



# LAW AND SOCIETY TRUST

## Fortnightly Review

No.3, Kynsey Terrace Colombo 8 September 1st & 16th, 1990 Issues 3 and 4

### OBJECTIVES

*The Law and Society Trust Fortnightly keeps the wider Law and Society community informed about the activities of the Trust and about important events of legal interest and personalities associated with the Trust.*

The September issues of the Fortnightly Review have been combined to form a special issue, highlighting the "The South Asian Task Force on the Judiciary", a conference of eminent jurists from the SAARC countries organized by the Law and Society Trust on September 9th, 10th and 11th:

Extracts from the report of the Task Force will be published in later issues.

### SOUTH ASIAN TASK FORCE ON THE JUDICIARY

**T**he Law & Society Trust hosted on the 9 and 10 of September, at No.3 Kynsey Terrace, the initial workshop of the South Asian Task Force on the Judiciary.

This exercise in promoting and protecting the independence of the judiciary was pioneered by the International Centre for Law in Development in New York and the workshop was co-sponsored by ICLD.

This Task Force was established as a further step to the efforts of the International Commission of Jurists. The ICJ has been in the forefront of promoting and safeguarding the independence of the judiciary. One of the objectives of the ICJ efforts has been to obtain international consensus with regard to the norms and principles necessary to safeguard the independence of the judiciary.

This Task Force was constituted with the objective of now seeking enforcement of these norms and principles in the South Asian region. The task force on the judiciary is part of a larger exercise which also seeks the establishment of a similar group with regard to the legal profession.

The Task Force was chaired by former Indian Chief Justice P.N. Bhagwati and comprises several eminent jurists and lawyers in South Asia.

The Task Force addressed the twin tasks of:

1. Identifying factors leading to the erosion of the independence of the judiciary, in the countries under study, and the formulation of strategies to arrest such erosion and to strengthen the independence of the judiciary.

2. Identifying specific legislation and policies, in the participating countries, which either violate, or help promote the international norms and principles articulated for the protection and safeguarding of the independence of the judiciary.

The deliberations of the Task Force will be embodied in a report which will be presented (for adoption and implementation) to meetings of international legal professional bodies such as the International Bar Association and the International Commission of Jurists. The report of the Task Force would comprise practical measures and strategies (reflective of the specific experiences in each member's country) to help implement and enforce the international norms, standards and principles aimed at securing the independence of the judiciary. It would focus especially on measures and strategies which the legal profession, as an organized body, could take to safeguard the independence of the judiciary.

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- Radhika Coomaraswamy

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- Shamini Mahadevan

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CLASS  
NO:

ACC.  
NO.

0003

## LIST OF PARTICIPANTS:

### Sri Lanka

1. Dr. Nissanka Wijeyeratne, Chairman, Law & Society Trust
2. Mr.R.K.W. Goonesekere, Trustee, Law & Society Trust
3. Mr. H.L.de Silva, PC, Attorney-at-Law
4. Prof. G.L. Pieris, Vice-Chancellor, University of Colombo
5. Mr. T.W. Rajaratnam, Member of Parliament & Former Judge of the Supreme Court
6. Mr. Desmond Fernando, PC, President, Bar Association of Sri Lanka
7. Mr. Kalyananda Thiranagama, Attorney-at-Law, Lawyers for Human Rights & Development
8. Dr. Neelan Tiruchelvam, Trustee, Law & Society Trust
9. Mr. Mario Gomez, Consultant, Law & Society Trust
10. Ms. Nandini Samarasinghe, Consultant, Law & Society Trust
11. Ms. Jennifer Thambayah, Law Faculty, University of Colombo
12. Ms. D. Wickremasekera, Secretary, Law & Society Trust
13. Mrs. I. Nilaweera, Administrative Secretary, Law & Society Trust

### Bangladesh

14. Dr. Kamal Hossain, Former Foreign Minister of Bangladesh
15. Mr. Amirul Islam, Secretary-General, Bangladesh Institute of Law & International Affairs

### India

16. Dr. Upendra Baxi, Vice-Chancellor, University of Delhi
17. Mr. R. Venkaramani, Advocate, Supreme Court of India
18. Mr. R. Sudarshan, The Ford Foundation, New Delhi
19. Justice P.N. Bhagwati, Former Chief Justice of India
20. Dr. Clarence Dias, President, International Center for Law in Development, New York

### Pakistan

21. Justice Dorab Patel, Pakistan
22. Mr. Muhammad Makhdoom Ali Khan, Advocate, Supreme Court, Pakistan

### Nepal

23. Mr. Prakash Kaphley, General Secretary, Forum for the Protection of Human Rights, Nepal
24. Mr. Bharaat Raj Upreti, Pioneer Law Associates, Nepal.

