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James C.N. Paul

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HUMAN RIGHTS AND THE LEGAL STRUCTURE OF SECURITY FORCES IN CONSTITUTIONAL ORDERS: THE CASE OF ETHIOPIA*

James C. N. Paul**

This contribution consists of a paper presented to the Constitutional Commission of the Transitional Government of Ethiopia (TGE) in Addis Ababa in August 1993, at its invitation. In it I suggested that the Commission might well pay some attention to the law governing the "structure" of the "security forces" in Ethiopia's future constitutional order.

The Commission was explicitly charged with the task of producing a draft Constitution which would establish "democracy" and "human rights"—and a "rule of law" to secure these conditions.¹ This general mandate was underscored by Ethiopia's recent ratification (without reservations) of the International Bill of Rights and other major human rights instruments including the UN Convention on the Elimination of All Forms of Discrimination Against Women.

As a first phase of its work, the Commission held a number of public sessions featuring discussions of a wide variety of subjects. In these sessions certain general themes regularly recurred, notably discussions of three interrelated tasks:

*A longer version of this paper was published in *5 William and Mary Bill of Rights Journal* 235 (1994). That piece contains detailed footnote annotations to the text, as well as a lengthier discussion of the military in Ethiopia's constitutional and political history.

**During 1962-1969, the author served as founding Dean of the Law School of Haile Sellassie University (now the University of Addis Ababa) and (during 1967-69) as Academic Vice President of that institution). During 1970-74 he served as a consultant to the President of that University. During the period 1991-95, he returned to Ethiopia at the invitation of the Transitional Government on various missions and, on a number of occasions, was invited to participate in public seminars sponsored by the Constitutional Commission.

¹ The TGE was legally established by the Transitional Period Charter of Ethiopia, which is effect, the interim constitution of a government created to "lead the country towards full democracy." *Transitional Period Charter of Ethiopia*, Proclamation No. 1, NEGARIT GAZETA, July 22, 1991. The Commission was charged with preparing a draft Constitution to be submitted to an elected Constitutional Assembly for amendment, adoption and promulgation.

1. How to build and empower a civil society and civic culture which will increasingly value and nurture democratic (notably participatory) systems of governance;
2. How to decentralize and devolve powers of government in a multi-ethnic polity in order to satisfy alleged ethnic group demands for “self-determination.”
3. How to develop governmental institutions and processes that will promote democratic processes and protect human rights in all realms of governance.

In this context, I expressed surprise that so little attention had been focussed on the policies and strategies needed to “restructure” and “reconstitute” the army, police and other security forces. This subject seemed to us to be of urgent importance for reasons noted below in the paper which I was asked to prepare, and which follows.

THE SECURITY FORCES IN ETHIOPIA'S FUTURE CONSTITUTIONAL ORDER

**A Working Paper Prepared for the Constitutional Commission
August 1993**

The TGE (i.e. Transitional Government of Ethiopia) has charged the Commission with the task of preparing a Constitution that will establish institutions and processes necessary to establish democratic governance and the protection of universally recognized human rights. Presumably the Commission will carefully apply this mandate to *all* of the basic organs of government which the Constitution must create or authorize the legislature to create. Each of these must be put under a particular body of law that will enable and obligate it to promote and protect human rights and the principles of a democratic system of governance.

The military, police, and other law enforcement organizations—all of the “internal security forces” (ISFs) must be seen as basic organs of government, in many ways just as important as the executive, legislature, and courts, possibly, in light of Ethiopian history, more so. Thus, it seems necessary for the Commission to identify those principles necessary to put the security forces under a rule of law designed to assure *their* commitment to democracy, human rights and the Constitution. This paper addresses that task.

