air
amnesty international review

A Quarterly Review of news and comment on international human rights

Number 24
August 1968
One Shilling

Banning Torture

On August 23rd, in Stockholm, AMNESTY INTERNATIONAL *is arranging a Conference on the torture and inhuman treatment of political prisoners. The following article, which offers some preliminary thoughts on the subject, is extracted from a paper prepared by Eric Baker for the Conference. (The full paper may be obtained from the International Secretariat on request.)*

Torture, in the sense in which its use was prohibited in Scotland in 1709 is probably adequately covered by the dictionary definition: "The infliction of excruciating pain . . . from the delight in watching the agony of the victim." In the sense of the first part of this definition "judicial torture" was employed "for the purpose of forcing an accused or suspected person to confess or an unwilling witness to give evidence or information" (although the authority for such torture was never a matter of law but of prerogative).

In this sense, the gross forms of torture are still used upon prisoners. The use of the bastinado in Greece is a recent example but an unusual one, as the marks which it leaves remain as visible evidence for a relatively long period. As public disquiet about the use of torture has grown, so has the incentive for torturers to devise methods which may be no less painful but are less likely to leave visible evidence—from banging a bucket placed over the victim's head to electric shocks applied to peculiarly sensitive areas.

These forms of torture necessitate physical contact between torturer and victim; more sophisticated methods may be more indirect. On the one hand, the physical conditions of the prisoners' confinement can be arranged in such a way as to cause the maximum discomfort—insufficient room to sit or to sleep, insufficient food, water, air or warmth, no access to toilet facilities, etc.

Finally, there are the well-known methods of mental torture (which may be combined with all or none of the above) which may vary from being placed within earshot of the screams of a victim to solitary confinement over a long period, or anxiety about the fate of a relative or friend also held in detention.

This brief—and certainly inadequate—summary of the main forms which torture might take underlines the difficulty which necessarily bedevils any attempt to formulate the terms in which it should be banned. It is clear that if they are to be comprehensive, they must also be detailed. Nevertheless, the prevalence of torture in at least one country which is signatory to the European Convention of Human Rights and others which presumably acknowledge the UN Declaration of Human Rights, makes it clear that the simple, one sentence declaration in both that, "No one shall be subjected to torture or to inhumane or degrading treatment or punishment" is not enough; its implications must, if it is to be effective, be set out in much fuller detail.

The situation now obtaining is that the General Conventions of 1949 provide full and precise guarantees of the security and humane treatment not only of foreign military units who have been captured but of those engaged in civil war. There are, however, no conventions governing in the same detailed way the security and treatment of men and women whose crime is not violence but opinion—and that more often than not, assumed rather than proved.

Need for a New Convention

What AMNESTY should aim at, therefore, is an effective Convention (parallel to the Geneva Conventions of 1949) to cover just this category of civilian detainee/prisoner. To begin by trying to eliminate torture may not be the best starting point, but it is at least, one starting point. There is not space here to do more than note a few of the requirements of such a Convention. It must:

prohibit the use of any form of physical (mechanical or electric) force on the prisoner—except where judicially ordered, the administration of such physical force then to be noted and signed in regular form by the responsible officer; prohibit similarly the use of any form of indirect force which results in excessive sensory stimulation or deprivation of the prisoner (e.g. shining of bright lights—or keeping him in complete darkness); require immediate access by prisoner or detainee to the superintending officer of the place where he is held immediately upon complaint of ill-treatment; require regular communication by prisoner or detainee with family and legal advisers.

Investigation

With regard to investigations, it should be the responsibility of the staff of the proposed UN Commissioner of Human Rights to investigate immediately any complaint of inhuman treatment which may reach him. As a matter of course, the Commissioner should request the consent and co-operation of the government concerned. Where this is refused, he should report as fully as the circumstances warrant to the United Nations, giving the names of the officials reported to have been concerned in the ill-treatment where these are known. It would then be the responsibility of the government to provide evidence in refutation. It is probable, however, that rather than risk such publicity most countries—though not all—would prefer to co-operate with the Commissioner.

Where such co-operation is forthcoming the investigation should be carried out by a mixed board (nationals and non-nationals of appropriate professions—medical, legal, etc.) under the Chairmanship of the Commissioner's representative. From the nature of the case, it would be essential that the investigation should be carried out as speedily as possible and that the Government should give a guarantee of security to any who appeared as witnesses.

