



**PERSECUTION OF DEFENCE LAWYERS  
IN  
SOUTH KOREA**

Report of a mission to South Korea in May 1979

by

**ADRIAN W. DEWIND**  
Attorney-at-Law, New York

and

**JOHN WOODHOUSE**  
Secretary, Centre for the Independence of Judges and Lawyers

**INTERNATIONAL COMMISSION OF JURISTS**

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## INTRODUCTION

by

NIALL MACDERMOT

Secretary-General, International Commission of Jurists

At the beginning of 1979 the International Commission of Jurists and its Centre for the Independence of Judges and Lawyers received a number of reports of the harassment and persecution of defence lawyers in South Korea for action which they had properly taken in a professional capacity on behalf of their clients in political cases.

In view of the gravity of these reports the International Commission of Jurists and the Centre for the Independence of Judges and Lawyers decided to send a mission to South Korea to enquire into the situation of these lawyers and the defence rights of their clients, and, in the light of its findings, to make appropriate representations to the South Korean authorities and to the South Korean Bar Association.

The ICJ and CIJL were fortunate and honoured to secure the agreement of an outstanding New York attorney-at-law, Mr Adrian W. DeWind, former President of the Association of the Bar of the City of New York, to head this mission in May 1979. He was accompanied by Mr John Woodhouse, the Secretary of the Centre for the Independence of Judges and Lawyers in Geneva.

This report of the mission is commended to the attention of all lawyers who are concerned about the

independence of the judiciary and of the legal profession, as being the cornerstone of the Rule of Law and the legal protection of human rights. The violations and abuses described in this report illustrate in a vivid manner the erosion of this independence, which is increasingly occurring in many countries of the world. As a background to the particular cases under study, the report also describes the constitutional and legal framework of the general repression of human rights in South Korea.

The assistance of a grant from the Rockefeller Brothers Fund, New York, which made possible this mission, is gratefully acknowledged.

## TABLE OF CONTENTS

<u>Preface</u>	3
<u>PART I. NATURE OF REPRESSION IN SOUTH KOREA</u>	
A. RATIONALE	7
B. CONSTITUTIONAL AND LEGAL FRAME WORK	11
- The Yushin Constitution	11
- Statutory Provisions, Presidential Decree	13
- Applications of the "Anti-Subversive" Enactments	16
C. EXTRA LEGAL METHODS OF REPRESSION	20
- House Arrest and Surveillance	20
D. THE JUDICIAL PROCESS	24
- Search, Arrest Interrogation	25
- Treatment of Prisoners	29
- Defense Rights	31
- Trial Procedure	34
<u>PART II. THE HARASSMENT OF DEFENSE LAWYERS</u>	
A. GENERAL FINDINGS	40
B. CASES OF HARASSED LAWYERS	42
- Mr Han Seung-Hun	43
- Mr Kang Shin-Ok	44

- Ms Lee Tai-Young	46
- Mr Kim In Ki	47
- Mr Lee Byong-Nin	47
- Mr Im Kwang Kyu	48
- Mr Kim Kwang-Il	48
- Mr Hong Sung Woo	49
- Mr Pak Se Kyong	49
C. THE POSITION OF THE KOREAN GOVERNMENT	50
D. THE POSITION OF THE KOREAN BAR ASSOCIATION	52
<u>PART III. CONCLUSIONS AND RECOMMENDATIONS</u>	57
Appendix: Extract from the Defense Speech by Advocate Kang Shin Ok	61

PREFACE

The International Commission of Jurists (ICJ) has for many years been concerned about chronic political repression in the Republic of Korea. It has responded to many reported violations of human rights by publishing reports, issuing press releases or sending observers to South Korea on the basis of the information received.

From 1974 onwards, the ICJ repeatedly received disturbing word that South Korean attorneys who engaged in the defense of persons charged with political offences were being subjected to considerable pressure to abandon these clients. It was alleged that some of these attorneys had themselves been unjustly convicted of political offences and automatically disbarred as a consequence, while others, along with their "non-political" clients, had been intimidated by the Korean Central Intelligence Agency (KCIA) in various other ways.

The harassment of civil rights attorneys and their clients is common in perhaps 50-60 countries. This alarming situation prompted the ICJ in January 1978 to establish a center<sup>1/</sup> to give particular attention to this problem, believing that the enforcement of fundamental rights of individuals is impossible unless the legal profession and judiciary enjoy effective independence.

<sup>1/</sup> The Centre for the Independence of Judges and Lawyers operates from the Headquarters of the ICJ in Geneva.

In January 1979, the ICJ and the Centre for the Independence of Judges and Lawyers (CIJL) proposed to send a mission in May 1979 to South Korea to investigate and report on alleged violations of the independence of the civil rights attorneys and more generally as to violations of the defense rights of accused "political" offenders.

In the Ordre de Mission, the Chairman of the Executive Committee of the ICJ, Mr. William J. Butler, advised the Korean Government of the nature of the mission and requested it to extend the facilities and usual courtesies to the members of the mission for its accomplishments. The mission was supported by The Association of the Bar of the City of New York and the American Bar Association. Particular interest was expressed in it by United States Senators Edward Kennedy (Chairman, the Senate Judiciary Committee), Gary Hart ( Democrat, Colorado ) and Alan Cranston (Democrat, California ) and by members of the House of Representatives Elizabeth Holzman (of the House Judiciary Committee) and Don Bonker (Chairman of the Subcommittee on International Organisations).

#### Preparation of the Mission.

Assistance in the preparation of the mission was given by the United States State Department and the National Council of Churches in New York. The American Embassy in Korea facilitated the mission by arranging meetings with lawyers and government officials. Mr. Edward Baker of the

East Asian Legal Program of Harvard Law School unofficially joined the mission in Korea and we are greatly indebted to him for his expert assistance during our investigation.

We visited Seoul between April 29th and May 5th during which time we were able to meet leading dissidents, lawyers, clergymen and ministers of the Korean National Council of Churches (KNCC), journalists, the families of political prisoners and a member of the National Assembly. Included among these were former President Yun Po Sun, Mr. Kim Dae Jung (opposition candidate in the 1971 presidential election), Reverend Kim Kwan Suk, General Secretary of KNCC, Mr. Park Se Kyong, head of the Lawyers' Committee of the KNCC and Mrs. Lee Tai Young, the first woman lawyer and former judge of South Korea.

We were granted interviews with the Minister of Justice, Mr. Kim Chi Yul and the Minister of Foreign Affairs, Mr. Park Tong Chin. We regret that our request to meet the President or senior members of his staff was not granted.

We also discussed the problems of human rights with the American Ambassador to Korea, the Honorable William Gleysteen, political counselor, William Clark, the labor affairs and human rights officer, John Lamazza, and other staff members of the American Embassy.

#### Contents of the Report.

It is axiomatic that a proper assessment of the position of defense counsel in political cases in South

Korea can only be made after a general understanding of the nature of political repression in South Korea has been gained.

Accordingly, we have included in the introductory section of the report a survey of, and our findings on, the legal and extra-legal methods adopted by the South Korean government to restrict participation in the political process. The second section is devoted entirely to our findings with respect to the allegations of the harassment of human rights attorneys and the response to them of the South Korean government and the Korean Bar Association. A third section comprises our conclusions and recommendations.

## I. NATURE OF REPRESSION

### A. RATIONALE OF REPRESSION

Although the military junta which seized political power under the leadership of General Park Chung Hee and the civilian government established by Park in 1963 imposed major restrictions on political activities and freedom of expression,<sup>1/</sup> systematic political repression was not fully perfected until 1972 when President Park proclaimed the Fourth Korean Republic and the adoption of a new constitution.<sup>2/</sup> Since that time, political repression has intensified. Many thousands of Koreans who have attempted to exercise their fundamental rights have been harassed, placed under house arrest, illegally detained, imprisoned, and in many cases tortured by government agents.

There have been suggestions recently that the Korean government is taking a more liberal approach to political dissent. We saw no signs of a political thaw. Rather it appeared to us that an intensification of repression against political dissidents was evident. The presidential announcement of the release of 106 political prisoners in December

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<sup>1/</sup> The suppression of political dissent in the Republic of Korea has been given considerable international publicity. Mr. William J. Butler, the Chairman of the Executive Committee of the ICJ, published a comprehensive report on the Violations of Human Rights in Korea for Amnesty International in 1974.

<sup>2/</sup> The so-called Revitalization (Yushin) Constitution.

1978<sup>1/</sup> has been followed by numerous arrests of students, university professors, Christian social workers, journalists and others.

The South Korean government maintains that restrictions on political dissent are necessary to forge a united country against the threat of a North Korean invasion and to facilitate economic growth and national re-unification. This position was reiterated both by the Minister of Justice and the Minister of Foreign Affairs during our discussions with them, although the latter seemed somewhat ready to concede that new relations between China and the United States greatly diminish the possibility of either a Chinese or a Soviet Union supported military venture by North Korea.

The extent to which the South Korean government believes in the need to effect a reconciliation and eventual union with the North is impossible to ascertain. It is the view of many Koreans, however, that the defeat of communist subversion and the long-term goal of national re-unification will never be achieved by internal repression, but rather will be frustrated by the social and political dislocation that results from repression.<sup>2/</sup>

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<sup>1/</sup> Of the 106, the KNCC later reported that only 23 could be identified, all of whom were due for release in three or four months. The U.S. State Department Human Rights Report on Korea estimates there are between 180-220 political prisoners in Korea. The KNCC estimates 280 such persons.

<sup>2/</sup> The incongruity between the stated objective of the government to effect national unity and the harsh methods adopted by it to achieve it have undoubtedly raised the suspicion of many Koreans and outsiders that the real motive of those in power is to remain there permanently.