## RESOLUTION REGARDING SAARC VICTIMS OF THE GULF CRISIS

1. Whereas, we, who are engaged in the work relating to the promotion of law and human rights in our respective countries in the SAARC region having assembled in Colombo under the auspices of Law & Society Trust share our grave concern regarding the present plight of the hundreds of thousands of workers from our region who were in lawful employment in Iraq and Kuwait being stranded and marooned in the deserts of those countries and their bordering areas without food, water, medicine or medical facility awaiting to be evacuated from the countries of their employment for returning to their own;
2. And whereas, the social and international order in which their employments and livelihoods were secured has been disrupted and destroyed due to international conflicts and actions of which they have become innocent victims;
3. Recognizing that the inherent dignity and the equal and inalienable rights of all members of the human family are the foundations of freedom, justice and peace in the world;
4. And whereas several of their rights under the Universal Declaration of Human Rights, including rights under Articles 13, 23 and 25, are being violated;
5. We urge upon the Secretary General of the United Nations to raise an adequate Emergency Relief Fund for the purpose of immediate relief and speedy repatriation to those stranded within borders of Iraq, Kuwait and neighbouring countries.

ADOPTED BY THE S.A. TASK FORCE ON THE JUDICIARY

Colombo  
11 September 1990.

## CONSULTATION ON ELECTORAL LAW REFORMS IN NEPAL

*Scott Newton*

Election monitoring and discussions regarding the planning and conduct of elections are nothing new for the Law and Society Trust. On Tuesday, September 11, however, LST played host to a consultation on electoral laws of an extraordinary and path-breaking nature. Four leading legal experts from Nepal came to meet with a group of eminent South Asian Jurists to discuss the laws and procedures governing Nepal's upcoming "founding elections." These elections, the first genuine elections in three decades of autocratic rule, to be held next March, mark the culmination of Nepal's democratic revolution earlier this year.

(Uruguay); for the third Prize to Mrs. Tai-Young Lee (Republic of Korea), Mr Lorenzo Vidal Vidal (Spain) and to the World Association for the School as an Instrument for Peace (Switzerland); for the fourth Prize to Mr Kadir Asmal (Ireland); for the fifth Prize to Mr Ralph Pettman (Australia); for the sixth Prize to Mr Alfredo Bravo (Argentina), Fred and Bonnie Cappucino (Canada) and Mrs Jeanne Hersch (Switzerland).

The award ceremony of the Unesco Prize 1988 for the Teaching of Human Rights, presided by the Director-General, was particularly outstanding as it took place during the Fortieth Anniversary of the Universal Declaration of Human Rights (1948). The ceremony took place on 5 December 1988 in the presence of Mr. Julio Javier Tumiri, President of the "Asamblea Permanente de los Derechos Humanos" and Mr Nikolai Todorov, President of the International Jury in 1988. Many personalities participated in the ceremony which took place on the same day as the opening of the International Meeting on Human Rights organized by Unesco to celebrate the Fortieth Anniversary.

### III. Nomination for the 1990 Prize

It should be recalled that in 1988 thirty-one nominations were presented for the Prize. In 1990, 32 nominations have been received of which 19 were presented by Member States and 13 by international non-governmental organizations. Of these 12 are for institutions and 20 for individuals.

The International Jury for the selection of the UNESCO Prize for the Teaching of human rights unanimously decided to recommend to the Director General to award the Prize to Mr. Vaclav Havel, writer, poet, and currently the President of Czechoslovakia. His candidature was forwarded by the Union of Catholic Bishops.

Mr. Havel was seen by the Jury to represent the full spirit of the prize for the teaching of human rights. His literary writings are essentially concerned with the respect of the rights of persons and fundamental liberties. His political action is an example of involvement in the non-violent, democratic processes of his country which ultimately led to the transformation of his society.

Havel remained and worked in his country and his teachings and writings played a significant and important role in the democratic transformation of Czechoslovakia. Both in teaching and action, the Jury believed Vaclav Havel represents the spirit behind the UNESCO prize for the teaching of Human Rights.

In addition the Jury made honorary mention of three other applicants for special commendation -

- Task Force for Detainees of the Philippines
- Madame Eva Latham, Netherlands
- L'Institute Louis Sallant Foundation, France.

The Members of the Jury included -

- Ali Sadek Abu-Heif (Egypt)
- Juan Antonio Carillo Salcedo (Spain)

- Radhika Coomaraswamy (Sri Lanka)
- Hector Fix-Zamudio (Mexico)
- J.K. Zerbo (Senegal)
- Nikail Todorov (Bulgaria)

The Prize will be given on December 10th Human Rights Day to Mr. Vaclav Havel.

