National Goals and Basic Social Rights and Obligations in the Guyana Constitution

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INTRODUCTION

Guyana's independence constitution was characterised by features common to the independence constitutions of many other former British Colonies. Basically it was a Westminister form of government but with provisions which reflected tensions that existed at the time of independence.[1] Examples of the latter are the electoral system, and the type and extent of human rights protection contained therein.[2]

The importance of a constitutional status of these political solutions is to invest the statements with a status of supreme principles in the legal system. Article 2 of the independence constitution of Guyana provided that the constitution is the supreme law of the land and if any other law is consistent therewith, that other law shall, to the extent of inconsistency, be void.[3] Consistent with the principle of supremacy of the Constitution, existing laws were required to be construed with modifications, adaptations, qualifications and exceptions, necessary to bring them in conformity with the Constitution.[4]

It is a well known fact that independence constitutions are not as sancrosanct as the framers might have intended. Restraints on the powers of independent governments have been eroded in some countries by constitutional amendments; sometimes for legitimate reasons,[5] sometimes for questionable purposes.[6] Hence the justification for an autochthonous constitution which provides a framework capable of dealing with real problems of the nation.

The arguments for autochthony have therefore revolved around questions of limitations on the powers of the independent government to decolonise. In Guyana, there was a new dimension to the arguments, viz., the ideology of the ruling party, and the need to redistribute power between the national and regional governments. The former is expressed as cooperative socialism and the latter in terms of a concept of regionalism.[7]

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This essay is intended to examine Chapter 2 of the Guyana's new Constitution (1980) which articulates ideological objectives for the nation and the means for their achievement. This Chapter, in the author's view, could have significance for the development of an autochthonous legal system. Its impact would largely depend upon the initiation and implementation of positive law reforms and revision processes and the ability of the practising Bar and the Bench to re-interpret the received law to realise the goals and principles set out therein. It poses a challenge to legal education to equip the young lawyer for the task of social engineering.

National Goals

Chapter 2 of the Constitution titled Principles and Bases of the Political, Economic and Social System, sets out a number of National Goals or National Objectives, and the Directives for achieving them. The statements define the objectives of the political system to be the extension of democracy and to provide opportunities for participation of the citizens in the management and decision-making processes of the state.[8] The economic goals are stated as the extension of socialist ownership and the economic laws of socialism; [9] and the social goals as the total development of the nation through cooperative efforts.[10]

Those are the long term ideals of the nation, the more immediate and specific policy ones could be stated in terms of: *integral human development* to be guaranteed by vesting in every citizen rights to *inter alia* free education, proper housing and leisure;[11] *equality and participation* which is intended to be secured by a right in every citizen irrespective of sex to take part in the political, economic and social life of the nation, and that of equality of all children born in and out of wedlock,[12] and finally, the *protection and conservation of the Environment* to be achieved by (a) the rational use of the natural resources and the environment in and on the land, the sea and in the air; (b) the conservation of the environment and its essential qualities and (c) the protection of fauna and flora.[13]

Directive Principles

We have already referred to some of the appropriate Directives for achieving these goals. Other statements include the elimination of discriminatory distinctions between classes, between town and country and between mental and physical labour.[14] These directives go towards the achievement of the goal of 'integral human development.' Respect for the diverse cultural strains which make up the nation would indicate an assumption of cultural diversity in development.[15] Land to the tiller[16] is an aspect of the goals of the Political and Economic systems referred to above, which require the abolition of all internal arrangements and relationships which permit the exploitation of man by man.

Basic Social Rights

The Chapter sets out certain basic social rights of the citizens. These are not likely to excite any controversy; on the contrary they may, with justification, be taken for granted in the 1980's. These rights are not new and are associated with the welfare state of Britain where they are often referred to as social security rights. Their inclusion in a modern constitution as a distinct category from the national goals and Directives has been justified on the basis that the national objectives are for long term, social security rights for short term, realisations. They include the rights to work,[17] free education[18] free medical treatment,[19] and participation in political activities.[20] These social rights do not derogate from nor do they duplicate the fundamental rights of the individuals which are protected in the constitution. They in fact enhance them and are *sui generis*.

