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CENTRE FOR THE INDEPENDENCE OF JUDGES AND LAWYERS (CIJL)

In an increasing number of countries, and on an increasing scale, serious inroads have been made into the independence of the judiciary and practising advocates, particularly those who have been engaged in the defence of persons accused of political offences who have been harassed, victimised, arrested, imprisoned, exiled and even assassinated by reason of carrying out their profession with the courage and independence that the profession expects. In some countries this has resulted in a situation where it is virtually impossible for political prisoners to secure the services of an experienced defence lawyer.

In response to the increasing gravity of this situation the International Commission of Jurists established, in January 1978 at its headquarters in Geneva, a Centre for the Independence of Judges and Lawyers, following the decision on this subject taken at the twenty-fifth anniversary Commission Meeting in Vienna in April 1977.

The objects of the Centre are:-

- (1) to collect reliable information from as many countries as possible about
 - (a) the legal guarantees for the independence of the legal profession and the judiciary;
 - (b) any inroads which have been made into their independence;
 - (c) particulars of cases of harassment, repression or victimisation of individual judges and lawyers;
- (2) to distribute this information to judges and lawyers and organisations of judges and lawyers throughout the world;
- (3) to invite these organisations to cooperate in this project either by supplying information about erosions of the independence of lawyers and judges in their own or in

other countries, or by taking action in appropriate cases brought to their attention.

If you or your organisation are willing in principle to participate, could you please write and state the name and address of the person to whom communications upon this subject should be addressed. A favourable reply does not, of course, commit an organisation to take action in any particular case. That will have to be considered at the appropriate time on a case by case basis. Replies should be addressed to

Secretary, CIJL
International Commission of Jurists
BP 120
1224 Chêne-Bougeries/Geneva
Switzerland

Individuals and organisations wishing to support the work of the Centre are invited to make a financial contribution. An appropriate form will be found on the last page.

CASE REPORTS

This section comprises a selection of cases concerning the independence of jurists in various countries which have been brought to the attention of the Centre in the last six months.

ARGENTINA

Reference should be made to a comprehensive report on the persecution of jurists in Argentina published in CIJL Bulletin No. 1 of February 1978. Other cases of persecuted Argentinian lawyers are noted in the second and third issues of the Bulletin.

Hockman, Seman, Falcone

The cases of defence lawyers, Abraham Hockman and Elias Seman were reported in the third issue of the Bulletin in February 1979. They were both arrested on 17 August 1978. Neither of them has been charged with an offence. Norma Raquel Falcone, also a defence lawyer, was arrested by persons dressed in police uniforms on 20 August 1978 at her home in Buenos Aires. The families of the three lawyers have attempted to establish their whereabouts, but the authorities have repeatedly denied that they have been detained by government agents. However, two former Argentinian detainees, Estrella Iglesias and Cecilia Vásquez, have testified, in separate sworn statements, that they and 20 other detainees, including the three lawyers, were held at a detention centre in the military camp of La Tablada, Buenos Aires in August 1978. Both women were arrested by the police in August 1978, taken to the military camp, interrogated and tortured. Ms Iglesias, a Spanish citizen alleged that "the torture consisted of applications of electric current to the genitals, breasts, toenails, mouth and gums; putting rats on my face and between my legs". She mentioned that other detainees had been tortured and it is more than likely that the three lawyers have been subjected to similar

treatment.

The CIJL has written to the Argentinian authorities urging that their present place of detention be officially disclosed.

Alfredo Edwardo Catala

Mr Catala is a 26 year old defence lawyer who was arrested by the Argentinian security police on 15 May 1977 in Avellaneda, Province of Buenos Aires. He has not been charged and his present whereabouts is not known. Mr Catala, who worked in the prosecutor's office in Buenos Aires as a student, defended political prisoners at the time of his arrest. He was at one time a legal advisor in the municipality of San Vincenta in Buenos Aires.

In June 1977 his parents unsuccessfully lodged a habeas corpus application with the federal court in La Plata, and in October 1977 commenced proceedings with the Ministry of the Interior to locate him in accordance with a procedure established by the government for the purpose of dealing with the thousands of complaints of disappeared persons. Although the parents were subsequently notified that an investigation was in progress, nothing has come of it.

The CIJL has appealed to the Argentinian Government on behalf of Mr Catala to reveal his place of detention and to release him or bring him to trial without delay.

