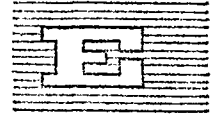


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COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention of
Discrimination and Protection
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Agenda item 6

QUESTION OF THE HUMAN RIGHTS OF PERSONS SUBJECTED TO
ANY FORM OF DETENTION OR IMPRISONMENT

Written statement submitted by the Procedural Aspects of
International Law Institute, a non-governmental organization
in consultative status, Roster

In resolution 5D (XXXI) of 15 September 1978 the Sub-Commission, after having considered a preliminary report given by Mrs. Nicole Questiaux, recommended that the Commission request the Economic and Social Council to authorize Mrs. Questiaux to continue her study of "the implications for human rights of recent developments concerning situations known as States of Siege or Emergency". Authorization for the study was given by the Economic and Social Council in its resolution 1979/34 of 10 May 1979.

The (preliminary) report of the Special Rapporteur will be considered at the thirty-fourth session of the Sub-Commission.

During the discussion of this item at the Sub-Commission's thirty-third session one speaker remarked inter alia that "States of emergency constituted attempts on the part of Governments to give an air of legality to violations of the fundamental rights of their citizens"1/. The remark illustrates the concern that has arisen over the violations of the most fundamental human rights occurring under states of emergency. Considering the human rights violations reported over the last decade in countries under a state of emergency such concern seems understandable, as is the general relief felt when a country decides to lift a state of emergency.

Unfortunately, however, the lifting of states of emergency or siege is becoming more and more a device designed to have a cosmetic impact and geared to give the impression that the human rights situation in the particular country has improved, while it has not. In several countries, after the state of emergency or siege has been lifted, government practices that violate fundamental human rights are continued and legislation that denies those rights to citizens is retained.

Two countries can serve as examples to illustrate the above described development. During the state of emergency in force in 1979 in Sri Lanka the Government of that country passed the "Prevention of Terrorism (Temporary Provisions) Act", no. 48 of 20 July 1979. Although the state of emergency was lifted on 27 December 1979, ^{2/} the Act is still in force. Detention under the Act can be for a period of up to 18 months "in such place and subject to such conditions as may be determined by the Minister"^{3/} Under the Act those arrested can be held incommunicado without being informed about the charges and without access to relatives or lawyers. By mid-June 1981 28 persons, all members of the Tamil minority in Sri Lanka, were held in this fashion after they were arrested at the beginning of April, allegedly in connection with a bank robbery. The provisions of the Prevention of Terrorism Act cited here are in contravention of the Constitution of Sri Lanka and the International Covenant on Civil and Political Rights, ratified by Sri Lanka in 1980.

In the case of the Philippines, martial law was lifted on 17 January 1981 after having been in force for eight and a half years. However, the President retains extensive powers acquired under decrees passed during the period of martial law. For example, the decrees which make strikes illegal and permits arbitrary arrests and detention remain in force. Reports of arbitrary arrests, massive civilian killings and torture in the Philippines continue, including arbitrary detention and inhumane treatment of lawyers who have offered their legal services to political prisoners.

In other countries legislation has been enacted which has a similar effect to a state of emergency, but which has not been necessarily designated by the particular government as an emergency situation. For example, in the case of Peru the return to civilian rule in 1980 has been favourably noted as being likely to increase protection of human rights in that country. Yet, on 10 March 1981 Legislative Decree no. 46 was issued, also referred to as the "Anti-Terrorism Law", under which any person may be punished with no less than ten years imprisonment, who "for the purpose of provoking a state of anxiety in the general public commits acts that could create a danger to the health of persons, by using methods capable of affecting international relations or State security". ^{4/} Persons arrested under the law can be held in detention for 15 days and can be moved from one place to another "when such a step is strictly necessary for the greater success of the police investigation".^{5/}

Unrelated to any specific declaration of a state of emergency in Pakistan is a provision in that country's constitution which removes certain protections for any person in preventive detention, "who is acting or attempting to act in a manner prejudicial to the integrity, security or defence of Pakistan, or any part thereof, or who commits or attempts to commit any act which amounts to an anti-national activity" ^{6/}. Again, the vagueness of this provision could permit detention which, in effect, is the same as that under a state of siege.

This statement is submitted in order to draw the attention of the Sub-Commission to situations in which the lifting of states of emergency, while desirable, may not, in fact, reflect an improvement in the protection of fundamental human rights.

While the repeal of states of emergency should be welcomed, in order to be meaningful such repeal should be accompanied by the repeal of all emergency laws or decrees which cannot be justified as "strictly required by the exigencies of of the situation".

Every nation has the right to defend itself against terrorism, but so-called "anti-terrorist" laws should not be permitted to provide a cover for the repression of legitimate political opposition.

FOOTNOTES

- 1/ E/CN.4/Sub.2/459, p.24, para. 142.
- 2/ A state of emergency has been declared several times in Sri Lanka for brief periods since 1979. On 17 August 1981 the second state of emergency in two months was declared "to curb communal violence in the northern part of the country".
- 3/ Art. 9(1) Prevention of Terrorism (Temporary Provisions) Act, no.48 of 1979.
- 4/ Art. 1 Legislative Decree No.46 of 10 March 1981.
- 5/ See note 4 supra., art.9.
- 6/ E/CN.4/Sub.2/470/Add.3, p.2.