Basic Social Obligations

On their part, the citizens are subject to certain basic social duties. These include: (i) respecting the Constitution and National Symbols,[22] (ii) defending the state,[23] (iii) combatting crimes, [24] and (iv) protecting public property.[25] These obligations are as fundamental as that of obeying the law of the state. They reflect the basic need for man to respect each other and to respect society, and stem from the recognition that in the long-run the extent to which rights and freedoms are protected will depend on the extent to which one respects the rights and freedoms of others. Comprehensively, they may be placed into broad categories such as constitutional, political, social and economic obligations. The former includes that of respect for the constitution as the fundamental law of the land including the structures providing for freedom and justice for all. Political obligations include that of exercising the political rights which are safeguarded by the constitution, in particular that to participate in the government of the nation. Social and Economic obligations include protecting the state, safeguarding its wealth, its resources and the environment in the interests of future generations.

SIGNIFICANCE

Preliminary

In the Commonwealth Caribbean, as in the majority of English-speaking countries, a constitution is usually regarded as a document which sets out a code of justiciable rules and regulations concerning the organs of government and their functions. Provisions defining the objectives of the state are unknwon and would excite skepticism when stated in the constitution. Such provisions are on the other hand a fimiliar feature of the constitutions of French-speaking and socialist countries.

Professor Lutchman[26] has ably demonstrated that almost all of the articles of the Guyana Constitution on these matters have been taken from the Constitutions of the Democratic People's Republic of Korea, the People's Republic of China, the German Democratic Republic, the Socialist Federal Republic of Yugoslavia and the Union of the Soviet Socialist Republic.

Historically, new grounds were first broken in the English-speaking Commonwealth countries in the Indian Constitution (1947) which provided for "Directive Principles of State Policy," and that of Pakistan which set out "Principles of Policy."

The Interim Constitution of Tanzania (1965) contained no statements of "National Goals or Basic Social Rights of the People," or for that matter "fundamental rights of the individual," although the latter had since the 1959 Nigerian Constitution, become a familiar feature in constitutions of Commonwealth countries.[27] This was suprising, for TANU, the sole party, was concerned with human liberty and individual freedom, the prominent features of the independence struggles.[28] The Preamble to the constitution of TANU has, however, expressed commitments to a number of principles normally guaranteed as fundamental rights, some national goals of economic, social and political development and some basic social rights. It was argued by Professor P. Georges, who was at the time Chief Justice of Tanzania, that Tanzania being a One Party State, and the constitution of the ruling party forming a schedule to the constitution of the state, statements of fundamental rights and obligations therein were not without binding force.[29]

Subsequently, the *Arusha Declaration* (1967) and the *TANU Guidelines* (1971) spelt out in clear ideological terms, national goals and guidelines for achieving these. The constitution was therefore amended in 1975 to substitute a new Preamble which set out comprehensive Directive Principles of State Policy and Social Obligations, and the Social Rights of citizens. These included a right to receive a just return for one's labour. In *Ngaka v. The Regional Fisheries Officer*,[30] the High Court held that these statements in TANU constitution and the Preamble to the National Constitution guaranteed to all workers, including government employees, a right to their wages and that right was not a mere privilege. Consequently, the disregard of the requirements of the *Government Suits Act* for claims against the Government to be instituted: (i) against the Attorney General, and (ii) with the previous written consent of the Minister responsible for Legal Affairs, was no barrier to an action against the government in its capacity as employer. This decision constitutes tangible proof of the recognition that in a Socialist state workers have a right to their wages and not a mere privilege.

The Constitution of Papua New Guinea (1975) a truly autochthonous document, represents the most successful attempt to grapple with compehensive statements of National Goals the Directive Principles for realising them and Basic Social Rights and Obligations of the people of

that country. There are five National Goals clearly stated together with the principles for achieving them. The former are (1) Integral Human Development; (2) Equality and participation of all citizens; (3) National Sovereignity and self reliance; (4) Natural Resources and environment to be protected; and (5) Development primarily through the use of Papua New Guinea forms of social political and economic organisation. The Directive Principles are too bulky to be reproduced but suffice it to state that they are clearly set out in the context of each goal. There are six basic rights viz. (a) life, liberty, security of the person and the protection of the laws; (b) the right to take part in political activities; (c) freedom from inhuman treatment and forced labour; (d) freedom of conscience, of expression of information and of assembly, and association; (e) freedom of employment and of movement, and (f) protection for the privacy of the individual's homes and other property and from unjust deprivation of property.