It is the view of many Koreans and foreign observers that a military invasion from North Korea is now much less likely in the face of the detente between the U.S.A. and China, the increasing strength of the South Korean army, the presence of American troops there and the economic superiority of the South over the North.

As to the economic justification for repression, it cannot be denied that there has been a rapid expansion of the Korean economy in the last 17 years. Yet, it is impossible to say that this could not have been achieved under a more liberal political system and, in any event, we strongly believe that economic progress cannot justify the violation of laws promulgated by those who violate them or the arbitrary and often brutal manipulation of large numbers of Korean people.

Moreover, in our view, the strength of the economic argument is diminished by the fact that Korean workers, who have had to make considerable sacrifices and work under intolerable conditions<sup>1/</sup> in order to produce the economic

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<sup>1/</sup> Efforts on the part of workers to improve their working conditions through collective action have been met with firm resistance by the government, employers and the unions which are very much under government and employer influence. Despite the fact that Article 29 of the 1972 constitution guarantees workers the right to association, collective bargaining and collective action, it further provides that the rights to collective action of workers engaged in enterprises which have a serious impact on the national economy may be restricted or denied by law. In fact collective

(continued)



miracle, have not received an equitable share of the resulting increment in the national wealth. They have enjoyed only a small improvement in their standard of living relative to the overall increase in the wealth of the country.<sup>1/</sup> This improvement is now being whittled away by acute inflation.<sup>2/</sup>

Many observers believe that the real explanation for the Park government's repression lies in Park's desire to hold onto political power. The fact that he amended the constitution by extraordinary means in 1969 to allow himself

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(Footnote continued)

action is forbidden in foreign invested enterprises by a special law promulgated on January 1, 1970 and in all enterprises by another special law enacted during a state of national emergency on December 27, 1971 and still in effect. The effect of historical factors, restrictive labor laws -- including a provision allowing only one union in an enterprise -- and government interference in the interest of management -- often carried out by the police or KCIA -- has been to make it impossible for unions to effectively promote the interests of their members. In effect most unions are company unions.

<sup>1/</sup> The Blue collar Korean worker earned on average in 1978 US \$ 26 per 84 hour work week. (Korean Office of Labour Affairs and Labour Union Federation.) This amounts to approximately 1/10 of the salary of the American blue collar worker. Certain female textile workers are required to work up to 15 hours each day on US \$15 per week.

<sup>2/</sup> Prices generally rose 633% in 1978 over 1977 prices. According to the Korea Employers' Association, wage increases in 1978 averaged 19%.

to run for a third term in 1971 and amended it again in 1972, lengthening the presidential term to six years, establishing an indirect mode of election and removing the limit on the number of terms a president may serve lends considerable support to this view.

The final solution of 1972 to the perennial problem of extending his power had to be worked out in an extra-constitutional fashion partly because he did not control two-thirds of the National Assembly seats which was necessary for a constitutional revision under the pre-Yushin constitution.

#### B. CONSTITUTIONAL AND LEGAL FRAMEWORK

- The Yushin Constitution

The 1972 (Yushin) constitution, which was promulgated in a less than democratic manner<sup>1/</sup> vests in the presidency unlimited political power. The authority of the once prestigious National Assembly is considerably weakened.

The President is elected, without prior debate, by a body referred to as the National Conference for Unification which is directly under his control. He is elected for a six year period and there is no limitation imposed on the number of times he can be re-elected.

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<sup>1/</sup> It violated the procedure laid down in the 1962 Constitution for amending or repealing the latter and was drafted in great secrecy. It was impossible to obtain a copy before the national referendum which approved it and debate on it was totally forbidden.

Seventy-seven of the 231 members of the National Assembly are elected without debate by the National Conference on the recommendation of the President; in effect, they are appointed by the president. The remaining 154 seats are assigned to 77 two-seat constituencies -- a system which enables the runner-up candidate in any constituency to occupy a seat in the National Assembly. As there are only two major parties in South Korea, this system assures the government party electing a sizeable number of members to the National Assembly. Between the government party members elected and the 77 members appointed by the president,<sup>1/</sup> the government is virtually guaranteed control of the assembly.

These provisions have the effect of putting the almost impossible burden, considering the resources available to the government party, of winning 116 of the 154 elected seats in order to be able to pass legislation and all 154 of the elected seats in order to be able to amend the constitution, a procedure which requires a two-third vote of the assembly.<sup>2/</sup>

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<sup>1/</sup> Technically the appointed members are not members of the government party. They have a separate organization called the Yujonghoe (Yushin Political Fraternal Society, the praetorian guards of Yushin in the National Assembly).

<sup>2/</sup> In the most recent National Assembly elections in December 1978, the opposition party, the New Democratic Party, outpolled the President's party, the Democratic Republican Party by 1% and won 61 seats -- seven seats less than the Democratic Republicans.

The President can dissolve the National Assembly<sup>1/</sup> and would no doubt do so were he confronted with a hostile legislature.

The Cabinet, Prime Minister and all local government officials are appointed and removed by the President.

The Constitution guarantees the rights and freedoms of citizens but in most cases adds the proviso "except as provided by law."<sup>2/</sup> Moreover, under Article 53 which gives the President power to take emergency measures when the national security or public order "is seriously threatened or anticipated to be threatened," the President is specifically granted the power to "temporarily suspend the freedom and rights of the people as defined in the present Constitution. . . ." Such a Presidential decree is not subject to judicial review<sup>3/</sup> nor, indeed, the review of any other state power.

- Statutory Provisions and Presidential Decrees

The President has promulgated a number of Emergency measures under Article 53. Emergency Decree No. 9, promulgated in 1975 and still in effect, severely restricts the right of Koreans to participate in the political process. Essentially, it outlaws all forms of criticism of the constitution, members of the government, government departments and the Emergency

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<sup>1/</sup> Article 154 of the Constitution.

<sup>2/</sup> Articles 8-32 of the Constitution.

<sup>3/</sup> Article 53(4) of the Constitution.

Decree itself and prohibits political meetings and demonstrations. Persons who violate Emergency Decree No. 9 are subject to arrest, detention, search or seizure without warrant and are liable upon conviction to a period of imprisonment of not less than one year and a concurrent suspension of civil liberties for not more than ten years.<sup>1/</sup>

Article 104 of the Korean Criminal Code extends the effect of Decree No. 9 to Korean nationals living abroad.<sup>2/</sup>

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<sup>1/</sup> See Appendix for text of Emergency Decree.

<sup>2/</sup> Article 104 provides:

(1) Any Korean national, who endangers or is feared to endanger the security, interest and dignity of the Republic of Korea, in foreign country, by insulting or slandering the Republic of Korea or any State organ established under the Constitution, by distorting the fact about it or disseminating fictitious description of it or in any other way, shall be punished by a penal servitude or imprisonment without hard labor for not more than seven (7) years.

(2) Any Korean national who commits such acts as prescribed in the preceding paragraph by use of foreigners or foreign organizations shall be punished in the same way as in the preceding paragraph.

(3) In cases of the preceding two paragraphs, a suspension of civil rights for not more than ten (10) years may be sentenced concurrently.

A number of other laws have also had the effect of circumscribing participation in the political process:

1. The Anti-Communist Act of 1961 provides that persons who belong to, are affiliated with, praise or in any other way encourage or benefit a communist organization may be punished by imprisonment at hard labor for five to seven years.<sup>1/</sup>

2. The National Security Law, promulgated in 1960, casts a wider net on dissidents. Article 1 provides that "Any person who has organized an association or group ('anti-state organisation') for the purpose of assuming a title of the government or disturbing the state or supports such a group is liable to a term of imprisonment from 5 years to life." Second offenders are liable to the death penalty. As the phrase "disturbing the state" is not defined and a subjective intention on the part of the actor need not be proved, any type of political opposition to the government could be construed as violating the act.

Political suspects can be placed under administrative detention by virtue of the Social Security Law (1975). Political prisoners, who have been released on suspended sentences, persons who have had political charges brought against them which have been

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<sup>1/</sup> Articles 3, 4 and 5.

subsequently dropped, and "all those whose re-education is judged necessary" can be kept under administrative supervision, ordered to report regularly to a police station,<sup>1/</sup> or kept at a place of residence designated by the President or Minister of Justice<sup>2/</sup> or interned in a re-education center.<sup>3/</sup>

- Applications of the "Anti-Subversive" Enactments

The all encompassing nature of these enactments has enabled the authorities to suppress a wide variety of non-subversive activities.<sup>4/</sup>

Prosecutions under Decree No. 9<sup>5/</sup> and the anti-communist law have been brought against journalists who

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<sup>1/</sup> Article 4.

<sup>2/</sup> Article 5.

<sup>3/</sup> Article 6.

<sup>4/</sup> The student community has undoubtedly suffered the brunt of the "anti-dissident legislation." In 1978 alone, over 165 arrests were brought against students for demonstrating against the government.

