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LAW AND JUSTICE FOR POLITICAL PRISONERS IN URUGUAY

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LAW AND JUSTICE

FOR POLITICAL PRISONERS

IN URUGUAY

Introduction

Political events in Uruguay since 1968 and, in particular, since 1973 have led to important changes in the legal system of the country. These changes affect the Uruguayan Constitution of 1967, the theoretical basis and practical implementation of the laws relating to political imprisonment, and the role and functioning of the judiciary. The Uruguayan Constitution and the international human rights instruments to which Uruguay is a party* provide for protection against arbitrary arrest and for basic safeguards for any citizen deprived of his liberty; an arrest can only be made by written judicial warrant if there is prima facie evidence, unless the person was caught in flagrante delicto; the person must be brought promptly before a judge who shall decide whether there is a basis for prosecution or who otherwise shall order the person's release; torture or other cruel, inhuman or degrading treatment is prohibited; the right to habeas corpus is guaranteed; other provisions, including the right to compensation for unlawful detention, punishment of a public servant responsible for abuses of authority against detainees, etc.

Most of the legal provisions affecting human rights are interrelated and interdependent in as far as their proper implementation is concerned. So, for example, safeguards which in theory still exist within recent legislation are made ineffective by the lack of the corresponding machinery to implement them. Legal provisions, even new ones, are generally either flouted in practice or through pseudo-legal interpretation. There is well-documented evidence of malpractice by law enforcement agencies in Uruguay during the 1970's, which violates accepted standards of international law for the protection of human rights. It is also evident that the laws and decrees themselves violate most international instruments and agreements in the field of human rights to which Uruguay is a party, notably the International Covenant of Civil and Political Rights, ratified by Uruguay in 1969. Some laws affect the rights of all citizens of the country, e.g. the rights to participate in political life, while others are more specifically related to imprisonment for political reasons.

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* Uruguay is a party to the following international or regional agreements in the field of human rights: the International Covenant of Civil and Political Rights and its optional Protocol (ratified by Uruguay on 11 July 1969); Freedom of Association and Protection of the Right to Organize Convention (No. 87); the Right to Organize Collective Bargaining Convention (No. 98), both ratified by Uruguay on 18 March 1954; Convention Relating to the Status of Refugees and Protocol, both ratified by Uruguay on 14 October 1969. Uruguay has signed the Universal Declaration of Human Rights (1948) and the American Convention on Human Rights (1969) and voted for the American Declaration of the Rights and Duties of Man (1948). Uruguay is also bound to respect the UN Declaration on the Protection of All Persons from Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1975) and the Standard Minimum Rules for the Treatment of Prisoners (1957).

Medidas Prontas de Seguridad (MPS)

The Uruguayan Constitution vests in the President the power to take "prompt security measures in grave and unforeseen cases of external attack or internal turmoil" (Art. 168:17). This provision to some extent corresponds to the "state of emergency" or "state of siege" in other countries. The President's power is, however, regulated by strict safeguards: the reason for MPS as well as any individual arrest made under this provision must be communicated to the General Assembly within 24 hours and it is up to the General Assembly to decide whether these measures are justified. With regard to individual citizens, this provision only permits their arrest or transfer from one place to another unless they "opt to leave" the country. They may not be detained in places intended for the incarceration of criminals.

From 1968 onwards, the Prompt Security Measures were extensively used by the governments of Jorge Pacheco Areco and Juan Bordaberry to deal with social unrest, in particular the widespread strikes that occurred in the early period.

On three occasions the General Assembly lifted the Prompt Security Measures (MPS) but on the second occasion the Executive reinstated them within two hours. On the last occasion, the Permanent Commission, which acts for the General Assembly during the parliamentary recess, ruled against the MPS and although the Executive did not heed the ruling, the General Assembly failed to act on this question.

Detainees held in administrative detention without trial under MPS were normally taken to the roofed municipal sports stadium in Montevideo, called El Cilindro (The Cylinder). The length of detention ranged from a few weeks to a few months. Although conditions were materially poor and the stadium at times became overcrowded, detainees considered the stadium a more humane and much safer place of detention than others. Maltreatment of this category of detainees was exceptional until 1973-74, when they too began to be maltreated either before they had arrived at El Cilindro, or after removal for a period during their detention there*.

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* The following are examples of such cases:

Ariel Ganz: Student, arrested 14 November 1974, taken to El Cilindro. Removed to Artillery Regiment No. 5 on 15 November 1974 where he was tortured for several days (54 hours plantón, no food, verbal abuse - especially anti-semitic, submarino torture). He was returned to El Cilindro on 13 December and released on 16 December. His parents' request for habeas corpus was not acted upon.

Alcides Lanza: Trade union leader, aged 45. Arrested on 15 November 1974, tortured at the Second Department of Police and then transferred to El Cilindro on 17 November. He was unable to walk. The police doctor diagnosed him to be in a state of complete trauma and in need of medical attention. A detained doctor and professor of medicine made a detailed diagnosis of the injuries to his head, chest, abdomen and limbs.