The basic social obligations are worthy of reproduction. They are (a) to respect and act in the spirit of the constitution; (b) to recognise that people can fully develop their capabilities and advance their true interests only by active participation in the development of the national community as a whole; (c) to exercise the rights guaranteed or conferred by the Constitution, and to use the opportunities made available under it to participate fully in the government of the Nation; (d) to protect Papua New Guinea and to safeguard the national wealth, resources and environment in the interests not only of the present generation but also of future generations (e) to work according to one's talent in socially useful employment, and if necessary to create for oneself legitimate opportunities for such employment; (f) to respect the rights and freedoms of others, and to co-operate fully with others in the interests of interdependence and solidarity; (g) to contribute, as required by law, according to ones means to the revenue required for the advancement of the Nation; (h) in the case of parents, to support, assist and educate their children (whether born in or out of wedlock) and in particular to give them a true understanding of their basic rights and obligations and of the National Goals and Directive Principles; and (i) in the case of the children, to respect their parents. This Constitution, unlike the Guyana equivalent, sets up structures for the implementation of these goals, directive principles, basic rights and basic obligations.[31]

The Report of the Constitutional Drafting committee of Nigeria (1976) devoted much time and space to the consideration of fundamental objectives and Directive Principles of state Policy, for in the words of the Committee "the idea... is completely new" in that country.[32] The sub-Committee recommended the inclusion in the new constitution of Nigeria of 7 Articles on "the State and its Fundamental Objectives,"[33] and 11 Articles on "Directive Principles of State Policy."[34] The Fundamental Rights section of the constitution, it was recommended, should be strengthened by adding to the list the following rights: (a) the rights to equal pay for

equal work; (b) the right of every child, whether born in or out of wedlock to equitable treatment; (c) the right to education provided that the Government shall, from time to time determine to which level such a right is to be exercised, having regard to the nation's resources; (b) the right of every citizen to free health services; and (e) the right to permanent employment in any of the public services of the Federation.

The Sub-Committee went on to recommend for inclusion in the Constitution provisions for a Social Security Scheme. The following social security measures were listed: (1) the right to full employment and security of employment; (2) the right to suitable and adequate shelter; (3) the right to suitable and adequate food; (4) the right to minimum living wage; (5) the right to old age care and pension; (6) the right to adequate and self-fulfilling leisure; (7) the right to unemployment benefits.

In Guyanese context, where some basic enforceable fundamental rights' provisions in the constitution are repeatedly breached,[35] critics are likely to view statements of objectives, directive principles and social rights and obligations in the constitution as cliches and empty words. Likewise, their significance are likely to be falsified by even those who argued their essentiality as constitutional precepts. The absence of confidence in these declarations are compounded by uncertainties concerning their enforceability. While the Drafting Committees in both Papua New Guinea and Nigeria canvased opinions and spent much time and energy on structures to secure the realisatio of these objectives, that of Guyana approached this subject in a most uninformed and cavalier fashion.

The consequences of breach of statements of goals and the infringement of social rights vary in many countries. In some constitutions they are invested with a quality of cor titutional directives and a basis for changes in the legal system. These strategies are vigorously pursued in Papua New Guinea, for example. In contrast, Guyana seems to have made a clear choice for their non-enforcement. Implementation "is for Parliament" which may provide "for any of those principles to be enforceable in any Court or Tribunal."[36] They appear to be reduced to being merely statements of intent. We shall return later to this thorny problem of implementation.

Recognition of Sociological Jurisprudence

From a jurisprudential point of view, the significance of the classification of interests into toals, social rights and social obligations, is highlighted in Pound's theory of sociological jurisprudence. Pound argued that the application of law must take account of social factors. To achieve the purpose of the legal order, there must be a satisfaction of maximum of wants with the minimum friction. The task of the lawyer is therefore social engineering, i.e. balancing competing interests. The first steps to achieving this balance are (a) the recognition of interests, individual, public and social; and (b) a definition of the limits within which such in-

terests will be recognised and given effect to in law, and, finally, (c) securing those interests within the defined limits.

Pound's arrangement of interests was into *Individual interests* (personality domestic relations and interests of substance e.g. property, freedom of industry etc.); *Public interests* (i.e. interests of the State as a juristic person); and *Social interests* (which included that in the general morals, conservation of social resources, general progress and individual life). Although Pound's formulation of interests was based on contemporary American society and would invite controversy on his claim to universality, the method used underscores the vital connection between law, its administration and the life of society.

Limitation of Power

Central to the argument for autochthony is that constitutions are about power, its distribution and redistribution. The government in Guyana, as indeed in many other developing countries, has tended towards the preoccupation with power in the ruling party in terms of a concept of paramountcy of the Party.