Part I sets out some principles, derived from the International Bill of Rights and other basic, international human rights instruments which Ethiopia has now ratified—principles which should (in my view) be used to develop both constitutional provisions and legislation governing all future security forces of the country (including those of

the proposed regional and local governments). An appended, suggestive, draft code spells out these ideas in more detail.²

Part II focuses on the importance of this task in view of both the unhappy history of the role played by military and police in the governance of Ethiopia in the past, and the current, urgent need to reconstitute them, *tabula rasa*, including, most important, the need to adopt their governance to the *positive* roles which ISFs must play in the processes of democratization and development over the coming years.

Part III suggests some strategies that the Commission might employ to address these difficult tasks in framing a draft Constitution.

I. Identifying the Basic Principles Which Should Govern The Security Forces in a Democratic Constitutional Order

The International Bill of Rights³ (to which Ethiopia is now committed) is more than a Charter of basic rights. It is also a significant source of constitutional principles that help people everywhere to define “democracy” as a system of government and to structure governmental institutions committed to the interrelated tasks of democratizing governance and protecting rights.

These principles also help us to define the character of organs of government necessary to sustain a democratic system irrespective of whether the Constitution creates a Presidential, Parliamentary or some other, novel form of government. Thus they call for creation of *institutions of government which will promote and protect:*

A. Respect for the sovereignty of the people - secured, in part, by establishing the supremacy of a constitution which is derived from the fullest exercise of direct rights of political participation and “self-

² See The Draft Code of Universal Principles reprinted elsewhere in this volume.

³ I.e. The Universal Declaration and the two Covenants (which Ethiopia had recently ratified). Article 1 of the Transitional Period Charter, the “interim Constitution” (cited in Note 1) appears to have incorporated the Universal Declaration and guaranteed “the right to engage in unrestricted political activity,” including rights of “freedom of expression, association and assembly.”

determination”—a constitution that expresses the “will of the people,” and that provides for the continuing opportunities to express that “will.”

B. Participation in all spheres of governance - secured through recognition of a wide array of “political” rights including freedom of association, assembly, speech and press; rights to vote and participate in free electoral processes; rights of access to responsible officials in all agencies of government in order to present grievances, demands and proposals, or to seek information; rights to redress violations of the Constitution and hold all organs accountable to standards of governance prescribed by law.

C. Representation in governance - secured not only through popular exercise of rights of “participation” and rights to free and fair elections and a “representative” legislative organ, but also through respect for rights of concerned groups to present, on a continuing basis, their concerns and grievances to relevant agencies of government and to have these fairly heard; and rights of communities of the poor, and of women and persons of different ethnic, cultural or religious backgrounds to enjoy equal access to both employment and positions of power in all organs of government, and to secure fair representation of their interests in all organs of government.

D. Administration which respects due process of law - secured not only through a Bill of Rights but through legislation which creates *processes* that require each organ of government to hear claims challenging the legality of its policies and institutional behavior, or the legality of individual actions of its personnel, and through laws which empower courts or other tribunals to impose adequate remedies where these claims are shown to be valid and unredressed by the wrongdoing agencies;

E. Equality of opportunity for all elements of the population to participate in all spheres of governance - secured not only through respect for rights of all persons - notably women - to enjoy equal access to positions of government, but also through appropriate actions

to remove historic patterns of discrimination practiced against them in the recruitment of all public services, including the ISFs.

F. *Transparency in the conduct of governance* - secured through the imposition of obligations to conduct lawmaking, adjudicatory and regulatory proceedings in public; obligations to make and preserve prescribed records of official actions and to make these readily available to the public; and obligations imposed on designated officials in all organs of government to disclose information to the press and public and explain decisions affecting particular citizens or groups, or the country as a whole.

G. *Free, fair and frequent elections* - secured through rights of peoples to demand fair enforcement, by impartial agencies of government (notably the security forces), of laws designed to assure the peaceful, democratic character and integrity of all stages of the electoral process - from campaigning to ballot counting, from rights of access to the media to access to the courts to secure preventive and protective remedies for victims of abuse of electoral processes.

