/23, para. 6.

10/ See in particular, E/CN.4/Sub.2/1985/18/Add.1 and Add.2.

11/ Decisions of 29 March 1982 (No. 10/1977) Altesor v. Uruguay; of 3 April 1987 (No. 155/1983), Hammel v. Madagascar; of 4 November 1988 (No. 203/1986), Muñoz Hermoza v. Peru; of 2 November 1988 (Nos. 241 and 242/1987), Birhashwirwa and Mulumba v. Zaire; and of 8 November 1989 (No. 369/1989), Samuels v. Jamaica.

12/ In particular Delcourt v. Belgium (17 January 1970, series A, No. 112; Le Compte, van Leuven and de Meyere v. Belgium (23 June 1981, series A, No. 43); Piersack v. Belgium (1 October 1982, series A, No. 53); Campbell and Fell v. United Kingdom (28 June 1984, series A, No. 46); Hamek v. Austria (22 October 1984, series A, No. 84); de Cubber v. Belgium (26 October 1984, series A, No. 86); Ettl v. Austria (23 April 1987, series A, No. 117); H v. Belgium (30 November 1987, series A, No. 127); Belilos v. Switzerland (29 April 1988, series A, No. 132); and Hauschildt v. Denmark (24 May 1989, series A, No. 154).

13/ See in particular: International Convention on the Elimination of All Forms of Racial Discrimination (art. 5); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (art. 13); Convention on the Rights of the Child (art. 37); International Convention on the Protection of the Rights of all Migrant Workers and their Families (art. 18); Convention relating to the Status of Refugees (art. 16); Convention relating to the Status of Stateless Persons (art. 16); Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (art. 5); etc. Reference will also be made to the relevant provisions of international

humanitarian law, in particular the Geneva Conventions of 12 August 1949 (common art. 3, para. 1.d) and Additional Protocols I (art. 75, para. 4) and II (art. 6, para. 2).

14/ Hereinafter referred to as the "Judiciary Principles"; see Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat (United Nations publication, Sales No. E.86.IV.1), General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985 and the Compilation of International Instruments on human rights, chapter G.38 (United Nations publication, Sales No. E.88.XIV.1).

15/ Hereinafter referred to as the "Prosecutor Principles" and the "Lawyer Principles" (see footnote 6 above).

16/ E/CN.4/Sub.2/1988/20/Add.1 and Add.1/Corr.1; hereinafter referred to as "the draft Declaration".

17/ We shall henceforth refer to these instruments as "the specific regime of protection". All the instruments mentioned in this paragraph, with the exception of the "Prosecutor Principles", are reproduced in "The Independence of Judges and Lawyers: A Compilation of International Standards", CIJL Bulletin, Nos. 25-26, April-October 1990.

18/ See E/CN.4/Sub.2/1990/35, para. 14.

19/ For example: receiving appropriate training in law.

20/ Freedom of association as a safeguard of the defence of the collective interests of the judiciary.

21/ For example, the guarantee of adequate resources to enable the judiciary to perform its functions "properly".

22/ For example, career organization and development, irremovability, etc.

23/ It should be emphasized that the "Prosecutor Principles", as adopted, do not appear to have paid enough heed to the diversity of legal systems, especially with regard to the scope of the principle of the independence of prosecutors.

24/ Principles 4 and 5.

25/ Principle 15.

26/ Principle 16.

27/ E/CN.4/Sub.2/1990/35, paras. 30 and 31.

28/ General Assembly resolution 43/173 of 9 December 1988, annex, principle 32.

29/ Our underlining.

30/ See the now famous Advisory Opinions handed down by the Court, OC-8/87 of 30 January 1987 and OC-9/87 of 6 October 1987.

31/ E/CN.4/Sub.2/1990/35, para. 15.

32/ E/CN.4/Sub.2/1985/18/Add.1-6.

33/ See above, para. 14.