The prolonged use of emergency legislation over many years has created two parallel systems of political detention, one under civilian (later military) justice and one under the Executive. While abuses, such as maltreatment and failure to act on habeas corpus, did occur during the period 1968-73 and the General Assembly did not always make full use of its power of control over MPS, it was not until after the executive decree of 27 June 1973 ordering the dissolution of the elected legislature that the application of MPS developed into a system of serious violations of human rights. The elected legislature acted as a constitutional safeguard against arbitrary arrest under MPS. Since June 1973 there has been no elected legislature, only a 25-member body, the Council of State, whose members are designated by the Executive. Despite the responsibility of this body to "control the action of the Executive with regard to the respect of the rights of individuals and in compliance with constitutional and legal norms"*, the Council of State has not yet questioned the justification of MPS, nor do its members seem concerned that they are not informed of administrative detentions, either at all, or only a long time after the event.** The other constitutional guarantee for citizens detained under MPS is the option of exile. This has frequently been denied in individual cases.*** At the end of 1974 the option was temporarily suspended de facto without a formal decree.****

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* Decree 464/973 of 27 June 1973.

** The International Commission of Jurists-Amnesty International mission in 1974 was able to see this failure in the case of General Liber Seregni, arrested on 9 July 1973. As trial proceedings had not begun, he applied to go into exile on 5 January 1974. On 11 January trial proceedings began, thus depriving him of the right of exile. On 5 March 1974, the President informed the Council of State that General Seregni had been detained by the General Command of the Armed Forces under Article 168 (17). This was reported in the official journal of 26 March 1974. The President of the Council of State admitted to a mission of jurists in December 1977 that the Council was often not notified for months of such administrative detentions.

*** Apart from the case of General Seregni, that of David Cámpora serves as an illustration. Following the civilian judge's release order in May 1974 he remained in detention under MPS. He then requested permission to go into exile in Germany, as he had a German visa and his wife and children were already living there. Although he had a ticket, he was not released for three years, and then a new lawsuit was brought against him, based on the same charges as an earlier one.

**** This followed the so far unsolved murder of the military attaché at the Uruguayan Embassy in Paris, Colonel Ramón Trabal. A written note attributed the murder to a hitherto unknown group, whose name indicates left-wing orientation. Other observers believe that it may have been a sectarian killing by rival factions of the Armed Forces.

Although the Uruguayan Constitution in no way denies the right of habeas corpus in cases of administrative detention under MPS, the Government's practice is to claim that habeas corpus is not applicable to this category of detainees. Complaints by international human rights bodies regarding illegal and lengthy pre-trial detentions invariably receive the answer that the person was detained "at the disposal of the Executive power under the system of Prompt Security Measures".

While earlier there was a fairly clear distinction between persons detained under MPS and persons detained for interrogation with a view to obtaining a confession or prima facie evidence for prosecution, this distinction has become increasingly hazy in the past few years. The picture which emerges from numerous reports of individual arrests and from the study of the equally numerous complaints made to human rights bodies, including the Uruguayan government's own comments on these complaints, is that the "detention under MPS" is used as a routine explanation for an unconstitutionally long period of pre-trial detention (in conditions which are also unconstitutional) and that this period is used for interrogation of the detainee in order to obtain under duress sufficient information to form the basis for prosecution.* This use of MPS limits even further the right to habeas corpus.

Habeas Corpus

Article 17 of the Uruguayan Constitution provides for the writ of habeas corpus and makes the judge's ruling prevail over the arresting authority.** This legal safeguard is, however, seriously affected by the extended use of administrative detention as an explanation for detaining a person for more than 24 hours prior to bringing him before a judge. The judges then fail to demand that the "body be produced" although the person may be held in incommunicado detention in a place unknown to the family and defence counsel. The judiciary fails to take effective action on the writ of habeas corpus in another respect also. The civilian judge, under whose prerogative habeas

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* The lawyer Gualberto Trelles was arrested on 23 October 1975. According to the Uruguayan Government's reply to the IACHR, he was first detained under MPS and "later placed at the disposal of Military Examining Magistrate No. 1 who decided to indict him under Article 60 of the Military Penal Code". (Inter American Commission on Human Rights)

Medical doctor, Luis Carlos Fierro Berro, was, according to the Uruguayan Government, arrested on 22 October 1975 and interned under MPS. On 22 June 1976, he was placed at the disposal of Military Examining Magistrate No. 1.

** Article 17 of the Uruguayan Constitution: In the event of unlawful detention, the interested party or any other person may apply to the competent judge for a writ of habeas corpus to the end that the detaining authority shall immediately explain and justify the legal grounds for such detention, the decision of the aforementioned judge being final.

corpus remains, declares himself satisfied as long as the person is stated to be under judicial authority, namely the military courts, without taking into account what a precarious safeguard this is in a situation where the judiciary is subject to military hierarchy and where there is no clear separation between the military judicial authorities and the Executive, i.e. the Armed Forces.