H. *Imposition of accountability on all officials who violate these principles* - secured through recognition of rights of people to demand the disciplining, removal and imposition of criminal and civil liability on *all* officials who violate prescribed standards - with appropriate powers and duties vested in the courts and other departments of government to enforce these sanctions.

I. *Respect for the Constitution and the Rule of Law as transcendent obligations imposed on all officials* - secured by requiring solemn commitments from all public officials to support the Constitution and obey the law as overriding obligations of their office, and through processes of recruitment, training and application of codes of conduct and other methods which emphasize loyalty to these principles above all other loyalties, including loyalties owed to the regime in power or to one's party, patron or superior.

If these human rights commitments are taken seriously, they will be reflected in *all* bodies of law which provide for the establishment,

organization, governance and accountability of all organs of government.

So a key problem confronting the Commission is how to adapt and apply these prescriptions to the security forces.

The first step may be to work out a general framework of principles which in turn can be used to draft: (i) *provisions of the Constitution* relating to the security forces (ii) the *basic legislation* (to be enacted at a later point) providing for establishment of these forces, organization, finance, management and oversight of these forces, and for required standards governing their recruitment, training, discipline, transparency and accountability; (iii) *regulations* promulgated by the relevant ministries and commanding officers of security forces to adapt and implement these legal commands to the work of the army, police and other law enforcement agencies, including those charged with "surveillance" duties. Viewed in this light, the proposed framework of principles can be seen as a projection of a most important part of Ethiopia's future constitutional order.

The appended draft of such a code is intended to supply such a framework. This draft code is *not* offered as an idiosyncratic statement of personal preferences. Rather the effort is to use provisions of existing international human rights law as the source of the universal principles proposed, to show that international law calls for the code proposed. In addition to the International Bill of Rights, the draft code draws on other UN Conventions and international instruments adopted unanimously by the UN General Assembly which set out standards necessary for humane law enforcement (such as the UN Code of Conduct for Law Enforcement Officers). These instruments were supported by Ethiopia in the UN, and, in view of this Commission's mandate and its keen interest in implementing human rights, they may deserve high visibility in Ethiopia's future constitutional order.

The draft code (attached) addresses a number of subjects, including the following:

A. *The fundamental mission of the security forces.* These forces should not simply be created to provide for “law enforcement” in the abstract, nor to preserve the “security” of the “state” through blind obedience to the commands of the government of the day. The overriding obligation of all law enforcement should be to protect, preserve and honor the Constitution and all laws enacted pursuant to it.

B. *Legislative control.* In a democratic society the power to establish (and abolish) organize, empower (and limit powers) and finance *all* security forces must reside in the elected legislative branch. To that end the legislature must also enjoy continuing powers to investigate and review the activities of all units in order to maintain its (and the people's) sovereignty over them.

C. *Judicial control.* The courts must be adequately empowered to hear and determine all cases alleging abuses of power by the security forces, to impose civil and criminal remedies on wrongdoers and, where necessary, to provide other remedies requiring institutional action to correct systemic failures or abuses by particular units. These powers of judicial control should in no way preclude (or deter) the legislature (and the executive) from discharging their obligations to review and remedy systemic abuses and other faults in the governance or operation of security forces. But a basic commitment to the rule of law as the means to secure human rights implies that the courts must enjoy final powers to require enforcement of the law when other organs fail to do so.

D. *Executive control.* The civilian chief executive (and his/her ministers and other delegates) should enjoy powers of command over the security forces, but *these powers must be exercised in accordance with the limitations imposed by the Constitution and legislation*, and in accordance with the mandates of the legislature and to *accountable executive control* enforced by the review powers of the courts. This concept of power should replace the historic notion that executives exercise exclusive and autonomous executive control. “Civilian control” should never be simplistically equated with the exclusive control of a civilian executive, even if he or she is elected to office.