Where such an investigation provided prima facie evidence of inhuman treatment, the government should be obliged (in terms which would have been incorporated in the protocol ad hoc which it drew up with the Commissioner) to prosecute any persons indicted, and, where necessary to issue new or strengthen old regulations designed to prevent future malpractices.

There will remain many other forms of punishment amounting to torture which are not covered by the above, ranging from confinement to lunatic asylums to the various forms of isolation used in S. Africa. Nevertheless, it will be an achievement if we can at this stage lay down conditions which should result in the prohibition of torture within places of detention (most of which is extra-judicial and would be an embarrassment to the Government concerned if it were widely publicised).

National Service and Conscientious Objection in Australia

In Australia registration for military service is obligatory on all men between the ages of 20 and 26 ordinarily resident in the country. A few groups, including Aboriginals and foreign diplomats, are exempted. Of those who register, approximately 1 in 12 are actually called up for National Service. These are selected by a ballot which is based on birth dates. About 44% of the Australian forces serving in Vietnam are National Servicemen.

The provisions for exemption from National Service on grounds of a conscientious belief are not illiberal when compared with similar legislation in many other countries. However, recently there has been considerable concern in Australia about this aspect of the Act.

Exemption from National Service on conscientious grounds is governed in Australia by Section 29 of the National Service Act of 1951 and its amendments, as interpreted by the courts. The Act defines conscientious beliefs as including "all conscientious beliefs whether the ground of the belief is or is not of a religious character and whether the belief is or is not part of the doctrines of a religion." As interpreted by Dwyer, CJ (in Grondal v. the Minister of State for Labour and National Service) and Judge Norris in the recent O'Donnell case, a conscientious belief must represent "a conclusion that is uninfluenced by any conscious consideration of personal advantage or disadvantage either to oneself or others."

Categories of Exemption

The National Service Act (Section 29 I b) recognises two categories of conscientious objector:

(i) a person whose conscientious beliefs do not allow service of a combatant or non-combatant nature in any capacity, at any time or in any place.

(ii) a person whose conscientious beliefs do not allow him to engage in military service of a combatant nature.

In the first case total exemption may be allowed: in the second, non-combatant service is provided. In either case the onus of proving conscientious objection rests on the person claiming exemption. The procedure to be followed by the claimant is similar whether he has merely registered, or whether he has already commenced service. In the first case he must apply to the Registrar at the National Service Registration Office from which his certificate of registration was issued: in the second he applies to his Commanding Officer, who forwards the application to the Registrar for the State or Territory in which the applicant resides. The application then goes to the clerk of a competent Court of Summary Jurisdiction, who is required to give both the Registrar and the applicant at least 7 days' notice of the hearing. Should the case be dismissed, it is possible for the applicant to appeal to a Court of Review (either a District or County Court).

Objectors to a Particular War

Criticism of the law centres on the fact that it does not allow for exemption from service on grounds of a conscientious objection to a particular war, such as the current Vietnam War. This has been highlighted by the case of Denis James O'Donnell, who is not a pacifist, but who opposes

Australian participation in Vietnam. O'Donnell asserted that it would be against his conscience to serve in the Australian Army at the present time in any capacity, since by so doing he would be helping, albeit indirectly, the Australian Army's military effort in Vietnam. However, he has said that he would be prepared to fight if Australia were attacked or were assisting New Zealand to repel an aggressor.

In giving judgment on this case and dismissing O'Donnell's appeal, Judge Norris said, "I am left with the clear conviction that the appellant does hold conscientious beliefs that the committal to the War in Vietnam of Australian forces was and is morally wrong and that he could not conscientiously take any part in that war." But Judge Norris continued later, "The requisite for total exemption is . . . a conscientious and complete form of pacifism. I do not read S 29 A (1) as referable to participation only in a particular war or in operation against a particular enemy."

Thus, in interpreting the law as it stands in the statute book, there can be no exemption on grounds of a moral objection to a particular war. The Opposition want such an objection to be recognised as grounds for exemption. They also want the onus of proving conscientious objection to rest with the prosecution and not with the applicant.

The Australian Government has shown itself susceptible to pressure. An amendment to the National Service Act which would have introduced fines for schools and universities which failed to supply the Ministry with lists of students, or shipping and airline companies which supplied tickets to young people liable for call-up, was rejected. Furthermore, although O'Donnell has not been released from the army, his treatment has been greatly modified as a result of publicity and protests from groups both in Australia and abroad.