Military Justice

I. Legislation

Military jurisdiction over civilians, which runs against the legal tradition in Uruguay, was first introduced by the declaration of a State of Internal War on 15 April 1972.* Other types of emergency legislation had been extensively used since 1968. On 10 July 1972, the General Assembly approved a new "Law of State Security and Internal Order", No. 14,068, which resulted in the lifting of the State of Internal War. Persons arrested between April and July were subject to military courts but were tried under ordinary criminal law. However, those arrested before April remained under ordinary justice. In December 1975, a new law** was decreed which retroactively brought anyone accused of crimes against the security of the state under military justice, whatever the date of the offence, and even though sentence may have already been passed.

The Law of State Security incorporated certain crimes from the Ordinary Penal Code relating to the "association to commit a crime" in various degrees where sentences tend to remain relatively low (a maximum of five years with a possible increase of one third). It also created new crimes against the security of the state, called de lesa nación, which were considered "military" crimes and were therefore tried by military tribunals. The following articles are those most frequently applied to civilians: attack on the Constitution (10-30 years); subversive association (6-18 years)***; assistance to the association (2-8 years)***; assisting members of a subversive association (18 months to 4 years); association usurping public authorities (2-12 years); assistance to association usurping public authorities (20 months to 6 years).

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* The immediate cause of this declaration was the killing of four policemen on 14 April by the MLN-Tupamaros. The policemen were allegedly members of a death squad responsible for the killing of MLN members in February 1972. The following day the police shot dead several MLN members.

** Law 14,493 of 29 December 1975.

*** By Law No. 14,619 of 23 December 1976 the minimum sentence was reduced to 3 years and 24 months respectively.

Another charge from the Military Penal Code which has frequently been used against civilians is based on "crimes which affect the moral strength of the Army and the Navy". The articles refer to "lack of due respect for the flag" or other national symbols; failure to adhere to the republican democratic system; "mere criticism" of the branches of the Armed Forces when such criticism "has the aim of attacking the institution in itself and not to correct its defects".

It would appear that the application of military laws and military tribunals to civilians violates the Uruguayan Constitution (Article 253) which even provides for civilian courts for military personnel when they are accused of common offences.* However, following certain changes in the composition of the Supreme Court of Justice in 1974, it ruled, by three votes to two, that the Law of National Security was not unconstitutional.

In order to appreciate the scope of this new legal situation, it is also important to consider what kind of offences give cause for the charges under military law. A few examples will suffice as illustration. In Uruguay, as in many other countries with a democratic structure of government, the charge of subversive or illicit association used to refer to armed groups operating outside the legal and parliamentary system. Since the banning of 14 political parties and groups in 1973**, members and supporters of these groups are liable to prosecution under this charge (i.e. a clearly ideological offence). While in theory the retroactive nature of this law is not explicit, it appears that in practice it is retroactive.

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* Article 253 of the Constitution: Military jurisdiction shall be limited to military offences and to a state of war. Common offences committed by the military in time of peace, regardless of the place in which they are committed, shall be subject to the ordinary courts.

** By Decree 1.026/973 of 28 November 1973, the President, "acting in the Council of Ministers and favourably advised by the Council of National Security", declared that: The following political parties and student groups be dissolved and declared "illicit associations": Communist Party, Socialist Party, Popular Union, 26th of March Movement, Uruguayan Revolutionary Movement, Revolutionary Communist Party, Agrupaciones Rojas (Red Groupings), Union of Communist Youth, Workers' Revolutionary Party, Uruguayan Federation of University Students (FEUU), Worker-Student Resistance (ROE), Revolutionary Students' Federation (FER), Groups of Unifying Action (GAU) and Self-Defence Groups (GAD). This decree also ordered the closure of their offices, confiscation of property, closure of newspapers, and eliminated those parties which had representation in the General Assembly from the electoral register.

The text of the decree banning the national trade union movement (the National Workers Convention - CNT) in June 1973 clearly indicates that the leading members of the CNT were liable to imprisonment for activities which, up till then, had been legal and protected by the Constitution, as well as by international conventions to which Uruguay is a party. The next decree affecting trade union freedom came a few days later.* It prohibited strikes and declared that instigators of strikes shall be prosecuted under the Law of National Security or as before shall be held under Medidas Prontas de Seguridad.**

The charge of "vilipendio" of the Armed Forces by an "attack on their moral strength" has been based on acts such as emphasizing the line "tyrants, tremble!" while singing the Uruguayan National Anthem (in meetings with compulsory attendance) or the distribution of leaflets on 1 May (Labour Day).***

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* Resolution 1.102/973 of 30 June 1973 declared illicit the association called the National Workers' Convention (CNT) and ordered its dissolution; prohibited its meetings, etc., closed its offices and confiscated its property; ordered the arrest of its leaders; the military and police were put in charge of carrying out these measures.

** Decree 518/973 of 4 July 1973 contains norms to prevent "anomalies in the service of employees in the private and public sector".

*** When Ruben Enrique Martínez Cuíño and Miguel Capdevilla Acosta were arrested in 1975, according to the official explanation, "they were distributing leaflets about demonstrations and disorders to be organized on 1 May offensive to the prevailing institutions". Teachers Humberto Daniel Costa Fernández and David Rabinovitch Korotky were arrested for singing the national anthem.