<sup>5/</sup> The United States State Department estimates that between 600 and 700 persons have been charged with violating Emergency Decree No. 9. C.F. Report on Human Rights practices in countries receiving U.S. aid (February, 1979).

attempted to preserve their independence in the face of KCIA pressure to come under government control. Such use of these laws has had the effect of emasculating the local news media. A group of 135 former reporters of the Dong-A Daily News, who were dismissed in 1975 because of their efforts to achieve freedom of the press, partially tried to fill the gap by publishing a newsletter containing the important stories omitted by the intimidated regular press. Seven of them were arrested in October 1978 and sentenced to 2-1/2 years each for violation of Decree No. 9 on May 9, 1979. Three others, arrested in January, are still on trial at the time of this report. Among the offending news items they published was a report of the platform of the opposition New Democratic Party in the December 1978 National Assembly election which advocated the abolition of Decree No. 9.<sup>1/</sup>

The government has also acted to prevent accurate coverage of the news by the foreign press. Article 104 of the criminal code, cited above, has made it more difficult for foreign reporters to gather news. Furthermore the government has closed the offices of two Japanese newspapers

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<sup>1/</sup> Based on an interview with a former reporter who has himself served several years in prison for violation of Decree No. 9 and the Anti-Communist Law.

whose coverage it found offensive and denied visas to or expelled a number of foreign reporters who wrote critical pieces.<sup>1/</sup>

Prosecutions under the Anti-Communist Law were brought in May 1979 against six staff members and one affiliate of the Korean Christian Academy who had been detained since March. The seven have been working for a number of years to educate farmers, workers and women about their rights and how to improve their conditions.

The main charge against them is that they formed a "pro-communist group" which aimed at constructing a socialist state in Korea and that they circulated communist books<sup>2/</sup>

<sup>1/</sup> The two Japanese papers are the Mainichi Shinbun and the Yomiuri Shinbun. At the time of this report, Mr. Maeda Yasuhiro of the Mainichi and Mr. Bernard Wideman of the Far Eastern Economic Review have been expelled. Elizabeth Pond of the Christian Science Monitor and John Saar of the Washington Post are among those who have been denied visas.

<sup>2/</sup> The basis of the charges is that:

- 1) The defendant Chung Chang-Yal lent the book A Study of Modern Thought to Lee Oo-jae, and thus contributed to the "inculcation of the Communist spirit."
- 2) Mr. Chung made two copies of Marx' Theory of Economics and gave one to Lee Oo-jae, keeping the other.
- 3) Mr. Chung made copies of Korean Women's Rights, a book published in Seoul in 1948. This book had almost disappeared from South Korea, with only a few copies left in libraries. The right to read it, as with many other books censured by the government in recent years, was conditional upon receiving special permission from the authorities, because of its "socialist" contents.

among staff members of the Christian academy. It was stressed to us by a number of Koreans including the Korean National Council of Churches (KNCC), that the informal meetings of the Christian Academy defendants could not possibly be construed as constituting a communist organization. In an official statement on this affair, the KNCC expressed the view that:

"the informal meeting of the six staff members is not an illegal communist circle as reported by the authorities but rather it is a meeting for research activities to overcome communism in line with their duties and responsibility to carry out Intermediary Group Education for labourers, agricultural workers, and women. . . . Although the authorities say that this incident has no direct connection with the Korea Christian Academy, when we consider the development of the investigation, we cannot but have the impression that it has been carried out with the intention of seriously injuring the educational activities of Korea Christian Academy and of oppressing or diminishing the movements of labourers, women and agricultural workers.

"We believe that persons like the members of the staff of Korea Christian Academy should be allowed liberty to examine and evaluate materials and booklets about communism and especially, we believe that professors who are educating the workers who work for the rights of labourers, agricultural workers and women should be guaranteed maximum academic freedom. From this position we believe it is unjust to arrest the six members of the staff of Korea Christian Academy under the anti-communist law or to regard them as communists by the mere fact that they possessed books containing socialistic ideas or that they read them."

Those who have spoken out against the use of violence committed by the security police on persons charged under the Anti-Communist Act have themselves been faced with prosecution

under the act. The poet Kim Chi-Ha has spent the past five years in prison because he exposed to the Korean people the grossest forms of torture practiced by KCIA agents on persons convicted of forming a fictitious "People's Revolutionary Party" in the mid 1970's.<sup>1/</sup>

### C. EXTRA LEGAL METHODS OF REPRESSION

Despite the "all inclusive" nature of the anti-subversive legislation and the abusive manner in which it is being used, we were concerned to learn that numerous extra legal tactics are employed by the security police to silence government critics. Such methods include: house arrests of prominent Korean citizens, wire tappings, interceptions of mail and other forms of surveillance of their homes; the illegal arrest, detention and torture of detainees, and their ill treatment in prison.

#### -House Arrest and Surveillance

House arrest, in the manner in which it is currently being carried out by the KCIA, is illegal, yet it is being

<sup>1/</sup> Thus, it has been pointed out that:

"The Kim Chi-Ha case is a good example of how, under the Anti-Communist Law, criticism of violence is regarded as more subversive than advocacy of violence. Because so much of the regime's power rests upon the apparatus of violence -- the KCIA, the Army Counter-intelligence Command, the police and the Capital Guard Division, to criticize violence is to challenge the existence of the regime. Thus, as Kim Chi-Ha discovered, one can talk about torture only on pain of himself suffering further torture and punishment." Jerome Cohen, "The State of Human Rights in South Korea," a paper prepared for the Conference of Japanese and U.S. Parliamentarians on Korean Problems, Sept. 1977.

extensively used to restrict the movements of former political prisoners and others suspected of being critical of the government.

In March 1979, approximately 500 people, including leading politicians, ministers, professors, students and their families were prevented from leaving their homes. The object of the house arrest was to suppress political dissent during and immediately after the anniversary in March of the 1919 independence movement against the Japanese occupation. Many people were again placed under house arrest around April 19 to prevent them from taking part in celebrations of the anniversary of the April 19, 1960 Student Revolution which overthrew President Syngman Rhee. A number of persons were under almost continuous house arrest from March 1 until after April 19. Notable among these was Mr. Kim Dae-<sup>1/</sup>Jung.

Mr. Kim was forcibly prevented from leaving his residence for 41 days from March 1st to April 21st. In an

<sup>1/</sup> Mr. Kim almost defeated President Park in the 1971 Presidential elections. In 1973 Mr. Kim was kidnapped from a Tokyo hotel by the KCIA and was released in Seoul only after a number of foreign powers intervened on his behalf. After joining in on the 1976 March 1st declaration to restore democratic freedoms in Korea he was charged and convicted under Emergency Decree No. 9 and sentenced to eight years imprisonment and eight years suspension of civil rights. He was released late last year on a suspended sentence.

open official letter to Cardinal Kim Su-Kwan, head of the Seoul Diocese and other ministers, he describes his ordeal as follows:

"... since March 1, I have been forcibly placed under illegal house arrest. Between March 1 and today I have been under house arrest on 15 out of 26 days. Police authorities have failed to present legal grounds for this house arrest and have admitted that it is illegal, but have continued in the name of 'orders from above.' Although police at first asserted the legality of the house arrest, referring to Article 2, clause 1 of the regulations on probation of those under suspension of execution of sentences. However, this clause states that 'reports should be made immediately to the prosecutors if there is anything unusual about the person in question,' and does not give the police power to use force. I do not have to repeat the clear unlawfulness of the house arrest of my wife, or the prohibition of visits by other ordinary people. Actions by the police in connection with this house arrest have often been excessive. At times over one hundred agents and seven or eight vehicles, including buses, have been stationed outside my house, stopping people from passing by. Vehicles are always blocking the garage of my house. In a word, my house has now become like another prison, and under these circumstances I prefer to be imprisoned again. Peace in my family has been completely destroyed, and some family members suffer from mental and physical illnesses. Above all, I feel sorry for the people around my house. The police even prohibit my wife and I from ordinary religious activities, such as going to church on Sundays. My wife was also barred from attending the memorial service for our mother on the 24th.

After a brief respite in late April and May, Kim Dae-Jung was again placed under house arrest on May 29 because on May 28 he attended a party of New Democratic Party members where he spoke in favor of the election of Mr. Kim Young Sam

to the party chairmanship. Mr. Kim Young Sam won the post in large measure because of Kim Dae Jung's support, and the government retaliated by placing him under house arrest again. He remained confined during President Carter's visit to Korea to avoid any chance of their meeting.

Mr. Ku Cha Chun, Minister of Internal Affairs, stated:

"Kim Dae Jung differs from other people in that he has no right to vote, to be elected to a public office, nor does he have the right to be a member of a political party. . . . The government has been giving him friendly advice to devote himself to private life. I, as the official in charge of public security, say that it is extremely difficult to set him free [sic]. This man who cannot legally engage in political activities.<sup>1/</sup>

In addition, since his release from prison, Kim's home has been constantly under police surveillance and his telephone conversations have been tapped. He complained to us that surveillance stations have been set up around his home which contain telescopes, wireless apparatus, movie cameras and several cars manned by a large number of KCIA agents.

Mr. Kim is not alone in receiving such treatment. We heard similar accounts from several people who had recently

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<sup>1/</sup> In response to an apparent query -- since this sort of question is not reported -- by an opposition member, Dong A Ilbo, July 27, 1979, p. 3.

undergone the experience of house arrest. One said, "On the night of April 10, twelve riot policemen took rooms in a house adjacent to ours and had supplies of fuel and blankets hauled in. Twenty or thirty KCIA agents and patrol men crowded our neighborhood for the purpose of watching me, a solitary woman."

When we visited the home of former President Yun Posun on May 1, we saw more than 50 unidentified men in plainclothes loitering in the narrow residential alley leading to the house, carefully scrutinizing all who passed through Mr. Yun's gate.

At the time of President Carter's visit to Korea, 63 dissidents were reportedly placed under house arrest. (Washington Post, June 29, 1979, p. A25.) At the time of the writing of this report, Kim Dae-Jung and Hahn Sok Hun were under house arrest, a fact confirmed by the controlled Korean press as well as telephone contact with Mr. Kim.

#### D. THE JUDICIAL PROCESS

In political regimes where the opposition is systematically suppressed, the judicial process provides the only possible safeguard against the violations or abuse of laws by government officials.

It is natural, therefore, that those who abuse governmental power should want to manipulate the judicial system in order that such abuses are not exposed or checked.