ELIZABETH PALMER

Recent Human Rights Legislation in East Germany

On April 6th, 1968, 94.49% of the adult population of East Germany (German Democratic Republic) accepted by plebiscite the new Constitution. On April 8th it was promulgated by the Chairman of the Council of State of the GDR, Walter Ulbricht.

This Constitution has taken the place of the previous one of August 3rd, 1950. Differently constructed, it covers very much the same ground. The treatment, however, shows a remarkable moving away from the plain and sober wording of the old Constitution. It may be of interest to compare the two Preambles.

1950: "The German People, imbued with the desire to safeguard human liberty and rights, to reshape collective and economic life in accordance with the principles of social justice, to serve social progress, and to promote a secure peace and amity with all peoples, have adopted this Constitution."

1968: "Imbued with the responsibility of showing the whole German nation the road to a future of peace and socialism, in view of the historical fact that imperialism, under the leadership of the United States of America and in concert with circles of West German monopoly capital, split Germany in order to build up West Germany as a base of imperialism and of struggle against socialism, contrary to the vital interests of the nation, the people of the GDR, firmly based upon the achievements of the anti-fascist, democratic and socialist transformation of the social system, unitedly carrying on in its working classes and sections the work and spirit of the Constitution of October 7th, 1949,* and imbued by the will to continue unswervingly and in free decision on the road of peace, social justice, democracy, socialism and international friendship, have given themselves this Socialist Constitution."

* Amos J. Peaslee in "Constitutions of Nations", 1956, gives August 3rd, 1950, as the date of the old Constitution.

Limitations on Freedom

It is important to bear the spirit of the new Preamble in mind when reviewing recent developments in the field of human rights. Most of these, as in the previous Constitution, are provided for, e.g. the right to personal property (Art. 11), freedom of conscience and belief, equality before the law (Art. 20), the right to work (Art. 24), to education (Art. 25), freedom of opinion (Art. 27), of assembly (Art. 28), of association (Art. 29), personal liberty (Art. 30), freedom of movement (Art. 32), the right to profess a religious creed (Art. 39). But every right and freedom is limited and these limitations can be summed up by Art. 2, para 4: "The most important driving force of socialist society is the identity between social requirements and the political, material and cultural interest of the working people and their collective groups." Individual human rights can only be recognised subject to these collective interests.

Thus, to give only a few examples, in the old Constitution, Art. 9 provided all citizens with "the right within the limits of universally applicable laws, to express their opinion freely and publicly and to hold unarmed and peaceful assemblies for that purpose . . ." Art. 27, and 28, 1 of the new Constitution says: "Every citizen of the GDR has the right, in accordance with the spirit and aims of this Constitution, to express his opinion freely and publicly. . . . All citizens have the right to assemble peacefully within the framework of the principles and aims of the Constitution. . . ." Whether Art. 9 was followed during the last 18 years is another matter.

What is quite clear are the restrictions which "the spirit and the aims of the Constitution" impose now. Two human rights have, in fact, been abolished by the new Constitution. Art. 10 of the old Constitution contained the rule: "Every citizen has the right to emigrate. This right may be restricted only by a law of the Republic." Art. 32 of the new Constitution says: "Every citizen of the GDR has the right to move freely within the state territory of the GDR within the framework of the laws." Emigration, even in theory only, is now no longer possible. Similarly, the right for recognised trade unions to strike has been eliminated. So much for human rights in the new Constitution.

The Penal Code

On July 1st of this year, the new Penal Code together with a new Code of Penal Procedure came into operation. The Penal Code is replacing the old Strafgesetzbuch of 1871 which until now has still been used, with some important laws added in order to cover for instance political offences. Both Codes have political significance, as they carry out the political aims of the Constitution. The former Minister of Justice, Hilde Benjamin, has called the Penal Code an important stone "in the constitutional construction of our Republic during the period in which the Socialist form of society is being worked out."

It seems that in future all political offences will be more severely punished than offences in the sphere of personal relations. For instance, para. 106 ("Staatsfeindliche Hetze") punishes criticism of the State and the Social Order of the GDR or its representatives or other citizens or activities of state or social institutions with 1 to 5 years imprisonment, or in certain circumstances with 2 to 10 years. Numerous political offences carry the death penalty as maximum sentence, e.g. treason, sabotage, espionage, "terror" connected with attempts to escape and attacks on representatives of the GDR. Hooliganism ("Rowdytum") will be treated as an attack on the "rules of socialist community life" and therefore as a political offence with prison sentences up to 5 years. Actions which to a "particularly high degree" threaten specified legal interests or peace will be considered as "specially serious cases," demanding the death sentence—a definition which allows wide interpretation by the public prosecutor.

