

ATTACKS ON JUSTICE

**The Harassment and Persecution
of Judges and Lawyers**

June 1990 – May 1991

Edited by
Reed Brody

CENTRE FOR THE INDEPENDENCE OF JUDGES AND LAWYERS
of the
INTERNATIONAL COMMISSION OF JURISTS

THE CENTRE FOR THE INDEPENDENCE OF JUDGES AND LAWYERS (CIJL)

The Centre for the Independence of Judges and Lawyers was created by the International Commission of Jurists in 1978 to counter serious inroads into the independence of the judiciary and the legal profession by:

- promoting world-wide the basic need for an independent judiciary and legal profession;
- organising support for judges and lawyers who are being harassed or persecuted.

In pursuing these goals, the CIJL:

- intervenes with governments in particular cases of harassment or persecution and, in some instances, solicits the aid of a network of jurists and lawyers' organisations throughout the world to do likewise;
- works with the United Nations in setting standards for the independence of judges and lawyers and the impartial administration of justice. The CIJL was instrumental in the formulation of the UN Basic Principles on the Independence of the Judiciary adopted at the Seventh Congress on the Prevention of Crime and Treatment of Offenders in 1985 and endorsed by the UN General Assembly. It is now working with the UN on similar principles on the role of lawyers;
- organises conferences and seminars on the independence of the judiciary and the legal profession. Regional seminars have been held in Central America, South America, South Asia, South-East Asia, East Africa, West Africa and the Caribbean. Several national seminars have also been organised. These seminars bring together judges, lawyers, government officials, activists and academics to discuss obstacles to the implementation of the U.N. standards and how to overcome them;
- sends missions to investigate situations of concern, or the status of the bar and judiciary, in specific countries.
- publishes a bulletin twice-yearly in English, French and Spanish. It contains case reports and articles and documents relevant to the independence of the judiciary and the legal profession.

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The affiliation of judges', lawyers' and jurists' organisations is welcomed. Interested organisations are invited to write to the Director, CIJL.

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Introduction

by Reed Brody

Director, CIJL

This is the third annual report by the Centre for the Independence of Judges and Lawyers (CIJL) cataloguing the harassment and persecution of judges and lawyers worldwide. It lists the cases of 532 jurists in 51 countries who have suffered reprisals between 1 June 1990 and 31 May 1991 for carrying out their professional duties. Of these, 55 were killed, 103 were detained, 8 were "disappeared," 42 were attacked, 65 received threats of violence and 234 were professionally sanctioned (by disbarment, removal from the bench, or travel restrictions).

In this year's report, we have also tried to describe some of the structural problems faced by lawyers and bar associations across the world, and to look, in selected cases, at infringements on the independence of the judiciary.

In August 1989, we submitted a first report to the United Nations Sub-Commission on the Prevention of Discrimination and the Protection of Minorities. The report described the cases of 145 judges and lawyers who had been harassed, detained, or killed between January 1988 and June 1989. The list included 34 judges and lawyers who were killed, 37 who were detained, and 38 who had been attacked or threatened with violence. As we had hoped, the report drew attention to the serious problems faced by jurists in many countries. The Sub-Commission responded to the report with a resolution, declaring itself "disturbed at the continued harassment and persecution of judges and lawyers in many countries." It named its French expert, Mr. Louis Joinet, to prepare a working paper on means by which the Sub-Commission "could assist in ensuring respect for the independence of the judiciary and the protection of practicing lawyers." The Commission on Human Rights would later also pronounce itself "disturbed" by these attacks and endorse the Sub-Commission's call for a study.

Our second report, in August 1990, gave details on 430 jurists in 44 countries who suffered reprisals between 1 July 1989 and 30 June 1990 for carrying out their professional duties. Of these, 67 were killed, 165 were detained, 40 were attacked, 67 received threats of violence, and 54 were professionally sanctioned. Like the first report, it helped stir the UN Sub-Commission to further action, as Mr. Joinet was tasked to provide a full report to the Sub-Commission on practices worldwide "which have ... undermine(d) the independence of the judiciary and the protection of practicing lawyers."

Trends in 1990 - 1991

The number of cases reported (532) in this year's compilation is higher than in last year's (430). This is, in part, due to the mass dismissal of judges and prosecutors in Kosovo, Yugoslavia. Last year's numbers, however, were also particularly affected by two mass

cases: large-scale arrests of lawyers in Nepal (where the situation has now improved) and the wholesale dismissal of the judiciary in Sudan (where, unfortunately, it has not). The compilation of cases also points to some encouraging signs, particularly the decline in the number of killings of human rights lawyers in Sri Lanka, though this situation is at best precarious.

Other situations remain distressing. Nowhere in the world do judges and lawyers work at such risk as in Colombia. While drug cartels pose the most notorious threat, the vast majority of the 36 judges and lawyers who were assassinated in the past year were investigating not drug trafficking but paramilitary activities and massacres attributed to security forces.

In Peru, 10 jurists were killed in the past year while 26 others were victims of violence or threats. Judges and lawyers in Peru who must investigate, prosecute and try cases of terrorism or cases of human rights violations are caught between the two fires of the guerrilla forces and the military.

In the Israeli-occupied territories, Palestinian lawyers face legal obstacles preventing them from helping their clients as well as continual harassment by the military authorities.

In several parts of the world, governments have used the power of "contempt of court" or *delit d'audience* to attempt to silence troublesome lawyers. This was notably the case with Manjeet Singh in Malaysia, Nicolas Tiangaye in the Central African Republic, Pheroze Nowrojee in Kenya, Stanislas Mbonampecka in Rwanda, and Sergei Leonidovich Kotov in the USSR. It is also reportedly used as an intimidatory tactic in Nigeria.

In many countries, lawyers have been detained for exercising their duty of speaking out in favour of the rule of law. In Kenya, the government's detention of seven prominent human rights lawyers, its maneuvers to control the Law Society and its harassment of *The Nairobi Law Monthly* was part of an attempt to silence the movement for a multi-party system. Eleven jurists have been jailed in China for their "pro-democracy" sympathies. Eight are detained in Burma.

Attacks on justice were not limited to developing countries. Judges in France and Italy whose investigations brought them too close to sensitive political issues found themselves abruptly curtailed. A politically active lawyer in the United States who refused to yield information regarding a former client spent six months in jail for her loyalty, while another faces prison in similar circumstances. Lawyers in Spain looking into government connections to anti-terrorist hit squads had explosives placed under their car.

In Yugoslavia, the Serbian authorities have dismantled the judiciary in the Autonomous Province of Kosovo, dissolving numerous courts and removing at least 180 ethnic Albanian judges, prosecutors, and state lawyers.

In Turkey, 11 lawyers have been detained. The blind defence lawyer Esber Yagmurdereli remained in detention from 1978 to 1991, after being convicted of political offences in an unfair trial based on confessions apparently induced through the use of torture.

One positive development has been the increasing "solidarity" among lawyers at the international level. As described below, the international legal community mobilized in several trials against lawyers, as well as in the attack on the Istanbul Bar. Such a show of support is a powerful dissuasion against government misconduct.

On the larger issues of the structural independence of the judiciary, there were many positive developments. The democratic revolution sweeping Eastern Europe led to new constitutions and drafts enshrining and guaranteeing the independence of the judiciary. The new constitution of Namibia does the same, and several other African countries are preparing charters which we hope will provide for independent and impartial tribunals. New governments in Argentina and Nicaragua, however, replayed a familiar ritual by enlarging the Supreme Court and installing favoured judges. Many other countries, such as Burma, Ghana, Israel (both in Israel proper and in the Occupied Territories) Nigeria, Pakistan, Sudan and Tunisia use military courts to oust the regular courts of their

jurisdiction and/or curtail the rights of the accused to a fair trial.

In some newly-democratic countries, lawyers are for the first time free to take up unpopular cases. Even in Albania, a new law allows for independent lawyers. In some countries described in this report, however, such as Indonesia and Kenya, governments seek to control independent-minded bars. In yet others, such as North Korea and Saudi Arabia, independent lawyers do not even exist.

U.N. Basic Principles on the Role of Lawyers

In September 1990, a major landmark in international work to protect lawyers was reached when the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders adopted the Basic Principles on the Role of Lawyers. The 29 Basic Principles give special attention to: provision for effective access to legal assistance for all groups within society; the right of the accused to counsel and legal assistance of their own choosing; the education of the public on the role of lawyers in protecting fundamental rights and liberties; training and qualifications of lawyers, and the prevention of discrimination with respect to entry into the legal profession; the role of Governments, bar associations and other professional associations of lawyers; the right of lawyers to undertake the representation of clients or causes without fear of repression or persecution; and the obligation of lawyers to keep communications with their clients confidential, including the right to refuse to give testimony on such matters.

The CIJL is proud to have played an instrumental role in drafting the Basic Principles and in guiding them through the U.N. system. The General Assembly has "welcomed" the Basic Principles and invited governments "to be guided by them in the formulation of appropriate legislation and policy directives and to make efforts to implement" them. The Basic Principles, which complement those adopted in 1985 on the Judiciary, are set out in an appendix to this report.

Scope of this Report

As in the past, the "cases" we describe are only those of jurists who have suffered harassment because of their professional activities, including the advising and representation of clients, advocacy of law reform human rights and democracy, the conducting of investigations and the rendering of judicial decisions. We emphatically do not seek to elevate judges and lawyers to a higher status than that of their fellow citizens. Rather, the report focuses on judges and lawyers because of the effect that attacks on them have on the rights of all citizens to receive justice and to live in a society guided by the principles of the rule of law.

We have included the cases of jurists detained or otherwise sanctioned before 1 June 1990 but whose sanction remained in effect into the period covered by the report. We have tried to reflect all changes in status that occurred before 31 May 1991, though we have not been able to obtain up-to-date information in all cases.

International Support for Judges and Lawyers

In his landmark 1985 UN study on the independence of judges and lawyers, Dr. L. M. Singhvi (India) wrote that "an important factor in ensuring the independence of the legal profession is its sense of solidarity. The profession is able to preserve its dignity, ideals. Sometimes when the independence of the legal profession is besieged within a country and

internal protests prove to be of little avail, the solidarity of the international community in general and of the legal profession in other countries of the world can prove to be an important factor." One of the principal tasks of the CIJL is to promote such solidarity.

1. *Intervening in Individual Cases*

Many of the cases listed in this report were the subject of CIJL interventions with the governments concerned during the year. The CIJL regularly intervenes in such individual and structural cases. It then solicits other jurists' associations to do the same. These organizations have come to recognize that it is their professional responsibility to speak out on behalf of colleagues who are persecuted at home or abroad and that such interventions are not "political" but are vital to the protection of a system of justice based on the rule of law.

Generally, we fax copies of our appeal, together with supporting documents, to the lawyers' associations which have, over the last years, been most active on behalf of their colleagues. These include: the International Bar Association, the Lawyers Committee for Human Rights, the Netherlands Order of Advocates, the *Ordem dos Advogados do Brasil*, the *Ordre des Avocats à la Cour de Paris*, the Free Legal Assistance Group (Philippines), the International Association of Democratic Lawyers, *Den Norske Advokatforeing*, the Canadian Section of the International Commission of Jurists, the Arab Lawyers Union and the *Union Internationale des Avocats*, Human Rights Watch, *Diakonisches Werk der EKD*, *Nederlandse Vereniging voor Rechtspraak* and *Commission des Droits de l'Homme* (Lyon Bar Association). We also send the appeal to Louis Joinet, Special Rapporteur of the United Nations on the independence of judges and lawyers. Where appropriate, the CIJL issues press releases to call attention to the situation. In rare cases, we send our appeal to a list of hundreds of jurists' organizations.

Since the CIJL began its work 12 years ago, a number of international lawyers organisations have joined us in organising intervention networks. The International Bar Association now regularly intervenes with governments to protest the harassment or persecution of judges and lawyers, and encourages its member bar associations to do the same. The IBA's interventions are forwarded to us as well, so that we can activate our network. In 1987, the New York-based Lawyers Committee for Human Rights launched the "Lawyer-to-Lawyer Network" to involve the U.S. Legal community in seeking protection for colleagues abroad. Two or more monthly appeals to its network of 4000 lawyers and state, local and foreign bar associations are designed to inform and mobilize U.S. lawyers and bar groups to write to government officials on behalf of their colleagues. The appeals are also circulated to members of Congress, diplomats, representatives of the department of State and the news media. In 1989, the Lawyers Committee expanded its network to include foreign lawyers as well. The *Union Internationale des Avocats*, the largest federation of French-speaking attorneys, now also has a similar program.

2. *Trial Observers*

Sending observers to trials against lawyers also constitutes an effective demonstration of solidarity, as some of the cases in this year's report indicate:

- In September 1990, when the Turkish government brought a lawsuit against the leadership of the Istanbul Bar Association, Niall MacDermot, the former Secretary-General of the ICJ, the President of *Union Internationale des Avocats*, representatives of the Lawyers Committee for Human Rights, the International Bar Association and almost all the major bar associations of Europe attended. The overflowing courtroom

- demonstrated to the Turkish authorities that the lawyers of the world would stand with their colleagues, and the trial was postponed and eventually dropped.
- In the Central African Republic, the authorities who opened a disciplinary proceeding against a young lawyer for alleged sedition could not have expected that the President of the *Union Internationale des Avocats* and the Director of the CIJL, as well as an Executive of the Paris Bar would be present at the trial. Lawyers from neighboring Congo, Cameroon and Gabon were also there, as well as 15 of the 16 lawyers of the Central African Republic. This imposing presence of foreign lawyers not only comforted the defendant, but made it clear to the authorities that the world was watching the proceedings. The lawyer was acquitted.
 - In Kenya, a prominent attorney was threatened with jail for complaining publicly that the court was refusing to hand down a decision in a sensitive political case. Representatives of the CIJL (Ali Hamir, former President of the Law Association of Zambia), the American Bar Association, and the New York City Bar joined hundreds of Kenyan lawyers in the courtroom, effectively displaying the international concern the charges had generated. Again, the lawyer was acquitted.
 - In June 1990, at the contempt trial of Manjeet Singh, Vice-President of the Malaysia Bar Association, the CIJL sent a prominent Pakistani lawyer, Makhdoom Ali Khan, to observe the proceedings. Observers also came from LAWASIA, the IBA, the Commonwealth Bar Association and the American Bar Association.

We believe that everytime a lawyer stands trial, anywhere in the world, for carrying out her work, the rest of us must be there.

3. Missions

A third area for solidarity is sending fact-finding missions. The CIJL conducts missions to make governments aware of the serious concern with which outside organizations are watching developments within their countries and to present reports on the situation. Recent CIJL Missions have concerned: the harassment of judges and lawyers in the Philippines; the independence of the judiciary in Peru; and the situation of Brazilian lawyers who have been assassinated and threatened as a result of providing legal assistance to peasants and labourers in the rural north and northeast. In February 1991, a Senegalese advocate visited Mali to investigate threats to Montaga Tall (see report).



In preparing this report, we have relied heavily on the work of other international human rights organizations such as Amnesty International, Human Rights Watch, and the Lawyers Committee for Human Rights. In particular, the researchers of Amnesty International have again provided invaluable assistance on individual cases, digging information out of their files, spontaneously providing updates, and responding to endless queries. Pam Price of the Lawyers Committee provided us with updates on cases tracked through their Lawyer-to-Lawyer Network. We are especially grateful for the information in two excellent reports: Human Rights Watch's fourth annual survey *The Persecution of Human Rights Monitors, December 1989 to December 1990*, and the Lawyers Committee for Human Rights' second such compilation: *In Defense of Rights. Attacks on Judges and Lawyers in 1990*. The constant exchange of information with the international and regional bar associations listed above under "CIJL Interventions" also kept us abreast of cases. Thanks also go to several ICJ affiliates, regional bar associations, local human rights groups, and individuals which provided us with information on their countries or reviewed our entries - in

particular the Andean Commission of Jurists and its Colombian Section, the Arab Lawyers Union, the Union of Central African Lawyers, the *Centro de Estudio Legales y Sociales* and Liliana Valiña (Argentina), the *Ordem dos Advogados do Brasil*, the Cameroon Bar Association, the *Vicaria de la Solidaridad* (Chile), Foundation for Human Rights and Democracy in China, YLBH - Indonesia, *al-Haq* (occupied West Bank), the Gaza Centre for Rights and Law, the Japan Federation of Bar Associations, the *Centro Nicaraguense de Derechos Humanos*, Femi Falana and Clement Nwankwo (Nigeria), the Human Rights Committee of Pakistan, the Free Legal Assistance Group of the Philippines (FLAG), the Protestant Lawyers' League of the Philippines, Philippe Dahinden (Rwanda), Lawyers for Human Rights (South Africa), the Bar Association of Sri Lanka, the Istanbul Bar Association, the Human Rights Association (Turkey), the Association of the Bar of the City of New York (Uganda and USA), the National Association of Criminal Defence Lawyers, Gerald Lefcourt and the National Lawyers Guild (USA), and the Council for the Protection of Human Rights and Liberties of Prisitna (Yugoslavia).

The entries in this report were prepared by Sarah Craven, Jayni Edelstein, Alia Jamal, Wendi Lazar, Claire Morel-Seytoux, and Richard T. Williams, law interns with the ICJ, as well as Reed Brody and Mona Rishmawi. The report was edited by Reed Brody and Mona Rishmawi. In August 1991, Mona Rishmawi was appointed Acting Director of the CIJL.

The report is again dedicated to all the brave men and women listed here who have tried, in the face of repression, to uphold the finest traditions of the legal profession.



The Harassment and Persecution of Judges and Lawyers June 1990 - May 1991

ARGENTINA

The independence and impartiality of the Argentine judiciary have been severely tested in the past two years. The government increased membership on the Supreme Court from five judges to nine, and appointed five lawyers with ties to the ruling party. The *Procurador General* (Attorney-General) was also placed under the jurisdiction of the Executive, and several leading prosecutors have been replaced.

Enlarging the Supreme Court was within the power of the government and the Congress, as the number of judges on the Supreme Court is set by law, and was not without precedent¹. The effect, however, has been to undermine the independence of the judiciary.

The 1989 composition of the Supreme Court had been the work of outgoing Radical Party President Raul Alfonsín, who had taken office in December 1983. At that time, the justices, who had been appointed by the military regime, offered their resignations, as was the custom when *de facto* governments came to an end². Only two of five judges, however, were close to the Radical Party: Chief Justice Caballero and the most senior judge, Dr. Belluscio. Dr. Baqué was considered a "liberal," Dr. Fayt a Socialist, and Dr. Petracchi a Peronist.

The government's bill proposing an enlargement of the Court cited the backlog of cases, and the mounting number of officials performing tasks within the exclusive domain of the judiciary. The Court itself reacted immediately to the proposal in a resolution quoting former President Bartolomé Mitre (1862-68) and the International Commission of Jurists in favour of an impartial judiciary. The Court disapproved increasing "abruptly the number of judges from five to nine (which) would run the risk of triggering a sudden alteration in the application of law and legal scholarship," and added that the independence and stability of the judiciary, combined with the stability of its members, were the pillars on which the Argentine people were relying for the transition "to constitutional institutions to be genuine and unshakable." The Bar Association of Buenos Aires agreed: "Owing to its eminent mission and its significance for individual freedoms, the Supreme Court must have a stable organization, protected from changes

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1. In 1960, President Frondizi brought the number of Supreme Court seats to seven. Some years later, President Illia failed in his plan to raise that number to nine; in 1966, during the term of *de facto* President Onganía, the Court shrunk again to five judges.
 2. Despite the constitutional guarantee of judicial tenure, the Supreme Court of Argentina was entirely renewed in 1946, 1957, 1973, 1976 and 1983. See Rosenn, "The Protection of Judicial Independence in Latin America," *CIJL Bulletin* N° 22, p. 13 ff.

in the political arena." A heated debate ensued also on the proposed "division of the judges into chambers."

A few days before submitting the draft law, the Technical and Legal Secretary to the President called the judiciary *Alfonsinista* and claimed that "it is impossible to govern if the Supreme Court is against all the Executive's political initiatives and might declare all the laws implemented by it unconstitutional." The Peronist Governor of Buenos Aires Province declared: "The judiciary must share the Executive's basic policy direction."

Over vigorous opposition, Law 23.764 was enacted in April 1990, raising the number of judges to nine. Following its passage, the Executive-supported candidates for these seats were quickly confirmed³. All the judges appointed are close to the Peronists, giving them a majority on the Court:

- Dr. Levene, subsequently elected Chief Justice, was an administrative lawyer and Under-Secretary of the Interior, with close links to Peronism; he was appointed to the Court for the first time in 1974 by María E. Martínez de Perón ("Isabelita");
- Dr. Cavagna Martínez comes from an old Peronist family. His father was the last Prime Minister of Juan D. Perón prior to the military takeover in 1955;
- Dr. Nazareno was the law firm partner of Senator Eduardo Meném (the President's brother) and presiding magistrate of the Supreme Court in La Rioja (Meném's home province);
- Dr. Barra was a government official, first serving as Secretary of Public Works and later as Under-Secretary of the Interior;
- Dr. Oyhanarte was Menem's Secretary of Justice and Chairman of the Academic Commission for Constitutional Reform.

Another change worked by Law 23.764 was the placement of the *Procurador General* (the Attorney-General) under the jurisdiction of the Executive. The *Procurador*, who acts as the prosecutor before the Supreme Court, attends its regular meetings. Previously, he had been appointed by the same procedure applied to judges: nomination by the Executive and confirmation by the Senate.

Fears that the new court would be sympathetic to the government proved well-founded as the court immediately moved to protect presidential privatization decrees from lower court injunctions by assuming jurisdiction over cases not yet brought before it.

Miguel Alegre: judge from Corrientes investigating the mismanagement of provincial, decentralized institutions. Alegre has also investigated cases of embezzlement in the construction industry and the illegal trade of cattle. In October 1990, Alegre received a telephone call from an unidentified individual who threatened to bomb the courthouse where he worked.

Jorge Aníbal Bartolomé and Elba Demaría Massey: Bartolomé, Criminal Appeals Judge, and Demaría, Investigatory Judge in La Plata, received anonymous telephone death threats while presiding over a case in which two defendants, Alejandro Fernando Lecce and Julio Burlando, petitioned to be released from custody. Upon receiving the

3. The Argentine Constitution (art. 86) grants the Executive the power to name "the judges of the Supreme Court and those of other lower courts with the approval of the Senate."

death threats, Aníbal withdrew from the case. Damaría had also received death threats when she presided over the case at the first instance and denied the request for release from custody.

Hugo Omar Cañón: appellate federal prosecutor in Bahía Blanca. The Secretariat of Justice initiated professional disciplinary proceedings against Cañón on 15 November 1989 after Cañón challenged the constitutionality of the 7 October 1989 amnesty granted by President Carlos Saúl Menem to all but six members of the highest ranking police and armed forces charged with human rights violations during the 1976-83 military regime. The actions taken by Cañón disregarded a specific order from the Attorney General not to challenge the pardon. At the time of this writing, the inquiry is still in progress.

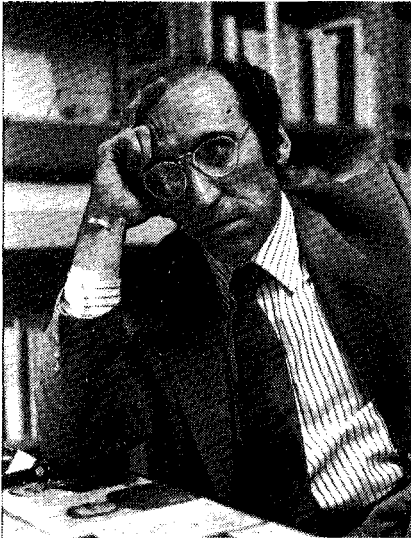


Jorge Casanovas

Jorge Casanovas: Judge of the Federal Court in Buenos Aires (second in hierarchy only to the Supreme Court). He has received numerous threats as a result of his handling of criminal proceedings against leaders of the so-called "*carapintadas*" (painted faces), military officers who attempted a rebellion on 3 December 1990. Since the start of the trial in April 1991, two bomb-scares have forced evacuation of the courthouse. On 28 June 1991, Casanova's house in the Nuñez neighborhood was attacked by gunfire as he ate lunch with his family. The Minister of the Interior, Julio Mera Figueroa, admitted that the attack had probably come from "ultra-rightist sectors or the *carapintadas*." Days before the attack, the lawyer for one of the *carapintada* leaders had warned that "the *carapintadas* are going to prevent this trial from going forward." In addition, a secretary to one of the judges on Casanovas' panel reportedly received a telephone call at his home warning that after the judges had been killed, it would be the turn of the court personnel. The attack touched off protests from Federal Court judges over the alleged lack of protection they received. Court President Juan Rodríguez Basabilvaso accused the government of failing to adopt adequate security measures: "Our telephone lines are listened in on, we receive telephone threats all the time, one of our colleagues has just had his house attacked. This is no man's land." According to Casanovas, the attack on his house and the threats are "part of a campaign to frighten the judges and rob them of their freedom."

Mariano Ciafardini and Aníbal Ibarra: federal prosecutors in Buenos Aires. Ciafardini and Ibarra brought criminal charges against persons allegedly responsible for the illegal adoption of children born to women while in detention during the military regime. During the course of their work, they attempted to establish the minors' identities and to restore custody to the natural parents or grandparents. Both attorneys were subjected to disciplinary proceedings and later reprimanded by the Secretariat of Justice after a dispute they had with a public defender. Ibarra and appellate prosecutor Hugo Cañón (see above) were also subjected to disciplinary proceedings for refusing to apply the 1989 pardons and urging the courts to declare them unconstitutional. The disciplinary inquiry is still in progress. Ibarra has since gone into private practice and human rights groups believe that Secretariat of Justice officials will seek his disbarment.

Raúl Alberto Borrino: judge in San Isidro who indicted senior police officer Luis Patti in the city of Pilar, Province of Buenos Aires, for the alleged torture of two criminals.