## **THE FOCUS ON SRI LANKA DOWN UNDER**

*By Sharmini Mahadevan*

**I**n the wake of the recent outburst of violence in the North and East of Sri Lanka, Sri Lankan visitors to Australia have been granted a three month extension on their visas by the Federal Government, which has also warned Australians travelling to Sri Lanka to avoid certain parts of the country.

To some Sri Lankans living Down Under and lulling in a sense of well-being which distance helps create, Jana Wendt's television programme 'A Current Affair', with its recent focus on Sri Lanka, was a timely reminder of the civil strife back home. Australian Martin King and his camera team overcame much resistance in their bid to cross into Tamil territory and highlight the vicious war which the Sri Lankan army and the LTTE are locked into.

Their ten minute segment on Australian television focussed on the cycle of violence in the North and East where both the Sri Lankan Army and the Tamil Tigers "shoot first and ask questions later". The result of this strife being the destruction of entire villages and towns and the fleeing of countless numbers of people to overflowing refugee camps.

Most of the soldiers have never seen battle before and many of the young Tigers are only children barely in their teens. However "they have got the same commitment to kill as any man. They've also got the same commitment to die".

Martin King and his crew, though at first looked upon with suspicion by the Tigers, were laid out the the Tiger equivalent of the red carpet on the discovery that they were from Australia. A spokesperson for the Tigers said that they would keep on fighting until they achieve their goal of "a separate state". The Sri Lankan troops' response has been a full scale invasion of the North and East.

Sri Lanka often described as a gentle, beautiful country is today, in the words of Martin King, "A country torn by hatred and civil war, where bombings have become a part of life and massacres no longer have the capacity to shock, even when they involve the mindless slaughter of small children."

Whether or not we agree with this harsh portrayal of our once calm island, we may feel obliged to ask ourselves the question which Fyodor Dostoevsky put into the mouth of one of The Brothers Karamazov:

Rights has supplied the Fortnightly Review with the following:

## **I. Creation and Rules of the Prize**

The UNESCO Prize for the Teaching of Human Rights was created by the Executive Board during its 104th session (June 1978) by Decision 5.4.1. This Prize, which aims to develop the teaching of human rights, is part of Unesco's follow-up to Resolution 3 (XXXIII) of the United Nations Commission on Human Rights concerning the celebration of the thirtieth anniversary of the Universal Declaration of Human Rights.

With this Prize, Unesco honours an institution, an organization or an individual in recognition of a significant activity aimed at developing human rights.

The Unesco Prize for the Teaching of Human Rights is now awarded once every two years. It was originally awarded every year but the Executive Board at its 112th session (April 1981) changed this to every two years with a view to facilitating the submission of new nominations for the Prize, to improving the quality of the nominations and to enhance the impact of the award of the Prize. In addition, the Executive Board decided to increase the number of Jury members from 5 to 6 and the length of their mandate from two to four years.

The amount of the Prize, which was four thousand United States dollars, has been augmented in 1990 by decision of the Director-General to ten thousand United States dollars.

## **II. Laureates of the first six Prizes**

The Prize was awarded for the first time in 1978. The Jury met at Unesco Headquarters from 22 to 23

March 1979. The award ceremony took place on 7 May 1979 during a session of the Executive Board. The first laureate of the Unesco Prize for the Teaching of Human Rights was Mr. Mumtaz SOYSAL (Turkey). The Prize was awarded to Professor Soysal of the University of Ankara for his activities for the development of human rights teaching at the higher education level. Through his publications and his teaching, Professor Soysal has acquired an international reputation. His personal and public position are witness to his attachment to the cause of human rights. As a member of Parliament, he contributed to the drafting of the Turkish Constitution in 1961. He published several books and in particular an **Introduction to the Constitution**.

The 1979 Prize for the Teaching of Human Rights was awarded to Mr. Paul Morren, specialist of higher secondary education, inspector of secondary and higher non-university teaching in Belgium, devoted many years to the development of human rights education in the field of secondary education and above all in the framework of the Associated Schools of Unesco. Mr. Morren is the author of publications in Dutch and audiovisual material on human rights.

The International Jury recommended to the Director-General that the 1981 Prize for the teaching of Human Rights be awarded to Professor Ali Sadek

ABOU-HEIF, Head of the Department of International Law of the Faculty of Law at the University of Alexandria, Arab Republic of Egypt. Professor Ali Sadek Abou-Heif is considered to be one of the outstanding specialists in public international law and human rights in Egypt as well as the University of Alexandria as well as to the founding of the University of Kuwait. Professor Abou-Heif has spent his entire life in the service of science and the defence of human rights, and he has trained several generations of university specialists in human rights teaching and in other branches of public international law. In 1988, the Director-General invited him to become a member of the Jury.