II. The Administration of Military Justice

The military justice procedure is divided into four stages before three different courts: the presumario and sumario before the juez de instrucción; the plenario before the juez de primera instancia; and the segunda instancia before the Supremo Tribunal Militar. In addition, the large number of arrests has made an exceptional provision in military law into common practice: the appearance before a juez sumariante as the very first stage of the investigation. The juez sumariante, who is an officer appointed by the commanding officer as the unit's summarizing judge "can only intervene in a case where the military examining magistrate (juez de instrucción) is delayed by reason of distance or for any other reason* and the intervention by the juez sumariante will be limited only to collecting essential data of the offence so that the investigation by the magistrate is not prejudiced, and it will cease as soon as the magistrate arrives, whereupon the juez sumariante will hand over the summary records (actuaciones sumariales) to him" (Article 83 of the Code on the Organization of Military Tribunals). The Code of Military Penal Procedure (Article 256) provides that the commanding officer of the unit will notify his superior "by the most rapid means possible in order that the notification through the relevant channels reaches the Minister of Defence so that the magistrate will come and continue the investigation (sumario)".

These provisions are the legal basis for this first stage, but the procedure laid down is not carried out in practice. A prolonged investigation lasting an average of 2 to 3 months (and often 6 months to 1 year) is conducted by the military unit. The arrested person is interrogated, often more than once by the juez sumariante or is at least asked to sign a "confession". If a confession or other evidence is obtained, the case is passed to the military magistrate and the prisoner's incommunicado detention is lifted. While the Uruguayan Constitution (Art. 16) only allows the judge 24 hours to take the detainee's statement and a maximum 48 hours to initiate proceedings, the Military Penal Procedure (Art. 192) authorizes the military examining magistrate to maintain a suspect incommunicado if need be "for the success of the investigation". However, it also provides that, apart from exceptional cases, this incommunicado detention cannot last for more than two days and must not prevent the accused from communicating with his defence lawyer, attending the hearing of the witnesses and communicating in writing with the prison director and the judicial authorities. Under decree 419/973 of 12 June 1973, persons detained for "alleged subversive activities" must be brought before a competent judge or released within ten days of arrest. Even this decree appears never to have been applied in practice.

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* If, for example, a military crime is committed on a ship at sea.

It is during this first stage of incommunicado detention that illtreatment most frequently occurs. In general, it is not alleged that the juez sumariante takes part in or attends the illtreatment, although he must be fully aware of it. The first session of illtreatment usually takes place before the first interrogation by the juez sumariante and continues until the detainee indicates that he is prepared to make a confession. If he then fails to do so before the juez sumariante, another session of illtreatment occurs before he is re-interrogated, and this procedure continues until he makes a confession. A certain number of prisoners of the many thousands who have passed through military barracks are released without further intervention by a judicial authority. This system of release of suspects without the intervention of any judicial authority provides a partial explanation of the discrepancy in the numbers of prisoners given in official statistics and the estimates made by reliable sources inside and outside Uruguay.

The most common forms of illtreatment are prolonged standing (plantón), beating, and repeated immersion in water (submarino). Sometimes electric cattle prods (picana eléctrica) are applied to the most sensitive parts of the body. The victims can hardly ever identify their torturers as they are invariably hooded during the sessions and throughout most of their detention in the barracks.

The next stage is before one of the military examining magistrates (juez de instrucción) who are all officers or retired officers of the Armed Forces, usually with the rank of colonel. In 1972 their number was increased from three to six. Only one of these was a recently qualified lawyer, while two others were studying law.* The magistrate interrogates the accused and, in particular, he asks him to "ratify or rectify" the declaration made before the juez sumariante and to confirm that the signature is his own. If the magistrate finds that there is prima facie evidence (semiplena prueba) of an indictable offence, he draws up the indictment (auto de procesamiento) and he notifies the defendant. If there is no prima facie evidence, he may release the detainee on terms that he may be rearrested if any further evidence comes to light later, or he may decide on prosecution on the grounds of his own "moral conviction" (por convicción moral) that the defendant is guilty. This is a moment when theoretically the detainee can report to the judge the treatment he has been subjected to in the military barracks during his detention prior to the court hearing, which, in accordance with the UN Declaration on the Protection of All Persons from Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1975) should make his confession invalid and give rise to an investigation into the responsibility for the alleged abuse of authority (Art. 10/12). Prisoners who have declared

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* This was still true at the time of the AI-ICJ mission in 1974. (Amnesty International-International Commission of Jurists)

that they have been maltreated have, however, found that it has little effect.* The judge does not declare the report made at the barracks to be inadmissible evidence, does not order an investigation and probably does not even enter it into the prisoner's dossier. Many other prisoners have felt that they could not report their maltreatment for fear of being returned to the same barracks by the Armed Forces, who disregard the authority of the military judges, or by order of the Executive, which leaves them outside the authority of the judge. Indeed, many have been firmly warned not to report their maltreatment before they leave the barracks, where they are made to sign a statement to the effect that they have been well treated while in custody.**