Raúl Alberto Borrino

Electric cattle prods, plastic bags, and clubs were reportedly used against the detainees to force them to confess to a robbery. Citizens of Pilar, however, who were concerned with a rise in crime, expressed their support for Patti. The mayor of Pilar, the governor of the Province of Buenos Aires and President Menem all praised Patti, who they considered an "efficient" policeman. The press also fostered sympathy for Patti by presenting him as a victim of a judge who was more concerned about criminals' rights than about crime prevention.

Shortly after indicting Patti, in October 1990, Borrino received a letter at his home from the *Comando de Interfuerzas Policiales Argentinas* (Interforces Command of the Argentine Police) threatening him with death. The letter was signed "God and Fatherland or Death." **Juan Ramón Makintach**, a criminal judge in San Isidro who was assigned to investigate the threats against Borrino,

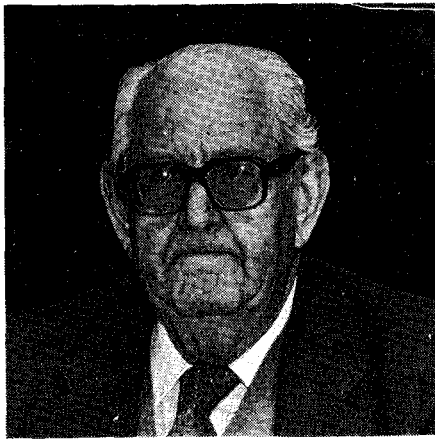
also received threats. In October, the Command reportedly sent a letter to him saying that it had lost "patience" with the judges and warned that "slowly and meticulously we are going to finish your fucking lives and the lives of other sons of bitches like Makintach and Durán. ... You won't mess around anymore with the police." (*"De a poquito y armonisamente, nos ocuparemos de terminar con tu puta vida y la de otros hijos de puta como Makintach, Durán...con la policía no se jode más."*) On 23 October 1990, the San Isidro Chamber of Criminal Appeals granted Subcommissioner Patti's motion to remove Judge Borrino from the case. The judge who was assigned to preside over the case dropped all charges and released Patti.

Claudio Kiper: clerk (*secretario*) of the Argentine Supreme Court of Justice. In October 1990, as he was parking his car in front on his house, an individual identified as José Osvaldo Garuti approached Kiper, hit him, insulted him and then fled. Kiper has also been threatened through his intercom system at his residence. His eight-year-old daughter heard a male voice say: "Kiper, you are going to die."

Enrique Knoll: judge in the Fourth Investigatory Court (*Cuarto Juzgado de Instrucción*) in Mendoza. Knoll has received repeated calls threatening himself and his children with death. Knoll was investigating the swindling of a local casino in which the casino lost more than 100,000 dollars. He believes that the threats are from the gang members implicated in the fraud. In December 1990, Knoll received an anonymous telephone call in which the caller stated "We know what schools your children attend." In another call, he was told "Your health and the health of your family depends on you, because we are going to take you to a place that you won't like and you won't know." Another death message said: "Tell the judge that I am here."

José Luis Méndez Villafaña: judge who received death messages left at the door to his courtroom in late 1990. The judge reported the threats to the authorities. The death notes were reportedly signed by a union.

Ricardo Molinas: attorney and head of the *Fiscalía Nacional de Investigaciones Administrativas*, a governmental office which investigates alleged wrongdoing by public officials. The *Fiscal Nacional* is appointed with the advice and consent of the Senate, and is removable only through impeachment. President Menem dismissed Molinas by decree in February 1991 at the request of Raul Granillo Ocampo, a presidential advisor under



Ricardo Molinas

investigation by Molinas for charges of corruption related to the awarding of benefits to a US-Argentine business consortium. Molinas had pursued rigorous investigations of other officials as well, including Ricardo Dromi, former Minister of Public Works. Molina's dismissal was purportedly based upon a disagreement between him and four assistant attorneys in his office who believed it necessary for Molinas to suspend his son Fernando, who also acted as his private secretary, after charges of corruption were brought against the latter. The dismissal of Molinas and his four assistant attorneys appears to violate the express provision that they all could be removed only by impeachment. Upon Molinas' petition, federal judge Néstor Bujan declared

in March that the presidential decree was invalid on this ground. This decision was upheld shortly thereafter by the Federal Court in Buenos Aires.

Luis Moreno Ocampo: prosecutor who has been in charge of several human rights cases before the Federal Court of Appeals for Buenos Aires and former assistant prosecutor in the trials of the nine Commanders-in-Chief of the previous military governments prosecuted and sentenced for human rights abuses. Moreno has been verbally attacked by President Menem and other senior government officials for publicly voicing his opposition to the pardons granted to the officials he helped to prosecute. In December 1990, Menem reportedly said that he would seek Moreno's dismissal. Shortly thereafter, Secretary of Justice Arias publicly stated that Moreno would be disciplined. At the time of this writing, however, Moreno is still on his job as federal appellate prosecutor and no action has been taken against him.

Julio Reynoso: public prosecutor who brought charges against three Buenos Aires police officers for murdering three young men. On 17 October 1990, a man identifying himself as a member of a "parapolice command" telephoned Reynoso and threatened him with death, saying that Reynoso would have to "pay for the Budge." Ingeniero Budge is the place where the police officers allegedly killed the young men. Reynoso received the telephone call shortly after he had telephoned a colleague and friend of his, Juan Makintach (see above), who had also received death threats, to express his sympathy and support.

María Servini de Cubria: judge who received death threats around 29 June 1990 shortly after the Vice-president of the Supreme Court of Justice announced at a press conference that another judge, Remigio González Moreno, would be investigated for professional misconduct. Judge Servini had reported González to the Supreme Court upon suspicion that he may have violated his professional responsibilities while presiding over a recent case.

BRAZIL

Ricardo Brandão: lawyer in charge of the Human Rights Commission of the Brazilian state bar association at Campo Grande, Mato Grosso do Sul state. Brandão has denounced numerous human rights violations allegedly committed by members of the Federal Police in Mato Grosso do Sul. He also pressured authorities to investigate a 1989 case of a 20-year-old who was arrested by federal police and allegedly tortured to death at a police station. In June 1990, the federal police charged Brandão with making false accusations against them. His two daughters have received anonymous phone calls threatening their father with death. Although both the Minister of Justice and the General Chief of Federal Police have been informed of the threats, the government has not taken any action to protect Brandão.

Luiz Carlos Brondi: prosecutor in Ribeirao Preto, São Paulo state. Brondi opened investigations into a case concerning the alleged torture of a woman detained by civilian police in a police station. In May 1990, a policeman threatened Brondi in an attempt to force him to drop the case and transfer to a different district.

Geraldo Vieira Diniz: lawyer for the Rural Workers Union (*Sindicato dos Trabalhadores Rurais*, or STR) in Barras, Piauí state. Diniz has represented clients contesting land ownership on the "Currais Novos" farm. On 9 December 1990, the owner of the farm along with his son and four other heavily armed men entered Diniz's home and threatened him with death. The incident was reported to the Brazilian authorities.

Cleide Fontes: lawyer assisting a peasant group in Choro, Quixada district, in a title dispute with a large landholder. In late April 1989, after many of the peasant families had already been driven off the land by the landlord's private militia, Fontes began to receive death threats and anonymous calls. (See CIJL 1990 report.) In 1990, the threats became more frequent. After international action in her favour, particularly by the CIJL and the International Terre des Hommes Federation, she was received by the Governor of Ceara state and promised protection. The peasants whom she was representing subsequently won their case and became owners of the lands they had been working.

Tania Maria Salles Moreira: public prosecutor of Duque de Caxias, Rio de Janeiro. Moreira, who has prosecuted members of Brazilian death squads who frequently target minors, received numerous death threats in 1990. In early February 1991, Moreira began to receive an increased number of anonymous telephone death threats. Although her initial request for police protection was denied, pressure and press attention prompted the state Secretary of Public Security to offer Moreira protection on her way to and from each work day.

Marcelo Silva de Freitas: lawyer and member of the Marabá centre for the Defence of Human Rights threatened with death by a group of armed landowners in July 1990. Freitas represented a group of landless peasants arrested during the course of a land occupation of the *Jandáia* farm in Pará state. He was reportedly threatened with death by armed landowners who had surrounded the Marabá police station where the peasants were being held. The ICJ is unaware of any investigation into the threats against him.

David Guerra: lawyer for STR in Colatina, Espírito Santo state. Guerra was threatened for the first time in 1986 while he was defending a peasant in a land conflict with a landowner. (See CIJL 1989 report.) The landowner reportedly stated: "If you bring me to

court and win, you can order your casket." In 1990, Guerra received death threats allegedly from the same landowner. Local human rights groups assert that the threats against Guerra may relate to his investigation of the 1988 killing of a former STR president, in which the landowner, a former civil police officer and a military policeman were implicated.

Milton Inácio Heinen: lawyer working for the *Comissão Pastoral da Terra* (Pastoral Land Commission) in Goiás. Heinen has received numerous death threats as a result of his representation of the families of rural labourers. Since August 1989, Heinen has represented the workers who were occupying land on the *Fazenda Europa* farm owned by the Caido family in the municipality of Goiás. On 5 May 1990, during negotiations between the two parties, the Caido family representatives allegedly threatened the workers and the lawyer. In front of a human rights official of the Secretary of Justice of Goiás state, an army colonel and a commander of the Sixth Battalion of the Military Police, the landowner reportedly said to Heinen: "I don't want to do what I already did 30 years ago, but if I go to that area and I need to go there, I will do it with men, women, children and I will do it with you too." He was apparently referring to an incident on his land in which a number of peasants were killed. The threats were allegedly repeated to a city official on 3 July 1990.

Adair Longhini and Eliseo Buchmeier de Oliveira: Longhini is a judge in Xapuri, Arce state who presided over the Chico Mendes trial and Buchmeier de Oliveira was the chief prosecutor in the case. Chico Mendes was a renowned leader of the rubber tappers union in Xapuri, Arce, who was murdered on 22 December 1988. Following the killing, several of his relatives and people close to the investigation received death threats, including Longhini. During his tenure with the case, he and his wife received numerous threatening telephone calls at home and work. In response, Longhini changed his phone number several times and took other precautions. On 26 June 1990, two men were convicted of the murder of Chico Mendes and sentenced to prison. Shortly thereafter, Buchmeier de Oliveira was told that relatives of the convicted murderers were surprised that "he was still not afraid to walk around town after dark."

José do Patrocínio: Catholic priest and attorney in Quipapa who works with the Federation of Agricultural Workers of Pernambuco. The Federation represents rural workers in the sugar cane industry in that state. According to local bishop Dom Tiago Postma, Father José has been threatened by gunmen allegedly hired by landowners during 1990.

Maria Aparecida Pedrosa: legal advisor to the Palmeres Rural Workers Union and member of the Federation of Agricultural Workers of Pernambuco. Pedrosa is the widow of José Helio da Silva, an STR advisor who was killed on 13 December 1990 after receiving death threats from individuals reportedly representing landowners in the area. Immediately after her husband's death, Pedrosa began to receive death threats as well. She suspects that the people threatening her are those responsible for her husband's murder. On 14 December 1990, she applied for and was granted police protection. Pedrosa also left the township for a short time for security reasons.

Nishlei Vieira de Mello: legal advisor to the *Conselho Indigenista Missionario* (Missionary Council for Indigenous Peoples). On 21 May 1991, Vieira de Mello was prevented by the President of the official *Fundacao Nacional do Indio* (National Indian Foundation - FUNAI) from assisting the Guajajara Indian community in Cana Brava during a meeting with FUNAI in Sao Luis, Maranhao State, called to resolve a conflict regarding traditional Guajajara lands in the zone of Sao Pedro dos Cacetes which had

been occupied by non-indigenous settlers. At the meeting, which had been requested by the Guajajara to discuss their grievances, the authorities told the Indians that they could not bring their lawyer. After recusing themselves to discuss the matter, the Guajajara demanded that Vieira de Mello be present to advise them. When the authorities refused, the meeting had to be adjourned. Three days later, when Vieira de Mello and two Guajajara leaders attempted to visit the Maranhao Governor to lodge a complaint, she was refused entry to the office. Vieira de Mello called the local office of the Brazilian Order of Advocates, which dispatched its President and another lawyer who arrived at the governor's office after the meeting had terminated.

CAMEROON

In July 1990, the Cameroon National Assembly passed a law which would have granted authorities strict control of the legal profession, including the right for police to search lawyers' offices without a warrant. The law would also have disempowered the Cameroon Bar Association, by dismantling the national bar and replacing it with several regional bar associations. The bar association went on strike to protest the draft laws which were not promulgated by the executive.



Yondo Mandengue Black

Yondo Mandengue Black: lawyer and former President of the Cameroon Bar Association. On 19 February 1990, Black and ten others were arrested in Douala on suspicion of setting up a political party and for alleged "subversive activities" including "holding secret meetings," "writing and distributing tracts that are hostile to the government and the president," and contempt under Section 153 of the Cameroonian Penal Code (see 1990 CIJL Report).

Members of the Cameroon Bar Association, which represents more than 500 lawyers, mobilized around the case of Yondo Black. In a statement issued on 6 March 1990, the Bar claimed that Black's arrest constituted an infringement of constitutionally guaranteed freedoms of expression and association, and demanded his immediate release. In late March, lawyers in Cameroon called a boycott, ceasing all courtwork, until the trial of the "Douala Ten" was over. The strike was also in protest against the subversion law, which allows for prolonged detention of suspects without charge or trial. Over two hundred lawyers interrupted their boycott to attend Black's trial. The lawyers, dressed in their black robes, acted as Black's defence team.

On 5 April 1990, Black was convicted by a military tribunal of subversion and was sentenced to three years imprisonment with no right of appeal. On 14 August 1990, Black was pardoned by President Paul Biya and released from prison. Black's release followed the 21 July announcement that all political prisoners would be released.

Bernard Muna: lawyer, three-term president (*bâtonnier*) of the Cameroon Bar Association and President of the Union of Central African Lawyers. Muna spearheaded the bar's defence of Yondo Black (see above). On 27 March 1990, at a meeting of the Bar Association to discuss the Yondo Black case, Muna gave an impassioned speech calling upon the Bar to defend against *all* human rights violations in the Cameroon, and not just those committed against lawyers. "Why do Cameroonians have to resort to anonymous tracts and clandestine meetings to express their opinion as to the way they are being governed," he asked, also criticizing the state security apparatus which "arrests and detains citizens with impunity." Muna subsequently received anonymous death threats which referred to his speech and his association with Yondo Black's defence team. In June 1990, Muna's passport was seized when he returned to Cameroon from traveling abroad. It was returned in September 1990.

CENTRAL AFRICAN REPUBLIC



Nicolas Tiangaye

Nicolas Tiangaye: defence lawyer from Bangui. Tiangaye has taken on many leading political cases, including the defence of former Emperor Jean-Bedel Bokassa and of current opponent General Francois Bozizé. He is also co-signatory and co-drafter of documents calling for a national conference to establish democracy in the Central African Republic¹.

In 1990, Tiangaye was the subject of disciplinary proceedings to remove him from the bar. The government accused Tiangaye of insulting witnesses and lacking respect for State institutions in statements made before the Permanent Military Tribunal on 2 June 1990, in a trial in which he was defending two superior officers accused of threatening state security. The charges against the officers were based on allegations of plotting contained in letters written to the President's wife by soldiers under the officers' command and which were written with the express purpose of "rendering a service...for the security of the Yokoma people" (a minority ethnic group to which the letter-writer, the President and most of the government belong). Tiangaye, in his closing argument, rhetorically asked the military court:

Et quand je vois des petits rigolos ... venir ici pour narguer des Officiers Supérieurs ... Monsieur le Président, je dis: Où est l'honneur de l'armée? Où est l'honneur des officiers que vous êtes, Messieurs les Assesseurs, où est votre honneur? (And when I see these little jokers...come here to make fun of their superior officers...Your Honour, I ask, where is the honour of the army? Where is the honour of the officers whom you are, members of the court, where is your honour?)

Où est l'honneur de l'armée dans tout ça? Où est la dignité nationale dans tout ça? Quand vous êtes Chef de Corps, vous êtes Sous-Chef d'Etat-Major et c'est des petits soldats de 2ème classe, des va-nu-pieds qui écrivent des lettres contre vous à leurs "parents" pour qu'on vous écrase, pour qu'on vous jette en prison. Où est l'honneur de l'armée? (Where is the honour of the army in all this? Where is the national dignity in all this? When you are Chief of a Corps, Assistant Chief of Staff, and little second-class privates, barefoot boys, write to their "parents" to stamp you out, to throw you in prison. Where is the honour of the army in all this?)

Tiangaye's quotation from French philosopher Antoine de Rivarol was also cited by the government:

Une armée dont on se sert pour asservir les autres est déjà asservie. Le marteau reçoit autant de coups que l'enclume. (An army used to enslave others is itself enslaved. The hammer receives as many blows as the anvil.)

Tiangaye's military clients were acquitted of the principal charges against them. However, the President of the Permanent Military tribunal, Marcel Serekoisse-Samba,

1. Roughly 1,000 people have signed open letters to the President, and supported press releases, calling for a national conference to establish a multi-party system. Many of the signatories, including civil servants and other professionals, have been the subjects of government reprisals.

was relieved of his duties and downgraded from First to Second Counselor of the Supreme Court. The Minister of the Interior, Christophe Grelombé, then reportedly asked the Minister of Justice, Jean Wilibiro-Sacko, to order Tiangaye's disbarment for the above statements, which Wilibiro-Sacko refused to do. On 5 June, Wilibiro-Sacko was replaced as Minister of Justice.

On 13 June, Minister Grelombé wrote to the new Minister of Justice, asking that disbarment proceedings be initiated against Tiangaye "*dont l'affiliation à un parti, dit d'opposition au régime, ne fait plus aucun doute*" (whose affiliation to a supposed opposition party is no longer in doubt). The Prosecutor-General immediately commenced such proceedings.

In the meantime, the Minister for Public Security ordered that Tiangaye be barred from leaving the city of Bangui pending the hearing. When the new Minister of Justice, Hugues Dobozeni, protested against this measure, he was also relieved of his duties and replaced by Christophe Grelombé.

At his disciplinary hearing before the Court of Appeals on 9-10 October 1991, Tiangaye was defended by 15 of the other 16 lawyers from the Central African Republic, as well as colleagues from Cameroon, Congo, Gabon and France. The hearing was also attended by the CIJL Director, the President of the *Union Internationale des Avocats* (mandated as well by the International Bar Association) and a member of the Executive Committee of the Paris Bar Association. The public, however, which had descended by hundreds on the courthouse ringed by army officers, was excluded from the hearing. At the hearing, the prosecution attempted to add a third charge of "sedition" against Tiangaye.

On 30 October, the three-judge court, without reaching the merits (i.e. a defence lawyer's immunity), dismissed the action, ruling that as Tiangaye's words had not given rise to any reproach or comment from the military court before which they were pronounced, no ulterior action could be commenced.

The CIJL Director, in his report on the hearing, ("*Ou est l'honneur?*" *Le Procès Disciplinaire de Maître Nicolas Tiangaye*) considered that Tiangaye's arguments to the court were within the bounds of the defence of his clients. He also stated his conviction "that the proceedings undertaken against Maître Tiangaye responded to political rather than professional considerations" and that (despite the acquittal) they therefore violated Principal 23 of the UN Basic Principles on the Role of Lawyers which provides that "lawyers shall not suffer professional restrictions by reason of their lawful action or their membership in a lawful organization."

CHILE

Efren Araya: justice of the Supreme Court. On 12 March 1991, a low-powered explosive device was hurled from a passing car at his home. Neither Araya nor his wife were at home and the bomb did little damage. The attack came during a heated national debate over the Supreme Court's role during the 1973-1990 military dictatorship. On 4 March, the Commission for Truth and Reconciliation (the Rettig Commission) released its report on human rights abuses during the dictatorship, in which it heavily criticised the courts for their failure to protect human rights. The report added to calls for judicial reform, in light of the judiciary's alleged subservience to the military government. Two days later, on 6 March, the police, acting on information reportedly obtained from a leftist in detention, informed the Supreme Court of details of an alleged plot to carry out an attack on two members of the court, including Araya. The Court immediately issued a statement accusing the government of "pernicious animosity" against the Supreme Court and "denigrating the judiciary," linking the alleged plan directly with criticism of the court. After the attack on Araya, the Court issued another statement, claiming that the attack fully justified the fears they had expressed earlier. Some believe, however, that the attack may have been carried out by right-wing provocateurs.



Carlos Cerda Fernández

Carlos Cerda Fernández: Santiago Court of Appeals judge and president of the Military Court (*Corte Marcial*). Cerda faced Supreme Court disciplinary proceedings in 1990 for refusing to close a case against several high officials of the Chilean armed forces implicated in the 1976 kidnapping and "disappearance" of ten individuals.

In 1983, Cerda had been appointed investigating magistrate in the case, originally opened in 1977. From 1983 to 1986, Cerda issued several orders of arrest and for the posting of security. Some of these orders were reversed on appeal, others were upheld. In one appeal, the Court of Appeal of Santiago specifically held that an amnesty law which the military government proclaimed for political crimes occurring prior to 1978 did not bar the investigations.

On 14 August 1986, Judge Cerda issued orders for the arrest of 40 people on the grounds that there was sufficient evidence of their involvement either as perpetrators, accomplices, or aiders and abettors in two of the "disappearances." Thirty-eight of the accused were either active or retired members of the various branches of the military or the secret police. Some appealed, alleging that the amnesty law prevented any further investigations in the case. The appeal was heard on 10 September 1986 by the Santiago Court of Appeal, which accepted the amnesty argument, prohibited the continuation of the investigation, and ordered that the case be closed. This decision was upheld by the Supreme Court on 6 October 1986.

Judge Cerda believed that the ruling was not well-founded. Relying on Article 226 of the penal code which makes it a crime to execute an order believed to be incorrect unless representations are made to superior officials setting out the reasons for the order's illegality, Cerda sent a memorandum to a panel of the Court of Appeals explaining why he believed the order to be wrong. This memorandum was sent by the appellate court to the Supreme Court. In his memorandum, Judge Cerda stated that the amnesty law had not been meant to apply to the investigatory stage of the proceedings, as to ap-

ply it in this way would mean that the facts surrounding the crime would never come to light and the perpetrators would not be identified. He argued that the law became applicable once the identity of the perpetrators was clearly established, and pointed to previous opinions of the Supreme Court to support his assertion. He also argued that the crime of depriving someone of their liberty was a continuing crime and no date of commission could be assigned until the time of the person's release. As eight of the ten "disappeared" had not been located, the crime could not be considered to have ended, and the amnesty law, which only covered events prior to 1978, was not applicable.

On 8 October 1986, the Supreme Court reprimanded Judge Cerda for having taken issue with its decision and stated that his conduct represented "an absolute disobedience to his duties and obligations and a grave lack of judicial discipline, because no law authorized him to raise, discuss and object to judicial orders, ripe for execution, and even less so resolutions of the Supreme Court." The Court also asserted that his behavior undermined the proper functioning of the judiciary and suspended Judge Cerda from office for two months with half pay.

In August 1989, after Cerda had returned to the judiciary, the Supreme Court ordered him to close the investigation. Cerda did not do so, however, believing that this would violate Article 143 of the Code of Criminal Procedure, which states that a case shall not be closed unless an investigation has been exhausted. He also believed that closing the case would violate international human rights norms. Cerda therefore archived the case without closing it.

In June 1990, the Supreme Court discovered that the case had not been officially closed and initiated disciplinary proceedings against Cerda. In July 1990, Cerda closed the case. Nevertheless, in mid-January 1991, the Supreme Court suspended Cerda for two months at half salary and subsequently dismissed him from the judiciary by giving him the lowest possible performance rating. The Court allowed Cerda only five days to appeal the ruling. On 29 January 1991, after national and international pressure in Judge Cerda's favour, the Supreme Court reversed its decision, reinstating Cerda in the judiciary by raising his performance rating. Cerda remained subject to the two-month suspension.

Nelson Muñoz Morales: judge in Pozo Almonte, in northern Chile. Muñoz received death threats following his decision to permit a search of Pisagua, a former penal colony, for clandestine graves. Muñoz issued the order in early 1990, and the following June, a number of corpses thought to be victims of extrajudicial executions under the Pinochet government were discovered. That same month Judge Muñoz received a letter threatening his life, and a dead cat with its throat slit was left hanging from the gate in front of his house.

Hugo Onetto Urzúa: lawyer working in Pisagua who defended persons tried by the 1973 "wartime courts" (*consejos de guerra*). Onetto received a telephone death threat on 9 June 1990, shortly after he publicly announced the names of individuals who had been involved in these courts.

Alfonso Stephens: 73-year-old judge and newspaper columnist detained after publishing articles on the responsibility of the Chilean armed forces in human rights violations. His articles, which criticized the military courts, appeared in the publications *El Siglo* and *Análisis*, in July, August and September of 1990. On 21 September 1990 the military prosecutor's office arrested Stephens on the charges of "inciting sedition" and "offending the armed forces." He was taken to the Anexo Capuchinos prison where he was held until 2 October 1990 and later released on bail.

Gustavo Villalobos Sepulveda: executive secretary and former head of legal analysis for the church-sponsored *Vicaría de la Solidaridad*. In 1986 Villalobos was charged with “assisting an armed terrorist organization” after providing legal advice to an individual accused of killing a policeman. After ordering the detention of Villalobos, the Military Prosecutor demanded access to confidential files of the *Vicaría*, an act widely regarded as an attempt to discredit Chile’s main human rights organisation. In an opinion dated 20 November 1989, the military Justice of Santiago sentenced Villalobos to five years imprisonment. The sentence was reversed by the Supreme Court on 18 June 1990 on the grounds that there was no evidence to support the conclusion that Villalobos had committed an offence.

CHINA

According to Amnesty International, the "procedures for trial established in Chinese law do not meet the minimum standards for fair trial set out in international human rights instruments - notably the right to have adequate time and facilities to prepare the defence, the right to be presumed innocent before being proved guilty in a court of law and the right to cross-examine prosecution witnesses and to call witnesses for the defence".¹ In practice, verdicts and sentences are often determined by authorities before a trial begins. This has never been more clearly illustrated than in the political trials held since the crushing of the 1989 pro-democracy movement.