Complete control, however, is not possible unless the guardians of the system, the judges and lawyers, are willing or forced to submit to government control themselves. It is evident that the abuse of power in Korea has corrupted the judicial process. This, in turn, has undermined the independence of the Korean judiciary and legal profession.

- Search, Arrest, Interrogation

3. Subsections 1 of Article 10 of the Constitution provides that:

"All citizens shall enjoy personal liberty. No person shall be arrested, detained, seized, searched, interrogated, punished, subjected to involuntary labor, or placed under probationary supervision except as provided by law."

A most depressing aspect of the lawless repression in South Korea concerns the many cases of ill treatment of dissidents at the hands of Security and prison personnel. Arbitrary and often brutal violations of the person in South Korea have occurred over a long period on such a large scale that official violence has become acceptable as an inevitable part of the legal and punitive process and those who practice it do so with impunity.<sup>1/</sup> We obtained considerable evidence indicating that arbitrary and often brutal treatment of political detainees continues unabated in South Korea.

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<sup>1/</sup> Article 125 of the Korean Constitution provides that officials who commit acts of violence or cruelty against a prisoner while in the performance of his duty shall be punished to a term of up to five years imprisonment.



Persons suspected of engaging in dissident activities are regularly searched and apprehended without a warrant<sup>1/</sup> by plainclothed KCIA officers, often in the early hours of the morning. Members of the arrested person's family are not informed of his or her detention until long after the arrest, often not until a month or more has elapsed.

The detainee is then taken to an interrogation center and subjected to a gruelling interrogation over a long period, without the presence of counsel. In some cases, it is several weeks before formal arrests and charges are made. The obligation to accompany the arresting KCIA officer to the interrogation center is well understood by dissidents. If they refuse, they are forcibly apprehended. It is during this period that physical abuse and torture are committed by KCIA agents on suspects.

The families of the arrested Korean Christian Academy staff members were not informed by the KCIA of their whereabouts until one month after their arrest. It was reported

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<sup>1/</sup> Subsections 3 of Article 10 of the Constitution provide that:

"(3) Warrant issued by a judge upon request of a prosecutor shall be presented in case of arrest, detention, search or seizure. However, in case a criminal is apprehended flagrante delicto, or in case [sic] where there is danger that a criminal may escape or destroy evidence, the investigating authorities may request an ex post facto warrant."

Despite this provision, arrests under Emergency Decree No. 9 can be carried out without warrants.

that three of the defendants, Mr. Lee Oo Jae, Mr. Chang Sang-Hwan and Mr. Chung Chang-Yul were tortured during their interrogations. Mr. Chung Chang-Yul reported to his lawyer that he was tortured by having his eyes taped shut and a gun held to his chest. A KCIA interrogator repeatedly simulated his execution by pulling the trigger of the gun and threatening him with "Do you want to die? We can kill all of your family . . . it will be a traffic accident."

Another defendant, Ms. Shin In-Ryung reported that she had been assaulted (slapped in the face on several occasions by the KCIA interrogators). She said she heard two other defendants, Mr. Lee Oo-Jae and Ms. Hah Myung-Sook crying out in adjacent rooms.

We interviewed the wife of a university professor who was arrested in March for allegedly engaging in espionage for North Korea.<sup>1/</sup> He had been under arrest for fifty days. During this time neither she nor his lawyer had been able to see him. She only learned of his arrest and the nature of

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<sup>1/</sup> In what is referred to as the "Korea University Labor Problems Research Institute Spy Case," university professors have been arrested. Those of their lawyers and families we spoke to were emphatic that the charges against them are completely unfounded.

the charge in the press, 30 days after his abduction. Plainclothed policemen came to their home afterward, without a search warrant, and removed 80 volumes of books.

The wife of another prisoner charged and convicted of being associated with the so-called "Peoples Revolutionary Party"<sup>1/</sup> described how her husband had been refused sleep, beaten, and given strong electric shocks with his wired hands wrapped in wet towels. Under intolerable pressure he signed a confession and when he withdrew the confession after recovering from the ordeal, he was placed in a wired chair and threatened with further electrical shock torture. Understandably, he capitulated. He is now in his sixth year of a 15-year sentence.

A former prisoner related to us how after being interrogated and tortured for 1-1/2 months, he finally signed a confession written by his interrogator, stating that he agreed with Mao. He repudiated the confession at trial to no avail.

Confessions extracted from prisoners in this manner are regularly admitted as evidence by Korean courts during the trials.

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<sup>1/</sup> It is widely accepted in Korea that the "Peoples Revolutionary Party" never existed. The name of this imaginary organization was fabricated by the KCIA.

#### - Treatment of Prisoners

Detainees awaiting trial and convicted political prisoners are discriminated against and maltreated by prison authorities. On April 19, 1979, students imprisoned at West Point Prison, who shouted slogans in support of the student revolution of April 19, 1960, were severely beaten by security guards. One student was confined to a room without light with his hands bound and forced to eat from a bowl on the floor like a dog. The parents of the students complained that their children were so badly injured that they could not walk to the visitors' room to see them and when their lawyers attempted to ascertain what had happened, they were threatened by the guards.<sup>1/</sup>

Prisoners' rights are violated in other respects. Thus, prisoners are often kept in solitary confinement over long periods<sup>2/</sup> and those who are not, complain that they are prevented from communicating with outsiders; visits from family are rare and brief, often restricted to five minutes instead of the 30 minutes required by law.

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<sup>1/</sup> We were pleased to learn subsequently that the Minister of Justice had assured human rights advocates that he intended to dismiss and discipline those responsible, including the Deputy Warden. It is hoped, however, that the Minister will see fit to bring charges against them under Section 125 of the Criminal Code.

<sup>2/</sup> The wife of one of the "Peoples Revolutionary Party" prisoners told us that her husband had been kept in solitary confinement for over two years.

We received detailed and disturbing statements from the wives of the "Peoples Revolutionary Party" prisoners, 15 of whom have been incarcerated for more than five years in sordid conditions. They are permitted thirty minutes exercise a day, forbidden to participate in any form of work in the prison and on the orders of the KCIA are completely isolated from ordinary prisoners because of their reluctance to sign statements confessing their crimes. They are kept in inadequately ventilated, 18 square foot cells. The cells and the prisoners' possessions (clothes, blankets, etc.) are permanently damp. They are kept on inadequate diets; some have complained of being served spoiled food. As a result, some prisoners are seriously ill, suffering from skin diseases and various internal ailments (kidney problems, vomiting, diarrhea and intestinal infections).

One former prisoner told us that while he was serving his sentence, he and other political prisoners were offered release if they would sign statements stating: "Hereafter I will actively participate in the Yushin system and support the constitution. In the future if the authorities again decide I am against the Constitution and current system I should be punished in any manner." He refused and served out his sentence. Others signed. Many of the government's demonstrations of benevolence in the last few years have been conditioned upon such promises by those prisoners who were released.

- Defense Rights

Article 10, Section 4 of the Constitution states:

"All persons who are arrested or detained shall have the right to prompt assistance [sic] of counsel. . . ."

Articles 34 and 35 of the Korean Code of Criminal Procedure respectively provide that:

"The defence counsel or a person who is to become a defence counsel may have an interview with the accused or suspect who is placed under physical restraint; deliver or receive any documents or any other things and cause the accused or suspect to consult a doctor . . . ."

"The defence counsel may inspect or copy documents or articles of evidence relating to the litigation pending in the courts . . . ."

The attorneys of political prisoners complain that they find it extremely difficult to prepare their clients' defense. Communications with their clients are monitored and kept brief and in some instances the lawyers have not been able to see them until shortly before the trial. The right to counsel guaranteed by the Constitution and Laws is not interpreted to mean that the accused has a right to consult his counsel before being interrogated, much less to have counsel present at interrogation. In political cases, the important part of the interrogation process goes on at the hands of the KCIA before the suspect is "arrested," a formal procedure. In the absence of an arrest, there is no forum in which to raise the question of the right to counsel or even in which to ascertain the whereabouts of the detainee. After the suspect has been "arrested," which occurs when he

is transferred from KCIA custody into the hands of the procuracy and police, counsel may interview him only when he is available, i.e., when he is not being questioned by the authorities, etc. Even this limited right is often denied by prison authorities who simply state that the prisoner is at the prosecutor's office when, in fact, he is in his cell.

During the March 1st trial in 1976, the defense lawyers alleged that the time given to interview their clients was totally inadequate. One of the attorneys for Kim Dae-Jung complained to the judge that he was only able to see him two months after Kim's arrest. He added that when he went to the prison, he was kept waiting for 1-1/2 hours before being told that he could not see Mr. Kim. He reapplied to see him on another occasion which was only granted after a further one hour wait. Mr. Kim stated he was not able to gain access to the court dossier, not even the March 1st Declaration which had formed the basis of the charge against him. In response to these complaints, the prosecution made the astonishing remark that:

"We cannot allow the defending lawyers to visit the prisoners very often because we have the example that one of Kim Dae-Jung's lawyers, who is present in this court, visited Kim Dae-Jung in prison; and just the next day the foreign newspapers reported what they talked about. The prison guard took notes of what they said and the exact contents of the notes were in the foreign newspapers. We are studying whether this violates the Emergency decree."

This situation does not seem to have improved despite the continuous protests of defense counsel. The lawyer defending one of the university professors charged with spying for North Korea told us that he has found it extremely difficult to see his client. The prison authorities have told him on two occasions when he has attempted to see his client that he was not available, despite the fact that the prisoner subsequently informed the lawyer that this had not been the case.

We were also informed that the prosecutor's office had forbidden some of the lawyers of the Christian Academy defendants to see them and other attorneys were not able to see their clients until one month after their arrest.