34/ It should be pointed out that, although the mandate of this Department does not expressly relate to human rights but deals with natural resources, economic development planning, public administration and social development, it implicitly includes this subject in the Department's own opinion. Moreover the Department has activities which concern human rights, including the administration of fellowships, the recruitment and supply of experts and consultants on "social development", "legal and related activities" and so on.

35/ For example, early in 1991 23 new requests from Governments concerned training activities on the administration of justice (E/CN.4/1991/55, annex III).

36/ The only information is contained in the annual report of the Secretary-General on advisory services and technical assistance to the Commission on Human Rights (E/CN.4/1989/42, para. 26).

37/ CNDH, Rapport annuel, 1988, p. 21. Translation by the United Nations Secretariat.

38/ E/CN.4/1989/42, para. 30.

39/ HR/PUB/89/2.

40/ E/CN.4/1989/42, para. 32.

41/ Ibid., para. 35.

42/ "To enhance observance of international instruments, to encourage exchange of knowledge ... and to lay the foundation for improved interaction and cooperation between and among government and non-governmental organizations". Ibid., para. 33.

43/ "... roles of the various sectors ... practical measures to ensure the enjoyment of human rights ..., programme of action and assistance for enhancing adherence to international ... instruments". Ibid.

44/ Ibid., para. 34.

45/ E/CN.4/1990/43, para. 83.

46/ Ibid., para. 92.

47/ Ibid., para. 93.

48/ Ibid.

49/ E/CN.4/1991/55, paras. 86 and 87.

50/ For a pertinent critical analysis of the advisory services and technical assistance rendered to Guatemala - their desirability, method and content - see Lawyers Committee for Human Rights. The UN Advisory Services Program in Guatemala, Abandoning the Victims (New York: February 1990), 101 pp.

51/ The reader is reminded that 1988 is the first year covered by this study.

52/ E/CN.4/1989/39, inter alia, paras. 48, 60, 66 and 69 (c) (ii).

53/ E/CN.4/1990/45, paras. 48, 49, 54, 58, 63, 66 (c), (m) and (o), 71 (c) and (d) (ii).

54/ E/CN.4/1991/5, inter alia, paras. 123-126, 140 and 142-145.

55/ E/CN.4/1989/40, inter alia, paras. 89-97, 138 (c) and (e) (i) and 139.

56/ Ibid., para. 141.

57/ E/CN.4/1990/44 and Add.1, inter alia, paras. 55, 102-103, 106 (e) and 107 (c) and (d).

58/ See E/CN.4/1495; the Government accepted this Plan and the Economic and Social Council took note of it in its resolution 1982/36.

59/ E/CN.4/1990/42 and Add.1, inter alia, paras. 20, 44 and 57.

60/ E/CN.4/1991/54 and Add.1 and 2, inter alia, paras. 6 and 13.

61/ The organization draws attention in particular to a lack of independence and impartiality on the part of the trial courts and to infringements of the rights of the defence; see E/CN.4/1991/NGO/27, inter alia, paras. 4 and 13.

62/ Resolution 1991/80 of 6 March 1991, para. 8.

63/ See the annual reports of the Secretary-General to the Commission for Human Rights on advisory services and technical assistance (E/CN.4/1989/42, paras. 16-17; E/CN.4/1990/43 and Corr. 1, paras. 74-78; E/CN.4/1991/55, paras. 70-73).

64/ United Nations Centre for Human Rights (UNCHR), UNICRI and the Italian Ministry of Foreign Affairs, Diritti Umani ed Istruzione Penale, Corso di Formazione sulle Techniche di Istruzione ed Investigazione, UNICRI Publ. No. 39 (Rome, 1990), 245 pp.

65/ E/CN.4/1991/55, para. 72.