The CIJL is concerned that the judiciary in China is under pressure to impose judgments based on decisions by non-judicial bodies. A provision in the Criminal Procedure Law allows court presidents to submit, "when they consider it necessary ... all major and difficult cases" for "discussion and decision" to the "adjudication committee." The adjudication committee is a body set up to supervise judicial work. All cases, however, are reportedly first decided by the adjudication committee — before the cases go to trial. Thus, court presidents do not actually have the power the law apparently confers upon them to decide which cases go to the adjudication committee. In addition, judgments can be sent to Communist Party committees in charge of political-legal work in order to be examined and approved. These committees issue opinions to courts which are reportedly used as the basis for verdicts and sentences. Finally, court presidents often submit cases, particularly those involving political issues, for a pre-trial decision to local government authorities.

In politically sensitive cases in China, standards for a fair trial are even lower than in non-political criminal cases. Again, this is largely due to the practice of predetermining outcomes. Political trials are, in practice, not public. Foreign observers who have tried to attend the trials of pro-democracy activists have routinely been refused permission, and even family members are often denied this right. Defendants have been held in pre-trial detention for several months, without access to a lawyer or family members. This often leaves the defendant in a vulnerable situation, susceptible to pressure to confess. In addition, defendants often cannot choose their lawyer; the state assigns a lawyer who normally will only assist the defendant in mitigation.

Furthermore, people convicted of ordinary criminal offences have been executed after summary trials. These trials, according to Amnesty International, occurred during a series of anti-crime campaigns and involved over one thousand people. Chinese officials have increased pressure on the judiciary to follow the party line; in fact, on several occasions officials urged that the judiciary follow the party leadership.

For defence lawyers in China, an entrenched system makes accomplishing an adequate defence extremely frustrating and threatens the fairness of trials. Lawyers usually begin working on a case only a few days before trial, and sometimes they begin the day of the trial. In addition to time limitations, defence lawyers face the monumental obstacle of trying a case when the outcome is normally predetermined and the lawyer's role is expected to be less of defending the charges and more of mitigating for the client.

The case of lawyers Ji Suwan and Gao Xiaofeng of the Beijing Qing Shan Legal Affairs Office is a case in point. Ji and Gao were assisting in the defence of economist Chen Ziming who was sentenced to 13 years imprisonment and four years deprivation of political rights for his alleged role in the 1989 student movement. In their defence, the lawyers questioned whether the charges against Chen were based on fabrications. The first day of trial ended with the judge ordering the parties to return the next day to re-examine the facts.

1. Amnesty International, *People's Republic of China: Violations of Human Rights*, April 1991.

As soon as the trial began, however, a guilty verdict was announced and the judgment entered. Both Ji and Gao reportedly had their licenses held when they turned them in for annual re-registration; thus they had been effectively disbarred as they could not practice law. Their credentials have since reportedly been reinstated.

In another case from the 1989 pro-democracy movement, lawyers **Sun Yachen** and **Zhang Sizhi** represented journalist Wang Juntao who, like Chen Ziming (above) was sentenced to 13 years imprisonment. Lawyer Sun, who headed the defence, was reportedly denied state housing in retaliation for his work on behalf of Wang. (State housing is an essential privilege because of the housing shortage in China.) Sun was assisted in Wang's defence by his partner, attorney Zhang Sizhi. Zhang has received telephone threats regarding his future. Sun's license to practice was also reportedly suspended on the ground that he left his work post without first asking for leave.

These two cases were notable among the pro-democracy trials because Wang and Chen were permitted to choose their own defence lawyers. The government had labelled Wang and Chen as the "black hands" of the pro-democracy movement. The sentences they received were the harshest handed down in the trials against participants in the Tianamen Square movement. The Permanent Representative of the People's Republic of China to the United Nations Office at Geneva, Fan Guoxiang, responded to a CIJL inquiry about the reported reprisals against the attorneys, calling them "groundless." He denied that the government had taken away the licences of Ji and Gao, "on the ground that that these two lawyers have defended Chen Ziming." The letter also stated that Sun had been provided with a state-owned apartment.

Leading democrats detained in China in 1989 included lawyers, law professors and law students who took leading roles in organising other groups, including the Workers' Autonomous Federation and the Beijing Citizens' Autonomous Federation. The status of many of those listed below is sketchy or not known.

Chen Xiaoping: graduate of Beijing University's law department and lecturer at the Chinese University of Politics and Law. Detained June 1989 and released February 1991 after persistent pressure from one man who taught Chen Xiaoping in Beijing, and is currently working in the U.S.A. Forced back to his home province, Hunan, Chen is reportedly in ill health and with no means of livelihood.

Chen Yang: student at the Chinese University of Politics and Law. Member of Beijing Citizens Autonomous Federation. Detained in June 1989 in Shenyang for printing and distributing "reactionary" leaflets and other "counter-revolutionary" crimes. His present status is not known.

Fan Weijun: professor at the law research institute of the Chinese University of Politics and Law and leader of Beijing Citizens Autonomous Federation. Detained June 1989. His present status is not known.

Li Jinjin: doctoral student in law at Beijing University, founder of and legal adviser to the Beijing Workers' Autonomous Federation, and head of the official Graduate Student Union. Detained June 1989 and released between 28 April and 2 May 1991, apparently pending trial. According to news reports, he was formally expelled from Beijing University.

Liu Suli: professor at the Chinese University of Politics and Law. Liu went into hiding after the 4 June Massacre, but decided that as others were being killed and detained, he should stand with them. Liu came out of hiding and returned to his university dormitory.

He wrote a proclamation "Waiting for Arrest" and sent it to the government. The police came for him on 17 June 1989 and accused him of instigating and spreading counter-revolutionary rebellion. He was released 26 January 1991 after pressure organised by his wife in the United States of America.

Shi Binhai: journalist for the Shanghai newspaper *Law Monthly* (published by the East China Institute of Government and Law). Detained in 1989, accused of instigating student protests. Present status not known.

Wang Xinjing: Professor at Chinese University of Politics and Law. Leader of Beijing Citizens Autonomous Federation. Detained June 1989 in Pingdu, Shandong, and accused of spreading rumours and forming an illegal organisation. Present status not known.

Yu Haocheng: 66 year old lawyer, former legal scholar and director of the China Legal System and Social Development Research Institute. Detained July 1989 in Beijing and released on 29 December 1990, apparently into house arrest. He is reported to be in ill health and without employment.

Yu Zhongmin: journalist for the *Law Monthly* (see Shi Binhai, above). He was detained in July 1989 in Shanghai. His present status is not known.

Zhang Weigulo: journalist and licensed practitioner of law. Zhang worked as Beijing correspondent for the *Shanghai World Economic Journal*, closed by the government during the crackdown following the 4 June Massacre. Detained in June 1989 and released February 1990, after "demonstrating knowledge of his crime." Zhang continued to speak out against the Chinese government's disregard for the law. He appeared on the BBC's "Yellow Bird" documentary programme, emphasising the importance of the rule of law. He was taken in for questioning by the police in May 1991 and held for eight hours, and is apparently under constant surveillance. According to a Hong Kong newspaper report, Zhang went into hiding in the beginning of July fearing re-arrest.

Zhou Yongjun: fourth year student at Chinese University of Politics and Law, and organiser of the 21 April 1989 student demonstration, the first large scale open protest from Beijing students. Zhou was also the first chairman of the Beijing Students' Autonomous Federation. One of the main student leaders, he put all efforts into organising the Workers' Autonomous Federation. Detained in June 1989 for counter-revolutionary propaganda, he was released on 26 January 1991 after pressure was brought to bear on the Chinese government. He is now reportedly under surveillance and was expelled from school for involvement with the democracy movement.

COLOMBIA

The level of violence against members of the Colombian legal profession remains high. In all, there were 58 attacks and threats against judges and lawyers since last year's report (including 36 murders). An undisputed political motive was at work in almost half the cases (28), including 13 killings.

On the one hand, there appears to have been a decrease in violence stemming from drug traffickers. Last years' CIJL report noted that drug traffickers or their allies were behind a large number of threats and attacks against the judiciary. This year, however, drug traffickers appear to be implicated in only two cases reported. This decrease in violence may be due in part to President Gaviria's policy of offering drug traffickers reduced sentences if they turn themselves in.

The murder of former Minister of Justice Enrique Low Murtra (see below) nevertheless served as a stark reminder that not all drug traffickers have given up their violent tactics. Low, who was gunned down on a busy Bogotá street on 30 April 1991, was a distinguished jurist who had played an active role in promoting the extradition of suspected drug traffickers during his tenure as justice minister.

On the other hand, attacks against lawyers working on human rights cases increased during the period covered by this report and the majority of cases documented in the CIJL's past two reports remain unresolved. For example, more than one year after Alirio Pedraza Becerra disappeared from a street corner in Bogotá, no suspects have been identified (see below).

As with last year's report, the section on Colombia represents only a general picture of the situation of judges and lawyers in the country. For security reasons, many attacks and threats against members of the legal profession are never formally reported to human rights organization or to the press. This is especially true in connection with death threats. According to *ASONAL-Judicial*, the Colombian judicial employees union, the majority of juvenile court judges handling cases involving young paid assassins are threatened with death.

Carlos Campo Donado: lawyer and former magistrate and president of the Superior Tribunal of Barranquilla and former president of the Criminal Chamber of the same court. Campo was killed on 13 August 1990 at approximately 8:30 a.m. Two individuals riding a motorcycle in the coastal town of Barranquilla, Atlántico, reportedly shot Campo three times in the head as he stopped his car in front of the house of former Judge Santiago Avila to pay him a visit. Twenty suspects were detained for questioning but all were later released for lack of evidence. Campo, who had received numerous death threats in the past including "invitations" to his own funeral, had no bodyguards or governmental protection since he left the Superior Tribunal eight months earlier. After stepping down as judge, he dedicated himself to litigation.

On the same day, **Carlos Enrique Castillo**, magistrate of the Penal Chamber of the Superior Tribunal of Barranquilla, **Lucas Morales Duque**, Third Superior Court Judge (Barranquilla), and **Abraham Nader**, Fourth Superior Court Judge (Barranquilla) received anonymous telephone death threats. The callers stated that the three other judges would face the same fate as Donado.

Jorge Clavijo López and Oscar Ocampo Amaya: Clavijo López was killed on 6 September 1990 in Cali, Valle department, by a passenger riding a motorcycle as he rode in a taxi in downtown Cali. He died later at a local hospital. Prior to his death, Clavijo received death threats after he attached property during a legal dispute over title to land in

the municipality of Yumbo. The lawyer who represented the other party, Ocampo Amaya, died on 21 September in the Cali university hospital after being shot by a motorcycle passenger on 10 September in the Alameda neighborhood of Cali.

Manuel René Costa Gutiérrez: lawyer for the left of centre Patriotic Union (*Unión Patriótica*) party, killed on 22 November 1990 as he was about to enter his office in Valledupar, Cesar. His brother, a former councilman, reportedly wrote to the governor of Cesar claiming that members of the F-2 branch of the national police were involved in the crime. Both the Colombian Association of Litigators (*Asociación de Abogados Litigantes*) and the *Unión Patriótica* demanded that the police conduct an exhaustive investigation into the murder. The criminal investigatory office (*Dirección de Instrucción Criminal*) in Cesar appointed a judge to investigate the crime, and a member of the national police of the department of Cesar, Alvaro Correa Correa, was accused of participating in the crime. On 23 November 1990 the police detained three suspects.

Jorge Gómez Lizarazo: lawyer working in the Magdalena Medio region and President of the Regional Committee for the Defence of Human Rights of Santander (CREDHOS). Gómez has been working with people affected in the course of the Fifth Army Brigade's counterinsurgency operations in the Magdalena Medio region of Santander and Antioquia in mid-September 1990. During these operations, several people have allegedly been extrajudicially executed and tortured. Gómez has received threats since January 1991, allegedly from members of the army's Fifth Brigade. Lawyers who have visited the Fifth Brigade bring messages to Gómez telling him that he should leave the region. On 19 March 1991, Gómez' bodyguard, José Humberto Hernández Gabanzo, who was hired after the local mayor took up a collection in view of threats to Gomez, was himself murdered.

Local human rights groups have documented numerous violations during army operations in the region. On 4 September 1990 Henry Delgado was detained by the Army in the hamlet of Tienda Nueva, municipality of Yondo, Antioquia department. His body was later found with signs of torture in the city of Barrancabermeja. Gabriel Flórez, leader of the national Association of Peasant Farmers (*Asociación Nacional de Usuarios Campesinos (ANUC)*) in the municipality of San Vicente de Chucurí was allegedly tortured. These and other violations were reported to the Attorney General. On 1 October 1990, however, the commander of the Mobil Brigade, Hugo Tovar, publicly declared that the Human Rights Committee of Barrancabermeja was "an organization dedicated to benefit the subversion." Such comments may further endanger members of the Committee.

Magda Gonzáles: lawyer for the *Comité Permanente de Derechos Humanos* (Permanent Committee for Human Rights) in Bogotá. In early 1990, Gonzáles obtained highly detailed information from military officials relating to human rights abuses and drug trafficking on the part of Colombian security forces. Shortly thereafter, she was warned that security forces were trying to locate her. Upon calling her office, she was told security forces had already attempted to locate her there. Fearing for her safety, and under the recommendation of fellow human rights workers, she took refuge in the Swiss embassy in June 1990 and was assisted in fleeing the country.

César Augusto Hernández: lawyer, former official of the municipality of Concepción, Santander department, member of the non-governmental Human Rights Committee of Bucaramanga (*Comité de Derechos Humanos de Bucaramanga*), and leader of the left-wing political organization *A Luchar*, was killed on the road between Bucaramanga and Barrancabermeja on 2 June 1990. The crime occurred in an area where army troops

were engaged in a counterinsurgency operation against a guerrilla group. Hernández' body reportedly showed signs of torture.

Luis Guillermo Hernández Camelo: lawyer killed on 2 May 1991 in Villavicencio, Meta department. Two unidentified gunmen arrived at the home of Hernández in the El Remanso neighborhood and shot him four times in the head in the presence of his two children and wife. Hernández was handling several civil cases and was in charge of collecting debt owed to the *Caja Agraria*, a lending institution, in Villavicencio and other municipalities of Meta.



Enrique Low Murtra

Enrique Low Murtra: former Minister of Justice, former criminal investigatory judge (*Juez de Instrucción Criminal*) former Magistrate of the Administrative Tribunal of Cundinamarca, former judge of the Council of State (*Consejo de Estado*, the highest court for administrative litigation), former director of the national taxation office (*Impuestos Nacionales*), former Comptroller for the District of Bogotá, former ambassador in Switzerland. Low was murdered on 30 April 1991 at approximately 8:15 p.m. as he left Bogotá's La Salle university where he was dean of the economics department. Low was about to get into a taxi at the main entrance to the university when an unidentified man stopped a few meters in front of Low and fired several shots at him. The assailant had arrived in the university area earlier in the afternoon accompanied by another individual who drove a motorcycle. Low died moments after

arriving at a local hospital. According to human rights groups, drug traffickers, paramilitary groups, or ultra-rightist members of the military may be responsible for the crime.

As Minister of Justice, Low was active in promoting the extradition of suspected drug traffickers. On 5 January 1988 he announced a detention order with the aim of extraditing Pablo Escobar Gaviria, Gonzalo Rodríguez Gacha, and three of the Ochoa brothers. This decision was taken after the scandal that occurred after Jorge Luis Ochoa Vásquez was released from jail on 30 December 1987. When the Colombian Supreme Court ruled that the extradition treaty with the U.S. was unconstitutional, Low relied on the Multilateral Convention on Extradition signed in Montevideo in December 1933 to extradite suspected traffickers. In May 1988, the Council of State suspended these orders (*autos de detención*) and considered them invalid. At Low's petition, the Council of State later upheld the orders. One month later, on 9 June 1988, Low resigned from his post.

Low had received death threats in the past and was aware of attempts to kill him. During his tenure as ambassador in Bern, Switzerland, the Swiss police captured a member of the ETA near the border with France who allegedly had plans to blow up the Colombian embassy in Bern with dynamite. Although Low requested protection from the Colombian government, he was not afforded any protection. Low was killed on the seventh anniversary of the assassination of Minister of Justice Rodrigo Lara Bonilla, a crime attributed to Medellín drug traffickers. Low also survived the M-19 takeover and subsequent army attack on the Justice Palace on 6 November 1985. At the time, Low was a member of the Council of State and was in his office.

Dumar Orlando Murcia Baquero: lawyer abducted on 3 October 1990 in Villavicencio, Meta department. Murcia was apparently kidnapped by members of a paramilitary group as he left his office in downtown Villavicencio for a legal appointment. According

to the *Comité Permanente por la Defensa de los Derechos Humanos*, the individuals forced Murcia to call his home and tell his family that he was being held by subversives. A few days earlier, however, Murcia had received threats from police agents who had been detained after Murcia reported a crime in which they were allegedly involved.

Henio Fernando Ocampo Villamarín: public prosecutor (*fiscal*) of the Fifth Special Court of Cali and former Municipal Criminal Court Judge in Cali. Ocampo's caseload included extortion, kidnapping and drug trafficking cases. He was killed on his property by five bullets from unidentified gunmen on 12 October 1990 at approximately 8:00 a.m. in the neighborhood of Atanasio Giradot. At 9:00 a.m. on the same day, Ocampo was supposed to attend a hearing on a case involving a kidnapping. Ocampo's assailant took his briefcase, which contained legal documents on cases he was handling. He survived an earlier attempt on his life in October 1989.

Carmen Palacio Palacio: Magistrate of the Superior Tribunal of Medellín. On 10 December 1990 two unidentified individuals riding a motorcycle fired at Palacio as she travelled home in her car at approximately 7:00 p.m. Palacio then fired back with a gun she had in her car, wounding one of her assailants. The incident occurred in the Belén neighborhood in western Medellín. Earlier in the year, on 6 March 1990, two police officers who watched over Palacio's home were gunned down by three men and one woman, in what was possibly an attempt on her life. Palacio had replaced Magistrate Héctor Jiménez Rodríguez in the Penal Chamber in October 1989. Jiménez was killed near his home as he travelled to the University of Antioquia. Jiménez had worked on extradition cases, and drug traffickers were probably behind the crime. Four magistrates of the Penal Chamber of the Superior Tribunal have been murdered in recent years.

Clara Parra Bravo: Municipal Court Judge in Guamal, Meta department, known for its high level of violence. On 5 May 1990, Parra Bravo received an anonymous telephone call inviting her to her own funeral. Parra had received repeated threats during her five years as a judge. She handled labour, criminal, and civil cases, and was in charge of murder investigations and drug related crimes. Fearing for her life, Parra fled Colombia in October 1990. Local groups believe that *Los Extraditables*, a group of paid assassins who work in connection with Medellín drug traffickers, may be behind the threats.

Benilda Rosa Patiño Noreña: Clerk (*Oficial Mayor*) of the Seventh Civil Municipal Court of Medellín. Patiño was forced to flee Medellín after surviving an attempt on her life on 28 August 1990. She had received death threats in the past.

Alirio de Jesús Pedraza Becerra: human rights attorney and member of the Committee in Solidarity with Political Prisoners (*Comité de Solidaridad con los Presos Políticos* or CSPP). Pedraza was last seen on the night of 4 July 1990 at approximately 10:00 p.m. in the Suba neighborhood of Bogotá. According to eyewitnesses, Pedraza was abducted by eight heavily armed men in civilian clothes outside a bakery. The abductors arrived earlier in three vehicles, which were stationed in front of the bakery. Pedraza managed to shout out his name as he was being forced into one of the vehicles. Two policemen in the area reportedly tried to intervene, but the individuals claimed they were members of the Colombian security forces, forced Pedraza into a camper, and drove off. Colombian security forces, including the judicial police, have denied holding Pedraza. Neither human rights groups nor the office of the Attorney General have any further information about his whereabouts.

Pedraza, married with a seven-year-old son, had worked with the CSPP for more



Alirio de Jesús Pedraza Becerra

than eight years. Founded in 1973, it provides legal assistance and aid to political prisoners. Pedraza was in charge of legal proceedings in several human rights cases. He served as legal advisor to the relatives of peasants who were killed when the army opened fire on hundreds of peasants during a May 1988 protest in Colombia's Magdalena Medio region. Pedraza also defended 42 trade union members who were arrested and allegedly tortured by members of the Army's Third Brigade in Cali in March and April 1990. In addition, he was investigating the disappearance and assassination of labour leader Jorge Eliécer Agudelo, allegedly carried out by military officers. The suspects in the latter case are currently the subject of disciplinary investigations initiated by the Attorney General.

The 35th Criminal Instruction Judge (*Juez 35 de Instrucción Criminal*), who was initially in charge of investigating the abduction of Pedraza, issued several search warrants, visited military barracks and heard testimony on the case. No suspects, however, were identified. The identities of the two police agents who witnessed the abduction have not been established either. In October 1990, the investigation was turned over to the judicial police. (According to Colombian criminal procedure, if 60 days have elapsed and no suspects have been identified, the judge must suspend the investigation and turn it over to the technical core of judicial police, who continue the investigation.) At the time of this writing, no suspects have been identified.

Duvarado Piedrahita Cardona: lawyer, law professor at the Universidad Libre and the Universidad de los Andes, author, columnist for the newspaper *El Siglo*, and former city councilman in Cali. On 4 December 1990, two gunmen stopped their car in the way of Piedrahita's car in the Pablo VI neighborhood of Bogotá and shot him several times, killing him instantly. Piedrahita had survived at least five prior attempts on his life since 1987. On numerous occasions the 37-year old lawyer had reported threats he received to the authorities. Drug traffickers operating in the northern part of Valle department are believed to be behind at least some of the threats, and Colombian police have confirmed that Piedrahita received threats from drug traffickers. Although Piedrahita was normally accompanied by bodyguards, they were recalled just two months before his death. One month prior to this death, Piedrahita published a book entitled *Between the Dirty War and Extradition (Entre la guerra sucia y la extradición)* in which he described the different types of violence present in Colombia - from drug trafficking, paramilitary groups, the "dirty war," and guerilla groups. Local groups believe that paid assassins working for the mafia in Valle may have been responsible for the crime.

María Esther Restrepo Quiceno: Regional prosecutor for the municipality of Apartadó, Uraba region, Antioquia department. Restrepo had been working in the heavily militarized region for two years, first as an assistant prosecutor and, since February 1990, as prosecutor. On 24 July 1990 at approximately 8:30 a.m., Restrepo and her bodyguard were shot and killed by three gunmen at the entrance to her office in the central plaza of Apartadó. The Seventh Public Order Judge in Medellín ordered the arrest of four suspects days after the crime. (One was later released for lack of evidence.) The suspects reportedly belonged to a group directed by Fidel Castaño, a paramilitary leader who operates in the regions of Urabá and Córdoba. One of the individuals arrested, Oscar Augusto Montoya, had been dismissed earlier from the National Police for poor conduct.



María Esther Restrepo Quiceno

Local groups believe that the a possible motivation for the killing was Restrepo's investigation into the kidnapping of 42 peasants in Pueblo Bello (Antioquia) on 7 January 1990. Several graves containing the bodies of the kidnapped peasants were discovered in mid-May on a farm owned in the Córdoba department by Castaño, who reportedly ordered the abduction. The Delegate Prosecutor for Human Rights initiated disciplinary proceedings against Army Captain Alvaro Gómez Luque and Sub-Lieutenant Nestor Enrique Bernal, attached to the Urabá Military command, for allowing the free transit of two trucks carrying the kidnapped peasants. The paramilitary group allegedly took the 42 men to one of Castaño's ranches, where they were tortured and killed. To date, the investigation has not led to the arrest of any of those who allegedly took part in the abduction and killings of the peasants.

Wilson Rivera Palomino: Customs Court Judge (*Juez Unico Superior de Aduanas*) in the city of Buenaventura, Valle department. On 24 November 1990, individuals riding a motorcycle shot and injured Rivera while he was waiting in a mechanics garage in downtown Cali. He died later at a local hospital. Two other persons who were in the garage at the time were also injured in the attack. Colombian police arrested two men whom they found in possession of a motorcycle and two revolvers shortly thereafter. At the time of his death, Rivera had been investigating alleged wrongdoing in the customs office of Buenaventura.

Samuel Alonso Rodríguez Jacome: Public Order Judge of Bucaramanga, department of Santander, assassinated along with his wife, **Margot Estela Puentes**, on 27 June 1990 in Bucaramanga, Santander department. At the time of the killings, Rodríguez had been in charge of investigating the deaths of three persons during a military operation led by the Anti-Extortion and Kidnapping Intelligence Command under the direction of the Fifth Army Brigade. The three had been accused by the military of belonging to the guerrilla group *Ejército de Liberación Nacional* (National Liberation Army).

The two had just arrived home at approximately 7:00 p.m. when gunmen shot the judge in the head seven times, killing him instantly. Puentes, also a lawyer, was shot several times in the back and died hours later at a local clinic. Eyewitnesses said that the two gunmen were riding in a yellow jeep. One week before his death, Rodríguez and other public order judges of the district met with the police commander of the city to request additional personal protection. Despite the request, no action was taken.

Martha Luz Saldarriaga Vélez: human rights lawyer and member of the Permanent Committee for the Defence of Human Rights (*Comité Permanente por la Defensa de los Derechos Humanos*) in Medellín. Vélez received an anonymous call at her office in early July 1990 threatening "*te vas a morir*" ('you are going to die'). Another member the Committee, Elvia Urán de Beltrán, 60, received an anonymous telephone call on 10 July at her home warning that if she continued to work on behalf of political prisoners she would meet the same fate as Alirio Pedraza Becerra who had disappeared days earlier (see above). Both Urán and Saldarriaga believe that the Colombian security forces are behind the threats. As a result of the threats, the two went into exile.