This is indeed to make a mockery of the requirement in Article 104 of the Korean constitution that "All persons who are arrested or detained shall have the right to prompt assistance of counsel . . . ." This can only lead to the conclusion that the authorities have little faith in their case against the prisoner.

It should also be noted that a procedure analogous to habeas corpus, which was provided by Article 10, Section 5 of the old constitution, was omitted from the Yushin constitution depriving counsel of any means of challenging the sufficiency of the case against his client before the trial.

- Trial Procedure

The manner in which political trials are conducted reinforces this conclusion.

Admission to some political trials has not been possible unless one had a ticket given only to members of the defendant's family, and to defense counsel, reporters and government officials. Indeed, the security arrangements were so tight during the March 1st Trial in 1976<sup>1/</sup> that the defendant Lee Wo Jung complained that it was difficult even for her to get into the court room.

Upon entering the court room, one must contend with a large number of police, KCIA agents and other government officials for the few available places. This does not instill confidence that the trials are being conducted in a fair and open manner.

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<sup>1/</sup> Mr. Yap Thiem Hien, a prominent Indonesian defense lawyer and Member of the ICJ who attended the March 1st Trial in 1976, describes his experience before entering the court room:

"It was necessary to have a pass to enter the court. That morning (Saturday, June 12) we were brought to the street where we had to wait at the corner with many other people, including plain-clothes police who were taking photos of us. This street led directly to the Seoul district court where the trial session was to be held, and it had been barricaded. It was necessary to take a circuitous route, and we had to pass several check points where it was necessary to show our passes. At the last check point, we had to also give our names, which we did, and all those carrying bags had to enter a sideroom where their bags were searched.

"In front of the courtroom were several policemen, and others lined the walls of the courtroom."

Foreign observers to political trials in Korea have noted a number of anomalies in trial procedure. Undoubtedly, the most glaring one concerns the right of the defendant to call witnesses. It has often been alleged, and it was reported to us on a number of occasions that the court regularly refuses to hear defense witnesses.

Other anomalies concern the availability of the court dossier during the trial and the availability of copies of transcripts of the proceedings.

The ICJ observer to the March 1st Trial, a United States attorney, Mr. Charles Prescott, pointed out in his report that "attorneys were able to obtain photocopies of the indictment, at their expense, one week before the trial. . . . [During the trial] the attorneys take turns taking complete transcripts of the trial in as much as the official transcript, which becomes available the fifth day after the day of the hearing, shows signs of not being accurate. . . . The Declaration for the Democratic Salvation of the Nation has not yet been produced in evidence by the prosecution which would logically be done at the outset of the trial, which underscores the political, rather than the criminal, nature of the trial."

There is a general consensus among the human rights attorneys that the courts and the prosecutors have received instructions from "above" concerning the outcome of the case and that sentences are determined in many cases before the

commencement of the trial. In support of this they point to the fact that there has not been one full acquittal in a political case since the Yushin Constitution came into effect in 1972. They also point to the fact that confessions made by prisoners under torture are regularly admitted as evidence by the courts, defense witnesses are prevented from giving evidence, the prosecutor will often not bother to adduce evidence relevant to the charge and the court will convict on grounds extraneous to the charge.<sup>1/</sup>

These lawyers felt concerned that the Korean judges were not able to perform their duties in an independent and impartial manner. They believed this was mainly as a result of the immense pressure placed on judges to decide cases in accordance with government policy. When Kim Dae-Jung was charged with violation of the Presidential Election Law, which had been abolished by the Yushin reform, the defense filed a motion for the removal of the judge, Pak Chung Sun, on the ground of prejudice. The motion was granted by a separate court presided over by Chief Judge Lee Kyong Sun. Lee was

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A case in point is that of the advocate Hahn Seung-Hun who was charged with aiding North Korea by publishing an article which advocated abolition of the death penalty. The indictment claimed he had written the article in praise of a condemned North Korean spy. As revealed in the judgment of the court, his conviction was based, however, upon his professing the abolition of the National Security and Anti-Communist Act. This he had not, in fact, done.

transferred to a provincial court while Judge Pak was awarded an untimely month-long foreign trip despite the overloaded docket.

The panel of judges that succeeded Pak's panel was composed of Chief Judge Hwang Pul Yon and two other judges. Judge Hwang found it unwarranted to proceed "with the defendant under detention," and thus Kim Dae-Jung was not detained.<sup>1/</sup> Subsequently all the three judges were transferred to provinces. By contrast, Chief Judge Yu Tae Hung, the head of Seoul Criminal District Court, who, incidentally, strongly defended judicial independence in 1971 and is known to have directly and indirectly interfered in the Kim Dae-Jung election law violation case, has enjoyed a meteoric rise: he was promoted to the head of the Seoul Court of Appeals, and one year later, to the supreme court. The case of Judge Lee Young Ku was also cited.

Judge Lee passed lenient sentences on students convicted of participating in anti-government demonstrations in 1976. He had also gained a reputation for following the letter of the law. Not long after this trial he was removed to a remote country district.

<sup>1/</sup>

Under Korean criminal procedure, a trial may be held "with the defendant under detention" or at liberty. This is a matter for judicial decision. The grounds for detention are narrow although persons are often detained despite the absence of such grounds, especially in political cases. The grounds for detention are:

1. When he has no fixed dwelling;
2. When there is reasonable ground -- enough to suspect he may destroy evidence; and
3. When he has fled or there is reasonable ground -- enough to suspect he may flee.

Another independent judge, Kwak Tong Hun, passed a light sentence on the Secretary-General of the K.N.C.C. who had been convicted of misappropriating funds. He was warned by the Chief Justice that he would be removed to the country if he persisted in taking a conscientious approach to these cases.

Judges have become, understandably, more reluctant to take charge of political cases than ever. Thus, in order to spread guilt more evenly throughout the bench, the judges of civil courts are now assigned political criminal cases.

Some judges have indicated their desire to resign or have, in fact, done so.

In at least one case the judge, perhaps unconsciously, indicated the rubber-stamp nature of his function by simply using the indictment statement as his judgment.

## II. HARASSMENT OF DEFENSE LAWYERS

The harassment of civil rights lawyers is a concomitant of political repression. Defense lawyers pose a threat to governments who repress political dissent because they are best able to expose the harsh excesses of such a regime. Indeed, in societies where dissent is completely crushed, the only opportunity afforded the dissident to defend his position is through his lawyer in the courtroom. It is in this sense that governments often assume that civil rights lawyers identify with the cause of those they are defending. This results in a situation in which lawyers refuse to take on politically sensitive cases and political prisoners find it increasingly difficult to obtain adequate legal counsel.

As already stated, the primary object of our mission to Korea was to investigate allegations that Korean lawyers who have engaged in civil rights work on a regular basis had, almost without exception, been subjected to various forms of harassment by the Korean authorities. In the course of our investigation, we were able to collect considerable and varied information from the defense lawyers themselves as well as from a variety of other reliable sources, which bears out these allegations.

#### A. GENERAL FINDINGS

We were informed by the President of the Korean Bar Association, Mr. Yang Joon Mo, that there are approximately 850 practicing lawyers in Korea and 600 of these practice in Seoul. We were not provided with figures of the number of lawyers engaged in criminal defense work, but there was general agreement among the considerable number of lawyers we spoke to that, at the present time, only 20 advocates are willing and able to defend political prisoners on a regular basis.<sup>1/</sup>

These lawyers are commonly known as "anti-system" dissident lawyers, a term which came into being in the wake of the escalation of repression and political trials after the imposition of Emergency Decree 1 in 1974.

A lawyer falls into this category if he defends any person who advocates, or takes part in, activities of organizations for the restoration of democracy, or the abolition of the Yushin political system, or the repealing of Emergency Decree No. 9, or release of political prisoners, or criticizes the current state of affairs.

Twelve of these lawyers are members of the Korean National Council of Churches Lawyers' Committee which

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<sup>1/</sup> The 20 lawyers who take on political cases do so upon the understanding that the legal fees will be small. In some cases, they take these cases gratis.

administers a legal aid service for political prisoners and assists them in engaging legal counsel. The head of this group, Mr. Park Se-Kyung, explained that attorneys outside the group of 20, including court appointed attorneys, have taken on politically sensitive briefs on the basis that the defendant will plead guilty. The lawyer then enters a simple plea in mitigation. An adequate legal defense is provided only by the KNCC lawyers and seven or eight others.<sup>1/</sup> It is our conclusion that many of these advocates have been persecuted as a result of their willingness to present an uncompromising defense in political cases. Some of them have been subjected to frequent detention for questioning, sometimes during their participation in political trials -- along with their clients who are urged by their KCIA interrogators to seek legal assistance elsewhere. These tactics are often effective and the attorney loses clients as a result. All of the civil rights attorneys we interviewed agreed that ordinary clients tended to avoid using their services for fear that the lawyers' participation in political cases would jeopardize their own non-political cases.

This avoidance of the "dissident" lawyers is most pronounced in cases where clients seek favorable treatment

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<sup>1/</sup> Mr. Park lamented that defendants who conducted an uncompromising defense by engaging KNCC lawyers, were more harshly treated than those who chose to plead guilty and offer no defense.



from an agency of the government. Even ordinary private businessmen or firms stay away from those lawyers, not to mention government agencies, local and municipal governments, public corporations, large (government) corporations, and any subcontractors of these corporations. Consequently, most lawyers who have been branded "dissident" are under extreme financial hardship in addition to political persecution. Others have been subjected to more severe persecution. The improper use of criminal penalties has been brought against lawyers under the Anti-Communist Law and Emergency Decrees No. 9 and No. 4.<sup>1/</sup>

Other cases provide examples of instances of pressure brought through the threat of criminal sanction or disciplinary action. The effect of these tactics has been to cause some lawyers concerned to desist further from taking on political cases.

