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COMMISSION ON HUMAN RIGHTS

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THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES

Freedom of opinion and expression

Written statement submitted by the International Federation of
Human Rights, a non-governmental organization in consultative
status (category II)

The Secretary-General has received the following communication, which is circulated in accordance with the Economic and Social Council resolution 1296 (XLIV).

[25 August 1987]

Just concern for certain fundamental human rights - the rights to life, freedom of movement, personal security, food, health, education, etc., must not make us forget other human rights equally fundamental, such as the rights to freedom of thought, opinion and expression. We call these rights equally fundamental because thought, opinion and their expression are inherent to the human condition.

The basic legal norms (Constitution, Supreme Law, Basic Law) of the great majority of States recognize these fundamental human rights but their effective enjoyment is often limited and even annulled for various reasons:

(1) When, apart from the basic norm proclaiming the existence of those rights, there is only the arbitrariness of power;

(2) When, in addition to the basic norm, there is a system of legal guarantees but with more or less long interruptions, called "states of exception";

(3) When the legal system itself establishes limits on those rights, punishing some forms of their exercise by vague legal provisions which leave a vast field open to arbitrary behaviour by law-enforcement authorities;

(4) When the legal system guarantees those rights but they are occasionally administratively, legislatively or judicially trimmed by citation, inter alia, of "reasons of State";

(5) When there are all the formal guarantees for freedom of thought, opinion and expression but their exercise is basically the privilege of a political and/or economic élite.

The Sub-Commission should concern itself with a more thorough study of legal and social mechanisms to overcome the factors that limit or annul the exercise of the freedoms of thought, opinion and expression.

At the same time, it is necessary to warn against the danger that freedom of opinion may amount to a mere catharsis if it is not accompanied by the determined and conscientious participation of individuals and groups in the prior consideration and the adoption of the decisions that concern them. In other words, it is necessary to bring out the indissoluble relationship that exists between the right to freedom of opinion and public participation.

IN THE LEGAL FIELD

(1) Arbitrariness must be excluded. A mere proclamation of rights is not enough. There must also be a system of guarantees based on the Constitution, the laws and an independent judicial branch of government, subject to the Constitution and the laws, and to them only.

(2) Very precise legislative or constitutional limits should be set for so-called states of exception. (a) The rights and guarantees that are suspended during the period of the state of exception should be strictly limited. (b) A maximum period for the uninterrupted duration of the state of exception should be established. (c) The automatic extension of the state of exception should be excluded; in addition to article 4 of the International Covenant on Civil and Political Rights, article 27 of the American Convention on Human Rights should be a source of inspiration.

(3) Whatever the nature of the legal area protected (national security, public morals and order, reputation of the State, etc.), the criminal law should not punish the mere expression of opinions or ideas. Penal provisions which punish conduct injurious to particularly sensitive legal areas, such as those indicated, must be especially explicit in the description of such conduct, precisely delimiting and specifically enumerating the types of conduct incriminated and thus leaving as little room as possible to the discretion of those responsible for law enforcement. The principle "nullum crimen, nulla poena sine lege" should be rigorously applied.

(4) States which do not yet have it should introduce the practice of amparo, i.e. a summary procedure whereby anyone who considers one of his

constitutional rights violated can appeal to the courts to restore the status quo ante until the matter is settled through normal judicial procedures (article 8 of the Universal Declaration). The same recommendation applies to the institution of habeas corpus.

IN THE SOCIAL FIELD

In view of the preponderant role played by the mass media in the expression and spread of ideas in today's society and of the enormous technical and financial resources they require, as in the cases of mass-circulation newspapers and periodicals, radio broadcasting, television and satellite communications, mechanisms should be created to prevent them from being monopolized and to ensure that they operate democratically (resolution 21 C/19 of the UNESCO General Conference, October-November 1980).