CZECHOSLOVAKIA

Dr Joseph Danisz

The case of Dr Danisz was noted in the third issue of this Bulletin. At the time, Dr Danisz was under threat of disbarment for political reasons. Dr Danisz, who has for some time been actively engaged in the defence of political dissidents

in Czechoslovakia, was accused, inter alia, of misconduct during the trials of two prominent dissidents, namely Jiri Chmel and Dr Jaroslav Sabata. The CIJL considered these accusations to be ill-founded and in any event insufficient to justify disbarment.

The CIJL subsequently learnt that the Committee of the City Association of Lawyers of Prague decided on March 12, 1979 to discontinue Dr Danisz' membership in the Association. This decision has the effect of disbarment. The Committee found that Dr Danisz "had acted in a manner which conflicts with the rights and duties of a lawyer as laid down by the legal code."

During the hearing preceding disbarment, the Committee gave the following reasons for their decision:

1. That in his concluding address at the trial of Jiri Chmel before the district court in Most, he mentioned the trials of the 1950's.
2. That in dealing with the results of the investigations in the case of Dr Jaroslav Sabata, he mentioned the case of a signatory of Charter 77 who had been brutally attacked by security officers.

Dr Danisz was also asked during the inquiry whether he identified with his client's political views (members of the Charter 77 Human Rights Movement). He replied that insofar as he defended many political dissidents, he did so because other attorneys were unwilling or unable to defend them and often referred them to him.

The question concerning his political attitude to these cases was difficult to answer, but he considered that he defended them as he would any other case. In any event, they were not always overtly political.

The political character of the case against Dr Danisz appeared more evidently from the fact that the public was excluded from the court room, which was usually filled with uniformed police.

He continued that if he had allowed himself to be swayed by the political views of his clients, he would have undoubtedly turned the court proceedings into a political platform which he had not done. His political position was evident from the fact that he had simply fulfilled his duty consistently in accordance with the code governing the conduct of the legal profession and has used all legal means to defend his clients.

He believed that socialism was inseparably linked to the maintenance of socialist legality and that insofar as some of his clients had been treated like second-class citizens, he has voiced his objection because such practices had nothing in common with socialism.

In the view of the CIJL, the disbarment of Dr Danisz is unjust and is bound to affect adversely the independence of the legal profession and the right, and indeed duty, of an advocate to present all proper arguments in support of his client's case without fear of victimisation.

The CIJL has written to the Czech authorities urging that Dr Danisz' licence to practice law be restored to him and has invited legal organisations throughout the world to make similar interventions. Many have done so. In particular, the CIJL welcomes the decision of the Netherlands Bar Association and the Netherlands section of the International Commission of Jurists to send Dr Gielen to Prague to make representations to the Czech government on behalf of Dr Danisz.

IRAN

Mr Matine-Daftary

It is of great concern to those who deplored the violations of human rights in pre-revolutionary Iran that the present regime has repeatedly demonstrated its lack of respect for human rights. The setting up of Islamic tribunals which have summarily tried and condemned to death members of the Shah's regime in accordance, not with existing legal provisions, but with general principles of Islamic justice derived from the Koran, conflict with basic principles of the Rule of Law, and with the International Covenant on Civil and Political Rights, to which Iran is a Party. As the ICJ commented in a statement to the press:

"In violation of Article 11 of the Universal Declaration of Human Rights⁷ the defendant is denied "the guarantees necessary for his defence". There is no formal charge or indictment, no time is allowed for the preparation of the defence, and the defendant is not entitled to the services or even the advice of a lawyer.

There is no form of appeal from the decision of the tribunal, and a sentence of death is carried out within an hour or so without any opportunity for an appeal for clemency to be made or considered.

It is deplorable that those who have overthrown a regime which they rightly criticised, as did the International Commission of Jurists, for denying a fair trial to their prisoners, should now try their suspects under such wholly arbitrary procedures."

More recently groups and individuals who have criticised or resisted the repressive tactics of the new regime have themselves become the target of repression.

Of particular concern to the CIJL has been the persecution of Mr Matine-Daftary a prominent Iranian defence lawyer and leading member of the Association of Iranian Jurists, a human rights organisation, and of the National Democratic Front, a political movement. Both were established to fight for the restoration of democratic rule under the Shah. A warrant has been issued for the arrest of Mr Matine-Daftary whose house has been ransacked and sealed off. Together with other leading members of the Front, he has gone into hiding.