Power, in developing countries, has been used for legitimate and sometimes illegitimate purposes, given the country's condition of underdevelopment. It can provide an opportunity for leaders to acquire wealth and prestige by enabling them to distribute benefits in the form of jobs, contracts, gifts and other patronages to political supporters. In small states like Guyana, it is a means for those in power to settle personal vendetta. Preoccupation therewith might be a degree that political ideologies as to how a society may be organised to the best advantage of all may hardly enter into consideration; or if formulated, may be reduced to mere subterfuges.

A Constitution which speaks of power of the organs of government but recognises rights in its citizens should inevitably accommodate those rights as limitations on power. It is therefore argued that as the charter of government and the fundamental law of the land, a constitution by defining basic social rights underscores the ideal that powers are bestowed upon the organs and institutions of government not for the personal aggrandisement of those who wield them, but for the welfare and advancement of society as a whole. Basic social rights without corresponding duties cannot, however, be enforced directly and are therefore tantamount to no rights. The sceptics would, on this basic, question the usefulness of these statements.

It could, however, be argued that the purpose of proclaiming these rights in the Constitution is not to enable people to go to court to enforce them directly, it is rather to emphasise in a solemn manner through the supreme law the basis of government and the subordinate position of those who wield state powers. It is assumed that they will be conscious of, and responsible to their obligations and responsibilities. This could be of

particular significance for the dignity of the people in Guyana where there is a breakdown of services and the distribution of goods with inevitable 'black marketing' problems. Segments of the population are made to feel that any acquisition of goods and services from state owned corporations or other state entities is a privilege for which they must be eternally grateful. In the words of the Constitutional Committee of Nigeria, the provision of 'basic rights' in the constitution could therefore have "a preeminently educative, emotive and psychological value" for those who govern as well as the governed.[37]

There are certain grey areas in the statements of basic rights and obligations which the critics will claim have been proclaimed to justify mal-practices of the government. For example, Article 22 which states a basic social right to work spells out a parallel duty to work in the same person. It might be claimed that the government needed a legal basis to justify its deployment and transfer of critics of government and this practice may have motivated this provision. It is on the contrary arguable that Article 22 Prohibits such practices for it defines the right to work to include a choice in accordance with social requirements and personal qualifications. The interpretation would ultimately depend on the sensitivity of the judiciary and their indentification with the spirit of the provisions.

Constitution as a Philosophical Document

Recent constitution makers have gone further in holding that a constitution is also a philosophical document. It should therefore proclaim the principles upon which the state is organised and spell out as well the ideals and objectives of the social order. These major premises should neither be left to chance or remain unexpressed.

This development in constitution making has a number of strength and some pitfalls. As a philosophical document, theoretically; (1) the objectives of the state will become known throughout the country and provide a yard-stick against which a government's performance can be judged; (2) the statements of objectives and constitutional directives ought to direct and concert the efforts and actions of people towards the achievement of those goals; (3) the parameters of government become clear and people are informed of the policies of the state - these are prerequisites to cooperation, peace, unity and progress; (4) the objectives and principles of state policy are invested with the quality of constitutional norms, and thereby making it easier for political leaders and public functionaries to establish and show the desired identification with them.

On the other hand, it may be argued that goals and values of a society are not unchanging for all times. The stated ones may not be a true reflection of current values but only what the present generation of leaders believe them to be or think they should be. To enshrine them in the

constitution is an imposition, and would create a false and unwarranted image of popular acceptance. One is also confronted with an assumption that a constitution is by its nature a short document setting out the essential principles necessary for the establishment and functioning of the organs of government. To enshrine therein values and aspirations of society (and as in the Papua New Guinea Constitution provide structures for their implemenentation) is to encumber what should be basically a simple document. It is precisely because of this realisation that the concept of organic laws is used in some countries. For example, the constituion of Papua New Guinea sets out basic statements of national goals and basic social rights and obligations. The structures for implementation are for the greater part defined and established in Organic Laws on the Leadership, the Ombudsman and the Underlying Laws. An Organic Law is a law expressed to be the organic law in respect of a matter, provision for which is expressly authorised by the constitution. Like the constitution, it is a supreme law and enjoys similar protection with reference to alterations.

IMPLEMENTATION

Guide to Judicial Interpretation

The pursuance of national goals and the recognition of non enforceable duties on the part of the state can be very much a matter of political will to ensure that state activities are directed towards achieving and respecting them. Article 39 provides that the realisation of the Directive Principles is a matter for Parliament, the government and other public agencies. Parliament may, however, provide for their enforceability in any court or tribunal.