66/ See the annual reports of the Secretary-General to the Commission on Human Rights on advisory services and technical assistance (E/CN.4/1989/42, paras. 19-20; E/CN.4/1990/43 and Corr.1, paras. 79-81; E/CN.4/1991/55, paras. 74-76); see also the reports of the Expert on Guatemala (E/CN.4/1989/39; E/CN.4/1990/45 and Add.1; E/CN.4/1991/5 and Add.1).

67/ E/CN.4/1990/43, para. 80 (k).

68/ E/CN.4/1990/45/Add.1, paras. 3 and 4.

69/ They are stated in detail in document E/CN.4/1990/45/Add.1.

70/ E/CN.4/1991/5, paras. 144 and 145.

71/ E/CN.4/1990/45/Add.1.

72/ See the programme of the course, E/CN.4/1989/39, annex II.

73/ E/CN.4/1990/45/Add.1, para. 60.

74/ In 1982, 1986 and 1989 respectively.

75/ E/CN.4/1991/54, para. 3.

76/ Ibid., paras. 6-7.

77/ E/CN.4/1991/55, para. 77.

78/ Republic of Paraguay, UNDP and United Nations Centre for Human Rights, Seminario sobre la aplicación de los instrumentos internacionales de derechos humanos y la administración de la justicia. Ministry of Justice and Labour of the Republic of Paraguay, January 1991, 302 pp.

79/ E/CN.4/1991/55, para. 78.

80/ Ibid., paras. 80-81.

81/ Ibid., para. 61.

82/ We are dealing here only with the regular fellowship programme since 1988 (cf. E/CN.4/1989/42, paras. 39-40; E/CN.4/1990/43, paras. 58-62; E/CN.4/1991/55, paras. 51-56); for fellowships awarded by way of technical assistance to individual States, see above.

83/ Ibid.: 1988: 62 applications from 43 Governments; 1989: 65 applications from 45 Governments; 1990: 85 applications from 53 Governments.

84/ The group is composed of senior officials of the Centre for Human Rights. See E/CN.4/1991/55, para. 15.

85/ For example, criminal procedure and human rights, the right to a fair trial, legal aid, and the administration of justice during a state of emergency.

86/ For example, a fellow wishing to study the conventions on prostitution was sent to New York, where the information on the subject is collected.

87/ E/CN.4/1989/42, para. 41; E/CN.4/1990/43, para. 64; E/CN.4/1991/55, paras. 57-58.

88/ Ibid.

89/ E/CN.4/1991/55, para. 58.

90/ See in particular the reports of the Secretary-General to the Committee on Crime Prevention and Control: E/AC.57/1988/2 and E/AC.57/1990/2; the documents prepared by the secretariat for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders: A/CONF.144/5 and A/CONF.144/18; and Crime Prevention and Criminal Justice Newsletter, Special double issue on United Nations activities in the field of crime prevention and criminal justice, United Nations Office at Vienna (UNOV), Centre for Social Development and Humanitarian Affairs, No. 18/19, June 1990.

91/ Projects carried out jointly with ILANUD.

92/ For the Adviser's background terms of reference, see: Economic and Social Council resolution 1979/20, General Assembly resolutions 35/171 and 36/21 and the report of the Secretary-General to the General Assembly in 1981, A/36/442.

93/ Advice given by the Adviser is not reproduced in any official United Nations publication; moreover it remains confidential for a year from the date on which it is given.

94/ UNAFEI Joint Seminar on Crime Prevention and Treatment of Offenders (Philippines-Japan), UNAFEI, Japan International Cooperation Agency, March 1989, 316 pp.

95/ See for example the seminar reports published in cooperation with the Japan International Cooperation Agency, inter alia: An introduction to the Criminal Justice Legislation of Singapore, January 1987, 528 pp.; An introduction to the Criminal Justice of Sri Lanka, December 1987, 644 pp.; and the Resource Material Series, inter alia No. 29, April 1986, and No. 32, December 1987, which contain reports on the Institute's activities not covered by special publications.

96/ Ref. RLA/88/001.

