

NOTES AND NEWS

Notes et Informations

CONFERENCE OF AFRICAN JURISTS ON AFRICAN LEGAL PROCESS AND THE INDIVIDUAL: ADDIS ABABA, APRIL, 1971

This Conference, convened by the United Nations Economic Commission for Africa in Addis Ababa, was attended by representatives of more than twenty African governments as well as by individual African lawyers and others. The far-reaching resolutions agreed by the Conference are printed below.

Resolutions

Resolution 1: The process of arrest and detention

Affirms the resolutions of the Lagos Conference (i.e. the African Conference on the Rule of Law, convened by the International Commission of Jurists at Lagos, in 1961) in this regard

Deplores and condemns any legislation which permits detention without trial, *Emphasizes* the importance of respecting the provisions regarding the conditions of arrest and detention contained in various criminal codes,

Urges that respect for these provisions be extended as far as possible to all kinds of arrest and detention, and that all places of detention shall be subject to frequent and regular judicial inspection, and that in the recruitment and employment of law enforcement officers attention be paid to their suitability, qualifications, training and that their remuneration be improved,

Recommends to this end, the establishment of an Institute of Comparative Law, under the auspices of the Organisation of African Unity, with the co-operation of the United Nations and its competent specialized agencies and of all inter-governmental and non-governmental organisations concerned with the problem, charged with:

- (1) The scientific study and development of law in Africa; and
- (2) the holding at regular intervals (once or twice a year in various African countries in turn) of study and research sessions on African law lasting two or three weeks at a time; and
- (3) the promotion of research into problems of African law and the publication of an African Journal of Comparative Law to be used for the widespread dissemination of the results of research, and of information regarding legal developments.

Resolution 2: The Judicial Process: Access to courts, trial review, judicial remedies and the Ombudsman

Reaffirms the resolutions of the United Nations Seminar held at Mexico (1961) stressing that *amparo*, *habeas corpus*, *mandado de seguranca* and other means of defending human rights are enduring and essential juridical institutions for the survival of any civilized community,

Recognizes and recommends that a many-sided approach must be undertaken to overcome the economic, social and human factors which create a gap between the principle that the courts should be readily accessible to all and the actualities of present-day judicial facilities in Africa,

Declares that among the measures that should be undertaken are:

(1) An extensive simplification of the rules of procedure especially in relation to the institution or commencement of legal proceedings by any person, in particular illiterate or needy persons;

(2) A sustained programme of civic education designed to communicate a better knowledge of legal rights and duties and thus promote the awareness of remedies which would enable the ordinary man to defend his rights and in which judges, magistrates, lawyers and law students have a leading role to play;

(3) A determined effort to minimize the cost of judicial proceedings and to bring justice and the individual closer together by increasing the number of courts and extending the use of circuit courts;

(4) A thoughtful Africanization of law and procedure so as to increase their understanding;

(5) The establishment of adequate machinery for the provision of legal aid to persons who otherwise could not afford to prosecute or defend their rights in court;

(6) A scrupulous respect for the basic elements of fair hearing including the enforcement of such safeguards as the protection of witnesses, litigants and counsel; the presumption of innocence; the protection afforded by the principle *ne bis in idem* and against self-incrimination; the holding of trials in public and the curtailment of delays in disposing of cases;

(7) (a) The settlement of all judicial business in the ordinary courts of the land and the abolition of all exceptional tribunals;

(b) The development of an adequate system for the settlement of administrative problems and of administrative courts with a channel of appeals to the highest courts in the land;

(c) Where appropriate the creation of the office of Ombudsman; and

(d) The introduction of some code of non-contentious administrative procedure and appropriate machinery for its enforcement.

Resolution 3: The Judicial Process: Independence of the judiciary, the executive and the judiciary, and international judicial processes

After considering the important questions regarding the independence of the judiciary, the relations between the judiciary and the executive, and possible international judicial processes,

Affirms the resolutions in this regard of the following Conferences: the Lagos Conference of January, 1961, the Rio de Janeiro Conference of 1962, the Bangkok Conference of 1965, and the Dakar Conference of 1967, all held under the auspices of the International Commission of Jurists;

Endorses the recommendations of the United Nations Seminar on the establishment of regional commissions on human rights with special reference to Africa, held in Cairo, 1969; and

Recommends as follows:

(1) That the independence of the judiciary be guaranteed in order to ensure the impartiality of justice;

(2) That attention be paid to the social and economic factors that promote stability and that jurists should acknowledge the fact that they have a vested interest and a professional or technical commitment to the task of nation-building and that problems of political morality and the prevalence of the spirit of justice within their state are the business of lawyers;

(3) That steps be taken to agree at an early date upon a comprehensive code of judicial ethics, which also takes account of relations between the judiciary and the police;

(4) That in exercise of political power all authority be subordinated to law and that the protection of human rights should be the primary concern of all the principal organs of the State;

(5) With a view to promoting the better protection of human rights, the Conference recommended further:

- (i) that an African Commission on Human Rights be established and charged with the responsibility of collecting and circulating information relating to legislation and decisions concerning human rights in annual reports devoted to the question of civil rights in Africa;
- (ii) that an African Convention on Human Rights be concluded;
- (iii) that every effort be made to harmonize legislation in the different African countries in this regard;
- (iv) that an Advisory body be established to which recourse may be had for the interpretation of the terms of the African Convention on Human Rights; and
- (v) that the various African States be urged to take speedy measures to accede to or ratify the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the OAU Convention governing specific aspects of refugee problems in Africa.

(6) The Conference welcomes the recommendations of the aforesaid United Nations Seminar held in Cairo in 1969 entrusting the Organization of African Unity with the establishment of a Commission for Human Rights for Africa and invites the Organization of African Unity to hasten the implementation of the said recommendations taking account of existing international instruments that have been drafted by the United Nations in this connexion.

Resolution 4: Provision of legal services to individuals: on the question of legal aid, the Conference

Emphasizes that it is essential to the fair and impartial administration of justice that rich and poor alike should have equal access to the courts and to the assistance of trained legal personnel and that this consideration imposes an obligation on governments and on the legal profession to devise adequate machinery for ensuring that the ideal of equal justice before the law becomes a living reality that supports the development of a spirit of justice in the society.