Mr Matine-Daftary's plight can best be described in his own words. In a letter to the Secretary General of the Italian Committee of solidarity for the politically persecuted in Iran he explained that:

"Instances of assault upon individual and public rights and liberties by political monopolists and those who believe in the creation of a non-democratic and sectarian state, has now increased to a new level.

"Although no grounds have been paved for an assembly of a Council representative of all classes and strata, a sectarian Revolutionary Council is now making new legislation limiting the democratic rights of the nation - the recent "Press Law" is a good reminder of the regulations of the fallen regime. Furthermore, we have before us another bill which will turn our judiciary into an even less democratic machinery of justice than that experienced in the past. In the name of "action against counter-revolutionaries" a certain 'Revolutionary Court' is exercising the principle of: "The Court determines the crime, the criminal act and the punishment" as against the accepted principle of: "No act constitutes a crime unless provided for by a law existing prior to the act determining the scope and punishment for the crime."

"I was fortunate as the vice-President of our Bar Association, to have a major part in a Conference of Iranian

Bar Associations open to all lawyers in this country. In the resolutions of the Conference, we endeavoured to clarify the most urgent and immediate steps to be taken towards building an independent and democratic judiciary to suffice the needs of a modern revolutionary state. This received no word of welcome from the sectarians in power and instead, we, as a result, became subjects of illogical and unjustifiable personal attacks.

..... news of a complaint against myself by certain so-called "by-standers" has been given to and printed in the newspaper Ettela'at of August 13, 1979, followed in the next issue by the news of a warrant issued for my arrest by the Revolutionary Prosecutor, making an atrocious and groundless claim that N.D.F. members were responsible for the injuries incurred during the protest march [against the new Press Law]. The newspaper report also said that a similar warrant has been issued for the arrest of Mr Reza Marzban, the editor of a well known progressive and outspoken newspaper, Peyghame Emrouz, for "enticing riots and creating disunity amongst the people" through his articles - supposedly those publicizing the peaceful protest march-and further for "insulting Ayatollah Khomeini". So far no official indication or notice of the warrants have been received by myself or Mr Marzban or by any other responsible persons or quarter or at our known addresses and domiciles. So far, the news has been given in a manner only to create uncertainty in our daily life, to paralyse our daily routine and serve as an instrument of public harassment."

The Executive Committee of the Association of Iranian Lawyers has issued a public statement on his behalf. The full text of the statement reads as follows:

"We wish to express our concern about the warrant issued for the arrest of Mr Matine-Daftary and specially the recent statement by the Islamic Prosecutor to the effect

that his life and person is outside the protection of the law (Mahdur al-Dam). Theoretically this would mean that anyone who kills Mr Matine-Daftary would be immune from prosecution.

"Mr Matine-Daftary is the vice-President of the Bar Association; a member of the Executive Committee of the National Democratic Front (N.D.F.); a founding member of this Association as well as a member of its Council and Executive Committee. His tireless efforts both in defence of Iranian political prisoners and for the promotion of Human Rights and liberties are well known to all those International Organisations which in the past have also been concerned about these problems.

"Mr Matine-Daftary has refused to present himself to the authorities because he contests the legal validity of the warrant and the jurisdiction of the issuing authority; in addition, he regards the Order to be in contravention of the Universal Declaration of Human Rights. As a result, his home has been occupied by armed guards, his personal and family possessions confiscated, and members of his family harassed and persecuted. He has been named as the Secretary General of the N.D.F. and so charged with the casualties caused during a protest march organised by the N.D.F. on 12 August 1979. In fact the N.D.F. is led by an Executive Committee which is collectively responsible for its leadership and activities. In particular, the N.D.F. does not have a Secretary General at all. However, the disturbances and casualties for which Mr Matine-Daftary is held responsible happened in the course of a lawful protest march against unreasonable limitations of the freedom of the press, when a large band of hooligans attacked the peaceful marchers with sticks and stones.

"We appeal to all International Organisations to support

his cause on the grounds of the defence of Human Rights, freedom and justice."

The International Commission of Jurists has appealed to the Iranian government to withdraw the criminal proceedings brought against Mr Matine-Defitary.

