BULLETIN
of the
CENTRE FOR THE INDEPENDENCE
of
JUDGES AND LAWYERS

CONTENTS

Vol. 1, No. 2
September 1978

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 our 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 inedpendence 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 your 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
P.O. Box 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.

C A S E R E P O R T S :

A number of cases concerning the persecution, detainment, assassination or otherwise of judges and lawyers in various countries have been reported to the Centre since the publication of the previous Bulletin. The following are a selection.

Czechoslovakia

The Centre received a communication from Dr Zdenek Damec, a Czechoslovakian advocate, who complained that his licence to practise law was revoked in July 1973 by the district association of lawyers at Ostrava. No complaint was made about his professional conduct. Indeed Dr Damec was given a certificate dated 31 October 1973 stating that "during his professional career he demonstrated a thorough knowledge of the law (and) there has never been a complaint made about his services by any of his clients".

The reason for his disbarment was that he failed to revise his political opinions to be more "in harmony" with the goals of socialism or to carry out the political duties of an advocate in helping to build a socialist society.

It is evident, therefore, that the advocatewas denied the right to practise for purely political reasons, not because he had undertaken any political activity against the government but because he had not shown himself sufficiently active in support of the government. This is a clear violation of his right to freedom of expression and opinion, guaranteed by Article 18 of the International Covenant on Civil and Political Rights and his right to work guaranteed by Articles 6 and 7 of the International Covenant on Social, Social and Cultural Rights. Both these Covenants have been ratified by Czechoslovakia and thereby incorporated in its domestic law.

Article 53(c) of the Czechoslovakian Labour Code, in fact, encourages political discrimination in employment by providing that an employee can be dismissed from his or her job where it can be proved that he or she has done something to endanger the security of the state. This provision has been used to justify the dismissal of large numbers of political dissidents since the Russian occupation of Czechoslovakia in 1968. Regulations are also to be found in areas and industries which require workers to demonstrate a continuing devotion to the "socialist state". Failure to do so often leads to the dismissal of the recalcitrant employee, who experiences great difficulty in finding alternative work commensurate with his or her training.

Those readers wishing to make representations concerning Dr Damec's case should write to one or more of the following:-

H.E. Jan Nemec
Minister of Justice
Prague 2 - Nové Mesto
Vysehradska 16
Czechoslovak Socialist Republic

JUDr Karel Kejzlar
Chairman
Supreme Court of the CSR
Prague 4 - Nusle
Nam Hrdinu 9
Czechoslovak Socialist Rep.

Czechoslovakia (cont'd)

The President
College of Advocates
Narobni 43
Prague
Czechoslovak Socialist Republic

or to the Czechoslovak Ambassador to your country.

South Africa

Since July 1977 four well known South African lawyers, who have frequently represented African defendants charged under South Africa's security laws, have been banned from visiting their clients in prison. The lawyers concerned are David Soggot, an advocate, and three attorneys, Ishmael Ayob, Shun Chetty and Christopher Nicholson.

The ban was imposed under prison regulations which entitle the Commissioner of Prisoners to deny any person access to a prisoner if he considers it would not be "in the interests of the State or the good order and administration of the prison". In fact it appears that the decision was taken by the Minister of Justice and not by the Prison Commissioner, following publicity given (not by the lawyers concerned) to complaints of ill-treatment made by prisoners to their lawyers. No suggestion of unprofessional conduct has been made against the lawyers. Originally the ban applied to visits to unconvicted as well as convicted prisoners. Following vigorous protests by the professional organisations in South Africa the ban was confined to prisoners under sentence. Nevertheless, convicted prisoners still have a right to the services of a lawyer (as was recently decided by the European Court of Human Rights), and this ban restricts the independence of the lawyers and the right to free choice of counsel.

Uganda

In March of this year the Centre received information that the Chairman of the Ugandan Industrial Court, Mr Sebugwaawo Amooti was ambushed and shot dead in the presence of his two children near Kampala. It is alleged that those responsible were wearing the uniform of the security police - the state research squad.

Those who knew the judge attest that he pursued his professional duties to the exclusion of any political activity. However, Amin's former Minister of Justice Godfrey Lule, now in exile, stated that Judge Amooti had a tendency to court publicity and enjoy the limelight which is fatal in Uganda.

Mr Lule's comment that members of the judiciary, who were not absolutely subservient to the president, were eliminated is an accurate reflection of the present state of the Ugandan judiciary which has suffered greatly during the six year old reign of terror in Uganda.

In September 1971 Judge Amooti's predecessor, Michael Kaggwa, was found burned to death in his car and a year later Uganda's Chief Justice Benedicto Kiwanuka was abducted and murdered by the military police. Although the

government disclaims responsibility for his death an eye-witness claims that he saw the Chief Justice in police custody and witnessed his excution by military officers at the Makindye military prison in September 1972. Kiwanuka was an important figure in Uganda and it has been suggested that his determination to preserve the independence of his court and resist government pressure to make rulings in accordance with government policy decided his fate.

As a result of the continued intimidation of the judiciary and the legal profession one Ugandan was prompted to write that:

> "The entire legal community has been left to operate under great fear and difficulty. The Ugandan judiciary is no longer independent and magistrates and judges are very cautious about making legal rulings which may hurt the government's interests. Justice in Uganda today is in danger. .....
>
> "Lawyers in private practice are in similar difficulties because they can no longer conduct their defence as they plan or would have planned. A defence counsel could be in serious trouble, notably with the Public Safety Unit (P.S.U.), if he successfully defended an alleged criminal."

The slaying of Judge Amooti prompted the CIJL to send a note of protest to President Amin expressing its concern that as a result of the repeated attacks on members of the Ugandan judiciary the independence of the judges and lawyers in Uganda has been seriously undermined. It urged President Amin to take immediate steps to give adequate protection to judges and to restore confidence in the judiciary.

Those who wish to make similar representations to the Ugandan government concerning the case of Judge Amooti should write to:

H.E. Life President
Field-Marshal Al Haji Idi Amin Dada
Command Post
Kampala, Uganda.

Letters should be marked "Personal".

Indonesia

The independence and integrity of the Indonesian legal profession has been considerably undermined during the past 13 years. With few exceptions Indonesian lawyers have been unable or unwilling to speak out against the rigorous supression by the Indonesian government of the liberties of many thousands of Indonesians who have been languishing in detention camps since 1965. Only this year has the Indonesian Bar Association felt able to pass a resolution condemning the continued detention of the many thousands of Indonesians who have not been charged or brought to trial.

It is estimated that of the 2,000 practising lawyers in Indonesia only five or six are now willing to defend politicalprisoners and they are in constant fear of being arrested or re-arrested.

The case of a prominent defence lawyer which greatly concerns the Centre is that of an elderly lawyer, Mr Gumulyo who has been detained in Salemba prison in Jakarta without being charged or tried since 1968.

Mr Gumulyo acted as a defence lawyer for Lieutenant-Colonel Untung who was sentenced to death and executed in 1967. His participation in the trial was probably one of the reasons for his arrest which occured not long after the trial, but in addition his name appeared on a list of persons who had given asylum to Mrs Aidit, the wife of the late chairman of the Indonesian communist party.

He is now over 70 years old and is probably in very poor health. He has no family and no-one visits him in prison.

He refuses to be interrogated and has always maintained that he has broken no law. He considers that if he has been arrested he should be shown the arrest warrant and the charge or charges. His insistence upon observing the letter and spirit of the law has seriously aggravated his case.

The CIJL has written to the Indonesian government urging it to give urgent consideration to Mr Gumulyo's case with a view to ordering his release.

Readers who wish to make similar representations to the Indonesian government should write to:

Admiral Sudomo
Chief of Staff, KOPKAMTIB
Jalan Merdeka Barat
Jakarta, Indonesia

Uruguay

Since 1968 Uruguay has been subject to a state of emergency ("prompt security measures") which was declared in order to deal with the problem of the Tupamaro guerrilla movement. Today full political power rests with an executive, under the control of the military which has flagrantly disregarded the fundamental liberties of its citizens over the past six years. The legislature was dissolved in 1973 and the government imposed an almost total ban on political dissent of any kind. All educational institutions and the press came under government control, foreign news and publications were heavily censored, the activities of trade unions were restricted and many thousands of those who criticised the government were summarily detained. It is estimated that Uruguay now has the greatest number of political prisoners relative to its population of any country in the world. (Approximately 5,000 in a country of 2,765,000).