E. *Codes of conduct.* The legislature should enact a fundamental law prescribing both the standards of conduct expected of every person in the various security forces and the processes to enforce these standards. This legislation could require the relevant ministries to implement the legislature's standards by promulgating more detailed codes of conduct tailored to the task of each of the various security forces - for example a code tailored to the tasks and powers of surveillance units. One purpose of these codes is to impose strict discipline not only on those who violate the code, but also on superior officers who appear to condone violations of it, or negligently fail to detect them. A second is to use the code as a basic element in the training and orientation of all ranks - a point that may be crucial to the reorientation of Ethiopia's future security forces.

F. *Recruitment, training and orientation.* These processes - as already suggested - must reflect commitments to the principles of equality of access and opportunity, to the duty to protect the constitutional order and to educate all persons in respect to its commands and to the commands of the relevant codes of conduct. It should be emphasized that women certainly have an equal stake in the reform of the security forces and in the manner of their governance; therefore, recruitment to all ranks must be open to them. So, too, in the Ethiopian context, the national security forces, must obviously be recruited from all ethnic groups with equal opportunities to attain the highest ranks.

G. *Transparency.* Security forces must be required to keep - and make available to the public - prescribed records, such as records of arrests, detentions and, indeed, of all other activities which plainly affect the rights of particular individuals or groups. Designated officials must be available to the public to answer questions regarding these operations and all other matters of legitimate public concern. Of course there are problems of defining subjects that can be kept secret, at least temporarily; but the presumption should favor transparency.

H. *Liability, criminal and civil.* Liability must be imposed on all ranks for violations of codes of conduct or violations of any other laws that result in palpable abridgments of guaranteed rights. Defenses

such as “obedience to superior orders,” “state necessity” or “ignorance of the law” must not be recognized except in regard to mitigation of penalties. Conversely, superiors must be held liable for the wrongs of inferiors whenever they have been negligent in terms of oversight or lax in enforcing codes and discipline. Unconditional amnesty or “impunity” must be forever forbidden—the Constitution itself should enshrine that prescription.

I. *Empowering civil society.* The law governing security forces should enable the press and other interested civil society groups to monitor the governance and conduct of the security forces - and to demand accountability for unlawful actions in accordance with the principles set out above.

II. The Importance of These Principles in the Light of the Ethiopian Experience

Cynics or critics may suggest, of course, that all this is aspirational and academic - that the enactment of these laws cannot effectively change the ways of armies, police and unscrupulous political leaders who use force to gain or maintain power.

There are several answers to these kinds of naysaying. The need for principles is not academic. It is based on both the requirements of international human rights law and on lessons of past experience and present necessity: the past abuses of rights by the army and police in Ethiopia; the present fact that all recognize that steps *must* now be taken to reorganize Ethiopia's security forces in fundamental ways as part of the transition; the fact that this reorganization will provide a unique opportunity not only to reorient, re-educate and retrain these forces, but to restructure and reconstitute them in legal terms; the fact that the security forces have crucial, *positive* roles to play in promoting the promised transition and the fact that this transition will be flawed and put at risk unless the security forces are governed by a rule of law grounded in human rights and democratization principles.

Military force, including lawless violence, surely looms large in the history of the creation, governance and political economy of the

modern Ethiopian state. At times, as is well known, Emperor Haile Sallassie depended on his armies to secure, retain and extend his powers, and one of his achievements in modernizing government was the development of a large, well-trained, national military establishment and a national police. But the size of these, coupled with their autonomy from both civil government and civil society, seemed to lay the foundations for military intervention as the Emperor's power inevitably waned.

