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ICJ NEWSLETTER

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Two members of the ICJ (Justices Michael Kirby and Rajsoomer Lallah) have taken part in a high-level Fact Finding and Conciliation Commission of the International Labour Organisation (ILO) to South Africa.

Justice Kirby from Australia is the newly elected Chairman of the Executive Committee of the ICJ. Justice Lallah from Mauritius is the Senior Puisne Judge of that country.

The Chairman of the Commission is Sir William Douglas, former Chief Justice of Barbados and now High Commissioner of that country to the United Kingdom.

The three Commissioners, with a staff of five ILO officers, spent most of February 1992 in Southern Africa, principally touring major industrial centres of the Republic of South Africa. The senior ILO officer, Mrs Hilary Kellerson, herself has ICJ connections. She worked in the ICJ Secretariat before moving to the ILO.

The ILO Commission to South Africa followed a complaint to the ILO by the Congress of South African Trade Unions (COSATU). COSATU alleged that South African laws on freedom of association did not conform to ILO standards. Although South Africa was an early member of the ILO, following the establishment of that body by the Treaty of Versailles after the First World War, it walked out in 1963 after widespread

condemnation in the ILO of South Africa's apartheid policies. Under the statutes governing the ILO, a complaint from a non-member country may only be investigated if the country concerned is a member of the United Nations and it consents to the investigation. In 1991, after communications about the COSATU complaint from the Director General of the ILO, the Government of South Africa signified its consent to the investigation. It was then that the Fact Finding and Conciliation Commission was established by the Governing Body of the ILO.

During the Commission's visit to South Africa in February 1992, it met high-ranking Ministers and officials of the Government. It also met leaders of the trade union movement. Just before the close of the visit, the Commission was received in Johannesburg by Mr Nelson Mandela, President of the African National Congress. The Commission paid calls on senior members of the South African judiciary, including the Appellate Division of the Supreme Court and the Industrial Court. It met practising lawyers and the parties to the proceedings (COSATU and the Government of South Africa) were each represented by leading South African advocates.

For most of the South Africans involved, this ILO Commission was the first contact any had had with an organ of the United Nations Organisation. Although South Africa has remained a member of the UN, its apartheid policies have severely restricted South African contact with UN agencies, including the ILO.

Most of the ILO Commission's hearings were conducted in Cape Town and in Johannesburg. However, at the mid-point of

the sittings in South Africa, the Commission divided. Its members went, individually, to three other major industrial centres. Sir William Douglas visited East London, Justice Kirby went to Port Elizabeth and Justice Lallah toured Durban. In each of these centres, as in Cape Town and Johannesburg, the Commission received information and submissions from representatives of trade unions and employer organisations as well as governmental agencies involved in aspects of industrial relations.

The COSATU criticisms of restrictions on freedom of association in South Africa included attacks on features of the registration system for trade unions and the operation of South Africa's network of security laws. A feature of South Africa's industrial relations system until now has been the existence of industrial organisations constituted on racial lines. Some of the worst features of the original COSATU complaint were met by amendments to the South African Industrial Relations Act which preceded the arrival of the ILO Commission in South Africa. However, that left large areas of South African law and practices to be scrutinized, including alleged restrictions on the right to strike which were said to go beyond the norms established by ILO Conventions. Complaints were also made concerning the operation of industrial relations law in the so-called Bantustands or African "homelands". The independence of these mini-territories has not been recognised by the international community.

Whilst the Commission was in South Africa, the Government of President de Klerk lost an important by-election to the Conservative Party which supports the

present constitutional arrangements. This caused the State President to announce a referendum on the current moves towards political and constitutional change in South Africa. That referendum resulted in a large vote of support for the Government within the "white" community on 17 March 1992.

At the end of its investigations in South Africa, the ILO Commission travelled to Zimbabwe to consider the preparation of its report. Whilst in Zimbabwe, the Commissioners paid a courtesy call on the Chief Justice of that country (Chief Justice A Gubbay). The Commission meets in Geneva in May when it hopes to complete its report. The report will be delivered to the Governing Body of the ILO, probably at its meeting in June 1992. It may be expected that the report will influence future directions of industrial relations law in South Africa during the current period of change in that country.