On the other hand, some constitions have gone beyond a mere "declaration of intent" of their enforceability. For example, Papua New Guinea constitution provides that the courts and other tribunals are to be guided by the National Goals and Directive Principles in resolving disputes. These goals and principles are also central to the expression of the *underlying law* of the state; for wherever the rules of the Common Law are inapplicable or inappropriate or they conflict with the goals, the former must give way to the underlying law. In this way the goals and principles form the basis for determining new legal rights and duties, and hopefully, inevitably, a new legal system. So important are the goals, principles and statements of social rights and obligations in the affairs of that nation, that the Supreme Court of Papua New Guinea is entrusted with a *new* jurisdiction to give advisory opinions in circumstances where no legal disputes have arisen, but doubts existed in their application. By Art. 19 of the Constitution a number of stipulated authorities (e.g. Parliament, Law Officers, the Speaker) may seek the "opinion" of that Court on any

question relating to their interpretation or application including the validity of any proposed law or executive action that might conflict with the goals, principles etc.

It may be argued that by virtue of Art. 8 of the Guyana Constitution (the Supremacy of the constitution) and section 7 of the constitutive act (interpretation of existing law in conformity with the constitution) the Guyanese courts are duty bound to take cognisance of directive principles and basic social rights and duties in resolving disputes. This submission is supported by the principle that the provisions in a Constitution are self-executing to the fullest extent that their respective nature and subject matters permit. Take for example, the principle of "dismissal at pleasure." It is arguable that insofar as it is a "received" principle, it could no longer be valid, in the light of article[22] of the constitution (the right to work).[38] Again, subject to the interpretation of the expression "proper solemnity" one might argue that Art. 7 (duty to respect national symbols) might be a basis for the reinterpretation of the law of crime where an accused is charged with failure to stand in a public place when the national anthem is being played. In *Dolly Kendall et al v Mohamed Khan*,[39] the full Court held that the accuseds' failure to stand in the cinema when the national anthem was played did not amount to an insult likely to provoke a breach of the peace within the terms of the Summary Offence Act, and though there was a moral and national duty to stand, there was no legal obligation to do so. This judgement was delivered before the 1980 constitution came into force.

However, the better view is that judicial law-making of crimes would be a violation of Article 144 (4) (Protection of Law). It is therefore for Parliament by the exercise of its legislative power to overrule the law as was stated in *Kendall's* case... Other assumptions which it is opened to the courts to make are as follows: (1) if the meaning of a particular legislation is unclear or ambiguous, the courts should give an interpretation which is consistent with the National Goals and Principles and are not in violation therewith; (ii) if there is a conflict between a human rights provision in the constitution and a Directive Principle, the duty of the court is not significantly different from that, where a provision in a statute conflicts with a principle of public policy. However, the conflict may be resolved in favour of the Directive Principle by legislation. One conflict that comes readily to mind, for example, is the freedom to form political parties protected by Article 147 (right of association). The Directive Principle (Article 10) which requires that political parties must respect the principles of "National Sovereignty)" purports to abridge the fundamental right of association.[40] Again the abridgement of the fundamental right of "protection from deprivation of property" (Art. 142) is clearly implied from the clear statement of principle that as land is for social use, it must go to the tiller (Art. 18).

Machinery for Ensuring Public Accountability and Duties

One explicit thesis of this essay is that the constitution which spells out objectives of and basic rights in the social order establishes duties in government and its functionaries and by so doing controls "power" and *subordinates* the leadership to the Constitution. The most important single factor in realising the objectives is the quality of the leadership. Experience in Guyana teaches that a leadership when unregulated soon becomes self-centred, unmindful of the rights of the citizens and of the concept of public accountability. Constitutional enjoinment and declarations alone have little effect by themselves.

In *Mwongozo (1971)* it was pointed out that the fact that the leaders have charted the objectives and policies for development is no guarantee of good leadership. The first step towards a responsible leadership, it is argued, is the recognition of a Code of Conduct. The second, is an effective machinery for investigating public complaints of public mismanagement. The 'leadership code' in Tanzania may therefore be seen as a necessary aspect of the *Arusha Declaration*. The latter spelt out the national goals and obligations; the former defined good leadership and provided for their control. In contrast, the Code of Conduct for PNC leaders[41] is a poor substitute for a national leadership code. It has no national or legal status and no binding force. For these reasons it is a matter of surprise, that thirty articles of the constitution are devoted to high sounding principles of state policies and basic rights of the citizen and not one to ensuring the accountability of the leadership in their implementation.