The authorities told the International Commission of Jurists and the Amnesty International delegation in 1974 that strict instructions had been issued to all units forbidding any form of illtreatment and that these instructions, in general, had been carried out. In a few cases where illtreatment had occurred, the culprits had been severely punished. The authorities provided no particulars of the instructions or the punishment, despite the delegates' request. The military magistrates said that they had received hundreds of complaints but had not found a single case proved. The burden of proof lies on the complainant in such cases. By contrast, the President of the Supreme Court pointed out that under ordinary justice it was not unusual for the magistrate to find a case proved against the police of ill-treatment during interrogation. This difference between the two jurisdictions is worthy of note and can probably be explained in part by the time difference: while the civilian judge would see the defendant within 24 hours and would immediately order a medical examination, the military magistrate would only see the defendant weeks or months after the maltreatment took place, thus making a medical examination pointless or of doubtful value as evidence. Identification is also made easier by the fact that the common law prisoner is not hooded during interrogation.

After the magistrate has drawn up the indictment, the defendant is asked to name his private defence lawyer, or to choose between the next civilian advocate on the roster of court-appointed defence counsel and the next unqualified military defender on a list of officers who are willing or nominated to undertake defence work. Harassment of defence lawyers who take on political cases has been such in recent

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* Jaime Gershuni Pérez made a full declaration of the torture he suffered during interrogation and incommunicado detention (1976).

Dr. Rubens Laíño reports that the magistrate laughed at him when he said he confessed to an offence he knew nothing about in order not to be subjected to further torture (1972).

** Former First Lieutenant J.C. Cooper has declared to Amnesty International in February 1979 that he saw whole piles of such signed statements in his regiment.

years that civilian lawyers, unless they are themselves in prison, have either gone into exile or no longer take on the defence of political suspects, thus leaving the vast majority of prisoners with only an unqualified military officer for their defence. In 1978/79, civilian lawyers are reported to be advising prisoners to take military counsel because they consider that a civilian counsel for defence will only have a negative effect on the military judge's verdict. This concludes the presumario, all of which takes place without the defendant having access to a defence lawyer.

Under military justice there were originally no provisions for appeal at this stage. With the introduction of the Law of State Security, it became possible to appeal when accused of crimes affecting national security. The appeal was to be well-founded and presented within three days. In the conditions under which the defence lawyer has to work, it becomes virtually impossible to study in such a short time the work accumulated over several months in a military barracks and in courts of law, comprising many hundreds of pages of statements. This appeal became ineffective for two further reasons: the prisoner was held incommunicado in a military barracks until meeting the military examining magistrate and had no access to a lawyer of his own choice. For various reasons the prisoner is often obliged, at least at first, to designate a court-appointed military defence counsel (defensor de oficio) who does not appeal the case. The appeal is presented to the Suprema Corte de Justicia Integrada, consisting of five civilian and two military members. The file circulates individually among the seven members of the Court and each one has 90 days to study the file. While the appeal is still pending, defence counsel cannot present a request for his client to be granted provisional freedom. The slowness of these proceedings, which is acknowledged by the Uruguayan Government, makes this remedy of appeal impractical except in cases where the expected sentence is very severe. Furthermore, the Court has proved not to be willing to go against the military rulers of the country and, in all but one exceptional case, has rejected the appeals.

The sumario stage takes place again before the examining magistrate's court and begins with the defendant being asked whether he "ratifies or rectifies" his previous statement to the magistrate. The question is asked in the presence of his defence lawyer, but before any consultation has taken place. The prisoner often confirms his first statement for the same reason as before: lack of guarantee that he will not be returned to barracks, although normally it is at this stage that prisoners are transferred to prison establishments (except in periods of large waves of arrests when normal prisons have been filled to capacity). When the International Commission of Jurists-Amnesty International mission asked one of the magistrates if he would act upon a confession made in the barracks but denied before him and if he disbelieved the defendant's denial, he said he would. This is in conflict with the Code of Military Penal Procedure (Art. 435) which stipulates that a confession has no legal effect unless it is made before the competent judge in the presence of the defence counsel.

During this stage, defence and prosecution can bring witnesses, present evidence and counter-evidence with a view to establishing the defendant's guilt or innocence or mitigating circumstances. This stage is conducted in writing. The magistrate may also release the defendant during this stage, either because of insufficient evidence or on bail, if the offence carries a sentence of less than 24 months. For offences involving a penalty of more than two years, release pending the outcome of the trial proceedings, which can take several or many years, is not common, even under civilian jurisdiction.* If a person is released by order of the magistrate, his effective release is very often delayed for one or two months or he may even be "retenido" (kept in detention) by the Armed Forces, thus disregarding the authority of the magistrate.

One of the most serious complaints made by the defence lawyers is that the magistrate often receives and acts on a secret report on the case supplied to him by the security intelligence branches of the Armed Forces. As the defence lawyer will never have access to this file, which one of the magistrates has referred to as the "submerged dossier" (expediente submergido), he cannot provide any evidence against the allegations made in it. The judge's decision is reportedly often based on, or influenced by, the contents of the parallel dossier, thus eroding the guarantees of the due process of law.