Under the Constitutions of 1931 and 1955 the Emperor not only commanded the armed forces and police, but he retained exclusive powers to determine their size, organization and cost; to establish the law governing their organization and discipline; to decree emergency powers and martial law, and to deploy security forces, as he deemed necessary, to assure the "integrity of the Empire." These powers were elaborated by various executive legislative instruments promulgated over the years, though much of the detailed law governing the security forces was unrevealed to the public. This body of law can be characterized in general terms as follows:

A. *Centralized executive control* - exercised directly by the Emperor and by ministers and officers who, in turn, were appointed and dismissed by him;

B. *Autonomy* - in the sense that, subject to the control of the Emperor, the security forces were largely left free to govern themselves in accordance with their own regulations;

C. *Insulation from and lack of accountability to civil society* - in the sense that governance of both the police and the army were - for all effective purposes - beyond the reach of Parliament and the courts, and enjoyed a *de facto* (if not *de jure*) immunity from the civil law; and

D. *The Absence of Law* - in the sense that rules requiring respect for human rights, obedience to the rule of law and the Constitution hardly figured in the professional codes governing the security forces, nor in their training and system of discipline.

Experience suggests that the combination of these, and related, characteristics helps to create conditions within the security forces which lead to politicization and intervention when the government of the day weakens, and then to sustained, lawless military rule based on force and systemic repression, and to all the other abuses which ultimately attend rule by the “barrel of a gun.”

Legal autonomy for the security forces often breeds a sense of their social and political apartness from civil society. The very fact that members of security forces live, to some extent at least, in a distinct society of their own, isolated from the people they are supposed to protect, creates risks of potentially hostile relationships with the public. These risks are increased when the suppression of political discontent becomes a major internal security preoccupation of the ruling regime, and when leaders of the security forces come to believe that civil society is infested with elites and other groups who are ideologically suspect because they seem to be hostile to the regime in power. Thus, professionals, intellectuals, students and other particular groups (including ethnic groups) come to be seen (by the security forces) as potential “enemies” to be carefully watched, repressed by overt force and controlled by terror, methods if necessary. The legitimacy of this kind of use of force against fellow citizens is more readily assumed by soldiers and police when their training and leaders appear to condone it, and when the powers of civil society to protest (and the legal system to prevent) abuses and control the police and military are weak.

Systemic use of force, particularly in the context of a large, pluralistic country, may breed recourse to force as the only apparent means to oppose an authoritarian regime. Recourse to the politics of violence and civil warfare is, indeed, a very venerable theme of Ethiopian history. Certainly widespread civil warfare became the inevitable response to the brutal rule of the Derg, and this civil warfare has, perhaps, now generated ethnic and other divisions within society which could threaten the unity of the state if the administration of public order is not seen to be fair and principled. The tasks of restoring not simply “security,” but popular confidence in, and support

for, the new constitutional order may depend in part on the legitimacy accorded to the future security forces in the processes of transition.

Indeed, the immediate need to reconstitute the security forces has been recognized by the TGE as a task of central importance—important because, *de facto*, the TGE is, itself, a military regime even though it struggles to escape that contradiction by operating *de jure* under the transitional “constitution” (the Charter) as a civilian government.

The army's leadership is also said by some to operate as an “*eminence grise*” in the non-transparent, ruling circles of both the ruling party (the EPDRF) and the government. This apparent conversion of the army into an instrument of authoritarian rule - whether fact or alleged fact - has (it has been said) undermined the credibility and legitimacy of the TGE. I am referring to the heavy-handed way in which it moved to disarm and disperse the paramilitary units of other “liberation front” parties in earlier stages of the transition, and to the policing of elections of the regional governments in 1992 and to the sometimes violent way it has put down other disturbances. These methods could undermine the future positive role that the army and police must play in securing the integrity of future elections.

Moreover, the TGE's army is hardly now a representative organization in demographic and ethnic terms, and, obviously, the attempt to police the entire country by an army largely composed of a minority ethnic group is fraught with risks, particularly if there is no law establishing control over the operations, finance, and accountability of these forces.

These concerns are reflected in a candid, thoughtful, paper apparently prepared under the aegis of the Ministry of Defense for the February 1993 Bujumbura Regional Conference on “Democratization in Africa: The Role of the Military.”⁴ The paper makes these points:

⁴ See Tsadkin Gebre Tensae, “The Unique Experience of Army-Building in Ethiopia” (February 1993) which was revised and presented as “A Vision of a New Army for Ethiopia” at the Inter-Africa Group’s “Symposium on the Making of the New Ethiopian Constitution,” May 21, 1993 (Addis Ababa).