Monica Sanchez Arrieta: human rights lawyer and member of the Committee in Solidarity with Political Prisoners (*Comité de Solidaridad con los Presos Políticos* or CSPP) in Medellín, where she defends political prisoners and investigates cases of human rights violations in which the Colombian security forces are allegedly implicated (see case of Alirio Pedraza Becerra, above). Reportedly, on 5 February 1991, Sanchez received anonymous messages on her telephone answering machine threatening her with death and accusing her of defending guerillas. Two days later, she received an invitation to her own funeral. Since then, she has reportedly been followed. The threats have been reported to various governmental agencies.

Luis Xavier Sorela Cajiao: lawyer, law professor and member of the board of directors of Bogotá's Rosario University. On 15 May 1991 at approximately 8:45 p.m., as Sorela waited at a traffic light in the Teusaquillo neighborhood of Bogotá, two men travelling on a motorcycle approached his car and fired several shots through the left side of the windshield. The gunmen then fled. Although Sorela was seriously injured, he managed to drive approximately 100 meters, get out of his car and obtain help. Members of a nearby police patrol drove him to a local clinic where he was treated for injuries.

Sorela was representing 3000 persons in a suit for damages. The plaintiffs were account holders in the Bank of Colombia (*Banco de Colombia*) who suffered economic loss as a result of illegal investment by Jaime Michelsen Uribe, the bank's former president and majority stockholder. In September 1990, the 28th Criminal Circuit Judge sentenced Michelsen to 52 months imprisonment for violating a 1982 law regulating the investment of account holder funds. Michelsen invested the money without obtaining the necessary approval from an official regulatory agency (*Superintendencia de Control de Cambios*). Sorela was also handling a case on behalf of 89 families against the State for damages caused by the crash of a SATENA state airplane.

Leonel Torres Rincón: Criminal Investigatory Judge (*Juez 24 de Instrucción Criminal*) in El Castillo, Meta department. On 19 April 1991, two men carrying nine millimeter guns entered Torres' chambers, asked to see him and gunned him down when he appeared. His clerk was injured during the attack. Local human rights organizations claim that the murder was facilitated because a police post in the area which was destroyed on 8 April 1991 by members of the FARC guerrilla forces had still not been replaced.

Jaime de Jesús Villalba Tafur: Municipal Court Judge (*Juez Promiscuo Municipal*) shot and killed by two individuals in his home in Murindó, Antioquia department on 8 July 1990 at approximately 10:00 p.m. According to sources, he had received death threats from guerrilla forces in the past.

In the following cases, members of the legal profession have been subject to threats, attacks, "disappearance" and murder. However, we were unable to obtain full information about each of the cases to determine whether the attacks were a result of the lawyers' and judges' professional activities.

Antero Aguaslimpias Benitez: criminal lawyer in Bolívar department. Two unidentified individuals shot and wounded Aguaslimpias on 13 November 1990 in front of his home in El Silencio, Bolívar as he was about to get into his car along with his wife.

Jaime Agudelo Ramírez: labour lawyer, former secretary of the governor's office of Antioquia, and former councilman for the municipality of Caldas. On 12 January 1991 at approximately 7:30 a.m., unidentified individuals riding a motorcycle shot at Agudelo as

he was driving his car through the La Candelaria neighborhood along with his wife, who was injured during the attack. Agudelo died later in a local hospital from gunshot wounds.

Constantino Basante: lawyer abducted by unidentified individuals as he travelled in a taxi on the road between Sevilla and Caicedonia, Valle department, on 17 November 1990. His partially burned body was found one week later on a farm known as La Grecia, near Morelia, Valle.

Efraín Bonilla Camacho: secretary (*secretario*) of the Municipal Criminal Court in Alcalá, Valle department, killed in the afternoon hours in a public park on 10 September 1990 by gunmen who escaped on a motorcycle.

Jorge Enrique Burbano Burbano: lawyer killed by two men travelling in a Chevrolet Monza who fired various rounds of machine gun fire at him as he left a Bogotá club on the evening of 29 November 1990.

Carlos Alberto Cabezas Barco: lawyer killed by unidentified individuals travelling in a black Mazda in the city of Cali, Valle department on 6 September 1990. Cabezas was killed upon leaving the funeral of his nephew who had been murdered 24 hours earlier.

Alvaro Caicedo Millan: lawyer shot and killed on 9 July 1990 while travelling on the Pan American Highway near Zarzal, Valle department, at approximately 2:00 a.m.

Antonio José Cañizales Sánchez: lawyer. On 14 February 1991 Cañizales was approached by an unidentified man as he left his home in the Vipasa neighborhood of Cali, Valle department. Without saying a word, the man fired several shots at Cañizales, killing him instantly. The man then fled in a waiting vehicle.

Emiro Cerro Rodríguez: lawyer abducted on 10 October 1990 by unknown men as he travelled from Buenavista, Sucre department, to Magangué, Bolívar department. Cerro was the brother of the mayor of Buenavista and son of a Conservative Party leader in Sucre. His whereabouts are still unknown.

Norbin Díaz Pérez: lawyer and council member in Montería for the Popular Front political party injured along with two of his colleagues in a murder attempt on 16 November 1990 at approximately 7:00 p.m. One of his colleagues later died from injuries he sustained.

Absalón Escobar García: lawyer whose dead body was found in a vehicle on the road between Jamundí and Potrerito, Valle department on 2 April 1991.

Héctor Forero: lawyer abducted by men allegedly working for *Los Extraditables* on 16 November 1990 in Medellín, Antioquia.

Antonio Forero Ortiz: lawyer abducted by a group of unidentified individuals on 30 September 1990. According to reports, the men, some of whom wore uniforms, intercepted the vehicle of Forero in a rural area in the municipality of Ginebra, Valle department.

Javier Humberto Gómez Castaño: secretary (*secretario*) in the 17th Municipal Criminal court in the city of Medellín. Gómez was killed on 28 July 1990 when unidentified gun-

men entered a pool room where Gómez was and fired several shots at him. The incident occurred in the Campo Valdes neighborhood of Medellín.

Carlos Ernesto Hernández: lawyer abducted by five heavily armed men on 27 November 1990 at approximately 11:00 a.m. from his farm located in the hamlet la Rinconada, Norte de Santander department. The men left the farm by foot and it is not known whether a vehicle was waiting for them. Hernández was a former secretary of the government of Ocaña and former president of the Chamber of Commerce. According to reports, members of the guerrilla group National Liberation Army (*Ejército de Liberación Nacional, ELN*) may have been responsible for the crime

Víctor Manuel Jaramillo: lawyer murdered by gunmen on 15 December 1990, in the Laureles neighborhood of Medellín, Antioquia.

Efraín López Londoño: lawyer killed on 11 April 1991 by gunmen riding a motorcycle who fired at him as he travelled in his car. López died instantly.

Luz Elena Londoño Arango and Argemiro Grajales Rosales: lawyers killed by three unidentified assailants who shot at them from a camper on 19 June 1990 at approximately 3:30 p.m. on the Pan American Highway in Zarzal, Valle department.

Flavio Hernando Mariño Porras: lawyer gunned down on 7 September 1990 at 12:00 noon in Montería, Córdoba, by two individuals who fired at him from a motorcycle as he travelled in his car.

Edilberto de Jesús Montero: lawyer, internal auditor in the office of the Comptroller General of Cesar and member of the Liberal Party, killed on 23 October 1990. Montero was travelling on the road between the hamlet of Atanquez, and the city of Valledupar, Cesar department, when a group of four individuals stopped his van and killed him. The four claimed they were members of the FARC guerrilla group. Members of the FARC reportedly sent a message to the local mayor demanding that police inspectors not be appointed to certain hamlets.

Albenis Orion Vinasco: lawyer and president of a community organization (*Junta de acción comunal*) of the Alto Meléndez neighborhood in Cali, Valle department. Orion was killed on 21 December 1990 in Cali. His body was found with several bullet wounds in the Jordán neighborhood in western Cali.

Hugo René Padilla García: criminal lawyer killed on 7 September 1990 in front of his home in the Miraflores neighborhood of Cali at approximately 7:00 p.m. Unidentified assailants reportedly fired at him from a motorcycle. Padilla died later at a local hospital.

Alonso Rivero Piedrahita: lawyer, civic leader and officer of an industrial organization in Cali murdered on 30 September 1990. A group of men stabbed Rivero 14 times and left him for dead. The police have detained one suspect in the crime.

José Mauricio Restrepo Echeverry: lawyer, member of the *Corporación Antioquia Presente* and nephew of the governor of Antioquia. Restrepo was killed on 14 October 1990 by unknown individuals. His body was reportedly found at 6:00 a.m. in the Sevilla neighborhood of Medellín. Police attributed the incident to common crime, but human rights groups believe the crime may have been politically motivated.

Miguel Santiago Reyes Obregón: lawyer killed by an unidentified gunman who fired at him from a bicycle as he arrived home with his wife in Santa Marta, Magdalena department, on 14 November 1990. His wife, also a lawyer and assistant to the governor of Magdalena, was injured during the attack.

Dario Luis Rodríguez Montoya: lawyer abducted on 13 January 1991 as he travelled in the afternoon hours in the La Primavera farm in the hamlet of Guabinal, near Giradot. Two members of the FARC allegedly abducted Rodríguez' while in his car.

Jaime Salazar Robledo: lawyer, member of Parliament for the Conservative Party, leader of the Social Change Movement (*Cambio Social*), deputy to the Caldas assembly, and councilman in Pereira. Salazar, who had been a congressman since 1968 and a political figure in the city of Risaralda for over 40 years was killed on 26 July 1990 in Pereira, Risaralda. Salazar was shot by an unidentified individual as he left the office of the Social Conservative party in downtown Pereira at approximately 6:30 p.m. He was taken to a local hospital where he later died.

Gabriel Uribe Escobar: 67-year-old lawyer murdered on 10 January 1991 in a rural area of Antioquia department. Two unidentified men reportedly entered his farm known as *San Gabriel*, located in the Tapartó area, municipality of Andes, and fired several shots at him. Uribe was a councilman of Andes and brother of the vice-president of the House of Representatives.

CUBA

Jorge Bacallao and Antonio de Varona Battle: lawyers barred by Cuban authorities from participating in the United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in Havana from 27 August to 7 September 1990. Bacallao, legal advisor to the Cuban Human Rights Committee, and de Varona Battle, defence counsel for Elizardo Sánchez, leader of the Cuban Commission for Human Rights and National Reconciliation (CCDHRN) imprisoned for “disseminating false news,” were denied access to the Congress, along with CCDHRN member Yndamiro Restano, despite their accreditation as members of the delegation of the International League for Human Rights. When they arrived at the UN conference hall, Cuban security guards refused to let them enter. The security guards drove the men to a dining hall. After one hour a man in civilian dress appeared and told them that they were not accredited to attend the Congress. When Restano explained that that they had credentials, the man was said to have replied: “No, the Cuban state decided several days ago that you were not authorized to attend.” They were then driven to their homes. Restano was later followed by security officials.

ECUADOR

Normandia Cabrera: lawyer. On 12 March, Cabrera and her three children were assassinated by an undetermined number of armed men near Quito. Police said that the men stopped her car near the capital and took the family to a remote location where they were shot and killed. According to preliminary investigations, Cabrera could have been the victim of retaliation by drug traffickers for cases that she was handling.

EL SALVADOR

Alvaro Henry Campos Solorzano and Edward Sidney Blanco Reyes: lead public prosecutors investigating the slaying of six Jesuit priests and two women in November 1989 in San Salvador. In January, the two prosecutors resigned from the public prosecutors' office (*Fiscalía General de la República*). They charged that the police investigation was inadequate, that the Attorney General barred them from initiating additional charges for perjury against military witnesses and that on occasion they were banned from sessions in which military witnesses were questioned. According to the Lawyers Committee for Human Rights, which has closely monitored the case since November 1989, Campos and Blanco had been prohibited from aggressively pursuing various aspects of the cases.

On 7 May 1991, General René Emilio Ponce, El Salvador's Defence Minister, threatened to bring legal action against Campos and Blanco, reportedly stating that "accusations made...against the High Command of the Armed Forces are very serious and if these (attorneys) do not have proof of the complicity of the (High Command)" the military would "proceed legally." According to *Diario Latino*, a San Salvador daily, General Ponce further stated that the military would file a counter suit against the attorneys for having committed the crime of libel.

Campos and Blanco later resumed the case as private prosecutors working on behalf of the victims' families. (Salvadoran law allows aggrieved parties to hire their own attorneys rather than rely exclusively on state prosecutors). The Lawyers Committee reports, however, that General Ponce has criticized the two attorneys because they have called for a more complete investigation of key issues relating to the murders, including the question of whether there were higher orders to kill the priests and the extent to which members of the Salvadoran military participated in a cover-up of the murder. Nine members of the Salvadoran military, including a colonel, have been charged with the killings.

FRANCE

The independence of the judiciary became the subject of a hot debate in France as judges staged three strikes - on 21 June, 23 October and 30 November 1990 - and a magistrate investigating a sensitive political case was removed from the case (see below).

Debate over the role of the French judiciary is not new. Charles de Gaulle, founder of the Fifth Republic and father of its constitution, remarked that "the indivisible authority of the state is fully invested in the President of the Republic by the people who elected him. There is no other authority, ministerial, civilian, military or *judicial* which is not conferred and maintained by him." Indeed, the 1958 constitution (art. 64) declares that "The President of the Republic is the guarantor of the independence of the judiciary. He is assisted by the *Conseil supérieur de la magistrature* (CSM - Judicial Service Council)." The President, moreover, names all nine members of the *Conseil supérieur de la magistrature* which is responsible for nominations to the *Cour de Cassation* and the presidency of the Appeals Courts and which advises the President on other nominations. (Two CSM members are selected freely by him. Six magistrates are selected by him from a list of 18 prepared by the *Cour de Cassation*. He selects one member of the *Conseil d'Etat* from a list of three proposed by that body.) Prosecuting magistrates are placed directly under the Minister of Justice.

As a presidential candidate in 1981, François Mitterand promised to restore the full independence of the judiciary through a reform of the CSM. No constitutional reform has yet been undertaken, however, although 1991 saw the government introduce a legal reform measure.

The strikes, which were called primarily to protest the insufficient budgetary and resources allocated to the judiciary, took up the question of the independence of the judiciary as well.



Thierry Jean-Pierre

Thierry Jean-Pierre: Investigating judge (*juge d'instruction*) in Le Mans. Jean-Pierre was at the centre of a nation-wide controversy after he was removed from a sensitive investigation into the finances of the ruling Socialist Party. The judge was investigating a labour accident which killed two workers at a construction company when he received an anonymous phone call telling him that the company had been financially unable to meet security requirements on the site because of the need to pay bribes to political parties. The anonymous caller allegedly told the judge that a former local leader of the Socialist Party could give further information on the subject. After preparing a report on the call, the judge convoked the local party leader who testified that the Socialist Party in Le Mans was receiving hidden payments from private companies¹. After receiving the necessary ap-

1. In the absence of a law regulating campaign financing, French political parties frequently received illicit financing through kick-backs in contracts awarded by party-controlled municipalities. In January 1990, after the "*affaire des fausses factures*" - the phony invoices affair - reached scandal proportions involving all parties, the legislature adopted a law on political financing and voted an amnesty for previous infractions.

proval from an assistant prosecutor in Le Mans, Jean-Pierre thereupon opened an inquiry on 8 January 1991 for extortion, forgery, and corruption. After receiving further information, the judge indicted the regional director of the Urbatechnic consulting company as the intermediary between the Socialist Party and construction companies².

On Sunday 7 April, Jean-Pierre went to the Paris where he first visited the home of the company's president. The president was not there. He then went to the Paris headquarters of Urbatechnic. The Paris police refused to help him search the office, however, on the ground that he had been removed from the case that morning by the President of the *Tribunal de grande instance* of Le Mans. Jean-Pierre called his colleagues in Le Mans, who were unable to confirm this report. He thereupon entered the offices, locked the door behind him, changed the locks, and, in the presence of a bailiff and two witnesses, conducted a search of the offices. Later in the day, however, the judge was officially informed that, upon the request of the chief prosecutor of Le Mans, he had been removed from the case (*dessaisi*) by the President of the Le Mans court and replaced by another judge. The prosecutor's request accused the judge of having a "position" on the case and carrying out the search for "purely personal reasons." The tribunal granted the request "*dans l'intérêt de la bonne administration de la justice*" ("in the interests of the proper administration of justice"), one of the three grounds for which a judge can be taken off a case. The ground is usually used, however, to balance the workloads of different judges, and then only after consultations with the judges concerned. According to one leading judge, "the removal of a *juge d'instruction* - without his knowledge - is a 'first' in the tormented history of *instruction*." In defending its actions, the government accused Jean-Pierre of a "judicial burglary." On 19 April, however, the Angers Appeals Court found that the procedures used by Jean-Pierre in opening the investigation (the only action officially challenged) had been "in conformity with the law." On 27 June, the *Cour de Cassation* affirmed the Angers decision. The Court decided that the investigation would continue.

The removal of Jean-Pierre opened a a nation-wide debate on the independence of the judiciary. Judges' organizations decried the judiciary's dependence on the executive. Opposition parties tabled a motion to censure the government for "flaunting the independence of the judiciary." Many observers, however, also criticized Jean-Pierre, who is the regional delegate of the progressive *Syndicat de la magistrature*, of acting with undue haste and zeal. The judge had indeed already expressed his position on the "*affaire des fausses factures*:" When the amnesty law was approved, Jean-Pierre, together with two other judges, had displayed their "civic" disapproval by releasing several common criminals convicted for minor offenses. He had also organized a slow-down strike of local judges and created the "Justice Forum" for the purpose of "tracking down phony invoices." Nevertheless, most agreed that the judge had acted within the bounds of the law.

Roland Ezelin: lawyer and former vice-chairman of the Trade Union of the Guadeloupe Bar. On 26 April 1991, the European Court of Human Rights held that the government of France's imposition of disciplinary sanctions on Ezelin for refusing to disassociate himself from a public demonstration critical of the judiciary had violated Ezelin's rights under Article 11 of the European Convention on Human Rights. The case stemmed from Ezelin's participation in a 12 February 1983 public demonstration organized by several independence movements and trade unions in Basse-Terre, Guadeloupe, to protest

2. The Urbatechnic company was allegedly involved in the financing of the 1988 re-election campaign of Francois Mitterand. The treasurer of that campaign, Henri Nallet, became the Minister of Justice - in charge of the the public prosecutors.

Judge Beaugendre's imprisonment of three independence movement leaders. At the demonstration, Ezelin carried a banner emblazoned with the words, "Trade Union of the Guadeloupe Bar against the Security and Freedom Act." During the demonstration, the participants rhythmically chanted 'Beaugendre-mako! Un jou ou ke paye' [One day you will pay] and several unidentified demonstrators left graffiti on the walls of the law courts calling Judge Beaugendre a fascist and calling all the judges 'MAKO' [pimps].

In June 1983, at the instigation of the Principal Public Prosecutor, disciplinary proceedings were brought against Ezelin before the Guadeloupe Bar Association, who after lengthy investigation decided that no sanction against Ezelin was warranted. The Public Prosecutor appealed to the Basse-Terre Court of Appeal who reversed the Bar Association's decision and imposed a disciplinary penalty of a reprimand on Ezelin.

In 1985, Ezelin appealed his reprimand to the Court of Cassation arguing that the penalty imposed on him infringed on Article 10 (freedom of expression) and Article 11 (freedom of assembly) of the European Convention of Human Rights. The Court of Cassation dismissed the appeal and stated, *inter alia*:

Mr Ezelin, who was at the demonstration as an avocat and had heard the threats and insults and seen the offensive graffiti daubed on the walls of the Law Courts, the place of work of judges and barristers alike, did not at any time express his disapproval of these excesses or leave the procession in order to disassociate himself from these criminal acts. It was entitled to infer from this that the behavior was a breach of discretion amounting to a disciplinary offence.

In October 1985, Ezelin brought his case before the European Court of Human Rights again relying on Articles 10 and 11 of the Convention arguing that the disciplinary sanction imposed on him seriously interfered with his freedom of expression and of peaceful assembly. In April 1991, the Court held by six votes to three that France had violated Article 11 and ordered the government to reimburse Ezelin for costs and expenses. In its ruling the court stated *inter alia*:

The freedom to take part in a peaceful assembly ... is of such importance that it cannot be restricted in any way, even for an avocat, so long as the person concerned does not himself commit any reprehensible act on such an occasion. In short, the sanction complained of, however, minimal, does not appear to have been "necessary in a democratic society."

N.N.: The Paris Bar Association reported that a Paris lawyer (whose name was not revealed) had had his telephone wiretapped by order of a Normandy judge who sought to eavesdrop on conversations between the lawyer and a client. In a resolution on 27 November 1990, the *Conseil de l'Ordre* of the Association protested against the order as a violation of the principle of confidentiality of lawyer-client communications.

GHANA

The Provisional National Defence Counsel (PNDC) in Ghana exercises "all powers of government" including control over the judiciary. Although a "prerevolutionary" court based on British legal practices still exists, there are limitations to the independence of these courts, and in the past the PNDC has summarily dismissed judges, warning them that they serve at the government's pleasure.

In 1982, the PNDC fragmented judicial power by setting up a separate "public tribunal" system at the national and regional levels. These public tribunals bypass the regular court system and speed up the judicial process by restricting the procedural rights of defendants. They are staffed largely by judges with little or no legal experience and shortcut legal safeguards in order to provide quick decisions, particularly in criminal cases. These public tribunals operate together with a number of quasi-judicial bodies including the Office of Revenue Commissioners, the National Investigations Committee and its ten regional units (which, established by PNDC Law 2, have the power to investigate virtually any allegation referred to it by the PNDC) and the Special Military Tribunal. Most sensitive political cases as well as those involving security issues and capital punishment are heard by public tribunals. Public tribunals have been empowered under PNDC law 78 to impose the death penalty for any crime specified as a capital offense by the PNDC or if the tribunal determines that capital punishment is merited in a particular case, even if the crime is not punishable by death under regular statutes.

Appeals from public tribunals were not permitted until 1985, when the National Appeals Tribunal was created. The public tribunals are not, however, subject to the appellate and supervisory jurisdiction of the Superior Court of Judicature (i.e. the High Court, the Court of Appeal, and the Supreme Court).

This fragmentation of judicial power has apparently diminished the power, prestige, and effectiveness of the judiciary and, coupled with the dismissal and compulsory retirement of a number of superior court justices (see below), has created an atmosphere in which many leading members of the Bar have been unwilling to accept appointment to judicial office. According to practicing attorneys in Ghana, there is thus greater expertise and experience at the Bar than on the Bench. The Ghana Bar Association has officially elected not to practice before the public tribunals and has a court case pending which hinges on its opposition to the tribunals. The ban, however, has been ineffective as a number of advocates continue to practice before the public tribunals.

Current statutory rules regarding judicial tenure have also served to undermine the independence of the Ghanaian judiciary. Ghana law enforces a compulsory retirement age of 65 for all justices of the superior courts including the Chief Justice. The PNDC, however, has the discretion to extend the tenure of any judge who reaches retirement age. According to prominent Ghanaian lawyers, the PNDC has rejected applications for extension of tenure to justices with reputations for being outspoken or who have adjudicated against the government's interest, resulting in pressure on judges nearing retirement to rule in the state's favour.

The PNDC also wields control over the judiciary in its role in appointing and disciplining justices. Ghana law requires that all justices of the Superior Courts be appointed by the PNDC on the recommendation of the Judicial Council, which was re-constituted in 1989. It is unclear, however, whether the PNDC is bound by the recommendation of the Judicial Council. The practice which has developed leaves it to the discretion of the PNDC whether to accept or reject such recommendations. At the 1990 General Conference of the Ghana Bar Association, it was reported that the Judicial Council had to recommend particular nominees numerous times before the PNDC would act favourably on their nominations.

The PNDC also serves as a disciplinary authority for the judiciary and has the power to dismiss or remove from office any justice of the Superior Court of Judicature or judicial officer if it is satisfied that it is in the public interest to do so. In April 1986, the following 17 judges were summarily dismissed: Justice Enock Edusei and Justice Wiredu of the Court of Appeals (alleged to have been involved in several cases of corruption); Justice P.K. Twumasi of the High Court and Judge Adozovie of the Circuit Court (alleged to have been involved in various cases of fraud); Justice Apatu-Plange of the High Court (alleged to have been involved in numerous cases of fraud, which came before an insurance probe); Justice Jonathan A. Wutho, Justice Gideon K. Quaye, Justice A. Gogo, and Justice Adadevoh (deceased) all of the High Court (removed on grounds of inefficiency and incompetence); Justice Kaloo Bio of the High Court, Judge Seponu of the Circuit Court and Mr Nuhu, District Magistrate (dismissed for persistent drunkenness); Mr J.D. Amartey, District Magistrate (dismissed for dishonourable conduct); Justice Victor G.A. Kisseth, Justice K.B. Hayfron, Justice S.S.Okunnor, Justice Owusu-Addo (Mrs), High Court, and Judge Maximus Atta-Pynn, Circuit Court (retired on health grounds). According to Ghanaian jurists, all of the dismissals were carried out without due process. At the time, the law required a judicial inquiry at which the judges would be given a hearing. Even though the announcement of their dismissals stated that the PNDC's action had been taken in consultation with the Chief Justice, this was said not to be true. The Ghana Bar Association vehemently but vainly protested the dismissals. In 1990, Justice Wiredu was reinstated and promoted to the Supreme Court without explanation.

In 1989 the Government reconstituted the Judicial Council but confined it to an advisory role for judicial appointments and disciplinary matters (see above). According to eminent Ghanaian jurists, the PNDC's power to remove judges strikes at the heart of the independence of the judiciary by serving as a constant reminder to the judges that caprice may undo them at any time.

George Agkeyum: one of the longest serving chairmen of the National Public Tribunals, suspended from office on 25 January 1991. Although no specific grounds were stated for his suspension, it arose from Agkeyum's 22 January ruling in *The Republic v. Kwabena Afriyie and Emmanuel Obiri Yeboah*, which involved alleged impropriety regarding the defendants' payment of bail. Agkeyum noted in his opinion that the defendants upon their release were driven home in a tribunal vehicle and subsequently made great efforts to thank government officials who had worked on their charges being dropped. "To the tribunal this is an impropriety to say the least. The tribunal thinks that in the future, if an accused does not want to be tried by a particular tribunal, all that he needs to do is to write to a higher authority and make allegations against the panel or the process. ... Courts could be made ineffective if the executive decides to violate the court processes."