There has also been a concomitant erosion of the independence of the judiciary and the legal profession.

I. The Judiciary

Two events greatly weakened the independence and integrity of the civilian judiciary.

On 1 July 1977 the Executive passed a Law (Institutional Act No. 8 which modified the constitution by depriving the Supreme Court of its status as a "power of state". The Supreme Court would thenceforth be referred to as the "Court of Justice" and its most important functions (such as appointing, supervising and removing judges) were transferred to the executive. Judges could now be dismissed summarily (refer to the case of Judge Forni in the Appendix to this report).

Since April 1972 the jurisdiction of civilian courts in all political cases has been transferred to military courts administered by the Executive rather than by the Supreme Court.

Political suspects are detained under the emergency legislation and held in military prisons for long periods before being brought before an examining magistrate (Juez militar de instruccion). Their families or lawyers are rarely told why or on what authority they have been arrested. Habeas corpus proceedings have proved ineffective as a means of eliciting this information from the arresting authorities as they usually neglect to respond to the enquiries of the court. As a result it is widely believed that many of those held in preventive detention are being severely tortured to extract confessions from them.

The preliminary examination of the prisoner and the trial are conducted by military officers who are often without legal training.

Before and during the first stage of the preliminary examination the defendant is not permitted to consult with his lawyer. The prisoners and their lawyers also face serious difficulties in preparing their cases: The lawyers are forced to interview their clients in small overcrowded rooms; the trial dossier is available to the defence for a very short period; usually for no more than 45 minutes and only at the bar of the court and where more than one defendant is being tried the lawyers working on the same case must share a single dossier containing the cases of all the defendants. The judge and prosecutor on the other hand are able to take the dossier to their offices to study it.

The judge of instruction and the trial judge often act upon a secret report (the expediente sumergido or submerged dossier) prepared by the security intelligence authorities which the defence lawyer is unable to see or reply to. This dossier usually contains information about the defendants' character and political activities.

Although cases should be assigned to the judge de turno (in charge of all cases during his period of duty) in practice all important political cases are sent to the magistrates and judges who must enjoy the confidence of the military command.

The trial must be reviewed before the supreme military tribunal in cases where a sentence of more than three years has been passed by the trial judge, and in other cases may occur on the appeal of either the prosecution or the defence.

Although the Supreme military tribunal does not have power to increase the sentence beyond that asked for by the prosecutor, higher sentences have in fact, been passed. This has occured even where the defence was the only party to the appeal. It has been suggested that this practice is sometimes

adopted as a punishment to counsel who show particular independence in their defence.

II. The Legal Profession

The situation regarding defence lawyers is particularly serious. Most is not all Uruguayan lawyers skilled in defence work are either in prison or have gone into exile.

In November 1977 the ICJ received information that the last four experienced defence lawyers had been detained on what can only be described as fabricated charges arising out of the proper performance of their professional duties on behalf of their clients. Two of the lawyers, Dr Rodolfo Schurmann Pacheco and Dr Juan José Fraga were charged by a military examining magistrate with offences arising out of their defence of a political prisoner named Olivari. Dr Emilio Biasco was charged with the offence of "making an attack upon the reputation of the army" after having submitted a petition to the government on the instructions of a client who had been dismissed from his post in the civil service. The fourth lawyer, Dr Hugo Fabbri, was also charged with the same offence after having submitted a petition to a civilian court which contained observations about the conduct of certain members of the army.

The four attorneys were subsequently released after the ICJ and various other legal organisations and individuals petitioned the Uruguayan government to release them. Among the actions taken was the sending of a mission to Uruguay with the support of the American Bar Association and the New York City Bar Association.

Dr Mario Dell'Acqua, a prominent defence lawyer, who was himself detained because of his continued willingness to defend political detainees and who is now living in exile in Switzerland informed the ICJ that only Dr Schurmann has applied to the Court of Justice for his right to practice to be restored, If he is allowed to practise again Dr Dell'Acqua is sure that he will no longer be prepared to undertake the defence of political prisoners before military courts.

Dr Dell-Acqua confirmed that there are now no experienced criminal lawyers available for defence work before military tribunals and estimated that in all there are only about five non-penal lawyers who are prepared to defend political prisoners apart from the four court appointed defenders, three of whom are legally unqualified military officers.

It would seem from the numerous cases of persecuted lawyers in Uruguay reported to the Centre that the military authorities are hostile to the presence of lawyers who are aware of the glaring anomolies in the judicial system, and consider that the willingness of lawyers to act for political prisoners implicitly indicates their involvement in similar subversive activities. Dr Dell-Acque explained that in his own case he was falsely accused of "assisting subversive elements" by failing to prevent the distribution of subversive tracts at the college of fine arts in which he was employed. Part of the written allegations in support of this charge was that he had defended more than 25 political prisoners. This was said to raise a suspicion of his own subversion.

He was first arrested for 50 days in 1973 but was never charged with any offence, nor was he interrogated. He is convinced that the reason for his arrest was that he had defended political prisoners. He was arrested again in November 1976 and only released last April. Although he was charged and brought before an examining magistrate, the examination did not take place. He was detained throughout this period at police headquarters. Upon his release he was threatened by a plain-clothes police-officer that if he resumed the defence of political prisoners he would be "castrated".

As he was automatically deprived of his right to practice upon being charged he would need to reapply to the court of justice to have his practicing certificate restored. He considered, like many other Uruguayan lawyers who had gone through a similar experience, that he could not resume his profession under the conditions facing defence lawyers in Uruguay, especially in view of the prospect of being rearrested.

A P P E N D I X

Lawyers who are currently being held in prisons or military barracks or other places of detention

Rúben A. Perdomo Bica

He acted as a defence lawyer for political prisoners above all in the city of Melo where his legal practice was. Arrested in June 1972 and charged and tried with collabration with a "subversive" movement. Before the trial he was tortured by the army. He is detained in Libertad prison.

José S. Arrillaga Echeverría

Held since December 1973 after he had presented himself to the police. He is at present in Punta Carretas Prison in Montevideo. He was charged with being the editor responsible for the journal Lucha Popular which was the official voice of the political alliance Grupos de Accion Unificadora (G.A.U.). Military justice has refused to take into consideration the fact that although G.A.U. was subsequently declared illegal, the offence which Arrillaga is alleged to have committed took place while G.A.U. acted legally and openly. The prosecutor has asked that he be sentenced to five years in prison for "subversive association".

José L. Baumgartner

Lawyer and notary. Editor of the daily paper Ya until its closure by the government. He is 45 years old and the father of three small children. He was arrested in May 1974 and accused of "collaboration with a subversive movement". Since then he has been held in the 4° Regimiento de Caballeria Mecanizada in a suburb of Montevideo. Reportedly he has not yet been brought to trial. The reason for this is thought to be connected with the fact that Baumgartner's property is in the hands of the military. No information has ever been made public about his legal position.

Alfonso A. Fernandez Cabrelli

Lawyer in Montevideo. Writer. He was arrested in September 1976 and charged with assisting a "subversive association" and "insulting the Armed Forces" for his interpretation of Uruguayan history as expressed in a book published some five years previously, which had been sold in bookshops in Montevideo. He is being held in the Carcel Central (Jefatura de Policia) in Montevideo.

Luis Alberto Viera

Lawyer and notary public and a distinguished professor of procedural law in the faculty of law at Montevideo. He is also the author of several legal textbooks.

He was arrested on 24 May 1977 and subsequently tried by a military court and though the court ordered his provisional release at the end of 1977, he has been kept in detention under security regulations since then. His family has been informed by the government that they must indicate their willingness to seek exile abroad before he can be released.