On the other hand, crimes committed against individuals will in future receive much more lenient treatment. For example, theft and manslaughter will carry sentences of 2 instead of the former 5 years. In the case of bigamy

the sentence will be probation only and homosexual practices between adults and living on immoral earnings no longer rank as offences.

The effect of the new Constitution and Codes on prisoners of conscience in East Germany remains to be seen. The law in East Germany is clearly capable by the vagueness of its definitions and concepts of being used to punish what in most other countries would not be considered as criminal. AMNESTY will have to keep this in mind in considering whether a prisoner in East Germany is a "prisoner of conscience."

C.M.

Conflicts within the Catholic Church in Portugal

In May of this year a Lisbon journalist, Dr. Raul Rego, published a book entitled *In Favour of a Dialogue with the Cardinal Patriarch* which was strongly critical of the Roman Catholic Hierarchy's failure to raise its voice against the numerous political and social injustices in Portugal. As a result the PIDE (political police) confiscated the 2,000-copy edition and arrested Dr. Rego. It was only after the intervention of the Cardinal Patriarch himself that Dr. Rego was released from Caxias prison one month later. This incident has reopened the debate on the relationship between the Church and the State in Portugal and revealed the ideological gulf that exists between the Catholic hierarchy and the ordinary practising Catholic.

Portugal is a predominately Roman Catholic country, but, unlike Spain, the Roman Catholic Church is not the established church. It has been separate from the State since the days of its persecution by the early rulers of the Republic, which was proclaimed in 1910. Over the years, however, there has been a gradual rapprochement between Church and State, so much so that nowadays membership of the Church is identified with support of the political status quo, in the same way as it used to be identified with support of the old monarchy. Despite the Catholic hierarchy's insistence on the independence of the Church in the affairs of the State, there are a number of factors which suggest that this independence is qualified. In 1940 Dr. Salazar signed a concordat with the Vatican which recognised the right of the State to approve all church appointments and regulated such details as marriage, divorce and compulsory religious education in schools. Understanding between the Church and State is reflected in the life-long friendship of Dr. Salazar and the Cardinal Patriarch of Lisbon, Dom Manuel Gonçalves Cerejeira, since they shared rooms at the Coimbra seminary in their youth. It is not unknown for Bishops to send representatives to the electoral rallies of Dr. Salazar's National Union Party or for priests to canvass support for the Party from amongst their congregation. Unlike Spain, where there is some indication of Vatican backing for the opposition to General Franco's dictatorship, the Pope's visit to Fatima in 1967 and the subsequent award of the Gt. Cross of St. Silvester to a high-ranking official of the PIDE, seemed to imply tacit approval of the Salazar regime. To many Roman Catholics, especially to those families of political prisoners who had signed a letter to the Pope asking him to cancel his visit, this was a shattering experience.

Militant Catholic Opposition

In recent years, largely due to the concepts of Catholic action and the worker priest, there has been an emergence of a militant Catholic opposition. This includes both priests and lay Catholics who believe that the Church is compromising its Christian ideals by failing to take a stand against censorship and the arbitrary arrest and imprisonment of hundreds of Catholics and others. They take their inspiration from the Bishop of Oporto, Dr. Antonio Ferreira Gomes, who has been living in exile since he threw his support behind the opposition candidate, General Delgado, in the 1958 elections. His see still remains vacant. There are a number of examples of young priests who have been suspended from their ecclesiastical duties for not toeing the official line or for voicing criticism of Salazar's

regime. One of these is Padre José da Felicidade Alves who in April publicly questioned the legitimacy of Portugal's sovereignty in her colonial possessions and accused the government of having destroyed public liberties. He is currently studying in Paris and awaiting the decision of the Cardinal Cerejeira as to the future of his priesthood. Meanwhile in Portugal groups of priests and lay Catholics have presented petitions to the Cardinal on behalf of Padre Felicidade.

Small groups of progressive Roman Catholics have aligned themselves with socialist opposition movements, but have been subject to the arbitrary censorship and police surveillance that hampers all opposition activities in Portugal. The Catholic newspaper, *Trabalhador*, was banned some years ago after only a couple of issues and the Catholic monthly magazine, *O Tempo & O Modo*, run by Dr. Alcada Baptista, is consistently interfered with and censored. A special edition, which was a compendium of views on marriage, was seized in March and prevented from publication. Last year the co-operative organisation, *Pragma*, which was formed for the discussion and exchange of ideas on economic and social problems, was banned on the grounds that there was communist propaganda on the premises.