GUATEMALA

Violence has been common in Guatemala throughout its existence, but in recent years the incidents of assassinations, kidnappings and disappearances have increased dramatically.¹ Most of the violence is politically motivated and is predominantly directed against the indigenous poor² and the labour movement by military and paramilitary groups intent upon perpetuating the glaring socio-economic division between the poor and a small group of extremely wealthy landowners. The latter owns more than 2/3 of the land, but represents no more than 2% of the population.

The paramilitary groups or "death squads" incorporating the military, police and civilians, were formed in the mid-1960's to counter left wing guerrilla forces active in certain eastern provinces of Guatemala. By the early 1970's, the threat from the guerrilla movement was crushed and the death squads redirected their activities against more moderate left wing organisations.

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1. Local newspaper reports indicated that from June 1978 to June 1979, 1,300 persons were the victims of assassination.
 2. By far the largest number of killings has been of the landless Indian peasants. At Panzós, more than 100 Indians were massacred by the army in May 1978 when a large group assembled to present land grievances to the local authorities.

Article 215 of the Constitution prohibits the formation of any militia outside the supervision of the army, but some of the death squads have acquired a quasi-legal status by operating under the umbrella of the security forces. Moreover, civilians can be appointed as agents of the armed forces (Comisionados Militares) whose task it is to maintain order in a specified district or districts. The Comisionados Militares have the authority to engage armed assistants.

Mr Donald Fox, a US attorney who went on a fact-finding mission to Guatemala on behalf of the International Commission of Jurists in June, 1979 concluded in his report³ that "While preserving the facade of democratic institutions and judicial process, the operations of these paramilitary forces in suppressing dissent, have the inevitable long-term effect of breaking down the judicial system, increasing criminality and flagrant disregard for due process."

An insidious development in the breakdown of law and order in Guatemala has been the disturbing increase in the number of violent acts directed against lawyers advising the peasants and labour movement.

The Persecution of Labour Lawyers

The labour movement in Guatemala has been repressed for the greater part of its existence. It was not until 1947 that

3. The Fox Report is available at the headquarters of the ICJ in Geneva and from the American Association for the ICJ (see back cover). Although Guatemala has inherited a legal system which makes ample provision (in the constitution and elsewhere) for the protection of the rights and liberties of individuals, the law has for the most part proved ineffective. The constitution, for example, recognises the right of habeas corpus under article 79, yet disappeared persons are rarely located, nor have the perpetrators of the numerous abductions and assassinations been brought to justice despite the assurances of the government authorities that the killings would be investigated. Indeed, the government is unduly sensitive to outside criticism of the human rights situation in Guatemala, regularly denying that anyone is persecuted there.

the first labour code was adopted to improve workers conditions and this code has been severely weakened since then as a result of its unsympathetic application by the labour courts and by the introduction of discriminatory labour laws and decrees.⁴ More recently efforts on the part of employees to organise unions have been met with increased violence instigated by hostile management and the death squads. Their original victims were individual trade unionists and their leaders, but their new targets are lawyers who have been helping the unions to assert their rights and challenge the basis of the discriminatory legal order.

One of the most notable examples is that of Mario López Larrave, who was machinegunned to death outside his home on June 8, 1977. He held the position of Dean of the Faculty of Social and Judicial Sciences at the National University in Guatemala City and was a recognised authority on labour law, having written many scholarly works on the subject. He was also a legal advisor to the National Council for Trade Union Unity.

On 20 July, 1978, another labour lawyer, Mario Mujía, who was legal advisor and regional co-ordinator to the National Confederation of Workers (CNT), was shot dead as he was about to enter his newly established legal advice centre. The centre offered people free advice on labour problems and also served as an educational centre for young people. Mujía also assisted Father Woods, an American priest who died mysteriously in an air crash in 1976. It is believed that his death can be linked to his work with peasants in new colonisation areas in Ixán and with the Altiplano Indians forced yearly to migrate to the coastal plantations in search of work. Mujía was also advisor to the miners union of San Idelfonso Ixtahuacán and was well

4. For example, the right to strike or organise labour meetings are curtailed during states of siege and it is also illegal for unions to engage in political or economic activities.

known for having led miners in a nine day protest march to Guatemala City in 1977, regarded as one of the most important events in the resurgence of Guatemalan trade unionism over the past three years. His work with the unions included advising workers on the trade union registration process. He also advised small stall holders in the local markets how to negotiate better terms with the municipality for rent, provision for water supplies and other matters. At the time of his assassination he was advising the workers of Santa Agapa and Corral Chiquito, two light industrial firms producing toys for export to the United States. The firms were owned by a local businessman, Leopoldo Zuñiga, whom Mujía implicated in the attack on him before he died of his wounds.