Kweku Baah: lawyer and former member of parliament. Baah was arrested on 11 June 1990 and detained without charge or trial by members of the Bureau of National Investigation, the security police in Accra. He was held under PNDC Law 4 which allows for the indefinite detention of anyone suspected of threatening the security of the state. The reason for Baah's arrest is unclear but it is believed that it might have been in connection with his representation of U.S. client who subsequently complained to the Ghanaian government about his treatment while in custody. After five weeks in detention, Baah was released from detention in mid-July 1990 without being charged.

HAITI

Charles Marc Bazile: human rights lawyer who provided legal assistance to peasants involved in land disputes. In June 1990, Bazile received telephone death threats from an anonymous caller who told him that "if the Zinglindos have not come yet, they will come for you." (Zinglindos is a term used to describe Duvalierists, and former Tontons Macoutes.)

Bazile has also been threatened by a landowner who publicly stated: "I already killed Jacques Philippe, so if you continue to fight me ..." (Jacques Philippe was a human rights lawyer assassinated in 1988). According to reports, the landowner repeated this statement to the Minister of the Interior, the St. Marc public prosecutor, and the Justice Minister. The landowner, however, has never been investigated for his actions.

Levelt Louis, Frantzi Philémon and Erick Riché: human rights lawyers from the Haitian League of Former Political Prisoners. These three attorneys were on their way to a meeting in Delmas on 6 June 1990, when six men, three of whom were in military uniforms, stopped their car at gunpoint. The lawyers were told they were under arrest. After searching their car, the six men took the lawyers to a police station where they were questioned extensively for two hours before being allowed to leave.

Moyse Sénatus: human rights lawyer who received numerous telephone death threats in July 1990. The callers made statements such as, "You are working on human rights so we are going to come take your children and burn your office."

Bayard Vincent: public prosecutor in Port-au-Prince. On 20 July 1990, Vincent was assaulted by a crowd of people as he arrived at the Palace of Justice to argue in favor of an arrest warrant for Roger Lafontant, Minister of the Interior and leader of the Tontons Macoutes under the Duvalier regime. The pro-Lafontant crowd spat on Vincent, threw rocks at him, and painted "Long Live Lafontant" on his car. Soldiers located at a military installation about 50 meters away allegedly did nothing to protect Vincent when the attack occurred.

HONDURAS

Oscar Aníbal Puerto: lawyer and vice-president of the Committee for the Defence of Human Rights in Honduras (CODEH). On 2 September 1990, soldiers stopped Puerto, CODEH president Ramón Custodio López, and a third individual, Matías Fúñez, as they were traveling down a road leading to La Ceiba. The soldiers said they had orders to detain Custodio and take him to a military installation. Custodio argued that they could not detain him because he had committed no crime. The soldiers allowed the three to leave after about a half hour.

Julio Francisco Lagos Hollman: prominent lawyer in Tegucigalpa. According to Lagos, on 20 May 1990, Honduran military intelligence agents abducted him and took him to a post of the Public Security Forces (*Fuerza de Seguridad Pública*). He was allegedly physically abused and repeatedly asked where the weapons were. He was held at the post for about six hours and was then transferred to a tiny cell in Region VII in the Belén neighborhood. There he was tortured with electrical shocks and again accused of possessing 70 machine guns and of being a subversive. He was unconditionally released on 8 June 1990.

Ramón de Jesus Ruíz Madariaga: lawyer, legal officer for the *Comité para la Defensa de los Derechos Humanos de Honduras* (Committee for the Defence of Human Rights in Honduras, CODEH) in the La Ceiba section, former leading member of the political party *Partido Innovación y Unidad* (Innovation and Unity Party; PINU), and professor at Curla University. Ruíz also provided legal assistance to grassroots organizations and peasant groups. His body was found on 20 July 1990 in the foliage near his farm Villa Hermosa in La Ceiba, Atlantida department. The original police report stated that the death was a "well-planned homicide." Two weeks later the police stated that the death may have been a suicide. A forensic report, however, revealed that Ruíz had been shot in the neck from a distance. CODEH asserts that the lawyer had been previously warned by a high-ranking military officer to stop working with CODEH.

INDIA

N.C. Prashar: judge. Prashar was ambushed and killed by four Sikh separatists on 3 December 1990. Prashar frequently conducted hearings on murder charges against Sikh separatists in Punjab State.

INDONESIA

The judiciary in Indonesia is dependent on the executive. Judges are structurally and administratively under the supervision of the Minister of Justice, and under the technical supervision of the Chief Justice of the Supreme Court. Judges are civil servants employed by the executive branch. The Supreme Court cannot annul laws passed by Parliament.

There has been growing government intervention in the legal profession, particularly in *Ikadin*, the Indonesian Bar Association. *Ikadin* was created on 10 November 1985 when the Indonesian government insisted that all lawyers' organisations merge into a single entity to conform with President Suharto's corporatist principle of the Indonesian state. This policy has been codified in Mass Organisation Law No. 8, 1985.

In late 1989 and early 1990, Minister of Justice General (ret.) Ismael Saleh publicly urged the replacement of Haryono Tjitrosoebono, chair of *Ikadin*. Haryono had been the chair of Peradin, the largest of the organisations absorbed into *Ikadin*, and served as counsel in leading political trials. Haryono has also spoken out on the lack of independence of the legal profession in Indonesia. Minister Saleh suggested Gani Djemat as a candidate for chairman of *Ikadin*.

Ikadin postponed its November 1989 congress until July 1990 due to an internal dispute over the association's voting rights. Minister Saleh used the dispute as a pretext to declare that *Ikadin* had failed to give "guidance" to its members and that he would not allow the congress to take place until he had received assurance that *Ikadin* would elect a new executive able to "communicate with the government and to guide its members." Minister Saleh interpreted the voting rights dispute within *Ikadin* so as to favour the election of Gani Djemat. (Gani's association with Ismael Saleh goes back many years. In 1966, he was judge in two Extraordinary Military Tribunal trials which sentenced to death alleged coup leaders.)

The *Ikadin* congress was eventually held in Jakarta on 24 July 1990. The dispute over voting rights resulted in a deadlock. On 26 July 1990, the Jakarta Chapter, led by Gani Djemat, walked out of the Congress and formed its own legal organisation, the Indonesian Lawyers' Association (Asosiasi Advocat Indonesia - AAI). Thus, there were now two fora representing the legal profession: the AAI, which the Minister of Justice recognised, and *Ikadin*, which was recognised by the Speaker of the House of Parliament, the Minister of Home Affairs and the Minister of State. Meanwhile, the *Ikadin* congress re-elected Haryono Tjitrosoebono as General Chairman.

Minister of Internal Affairs General Rudini, attempting to comply with Mass Organization Law No. 8 of 1985 (see above), encouraged the establishment of one federated body from the existing 10 associations of advocates, trial lawyers, legal consultants and the Legal Aid Institute. Some in *Ikadin*, including Haryono, did not want to join, believing that a single body exercising control over all the different law organisations might result in conflict based on different concerns and different approaches to the legal profession. Others in *Ikadin*, favoured joining. In March 1991, the Chairman of the Supreme Court, Chief Justice General Ali Said, stated that *Ikadin* was the one and only Indonesian Bar Association.

Finally, four organisations - *Ikadin*, Pushbadhi, Peradin, and BBH - announced their withdrawal from the proposed organisation. The other six organizations - legal aid offices - held a national meeting in Cipanas, West Java. The convention to establish the Law Profession Federation was held from 7-10 May 1991. The meeting was attended by the Minister of Justice, General Saleh, the Minister of Home Affairs, General Rudini, and the Commander of the Armed Forces, General Try Sutrisno. The six law organisations formed the Federation of Indonesian Legal Associations (*POPERI*) on 19 May 1991. *Ikadin* refused to join, claiming that merging organisations with divergent roles and purposes would confuse rather than serve the public.

On 9 May 1991, *Ikadin* attempted to hold a meeting at the Sahid Jaya Hotel in Jakarta. The hotel spokesman announced that the meeting was cancelled because no permit was issued by the Minister of Justice, the Minister of Home Affairs or the police. *Ikadin* gatherings have often been cancelled because of the lack of a permit from one of the institutions mentioned above. The *Ikadin* national conference, for example, was cut short on its third day because a permit previously secured was withdrawn.

It would appear that *Ikadin* will probably continue to function, it will face numerous challenges as all advocates and trial lawyers will be required to become *POPERI* members.

The legal profession also continues to work under the sword of a July 1987 decision by the Minister of Justice and President of the Supreme Court. This decision gave the Executive branch the power to supervise members of the legal profession and disbar lawyers for contempt of court. This joint decision prohibited lawyers "from acting, behaving, assuming attitudes, using words or issuing statements that display disrespect for the legal system, the laws of the land, the general powers, the courts, and their officials." It also required them to refrain from engaging in improper behaviour towards their opponents. The decision gave certain levels of the judiciary the authority to impose disciplinary measures against lawyers, ranging from warnings to permanent disbarment. District court judges and high court presidents could impose punishments of disbarment for up to six months; disbarment for longer periods was permitted by the Minister of Justice in consultation with the President of the Supreme Court Chair.

Haji J.C. Princen: lawyer and Chairman of the Indonesian Institute for the Defense of Human Rights. Princen, 65, has defended several political prisoners and was detained from 1974 to 1976 for taking part in an anti-government protest. The Indonesian government has prohibited Princen from travelling outside of Indonesia since 1985. In August 1989, he was denied an exit permit needed in order to attend the Geneva meeting of the United Nations Human Rights Sub-Commission on the Prevention of Discrimination and the Protection of Minorities, where he was to testify on the human rights situation in Indonesia and East Timor. On 19 June 1990, at 9:50 a.m., Princen's office at the Institute for the Defence of Human Rights received a telephone call from an individual identifying himself as from the Markas Besar ABRI (Army Central Headquarters). The caller said: "I'm going to shoot you." When asked to identify himself, the caller repeated "I'm going to [kill] you tonight," and hung up. Princen reported the incident to General Try Sutrisno. He also reported that one of his employees also had received numerous threatening telephone calls.

IRAN

An important human rights concern in Iran is the right to legal counsel. Although this right, as set forth in Article 35 of the Constitution of the Islamic Republic of Iran, has been consistently affirmed by Iranian government officials, those charged in politically sensitive trials held before Islamic Revolutionary Courts are regularly denied legal representation. In addition, there is no independent bar association in Iran.

In his February 1991 report, the U.N. Special Representative on Human Rights in Iran, Galindo Pohl, illustrates a continuing denial of basic due process guarantees in criminal trials, including the right to be represented by counsel. Members of the legal profession in Iran reported to the U.N. Special Representative that lawyers were not generally admitted before Islamic Revolutionary Courts and that they faced intimidation if they continued to insist on the right to appear. Furthermore, none of the political prisoners interviewed by the U.N. Special Representative had access to a lawyer, and several had been tried without being formally charged¹.

In June 1990, an open letter was addressed to President Rafsanjani criticizing the failure of the government to uphold rights and freedoms guaranteed by the Constitution. As a result, over 20 of the signatories including lawyer Ali Ardalan (see below) were detained. They have not been formally charged or tried, nor have they had access to a lawyer.

The Bar Association in Iran is not independent. According to the Lawyers Committee for Human Rights, a law guaranteeing the independence of the Bar Association is still legally in force, yet through a series of actions in the early 1980's, the government has taken effective control of the Bar. In 1981, the government took over the Bar's offices and seized its archives, library, and funds. In 1982, the President of the Bar along with other members were arrested; elected members of the Bar Association were illegally removed. The current President of the Bar was appointed by the government in 1982 and his statements concerning due process guarantees mirror those of other government representatives².

Ali Ardalan: lawyer and former Head of the Executive Committee of the Association for the Defence of Freedom and Sovereignty of the Iranian Nation (ADFSIN). Ardalan was arrested in June 1990 after signing an open letter to President Rafsanjani that criticized the government's failure to uphold rights and freedoms provided for in the Constitution. Ardalan, who has been held without charge or trial at Evin Prison in Teheran, has been denied access to a lawyer and has had only limited contact with his family. Ardalan was also imprisoned for expressing his views in 1981, 1985 and 1988. He reportedly suffers from heart disease and is unable to obtain needed medication.

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1. *Report on the Human Rights Situation in the Islamic Republic of Iran by the Special Representative of the U.N. Commission on Human Rights*, United Nations Document E/CN.4/1991/35, 13 February 1991.
 2. *Lawyers Committee for Human Rights, The Right To Legal Defense In Iran: Implementing A Practical Safeguard For Fundamental Human Rights*, 20 May 1991.

ISRAEL AND THE OCCUPIED TERRITORIES

The justice system in the Palestinian territories occupied by Israel since 1967 is a matter of constant concern. The fundamental flaws of which the system suffers jeopardize the fairness of trials and the functioning of lawyers.

Military courts, formed by Israeli military personnel, have been in operation since the occupation. They have been granted wide power to examine cases not traditionally related to national security. Under Israeli Military Order no. 378, soldiers may arrest any person without a warrant. Individuals are not informed at the time of arrest of the reasons for their detention. Detainees spend long periods of time in incommunicado detention, and families are not promptly notified of the arrest of a relative. Detainees are normally not brought before a judge for 18 days. Typically, lawyers are prevented from seeing their clients unless a confession is signed. Torture and ill-treatment are widely reported and bail is commonly denied.

Further, the West Bank (contrary to Gaza) remains without an independent bar, despite a law providing for the establishment of one. In 1967, a military decree vested all the powers of the bar in the hands of the Israeli Officer in Charge of Judiciary.

Since the Gulf War, the military justice system has deteriorated even further. During the war, the Palestinian population of the West Bank and Gaza was placed under a 24 hour round-the-clock curfew restricting them to their homes for about 3 weeks. Those accused of violating the curfew were submitted to summary trials, convicted without the presence of their lawyers, and fined or imprisoned. While lawyers were permitted to use their military-issue professional cards as passes at check-points, soldiers often refused to honour this licence. Some lawyers were detained for hours, refused passage, and sometimes even insulted and intimidated (see below).

After the general curfew was lifted, Palestinians were still prevented from entering Israel (including annexed East Jerusalem located in the centre of the Occupied Territories) without obtaining special permits. While Lawyers' Cards continued to be considered passes, on several occasions soldiers at the check-points refused to recognize this licence as well. Additionally, lawyer and family visits to a number of prisons and military detention centres, specially those located inside Israel, have been denied.

When queries are submitted to the Israeli government concerning specific violations of human rights against Palestinians, including lawyers, especially administrative measures, such as travel restrictions, administrative detention, or the issuance of "Green Identity Cards" (restricting their holders from entering Israel including annexed East Jerusalem), the Israeli authorities usually respond with general justifications. Typically, they allege that the person is a senior member of the PLO or one of its factions, concluding that he is a "terrorist." They fail to detail, however, specific accusations against the person or list the particular "hostile" activities the person has conducted.

Despite repeated interventions by human rights organizations, no improvement in the legal system operating in the Occupied Territories can be detected. A July 1991 Amnesty International report¹ expressed the organization's serious concerns over severe shortcomings in the procedures used in military courts:

Lawyers operating in military courts face various obstacles which seriously hamper their ability to provide adequate legal assistance. In addition to the impossibility of gaining access to their clients during the critical period of interrogation,

1. Amnesty International, *Israel And The Occupied Territories - The Military Justice System In The Occupied Territories: Detention, Interrogation, And Trial Procedures*"

they often have inadequate opportunity to consult their clients during the period of preparation for trial. Visits to detainees are often difficult to arrange and take place in conditions usually allowing for little time and limited confidentiality. The interpretation in court proceedings can be extremely poor, thus further undermining defendants' right to a fair trial. Finally, episodes of abuse or harassment of lawyers are not unusual. Under these circumstances many lawyers feel more like social workers or market traders rather than legal practitioners.

Amnesty International's report echoes the concerns voiced by an ICJ Mission of Inquiry into the Military Court System, which published its findings in December 1989.

The cases listed below illustrate the atmosphere and the rules under which lawyers in the Occupied Territories operate.

Shukri Aboudi: lawyer from Ramallah, West Bank. On 22 October 1990, as he was driving his car (which has a sign indicating that he is a lawyer) on the Nablus road after visiting his imprisoned clients, he slowed down before a military vehicle standing on the road blocking it. When the driver saw advocate Aboudi's car approaching, he started to move towards him. When the vehicle came closer, the driver threw a stone at Aboudi's car breaking the front window and injuring Aboudi, who required medical treatment.

Ibrahim Abu Daqqa, Fayez Ziyara, and Jamal Huwaila: lawyers from the Gaza Strip. On 29 April 1991, a guard at the military compound in Gaza, where the military court and prison are located, denied entry to the family a detainee who was tried that day. Abu Daqqa intervened on behalf of the family. The guard pushed him aside saying that Abu Daqqa was obstructing his work, and reported him to a military officer. Ziyara and Huwaila witnessed the incident. When the officer indicated that he was intending to arrest Abu Daqqa, the three proceeded to the chambers of the President of the Military Court. The president, however, listened only to the officer's version, refusing to hear the lawyer's. He then ordered everybody out, refusing to deal with the problem. As they came out of the chambers, Huweilah complained that it was impossible for lawyers to work under such conditions. An officer named Asadi overheard Huweilah's words, and yelled at the lawyer to keep his mouth shut "if he cares about his life." When Huweilah answered the officer that he was not talking to him, the officer pushed him to the wall, ordering him to give his identity card (an action which is normally followed during the procedure of arrest). He also forced Huweilah's hands behind his back, tearing his jacket. When Ziyarah tried to intervene on behalf of Huweilah, the officer left Huweilah, and pushed and beat Ziyarah. None of the soldiers present intervened to stop the officer. Hearing the noise, the President of the court came out of his chambers. The judge took the officer to his room and then came to the lawyers asking them to submit a complaint, but to proceed doing their work. The policemen submitted a complaint against the lawyers, accusing them of obstructing his work. The next day, the lawyers submitted a complaint against the policeman. No action, however, has been taken against the policeman.

Adnan Abu Lila: Nablus lawyer, member of the Board of the Arab Lawyers Committee in the West Bank. During 1989, he was placed under administrative detention without charge or trial based on secret evidence (see CIJL 1990 report). According to the Israeli government, in a letter to the CIJL, Abu Lila was detained "as a result of his activity on behalf of the 'Fatah' terror organization whilst exploiting his status as a lawyer." On 26 October 1990, he was summoned to a military government office near Nablus where his regular I.D. was taken. He was given a Green I.D. Card instead (see Zuhair Khalil, above)

preventing him from entering Israel. Abu Lila represents numerous Palestinians detained in prisons located within Israel itself. This restriction has also meant that he was unable to attend the meetings of the Arab Lawyers Committee, based in annexed East Jerusalem. As a result, the Committee was forced to meet in Ramallah instead of Jerusalem. Following an intervention of the Arab Lawyers' Committee, Abu Lila was given back his regular I.D. card on 17 February 1991.



O. Farid Al-Jallad

During the curfew imposed on the Palestinian population during the Gulf War, lawyers were granted a general permission to move in the West Bank upon showing their lawyers' I.D. cards. However, as Abu Lila and the deputy head of the Arab Lawyers Committee, **O. Farid Al-Jallad**, were coming from Nablus to Ramallah in the West Bank to attend an emergency meeting of the Arab Lawyers Committee, they were stopped at a check-point at the entrance of Ramallah and kept for more than two hours. When the soldiers checked with higher authorities, the two were released.

Since July 1990, Abu Lila is prevented from travel outside the country. No specific reason is usually given for imposing such a restriction and there is no appeal.

Yunis al-Jarou: lawyer from Gaza, and vice president of the Gaza Bar Association. In August 1990, al-Jarou was prevented from travelling to attend the U.N. symposia on the Question of Palestine which was held in Geneva on 27-31 August 1991. No reason was given for this restriction and there is no appeal.

Fuurayh Abu Mudin: President of the Gaza Bar Association. In June 1990, three months after being elected President, Abu Midin was invited by two U.S. Congressmen to visit the United States. He was, however, denied permission from the Israeli authorities. No reasons were given for this refusal. There is no appeal mechanism for such orders.

Muhammad Abu Sha'ban: human rights lawyer from Gaza. On 18 November 1990, he was arrested at his house. No reasons were given for his arrest, and no warrant was shown. He was taken to the Gaza Central Prison where a thick bag was placed over his head, and he was forced to stand for about 3 days, thus being deprived of sleep. Abu Shaban was subjected to long sessions of interrogation. The president of the Gaza Bar Association, Fuurayh Abu Mudin (see above), was able to see him after five days. Abu Shaban told Abu Mudin that he was subjected to insults and humiliations. During the period of his detention, Abu Shaban was denied showers, prevented from shaving, and denied clean cloths. Thirty one days after his arrest, Abu Shaban was released. No charges were brought against him.

Ibrahim Barghouti: lawyer from Ramallah, West Bank, active in defending Palestinian detainees before the military courts. During 1988 and 1989, he was arrested twice, each time for a period of 4 days. In February 1991, a number of lawyers were summoned to the Israeli military government office in Ramallah. When Barghouti was called, he was not in his office. At 11.30 the same night, soldiers surrounded his house and arrested him. The authorities justified the arrest by his "refusal" to answer the summons of the military authorities. He was taken to the tents adjacent to the Ramallah prison which are also used to detain Palestinians. When the detainees learnt that he was a lawyer, they asked him questions about their legal rights. As a result, he was punished by being forced to stand in a corner, his hands behind his back, for more than six hours uninter-

rupted. He saw detainees being beaten. When he protested, he was threatened with the same treatment if he did not keep his mouth shut. He was released four days later without being questioned.

George I. Bannourah and **Nasseem Douqmaq**: lawyers from Betlehem, West Bank. On 31 January 1991, during the Gulf War, as they were going to Hebron to visit their clients in prison, they were stopped by a group of soldiers and accused of violating the curfew imposed on the Occupied Territories during this war (see Abu Lila above). They were taken to the military headquarters there, and released 45 minutes later. A day later, a similar incident took place. The two were stopped by a group of soldiers near Bethlehem. The soldiers asked for their travel permit. After the two showed their lawyers' I.D.s explaining that such card serves in lieu of a permit, the soldiers started cursing them and insulting them, threatening to shoot them.

On 10 February 1991, the two lawyers and advocate **Rassem Badawi** went to Dahriyyeh Military Detention Center to see some clients, after taking an appointment from the secretariat of the prison. Upon arrival, Bannourah went to the guard asking to be allowed inside the premises. At that point, the prison commander approached in a jeep. The commander, in a nervous state, immediately pointed his gun at Bannourah, shouting and cursing at them, ordering them to leave the area and threatening to shoot. As a result, Bannourah returned immediately to his car. As Bannourah was telling what happened to his colleagues, who were waiting for him in the car, the commander came pointing his gun again at the lawyers, ordering them to leave. When they explained that they were lawyers and had appointments to visit their clients, the commander said: "When you act like human beings you will be allowed to visit your clients."

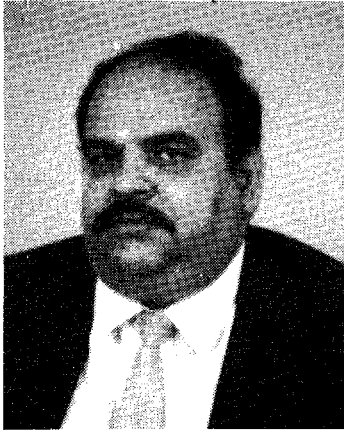


Ahmad Al-Damashouri

Ahmad Al-Damashouri: prominent civil lawyer from Nablus, West Bank. On 18 January 1991, as he was in his other residence in Ram, near Jerusalem, Damashouri was arrested by a group of soldiers. No reason was given for his arrest. He was taken to the tents adjacent to the Ramallah prison and kept under sub-standard conditions: the sides of the tents were ordered opened all the time, keeping the detainees with little protection from the harshness of the cold and windy winter weather; during the time of counting (which takes place four times within 24 hours) they were forced to stand outside the tents. He was humiliated and insulted by the guards when they learnt that he was a lawyer. On 21 January 1991, Damashouri was transferred to the Dahirreyeh Military

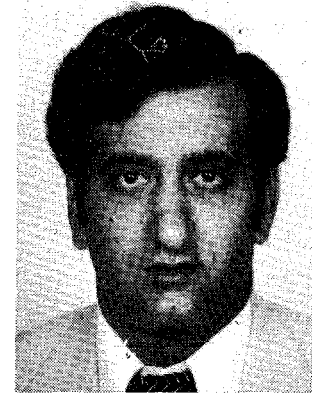
Detention Center. On 28 January 1991, he was questioned for the first time for about half an hour by an interrogator known as Abu Nihad. He was not asked about anything specific. To the contrary, the discussion centred on his work as a judge before the 1967 occupation, in addition to other minor matters. The next day, he was brought again to Abu Nihad, also for about half an hour. After this, he was taken to a military judge inside the prison to prolong his detention. No specific charges were submitted against Damashouri. When Damashouri asked the judge for the reasons of his arrest, the judge answered that this information was classified. The police asked for the detention to be prolonged for 60 days. The judge, however, extended it for 25 days. On 31 January 1991, Damashouri was submitted to a long interrogation session. He was handcuffed, a thick bag was placed on his face, and he was forced to stand for more than three hours uninterrupted. On 4 February 1991, he was subjected to another interrogation session, in which he was hooded as well as humiliated and insulted. Later, he was transferred to a prison in Peteh Tikva inside Israel where he was interrogated. He was there subjected to

very long interrogation sessions. A few days later, he was transferred to the "Russian Compound" Detention Centre in Jerusalem. He remained there without questioning until 19 February 1991, when his detention was prolonged again by a military judge for another 10 days, also based on secret charges. On 28 February 1991, he was released. His identification papers, however, were confiscated.