In the trial (plenario) before one of the five sentencing judges (jueces de primera instancia), both prosecution and defence make their case and suggest what sentence should be given. During the first period of military trials, the judges never passed sentences which were higher than the prosecution had asked for. However, after one judge passed one such sentence (ultrapetita), this soon became general practice** supported by the Supreme Military Tribunal. The prosecutors

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* According to a Uruguayan report to the United Nations 72% of the prison population held under ordinary jurisdiction are still awaiting sentence. Article 9:3 of the Covenant of Civil and Political Rights: "It shall not be the general rule that persons awaiting trial shall be detained in custody but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings and, should occasion arise, for the execution of that judgement".

** In General Liber Seregni's case, the prosecution asked for 11 years and the judge sentenced him to 14 years (1977). In Colonel Pedro Aguerre Albano's case, the prosecution reportedly asked for 24 months and the judge sentenced him to 14 years (1978). This was made possible by the temporary removal of the judge handling the case (Colonel Spinelli) who refused to pass such a high sentence and by replacing him with Colonel Blanco Vila, who is known to have frequently passed exceedingly harsh sentences.

complained to the military command, who took no notice. This led to the resignation of several prosecutors in protest. This practice would appear to change the judge's traditional role as a kind of arbiter between defence and prosecution.

Approximately 80-90% of the cases of primera instancia are forwarded to the Supreme Military Tribunal (segunda instancia - STM) for a review of the trial. Both prosecution and defence are entitled to appeal and if the sentence is over three years, the case is automatically passed up to the STM. This second review, for more serious cases, was intended to serve as a guarantee for the defendant but, at present, the STM is passing a higher sentence than that given by the trial judge - even though the defence was the only party to appeal. Instead of the principle of "non reformatio in peius" (no change for the worse), valid in all cases where the prosecution is not appealing, the court has applied "reformatio in peius".

The President of the Supreme Military Court, Colonel F. Silva Ledesma, interprets the fact that a higher court upholds or increases the sentence passed in the lower court as showing that the judges, who in the early days were inexperienced, are now performing with professional expertise. National and international observers interpret this as further proof of the lack of independence of the military courts vis-a-vis the military rulers of the country.

The Integrated Supreme Court of Justice (including two military officers appointed by the President) has the power to quash a conviction by the Supreme Military Court by annulment (casación). However, according to the Uruguayan Government's statement to the Inter-American Commission on Human Rights in 1977, the Integrated Supreme Court has never gone against the ruling of the Supreme Military Court: "In the last five years, since the entry into force of Law No. 14,068 which defines and establishes punishment for the crimes of lese majesty (crimes against the nation), no more than 40 appeals have been processed before the court and all of them were denied. This is the most eloquent fact demonstrating that the individuals concerned have not established "illegalities" in the judgements of the Supreme Military Tribunal." Despite this policy, the Supreme Court of Justice was deprived of its title "Supreme" and several of its powers in 1977*.

One prerogative of the Supreme Court of Justice was the annual review of cases for possible early release (visita de cárceles or visita de causas). This power was suspended for the whole of 1976 by a decree law issued at the end of 1975** and was abolished completely in 1977***.

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* Institutional Act No. 8 and Law No. 14,734 of 28 November 1977.

** Law No. 14,493 of 29 December 1975.

*** Law No. 14,734 of 28 November 1977.

Apart from the exceedingly slow proceedings and inadequate facilities for the defence, one of the most serious complaints with regard to military justice in Uruguay is the lack of independence shown by the judges themselves in administering justice. We have already referred to their lack of legal training, their reliance on information obtained under duress, and their practice of increasing even the sentence asked for by the prosecution.

There are further factors which cast serious doubts as to whether it is possible to have a fair trial under military justice in Uruguay. A military trial begins through an order from the Minister of Defence, who is the highest authority in the orbit of military justice, giving the magistrate the authority to act. The case should always go to the magistrate de turno (in charge of all cases during his turn of duty which lasts one week). However, current practice is different: all important cases are sent to the magistrate and judge who enjoy the confidence of the military command.*

Even civilian judges who have attempted to maintain their judicial standards have been dismissed or obliged to go into exile.**

Military judges continue to be part of the military hierarchy. This unavoidably affects their investigations into any abuse involving a superior officer and may also influence the ruling on cases in which the Armed Forces have a political interest. The image of the military judges is further tarnished by the fact that they, like all other members of the Armed Forces, are still on increased pay ("battle pay").

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* This happened in the case of Colonel Pedro Aguerre Albano. See footnote on p. 12.

** In 1974 Justice Forni ordered a post-mortem examination of a person who had died while in the custody of the Armed Forces. After the examining doctors had concluded that the dead person had been subjected to torture, the case was transferred to a military judge, who took no further action. Following the approval of Institutional Act No. 8, Justice Forni was dismissed.

Another civilian examining magistrate brought a complaint before the Supreme Court accusing the executive of failing to respect his court and ordering the release of a political prisoner. Before his inevitable dismissal following this confrontation between the judiciary and the executive, he went into exile.