On 5 September 1978, María Eugenia Mendoza, a law student at the University of San Carlos and assistant to the murdered Mujía, was kidnapped on the road between Chiantla and Huehuetenango and driven off in a car with Salvadorean licence plates. She too had been involved with organising the workers of Santa Agapa and Corral Chiquito, and had been interrogated in her home 15 days previously regarding her work with Mujía. The National Confederation of Workers filed a writ of exhibición personal on her behalf, and students in Quezaltenango and Huehuetenango announced that they planned to occupy schools in the area until she was located. Campesino and trade union associations announced that they planned to join the protests. After 30 hours of captivity she was found unconscious, gagged and bound, two blocks from her home in Huehuetenango.

On 15 February 1979 Manuel Andrade Roca, a labour lawyer and public relations secretary to the President of the University of San Carlos, was assassinated as he was leaving a meeting of the Guatemalan Bar Association at which some 500 lawyers were present. He was a former teaching co-ordinator in the Faculty of Social and Judicial Sciences at the University and had published a number of articles opposing foreign capital investment in Guatemala. He was also a legal advisor to various

peasant and labour unions. Andrade's name had appeared on a death list issued by the Ejercito Secreto Anticomunista, latest of the self-styled death squads which on several occasions published the names of trade union, peasant, academic, church and student leaders whom it had "tried and sentenced to death".

Other recent attacks on labour lawyers and judges include the following:

Rene de León Schlotter, a university professor, honorary president of the Christian Democrats and a leading agrarian lawyer. On 12 October 1978 an attempt was made on his life.

Arturo Rimola Alburez, a leader of the Frente Lúquista de Colomba in Quetzaltenango, and legal adviser to the peasant organisations in the area, was kidnapped on 16 November 1978. He escaped a murder attempt in 1977 when the man hired to kill him warned him of the plan.

Oscar Edmundo Acevedo, 50, a municipal judge, shot dead in Escutia on 22 November 1978. He had been a prominent member of the United National Front.

Jorge Antonio Lobo Dubon, a labour lawyer, killed on 5 December 1978 by three unknown assailants in a car with foreign number plates in zone 1 of Guatemala City, within 100 metres of the national police headquarters.

Ricardo Martínez Solorzano, a law student at the University of San Carlos and a candidate for the presidency of the Law Students Association. He was murdered on 25 January 1979 in Guatemala City, probably in retaliation for his support (through his union leadership in the Guatemalan Institute of Social Security) for transport strikes.

Lic. Max García Ruiz, 56, labour judge was shot and killed on 20 May 1979 in Guatemala City. García had served as adviser

to President Julio Cesar Montenegro (1966-70) and had practised primarily in labour law. Prominent members of the legal profession have called for an official government investigation of the killing.

Santiago López Aguilar, who represents a number of Guatemalan labour unions, was shot at the University of San Carlos on 18 October, 1978. He survived the assassination attempt.

Jesús "Chuz" Marroquin, former professor at the Trade Union training school, was a lawyer advising peasants in the eastern province who were threatened with eviction from their land. He was threatened with murder after the elections in 1978.

Romeo Alvarado Polanco, Dean of the University of San Carlos Law School, which is renowned for its emphasis on the training of labour lawyers. His name appears on the "death list" of the paramilitary group, Ejército Secreto Anticomunista, and he has received death threats by telephone at his home as well as in letters.

Rosa María Wantlan and Florencia Xocop are attorneys for the National Workers Central, which has organised unions in a number of key industries. In April 1979, they met at the Guatemalan airport to distribute leaflets in support of Sonia Oliva, a union leader who was forced to go into exile to save her four year old son whose life had been threatened. They were detained by the police and taken into custody.

In addition, it should be mentioned that there have been two recent assassinations of opposition political leaders, both of whom were lawyers and members of the Guatemalan Bar Association.