It has been suggested that his arrest was the result of his taking part in a legal conference organised by the Uruguayan and Argentinian Bar Associations in which the government was criticised. It is also possible that his exiled brother's (Eduardo) membership in the local communist party could also account for the tough line which the authorities have continued to take against him.

Julio Lev and Gualberto Trelles

Labour lawyers, acting for various trade unions. They were arrested in November 1975 during a large round-up of members of the Communist Party. They were both severely tortured by the army and held incommunicado for three months before being charged in February 1976 with being connected to subversive association presumably because of their sympathy with the communist party. (The communist party was declared illegal in November 1973).

Lawyers who are now in exile but who were held in military prisons, etc.

Alejandro Artucio Rodriguez

Defender of political prisoners. Lawyer for the Water Board. He was the victim of several explosive attacks by para-military groups. None of those responsible was arrested. Finally he was arrested in May 1972 and tortured by the army on several occasions before being brought to trial after a period of detention incommunicado, of ten months for "collaboration in subversion". The charge was so tenuous that even the military magistrates ordered his release a few months later. However he was kept in detention under "detencion administrativa" (preventive detention) and he was only released six months later after he agreed to go into exile which he did in December 1973. He now lives in Switzerland.

Heracio Perrone

Defender of political prisoners. He was arrested in October 1973 for "collaboration in subversion" and later tried. After serving his sentence and being released in 1976 he went into exile.

Ariel Collazo Odriozola

Defender of political prisoners. National Deputy between 1959-72. He suffered an explosive attack on his house. He was arrested on the day his parliamentary immunity came to an end. He was severely tortured and was interned in the Hospital Central de las Fuerzas Armadas. An attempt was made to fabricate a charge against him but without success. However, he was kept in prison (under Prompt Security Measures - preventive detention) until December 1973, when he was allowed to go into exile after 23 months in prison. He now lives in Spain.

Wilmar Olivera Jackson

Defender of political prisoners. Employee of the university. He was arrested in June 1972 and released four months later without being charged. He tried to restart his work as a defence lawyer but faced with threats, he went into exile shortly after his release. He now lives in Switzerland.

José Harari

Defender of political prisoners. Arrested in June 1972 he was reportedly tortured. He was then interned in the Hospital de las Fuerzas Armadas. He was released in 1972 and then went into exile in France.

Gonzalo Navarrete

Defender of political prisoners. He was arrested in May 1972 and released at the end of 1972 without having been brought to trial. He went into exile first in Argentina and then in Costa Rica where he now lives.

Armando Cuervo Romero

Well known labour lawyer. He obtained the releases of two people, charged with common crimes, who were brought before the civil magistrate. During their trials it came to light that their confessions had been extracted with the use of torture. As a result, Cuervo Romero was detained along with his clients, under Prompt Security Measures for several months. In order to regain his freedom he chose to go into exile.

Maria Ines Capucho

Defender of political prisoners. Labour lawyer, linked to several trade unions. She was the target of attacks by a para-military group. She went into exile in May 1972 and now lives in Sweden.

Marcos Canetti

Defender of political prisoners. He worked in the Faculty of Penal Law in the University of Montevideo. In view of the attacks suffered by other defence lawyers, he went into exile in June 1972 and now lives in Venezuela.

José Diaz

Defender of political prisoners. Leader of the Socialist Party of Uruguay; diputado suplente and a member of parliament. He was arrested in June 1972 and released after two days because of the outcry his case caused in Parliament. He went into exile after the military takeover when parties of the left were made illegal, at the end of 1973. He now lives in Spain.

Alberto Perez Perez

Professor of Constitutional Law. Dean of the Faculty of Law in Montevideo University at the time of the military intervention. He managed to avoid arrest by chance as he was in Buenos Aires at the time. The Deans, the Rector and other members of the University staff were all arrested. Alberto Perez now lives in the U.S.A.

Nicolas Grab

Defender of political prisoners. Labour lawyer. In December 1975 he managed to avoid arrest. The military occupied his office and sacked his house, destroying what could not be removed. He now lives in the U.S.A.

Hector Borrat

Editor of the Catholic magazine Vispera which was closed by the government under the charge of publishing subversive material. He was interrogated and held in the Jefatura de Policia in Montevideo under Prompt Security Measures. On being released he went into exile in Spain where he now lives.

Alba Dell'Acqua

Defender of political prisoners. Employee of the University. Sister of Mario Dell-Acqua. She was the victim of fire and explosive attacks on her house. She went into exile in January 1976 and now lives in Switzerland.

Osvaldo Mantero

Defender of political prisoners. Professor of Labour Law at Montevideo University. Lawyer for various trade unions. He was watched by security forces who suspected that he was the author of a report presented to a delegate of the ILO which was visiting Uruguay on a Mission of Inquiry. He managed to avoid arrest and went into exile in Venezuela where he now lives.

Carlos Quijano

Former minister and former Dean of the Faculty of Law; former Professor of Political Economy. Editor of the weekly Marcha. Just before his 80th birthday he was arrested for having published in Marcha a story with the theme of the death of a policeman. Although the judiciary could find no reason for charging him, Carlos Quijano, along with the other members of the literary panel which had chosen the work, were held for long periods under preventive detention which only came to an end as a result of the international outcry over this case. Marcha was then closed indefinitely, its records destroyed. In November 1974 Carlos Quijano was threatened again and he subsequently chose to go into exile in Mexico where he now lives.

Maria Esther Giglio

Defender of political prisoners. Journalist. She published various articles in Marcha denouncing torture. As a result she was threatened several times and her house was partly destroyed by an explosive attack. In July 1972 she went into exile.

Edgardo Carvalho

Defender of political prisoners. Appointed Joint Professor of administrative law at the University of Montevideo. Member of the Board of the Bar Association (Comision Directiva del Colegio de Abogados del Uruguay). Faced with imminent arrest he went into exile in August 1976 and now lives in Spain.

Maria Elena Martinez Salgueiro

Defender of political prisoners, including her own brother, a soldier who had been threatened with severe punishment for alleged collaboration with "seditious" elements. Dr Schurmann Pacheco intervened in the case as co-defender. In January 1977 she chose to go into exile and she now lives in Spain. Her brother was sentenced to 15 years imprisonment.

Celia Gil

Defender of political prisoners. She went into exile in mid-1977 and now lives in Holland.

Jose Luis Corbo

Defender of political prisoners. Lawyer for the Ministry of Transport. Arrested for questioning in a military unit in mid-1974. Dismissed from his job in the public sector for political reasons, he chose to go into exile in December 1977 after the trials of Drs. Fabbri and Schurmann. He now lives in Venezuela.

Susana Andreasen

Defender of political prisoners. Professor of Constitutional Law attached to the University of Montevideo. During 1977 the Supreme Military Tribunal tried to obtain from the Court of Justice her suspension from her profession for failure to attend a hearing. After the trials of Drs. Fabbri and Schurmann she went into exile and now lives in Spain.

Carlos Martinez Moreno

Well-known penal lawyer and "court appointed" defender in criminal cases for the civil tribunal for several years. Writer and journalist. Defender of political prisoners including General Liber Seregni. He was threatened on several occasions by para-military groups and his house was attacked with explosives in 1972. After the arrest of Dr Schurmann he chose to go into exile in Spain where he now lives.

Octavio Carsen

Defence lawyer. Arrested and charged in 1972 he was finally released in 1973, after the charges against him were withdrawn. He is now in exile.

Julio A. Caymaris

Labour lawyer and defence lawyer. After the military coup d'état (June 1973) he was held in administrative detention for some weeks. He is now in exile.

José Bertralmio

Defence lawyer. He agreed to leave the country because of the imminence of his arrest.

Saul Cogan

A labour lawyer, legal adviser to trade unions, also a defence lawyer. After some days in detention he left the country in 1975. He was also deprived of his citizenship (despite the fact that he had been a citizen of Uruguay since the mid-1930's).

Lawyers who have been held in prison and who have remained in Uruguay

Juan Carlos Orticochea

Defence lawyer. Arrested on May 1972 by the Army he was released in August 1972.