The Church in Portuguese Africa

The problems of the Church are not confined to metropolitan Portugal. In Mozambique a group of Catholic priests from the diocese of Beira addressed a letter to a Bishops' Conference earlier this year protesting at the Portuguese government's treatment of dissenting priests and laity and denouncing the silence of the Church on this issue. Censorship prevented the letter being published in Mozambique. There are currently seven Angolan priests, all of whom are adopted by AMNESTY groups, who are living in exile and in restricted residence in Portugal. They were removed from their parishes in Angola for expressing opposition to Portugal's overseas policies. Recently the Archbishop of Conakry, Monseigneur Tchidimbo, felt compelled to protest to the Salazar government and to the Portuguese hierarchy at their continued restriction. His words were, "We witness a total confusion of Cross and Flag."

SARAH RICHARDSON

Teheran Human Rights Year Conference

Resolution Supports Prisoners of Conscience

As part of its Human Rights Year programme, the United Nations convened an International Conference on Human Rights in Teheran between April 22nd and May 13th, 1968. Three hundred and ninety one delegates represented eighty-five states and a substantial number of non-governmental organisations sent observers. AMNESTY INTERNATIONAL was represented by Mr. Séan MacBride, Chairman of the International Executive Committee.

For some of the governmental delegates, the Conference provided a convenient stage on which to act out the wars being fought in the Near and Far East. Others, however, genuinely tried to get down to the real issue—the implementation of decisions that would further safeguard the human rights of the citizen. In this, the non-governmental organisations had a crucial role to play. Their efforts, though in some measure unrewarded, nevertheless demonstrated the demands of ordinary people for positive international action in the field of human rights.

One Resolution at least offered some hope of progress. In general terms, this drew attention to the inadequacy of existing humanitarian conventions concerning armed conflicts, with regard both to their scope and effective application. In particular, the Resolution called for the conventional protection under international law of political prisoners in racist or colonial regimes, and advocated their treatment as prisoners of war under international law.

Main Text of the Resolution

The Resolution, sponsored by India, Czechoslovakia, Jamaica, Uganda and the United Arab Republic, was approved by a vote of 67 for, none against, and two abstentions. The last paragraph of the Preamble and the operative portion of the Resolution are as follows:

. . . *Noting also* that minority racist or colonial regimes which refuse to comply with the decisions of the United Nations and the principles of the Universal Declaration of Human Rights frequently resort to executions and inhuman treatment of those who struggle against such regimes *and considering* that such persons should be protected against inhuman or brutal treatment and also that such persons if detained should be treated as prisoners-of-war or political prisoners under international law,

1. *Requests* the General Assembly to invite the Secretary-General to study

(a) Steps which could be taken to secure the better application of existing humanitarian international conventions and rules in all armed conflicts, and

(b) the need for additional humanitarian international conventions and rules in all armed conflicts, and revision of existing conventions to ensure the better protection of civilians, prisoners and combatants in all armed conflicts and the prohibition and limitation of the use of certain methods of warfare.

2. *Requests* the Secretary-General, after consultation with the International Committee of the Red Cross, to draw attention of all States Members of the United Nations system to the existing rules of international law on the subject and urge them, pending the adoption of new rules of international law relating to armed conflicts, to ensure that in all armed conflicts the inhabitants and belligerents are protected in accordance with "the principles of law of nations derived from the usages established among civilised peoples, from the laws of humanity and from the dictates of the public conscience."

3. *Calls on* all States which have not yet done so to become parties to the Hague Convention of 1899 and 1907, the Geneva Protocol of 1925, and the Geneva Conventions of 1949.

Agreed that this Resolution is not ideal, it nevertheless marks a stage forward. The fact that 67 States representing all the main power blocs, voted in its favour, indicates that there are genuinely good prospects of the Resolution being acceptable to the General Assembly of the United Nations. One factor that will help sway the balance will be the reaction of international public opinion. All non-governmental organisations and all citizens who seek to redress injustice through international law, should study the Resolution and do all they can to promote its passage through the United Nations. AMNESTY INTERNATIONAL, recognising the significance of the Resolution to its work, will campaign for it with the utmost vigour in the months ahead.

PETER BURNS

AIR is published by Amnesty International, Turnagain Lane, Farringdon Street, London, E.C.4 (telephone: 01-236 0111/3) and printed by Social Service Supplies Ltd., Witham, Essex