#### B. CASES OF HARASSED LAWYERS

The following are our specific findings of cases concerning the harassment of nine civil rights attorneys which we presented to the Minister of Justice, the Honorable Kim Chi Yul, at the end of our investigations.

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<sup>1/</sup>Emergency Measure No. 4, which was repealed, has been superseded by EM-9.

#### - Cases of Lawyers Who Have Been Criminally Charged

##### 1. Mr. Hahn Seung-Hun

Mr. Hahn is well known as a prominent defense lawyer and outstanding writer and has also served as a member of the Korean Committee for Amnesty International. He has, in addition, participated in the work of the coalition for the restoration of democracy.

In 1975, Mr. Hahn defended Mr. Kim Dae Jung in connection with his alleged violations of the electoral laws. In the same year, he defended lawyer Lee Byong-Nin, whose case is discussed below, and the poet Kim Chi-Ha (who was arrested on charges of violating the Anti-Communist Law and Emergency Decree No. 9).

At the time he was defending Mr. Lee, he reported to the press that Mr. Lee had been asked by the KCIA to resign his position as President of the National Council for the Restoration of Democracy. He was immediately taken to KCIA headquarters, detained there for three days, and questioned about an essay he wrote entitled "A Funeral Address," in which he advocated the abolition of the death penalty. The essay had been written in 1972.

Three months later, soon after he agreed to defend Kim Chi-Ha, he was approached by officers of the KCIA who

asked him to withdraw from the case. He was reminded of his previous unhappy experience at KCIA headquarters. When he refused to do so, he was arrested the following day and charged with violating the Anti-Communist Law. Lawyers throughout the country protested his imprisonment and 125 Korean lawyers offered to assist in his defense.

He was tried before the Seoul Criminal District Court, convicted and sentenced to 1-1/2 year's imprisonment. Although the basis of the charge was that he had, through his writings, aided North Korea, the reason for his conviction as stated in court was that he had advocated the repeal of the Anti-Communist Law. This he had never done.

The court of appeal confirmed the sentence of the lower court, but suspended the sentence for three years, resulting in his release after nine months in jail. Mr. Hahn's appeal to the Supreme Court was also dismissed and he was automatically disbarred <sup>1/</sup> from practicing law for six years.

## 2. Kang Shin-Ok

In 1974, in reaction to massive student protests, the government promulgated Emergency Decree No. 4 which

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<sup>1/</sup> Pursuant to Article 5 of the Korean Lawyers Act, a lawyer who has been convicted and sentenced to a term of imprisonment is automatically disbarred. Lawyers who engage in other unprofessional conduct are liable to be disciplined by a Disciplinary Committee headed by the Vice-Minister of Justice. Its membership also includes two judges two lawyers and one other official from the Ministry of Justice.

provided inter alia for life imprisonment and the death penalty for those who engaged in a variety of anti-government activities. Mr. Kang defended a number of students charged under this decree, including the poet Kim Chi Ha in July 1974. In the course of his address to the court, he criticized the court for not allowing him to make a full defense, and alleged that his clients had been tortured. He further argued that the emergency regulations were undemocratic and in violation of the principle of free speech. <sup>1/</sup> For this he was immediately charged under Emergency Decrees Nos. 1 and 4 and with contempt of court.

He was given a sentence of 15 years' imprisonment and a consequent suspension of civil rights. The sentence was reduced to ten years' imprisonment and ten years' suspension of civil rights by an appeal court martial. Mr. Kang's appeal of this decision to the Supreme Court is still pending. He was freed <sup>2/</sup> pursuant to a presidential order freeing emergency measure violators just before a national referendum in 1975. He is permitted to continue his practice, but it is understood that the appeal will proceed if he defends any more political prisoners.

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<sup>1/</sup> A transcript of Mr. Kang's speech is at Appendix 1.

<sup>2/</sup> He was detained for nine months awaiting trial.

### 3. Ms. Lee Tai-Young

Ms. Lee is Korea's first woman advocate and a former judge and university professor. She pioneered legal aid in her country and has, for many years, directed a unique family legal aid center which she established almost single-handed. She has also been in the forefront of the human rights struggle in South Korea.

On March 1, 1976, at the conclusion of an ecumenical service in the Myong Dong cathedral in Seoul, a group of professors, church leaders and politicians read a Declaration of Democratic National Salvation demanding an end to political repression under the Park regime. Ms. Lee had been active in circulating the document and making arrangements.

This incident culminated in the conviction of 18 persons, including Ms. Lee, who received five years' imprisonment and a consecutive suspension of civil rights. The sentence was suspended because of her sex, and she was permitted to retain her post as director of the Legal Aid Centre. However, she is disbarred from practicing law for five years. We consider it alarming that a woman of Ms. Lee's stature should be treated in this manner. It is, indeed, ironical that the importance of her crusading legal aid work has been officially acknowledged.

### 4. Mr. Kim In Ki

Mr. Kim, a member of the National Assembly belonging to the major opposition group, the New Democratic Party, took principal responsibility for the defence of Mr. Kim Dae-Jung and others charged in the March First, or "Myong Dong case." It is not clear whether the authorities were upset principally because of these legal defence activities, but they soon brought a case against Mr. Kim on the grounds that his speeches to his home constituency were in violation of Emergency Decree No. 9, for which he was arrested, charged and forced to resign from his National Assembly seat. At present he is not under detention, but his trial is still in progress in the lower courts.

### 5. Mr. Lee Byong-Nin

Mr. Lee was one of the most well-known civil rights lawyers and activists. He was the chairman of the Korean Bar Association, Chairman of the Korean Committee for Amnesty International, and became a member of the Standing Committee of the Coalition for the Restoration of Democracy upon its formation in the winter of 1974.

Shortly thereafter, in early 1975, the government authorities fabricated a scandal in which they accused him on suspicion of adultery, detained him, and eventually brought charges. After two months' detention, the suspicion was dispelled, and he was released. But Mr. Lee's health had

so seriously deteriorated that he resigned his public positions and was forced to retire to seclusion in the countryside.

- Cases of Lawyers Who Have Been Threatened With Criminal Charges or Other Disciplinary Action

6. Mr. Im Kwang Kyu

Mr. Im defended students charged in the Democratic Youth and Student's League case in 1974, and has played a crucial role through his defence of Bishop Tchi Hak-Sun. The government sought disciplinary action against attorney Im on the grounds that he had assisted Bishop Tchi in preparing and transmitting abroad an English translation of his "Statement of Conscience" of August 1975, written in prison. Disciplinary action was taken without investigation, and seizing upon this as an opportunity, the government apparently was able to persuade Mr. Im to refrain from all human rights activities including the defence of political prisoners in return for being allowed to continue his practice.

7. Mr. Kim Kwang-Il

Mr. Kim was forced to give up his position as a judge in the Taegn District Court after having offended the government by acquitting students from Kyong-Buk University accused of having violated the Anti-Communist Law. Subsequently, he opened a law office in Pusan where he has engaged in the defense of political prisoners.

In December 1978, he was threatened with arrest on suspicion of violating the Lawyers Act which prohibits lawyers from receiving fees in advance from clients. The matter will not be taken any further, it is understood, so long as Mr. Kim discontinues his human rights practice.

- Cases of Lawyers Who Have Been Intimidated

8. Mr. Hong Sung Woo

Mr. Hong has been handling "political" cases since 1974. In January 1979, a number of Mr. Hong's non-political clients were questioned by the KCIA about their connections with him. Prosecutors impounded all of the records of the cases he had handled and investigated his transactions with his clients. When he inquired about these interrogations, he was told that one of his clients had laid a complaint against him, alleging he engaged in unprofessional conduct. It is not known whether the case has been dropped, but in any event, intimidation of his clients and those of other civil rights lawyers has forced many of them to seek legal advice elsewhere.

9. Mr. Pak Se Kyong

Mr. Pak is one of Korea's most eminent advocates. Between 1954 and 1960 he was a member of the South Korean National Assembly, and then went into private practice. From this time, he has defended many political prisoners including Kim Dae-Jung and the former Korean President, Yun Po-Sun.

Since 1969, he has headed the Korean National Council of Churches Lawyers' Committee which provides legal aid and legal council for political prisoners.

He has been subjected to considerable pressure as a result of his civil rights defense work. At the time he was defending a number of defendants involved in the 1976 March 1st demonstrations, he was detained by the KCIA for three days and questioned about a meeting that had taken place between him and a number of politicians, some of whom had been previously convicted for violating Emergency Decree No. 9. His family was not told of his detention and he was only released after his case received wide publicity in the international press.

#### C. THE POSITION OF THE GOVERNMENT

We presented our findings on the nine cases to the Korean Minister of Justice, Mr. Kim Chi Yul, during a two-hour meeting.

He replied that our information, that there were no more than 20 lawyers engaged in human rights cases, was incorrect. There were more than 30 attorneys who undertook these briefs. In the light of this, he could not agree with our assessment that the harassment of a small group of human rights lawyers was clearly discernible. Mr. Kim specifically referred to the cases of three of the four lawyers noted by

us who have been or are under threat of disbarment. He asserted that Mr. Han Seung-Hun had uttered seditious statements concerning the trial of persons charged with espionage; and Mr. Kim In Ki had been involved in a tax fraud. The third lawyer, Ms. Lee Tai Young, had been convicted of violating Emergency Decree No. 9 and was disbarred as a consequence. He insinuated that he could understand the misunderstanding that had arisen in the United States and elsewhere over Ms. Lee's conviction and disbarment because of the international recognition and praise she had received for her pioneering legal aid work in Korea.