Alberto Ramon Real

A distinguished lawyer, Professor of constitutional law at the Faculty of Law, former Dean of the Faculty. Arrested in November 1973 when the amry took control of the University - along with Dell-Acqua and other University authorities. He was released without trial in December 1973. He was again arrested in 1974 and released a few days later.

Raul Gadea

A political leader of the Broad Front of the Department of "Treinta y Tres". Arrested with his wife in 1972. Both were charged and tried by military justice. He was released in 1976 after serving his sentence and a further period of administrative detention.

Sofildo Lavecchia

Defence lawyer and legal adviser to a trade union in the Department of Salto. Arrested in 1972, he was tried and provisionally released in 1974.

José V. Mato and
Oscar Leon Duter

Both ddfence lawyers. They were arrested and tried in 1973 and finally released in 1975.

Guillermo Medina

Arrested in 1976.

Elbio Moreira Piegas

Lawyer of the State Administration of Electric Energy, he was arrested in May 1972, tortured by the army and tried before a military court. He was released in 1976 after serving his sentence.

Juan Carlos Perez Ortega

Arrested in 1973. Imprisoned in the Penal de Libertad.

Luis Santini

Arrested in 1972 and tried before a military court, he was provisionally released in 1973.

Caton Stefanoli

Arrested in 1972, tried before a military court. He was also provisionally released in 1973.

Omar Torres Collazo

Defence lawyer. Arrested on November 1977, tortured and subsequently released without trial. On December 29, 1977, he was rearrested while acting on behalf of a client - a political prisoner - in a military tribunal. He was charged and provisionally released in the first quarter of 1978.

Carlos Gallardo

Lawyer; leader of the moderate left. Arrested in March 1975 for having made a donation towards the organisation of a holiday camp for members of the Union de Juventudes Comunistas. Charged with subversive association. He has been provisionally released.

Judges and functionnaries of the courts

Hêctor Amilivia

Civilian judge of instruction (examining magistrate) from 1970 to 1972, and trial judge (Juez Letrado de Primera Instancia en lo Penal) from 1972 to the end of 1976.

In both posts he presided over political cases. He judged a complaint before the Court of Justice, accusing the Executive (President of the Republic) of failing to respect an order of his court to release a political prisoner. This incident marked a confrontation between the Judiciary and the Executive. As it was inevitable that he would be dismissed, he went into exile at the end of 1976.

Forni

Former judge in the Department of Rocha. He ordered in 1974 a post-mortem examination of the body of a young student who had died in a military barracks. The examining doctors reported that he had been subjected to torture and ill-treatment. The case was transferred to a military judge and it thereupon lapsed. Judge Forni was dismissed by the Executive in July 1977.after they approved Institutional Act. No. 8 (see p. 7).

Aymée Bonnecarrere

Lawyer, Secretary in a civilian court. She managed to avoid arrest and left the country. She is in Spain.

Hilda Pierulvio

Lawyer, Secretary in a civilian court. She was arrested for political motives in December 1975 and charged. She has probably been released.

Note: Lawyers' organisations or individuals who wish to make representations to the Uruguayan authorities about matters referred to in this report, may consider writing to one or more of the followin :

(1) Junta de Commandantes en Jefe de las Tres Armas
Ave. 8 de Octubre 2626
Montevideo, Uruguay

(2) Dr Fernando Bayardo Bengoa
Ministro de Justicia
Ministerio de Justicia
Montevideo, Uruguay

(3) The Ambassador of Uruguay to their own country.

(4) The Minister of Foreign Affairs of their own country.

ARGENTINA

Since the publication of the CIJL report on Argentina the following cases covering Argentinian lawyers have been reported to the Centre:

Alberto Jorge Vendrell

Dr Vendrell was previously arrested in 1974 for taking part in a demonstration for the release of political prisoners, even though he subsequently released.

In August 1974 the Federal police, who were given orders to arrest his brother, visited his home while his brother was out and proceeded to assault him and threatened to kill him. He was then forced to sign a document stating that he had not been maltreated by the police.

It has now been reported that he disappeared on 19 May 1978.

Jorge Roberto Candeloro

Dr Candeloro was for many years legal counsel for several workers' unions but was not involved in any anti-government political movement. He was abducted, together with his wife, on 11 June 1977 in the city of Neuquén. She was released in November 1977 but Dr Candeloro is still in detention, his whereabouts unknown.

His wife reports that during her detention she was severely tortured as evidenced by the marks and burns on her body. She complained that she was given electric shock treatment to her genitals and other parts of her body, sexually assaulted, kicked and punched, and chained to a wall as a result of which she lost several teeth and suffered from a broken nose and ribs. She was released only after she was forced to sign papers stating that she was well-treated during her imprisonment.

The CIJL is concerned that Dr Candelero has suffered similar treatment and fears for his safety. It is understood that he has not been charged with any offence.

Antonio Bautista Bettini

Dr Bettini is a 60 year old lawyer and former member of the Judiciary for 30 years. At the time of his arrest he was a professor of the National University of La Plata, the National University of Buenos Aires, the Catholic University of La Plata and the Catholic University of Buenos Aires. He attended many international congresses and conferences but was not politically active.

He was abducted on March 12, 1977 while leaving a federal police station with his son-in-law. Dr Bettini's wife left the country for fear of persecution.

Juan Carlos Deghi

He is well-known as a cooperative leader and a union adviser. He was kidnapped on April 1, 1976 and held in a naval vessel. From there he was detained in a prison in Sierra Chica and finally he was sent to a prison in the City of La Plata. He was freed on March 21, 1978 only to be assaulted and then shot and killed in the presence of his wife by persons in military uniform.

Note: Any lawyers' organisation or individual lawyers who wish to make representations to the Argentine authorities about one or all of these cases may consider writing to one of more of the following:

(1) Excelentísimo Señor
Teniente General Videla
Presidente de la Nacion
Buenos Aires, Argentina

(2) Excmo. Almirante
Oscar Antonio Montes
Ministro de Relaciones
Exteriores y Culto
Arenales No. 761
Buenos Aires, Argentina

(3) Excmo. General Julio Gomez
Ministro de Justicia
Buenos Aires, Argentina

(4) The Argentine Ambassador
to your country

Alternatively you may wish to send an expression of concern and support to the

Federación Argentina de Colegios de Abogados
Av. de Mayo 65 , 2 piso.
Buenos Aires,Argentina

SYRIA

Nazir Shams ad-Din Mustapha

Nazir Shams ad-Din Mustapha, a 32-year old lawyer from Qamishli near the Turkish border, was one of eight members of the Kurdish Democratic Party (KDP) in Syria who were arrested in 1973 for sending a memorandum to Syrian President Hafez Assad in protest against the deportation of some 12,000 Kurds from their hoemlands under the Arab Belt Plan. This plan aimed at the replacement of the population of the three Kurdish areas with Arabs. None of the detainees have as yet been charged or tried.

His present place of detention is believed to be Muslimiyya Prison, Aleppo, but the prisoners have been transferred several times from other prisons including Tel Hassan (Damascus), and Qalaa (Damascus).

Mahmud Baidun

Mahmud Baidun is 43, married with children. He is a lawyer by profession and has Lebanese nationality. He was an active supporter of the Syrian Baath Party under Saleh Jadid 1966-1970. During this regime a group of Lebanese Baathists including Baidun were given funds for the Baathist newspaper 'al Raya'.

After President Assad took power in November 1970 the money was spent on anti-government propaganda. The Assad Government asked for the money to be returned and when he, as a signatory on the bank account, refused, he was kidnapped from Lebanon (in mid-1971). He has not been charged or brought to trial.