Alberto Fuentes Mohr, a former Guatemalan Foreign Minister was slain by gunmen in a passing car as he drove to a luncheon at the home of vice President Villagran Kramer. Fuentes Mohr was

a popular politician who had forcefully spoken out against political repression in his country.

Manuel Colom Argueta, was a former mayor of Guatemala City and a leading member of the Guatemalan Bar Association (College of Advocates). He was leader of the United Front of the Revolution, an opposition party which has recently been granted official recognition. He was murdered in broad daylight in Guatemala City on 22 March 1979. His assassins have not been apprehended. No witnesses have volunteered information and it is believed that anyone who offered to give testimony against the perpetrators would not live long. The sister of Colom Argueta stated that the murder of her brother was planned by military officers and senior members of the government and she believed that the crime would remain unsolved like so many other political assassinations. When her accusation was printed in the newspapers, the government brought a penal action against her and her brother, Guillermo Colom. The case is pending before the criminal court of the first instance.

As appears from Mr Donald Fox's report on his mission to Guatemala, the President of the Bar Association agreed that these criminal proceedings were illegal in that they were to be determined by a magistrate alone, denying the defendants their rights to trial by jury. Under Article 10 of the Constitution of Guatemala, the Bar Association has a special responsibility to challenge unconstitutional laws or decrees. It is to be hoped that the President of the Bar Association has taken the matter up with the governmental authorities. The CIJL has written to him expressing support for any such action which he may see fit to take.

Meanwhile, Guillermo Colom has left the country and is in exile in Venezuela.

NAMIBIA

Mr Arthur Pickering, a 30 year old lawyer, was arrested together with a number of SWAPO officials on 27 April 1979. Mr Pickering's family has not been informed of the reasons for his arrest or his present whereabouts, but it is believed that he and the other arrested persons are detained in a prison at Gobabis, a small town east of Windhoek.

Mr Pickering, who was the first non-white person to be admitted to the Windhoek Bar, is a legal adviser to the legally constituted internal wing of SWAPO. It is believed that he has been arrested as a result of this connection. He was previously detained under the Terrorism Act in January 1979, when the security authorities were investigating a bomb explosion in Swakopmund, but after 10 days he was released uncharged. He has been re-arrested under a proclamation which gives the Administrator-General of Namibia wide powers to detain persons suspected of engaging in subversive activities of a violent nature. Under the proclamation, the Administrator-General is given an unfettered discretion to determine the period of detention and conditions of release of detainees.⁵ The proclamation provides for a committee to review detention orders, but the Administrator-General is not bound by its recommendations.

The CIJL has written to the Administrator-General expressing its concern and pointing out that the independence of the legal profession is essential to the proper administration of justice and that the detention of a lawyer without charge strikes at the very basis of this independence. The CIJL urged that if Mr Pickering has engaged in a criminal activity, he should be formally charged and tried. Otherwise he should be released forthwith.

STOP PRESS: News has just been received of his release.

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5. Article 3(3) of the proclamation provides that "a detainee shall be detained until the Administrator-General order his release".

POLAND

Mr Witold Lis-Olszewski

In 1963 the legal profession in Poland abolished private practice and organised legal co-operatives (colleges) to one of which a Polish lawyer must now be admitted if he or she wishes to engage in legal practice. The lawyer receives a salary and upon retirement is eligible for a pension based on his number of years of service. The ultimate administration and regulation of the co-operative is vested in the Supreme Council of Lawyers which, inter alia, issues and revokes licences to practice law and supervises the lawyers' pension fund.

Pursuant to regulations passed by the Supreme Council of Lawyers in 1975, the age limit to practice law was set at 70. Upon attaining this age a member of the co-operative is deleted from the membership list of the college unless the executive of the Supreme Council considers that special circumstances require that his licence should be extended for a further year. Under no circumstances can the licence be extended after the attainment of the age of 75.

On two occasions his licence to practice was renewed but now the Supreme Council of Lawyers have removed the name of this 73 year old advocate from the register. Mr Lis-Olszewski believes that in a number of respects this decision is unjust and politically motivated.