Experienced jurists are concerned that the military courts do not understand the nature of a trial. The judges reveal this, they say, when they increase a sentence on the grounds that the defendant initially lied or did not fully cooperate with the magistrate*, and when they reprimand a lawyer for arguing a different legal doctrine from that followed by the military courts, as if this were not part of the rights and duties of the defence.

Institutional Act No. 8 (1977) introduced fundamental changes in the situation of both the civilian and military judiciary with regard to the system of designation and security of office. While the Supreme Court may still put forward names, the executive may disregard these and designate judges of their own choice. The traditional security of tenure of office for judges is still preserved, but with one fundamental limitation: during the first four years they can be removed without any reason being given. In addition, all the present judges were declared to be "interim" for a period of four years. This decree finalizes the process begun in 1972 whereby the judicial power ceases to be an independent state power**.

The whole process of erosion of the traditional principles that seemed to be solidly established within a system of rule of law in Uruguay, also affected the defence counsel for political prisoners. Some of the problems were described earlier, such as not having access to the client until after he had spent a long period in incommunicado detention and after the judge had drawn up the indictment and the inadequate provision for appeal proceedings. The treatment of the lawyers in court was equally unsatisfactory: on arrival they were treated as if they were suspects, they had to leave their identity papers and carry out their work in a small over-crowded room, where there were neither benches nor desks, and where they had to mix with visitors and soldiers. The trial dossiers were only available for very short periods (e.g. 45 minutes for various lawyers working for many defendants involved in the same case). They had to share one dossier which is sewn together and, at this stage of the trial, cannot be divided up.

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* International Convenant on Civil and Political Rights, Article 14(3)g: In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality...not to be compelled to testify against himself or to confess guilt.

** A leading article of the Uruguayan daily El País (17 August 1978) criticizes Institutional Act No. 8 (which makes all judges "interim" for the first four years) and the effect this will have on the independence of the judges. El País normally gives full support to the Uruguayan Armed Forces. "Institutional Act No. 8 jeopardizes principles which - as we wrote in a previous editorial on the subject - guarantee the impartiality of magistrates. This means that when administering justice, magistrates cannot proceed with the independence inherent to their duties. And if they cannot act with independence, they cannot decide with independence."

Throughout the exceedingly slow, mainly written trial proceedings, counsel is not treated on equal terms with the prosecutor and can never, unlike the judge and prosecution, take the trial dossier to his own office to study. Nor does he have access to the parallel dossier (expediente sumergido) which contains what military intelligence believes to be details of the defendant's character and activities, rather than what has been proven in court.

The practice of increasing rather than reducing a sentence, even on appeal by the defence, can also be used as a punishment for counsel who show particular independence or vigour in the defence of their client. Although the lawyers knew that torture and other irregularities occurred in military custody, they on the whole resigned themselves to carrying out their professional work within this deficient system of justice. Yet, through their professional work they were witnesses to many irregularities and as such, potential sources of information which could be negative to Uruguay's image abroad. This seems to be the reason behind the overt intimidation and persecution of lawyers themselves, which has led to a situation where all lawyers who used to take political briefs are either in exile or imprisoned, or sufficiently intimidated not to take on such cases, thus leaving the prisoners with no other option than that of taking one of the four defensores de oficio, three of whom are military officers without legal training*. The military rulers also considered that acting as defence counsel implicitly suggested sympathy for the prisoner's beliefs and activities, instead of being the normal function of a professional. As one defence lawyer put it: "To act as a lawyer in this atmosphere is almost to expose yourself to rapidly becoming a client". ("En ese clima actuar como abogado es casi exponerse a pasar con rapidez a la categoría de cliente.")

Several lawyers have been arrested explicitly or implicitly because of their defence of political prisoners. In the case of Dr. Mario Dell'Acqua (1976-78) the ostensible reason for prosecution was his omission, several years earlier in his capacity as secretary of a branch of the university, to report certain student activities. Several factors suggest that his defence of a large number of political prisoners was the basic cause for his arrest. Other lawyers of outstanding reputation have been imprisoned and charged with "assistance to a subversive association" as a result of alterations

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* In a report dated November 1977, the International Commission of Jurists affirmed: "Having brought all other aspects of the judicial system in political and security cases under military control, it seems that the intention of the Uruguayan military authorities is now to drive out of their courts all civilian defence advocates, leaving the prisoners to be defended only by official military defenders who lack both the independence and legal competence to represent them adequately."

to the dossiers in an attempt to show that they have not formally been designated by the defendant. Others have been charged with "attack on the moral reputation of the army" on the basis of statements made in the normal course of legal defence, e.g. a comment on the slow pace of the military trial proceedings which was found to be "insulting" to the Armed Forces. The international outcry to which such arrests gave rise led to the fairly early release of several of these lawyers. Their professional work will suffer the consequences for much longer.

Prison Costs

In the past two years, military justice in Uruguay has made highly irregular use of an old legal provision from the civilian penal code. Art. 105 of the code refers to the "obligation to reimburse the state for the cost of food, clothing and lodging during the period of trial and sentence". Those who, in the judge's opinion, lack resources, are exempt from this payment (Art. 106).