Zouheir Al Shulak

Zouheir Al Shulak, born in Damascus in 1919, is married with 9 children. He was a lawyer and businessman and was kidnapped from Beirut in April 1970 during the regime of Saleh Jadid, tried on the charge of opposition to the government and sentenced to 5 years. He is imprisoned in al-Mezze - alleged to have been tortured. He holds right-wign political views and was politically active in opposition to Syrian union with Egypt in 1958-1961. He was a supporter of the government under Dr Nazem Al Qudsi 1961-1962. He was imprisoned for 4/5 months in late 1962-63 and on release went to Beirut taking Lebanese (as well as Syrian) nationality. He practised as a lawyer and engaged in business with Saudi Arabia, building a factory for the Saudis. He also wrote political articles for Lebanese newspapers including Al Hayat, criticising the Baathist regimes in power in Syria since 1963. The real reason for his arrest was his political writing but he at no time advocated the use of violence. As in Syrian law 9 months in prison counts for a year of the sentence, Zouheir should have been released - however in May 1975 a new order was passed for his continued detention.

Ramadan Hajulah

Born in Aleppo. He went to live in Iraq in 1968 as a secretary in a lawyers office until 1971-72 when he moved his residence to Lebanon. He was kidnapped from Beirut by Syrian security forced in April/May 1975 and is being held in al-Mezze prison without having been charged or tried. This case is being investigated since so little is known - however it is probable that he was arrested on suspicion of Iraqi-inspired subversion. This is indicated by the fact that he lived in Iraq for 4/5 years, and that he was arrested with other Iraqi sympathisers.

THE PEOPLE'S DEMOCRATIC REPUBLIC OF YEMEN

Tawfig 'Az'Azi

Tawfiq 'Az'Azi, aged 38, was born in the People's Democratic Republic of Yemen. He became a lawyer in 1966 after studying in the UK. On his return to PDRY he became chief magistrate at the Supreme Court. In 1970 he went to the Yemen Arab Republic but subsequently returned to resume his former position in the PDRY. He was last seen at the Rex Bar, Tawahi, Aden on 31 March 1972 by some friends. It is believed that his disappearance is related to his refusal to convict certain political detainees. He claimed they had committed no offence under the penal code and ordered their release. His family made repeated personal appeals to the president and the ministers of the interior and security for information about him. In 1972 they were told that his body had been found in a river. His father was asked to identify him. The head had been severed from the body, but

it was not that of Tawfiq 'Az'Azi. In May'June 1976 Amnesty International sent 2 delegates to North and South Yemen, where they were able to make enquiries about Mr 'AzAzi. The director of prisons and the permanent secretary to the Minister of the interior maintained that he had been released on 22 August 1974 and was currently working in the Gulf. With additional information which they were able to check, the delegates found that this information did not apply to Mr 'Az'Azi but rather to another person sharing his first name. Further requests for information concerning him have met with no response from the PDRY government.

N O T E S

RESOLUTIONS IN SUPPORT OF PERSECUTED LAWYERS

Prompt action by lawyers' organisations in support of persecuted colleagues in other countries can be effective in bringing pressure on the government concerned to restore to the lawyer or judge his basic rights.

Various lawyers organisations have already established, and in some cases implemented, procedures for coming to the aid of colleagues who are persecuted as a result of their carrying out their professional duties. Among these are the English Law Society, the Australian Law Council, the Norwegian Bar Association, the New Zealand Law Society, the Bar Association of Sri Lanka, the American Bar Association and the Law Society of Kenya.

The resolution passed by the American Bar reads as follows:-

"Be it Resolved, that the American Bar Association affirms its support for the Rule of Law in the international community and its recognition of the need for an independent judiciary and for the independence of lawyers;

"Be it Further Resolved, that the Association notes with concern the reported arrest and detention or sentencing of lawyers in an increasing number of foreign countries because of their representation of individual clients;

"Be it Further Resolved, that the American Bar Association hereby authorizes the President of the Association, or his designee, to urge the Government of the United States, where appropriate, to bring to the attention of foreign governments the concern expressed by this Association in these resolutions."

Recently the American Bar Association and the New York Bar Association supported the sending of a mission to Uruguay (refer to the report on Uruguay on p.8) to enquire into the detention of four prominent defence lawyers in that country. Their mission comprised Mr W. Butler, Chairman of the Executive Committee of the International Commission of Jurists and Mr Luis Requé, former Secretary general of the Inter-American Commission on Human Rights. The lawyers were released between the time of notification of the mission and its arrival.

Four other organisations, the International Bar Association, the Union internationale des Avocats and the Association internationale des jeunes avocats acting together and the Dutch Bar Association have formulated detailed rules regulating their activities in this field.

Su maries of these rules are set out below as suggested guidelines for those judges' and lawyers' organisations who contemplate taking action themselves.

Netherlands

The Dutch Bar Association's Resolution to Take Action in Support of Persecuted Lawyers in other Countries

The Dutch Bar Association (Orde van Advocaten) established, in October 1975, a commission to ascertain the manner in which and the extent to which bar associations could take action in support of persecuted colleagues in other countries. The Executive Council (College van Afgavaardigden) accepted the following recommendations of the Commission, with minor amendments, as guidelines for future action.

A. Appropriate cases

The Commission felt that it is impossible to indicate in advance which factors should be taken into consideration in deciding whether or not a case should be taken up by the bar association. However it considered that the following factors were relevant:

(i) The seriousness of the reported violation;

(ii) the geographical and historical ties with the country or bar association concerned;

(iii) whether or not the request for help came from the lawyer concerned or his bar association (except where the bar association is considered to be in any way linked to the government concerned).

B. Adequacy of Information

The Commission recognised that the bar association should, normally, only take action in cases where it is in receipt of reliable and detailed information. However it observed that it is often difficult to obtain such information where the country involved is subject to strict government censorship. It recommended, therefore, that the bar association should not adhere to hard and fast rules concerning the adequacy of information but should, at least, endeavour to obtain information from, and have it verified by, separate and reliable sources, such as affiliated organisations (local bar associations), Dutch embassies and international organisations such as Amnesty International and the International Commission of Jurists.

C. Procedure

(i) The executive council is the most appropriate organ to assess and take action on cases referred to the bar association.

(ii) One or two members of the council should be assigned to a particular case, whose task it would be to collect further information, if possible, and then to advise the council whether or not to take action on the case.

(iii) In view of the mandatory membership of the bar, the Commission considered the question whether a proposed action should be pursued in spite of opposition by certain members of the executive council.

The Commission considered that a single member should not be able to veto a decision to take action supported by all other members.

Where more than one member votes against taking action in a particular case the executive council should reserve the right to determine whether the proposed action reflects the wishes of the other members of the bar association.

International Bar Association, Union Internationale des Avocats, Association Internationale des Jeunes Avocats (AIJA): Emergency Committee to Assist Persecuted Lawyers in Other Countries

Three international lawyers' organisations, the International Bar Association (IBA), Union internationale des Avocats (UIA) and the Association internationale des jeunes Avocats, met on 22 April 1977 to plan joint action to protect colleagues throughout the world who are subject to persecution in the practice of their profession.

This move was made after the organisations had taken independent action in the case of the Yugoslov lawyer Srdja Popovic who was charged and convicted for having, in his address to the court, while defending a political prisoner, spread false information with intent to injure the general public. The basis of the charge was that he had agreed with the views of his client.

The IBA and the UIA made representations to the Yugoslav government and the AIJA sent an observer to the trial.

The following proposals were put forward:

A. Information

An information bank which would collect and verify information with great stress being laid on the importance of ensuring that any information was accurate.

B. Types of Action

Once the information had been verified and it had been agreed that the right of the lawyer to defend his client free from interference was imperilled, there were various ways in which action could be taken.

First a process could be made by way of a press release, a press conference or a letter to the offending organisation or government.

Secondly where this was not considered sufficient the organisation could send an observer or representation - and the AIJA had found this to be usually very effective in their experience, in Jugoslavia, Morocco and elsewhere. A representative on the spot attending the court hearing or going to the Bar Council of Minister concerned had a great effect.

C. Procedure

It was therefore proposed that an emergency committee consisting of one representative of each organisation with an alternate from each should be set up to consider any cases referred to it as a matter of urgency (communicating by telephone or telex), each representative referring the matter to the governing body of his organisation for approval.