The 1983 Prize for the Teaching of Human Rights was awarded to Professor Felix ERMACORA (Austria), professor of public law at the University of Vienna since 1961. Deputy in the National Council of the Republic of Austria since 1971, representative of his country at the United Nations Commission of Human Rights for which he was Rapporteur, Vice-President and, in 1974-1975, President. Member of the Commission of Human Rights of the Council of Europe, Professor Ermacora has devoted himself for many long years to the teaching of human rights at the International Institute of Human Rights, Strasbourg (France) as well as at the Academy of International Law at the Hague. He is also the author of approximately 200 publications and works. **"Allgemeine Staatslehre", The Protection of Minorities in the Work of the United Nations, and Human Rights in a Changing World** are among the most outstanding.

The International Jury recommended to the Director-General that the 1986 Unesco Prize be awarded Mr. Hector FIX ZAMUDIO (Mexico). Professor at the Autonomous University of Mexico, Judge at the Inter-American Court of Human Rights, Professor Fix Zamudio has made a major contribution to the development of the teaching of human rights. In 1988, the Director-General invited him to become a member of the Jury.

The 1988 Prize for the Teaching of Human Rights was awarded to the "Asamblea Permanente de los Derechos Humanos" of Bolivia. This organisation has, in difficult social and political conditions, mobilised public opinion in favour of human rights. The defense by this organisation of collective rights (equitable salaries, the right to work, to education and to health, betterment of living conditions, etc.) and its programme for general education were the basis for the award of the Prize to an Institution which has undertaken varied and outstanding activities in the field of the teaching of human rights to all levels of the society and, in particular, to the most underprivileged groups. It was also the originator of parliamentary commissions of human rights and secretaries of human rights in trade unions. The activities of this organization constitute a meritorious effort in the fields of education, teaching of human rights as well as the defense against violation of these rights.

Honorary mentions for the Prize have been awarded as follows: for the first Prize Mr. Thomas Buergenthal (United States of America) and Mr. Louis-Edmond Pettiti (France); for the second Prize to Mr. Othman Abdul Malek Al-Salih (Kuwait), to Mr. Ph. Vegleris (Greece) and, posthumously, to Mr. Justino Jimenez de Arechaga

(Uruguay); for the third Prize to Mrs. Tai-Young Lee (Republic of Korea), Mr Lorenzo Vidal Vidal (Spain) and to the World Association for the School as an Instrument for Peace (Switzerland); for the fourth Prize to Mr Kadir Asmal (Ireland); for the fifth Prize to Mr Ralph Pettman (Australia); for the sixth Prize to Mr Alfredo Bravo (Argentina), Fred and Bonnie Cappucino (Canada) and Mrs Jeanne Hersch (Switzerland).

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"Imagine that you yourself are building an edifice of human destiny that has the ultimate aim of making people happy and giving them finally peace and rest, but that to achieve this you are faced inevitably and inescapably with torturing just one tiny baby, say that small fellow who was just beating his fists on his chest, so that you would be building your edifice on his unrequited tears - would you agree to be its architect under those conditions?"

Perhaps we have already answered this interrogatory.

#### ARTICLES OF INTEREST - INTRODUCED BY JENNIFER THAMBAYAH

Legal Scholarship in Australia - by Michael Chesterman & David Weisbrot.

This article traces the history of legal scholarship in Australia with particular reference to the changes in the

last 25 years, which witnessed the change from a tradition bound professional approach to a more academic, interdisciplinary approach. This is evidenced by the shift away from the position of unquestioning adherence to the English Common Law tradition, a position unique to Australia to the recognition of the notion of legal pluralism resulting in the acceptance of Aboriginal customary law. Legal education too has been affected by this change, thus moving away from a 'trade school' approach to instruction to a more classic, liberal approach with law taking its place with the rest of the social sciences. This is evidenced by the range and depth of law school curricula which de-emphasises traditional subjects and emphasises non-traditional subjects.

Despite these changes, it is the author considered opinion that there has been no decisive shift from the traditional moorings of the earlier years.

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## CALENDAR OF RECENT EVENTS

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### September 9th, 10th and 11th

- Meeting of the South Asian Task Force on the Judiciary on the premises of the Law and Society Trust.

### September 14th

- Core-Group Meeting

Chairman - Dr. Nissanka Wijeyeratne

Speaker - Mr. Shelton Wanasinghe (former Head of Commission of Administrative Reforms and Public Administration)

Subject - Privatisation of Public Enterprise.

### September 20th

- Lecture

Speaker - Dr. Sammy Adelman

Subject - Constitutional Reforms in South Africa.