Hussam Fatouh

Hussam Fatouh and Ahmad Mahmoud Ibrahim Shar'ab: Lawyers in Nablus, West Bank. On 11 July 1990, these two lawyers were in the civilian court in Nablus, defending Palestinians in a criminal complaint submitted against a person known as "Sadeq Belleh" and known for his collaboration with the Israeli occupation authorities. As they came out of the judge's chambers, Belleh shouted and cursed at the lawyers. As the collaborator was carrying a gun, the lawyers at first kept silent. When Fatouh shouted at him to



Ahmad Mahmoud
Ibrahim Shar-ab

stop, the collaborator pointed his gun at them and then started to beat the lawyers. Some people present in the courtroom, however, stopped him. The lawyers submitted complaints to the police. To date, the police have not pursued the matter.

Maher Faris: lawyer from Gaza. On 31 July 1991, as Faris was coming out of a building where his brother resides, a man in civilian clothes, approached him. He grabbed Faris and began to search him. Other men also joined in the attack and held Faris by his back, forcing him towards the wall. Thinking that he was being criminally assaulted, Faris defended himself. As the men finished their search, they put guns to Faris's head, identifying themselves as soldiers. At this point, Faris stopped resisting. Soon, soldiers in army uniform arrived. Faris declared that he was a lawyer and that there must be a mistake. Nobody paid attention to what he was saying, however, and he was handcuffed and taken to a nearby shop. There, he was forced on the ground and ordered to keep quiet. He was beaten and hit by a gun on the back of his head, causing him to bleed. He declared again that he was a lawyer, but again, nobody paid attention. He was kept on the floor for some time, bleeding severely.

He was taken in a jeep with others to a military centre and ordered to sit under a tree, head down. He was later blindfolded. After a while, soldiers took him to a military clinic for treatment. There, they removed his handcuffs and a nurse cleaned the wound which was still bleeding, and allowed Faris to wash his head. The soldiers, however, refused to give him a towel to dry his head because "the towel will get dirty." He was hand-cuffed again and ordered back under the tree. When he complained that the cuffs were too tight, a soldier made them even tighter.

He was later taken for interrogation by a man who introduced himself as Abu Amin. The interrogator asked about some names in Faris' private phone-book, claiming that they were *Intifada* activists. Faris denied this, stating that the numbers were either of friends, relatives, colleagues, or clients. Abu Amin asked Faris to indicate to whom the long-distance numbers belonged.

Another interrogator came, introducing himself as Firkish. Firkish accused Faris of having a security record. When Faris denied this, Firkish asked him about his profession. Faris answered that he was a lawyer. Firkish brought Faris' belongings which were taken during the search, apologized to him, and told him that he was free to leave.

Zuhair Khalil: prominent 47 year old lawyer in Tukarem, in the West Bank. He served as a civil judge in Nablus between March 1970 and May 1980. On 10 May 1988, during the current Palestinian uprising, he was served a 6 months administrative detention order without charges or trial. Like the rest of Palestinian administrative detainees, his detention was based on secret evidence. Upon appeal, his detention was reduced for health reasons from six months to three months.

On 12 February 1991, Khalil was given a special identity card preventing him from entering Israel, known as the "Green I.D.." No reason is usually given for such a restriction and there is no appeal process for the order. The restriction prevented advocate Khalil from going to Jerusalem to pursue important land cases. Similarly, he was unable to visit some Palestinian clients detained in prisons inside Israel. Even more difficult, Khalil lives in Dir el Ghusoun, a village close to the "Green Line" which separates the Occupied West Bank from Israel. When curfews were imposed on the area surrounding his village, Khalil was unable to leave his village to go to court, even in the West Bank. This is because the only other road connecting his village with the rest of the world runs through Israel, which he is prevented from entering. Following an intervention from the Arab Lawyers Committee in the West Bank, the restriction on entering Israel was lifted on 12 March 1991. He was then given his usual I.D. card.

Fatimah Mikhalalati: lawyer from Gaza City. On 24 June 1990, Mikhalalati's 7 year old son was arrested by a group of soldiers. This arrest was illegal, as according to the law in force in the Occupied Territories, the minimum age of arrest is 13. Mikhalalati went to the military building, where her son was taken. She told the guard that she was a lawyer and that her under-aged son was illegally arrested. The soldier started cursing her, another soldier threw some stones at her, a third threw a piece of wood at her as well, and a fourth started to spill a bottle full of urine on her. She went home and immediately contacted the Chairman of the Gaza Bar Association, who went with her to the military government to submit a complaint. At the military headquarters, an officer registered her complaint, and stated that they would release her son. Nevertheless, she insisted that the complaint with regard to her treatment be followed up. When the son was released, he was bleeding from his nose and his head and had several bruises, and his knee was injured. He told his mother that he was beaten by the soldiers. No further action has been taken on the complaint submitted by Mikhalalati.

ITALY



Rosario Livatino

Rosario Livatino: criminal judge in Agrigento, Sicily, and long-time anti-Mafia advocate. On 21 September 1990, Livatino was ambushed and killed by at least six gunmen as he was driving to his office in Agrigento. The killers blocked his car and sprayed it with submachine gun, pistol, and rifle fire. Livatino managed to get out of his car but was shot repeatedly by the gunmen who left his body on the road. A man known for his courage and determination, the 38-year old judge had been investigating activities of the mafia since 1980 and had been the prosecutor in several trials of mafia figures. At the time of his assassination, Livatino was about to order the house arrest and surveillance of members of several leading mafia families. Livatino was travelling without police escort, but with a pistol which he was unable to pull out.

Livatino became the eighth judge killed in Sicily since 1971. The previous killing had come two years earlier, on the same highway, when Assise Court President Antonino Saetta was killed along with his son on 25 September 1988. On 21 June 1989, an assassination attempt against *il magistrato antimafia numero uno* - the number one anti-Mafia Judge Giovanni Falcone failed.

Italian judges reacted to the killing with criticism of the lack of government protection as well as political support provided to judges working on mafia-related cases. The President of the National Association of Magistrates Raffaele Bertoni said: "Once more a judge has paid with his life for the inertia, the hesitations and the fears of the political powers faced with the onslaught of the mafia." The Communist Party called for a major financial commitment by the government to recruit more policemen and investigating magistrates. On 1 October, some 200 Sicilian magistrates, at an extraordinary meeting, appealed for more resources and for mafia trials to be given top priority.



Felice Casson

Felice Casson: Venetian investigating judge. In November 1990, while Casson was investigating a right-wing terrorist bombing, he came across documents at the Italian intelligence service (SISMI) revealing the existence of a clandestine, CIA-financed paramilitary organization functioning under the NATO umbrella. Code-named "*Gladio*" ("sword"), the stated purpose of the secret army was to fight against a Soviet invasion of Western Europe. Casson discovered, however, that the group's principal purpose was in fact to monitor Italy's left wing parties - in particular Italy's large Communist Party - and to ensure that they did not come into government. (The existence of similar organizations in most other NATO countries came to light within the next month.)

Casson's investigation uncovered Gladio's connections with neofascist groups. Its operatives had deposited arms at 139 secret depots across Italy, including at the US Darby Army base near Pisa where training programs for neofascist were allegedly conducted in the late 1970s. According to Casson, arms from the base may have been used in right-wing terrorist attacks, such as the 1980 bombing of the Bologna railway station which killed 85 people. Casson called President Francesco

Cossiga (who had been junior defence minister at Gladio's creation) to testify at his inquiry, but the President refused, citing constitutional privilege. According to the influential daily *la Repubblica*, some of the secret documents found by Casson at SISMI archives in Forte Braschi "demolished the basis of the government's reconstruction of the birth, life and activities of the clandestine structure."

In the pursuance of his investigation, Casson was specifically authorized by the President of the government, Giulio Andreotti, to look at all SISMI documents. On 15 March 1991, Casson was looking through a set of SISMI documents which, unlike others, was not marked "state secret." A SISMI official whom the judge had invited to be present at his searches refused, however, to let him have a document he had seen which apparently related to a NATO treaty. On 18 March 1991, two SISMI officials presented a formal complaint to the state prosecutor for "violation of secrets concerning state security." On 21 March, the government's chief prosecutor in Rome, Giudiceandrea, opened a formal criminal inquiry against Casson for "*procacciamento di notizie concernenti la sicurezza dello stato*" (searching for information relating to state secrets). The charges carried a penalty ranging from two to eight years in prison. (Observers noted that the law on state secrets provides that "in no case can acts violating the constitutional order be considered state secrets"). Together with most of the press, *La Repubblica*, denounced the complaint as "intimidatory," "having as its sole purpose to delegitimize the magistrate's work in the eyes of public opinion." On 12 April, three Roman prosecutors, after meeting with Casson, formally asked that the matter be closed as Casson was authorized by the Prime Minister to see the files. On 1 June, prosecutor Guidiceandrea closed the investigation, stating that "the facts are not there," and recognizing the regularity of Casson's methods.

JAPAN

The Japanese Constitution guarantees the independence of a judge in the exercise of his authority, providing: "All judges shall be independent in the exercise of their conscience and shall be bound only by this Constitution and the laws." (Article 76 (3)) In addition, the tenure of judges is strongly guaranteed by Article 78 of the Constitution:

"Judges shall not be removed except by public impeachment, unless judicially declared mentally or physically incompetent to perform official duties. No disciplinary action against judges shall be administered by any executive organ or agency."

The Court Organisation Act, Article 48, also provides: "There shall be no dismissal, transfer, suspension of duties or pay reductions of judges."

The cabinet has the authority to appoint Supreme Court Justices and name the Chief Justice. It is believed that in many cases the process of selection is a matter of conference between the Prime Minister and the Chief Justice of the Supreme Court. Newspapers have criticised this practice as strengthening the tendency to bring the Supreme Court under the control of the legislature and the executive.

Lower court judges are appointed from graduates of the Legal Training and Research Institute who apply to the Supreme Court. Since 1970, 49 applicants have been refused. Although in none of these cases have the reasons for the refusals been made clear, bar associations suspect that the refusals were based upon, among other things, the applicants' membership in the leftist Young Jurists Association, and have protested both the refusals and the lack of explicit standards.

According to the Japan Federation of Bar Associations (JFBA), a similar problem has arisen with refusals to reappoint lower court judges who are subject to reappointment every ten years. In one case, refusal was made without making explicit the reasons. In others, applications for reappointment were withdrawn after their acceptance was conditioned on a transfer not acceptable to the applicant.

The JFBA also states that the use of pay increases and transfers serves to discriminate among judges. There is said to be discriminatory handling in the form of delays in automatic pay increases for judges who belong to the Young Jurists Association or the leading members of the National Association for Discussion of Judges, which is an independent study group. The actual sums involved caused by delay in pay increase reportedly exceed two million Japanese Yen annually.

According to the JFBA, one judge who handed down a decision finding the Self-Defense Forces unconstitutional was assigned to family courts for 12 years in a row instead of being sent to a district court or a high court; and another judge who ruled it unconstitutional to prohibit election campaign workers from visiting individual homes was transferred among three small branch courts for 12 consecutive years, instead of being given a post in a big city.

Today there are about 14,000 lawyers practicing in Japan. All are required by law to be members of the Japan Federation of Bar Associations. The JFBA enjoys complete independence from all government organs. In addition to membership in the JFBA, every lawyer must belong to one of the country's 52 local bar associations.

According to the JFBA, "In recent years, there has been an increase in the number of incidents of obstruction against lawyers performing their professional duties. These incidents often concern not only cases of criminal organisations involved in civil cases or consumer fraud cases, but also cases of general civil suits."

In June 1987, Yoshihiro Mitsui, the head of a team of lawyers handling a case calling for a provisional order that the criminal organisation *Ichiriki Ikka* vacate its office in the city of Hamamatsu (Shizuoka Prefecture), was severely wounded in a knife attack by a member of that organisation.

According to a survey of the entire membership of the JFBA conducted in 1990, there have been 345 incidents of interference with lawyers' activities in the past 10 years. The acts are mostly committed by members of right-wing groups, criminal organisations, self-styled representatives of parties, and, sometimes, the actual parties in cases. These acts include: intimidation, telephone threats, physical assault, abusive statements via loudspeaker or distributed handbills, destruction of property, fraudulent use of the attorney's name, instituting law suits. These obstructionist activities often follow disputes over real estate or titles, credit and debt cases, traffic accidents, divorce cases, "spiritual" or pseudo-religious rackets, high rate interest loan, bankruptcy management, etc. Most bar associations in Japan have established "rescue centers for victims of violence relating to civil litigation."

At the regular general meeting of JFBA in May 1990, a "resolution on obstruction against lawyers' activities" was adopted. In August of the same year, at the national conference of rescue centers for victims of violence relating to civil litigation, a resolution calling for the establishment of a specific plan to deal with obstruction was adopted.



Tsutsumi Sakamoto

Tsutsumi Sakamoto: lawyer in Yokohama. On 3 November 1989, he, his wife, and their baby disappeared from their home. Sakamoto represented parents whose children have come under the influence of the religious sect AUM Shinrikyo and had handled labour suits for several unions. Police have undertaken an investigation, and at one point had reportedly assigned 110 agents to the case and had interviewed 2,000 persons. Sakamoto had spoken of the sect in a radio programme in October. Shortly thereafter, the religious group distributed leaflets in Yokohama criticising Sakamoto and the radio show. On 31 October, he had a heated argument with representatives of the sect. The sect, however, has denied any involvement in the disappearance, and the police have no evidence connecting it to the

disappearance. The Yokohama Lawyers Society set up a commission to look into the case and the JFBA established a council to examine the circumstances of the disappearance. A national rescue committee for Sakamoto and his family has been formed and 3,000 attorneys have joined the committee. Over a million and two hundred thousand signatures have been collected on a petition asking for increased measures in the police investigation. Public meetings for this purpose have been held in about 100 places throughout Japan. In December 1991, the CIJL Director visited the support committees in Yokohama, as well as the Sakamotos' home.

Takashi Naito: lawyer, member of the Tokyo Bar Association. On 17 June 1990, Naito was arrested while acting as a legal observer at a demonstration against the US-Japan Security Pact. According to witnesses, riot police surrounded four demonstrators and began to go through their belongings. When Naito protested, an argument ensued. The police accused Naito of kicking the metal shield which one of them was carrying and he was arrested. He was detained for 30 hours before being released after protests from the Japan Federation of Bar Associations. Naito has filed a civil suit against the police for unlawful detention, and 412 lawyers have agreed to represent him in the suit.

KENYA

In 1990, the government of Kenya launched a campaign against prominent human rights lawyers as part of its attempt to silence the movement for a multi-party system. It has sought to undermine the independence of the bar through the arrest and detention of numerous human rights lawyers, interference in the elections of the Law Society of Kenya and then in its governance, and the attempted ban of *The Nairobi Law Monthly*.

The government has harassed contributors to *The Nairobi Law Monthly*, a publication with a relatively small circulation, but which plays a significant role in Kenya as a forum for the expression and exchange of ideas among jurists. The magazine's editor-in-chief, Gitobu Imanyara (see below), has been the persistent subject of government persecution, and was imprisoned several times for material printed in his publication.

On 4-5 July 1990, the government arrested three prominent lawyers, Mohamed Ibrahim, Gitobu Imanyara, and John Khaminwa, along with eight others under the Preservation of Public Security Act. The arrests came after several weeks of mounting political tension, as calls for a multi-party state made by ex-politicians, lawyers, and church leaders were deemed "subversive" by the government. The three lawyers were held without charge or trial for three weeks before being released on 26 July. Imanyara was immediately re-arrested. After the arrests, the International Bar Association (IBA) shifted its September 1990 biennial meeting from Nairobi to New York. The IBA said that it acted out of concern both for the safety of IBA delegates in light of violence in and around Nairobi and for the state of human rights and the rule of law in Kenya.

The systematic repression of those calling for democratic reforms and respect for human rights also provides the context for the Government's efforts to control or silence the Law Society of Kenya (LSK). The March 1990 LSK elections pitted candidates from a pro-government group against an opposition faction led by Paul K. Muite (see below). There was widespread concern that the elections were rigged, with the help of the government, to ensure that the Law Society would not fall into the hands of critics of government policies (See 1990 CIJL report).

A year later, however, on 9 March 1991, Muite was elected chairman of the Law Society of Kenya after the pro-government incumbent, Fred Ojiambo chose not to stand for re-election. Ten members of Muite's "opposition" faction won seats on the LSK council in elections whose validity was not contested. In his 9 March acceptance speech, Muite called upon the government to allow for multi-party elections and for the registration of former Vice President Oginga Odinga's newly-formed National Democratic Party (NDP). On 14 March, four pro-government lawyers filed a complaint seeking to enjoin Muite and nine of the recently elected LSK council members, **Willy Matunga, Charles Nycachae, G.B.M. Kariuki, Martha Njoka, Japheth Shamalla, Bernard Mbai, Farkson Kagwe, Gumba Onywera** and **J.V. Jumba** from making any political statements or conducting business of the LSK in a political manner. In addition, the suit sought to prevent Muite from presiding over or participating in any LSK Council meetings. An *ex parte* hearing was held on 15 March before Justice Norbury Dugdale, who granted a temporary injunction.

On 4 April, Justice J.A. Mango upheld Justice Dugdale's ruling and granted a permanent injunction against Muite and the LSK Council, stating that the Kenyan courts could interfere with the law society's activities in situations where the LSK "has acted or is about to act *ultra vires*." Justice Mango justified the injunction against Muite and the Council by referring the potential for future harm to the plaintiffs should the government repeal the Act which created the Law Society of Kenya. Justice Mango explained:

If the defendants are not restrained and they continue on their what has been called "chosen course" of confrontational attitude against the government, there is a possibility that patience may run out and muscles may be flexed and steps taken towards repealing the Act. God forbid, but it is a real and live possibility, given the circumstances.. I have my doubts if their (the LSK Council's) earthly millions will be able to compensate that loss of professional touch and satisfaction should their Society be thrown overboard.

The injunction against Muite and the Council specifically restrained them from:

"using the [LSK] as a forum for political purposes to wit:

- a) from making any statements which are political in nature and contrary to the Constitution of Kenya and the Law Society of Kenya Act campaigning and calling for registration of a political movement and/or party.
- b) from conducting the business of the [LSK] in any manner political.
- c) from making any statements which may cause public dissatisfaction and prejudicially affect the peace and good order of the Republic."

In addition, Muite was restrained from "presiding over or participating in any Council or meeting of the [LSK] and from conducting the business and affairs or issuing statements or participating in any matter whatsoever in any activity of the Law Society of Kenya."

On 13 May, in a LSK Council meeting presided over by Muite, the Council issued a statement interpreting the injunctions as restraining them from making statements on behalf of other members, but not from making statements as the Council.

The plaintiffs in the original action subsequently moved to have Muite and the other LSK members jailed for contempt. On 22 May, Muite wrote to the newly-appointed Attorney General Amos Wako, requesting that, pursuant to Kenyan law, he be represented in the contempt hearing by Mr. Geoffrey Robertson, QC, an English Barrister. In his 29 May reply, Wako denied the request. On 14 June, the merits were heard before Justice J.W. Mwera. Mr. I. Kapila, the defendants' attorney, applied for a stay, which the court refused. Kapila subsequently raised his preliminary objections to the suit on which Justice Mwera was expected to rule on 24 June.

The attack against lawyers in Kenya is part of ongoing repression by a government that has frequently arrested lawyers for activities it views as hostile to it. Many of the lawyers whose cases are described below have been detained in past years for their defence of politically unpopular clients and for speaking out against conditions of detention and the denial of constitutional guarantees in Kenya.

In 1989, the Government amended the constitution to deprive High Court judges of security of tenure. In November 1990, however, after domestic and international pressure, President Moi introduced legislation restoring security of tenure for judges, the Attorney-General, and the Auditor General which was passed by Parliament.

Mohamed K. Ibrahim: Kenyan lawyer of Somali descent, and partner in the Nairobi law firm of Paul Muite (see below). In the November 1989 edition of *The Nairobi Law Monthly*, Ibrahim criticized as unconstitutional and discriminatory the government's policy of screening ethnic Somalis. (In November 1989, Kenyan Somalis were told to report to special centres to verify their Kenyan citizenship and were issued special identification cards; those who did not register were subject to arrest and detention.) On 10 April 1990, Ibrahim was summoned for questioning to the Nairobi Security Intelligence

Office. He was arrested in early July 1990, though the government refused to acknowledge the arrest. The arrest occurred soon after Ibrahim had initiated legal actions against the government for human rights abuses. He was released on 25 July.



Gitobu Imanyara

Gitobu Imanyara: lawyer, founder, editor-in-chief, and publisher of *The Nairobi Law Monthly* (*The NLM*), Imanyara has been an outspoken supporter of press freedom. (*The NLM*, launched in October 1987, is one of the few remaining publications to defend human rights in Kenya following bans on other publications critical of the government. Taking strong stands on a range of human rights issues, the independence of the judiciary and the bar, and the rule of law, *The NLM* also provides general information on legal problems and seeks to educate citizens about their constitutional rights. It is a forum for judges, lawyers, and others to exchange their views on matters of national significance.)

In March 1990, an Assistant Minister of Parliament moved for the banning of *The Nairobi Law Monthly*, calling it “subversive” and referring to Imanyara as “permanently abusing the government.” Later that month, a member of the Special Branch Office (the intelligence police) visited Imanyara in his Nairobi office and asked Imanyara to accompany him back to his office. Imanyara refused to go with him (see CIJL 1990 report).

On 18 June 1990, Imanyara was one of three lawyers to address a press conference called to protest the treatment by police of human rights lawyer Paul Muite and his two activist clients. Plainclothes police broke up the press conference, ordering all of the participants to disperse (see below).

Imanyara was arrested in early July 1990 under the National Security Act, for which no charges are necessary. He was detained for three weeks in isolation in a maximum security prison, and, in response to international pressure, was released with other human rights lawyers on 25 July. Unlike the others, however, Imanyara was rearrested the next day and charged with three counts, including sedition. He was also charged with failing to register the magazine correctly, and already faced charges since 1988 for not submitting financial returns, apparently an obscure charge that the government has selectively levelled against publishers of three critical magazines that it has wished to suppress. His rearrest followed publication of an *NLM* issue on “The Historic Debate - Law, Democracy and Multiparty Politics in Kenya,” containing articles for and against a multi-party system, which generated such interest that the initial print run of 10,000 copies sold out and another 5,000 were printed.

On 1 August, Imanyara was released on bail. He said that during his six days in jail he was held incommunicado in a windowless cell in the psychiatric wing of Kamiti prison near Nairobi. He described the experience as “squalid and degrading.”

On 28 September 1990, Attorney General Matthew Muli banned all past, present, and future publications of *NLM*. In early October, *NLM* challenged the order and the High Court temporarily lifted the ban. A constitutional challenge to the ban is scheduled to be heard in the High Court (the ultimate court of appeal) on 4 July 1991.

In November 1990, Imanyara was denied a passport and permission to travel to London.

In February 1991, Imanyara initiated legal proceedings against the government, claiming that the ban on opposition parties in Kenya was unconstitutional. On 27 February, the court denied the Attorney General’s application that Imanyara and Paul Muite (see below) be sent to prison for alleged contempt of court. On the same day, the Special Police seized thousands of copies of *NLM* at the printers and at newsstands without ex-

planation or authorization. News vendors were threatened if they continued to sell the publication. The Special Police also confiscated the magazines *Finance* and *Society*. The seized issue of *NLM* carried an article by Oginga Odinga who had launched the opposition National Democratic Party earlier in the month.

As he left his office on 27 February, Imanyara was attacked by three youths who shouted "This is the man, let's kill him." The youths threw stones at Imanyara while Special Branch police watched. Imanyara was slightly injured and filed a complaint to the police, who denied receiving the report of the attack. The police later retracted their denial. The same day, Imanyara released a press statement concerning the seizure of the issues of *NLM*:

Has Kenya now officially become a police state? Has our Constitution been suspended? This kind of undisguised surveillance last year culminated in my unlawful arrest and detention without trial. Now I would like to reiterate once more that these terror methods of intimidation and harassment will never divert *The Nairobi Law Monthly's* editorial policy. Neither arrest, nor detention, not even the threat of physical elimination will prevent patriotic Kenyans from giving meaning to the rights guaranteed by their constitution. A life in servitude is not worth living.

On 1 March 1991, as he arrived at his office, Imanyara was arrested by eight plain-clothes police officers. The police searched the office claiming to be looking for foreign currency and asked for access to the safe. Imanyara was placed in solitary confinement in Kamiti prison. His family and lawyer, however, were denied information as to where he was being held or the charges against him. On 4 March 1991, a *habeas corpus* application was filed with the High Court on Imanyara's behalf. As a gesture of solidarity, 20 lawyers waited in court for Imanyara to be brought in to be charged. Imanyara never arrived. (Under Kenyan law, a detained suspect must be brought to court and charged within 24 hours, unless charged with a capital offence, or be released.)

On 5 March, Imanyara was charged with sedition based on two issues of *The Nairobi Law Monthly*: July 1990, which contained an article about the debate on multi-party democracy and February 1991, which carried an editorial implying ethnic favouritism in government appointments. The editorial, written by Imanyara, stated that letters had been received from readers raising the issue of the disproportionate allocation of public offices to members of the Kalenjin ethnic group, to which President Moi belongs. Between 30 and 40 lawyers attended the court proceedings at which Imanyara was formally charged.

On 27 March, Imanyara was denied bail for a second time and further charges of sedition were added. Thirty one lawyers, led by Pheroze Nowrojee (see below), placed themselves on record as representing Imanyara. On 19 April, when Imanyara was brought to court to apply for bail a third time, he collapsed and had to be taken to police cells to rest. While in prison, Imanyara's health had deteriorated and he suffered from high-blood pressure and severe migraine headaches. On 22 April, Imanyara was brought to Kenyatta Hospital and given medication before being returned to Kamati prison. A few days later he was admitted to Kenyatta Hospital. While in hospital, Imanyara was chained to his bed.