97/ See in particular: El Rol del Poder Judicial en la Investigación de Casos de Derechos Humanos, ILANUD, 1989; Alternativas a la Prisión en América Latina y el Caribe, DEPALMA/ILANUD, 1990; Sistema Penal y Derechos Humanos en Costa Rica, EDUCA/ILANUD, 1990.

98/ Project "Rationalization of the Administration of Justice", URU/87/004.

99/ Project "Modernization of the Federal Judicial System", Brazil/87/025.

100/ COL/88/001.

101/ Project "Support for the National Crime Bureau", COL/88/024.

102/ See the reports of the United Nations High Commissioner for Refugees to the Executive Committee, inter alia EC/SCP/57 and 60.

103/ See the reports of the Director-General AB/XXI/2, inter alia paras. 20 (a) and (j), 54, 76, 127, 194, 234, 329 and 405, and AB/XXI/3, inter alia paras. 71, 83 and 242. See in particular the working papers of the training courses held in Chad, Swaziland, Lesotho and China in 1989, respectively WIPO/PI-DA/NDJ/89, WIPO/PI/SZ/89, WIPO/PI/LS/89 and WIPO/CR/BJ/89.

104/ I.e. our working paper of last year, E/CN.4/Sub.2/1990/35.

105/ Report on a visit to Colombia (E/CN.4/1990/22/Add.1, para. 69).

106/ Ibid., para. 58.

107/ E/CN.4/Sub.2/1991/19.

108/ See judgements in People and the Hong Kong & Shanghai Banking Corporation v. José O. Vera, 65 Phil. 56; Wenceslas Laureta, 148 SCRA 382; Nestlé Philippines, Inc. v. Sanchez, 154 SCRA 542.

109/ See inter alia the "proclamations" of the Supreme Court in the judgements Cunanan et al., 94 Phil. 534 (1954); Andres v. Cabrera, 84 O.G. 864; 127 SCRA 802 (1984).

110/ This is a declaration of principles reiterating support for fundamental human rights as defined in the Constitution, the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

111/ See in particular the National Commission's information file for May 1989.

112/ E/CN.4/Sub.2/1990/35, paras. 34-36.

113/ "Conditions of service" in the "Judiciary Principles".

114/ "Ordinary law" on human rights; "Judiciary Principles", art. 2; "Prosecutor Principles", art. 4; "Lawyer Principles", art. 16.

115/ Attacks on Justice, The Harassment and Persecution of Judges and Lawyers, January 1988-June 1989, Reed Brody (Ed.) (Geneva: CIJL/ICJ), idem, July 1990-June 1990).

116/ In Defense of Rights, Attacks on Lawyers and Judges in 1989, (New York: Lawyers Committee for Human Rights), 118 pp.; idem, in 1990, 174 pp.

117/ E/CN.4/1990/22/Add.1, para. 43.

118/ Ibid., para. 34.

119/ See also E/CN.4/1990/22/Add.1, paras. 34 and 43.

120/ Decree No. 1631 of August 1987 established the office of "public order judge" responsible for conducting inquiries and ruling on offences which seem to have the aim of "persecuting or intimidating any person resident in Colombian territory by reason of his membership of a political party or for any other conviction or opinion".

121/ See for example E/CN.4/1990/22, para. 128 (b), and E/CN.4/1991/36, para. 109 (e).

122/ E/CN.4/1991/36, paras. 365 (b) and 366.

123/ E/CN.4/1990/22, inter alia, paras. 382, 386 (b) and 389.

124/ E/CN.4/1991/20, paras. 339 and 346.

125/ In particular Amnesty International, the Centre for the Independence of Judges and Lawyers of the International Commission of Jurists, the International Federation of Human Rights and the Lawyers Committee for Human Rights.

126/ Within the meaning of the "Judiciary Principles", principle 2.

127/ See also the report of the Special Rapporteur on Summary or Arbitrary Executions (E/CN.4/191/36, para. 363 (g)).