Law Reform and Ad Hoc Bodies

The most direct method of ensuring that goals and basic rights and obligations are pursued and protected is an active law reform programme. It would be the first duty of the body entrusted with the task to give careful consideration to all current legislation, with a view to making recommendations for repeal or amendment of those which are in conflict with the National Goals and Principles. In areas where there are no legislation (for example for the conservation and protection of the environment) it is for the law reform body to propose adequate legislation to fill the gaps. One of the first acts of the government of Papua New Guinea following its new constitution was to establish a Law Reform Commission charged with proposing revisions of the laws to reflect the national goals etc.

The Committee which recommended social security measures to be incorporated in the Nigerian Constitution, enjoined the establishment of task forces to produce proposals for their realisation when the "time, circumstances and resources" permitted. Guyana's record of law reform is poor; legislative power over the last ten years being directed mainly to enhancing the power of the ruling party to control the economy and eliminate political opposition from within.

CONCLUSION

West Indians are not usually credited with creativity in the solution of their political and legal conflicts. This is so although their societies are highly sophisticated and the population comparatively literate. The political leadership itself has arisen from the ranks of men who have excelled in their professions. Dr Eric Williams' historical writings are read within and outside the region, the others are credited with less innovativeness. Dr Ratu Sir Kamisese Mara, the Prime Minister of Fiji, expressed widely held opinions when he commented in the Dillingham lecture at the Kennedy Theatre in Honolulu (1975)[42] that "despite the polish oratory of West Indians it is the Africans who are the solid pacemakers."[43]

We in Guyana have been haunted by serious racial and political conflicts which have bedevilled our existence as a nation. Despite fourteen years of running our own affairs, these conflicts remain unresolved and have taken on degenerating consequences. The depressed state of our economic and social lives proves the classic theoretical platitude that economic and social advancement are dependent on political stability. We have excused our inability to bridge our chasms on our heterogeneity. Though unique in this respect, in the West Indies we have not inherited from our Colonial masters even a fraction of the problems consequent upon heterogeneity like other developing states. African and Pacific states, with their numerous tribal and racial conflicts, diverse customs and cultures, have had to face near insurmountable problems. Yet we find that in many of these states when confrontations, racial and/or political, threatened the existence of the nation, the leadership has sought solutions in political and constitutional creativeness, some bordering on the genius. Papua New Guinea, for example, in the midst of succession by one of her dissatisfied districts (Bougainville) and threatened break away by other important areas of its territory (Gazelle Peninsular and Papua), sought to resolve its problems by skilful negotiations and partly by constitutional innovations in the creation of provincial governments.[44]

The ruling party in Guyana has in its rhetorics discredited the independence Constitution by attributing to its responsibility for all ills. It pledged an autochthonous Constitution capable of resolving most of the country's problems. At the end of the day the Constituent Assembly disregarded the numerous recommendations of various bodies and groups in Guyana and adopted with minor modifications the draft Constitution submitted by the Ruling Party.[44]

To enshrine goals, principles and basic social rights and duties in a constitution without popular discussion of them before hand, is to create a false and unwarranted image of popular acceptance. The constitutional formulation of values and objectives is of little utility unless they are the real fundamental ones widely shared in the community, and not the sectoral objectives and goals of a political group, uncritically taken from

foreign constitutions because they sound good.[45] For example, article 35 which seeks to concretise diverse cultural development has not been thoroughly discussed and resolved by the communities in Guyana[46] Its attainment is liable to be distracted from by discussions as to its authenticity. Statements of values of a society are hardly worth the paper they have written on if there is not a fairly generally shared commitment to the value which are endorsed therein. It is in the area of implementation that there is the greatest room for scepticism. People have become suspicious of the fine sounding statements which are only statements of intent. This is more so in a state where minimum human rights provisions which are firmly entrenched in the constitution are constantly being violated. It is a matter of great surprise that the interrelationship between fulfillment of basic social rights and the conduct of leadership was not acknowledged in the constitution. They are completely linked together as are chicken and eggs! The relation between the fulfilment of social rights and the conduct of the leadership has been a matter of great concern in several countries within recent years. The Committee which drafted the Nigerian Constitution attested to the "strong differences of opinion" this subject evoked in Nigeria. It, however, recommended that (1) the Directive Principles should be made justiciable to a limited extent by means of declaratory action; (2) a Code of Conduct should be established with strong sanctions for non-compliance; and (3) a Declaration by the Court that a law or action is a violation of the Directive Principles or basic social rights shall not render the law or action invalid, but may be a ground for the impeachment of the responsible functionary.