(1) in a democracy, civil society must enjoy an ultimate power to govern the army; (2) the army must be a truly national army - composed of people from all regions and ethnic groups, so that all elements of the population will see it as "their" army; (3) insofar as the army engages in local, "internal security" operations, it should enlist the "participation" of affected people in concerned communities in devising appropriate strategies to protect them; (4) the army must be completely separated - and disengaged - from politics and the competition of political parties; (5) the army must be under the control of, and accountable to, all civil organs of government; and (6) the overriding mission of the army must be to sustain the country's Constitution, and its loyalties must be rooted in that objective.

These points take on particular force when considered in the context of the transition yet to come in Ethiopia. Obviously, the promulgation of a new constitutional order will not, by itself, produce the goals aspired. In realistic terms, a transition must be seen as a long, difficult period. Quite possibly the introduction of democracy and competitive politics will also introduce a time fraught with dangers of rather unprincipled political conflict, attempted wrongdoing by party zealots and abuse of rights in contested elections - civil disorders which could blight the prospects of democracy. The privatization of Ethiopia's massive, inefficient state sector (a Derg legacy), even if governed by humane policies, may impose hardships on workers, leading to protests and strikes. Economic hardships coupled with the disruption of civil authority during the collapse of the Derg may have created new problems of urban crime and rural banditry. The proposed creation of "ethnic federalism" (i.e. regional governments deliberately constitutional along ethnic lines) may generate recourse to the politics of violence or vengeance in some parts of the country. The inevitable migrations of peoples from one area to another may increase pressures on land and risks of new forms of ethnic conflict. Finally there is, unfortunately, the always serious risk that, at some future point, the regime of the day may, if it feels beleaguered, seek to convert the security forces into an instrument to maintain its political ascendancy, a step which often leads to outright military rule.

These and perhaps other undesired scenarios must surely be anticipated in planning the reconstitution of the state, including its security forces. The Constitutional Commission may be confronted with both an urgent need and a unique opportunity to develop a new body of law governing the organization and governance of the future security forces, envisioning police and soldiers better trained and disciplined to deal with foreseeable emergencies by building public confidence in their commitment to democracy and human rights. Indeed, if the security forces cannot preserve order through methods that are seen by the public to be fair and lawful, if they use the abusive and brutal methods of the past, they may easily contribute to the subversion of democracy by undermining popular faith in the possibilities and utility of the goals proclaimed by the Constitution.

Conversely, confidence in the possibilities of democracy can be strengthened, perhaps greatly, to the extent there is a public belief that those entrusted with police powers can be held accountable to civil society, through legislative oversight, the courts, the press and other processes of political participation. As the TPLF's own civil war experience in Tigray demonstrates, techniques can be devised to enable dialogue between the army and the communities it polices. So, too, there can be dialogue with the public at large over security concerns. This fundamental orientation, if clearly mandated by the law, may help to deter the efforts of power hungry politicians to seize or exercise illegal powers, or the efforts of others to resort to the traditional politics of violence.

III. Strategies for Developing and Implementing the Principles.

Obviously, it is not enough simply to formulate aspirational principles concerned with the governance of security forces. The principles must be translated into specific legislative commands reinforced and implemented by detailed regulations. Further, this "law in the books" must be given visibility and the public must be encouraged to demand compliance. Achieving these goals is a formidable task confronting those responsible for projecting the new constitutional order.

Several suggestive strategies for promoting these goals are briefly outlined here. They are directed towards:

A. The processes employed to develop public participation in the making of the new constitutional order.

It has been emphasized by the Prime Minister that the new constitutional order must reflect a popular consensus developed through extensive public participation in its making. The principles embodied in the International Bill of Rights calling for self-determination and a legal order based on the will of the people require this kind of participation. Indeed, if the new Constitution is to be promulgated in the name of the people of Ethiopia, an emphasis on the processes used to create it may be just as important as the work of drafting the final product.