On 28 May 1991, Imanyara was released from prison and the Kenyan government entered a *nolle prosequi* with respect to the two sedition charges. Upon his release, Imanyara applied for the return of his passport so that he could travel to Greece to accept the Golden Pen of Freedom which he had been awarded by the International Federation of Newspaper Publishers. On 30 May, the court returned Imanyara's passport, but three hours before his 31 May flight, Kenyan security officials re-confiscated it for "investigative purposes." Imanyara was unable to leave the country and his passport has not been returned.

Another lawyer and *Nairobi Law Monthly* staff member, **Chris Mburu**, who had been acting co-editor during Imanyara's detention, travelled to Greece to accept the award on Imanyara's behalf. On 6 June, when returning to Kenya, Mburu was interrogated by ten immigration officials for over one hour. Mburu was subjected to a body search and had several documents confiscated, including his passport. Mburu's passport has not yet been returned.

In a speech delivered on 1 June, President Moi publicly accused Imanyara of having feigned illness. President Moi emphasized that state security matters were not the subject of debate and stated, "Now even if it means putting in some people (into prison), I will do so. They will eat rice and have a rest."

Imanayara continues to face charges filed during 1990 under the Books and Newspapers Act for not registering the magazine correctly and for failing to file two copies of the latest issue with the registrar. Imanyara has plead not guilty to those charges.

In July 1991, newly-appointed Attorney General Amos Wako lifted the ban imposed on *the Nairobi Law Monthly*. Immediately after the ban was lifted, Imanyara said that Wako's move would aid in "undoing the harm done to the publication by the previous attorney general and affirms Wako's commitment to the rule of law." Imanyara also requested that Wako lift the ban on other prohibited magazines, including *Beyond*, *The Financial Review* and *Development Agenda*.

Mirugi Kariuki, lawyer in Nakuru, former parliamentary candidate, and **Rumba Kinuthia**, lawyer in Nairobi, former parliamentary candidate. On 8 October 1990, Kariuki and Kinuthia were taken from their homes and placed in detention without charge. The arrests came in connection with the arrest of Koigi wa Wamwere, a prominent opposition politician who was granted asylum in Norway after he fled Kenya in 1986. Kariuki, who had defended political prisoners, had been detained for three years without charge or trial from 1986 to 1989, during which time he was allegedly tortured. Kinuthia, who has also actively represented political clients, was accused by the government of interfering with the elections of the Law Society of Kenya. Kinuthia publicly quit the ruling KANU party earlier in 1990 and has called for multi-party democracy in Kenya. On 19 October, the two were charged with treason before a Nairobi court and taken to Kamiti prison. They were represented by counsel, although their lawyers had not been provided access to them since their arrest on 8 October 1990. At a court hearing on 2 November, the lawyers for Kariuki and Kinuthia said that their clients had been "subjected to severe torture and extremely inhuman and degrading treatment." No date has been set for trial.

John Khaminwa: human rights lawyer. On 5 July 1990, Khaminwa was arrested and detained for three weeks under the Preservation of Public Security Act. Khaminwa was arrested in Nairobi Police Headquarters after attempting to visit his detained clients, Kenneth Matiba and Charles Rubia, who had been arrested the previous day. On 25 July, Khaminwa was unconditionally released after being held incommunicado during his three-week detention. Khaminwa had been detained under the same Act in 1982.

Gibson Kamau Kuria: leading human rights advocate known in Kenya for his willingness to take on politically sensitive cases. Kuria was first detained on 26 February 1987 and held without charge or trial until December 1987. His detention came two days after he had informed the government of his intention to bring suit on behalf of three people who were allegedly tortured while being held incommunicado in police custody, prior to official detention. At the time of the arrest, the government confiscated Kuria's passport. Kuria filed suit upon his release to have his passport returned, but encountered numerous delays. Without his passport, Kuria could not visit the United States in 1988 to re-

ceive the various honours and awards conferred on him (see 1989 and 1990 CIJL report).

On 3 April 1990, two plainclothes officers from the Special Branch went to Kuria's chambers looking for him. On 18 June 1990, Kuria was one of three lawyers to address a press conference called to protest against the treatment by police of human rights lawyer Paul Muite and his two activist clients. Plainclothes police broke up the press conference, ordering all of the participants to disperse (see below).

Kuria left the country on 11 July 1990, during a wave of arrests and detentions of human rights lawyers, after seeking refuge in the United States Embassy in Nairobi. He is currently in the United States where he has received the American Bar Association Rule of Law Award and is a fellow with the Harvard Human Rights Program.



Paul K. Muite

Paul K. Muite: lawyer, Chairman of the Law Society of Kenya. On 17 June 1990, while Muite was meeting with his clients, Kenneth Matiba and Charles Rubia (ex-cabinet ministers and leading advocates of a multi-party system in Kenya), three police officers broke up the meeting and ordered Muite and his clients to go with them. The three refused on the ground that the police had neither a warrant nor a basis for the arrest. The following day, Muite, Gitobu Imanyara and Gibson Kamau Kuria (see above) held a press conference to protest the treatment of Muite and his clients. Five police officers broke up the press conference, seizing notes and tape recorders from reporters, and ordering the dispersal of all present. The police also roughed up those who refused to disperse. When Muite and Kuria went to file a complaint with the Commissioner

of Police and the Director of Intelligence, they were informed that the officials were not in their offices, and no one would register the complaint. After a follow-up press conference by Muite's clients on 25 June, two journalists were detained for questioning. Muite went into hiding fearing his arrest early July 1990, just before the government arrested eleven human rights lawyers.

In March 1991, Muite was elected chairman of the Law Society of Kenya (see discussion at beginning of chapter). Muite had lost to Fred Ojiambo in the previous election, marked by alleged irregularities. Two weeks prior to the 1991 election, while leaving the Muthaiga Country Club, Muite's car was hit on the driver's side by a Land Rover. Ten days later, two men threw human excrement at the closed window of his car. Later that evening, two unidentified men threw stones at his car.

Muite, who represents Gibson Kamau Kuria (see above), had been ordered to surrender his passport on 23 November 1988, after travelling to the United States to accept the Robert F. Kennedy Foundation's Human Rights Award on the travel-restricted Kuria's behalf (see above.) The authorities have yet to return Muite's passport to him.

Martha Njoka: lawyer. On 1 March 1991, security police confiscated Njoka's car keys, forcibly restrained her and tore her jacket after she followed them to inquire why her client, Gitobu Imanyara (see above) had been arrested without a warrant. Njoka's later attempts to file a complaint with the police about her treatment were ignored. In March, Njoka was elected to the LSK Council and is currently one of the ten defendants facing contempt charges (see above).

Pheroze Nowrojee civil rights lawyer. On 20 November 1990, Nowrojee was tried in Nairobi under Section 5 of the Judicature Act, Cap. 8, for alleged contempt of court. The charges arose out of a letter written by Nowrojee expressing concern about delays in



Pheroze Nowrojee

the application to the court of his client, Mrs. Herman Muge, the widow of the slain Bishop Alexander Muge. (Bishop Muge of Eldoret had been among prominent church leaders who criticized the government for denying political freedoms. He was killed on 14 August 1990 when the motor vehicle in which he was travelling collided with a lorry. It is widely suspected that his death might have been an assassination engineered by the government or security officials.) Mrs Muge had instructed Nowrojee to obtain necessary court orders to delay the criminal prosecution of the lorry driver until an inquiry into the death of the Bishop was held. Nowrojee applied to the court on 21 September and, after receiving no reply for two weeks, on 4 October, Nowrojee sent a letter to the Registrar of the court inquiring about "unusual delay" in the ruling of Muge's court application.

It is most unusual for the date of the ruling in an urgent matter not to be fixed. It is unusual that it is taking so long to produce a Ruling in an *ex parte* matter. It is unusual that in the meantime the same Learned Judge has dealt with several hundred matters as Duty Judge and left this ONE matter as yet uncompleted. Such a delay amounts in law to a refusal to adjudicate...The Learned Judge has failed to appreciate the serious nature of, and the priority that is afforded to, proceedings involving the High Prerogative writs and orders.

The Attorney General argued that the letter was contemptuous because it allegedly accused the judge of bias and undermined the authority of the court. Nowrojee's letter was subsequently published in several local newspapers and he was further charged with "causing the publication of information from the same letter in the local daily papers, *The Daily Nation*, *The Standard* and *Kenya Times*."

It is believed that the charges against Nowrojee may have been motivated by his representation of Gitobu Imanayara, Mohamed Ibrahim, and John Khaminwa (see above) and other politically unpopular clients. At his 20 November contempt trial, more than 100 lawyers were present, as well as observers from the CIJL (Ali Hamir of Zambia) the International Bar Association, the American Bar Association and the Association of the Bar of the City of New York. On 4 December 1990, Nowrojee was acquitted. The 15 page judgment concluded that

The jurisdiction to punish for contempt is not to be exercised lightly. The authorities are unanimous it should be exercised with great care and in the clearest of cases... Although the criticism (Nowrojee) made against the duty Judge bordered on contempt of court, they did not exceed the limit as would lead the court to treat it as a contempt of court.

MALAYSIA



Manjeet Singh Dhillon

Manjeet Singh: lawyer, Vice-President of the Malaysian Bar Council and active campaigner against government restrictions on the independence of the judiciary. On 30 April 1989, the Malaysian government charged Singh with contempt of court for statements he made during a lawsuit to remove the new Lord President of the Supreme Court. The lawsuit stemmed from the government's 1988 removal of the previous Lord President, Tun Salleh Abbas and the subsequent suspension of five Supreme Court judges (see CIJL 1989 and 1990 reports).

On 7 July 1988, immediately after the suspension of the five Supreme Court judges, the Bar Council held an Extraordinary General Meeting during which it passed a resolution in favour of finding then-Acting Lord President of the Supreme Court, Hamid Omar, guilty of contempt of court. On 2 July 1988, Hamid attempted to prevent the Supreme Court judges from meeting to hear the Lord President's stay application. The Bar ratified the resolution on 22 April 1989, after the judges' final dismissal. Manjeet Singh, in his capacity as Secretary of the Bar Council, submitted an affidavit on 25 April 1989 in support of an application to the Supreme Court for leave to issue contempt proceedings against the Acting Lord President. The application, however, was dismissed on 30 April 1989. Attorney General Tan Sri Abu Talib subsequently charged Singh with contempt of court for statements he made in his affidavit, alleging that the affidavit scandalized Hamid. In so doing, Singh was said to have lowered the dignity of the court in the eyes of the people as well as the dignity of the monarch and the ruling council, who appoint the judges.

More than 300 members of the Bar Council, including almost all of its former presidents, asked to join Singh as respondents in the case. The Supreme Court of Malaysia heard the contempt proceedings from 4 to 7 June 1990 in the presence of a court observer sent by the CIJL. Observers from the Law Asia, the International Bar Association, the Commonwealth Bar Association and the American Bar Association were also present at the trial.

Although argument was heard in June 1990, the judgment was delivered nearly five months later (many observers believe that the court was waiting for the general elections called by the Prime Minister to be held). On 5 November 1990, in a two to one decision, the Supreme Court found Singh guilty of contempt. All three judges found that Singh could not avail himself of a defence of justification for his remarks; nor could his role as a lawyer excuse him. In what appears to be a ruling that seriously limits freedom of speech in Malaysia, all three judges reasoned that the "local conditions" or "circumstances" prevailing in Malaysia could form a legal basis for construing the law of contempt more broadly. All three judges issued opinions. The dissenting judge found that while Singh's statements were defamatory, they did not amount to contempt of court because the then-Acting Lord President was not acting in his judicial capacity. The dissent, while finding that the statements were defamatory, also noted the Bar Council's general concern for the independence of the judiciary.

The court held in mitigation that the responsibility of the respondent was vicarious as he was acting for the Malaysian Bar. A fine of M\$5,000 and in default three months imprisonment was imposed. On the same day, the Bar paid the fine for Manjeet Singh Dhillon.

MALI



Judges' strike

In March 1991, after months of growing pro-democracy demonstrations and strikes, during which over 150 people were killed by security police, General Moussa Traoré was deposed as President and replaced by a transitional government (the *Comite de Transition pour le Salut du Peuple* - CTSP) headed by Lieutenant-Colonel Amadou Toumani Traoré. The CTSP has called a national conference to start on 29 July to work out the details of a new constitution.

One of the many events leading to Troaré's fall was the "Judges' Movement" (*le mouvement des Magistrats*) in January 1991. Judges went on a three-day strike and demonstrated in front of the Ministry of Justice on 22 January to protest against interferences with the independence of the judiciary. The demonstration was joined by other court and legal workers, including clerks, lawyers and notaries. One of the immediate causes of the demonstration was the release, "on orders from above," of the brother of a leading imam who had just been committed to prison for swindling. The judge who had delivered the detention order, **Hamèye Foune Mouhamadane**, Judge of First Instance of Bamako, also had his scholarship to study in France withdrawn. After negotiations between the Ministry of Justice and the union representing judges and other court workers, it was agreed that the detention order would be carried out and that Judge Mouhamadane would be given priority for any new scholarships. On 29 January, however, Mouhamadane was transferred from Bamako to the town of Bankass, a long distance from the capital. In addition, the judges believed that the judicial selection and promotion process favoured politics over merit and that the executive had almost unfettered power to discipline judges. Demba Diallo, President of the Malian Bar Association, told an ICJ mission visiting Mali in February that "Judges are transferred, removed and disciplined for a yes or a no." In early February, the Minister of Justice railed on television against the "dishonest and shady practices of Malian lawyers."

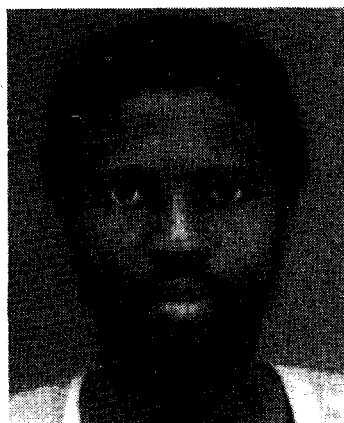
Amidou Diabaté: judge and Secretary-General of the CNID. Diabaté was forcibly taken away by four men in civilian clothes on 23 January 1991 as he returned home from a meeting of the coordinating committee of the judges' strike. During his detention, he

was questioned at length about the judges' strike. The reason for his detention, he believes, was to break the strike. After being held overnight, he was released without charge.



Diakité Manassa Danioko

Diakité Manassa Danioko - magistrate (the first woman to rise to President of the Tribunal of First Instance in Bamako). On 3 August 1988, after Danioko refused to lift a provisional attachment order against an airplane, despite the personal request of the Minister of Justice, she was suspended for "*faute grave*" (serious breach of duty). In November 1988, she was brought before a disciplinary tribunal and, on 2 December, she was removed by Presidential decree from her position. In January 1989, she applied to the Supreme Court to reverse the decision. After numerous delays, in August 1990, ten lawyers argued her case before the Supreme Court, where even the public prosecutor called for revocation of the Presidential decree. In October, the Supreme Court so ordered and finally, on 24 January 1991, after a two-year struggle, Danioko was re-instated by Presidential decree.



Mountaga Tall

Mountaga Tall: lawyer, President of the pro-democracy organization *Comité national d'initiative démocratique* (CNID), Vice-President of the International Union of Young Lawyers. Tall went into hiding and then fled to France in February 1991 after repeated threats against him. Tall had organized and participated in several demonstrations calling for a return to democracy. On 18 January 1991, security forces used batons and tear-gas against a march he had organized. Later, two truckloads of soldiers came to his house. Finding no one home, they scaled the walls and searched the house. Other threats reportedly came from relatives of the President. Tall then went into hiding. He returned to Mali after the overthrow of President Traoré.

MEXICO

Julio Macossay Vallado: human rights lawyer and member of the Mexican League for the Defence of Human Rights. Macossay also provided legal assistance to workers in Mérida, Yucatán state. On 8 August 1990, two individuals reportedly approached Macossay on a street in Mérida and beat him with a lead pipe. The attackers warned Macossay that they would kill him if he did not leave the city. Macossay had been imprisoned earlier in the year on charges of damaging property and making threats. To protest the charges he went on a 50-day hunger strike. While in jail, Macossay was reportedly warned to discontinue his human rights work. On 30 May 1990, he was released for lack of evidence.

MOROCCO

Mohamed Abdelhadi Kebbab: lawyer, President of the Moroccan League of Human Rights. Kebbab was the target of two assassination attempts in July 1991. During the second, on 29 July, a man came to his office in Rabat and shot and killed a client before being subdued and arrested. The murderer told police that he had killed his victim by error and was trying to kill Kebbab.

MYANMAR (BURMA)

After a military takeover in 1988, a State Law and Order Restoration Council (SLORC) was formed. The SLORC re-introduced national courts (replacing the committee system in place since the 1962 Constitution) and brought them under its control. Shortly thereafter, it established a law providing for military tribunals (Martial Law Order No. 1/89 on 17 July 1989. Martial Law Order No. 2/89, of 18 July 1989, further promulgated the powers of the tribunals). These tribunals, which are composed of military officers, who have no formal legal training, usually operate under virtually no legal constraints. While summary judicial powers of military commanders in some areas of Burma have now been revoked, civil court authority has not been restored, nor have military procedures significantly changed.

Military tribunals in Burma often fail to guarantee internationally recognized standards for fair trials. These tribunals forego the presumption of innocence and can convict a criminal defendant without ever hearing the witnesses against her. The military tribunals can summon or reject witnesses, and they can either consider or ignore evidence. According to the Lawyers Committee for Human Rights, in all of the known cases conducted by the military tribunals, not one person has been acquitted¹.

The Lawyers Committee further reports that military commanders are permitted to try criminal defendants either in civilian courts or through "summary trials" conducted by military tribunals. Persons who act in defiance of orders issued by the SLORC, the government, or the military commanders, however, must be tried only by military tribunals. The SLORC decides who is in defiance of orders and thus decides who is tried by the military tribunal. The SLORC apparently uses the military tribunals to prosecute anyone deemed to be a threat to the SLORC.

Military tribunals are closed to the public and rarely announced decisions publicly. A defendant does not have to be charged with an offense under Burmese law. Furthermore, a penalty can be imposed on a defendant without regard to the minimum and maximum sentences provided by law.

Persons detained for political offenses are rarely provided with counsel and meetings with counsel are not permitted before trial. Trials often consist of reading the charges against the accused and then the pronouncement of guilt. Often, an interrogation statement or a signed confession is also read. A disturbing number of these statements are reportedly the result of mistreatment. The verdict is announced with virtually no time for deliberation. Sentences range from a minimum of 3 years imprisonment with labour and fines to banishment with hard labour for life and even death. In August 1989, for instance, a military tribunal in Shwebo tried and convicted 25 defendants in two days. All the defendants were found guilty, and 11 received the death sentence.

The defendants' right to appeal military tribunal sentences has been left largely without effect. Three-year sentences must be appealed within 30 days to a military commander who can reduce or raise the sentence. Appeals of sentences over three years are submitted within 30 days only to the Commander-in-Chief of the Army, presently General Saw Maung (Maung is also the chairman of the SLORC). The Commander-in-Chief can revise the sentence as he chooses. According to the Lawyers Committee for Human Rights, there is no known case of overturning a conviction.

A defence attorney, when allowed to participate, is severely restricted in what she can accomplish for her client. During appeals, military authorities have not cooperated with attorneys and have even tried to intimidate attorneys. Furthermore, lawyers have been warned that a zealous or aggressive defence may result in problems for the lawyer.

1. Lawyers Committee for Human Rights, *Summary Injustice : Military Tribunals in Burma*, April 1991.

The following list of lawyers in detention is not complete. Because formal charges are not always brought nor verdicts announced, it is difficult to determine whether the detention relates to the person's professional activities:

Htay Aung: lawyer. Arrested in 1989.

Thein Han: lawyer and NLD candidate in the May 1990 general elections. Han was arrested on 8 February 1990 and later sentenced by a military tribunal to three years imprisonment. The charges against him are unknown.

Bawk La: lawyer, Baptist preacher and member of the NLD. He was arrested in October 1988 in Myitkyina, Kachin state.

Nan Zing La: lawyer and leader of the Baptist Church. He was arrested in October 1988 for giving speeches at pro-democracy demonstrations. Nan Zing La was sentenced to three years' imprisonment.

Maung Maung: lawyer and member of the NLD, arrested in June 1989. Maung is being held in detention.

Nay Min: lawyer. Min was arrested on 21 October 1988 for providing the BBC with information deemed to be false by the government of Myanmar. Min was charged with possession of anti-government literature. He was tried in a summary trial before a military tribunal on 5 October 1989 and sentenced to 14 years hard labour.

Zaw Myo Win: lawyer. Reportedly tortured by military agents.

Ko Yu: lawyer, member of the NLD and member of the Central Executive Committee of the Bar Association. He was arrested on 4 October 1989 and is currently being held at Insein Prison. His family is not permitted to see him.

Kyaw Zaw: lawyer. Arrested in September 1988.

NICARAGUA

In 1990 the candidate of the United Nicaraguan Opposition (UNO) defeated the governing Sandinista National Liberation Front (FSLN) in presidential and legislative elections. The Supreme Court was enlarged and judges favourable to the new ruling coalition were installed, achieving parity with FSLN-appointees. Newly elected President Violetta Barrios de Chamorro also removed the President of the Supreme Court, Rodrigo Reyes.

When President Chamorro took office, the Supreme Court was dominated by FSLN appointees. What had been a rough balance on the Court between four judges close to the FSLN and three from the political opposition was upset when the three non-Sandinista judges resigned in 1988 to protest the government's alleged refusal to comply with a court order reversing a land seizure. Judges sympathetic to the FSLN were appointed in their stead.

The Nicaraguan constitution (art. 163) provides that the Supreme Court shall have a minimum of seven members, selected by the National Assembly from panels proposed by the President. Article 164 further gives the Supreme Court the authority to "organize and govern" the administration of justice, while Article 140 gives the Supreme Court the right to propose legislation in areas of its competence. Under legislation adopted by the outgoing Sandinista-controlled National Assembly, and calculated to maintain control over the Court, these latter articles were interpreted as giving the Supreme Court alone the power to recommend, without interference from the other branches of government, the approval of legislation enlarging the Court.

The new UNO-dominated National Assembly, however, immediately adopted contrary legislation (ley no. 106) establishing that the enlargement of the Supreme Court was a matter for the Assembly to decide. The Court was thereupon enlarged from seven judges to nine. At the same time, and in an apparent political compromise, two FSLN-appointed judges resigned. President Chamorro then proposed the nomination of four new judges favourable to the new government.



Rodrigo Reyes Portocarrero

On 25 July 1990, President Chamorro by decree no. 28-90 removed **Rodrigo Reyes Portocarrero** as President of the Supreme Court and appointed in his place her personal lawyer Orlando Trejos Somarriba, who had just been elected to the court. Judge Somarriba was an active member of the Constitutional Liberal Party and had been the Minister of Labor in the government of Luis Somoza before splitting with him. Reyes had been Minister of Justice before joining the Supreme Court, and was considered to be pro-FSLN. While the constitution gives the president the power to select the court president from among the judges, the constitution had not previously been interpreted as giving the authority to replace one court president with another at the will of the president.

NIGERIA

Nigeria is ruled by a military government which came to power in December 1983 following a coup d'état led by General Mohammadu Buhari. The government issued Constitution (Modification and Suspension) Decree N° 1 of 1984, which left the institutional framework of the judiciary relatively intact, but set up a parallel system by conferring exclusive jurisdiction over certain criminal offenses on special military tribunals.

A plethora of decrees oust the jurisdiction of the regular courts from enquiring into any official policy or programme of the military government, thereby weakening the judicial system. Following the palace coup of 27 August 1985, the current military government headed by President Ibrahim Babangida and a 19 member Armed Forces Ruling Council (AFRC), made some changes to the decrees, further eroding the powers of the regular courts. Specifically Decree 9 of 1990 immunizes the President and military governors from judicial challenges for any reason whatsoever.

The independence of the judiciary has been seriously challenged by the AFRC's role as final arbiter in all cases and through the use of decrees that prohibit judicial intervention in political and security cases. The AFRC has transferred to special Military Tribunals jurisdiction over cases involving corruption, currency violations, armed robbery and a variety of miscellaneous offenses, such as drug trafficking and illegal oil sales. The tribunals do not necessarily adhere to legal principles of evidence and admissibility and are empowered to devise their own rules of procedure. Although the military and police officers who sit as co-equals with civilian judges have recently been withdrawn, conviction by these special tribunals is almost automatic and sentences handed down are generally severe. According to the Nigerian Constitutional Rights Project, which has published a major study of Nigeria's Military Tribunal, in the first division of the Currency and Miscellaneous Offences Tribunal for the two year period 1988 and 1989, for example, all 228 cases resulted in convictions. In the period January through October 1990, all 29 resulted in convictions.

Convictions for armed robbery carry the death sentence with no right of appeal, although the sentence must be confirmed by the state's military governor before it is carried out. Conviction by the Treason and Other Offences Tribunal (formed in 1986) also carries the death sentence and provides for appeal only to the Joint Chiefs of Staff, whose recommendations cannot be appealed but are subject to AFRC confirmation. The civil courts are precluded from inquiring into whether constitutional rights have been violated by the conduct and decisions of the military tribunals.

Persons accused of plotting a 22 April 1990 coup were tried by a military tribunal constituted under Decree One (Special Military Tribunal) of 1986. Because the proceedings were not public, it is doubtful that the defendants were afforded minimal due process. Tribunal members were all high-ranking military officers, the accused were denied use of civilian counsel of their choice, and appeals could be filed only before the Joint Chiefs of Staff, not before a civilian appellate court. On 27 July 1990, based on the tribunal findings, the AFRC ordered the execution of 42 convicted coup participants. An additional 27 were executed in September.

Some human rights organizations allege that a number of judges seek government advice before deciding cases in which the government is a litigant. The current Chief Judge of Lagos State, Mr. Justice Ligali Ayorinde, has been accused of delaying the allocation of *habeas corpus* cases while most courts frequently grant long adjournments in cases in which the government has an interest. Nigerian attorneys have also complained that many judges are corrupt and open to bribes. Promotion to both the Court of Appeal and the Supreme Court are widely believed to be reserved for judges who favour the government in their decisions. There is evidence that poor conditions of service have

also contributed to the weakening of judicial independence in Nigeria.