He has been in legal practice since 1927. Between 1932 and 1939 he was a judge and then served as a state prosecutor in 1939. He joined the resistance movement during the German Occupation of Poland, enrolled in the Bar at the end of the war but was convicted of high treason in 1948, and sentenced to 10 years in prison. He was released in 1953 after the Polish government announced a general amnesty to political prisoners but was forbidden to practice law until 1956 when the authorities

acknowledged his complete rehabilitation.⁶ From 1956 until 1978 he was involved almost exclusively in political cases concerning persons unjustly convicted during the Stalinist period, administrative abuse of power and restrictions on religious freedom.

In 1967, as a result of his defence of Nina Karsow (an Amnesty International prisoner of the year) he was the subject of an investigation. Thereafter he was repeatedly warned about his work in political cases, particularly after 1976 when he represented the Workers Defence Committee charged with participating in illegal demonstrations. Mr Lis-Olszewski considers that the decision to disbar him by the Supreme Council (which is composed of persons chosen by the party and approved by the Minister of Justice) can be linked directly to his defence of the Workers Defence Committee.

There are also compassionate grounds for renewing his licence as he supports an invalid wife and his centenarian father. His retirement pension would not enable him to provide for them adequately. The CIJL has written to the Supreme Council of Lawyers in Warsaw urging it to reconsider the case with a view to renewing Mr Lis-Olszewski's licence to practice for a further year.

SIERRA LEONE

The new Constitution introduced in Sierra Leone in June 1978 has met with considerable criticism from the legal profession and judiciary. The Constitution, which was passed rapidly through Parliament without committee hearings or public comment, creates a one-party state and increases the powers of the President during a state of emergency.⁷ Under the new Constitution, the President is empowered to make any regulations and

6. This had the effect of absolving persons convicted of political crimes during the Stalinist purges.

7. Sierra Leone has been under a state of emergency for over a decade.

take any measures he deems necessary regardless of their conformity with existing laws. However, the courts have jurisdiction to review emergency measures to determine whether they are "reasonably justifiable" for the purpose of dealing with the situation that exists immediately before and during a state of emergency.

Lawyers in Sierra Leone are particularly concerned about the inclusion of a provision in the Constitution which severely weakens the tenure of judges. Section 115(1a) provides that "judges of the Superior Courts of Judicature may be required by the President to retire at any time after attaining the age of fifty-five years".

Such a wide and undefined power makes ineffectual the provision in Section 115(1c) requiring mandatory retirement of judges of 65, and consequently strikes at the basis of security of tenure, which is an essential condition of an independent judiciary. It is recognised that there should be provision for the removal of incompetent judges, but this is already contained in Section 115(3).

The CIJL has written to the President of Sierra Leone urging him to give consideration to the repeal of the retirement provision. It is understood that the provision is under review.

CONFERENCE

Paris Colloquium on the Plight of Argentine Lawyers

On 19 and 20 May 1979, a colloquium was held in the Chamber of the French Senate (Paris) on the subject "National Security doctrine and the rights of the defence; the Argentinian case". The Colloquium was supported by the International Commission of Jurists, and Centre for the Independence of Judges and Lawyers (CIJL), the Mouvement international des Juristes Catholiques, the International Association of Democratic Lawyers and the

Fédération Internationale des Droits de l'Homme.

Dr Alejandro Artucio, ICJ Legal Officer for Latin America, addressed the meeting on "The responsibility of the State in the protection of life and liberty". He referred to the evolution of the political and social situation in Argentina, particularly in the field of human rights. He explained the return to a democratic system of government in 1963 with presidential and legislative elections, and, following the military coup of March 1976, how the armed forces had taken control over the whole political life of the nation, established new institutions of government and altered substantially the national Constitution.

"In recent years the juridical institutions and laws for the protection of human rights continue to exist in Argentina, but they are not applied if the violation of human rights is committed by the armed forces or the police, or if the case appears to be linked with national security" he said.

He analyzed this situation in the context of national and international law, including international instruments such as the Charter of the Organisation of American State, the American Declaration of the Rights and Duties of Man, the American Declaration of Human Rights, International Conventions of the International Labour Organisation, the 1949 Geneva Conventions, the Standard Minimum Rules for the Treatment of Prisoners (ECOSOC, 1957), and the UN General Assembly Declaration on Torture and other ill-treatment. In this connection he said that "torture has become the normal way to interrogate political suspects in this country".