Any activity must be totally independent both politically and ideologically, and for this reason it was desirable that any observer or representative sent to any country should be independent of any other organisation and representing only the three organisations concerned. The organisations would each retain their own independence, and any representation would be signed separately in the names of the IBA, the UIA and the AIJA, and not on behalf of the emergency committee.

Suggestions were made for the setting up of a fund with contributions from each of the three organisations for meeting the expenses of the observers, and this and other matters were to be referred back to the governing bodies of the organisations.

However, insistence on political independence for the three organisations did not mean that no action could be taken where the infringement of the liberty of the lawyer was a political matter - otherwise no action could ever be taken. Provided that the three organisations preserved their total independence, and action was taken equally in all regions of the world, they would attract some credit and efficacity.

Note:

National legal organisations should not be deterred from taking action where action has already been taken by international organisations. The accumulative effect of several interventions is much greater than that of solitary interventions.

Declaration by the Brazilian Bar Association to Restore the Rule of Law in Brazil

Brazilian lawyers have issued an important declaration calling on the military government in their country to restore the rule of law and fundamental liberties.

The declaration, supported by 3,000 lawyers, was published at the 7th National Conference of the Brazilian bar Association (Ordem dos Advogados do Brazil) held in the City of Curitiba on 12 May 1978. Almost all practising lawyers in Brazil are members of this organisation.

This is not the first time that Brazilian lawyers have called for a return to democratic rule in Brazil but the declaration goes much further in articulating the demands of many Brazilians for the restoration of their basic rights.

The declarants maintain that to achieve national harmony and peace, and the restoration of democracy there must be a renewed respect for human rights.

To achieve this they urge the legalization of political parties, the restoration of the right to freedom of speech, including the right to freely criticize the government and governmental institutions, the right to be free from arbitrary arrest, and the restoration of collective bargaining.

The declarants affirm that respect for these values can only be maintained while the three arms of government, the executive, the judiciary and the legislature function independently of each other. In particular there must be legal guarantees for the independence of a judiciary free to administer justice without executive interference. Moreover, under the rule of law the preservation of national security is essential for the protection of fundamental freedoms. The suppression of human rights made under the pretext of national security is, therefore, untenable.

Finally the declarants urge that to achieve lasting peace in their country a general amnesty be granted to all political prisoners.

Resolution by Iranian Judges and Lawyers for the Restoration of the Rule of Law in Iran

Iranian judges and lawyers have become increasingly outspoken in their condemnation of the repressive system of government in Iran in recent years, particularly with respect to the gradual undermining of the integrity of the civilian judiciary by the establishment of military tribunals which try most of the important military and criminal cases formerly tried in civilian courts.

Newly formed lawyers' groups, such as the Association of Jurists, rest their arguments on the 1906 Constitution of Iran which guarantees fundamental freedoms and enshrines the principle of the separation of the three organs of government.

Last year a group of Iranian Judges and Lawyers signed open letters urging the Iranian government:

- to reestablish the independence of the judiciary by abolishing the special tribunals;
- to contain the executive power within the limits set down by the Constitution and to restore the independence of the legislature.

Those who signed the lawyers' manifesto were subsequently penalized by receiving no further work from governmental and paragovernmental offices.

The Iranian government rejected representations made in support of these lawyers by the International Commission of Jurists commenting that: "The government and its agencies have full powers for appointing as well as changing their legal counsel and therefore may change their legal counsel as required".

The full text of the letter sent to the Chief Justice of Iran by 54 Tehran Judges and the Lawyers manifesto signed by 104 advocates of the Supreme Court of Iran are as follows:-

"Open letter from the judges of Tehran...

Tehran, 23 Shahrivar 1356 (14 September 1977)

To the Chief Justice of the Iranian High Court.

Since the High Court is the most important Court of Cassation in the country, this letter is addressed to you as the effectual head of the Judicial Power.

More than 71 years have passed since the victory of the Constitutional Revolution which had as its first objective the establishment of what was then called a 'house of justice' (adalatkhaneh). During these long years, the Judicial Power has shown on numerous occasions that whenever possible it has now been slow to fight against wrongdoers or violators of the nation's laws, and that it has been aware of its national mission. A glance at

articles 71 to 89 of the Supplementary Clauses of the Constitution, which indicates the powers of the Courts of Justice, makes clear this point: with reference to Article 28 of these Clauses, the purpose of those who drafted the Constitution was to safeguard the real independence of the Judicial Power.

Unfortunately, in the course of time, it has been the practice that the Executive Power, without regard to Article 28, has stopped at nothing in weakening the Judicial Power. The first step was to draw up a law 'for the principles of establishing the Ministry of Justice', through which the Executive's interference with the Judiciary was effected, despite the spirit of the Constitution. Gradually, the Executive diminished the Judiciary's authority by new legislation and by setting up special tribunals so that at the moment the power of the Courts, which according to the text of the Constitution ought to be the general Court of Cassation for injustices, has been reduced to such an extent that it is less than the collective competence of the special tribunals.

The last step of this kind was the dissolution of the district courts and increasing the authority of the Councils for Arbitration. The pretext was to prevent an accumulation of work in the Courts and to entrust the investigation of unimportant matters - which had no need of legal expertise - to local 'leading citizens' according to the wishes of the Minister of Justice. But, at the same time, a permanent adviser should be appointed to the Council for Arbitration from among the judges or lawyers. In other words, for matters which it is claimed have no need of legal expertise, a legal adviser is appointed by the Ministry of Justice. That is simply having it both ways; it clearly indicates that the plan to weaken the Judiciary continues as before.

Despite the public-spirited advice of judges, lawyers and other jurists, the Minister of Justice hastily embarked on the preparation of so-called 'reform' bills which the two assemblies (the Senate and the National Assembly) ratified with unusual speed. Now that these bills are being implemented in law, the views of the jurists have been proved correct, for the first effects have been, for example, to prolong the time before justice is obtained and simply to bewilder people.

Another move to weaken the Judiciary was the establishment of the Faculty of the Ministry of Justice. Its duty is to train judges for the Ministry. If these judges, who are trained at the Ministry's expense, under its administrative regulations, and contracted to serve it, wish to leave its service, their certificate of training will have no value, despite the Minister's wishes.

These will be the independent judges of tomorrow; in giving judgement they must stand against the Executive or somebody's exercise of undue influence; they must speak and write only the truth, and not fear for their livelihood. Yes, these are the judges for the years ahead; not only is their promotion (like that of the judges of today) linked to the wishes and whims of the Minister and his followers, but if they wish to leave the legal profession, their knowledge and expertise will become worthless, despite the Minister's wishes. Even now it can be quite clearly predicted what traits our future colleagues will have and how they will become obedient employees of the Ministry.

Those who founded this Faculty do not explain why so much as a third of those hundreds who have graduated in Law at home or abroad are not prepared to serve the Ministry of Justice, nor why those who do so leave, nor why those who stay are dissatisfied, nor, more essentially, why this important matter has not been entrusted to the universities, whose basic duty is to train cadres of specialists.

Therefore, insofar as those who have signed below have sworn to protect the basic rights of the nation; insofar as the Judiciaty can at any time carry out its great duty, which is the protection of individual and general rights (for, according to the Constitution, the Executive must be restrained from interference in judicial matters); insofar as the protection of individual and general rights is guaranteed by respect for and independence of the Judiciary, we request you to take the necessary steps to fulfil the following objectives with a view to reviving the Judicial Power in a manner that was intended in the Constitution:

1. Give back to the Judicial Power its proper authority by dissolving the special tribunals.

2. Reform the law 'for the principles of establishing the Ministry of Justice' and limit the powers of the Minister of Justice as far as possible, and transfer them to the High Court in accordance with the principle of the separation of powers and the spirit of the Constitution.

3. Safeguard the independence of the judges of the Courts and the Public Prosecutor's Office, and establish criteria for changing or promoting judges under the supervision of the High Court.

4. Create conditions under which the judicial Power can protect and preserve the freedoms contained in the Constitution and the Universal Declaration of Human Rights, as befits a free and independent nation.