128/ On the same lines, see the concern expressed by the Special Rapporteur on Summary or Arbitrary Executions (E/CN.4/1991/36, para. 363).

129/ In particular Amnesty International, the Centre for the Independence of Judges and Lawyers, the Free Legal Assistance Group, the Lawyers Committee for Human Rights and the Regional Council on Human Rights in Asia.

130/ Within the meaning of the "Lawyer Principles", principle 16.

131/ Within the meaning of the "Lawyer Principles", principle 18.

132/ See footnote 129 above.

133/ E/CN.4/1991/17, paras. 203-275, and E/CN.4/1991/20/Add.1 respectively.

134/ See principle 18 of the "Lawyer Principles".

135/ "Lawyer Principles" 5-8 and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

136/ See principle 5 of the "Judiciary Principles" in conjuction with paragraph 5 (f) of the "draft Declaration".

137/ Footnote 133, op cit.

138/ "Judiciary Principles" 11, 12 and 17-20.

139/ The new system established six courts and a High Court of Revolutionary Security.

140/ Admittedly the Declaration is only a draft, but it will be recalled that the Commission on Human Rights, in its resolution 1989/32 of 6 March 1989, invited "Governments to take into account the principles set forth in the draft declaration in implementing the Basic Principles on the Independence of the Judiciary" (para. 2); see above, para. 17.

141/ Meanwhile, in December 1989 the Government had authorized the new courts to apply the Sharia, to which a number of judges were opposed. It will be recalled that the Sharia was introduced in September 1983, supplemented by the jurisprudential principle of "free interpretation" authorizing the judge to seek in it charges not formulated in codified law. Since 1983, it is said, the judges' opposition to the application of the Sharia was always restricted by heavy pressure from the executive. In 1984 the establishment of special courts under the state of emergency was largely intended to systematize judges' resort to the Sharia. These special courts are said to have remained in operation, under the name of "courts of swift justice", when the state of emergency was lifted at the end of 1984 and a new Judiciary Act was adopted.

142/ None of them had been reinstated by 1 May 1991.

143/ "Lawyer Principles" 23-25.

144/ Principle 24.

145/ Principle 7.

146/ Principles 13 (b) and 20 *in fine*.

147/ Principle 18.

148/ Principles 16 and 17 *in fine*.

149/ "Judiciary Principles", *inter alia*, principles 1, 4, 5 and 6; "draft Declaration", *inter alia* paragraph 5.

150/ CCPR/C/21/Rev.1, GENERAL COMMENT 13 [21] (Art. 14), para. 4.

151/ As was done, for example, at Manila and San Remo in 1988.

152/ See Commission on Human Rights resolution 1991/50, para. 9, to the same effect.

153/ E/CN.4/1991/55, para. 15.

154/ For details of the March 1990 meeting, see A/45/590, paras. 59-81.

155/ See E/CN.4/1991/55, para. 21.

156/ Resolution 1991/49 of 5 March 1991, para. 13.

157/ See General Assembly resolution 45/108 of 14 December 1990 and the Secretary-General's note on the establishment, composition and terms of reference of the Intergovernmental Working Group which will discuss this question from 5 to 9 August 1991 (A/45/973 of 13 March 1991).

158/ The Commission's resolutions merely mention the beneficiaries of cooperation; furthermore they are not exhaustive. See, for example, resolution 1991/50, paras. 8 and 9.

159/ Newsletter, op. cit., annex II.

160/ See, to the same effect, the Secretary-General's report to the Sub-Commission containing succinct information on activities within the crime prevention programme as they relate to human rights (E/CN.4/Sub.2/1990/23).

161/ Convention No. 111 on Discrimination (Employment and Occupation) and Conventions Nos. 87, 98 and 151 on freedom of association. On the application of ILO standards and recommendations to our subjects, see the General Survey by the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference, 75th session, 1988, Report III, Part 4B.