The role of the courts in matters such as the enforcement of duties against the state has always been one of concern. One tries to avoid confrontations between the executives and/or the legislature on the one hand and the judiciary on the other. It may be argued that to make the judiciary the final arbiter over matters of fulfilling basic social and economic rights of individuals is only a short step towards building up against them the charge of usurping the functions of the Executive and Legislature. By their nature, the provisions relate to policy goals or directions rather than to the existence or extent of *legal* rights in individuals or groups. As such one might argue that it is a field into which professional judges are not the most competent to judge.

One is reminded of the opposition of Anglo Saxon lawyers to the inclusion of Bills of Rights in Constitutions. A Bill of Rights is not simply the embodiment of legal solutions but touches on matters of political philosophy and ideology. The Courts have, however, proven to be a forum for questioning their infringement albeit not very effectively. Shortcomings that there are, are not in their nature as justiciable rules, but in the timidity of some judges, and the limited range of remedies available upon infringement.

The "fundamental rights" provision and those of "basic rights" have two things in common: (1) they go to the very well being of man, and (2)

they inhibit actions which threaten that well being. One ... therefore question the basis on which they are accorded different treatment in Constitutions. Reference has been made to the Report of the Constitutional Drafting Committee of Nigeria which recommended that many of these "Basic Rights" be added to the list of the fundamental rights in the Constitution. The objection to adopting this technique and the argument for separation is well founded on the fact that guarantees of social and economic rights might conflict with individuals' fundamental rights. The latter should not deny the government the legal means of doing what is necessary to provide economic and social security. Nevertheless, as fundamental principles shouldn't the universal rule be that legislative and executive acts which violate these provisions are invalid? Judicial review would involve the courts in the political process, but courts' power to review legislation and executive acts is already a very distinct one in the political process. With the proposed extension of reviewing opportunities the Court's role would remain very limited in comparison with the judges in the Supreme Court of America.

One related matter necessary for the protection of both categories of rights and can itself fall into either of them, or as a guarantee of these rights, is that of *free legal aid.* In a developing country, most citizens are unlikely to have the resources to protect their constituional rights when such rights are threatened or infringed. Many of the new constitutions guarantee legal services out of public expense in such circumstances. Article 14446 of Guyana's new Constitution guarantees to everyone charged with a criminal offence a fair trial and accordingly places an obligation on the State to make provisions for legal aid to be taken in "suitable cases." For even this limited commitment to be a reality it would be necessary to establish one of the many models of legal aid schemes.[47]

FOOTNOTES

1. Kenya's independence Constitution, for example, contained solutions to land tenure problems, matters which traditionally are the subject of ordinary legislation.
2. For statements of the tension which existed in Guyana at the time of independence see the "Report of a Commission of Inquiry into Disturbances in British Guiana (1952)" and "British Guiana Conference (1963)" Report.
3. There were saving provisions of some existing laws, cf Art. 18 of the independence Constitution.
4. S. 5 of the Guyana Independence Order 1966.
5. For example limitations on national sovereignty in the interest of non-nationals have been removed from the Zambian Independence Constitution (s. 18) and that of Kenya (s.75). In both countries where there were European vested interests, extreme guarantees in terms of limitations on the circumstances in which compulsory acquisition was permitted, and the compensation therefrom could be taxed were enacted. The constitution then went

to guarantee the repatriation of any compensation payment made to non-nationals. See further R.W. James, "The Constitution and Land Rights" (1976) *Administration for Development,* p. 3.