(54 signatures)"

"The Lawyers' Manifesto

From the advocates of the Supreme Court of Iran

Tehran, 20 Tir Mah 1356 (11 July 1977)

Two months ago, a meeting convened by a number of lawyers committed to the preservation of our Constitution and the protection of the public interest, addressed a telegram to the National Consultative Assembly protesting against the hurried ratification of bills introduced by the Ministry of Justice that would result in undesirable changes in legal procedure. The telegram stressed that opposing views should be heard.

We expected that the Assembly would, in conformity with Article Thirty-Two of the Constitution, pay attention to the comments of legal specialists and that the legislation would be revised in accordance with the interests and needs of society. However, the total disregard both of the text of the

telegram and of other protests from those involved in legal and social affairs as well as the hasty promulgation of the bills in question, demonstrates that the process of legislation in Iran continues to be conducted in a manner contrary to the spirit of the Constitution, namely in unquestioning submission to the Executive Power.

It is the anticipation of the serious and undesirable consequences that will befall the people with the implementation of these measures, our realisation of the necessity for a continuous review of the legislative system in Iran and to maintain the inviolability of the Constitution which is the declaration of our people's victory over despotism and self-interest, that has led us, the lawyers, as guardians of the fundamental rights of the people, to face up to our responsibilities. We must think more, we must not shrink from the struggle, and we must accept that the crucial and fundamental role of the legal community is to safeguard the interests and welfare of the nation, to protect the rights of the people and to ensure the full, proper, indivisible implementation of the Constitution and its Supplementary Clauses.

Lawyers throughout the world perform the greatest role in protecting human rights, by carrying out the Law. In fulfilling this sacred mission, they do not rest content with the defence of individual rights in the face of injustice and despotism; they never forget their basic duty for restoring laws, individual rights and social freedoms, and for the unremitting and unrelenting struggle against every kind of action and interference contrary to Justice, Law and freedom.

We, the signatories of this Manifesto, in these crucial days in the history of Iran and at a time when the superiority and domination of the Executive over the Legislative and Judicial powers is continually increasing, appeal to Iranian jurists, aware of the pioneering and progressive role that they have in free societies, to co-operate and combine for the attainment of the following aims and for persistence in carrying them out:

1. The independence and prestige of the Judicial Power is an objective necessity for social advance towards freedom. Without this independence and prestige, freedom and Human Rights would always be subject to violation at the hands fo the secret or public agents of the Executive Power. In recent years the independence and prestige of the Judicial Power have suffered many blows. Everyone, and in the forefront, jurists and lawyers, have the duty to struggle for the revival and restoration of the independence and prestige of the Law, and more particularly, they must persist in demanding the dissolution of the special tribunals.

2. The Executive Power must contain its actions and powers within the limits set down by the Constitution and hold itself responsible and answerable to the Legislative and Judicial Powers.

3. The Legislative Power, through really open elections, free from fear and intimidation, must be released from the clutches of the Executive Power and, once more, regain its own proper role as a source of national deliberation and counsel.

4. The Rights and Liberties of the Iranian people, particularly those of expression, of the written word and association, must be truly respected.

(64 signatures)"

The African Bar Association - "Freetown Declaration"

The CIJL welcomes a declaration ("Freetown Declaration") of the African Bar Association which endorses the rule of law and independence of the Judiciary. The Declaration emerged from a legal conference organised by the Association in August 1978.

The Declaration asserted, inter alia, that "any law which purports or seeks to oust the jurisdiction of the courts of any matter is a derogation from the concept of fundamental human rights and is to that extent obnoxious".

The participants also condemned military rule, expressing their support for constitutional government, and the enactment of retroactive laws which are both prevelant in many African countries.

The Declaration affirmed the right to freedom of speech and expression, freedom from arbitrary arrest, freedom from inhuman treatment, freedom from discrimination on account of religion, sex or ethnic origin, and freedom of assembly, movement and association.

COMMENTARY

Military Justice in Iran and the 1977 Penal Reforms

The Constitution of Iran separates the powers of government between the Executive, Legislature and the Judiciary. In particular Article 27(2) of the supplement to the Constitution establishes "the Judicial Power" which "is reserved to the civilian courts in secular matters". Articles 71 to 89 set out the judicial powers in a manner which establishes the independence of the civilian courts.

However, since the promulgation of the Constitution in 1907, legislation has been passed which has severely weakened the authority of the civilian courts by transferring all political cases together with many of the more serious criminal cases to the military tribunals[1/] which also have jurisdiction over offences committed by members of the armed forces. Many of the more serious offences committed by civilians, which fall within the jurisdiction of military tribunals attract the death sentence or life imprisonment.[2/] Included are all political offences, crimes against the person, drug offences and sabotage of public services.

The system of military justice has come under increasing international and local criticism, to which the Iranian government has indicated its sensitiveness by introducing a number of amendments to the code of military procedure in August 1977. The following account assesses the extent to which the reforms have improved the system of military justice in Iran and in particular, the extent to which they have strengthened the independence of its judicial process.

I. Pre-trial Procedure

Article 164 was amended to read as follows:

> "The accused shall be questioned within 24 hours after he is brought before the examining magistrate who shall thereupon issue an appropriate warrant be it a warrant for the release of the accused on bail or for his imprisonment. The amount of bail must be commensurate with the importance of the crime, the elimination of incriminating evidence, the record of the accused, his age, health and social status".
>
> Note 1: "Setting of inappropriate bail is an offence which shall subject the magistrate to disciplinary action."

1/ The Iranian Government recently announced that civilians prisoners would in future generally be charged with offences triable before the civilian courts.

2/ A drug offender is liable to the death penalty if found guilty of possession of more than one kilogram of hashish or one gramme of hard drug.

The effect of this amendment is difficult to assess, especially as the 24 hour period referred to begins to run only when the accused is 'brought before the examining magistrate' and not at the time of arrest. This leaves completely at large the period of time within which a subject may be held by the security police organisation, the SAVAK.

Thousands of political suspects have been held for varying periods while under interrogation and investigation by the SAVAK. Many of them have been subjected to brutal torture. A show of legality has been given to this practice by a provision in the Establishment of Security Organisation Act of 1957 which said that officers of the SAVAK should "be considered as military magistrates and ... enjoy all powers extended to military magistrates and assume the responsibilities of such office". In practice it does not seem that officers of the SAVAK ever acted as military magistrates in the sense of carrying out a judicial investigation. They acted as what they are, a police and intelligence service. The only effect of the 1957 Act was to give a cloak of legality to the prolonged detention of suspects in police custody.

The new amendment to Article 164 leaves this position, from the legal point of view, unchanged. Experience throughout the world under all forms of government has shown that where security forces are able to hold suspects for indefinite periods without supervision, and are under pressure to produce quick results, it is almost inevitable that they will resort to methods of torture and ill-treatment to extract information or confessions. It is for this reason that most codes provide that the police must bring suspects before a judge within 24 or 48 hours of arrest.

It is also regrettable that, pursuant to the note to Art. 164, the magistrate is liable to disciplinary action if he sets an "inappropriate bail", a measure which curtails the independence of the magistrature while increasing the ability of the Executive to influence the Judiciary.

The International Commission of Jurists, with respect to this amendment, advised the Iranian government that "the most urgently needed reform is to separate the functions of the Executive and the Judiciary by:

(a) repealing the provisions of the Security Organisation Act of 1957 which grants to officers of the SAVAK the power to act as examining magistrates, and
(b) providing that all arrested persons
    i. are brought within 48 hours before an independent and professionally qualified examining magistrate rather than the prosecutor (as provided in Art. 164 of the military court rules of procedure) or an unqualified Justice of the Peace,
    ii. are thereafter under the control of the examining magistrate in the presence of defence counsel, and
    iii. if still detained, are transferred immediately to ordinary prison custody.