He did not specifically refute our findings concerning the fourth disbarment case (Mr. Kang Shin Ok) or, indeed the five other attorneys who, according to our information, had been harassed in various other ways. He did make the general comment that Korean attorneys were free to carry on their professional activities and assured us that during his tenure as Minister of Justice, the rights of Korean advocates would be fully respected.

The Minister was also willing to provide us with court documents and other material in support of his assertion concerning the cases of Ms. Lee and Messrs. Kim and Han. We were subsequently informed by officials at the Ministry of Justice that this was not possible although we were permitted to peruse briefly a large assortment of documents in the

Korean language. As we skimmed through the stack of documents, checking the names and charges, the official in charge said repeatedly "It's just as we've said. As you can see, they have simply violated the law and been punished."

It was explained to us that because of the highly sensitive nature of the cases, the Ministry would be accused of violating the human rights of the lawyers involved by the Bar and the press. The officials claimed to have already heard rumblings of discontent among the profession. This was a regrettable and unsatisfactory position to take. It impeded our efforts to assess the merits of the government's position with respect to the nine attorneys and cast doubt on those merits.<sup>1/</sup>

In light of this and the considerable evidence to the contrary, we find it difficult to accept the government position. The punishments and harassment meted out to these lawyers were unjust and, contrary to Mr. Kim's assertion, do, indeed, indicate an established pattern of harassment of human rights advocates by government officials.

#### D. THE POSITION OF THE KOREAN BAR ASSOCIATION

The stance taken by the Korean Bar Association to the plight of its beleaguered colleagues and the violation of

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<sup>1/</sup> The Ministry of Justice did provide us with a list of persons disbarred or under threat of disbarment since 1970. It is notable that two of the ten lawyers who have been disbarred and all four of the lawyers against whom some disciplinary action has been initiated, but not yet completed, are civil rights lawyers.

human rights generally in South Korea has been disappointing. Apart from a few courageous advocates, the organized Bar has been slow to protest the violation of laws and the abuse of power by government officials and the security police. This has resulted in a lowering of its prestige and effectiveness as a buffer against the excesses of government officials and has wrought dissatisfaction within its own ranks.

Indeed, in 1975, the negative response of the then President of the Bar Association, Mr. Kwak Myong Duk,<sup>1/</sup> to a resolution of the Bar Association calling for the restoration of democratic freedoms in South Korea, and his reluctance to protest the imprisonment of the defence lawyer, Han Seung-Hun, led to his forced resignation. Although the Bar, for a short period after this incident, was able to assert itself on behalf of persecuted colleagues (e.g., 125 lawyers volunteered to assist in Mr. Hun's defence), more recently the Bar has reverted to a position of tolerance vis-a-vis the harassment of civil rights attorneys.

The incumbent President of the Bar Association, Mr. Yang Jun Mo, kindly consented to discuss the position

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<sup>1/</sup> It had been rumored at the time that he condoned KCIA interference in an executive committee meeting of the Bar Association called to consider the resolution. Several members were prevented by the police from attending this meeting.

of his association on the matter of the disciplined defense lawyers. He was emphatic that lawyers should exercise their practice freely, but considered that the punishments of these lawyers was justified, adding that Emergency Decree No. 9, under which some of the lawyers had been convicted, was unavoidable.

We consider this position to be untenable. In each of the cases concerning convictions under Emergency Decree No. 9, or the Anti-Communist Act, the lawyers concerned were engaged in a professional activity which they were duty bound to perform.

It is well recognized among lawyers that an indispensable aspect of the maintenance of the rule of law is the availability of lawyers to defend the civil, personal and public rights of all individuals. It is also a primary duty of lawyers to promote economic and social justice, and to be prepared to act resolutely and courageously, particularly where persons concerned are associated with unpopular causes or minority views.

Indeed, these obligations are lucidly set out in the canons of the lawyers ethics promulgated by the Korean Bar Association:

Article 1 stipulates that: "A lawyer shall endeavor to protect human rights and to realize justice."

The preamble to the Canons elaborates on this:

"The mission of a lawyer is to protect basic human rights and to realise social justice. To achieve such a noble mission, the lawyers, bearing it in mind as their first principle to contribute to the public welfare, should, on the one hand, safeguard the independence of the judiciary and expedite rightful operation of judicial procedures, by endeavoring to conduct a ceaseless study of the law and to pursue just execution thereof, and by sincerely and properly executing their duties; on the other hand, lawyers should be courageous in leading public opinion toward social progress and in developing, with the people, a democratic political system under which freedom and order are guaranteed, by being strongly united with pride and dignity. It is thus keenly required that they have very high ethical standards since lawyers should endeavour to improve themselves and build a foundation as a paragon of the people by cultivating the spirit of mutual cooperation and solidarity."

The handful of Korean lawyers who have managed to continue to defend political dissidents obviously and strongly subscribe to these obligations; however, they sometimes wonder whether they are not simply legitimating an unjust legal process by their participation in these political trials. Their doubts arise from the fact that their efforts come to nothing. Not only are their clients never acquitted, but there is no reason to believe that their participation brings shorter sentences for their clients. It has become the norm for courts to usually give half the sentence the prosecution demands. In turn, the prosecutor simply demands a term of imprisonment twice as long as what he thinks appropriate. This puts the conscientious attorney in a dilemma.

On the other hand, one convicted political offender

pointed out that the participation of lawyers raises the morale of the defendants, even if they do not get them acquitted or get the sentences reduced.<sup>1/</sup> The participation of lawyers is especially important in cases of those accused of violation of the Anti-Communist and National Security Laws. In a society as strongly anti-communist as Korea, no one can afford to be labeled a communist, and so one must think twice about associating with anyone formally accused of being communist. Furthermore, the government's opponents are anti-communist themselves and do not want to ally themselves with those who may be communist. At trial, defense counsel, even if they lose the case, do their clients a great service by demonstrating the falsity of the charge of communism. This not only dispells all doubt from the minds of the dissident community, but also gives its members factual arguments with which to defend themselves against charges of fellow traveling.

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<sup>1/</sup> Political suspects usually undergo weeks of interrogation, and often torture, during which time they have no contact with anyone but their captors. Their lawyers are generally the first non-hostile contacts they have.

### PART III. CONCLUSIONS AND RECOMMENDATIONS

1. At the end of our mission to Korea, we reached the conclusion that both legal and extra-legal means are being employed by government officials to curtail drastically participation of non-governmental persons in the political process, and that political repression has not lessened as the military and economic climate in South Korea has improved, but rather has intensified. In the past six months, leading Korean citizens have been illegally kept under house arrest, detained and in some cases, tortured, and prisoners have been maltreated. The need to further industrialization, and to maintain a strong front against communist subversion, can never legitimize flagrant violations of the person -- such as torture.

2. The emasculation of the judicial system and the legal profession must be seen as a concomitant of such repression. We collected considerable evidence to suggest that the independence of the judiciary has been seriously undermined and, as such, is not capable of giving prisoners charged with political offences a fair trial.

It is widely accepted in legal, political and journalistic circles that no defendant in a political trial has been acquitted of all counts since Yushin of October 1972.



Asked whether this was the case, a high official of the Ministry of Justice denied it, but could cite no specific example. Indeed, the constitution itself has transformed the judicial function in political trials into something analogous to a "sentencing machine." The presidential emergency decrees with which the political, economic and cultural life of the nation are governed are "not subject to judicial review."<sup>1/</sup> Still this and other constitutional and legal restraints alone cannot account for the lamentable subservience of the courts in Korea. As pointed out earlier, individual judges are forced to make calculations about their careers, and even their own security, when they handle political cases. For example, there has apparently developed a code of communication between the political police and "public security" prosecutors on the one hand, and judges on the other, in which their attitude is conveyed by the thickness of the dossier on the defendant.

Since Emergency Decree No. 9 bans "fabricating, disseminating falsehood or making false presentation of fact" (Article I), the obvious, and probably the only, defense against such accusations is to demonstrate that the words prosecuted as false are true. The courts routinely deny defense motions for this purpose, for example, the calling

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<sup>1/</sup> Const. § 4, Art. 13.

of expert witnesses. Or, if such a motion is granted, the prospective witnesses are often subjected to pressures from the political police. There have been instances in which expert witnesses so pressured have given testimony quite at odds with their previously stated, public positions.

3. A small body of courageous civil rights attorneys have attempted to carry out their obligation to be vigilant in the protection of human rights. Most, if not all, these attorneys have been harassed as a consequence, contrary to the averments of the Minister of Justice and the President of the Bar Association.

4. The organized Bar in South Korea has done nothing to reassert its independence or support the few lawyers who have come under attack for so doing.

5. The Minister of Justice did assure us that the independence of the legal profession would be honored during his incumbency. However, we urge that the Minister act on this assurance by reinstating the lawyers Ms. Lee Tai-Young and Mr. Hah Seung-Hun to the Bar. We further urge the Minister to withdraw criminal proceedings against the lawyers Kang Shin-Ok and Kim In Ghee.

6. We exhort the members of the Bar Association to uphold the professional standards promulgated by it. The rights of attorneys and their clients and people in general

shall only be upheld where there is a free and vigorous Bar, ready to speak out against the violation of such rights.

ADRIAN W. DEWIND\*

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EXTRACT FROM THE DEFENCE SPEECH BY THE LAWYER KANG SHIN-OK

(July 1974)

1. The claim by the Public Prosecutor, made under para. 1.2 of the State Security Law and the criminal law para. 87, that the defendants were guilty of having "founded an organisation designed to stage a coup" and of "planning a rebellion leading to an uprising" is contrary to common sense if one looks at the legal position.