Apart from the fact that this provision had fallen into disuse and had not been applied by any civilian judge for over 40 years, there are further aspects of its present application that need emphasizing. This payment is only applied to political prisoners under military justice; the sum demanded is arbitrarily set by the military authorities*; it is applied even though the prisoners carry out compulsory unpaid work during their period of imprisonment and the families often provide their food; the judges reportedly do not inform the prisoners of the possibility of being exempt from payment.

The military judges reportedly inform the families that the prisoner cannot be released until his prison costs have been paid. This leads many families to make extreme sacrifices in order to obtain the sum demanded to secure the prisoner's release. However, Amnesty International also has reports that many prisoners have been released without any payment being made and have also been allowed to leave the country. The statistical material is too small to enable Amnesty International to assess the frequency with which the payment is enforced. However, from the information available, it appears that the payment of prison costs, apart from being an additional source of revenue for the military authorities, serves as a means of keeping a prisoner in detention after the expiry of his sentence, should the authorities wish to do so.

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* For 1972 1.50 new pesos, with a gradual increase until 1978 when it reached 15 new pesos. A receipt for prison costs issued in June 1978 for the period 1973-78 equalled US $ 1,700. The bank account number is No. 3383983 of the Banco de la Republica.

In a letter to Amnesty International in March 1979, the information office of the Armed Forces states that prison costs represent one third of the prisoner's earnings while doing remunerated work in prison and that this provision has been "rigourously applied by military justice". In its reply, Amnesty International seriously questioned the justification for this practice in view of the fact that political prisoners do not receive any form of payment for the work they carry out while in detention.

CONCLUSION

Reports of arrests of peaceful dissidents, illegal detention procedures, long periods of incommunicado detention, and various forms of torture taking place in Uruguay continued to reach Amnesty International in 1978 and 1979. Such arrests and procedures violate the Uruguayan Constitution and the international instruments to which Uruguay is a party. The present lack of separation of powers has eliminated all safeguards against unlawful detention, either administrative or judicial, and effectively prevents any remedies for such infringements of basic human rights from being carried out within the country itself.*

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* This was recognized by the Vice President of the Council of State Dr. Julio C. Espinola in his official speech commemorating the 5th Anniversary of the creation of this body:

> "Whether the Council of State has fulfilled the very important functions attributed to it through Article 2b of the Institutional decree, namely to control the conduct of the Executive Power in relation to the respect for the individual rights of the person and its obedience to constitutional and legal norms, the answer, in my opinion, must be no. The Council of State has not lived up to its task. It has reduced itself to total silence." (Published in the Official Gazette 19 December 1978)

48.

E.i. No. 295211

JUZGADO MILITAR DE PRIMERA INSTANCIA DE SEGUNDO TURNO.-

LIQUIDACION DE GASTOS DE ALIMENTACION, VESTIDO Y ALOJAMIENTO.-

En los autos caratulados "Ricardo Tarcicio Vilaró Sanguinetti", causa No.54/D.1/76, lib.3, fl.325, y conforme a lo dispuesto por el auto No.522, de fs.140, de fecha 7 de junio de 1978, se han liquidado los gastos de alimentación, vestido y alojamiento del penado militar RICARDO TARCICIO VILARO SANGUINETTI, detenido el día 10 de setiembre de 1973 y puesto en libertad el día 7 de abril de 1978, acorde a órdenes impartidas por el Supremo Tribunal Militar, de acuerdo al siguiente detalle.-

Año 1973.....112 días a N$ 2.50.....	N$	280.00
Año 1974.....365 días a N$ 3.50.....	N$	1.277.50
Año 1975.....365 días a N$ 5.00.....	N$	1.825.00
Año 1976.....365 días a N$ 7.00.....	N$	2.555.00
Año 1977.....365 días a N$10.00.....	N$	3.650.00
Año 1978..... 97 días a N$15.00.....	N$	1.455.-
TOTAL....	N$	11.042.50

Son nueve pesos once mil cuarenta y dos con cincuenta centésimos.- - - - - - - - - - - - - - - - - - - -

Montevideo, 12 de junio de 1978.-

El Secretario.-

Tte.1ro.(D.) [signature]

Roberto Cabrera.-

BANCO DE LA REPUBLICA ORIENTAL DEL URUGUAY

NOTA DE CREDITO PARA LA CUENTA CORRIENTE CUYO NUMERO ABAJO SE INDICA Y SUJETA A LAS CONDICIONES IMPRESAS AL DORSO.

Nº 47410

CUENTA Nº 33439/83

FECHA 13/6/78

CUENTA CORRIENTE: Supremo Tribunal Militar

SON NUEVOS PESOS: Once mil cuarenta [illegible] 50/100

DOMICILIO Rincon 451 P.1

TELEFº: FIRMA:

EFECTIVO N$ [illegible]

Cheque Nº | Cta. Cte. Nº

IMPORTE TOTAL N$ 11.042 50

CTAS. CTES. CAJA

NOTA DE CREDITO PARA CUENTA Nº Nº 474106

The photograph shows a bill for "prison costs" and the bank receipt.