In reply the Iranian government commented that "SAVAK officials are considered as military law enforcement officers and not magistrates. Thus, under the Iranian laws the role of SAVAK in prosecution of cases within its

jurisdiction may be compared to that of the police in other criminal cases. In this respect, SAVAK officials are bound to either release the accused within 24 hours of arrest or to present the accused before the military investigating magistrate for preliminary investigation or, as required, issuing warrants; acting otherwise they will be liable to a charge of illegal detention. Even after the opening of investigation, the procedure has to be followed and supervised by the military magistrate and the prosecution officer and not a justice of the peace who has no jurisdiction over such crimes. Regarding the legal position of the examining magistrate, it should be noted that under Art. 157 of the Military Penal and Procedure Code, the magistrate, as an investigating judge is impartial and therefore, should not discriminate in finding evidence and circumstances for or against the defendant. Regarding the presence of defence counsels during the preliminary investigations by the examining magistrate, it is to be noted that in accordance with a bill being prepared, the ICJ's recommendations are, in so far as possible, to be taken into consideration".

In light of these assurances there seems to be no reason why the provisions of the 1957 security Organisations Act, vesting in SAVAK officers the power to act as examining magistrates, should be retained. It is hoped that amendments will be made to both the Security Organisation Act and the Code of Military Procedure which fully reflect these assurances.

A further anomoly in pre-trial procedures is that where the prosecutor and the examining magistrate disagree on any aspect of the examination the dispute can be referred for resolution to the military tribunal designated to consider the substance of the case.[3/] This appears to be a most undesirable provision. As it means that the tribunal could be called upon to assess the merits of the case before it comes to trial, the impartiality of the tribunal is placed in doubt.

II. Defence Rights

Articles 182 and 184 of the Military Code were amended to read as follows:

Art. 182:

The accused can appoint one or two active or retired military officers as his defence lawyers. If the accused is a civilian, he may name as his defence attorney a lawyer recognised by the judiciary. The regulations for implementing this clause shall be approved by the Ministry of War and the Ministry of Justice.

Defence lawyers in military courts shall be entirely free, within the relevant regulations, to speak to the charges (against their client). They cannot be prosecuted in this regard. If charges are brought against a defence lawyer arising from his appearance in a military court, the case shall be heard in a military court if the lawyer is a military man and in the relevant (civilian) court if the lawyer is civilian.

3/ Article 175 of the Code of Military Procedure.

Article 184:
After the appointment of a defence lawyer, if the accused or his attorney or both request time to consult the dossier, the presiding judge can, with due regard to the time available, permit up to 15 days, during which time the accused and his lawyer can examine the dossier at the court office.

If the accused or his lawyer have objections regarding the authority of the court, or the statute of limitations, or if they regard the investigations carried out deficient, they must submit their objections to the court office during this period.

Until Article 182 was amended only military officers were permitted to plead before military tribunals, many of whom were retired officers. Very few of them had any legal training. The amendment is, therefore, welcome and it is regrettable that subsequent regulations issued by the Iranian government lessened its effectiveness. The regulations provided that advocates chosen by a civilian defendant being tried by a military tribunal had to obtain an authorisation to plead from a military commission instead of the order of advocates. This was a serious limitation on the independence of the profession and conflicts with the note to Article 182. Moreover any advocate who accepted such a brief had to give an undertaking to plead free of charge in two other cases. The CIJL supports schemes whereby advocates give their services free or at a reduced fee to needy persons under legal aid schemes. However, such schemes should be administered without discrimination.

A further restriction was that there could be no more than 10 defence advocates in one case (5 civilian and 5 military) however many accused there might be. In some trials there have been over 30 defendants. In such cases the above requirement is a serious restriction on the defence rights of the defendants.

With respect to the requirement that advocates chosen by a civilian defendant have to obtain an authorisation plead from a military commission, the Iranian government advised the ICJ that it was not aware that advocates who defend cases before military tribunals were under an obligation to give an undertaking to plead free of charge in two other cases. It was stated that if this was so, it was not the intention of the government and any such condition would be removed forthwith. The ICJ was later informed that "arrangements will be made in such a way that by amending the regulations, the lawyers wishing to defend cases before military tribunals could do so by only declaring their readiness to the authorities concerned."

It was also agreed that the provision restricting the number of defence advocates in any one case should be removed "so long as it is understood that each defendant can only have one lawyer".

The defence was formerly allowed only five days in which to consult the prosecution file and in this respect the amendment to article 184, extending the time limit to 15 days, is an improvement. However, the situation is still not satisfactory as this is the maximum period within which the defence can ascertain the nature of the prosecution case and prepare its defence and the judge has a discretion to shorten this period if time does not permit. Moreover, the defence is not given its own copy of the prosecution trial

dossier, but must study it at the offices of the court.

Neither are defence counsel able to meet freely with their clients and usually can only see them for a brief period shortly before the commencement of the trial.

III. Trial Procedure

Until recently political trials were almost invariably held in camera. Article 192 of the code has now been amended to read as follows:

Article 192:

> Sessions of the military courts shall always be public. However, if the prosecutor shall exceptionally feel that a public trial is prejudicial to public order and public interest or to public morals, he may request the court for a secret trial. If the court accepts the prosecutor's request, it shall issue the order for a secret trial. At the end of the trial, the judgement of the court shall be read only to the prosecutor, the accused and the defence lawyer.

This amendment is welcomed. It is hoped that the discretion to order a secret trial will prove to be truly exceptional. With respect to the last sentence of the article, it is submitted that even where a case is held in camera the name of the accused, the charges, the decision of the court and, where applicable, the sentence should always be made public at the end of the trial.

An anomaly in trial procedure which remains unchanged is that the tribunal needs only to rely upon the contents of the prosectuion file to convict without requiring the prosecutor to call witnesses. Clause 189 of the military code of procedure provides that witnesses should be summoned to court at least one hour before the hearing, but that if the court feels their presence is unnecessary it may treat as evidence, any statement which they may have made during the preliminary investigation and which appear on the file.

This provision taken together with the deficiencies that exist in the method employed by the Savak to gather their evidence against the accused and the inadequate judicial supervision over the compilation of the trial dossier means that, in cases where witnesses are not called, and this would seem to be the usual practise[3], nothing is put to proof. Often the courts convict soley on the basis of the defendant's written, signed confession contained in the Savak dossier. Allegations by the defendant that the confession was extracted under torture are dismissed summarily.

3/ Amnesty International, in their 1977 report on Military Tribunals in Iran, commented that It "is not aware of any case where witnesses have been called and where the defence is afforded a chance to cross examine."

IV. Right of Appeal.

A person convicted by a military tribunal has the right of appeal to another military tribunal which can increase as well as reduce the sentence imposed. However, to appeal against a death sentence from the appellate military tribunal to the Court of Cassation, the express consent of the Shah is required. In discussions with a representative of the ICJ, the Iranian government has accepted in principle that there should be an appeal as of right to the Court of Cassation when a sentence of death or imprisonment for life has been made and has indicated that the matter is under consideration.

V. Conclusion

Article 203 of the Code of Military Procedure was amended as follows:

> "The Judges will keep the God, the Shahanshah and justice in mind and subject to provisions of law and with due regard to the character of the defendant will pronounce their verdict in complete liberty and independence."

This assertion of the independence of the judiciary is to be welcomed as it concerns the fundamental problem of trying civilians before military tribunals. Civilian courts presided over by civilian judges are generally better able to bring to bear on a case a more impartial judicial attitude than military judges, who often have had little or no legal training. Moreover, although the 1977 reforms to the code of military procedure together with the subsequent assurances given by the Iranian government to the ICJ will help to strengthen the independence of the military tribunals, it is feared that an accused person tried before a military court will have little chance of receiving a fair trial if the courts continue to place total reliance upon the prosecution file and refuse to hear defence witnesses or allow the defence to challenge prosecution witnesses.

The ICJ has recommended to the Iranian government that all cases against civilians should be tried before civilian courts, but that if it is considered necessary to retain a military jurisdiction over civilians in the more serious cases concerning the security of the state, the jurisdiction should be exercised by a court of state security modelled on the french cour de sûreté de l'état. The Iranian Government has indicated that it will give consideration to this recommendation.

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