Finally he pointed to the responsibility of the judiciary in such situations, describing some positive actions taken by the Supreme Court and Courts of Appeal in habeas corpus proceedings concerning disappeared persons. He urged, however

that more could be done, saying that "The judiciary could be much more effective in their task of protecting life, liberty, security, ^{and} dignity of the people of Argentina, who are harassed by illegal actions taken by the authorities."

In an intervention made on behalf of the CIJL, Mlle Marion Raoul reported that specific action had been taken by the Centre with regard to the persecution of lawyers in Argentina. She explained that the Centre was established by the ICJ in response to the increasing inroads made into the independence of the judiciary and practising advocates in many countries, so that political defendants were often unable to secure the services of an experienced defence lawyer. She said that the Centre carried out studies and collected reliable information relating to this question; it then distributed this information to many countries in the world through a bulletin inviting judges and lawyers - and their organisations - to take action. The first issue of the bulletin was devoted to the plight of judges and lawyers in Argentina. It revealed that 27 lawyers had been assassinated, 76 had disappeared, over 100 had been detained and numerous others had been forced into exile.

ARTICLE

Persecution of Lawyers in South Korea:

Report of DeWind Mission

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. Mr Edward Baker of the East Asian Legal Program of Harvard Law School joined the mission in Korea and greatly assisted its work.

The South Korean Government was advised of the nature of the mission and requested to extend the usual facilities and courtesies to the members of the mission. 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).

The mission visited Seoul between April 29 and May 5. It met 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. The mission was granted interviews with the Minister of Justice, Mr Kim Chi Yul and the Minister of Foreign Affairs, Mr Park Tong Chin.

As the members of the mission point out in their preface to the report, "it is axiomatic that a proper assessment of the position of defence 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, as a background to the particular cases under study, the report describes the constitutional and legal framework of the general repression of human rights in South Korea.

The following extracts from the report of this mission describe the practices and legislation which limit the independence of judges and lawyers in South Korea, as well as presenting the findings of the mission on the particular cases they came to investigate. Copies of the full report are obtainable from the International Commission of Jurists, Geneva, or the American Association for the ICJ, New York (See back cover).

(Extracts from report on Persecution of Lawyers in South Korea)

THE JUDICIAL PROCESS

Defence 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^{1/} 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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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.^{1/}

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

^{1/}

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.^{1/} 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.

^{1/} 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.

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.^{1/}

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

^{1/} 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.^{1/} 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

^{1/} 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.^{1/}

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.

^{1/} 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 ^{1/} 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

^{1/} 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.^{1/} 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^{2/} 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.

^{1/} A transcript of Mr. Kang's speech is at Appendix 1.

^{2/} 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.^{1/}

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

^{1/} 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, ^{1/} 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

^{1/} 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.^{1/} 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.

^{1/} 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.

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."^{1/} 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

^{1/} 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.

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Persecution of Lawyers in South Korea

*Published by the International Commission of Jurists, Geneva, 1979, 70 pp.
SwFr. 4 or US\$2.50, plus postage*

A report of a mission to South Korea by Adrian DeWind, attorney-at-law, former President of the Association of the Bar of the City of New York, and John Woodhouse, Secretary of the Centre for the Independence of Judges and Lawyers, Geneva. The report describes the practices and legislation which limit the independence of Judges and Lawyers, Geneva. The report describes the practices and legislation which limit the independence of judges and lawyers in South Korea, and makes specific findings on nine cases of lawyers persecuted or harassed for action in defence of political prisoners. As a background to these cases the report describes the institutional and legal framework of the general repression of human rights in South Korea.

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Human Rights in Guatemala

*A report of a mission by Donald T. Fox, New York attorney,
published by the International Commission of Jurists, Geneva, September 1979, 60 pp.
SwFr. 4 or US\$2.50, plus postage*

Mr Fox's report outlines the historical, social and economic factors which have resulted in "a large area of institutionalised exploitation and injustice"; gives an account of the prevailing violence by right and left wing forces, the greater part being by military and clandestine para-military forces acting in the "narrowly perceived economic interests" of dominant groups; and commends the recent proposals of the National Council of Economic Planning for a development strategy to achieve a just and stable social peace.

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How to make the Convention against Torture Effective

*Published by the International Commission of Jurists and the Swiss Committee
Against Torture, Geneva, 1979, 44 pp.
SwFr. 3, plus postage (25% reduction for orders of 10 or more)
Available in English or French*

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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