6 See H.A. Lutchman "Constitutional Change and Development - The case of Guyana" (mineographed 1978) pp. 13 to 20.

7. See H.A. Lutchman "Constitution Making In a Post Colonial Setting: The Guyana Experience" (mineographed: May 1980) pp. 7 *et. seq.*
8. Art. 13.
9. Aticles 14 to 15.
10. Art. 16
11. Arts. 13 to 27.
12. Articles 10, 12, and 30.
13. Art. 36.
14. Art. 34.
15. Art. 35.
16. Art. 18.
17. Art. 22.
18. Art. 27.
19. Art. 24.
20. Art. 10.
21. Arts. 138 to 149 (inclusive).
22. Art. 7.
23. Art. 33.
24. Art. 32.
25. *Ibid.*
26. See H.A. Lutchman "Constitutional Changes and Development - The case of Guyana" (mineographed: 1978) pp. 20-23.
27. See S.A. de Smith, *The New Commonwealth and Its Constitutions,* pp. 193 et. seq.
28 "The Presidential Commission on the Establishment of the One Party State" did not recommend the inclusion of a Bill of Rights in the National Constitution. The arguments against a bill of rights and in favour of other institutions to protect individual rights and freedoms are set out in their Report, paras. 99-107.
29. See Selected Speeches of Telford Georges, Chap. 3 in R.W. James and F.M. Kassam, *Law and Its Administration in a One Party State* (EALS: 1973).
30. The Law Report of Tanzania (1973), n. 24.
31. See P. 8 *post.*
32. See "Report of the Constitution Drafting Committee containing the Draft Constitution" Vol. 1, P. v.
33. See a Report of the Sub-Committee on National Objectives and Public Accountability contained in "Reports of the Constitution Drafting Committee" (1976) Vol. 2.
34. *Ibid.*
35. Some fundamental rights provisions which are constantly being broken are (i) the guarantee "against arbitrary search and arrest" - members of the opposition parties and critics of the government are searched and their homes invaded against their will under the pretext of searches for five-arms, explosives and ammunitions under the National Security Act (CAP. 16:02). Literatures, tape recorders and other like items are sometimes seized and taken away on such searches. Road blocks and searches of one's vehicle or person by the police and or members of the military and security forces have become common occurances in spite of there being no declaration of a State of Emergency; (ii) "freedom of movement" - persons have been prevented from leaving or entering Guyana or their passports seized for no other reasons than being critics of relatives of critics of the ruling party, cf *Thomas*

v. A.G. (1979), *Kweyana v. A.G.* (1980); (iii) "right to li[illegible]en an increasing number of cases of unarmed persons suspected of committing or attempting to commit offences shot to death by the police in circumstances not reasonably justifiable. Guyana has gained notoriety for incidence of unexplained suicides and murders e.g. the Jonestown mass murders, the murder of Vincent Teekah, Walter Rodney etc. (iv) Finally, the onus in non-capital cases rests upon those who will deny an accused of his liberty. How well was that discharged when Mrs Olga Bone was set a bail of $20,000 by Principal Magistrate Norman Jackman when she pleaded not guilty to a charge of being in unlawful possession of ammunition, to wit, an empty shell of a 303 bullet. See further R.A. Lutchman "Constitution Making In a Post Colonial Setting: The Guyana Experience" (mineographed).
The human resources factor.

36. See F. Burnham "Forbes Burnham speaks of Human Rights (Ministry of Information: 1980) p. 7.
37. See "Fundamental Objectives and Directive Principles of State Policy: Rationale" para 3 of the "Report of the Constitution Drafting Committee etc." Vol. 1, and "Need for Embodying National Objectives (etc) in the Constitution" Chapter 1 of Report of the Drafting Committee. Vol. 2.
38. Cf. *Sheik Hyder Ali v. The P.S.C.* Civ. App. 37 of 1974. See also Forbes Burnham *op. cit.* p. 9 where he assumes that Art. 18 (Land to the tiller) is self executing.
39. Full Court No. 8/79.
40. The Privy Council held that freedom of association "merely controls the rights of a person to associate but does not include the purpose for which they associate or the objects which in association they pursue - see *Collymore* v. *A.G.* (1970) 15 W.I.R. 229.
41. See ch. 11 of the *Declaration of Sophia* (1974).
42. "Currents in the Pacific," *Fiji Information* Vol. 1 No. 1 (1975) p. 5.
43. *Ibid* p. 12.
44. See Diana Conyers, *The Provincial Debate,* IASER (1976); W. Tordoff and R.L. Watts, "Report on Central PROVINCIAL Government Relations" Post Movesby (1974).
45. Cf. H.A. Lutchman, "Constitution Making in Post Colonial Setting, etc."
46. Both Nigeria and Papua New Guinea opted, after serious and long discussions for cultural pluralism. This choice is reflected in the statement of National Goals in the Papua New Guinea Constitution in terms of "Papua New Guinea ways." The recognition that the cultural and ethnic diversity of the people is a positive strength - goals 5 of the Constitution. This goals has threfore determined the process of devolution of power to provinces under the system of provincial governments. See references in 44.
47. For a discussion of a number of models of legal aid schemes see D. Dodd and Parris "Representation in Criminal Cases and the Courts of Guyana: The Need for Legal Aid (Part II((1979) G.L.J. 11; see also Weisbrot and Pakiwala, "Lawyers for the People" (1979) MLJ 184.