One way to enlist participation is to encourage full discussion of widely shared public grievances concerned with past and present modes of governance - grievances to be redressed by the new constitutional order. The very processes of addressing historic grievances may help to create a popular understanding that the new constitutional order can be seen as a resource for the people, as something which they can use to define, defend and promote widely shared social interests, as a law empowering the people to demand protection against recurrence of the abuses of the past. In this context discussion of new ways to organize, govern and impose accountability on the police and other security forces may be a matter of great interest to ordinary people.

B. The processes employed to reorganize, re-orient and re-train the security forces.

Over the past year in Ethiopia there have been several conferences and seminars focussing on the need to provide “human rights education” for governmental bodies.

However, it may be doubtful that “human rights education” in the abstract produces a very real impact on official behavior. If the

purpose of this "education" is to change behavior and "cultures," the education attempted must be fully integrated with the rules of conduct actually used to govern all agencies, certainly the security forces; and the system of discipline must be geared to enforce those rules of conduct. A central purpose of training must be to secure understanding of, and obedience to, the commands of the law that governs them. Training and discipline - education and the inculcation of new values and loyalties - must all be seen as interrelated, interdependent means and ends.

All this underscores the importance of mandating not only codes of conduct and discipline grounded in human rights law to govern all ranks of the security forces, but mandating a system of continuing education designed to give effect to the codes.

C. Techniques which the Constitution Commission can use to elaborate principles which will put the security forces under the Rule of Law.

While a "short-form" Constitution may be desirable, a democratic order and the full protection of rights and the effective rule of law can only be established if the Constitution is implemented, and its principles reinforced, by various bodies of legislation elaborating its different provisions. In the absence of these bodies of law, the constitutional order will be incomplete and unenforceable. So, too, the work of the Commission might itself be regarded as flawed if it failed to elaborate in more detail the content of the constitutional order envisioned by the Constitution proposed.

The Commission cannot easily prepare drafts of all the legislation needed to create the new constitutional order it desires. But it can provide directions and guidance for that purpose to the future legislature. This guidance might take the form of a Report indicating the kinds of laws that must be put in place to complete the establishment of a new constitutional order. Alternatively, guidance could be provided, and action mandated, by including in the Constitution a body of Directive Principles which call upon the future government to adopt legislation addressing subjects of major, enduring

concern and which set out basic principles to be secured through that legislation.

Directive Principles have been incorporated in some constitutions in a form which gives them an effect similar to a preamble. In this approach, the Directive Principles are cast in the form of abstract, aspirational goals of social justice to which the state is pledged. These kinds of Directive Principles usually are treated as unenforceable by the courts, and often they are written in such general and inflated terms that they carry an uncertain meaning. Thus, they enjoy little legal effect.

Another way to use Directive Principles is to cast them in the form of specific commands to the future government to enact legislation on designated subjects which will incorporate designated principles deemed crucial to the ongoing development of the future constitutional order. In this approach the Directive Principles provide an important framework for the further development of the constitutional order, a set of *imperative* directions for the next government.

Further, the courts can be specifically empowered to use these principles for guidance in constitutional interpretation and to enforce them by appropriate judicial decrees in the absence of legislation.

Directive Principles of this character have the virtue of providing a map depicting steps that must be taken to complete the constitutional transition. They also provide a text that can be used by public leaders and activists in the ongoing processes of developing that kind of popular civic education and political participation which may be essential to sustain the transition over time.

The appended draft “code” was prepared on the assumption that the principles of the kind prescribed by it are mandated by international human rights law. Experience the world over surely suggests that we should no longer tolerate unregulated police or armies as autonomous organs of government. Putting them under a rule of

law may be a task of the highest priority to those committed to the cause of building human rights and democracy.