Demands for changes in the law or demonstrations aiming at persuading a ruler to resign cannot be regarded as upsetting the state system or as "rebellion". One can only speak of a "rebellion" or "upsetting the state system" when an attempt is made to carry out a coup by means of violence or the threat of violence; in more concrete terms, only when an attempt is made to change the political system by using military or other violent means; for instance, if the police safeguarding the peace in Seoul or the military employed in restoring the peace in Seoul are being overpowered.

Generally speaking, even student demonstrations accompanied by the throwing of Molotov-cocktails, can at most be described as a contravention of the "Law concerning public meetings and demonstrations" or as "causing a disturbance of the peace", even under the strictest interpretation of the law. Even a general strike, which is something much more serious than a demonstration, is not ever being described as a rebellion. The "1st March Independence Movement" of 1919 under foreign (i.e. Japanese) rule was not being published as a "rebellion" but only as "causing disturbances", because the movement, and the "Mansei Movement", etc. cannot be regarded as violent rebellions.

Let us be frank!

Evidently, the Government was not afraid of this student demonstration because it expected violence by the students, or possible forcible occupation of public buildings, but because the Government believed that the people would be in sympathy with the joint demonstration of intellectuals [sic]. Is this not true?

It is, therefore, very difficult to understand why expressions like "overthrow", "secret orders", "enlisting",

"training", "force", etc. which have never been used by either the defendants or the witnesses have been incorporated in the records of the court hearings and why the defendants are charged with offences against the State Security Law and rebellion.

The public prosecutor, when questioning the defendants during the trial, never once used such words as "enlisting", "training", "force", etc. This "gives a clear insight into the public prosecutor's own attitude. And all the defendants, without exception, have declared that they had never used such expressions as "overthrow", "violent revolution", etc., but that they were compelled by force to put their stamp-dyed thumbs to the record of the questioning during which these expressions were never uttered.

You have already heard evidence contradicting the accusations. The "declaration for the protection of freedom and the salvation of the nation" issued by the defendants contains the sentence: "From beginning to end, we are demonstrating peacefully". Is that how violent revolutions are made?

.....

The accusation against the defendants that they are guilty of offences against the State Security Law and of planning a rebellion once again confirms the exaggerated use of the State Security Law and the "Regulations against rebellions". Here, I would like to remind you of the fable about the boy who cried "wolf" so often that nobody came to his aid when the wolf really attacked him.

2. The first time the defendants heard of the name "National General Union of Democratic Students" was through the declaration brought from Pusan by Mr. Kim Sang-Yun on 29th March 1974. And the defendant Yun Han-Bong received the declaration from Mr. Kim Sang-Yun on the campus of the literature and science faculty of Chonnam State University at 1 p.m. on 4th April 1974; only then did he hear about the reasons for the founding of the National General Union of Democratic Students.

The defendant [sic] have used the name "General Union of Students in Kwangju for the Protection of Freedom and Salvation of the Nation" in their "Declaration for the Protection of Freedom and the Salvation of the Nation". If the term "Nation General Union of Democratic Students" [sic] is regarded under the criminal law, as a continuing and unified organisation, the above-mentioned organisation in the provincial town of Kwangju should be name [sic] "Section Kwangju, National General Union of Democratic Students" and not "General Union of Students in Kwangju for the Protection of Freedom and the Salvation of the Nation". So there is an obvious contradiction in the public prosecutor's claim. It also proves that these names were only meant for one or two particular demonstrations.

3. The public prosecutor maintains that the activities of the defendants aided the Communist (i.e. North Korean) regime or, at least, unintentionally helped the enemy. This is pure irony: the defendants Rah Byong-Shik and Hwang In-Song are Christians and their anti-communist attitude is proved by their use of the expression "gunrodsha" (workers) instead of "rodongsha" (working class -- a communist term).

Let me give a brief word-picture of defendant Yun Han-Bong: his father, Yun Ok-Hyon, was a section leader in the "Republican Korean Youth in Chilryang, Kangjin" at the crime of the Korean war, and at the same time, chairman of the Kangjin section of the Committee for the Salvation of the Nation"; and his participation in the fight against the Communist partisans proved that he was an active anti-communist fighter.

Let us look at the students' declaration in order to ascertain whether the defendants are really Communist. This declaration contains the following sentences: "Blood-filled eyes are looking at us from north of the battle-line". "The strengthening [sic] of the national potential through [sic] social integration and national unity is now more urgent and essential than ever". The sentences show their vigilance concerning the North Korean threat.

Further sentences from the declaration: "The patriotic voice calling for the salvation of the fatherland can only be raised if we reject the anti-national invasion tendencies of the red hordes and if we maintain vigilance to prevent the inhuman interference by the foreign power (i.e. Japan). This must be done in a spirit of rejecting injustices, valuing moral deficiencies, of being responsible and in fighting corruption, firmly convinced of the superiority of the free, democratic system and fully resolved to overcome the economic crisis and to create economic independence".

"We regard the Presidential Emergency Decree No. 4, according to which our clean and just demonstration has been inspired by the Communists, as a final attempt to prolong the corrupt dictatorship regime, and we totally rejected it".

"We are students whose blood is pure and hot. Our whole existence is based on the just way. Long live the Republic of Korea".

"We are using peaceful methods from beginning to end. If we should be opposed by force, the entire responsibility for the possible resulting difficulties will rest squarely on the present regime".

"We are trying to find the best way to stabilise the political situation and to restore public order and peace".

"We condemn Kim Il-Seng (? should it be Sung?) and his gang who exploit our demonstration". "We are risking our lives to fight to the end against this inhuman, violent challenge".

"We shall return to college as soon as possible so as to pursue our real work, and we are doing our best to prevent a recurrence of the present situation".

These sentences show very clearly what the defendants' ideology is. Are the defendants still to be regarded as Communists or their sympathisers? It is not even possible to find subconscious communist sympathies.

The public prosecutor has repeatedly tried to prove that the student demonstrators' statements closely resemble the terminology employed by the North Korean radio, and from this he concludes that the defendants are Communists or Communist sympathisers. But in actual fact, the words they use are quite different from those employed by the North Koreans and what is one to do if the North Koreans misuse the students' expressions? The fact that the North Korean regime warns its subjects against using words like "freedom", "demonstration", "trade union", etc. has been confirmed by North Korean spies who have given themselves up voluntarily. At the same time, the superiority of our system is much more likely to be demonstrated if we are magnanimous enough to tolerate demonstrations.

Let us now hear the views on state security of the defendant Yun Han-Bong. In his opinion, a one-man dictatorship weakens the freely developing anti-communist attitude of the people, and its existence hampers their affection; as a result, the end of dictatorial rule and the ensuing vacuum will only cause confusion and a retrogressive attitude. This, he thinks, makes the security of our country -- from a historical point of view -- very insecure indeed.

The defendant Kim Jong-Kil has given a warning that the country's present insecurity is much more threatened by the people's dissatisfaction resulting from the psychological "invasion" by North Korea than by an external physical invasion.

4. Let us look at the defendants' motives for rejecting the "Revitalisation Constitution" and for their criticisms of the emergency decrees prohibiting any criticism of

the "Revitalisation Constitution" on the following arguments: firstly, that it contains intolerable limitations and contraventions of basic human rights; secondly, that it eliminates the democratic system; and thirdly, that it thereby weakens the security of the state.

We should remember the historical fact from the time of the Yi-dynasty with its absolute rule, when our ancestors created institutions critical of the King.

5. The defendants are free democrats, and they are loyal to the "free democratic basic law" which is explicitly incorporated in the constitution's preamble.

History offers many example [sic] of protesters against their rulers having been condemned; but history has, in turn, condemned those rulers.

Before God and history, the defence lawyer today asks the judge for a just and conscientious verdict.

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*Published by the International Commission of Jurists and the Swiss Committee  
Against Torture, Geneva, 1979, 44 pp.  
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This pamphlet argues the case for an Optional Protocol to the proposed Convention against Torture now under consideration by the UN Commission on Human Rights. It contains in full the text of the Draft Optional Protocol and the original text of the Swedish Draft Convention. The Draft Optional Protocol proposes a regular system of visits by delegates of an international committee to any place of interrogation, detention or imprisonment in a member state. The advantages of this procedure over other means of implementation are explained.

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### **Le Développement et les Droits de l'Homme**

*Edited by the International Commission of Jurists and published as a special issue of the  
"Revue Sénégalaise de Droit", 255 pp.  
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A report of an international seminar convened by the International Commission of Jurists and the Association Sénégalaise d'Etudes et de Recherches Juridiques and held in Dakar in September 1978. The 48 participants included senior government officials, judges, lawyers, sociologists, economists, trade unionists and churchmen from 12 francophone African countries. The report includes the keynote address by the President of the ICJ, Mr Kéba Mbaye, the working papers, a summary of the discussions, and the forceful conclusions and recommendations. Appendices contain the text of the International Bill of Human Rights. The working papers and discussions deal with the relationship between civil and political rights and economic, social and cultural rights, possible regional human rights organisations for Africa, the new international economic order, the participation of the people in development, the rights of minorities, of women and of the child, ombudsman institutions, and the independence of the judiciary.

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### **Bulletin No. 3 of the Centre for the Independence of Judges and Lawyers**

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The third Bulletin of the CIJL was published in March 1979 in English. It describes the weakening of the judiciary in Chile, El Salvador and South Africa, and cases of persecution of defence lawyers in Argentina, Czechoslovakia, Paraguay, Swaziland, Tunisia and Yugoslavia. Other articles and notes concern the UN Seminar on the role of national institutions in the protection of human rights, the question of immunity in respect of judicial acts, and the erosion of the independence of judges in Sri Lanka.

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