Many lawyers have criticized what they perceive to be a pro-government bias in the judiciary. While declaring open the Nigerian Bar Association Law Week in February 1990, Chief Justice Mohamed Bello justified the existence of the State Security (Detention of Persons) Decree No. 2 of 1984 on the ground that similar preventive detention laws exist in 59 other countries around the world. Decree No. 2 authorizes the administrative detention, for a renewable period of six weeks, of any person suspected to be a threat to national security or to have contributed to the economic adversity of the country. The detention cannot be challenged in court. The Nigerian press castigated the Chief Justice for lending his judicial weight to the decree while the National Association of Democratic Lawyers (NADL) called for his resignation. In an earlier interview, Bello said that "if a judge releases anybody detained under Decree 2, it is illegal."

Olalere Ayinde: Chairman of Oyo State election tribunal. On 26 March 1991, Justice Ayinde received a letter which threatened to kill him and his family. The letter warned the justice that he would "pay the price" if the tribunal decided an election petition brought against the chairman of Ibadan Municipal Government (IMG), Alhaji Nuremi-Akbanis, in favour of the defeated National Republican Convention (NRC) candidate. The letter included the accusation that members of the NRC had boasted that they had the election tribunal "in the pocket." On 27 March 1991, Ayinde read the letter to an open court, denied the accusations and stated that he had worked on the Bench for 40 years without blemish. The Nigerian Bar Association issued a statement disassociating itself from the letter.

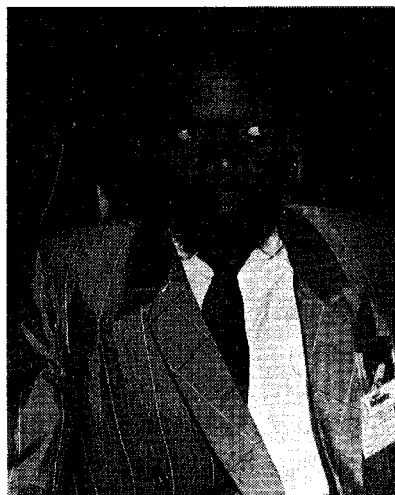
Alao Aka-Bashorun: Lagos human rights lawyer and former President of the Nigerian Bar Association. On 16 August 1990, Aka-Bashorun was arrested at his office. The police seized his passport and questioned him at the police station. The interrogation was suspected to be related to Aka-Bashorun's organization of the National Consultative Forum, planned for September to discuss the political future of the country, and which the authorities prevented from being held. On 31 May 1991, Aka-Bashorun was detained in his chambers for several hours by armed policemen. When they insisted on a search of the chambers, Aka-Bashorun demanded to see their search warrant. The head policeman left to obtain the warrant but did not return to the chambers. The remaining policeman left two days later.

Olisa Agbakoba and Michael Ozekhome: lawyers and president and director of legal services, respectively, of the Lagos-based Civil Liberties Organization (CLO). On 8 June 1990, Agbakoba and Ozekhome were held in detention for seven hours and questioned about their work for their clients, including the family of Chief Great Ogboru. Agbakoba had recently filed a motion on behalf of the chief's brother, Shadrack Ogboru, questioning whether the military court had the jurisdiction under the Nigerian constitution to hear cases involving suspects in the April 1990 coup (see discussion at beginning of chapter).

Tunji Brathwaite: Lagos lawyer and presidential candidate in the 1983 elections. He was detained on 25 April 1990. It is believed that Brathwaite's arrest is linked to his appeal to the government to consider changing some of the policies advanced as justifications for the attempted coup. In May, Brathwaite discontinued his suit against the government for unlawful detention. Brathwaite's lawyer, Chief Olu Onagoruwa (see below), read a statement by Brathwaite in court that Brathwaite was dropping the suit against the government because it was "a waste of time." The withdrawal of the suit came

shortly after the Principal Staff Officer to the President, Colonel Anthony Ukpo, had made public that Braithwaite was being held under State Security (Detention of Persons) Decree No. 2 of 1984 (see above). On 25 June 1990, Braithwaite was released.

Sola Ebiseni, barrister and elected chairman of the Ilaje Ese-Odo Local Government and **Yinka Orikoto** Barrister and secretary of the National Association of Democratic Lawyers (NADL). On 30 May 1991, the two lawyers were arrested and taken to an undisclosed detention centre. The police closed the law offices of Sola-Yinka Associates and seized documents belonging to the NADL.



Femi Falana

Femi Falana: Lagos lawyer and President of the National Association of Democratic Lawyers. An outspoken human rights advocate, Falana has been harassed on numerous occasions by Nigerian authorities. Falana has also been critical of the leadership of the Nigeria Bar Association (NBA), in particular blasting its acceptance of a \$1 million gift from the military government at the March 1991 conference of the African Bar Association, during which the Vice-President praised the NBA's "cooperative attitude."

On 8 April 1990, Falana was arrested at his home by State Security Service agents. He was driven around and questioned about his activities for several hours before being left in an area outside of Lagos.

On 10 October 1990, Falana was arrested by the State Security Service and accused of inciting the Maroko Community. This allegation arose from the law suit filed against the Lagos State Government for allegedly destroying homes in the community.

On 11 April 1991, following the refusal of Justice Moshood Olugbani to allow Falana to consult with his client who was facing a criminal trial before the judge, Falana withdrew his appearance in court. Justice Olugbani invited Falana to court to continue the defence of his client whether he was briefed or not. On 19 April, Falana appeared in court only to be charged with contempt. The Court of Appeal has restrained Justice Olugbani from proceeding with the contempt charge pending the determination of Falana's client's appeal.

On 11 May 1991, a Superintendent of Police from the Alagobon Police station went to Falana's residence on instructions to arrest him. Falana voluntarily reported to the Police Station on 12 May, where the police asked that he make a statement regarding a highly-publicized case in which he is representing Lagos socialite Jennifer Madike, on trial for corruption. (Ms. Madike, who has accused the head of the National Drug Enforcement Agency of accepting bribes, has been detained in solitary confinement for several months under Decree 2.) Falana declined, citing attorney-client privilege.

On 14 May, Falana travelled to the United States to attend the 50th Anniversary of the NAACP Legal Defence Fund. Upon his return to Nigeria on 26 May, Falana was arrested and held overnight by the security agents at the SSS Shangisha Detention Camp. The Security Service impounded Falana's luggage and passport and removed US \$200 from his wallet. While in detention, Falana was accused of offering legal advice to the National Association of Nigerian Students (NANS) and inciting a student riot on 23 May at the University of Jos. Falana produced documents to the police demonstrating that he was in New York on that day. Falana was released on 27 May 1991. On 30 May, the Police searched Falana's chambers in his absence.

On 14 July 1991, while Falana was out of Lagos, armed officials of the State Security Service invaded his residence at 4:00 a.m. His family was harassed; without a search

warrant and in his absence they searched his house and tried to arrest his wife, Funmi-layo. With the assistance of neighbours, she resisted arrest. However, security officials requested her to warn Falana to withdraw from his case pending in Justice Olugbani's court.

Chief Gani Fawehinmi: prominent political activist and human rights lawyer. In June 1989, Chief Fawehinmi was detained for four months, was charged with criticizing the government and had his passport confiscated by police while attempting to host a seminar in his chambers on an alternative to the government's structural adjustment program (see 1990 CIJL report). After considerable public outcry, the government abruptly terminated the case and the High Court ruled that the confiscation of Fawehinmi's passport was illegal. For two years the Government ignored the High Court's ruling. In October 1990, however, the government handed over Chief Fawehinmi's passport on "compassionate grounds" in order to allow him to travel abroad for medical treatment.

Olu Onagoruwa: Lagos lawyer. Onagoruwa was arrested in his lawyer's robe as he was leaving the Lagos High Court on 1 June 1990. The arrest followed his refusal to comply with directives from the State Security Office (SSS) to withdraw a suit against the government for the unlawful detention of his client, Paul Unongu, minister in the Second Republic. He was detained under Decree No. 2 until 11 June, when he was released. Onagoruwa also served as lawyer for Tunji Brathwaite (see above). In 1988, Justice Mo-shood Olugbani froze Onagoruwa's bank account because Onagoruwa was facing criminal charges in another court. Onagoruwa was not allowed a hearing and subsequently appealed Olubani's ruling. On 19 July 1991, in an unanimous decision, the court of appeal criticized Olubani for violating Onagoruwa's rights.

Usman Mohammed: Katsina High Court Judge. In 1989, Mohammed accused the Chief Judge of "gross professional misconduct and interference." On 29 April 1990, without a hearing, the AFRC dismissed Mohammed from his post. Mohammed alleged that he had received several death threats and spent several weeks in hiding. Mohammed's wife, a chief magistrate, was also threatened with removal. Mohammed alleged that: "All apparatus of government were directed against me because I denied them the chance to tel-eguide me in the performance of my duty."

PAKISTAN

On 6 August 1990, President Ghulam Ishaq Khan dismissed Prime Minister Benazir Bhutto and her Pakistan People's Party (PPP) government and dissolved the National Assembly. Asserting that Bhutto and her party had been involved in widespread plunder and corruption, President Ishaq established numerous special courts to try cases of alleged corruption by PPP government officials. These special courts have been criticized for violating international standards on the independence of the judiciary, abridging procedural guarantees and inherent bias because the courts' competence covers almost exclusively acts of PPP officials.

Three types of special courts were created:

- "speedy trial courts." Under the enabling ordinance, a provincial government may set up as many special courts for speedy trial that it deems necessary. Generally, these speedy trial courts are intended to deal with offences that "shock the public morality," lead to "public outrage" or cause an atmosphere of "fear or anxiety" amongst the public. A provincial government has the power to refer cases to a speedy trial court, which maintains exclusive jurisdiction. The right to adequate consultation with counsel is jeopardized by provisions that adjournments are not generally allowed and that appeals must be made within seven days to a High Court.
- "punishment of misconduct courts." Eleven such courts were set up to try assembly members for alleged misconduct. They create a presumption of guilt where the accused does not provide a satisfactory explanation for wealth in her possession.
- "disqualification of membership courts." These courts can disqualify assembly members from political office upon a finding of bribery or corruption. They operate under procedures similar to those used in the speedy trial courts and provide for trials *in absentia*.

Numerous special courts were also established under the Suppression of Terrorist Activities Act (first promulgated in 1975, amended twice in 1990). Special courts also provide for speedy procedures. The accused will not be released on bail if reasonable grounds exist for believing that she is guilty of an enumerated offense. Furthermore, the accused will not be released unless the prosecution is first allowed to show cause for not allowing the release. Once an accused person has appeared before the court, the court can then try her *in absentia* if the court has ordered her removal from court based on poor behaviour or if her absence is deliberate and involves an attempt to impede justice.

Qazi Mohammad Jamil: "additional" judge of the North West Frontier Province (NWFP) High Court. Jamil was appointed to the Bench on 1 October 1988 for a period of two years. On 30 September 1990, this period expired, his appointment was not confirmed and he vacated his office. (Virtually all persons elevated to the High Courts in Pakistan are initially appointed as "additional" judges. They are generally confirmed as full judges, and it is unusual for someone not to be confirmed.) Jamil's non-confirmation was generally seen as a punishment for a decision handed down in a major political case involving the dissolution of the NWFP Provincial Assembly in 1990 by the Governor of the Province in consultation with President Ghulam Ishaq Khan. In a four to one decision issued on 26 September 1990, the High Court declared the dissolution unconstitutional. Jamil was the only additional judge out of the four in the majority, the other additional judge being the lone dissenter. Pakistani jurists described the non-appointment of Jamil as an attack on the independence of the judiciary, noting the absence of cogent reasons for such action against a judge highly

regarded for his ability and integrity. Jamil, who holds an LLM from the London School of Economics, was a professor of constitutional law at the University of Peshawar and former President of the High Court Bar Association. He was also on the Law Commission of Pakistan and the council of the Human Rights Commission of Pakistan.

Nabi Sher Jenejo: judge of the Special Court for Suppression of Terrorist Activities. Nabi Sher Jenejo was gunned down along with his guard and driver on 17 June 1991. The judge's body reportedly contained about 25 bullet wounds. It is believed that the killing was in retaliation for the judge's decisions on the special court. In March 1991, Nabi Sher Jenejo issued death sentences against seven defendants in a kidnapping case. He was also hearing cases against former high officials of the Pakistan People's Party government and Benazir Bhutto's husband Asif Ali Zardari. Sindh Chief Minister Jam Sadiq Ali acknowledged that Nabi Sher Jenejo had received death threats. Prime Minister Nawaz Sharif described the killing as "a cowardly, shameful and desperate, but unsuccessful attempt to browbeat members of the judiciary."

Abdul Hafeez Memon: acting judge of the Supreme Court of Pakistan. On 10 October 1990, the President revoked an order appointing Abdul Hafeez Memon as Acting Judge of the Supreme Court of Pakistan. Memon, who was close to Mr. Yahya Bakhtiar, the Attorney General under Benazir Bhutto, had been appointed to the bench as a "temporary" judge under Article 181 of the constitution. Memon served as Advocate-General of Sindh in the 1970s before being appointed a judge of the Sindh High Court. In 1981, when Chief Martial Law Administrator General Zia ul-Haq promulgated the Provisional Constitution Order, and the judges of superior courts were required to take a new oath of office, Memon was not invited to take oath and therefore dropped from the Bench. Legal circles were disturbed at Memon's sudden removal.

Sajjad Ali Shah: Chief Justice of the High Court of Sindh. Sajjad Ali Shah granted a stay of proceedings of the special tribunal which was hearing allegations of misconduct against Benazir Bhutto (see discussion at beginning of chapter). At the time, Justice Shah was presiding over a Division Bench of the High Court. Within days after the stay was granted, he was appointed to the Supreme Court. Although Sajjad Ali Shah requested time to complete pending work, he was immediately compelled to go from Karachi to Islamabad to take the oath of office. Many members of the Pakistan legal community believe that this "promotion" was a result of Sajjad Ali Shah's failure to act in accordance with the government's wishes

PANAMA

Rogelio Cruz: Attorney General (*procurador general*) of Panama. Cruz reported that he and other members of the judiciary began to receive threats in August 1990. Around 20 August 1990, Cruz received several strange telephone calls at his home. He believes the threats were politically motivated.

Rolando Rodríguez: prosecutor (*fiscal superior*) in charge of investigating the murder of a businessman and priest several years ago in the western province of Veraguas. Rodríguez reportedly received anonymous death threats in August 1990.

Geomara de Jones: prosecutor (*fiscal segunda superior*) for the district of Panama. Jones' daughter has received death threats which are apparently related to Jones' investigation into the illegal trafficking of Chinese persons in Panama.

Oswaldo Fernández: magistrate of the second judicial district and director of the technical judicial police. Fernández has received telephone threats, and unidentified individuals have fired rounds of machine gun fire at his home and his brother's home. Local groups believe that the threats stem from Fernández' work against organised crime, including bank robbery and drug trafficking.

Wilfredo Sáenz: president of the criminal chamber of the Second Superior tribunal in Panama City. Sáenz has been subjected to repeated threats and attacks. Between November 1990 and July 1991, unidentified individuals fired shots at his home on three separate occasions and at one point planted a small bomb at his residence. Sáenz was forced to ask Panamanian authorities for protection, which was granted. (Permanent guards are now stationed at his residence.) Although the motive behind the attacks is unknown, local groups believe that the assailants are probably linked to members of the former government who have been criminally charged and jailed pending their trials.

Lluis Guillermo Zúñiga: first Criminal Circuit judge in Panama. Zúñiga has allegedly been pressured from defense lawyers and former military members. His telephone lines have also been tampered with. Zúñiga is currently facing disciplinary proceedings for releasing on bail a former military official who was allegedly involved in embezzling state funds, unjust enrichment, and falsifying documents.

PARAGUAY



Pedro Darío Portillo



Rodolfo Manuel
Aseretto

Pedro Darío Portillo and **Rodolfo Manuel Aseretto**: human rights lawyers for the Committee of Churches for Emergency Assistance (*Comité de Iglesias para Ayudas de Emergencia*, CIPAE) in Asunción. CIPAE has played an active role in pursuing the trials of military and police officials implicated in the torture, murder, and disappearance of Paraguayan citizens during the former military regime. In February 1991, Portillo and Aseretto received death threats as a result of their representation of human rights victims and victims' families. At least some of the threats warned that they would be killed if the defendants, officials of

the former military government, were convicted.

Aseretto and his family received several anonymous telephone death threats. The callers reportedly warned them that Aseretto would "receive three bullets" and be "liquidated." Portillo has also received telephone threats and written death messages at his home. The death threats occurred just as the trials of the various former police and other governmental officials were approaching the last stages of the prosecutorial procedure and sentences were imminent. CIPAE has stated that it believes that the threats are intended to intimidate the lawyers and halt the trials in which they were involved. The threats against Portillo and Aseretto were reported to the *Fiscal General de la Nación* and the Paraguayan Bar Association.

Francisco José de Vargas: lawyer and president of the Human Rights Commission in the House of Representatives. Vargas has repeatedly called for the investigation of police officers implicated in the alleged torture of minors and other human rights violations during the Stroessner regime. On 10 March 1991, unknown individuals fired shots at Vargas' home in the early hours of the morning. None of his family members were injured. The assailants fled before Vargas could get a glimpse of them, but he did see that a blue car parked a block away from his house sped off seconds after the incident. The owner of the car later denied any involvement in the events. Vargas told the Paraguayan newspaper *Noticias* that the incident was a message to him that he should stop his human rights work. Vargas and his children had received death threats in the past.

PERU

When Alberto Fujimori assumed the presidency in July 1990, he promised to put human rights in the forefront of his administration. An increase in guerrilla activity and increased counterinsurgency operations, however, have contributed towards an overall deterioration of the human rights situation since last year's report.

Upon taking office, President Fujimori pronounced harsh criticisms against the judiciary, calling the court system "slow and annoying" and "replete with dishonesty." He announced that he would "undertake the necessary measures in the people's defence to insure that justice was carried out in Peru." The Supreme Court reacted to what it called the President's "verbal excesses" by remarking that "the current problems faced by the judiciary are not the sole responsibility of judges." It demanded "respect for the judges, an improved infrastructure, a modernization of the system and attention to the just demands of those working in the judicial sector."

One of the most severe criticisms of the judiciary is its slowness and inefficiency in trying alleged members of subversive groups. Although official statistics do not exist, the percentage of those charged who are convicted is estimated at 10%, a figure attributed by many judges to insufficient police work and the lack of proof. Nevertheless, the impunity enjoyed by members of the security forces allegedly involved in killings and disappearances, due to a lack of cooperation by the executive with the judiciary evidences, more than anything, the lack of effective political will to avoid a repetition of these crimes.

More than half the population lives in emergency zones in which constitutional rights and freedoms are restricted. The civilian authorities, and the judiciary in particular, have limited power in these areas due to the prerogatives enjoyed by the "Political-Military Commands" which control the zones. The judiciary has little control over military activities in these areas, where it can be of little assistance to those detained.

The major problems confronting the judiciary include:

- a lack of protection for judges and prosecutors working on sensitive cases, particularly related to terrorism, who continue to be targets of attack. These attacks come from a wide variety of sources, including the guerrilla groups *Sendero Luminoso* (Shining Path) and *Movimiento Revolucionario Tupac Amaru* (Tupac Amaru Revolutionary movement), as well as paramilitary groups, and members of the Peruvian security forces. The President of the Supreme Court, as well as the President of the National Association of Magistrates have repeatedly asked for greater protection;
- a lack of cooperation with the judiciary and the prosecution, and even obstruction and threats by military authorities in emergency zones (see the cases below of Augusto Zuñiga, Guillermo Garcia Zamora and Moisés Ochoa Giron).

In a November 1990 communiqué, the Lima Bar Association criticized the government for the obstacles it placed in the way of the defence bar, and called on the authorities to guarantee their right to adequately defend their clients.

One of the goals of the *Sendero Luminoso* continues to be the elimination of the presence of the state in rural areas. For example, on 8 July 1990, presumed subversives dynamited the local investigatory court (*Juzgado de Instrucción*) in Huancayo. On 23 July 1990, an explosive device was found in the court which was handling the case of Osmán Morote, an important *Sendero* leader. 25 July 1990, guerrilla forces entered the town of Yurimaguas and attacked the local jail and dynamited several public offices as well as a local investigatory court. On 15 August 1990, the building housing both the investigatory courts and first instance court in Huancavelica department was attacked by

members of guerrilla forces, causing extensive damage. No one was injured during the incident. The Magistrates Association of Huancavelica (*Asociación de Magistrados de Huancavelica*) later reported that they were not receiving enough protection from the police. On 21 May 1991, alleged members of the *Sendero Luminoso* threw sticks of dynamite at the electoral registration office (*Registro Electoral*) and the courts of the Víctor Fajardo province in Ayacucho. The offices were extensively damaged.

An encouraging development has been that the associations representing judges and lawyers appear to be playing a more important role in speaking out on issues affecting their security and independence. In addition, for the first time in many years the budget allocated to the judicial branch was equivalent to the minimum established by the constitution (two percent of the national budget). Finally, increased attention is being paid to the legitimate complaints against judges and prosecutors involved in corruption or other abuses - since the beginning of 1991, 250 judges have been suspended as a result of disciplinary proceedings, while 20 have been removed. In the same period, 17 prosecutors and 58 temporary prosecutors have been disciplined.

Luis Almenara Bryson: president of the Superior Court of Justice in Lima. On 3 June 1991, unidentified individuals fired shots at Almenara's car moments after he arrived home with his wife. Neither was injured during the incident. The motive for the attack is unknown.

Diesel Alfonso Amasifuen Pinchi: Justice of the Peace in the Buenos Aires district in Picota Province. Amasifuen was detained by the Peruvian security forces on 29 May 1990, along with the mayor of Buenos Aires and a professor. The three were accused of collaborating with the guerrillas. Upon release, the group claimed that they were tortured by members of the security forces. This case has been denounced by the weekly paper *Cambio*, which, in general, is well informed of the activities of the armed left-wing Tupac Amaru Revolutionary Movement (*Movimiento Revolucionario Tupac Amaru*).

Sadi Anaya Castro: Prosecutor in the province of Huaraz, Ancash department. Anaya, who has prosecuted members of the Shining Path as well as members of the police, has received constant telephone and written death threats. Anaya has reported these threats to his superiors.

Dario Arroyo Yance: lawyer who represents Víctor Polay Campos, leader of the Tupac Amaru Revolutionary Movement (MRTA). Polay and 47 other MRTA prisoners escaped from the maximum security prison *Miguel Castro Castro* on 10 July 1990. Two days later, Arroyo reported that he had received death threats.

Rodolfo Ascencios Martell: lawyer and member of the Association of Democratic Lawyers of Peru, an organization that often represents persons charged with terrorism. On 7 September 1990, Ascencios was detained and accused of being affiliated with *Socorro Popular*, an organization which allegedly supports the Shining Path. He was later released.

Oswaldo Calderón Almonacio: lawyer and former judge of Castrovirreyna province in Huancavelica. Calderón was killed on 5 October 1990 near his home in the city of Huancavelica. Local human rights groups attributed the murder to the Shining Path.

Luis Fernando Colonio Arteaga: legal advisor at the National University of San Cristóbal de Huamanga in Ayacucho where he also represented students and faculty in

human rights cases, and former member of the board of directors of the Ayacucho Bar Association. In the early morning hours of 20 July 1990, Colonio was murdered by hooded gunmen who broke into his home in the outskirts of Huamanga and shot him in the head.

One day before the killing, Colonio had attended a public meeting in Ayacucho where he reported on recent cases of disappearances, killings, and house searches. Colonio claimed that government security forces were responsible for the events. During the meeting, he also called for the creation of a civilian association (*Frente Cívico*) to restore political power to civilian authorities in the region, which has been under a state of emergency since December 1982.

Colonio had been appointed lawyer for the students at National University just six months earlier. At the time of his death, he was representing several students who had been accused of having links to the guerrilla movement. There have been no arrests made in connection with the murder of Colonio and Peruvian authorities have failed to provide any further information on an investigation. Local human rights organizations believe that paramilitary forces may be responsible for the crime. In the days leading up to Colonio's assassination, lawyer Maximo Rico (see below) and biologist Ciro Aramburu were also killed during the night by hooded gunmen.

Recina Chavez Costa: prosecutor in the Special Prosecutor's Office for the Prevention of Crime (*Fiscalía Especial de Prevención del Delito*) in Lima. Chavez received several telephone death threats in April 1991 and her family has escaped three dynamite attacks. The Ministry of the Interior assigned two police officers to protect Chavez. Her children, who have also received death threats, are currently studying abroad.

Simón Damazen Mori: judge in the province of San Marcos, Cajamarca department. On 25 October 1990, members of the guerrilla forces attacked the house of Damazo, who was seriously injured during the attack.

Angel Escobar Jurado: lawyer and vice-president of the Human Rights Committee of Huancavelica (CODEH). Escobar was detained on 27 February 1990, allegedly by members of the Peruvian security forces, who have denied holding him. At the time of this writing, Peruvian human rights groups have no further information on his whereabouts. Escobar's name reportedly appeared on an August 1989 death list attributed to the Rodrigo Franco Command (*Comando Rodrigo Franco*), a right-wing paramilitary group.

César Fernández Arce: president of the Supreme Court. Fernández reportedly received numerous death threats in connection with his election as president of the Court on 6 December 1990. Prior to his election he was warned that he should withdraw his candidacy. After winning the election, Fernández was threatened again and told that he should not assume his position as scheduled on 2 January 1991. Local groups suspect that the threats may be in response to Fernández's campaign promise to eliminate corruption and the influence of drug traffickers and guerrilla forces on the judiciary.

Julio Falconi: lawyer with the Association for Human Rights of Peru (APRODEH), a non-governmental organization which often represents individuals accused of terrorist activities. After receiving repeated death threats, Falconi was forced to leave his home and family. He is currently living abroad.

Rogelio Galván García: president of the Correctional Tribunal of the Superior Court of Huancavelica. Galván was injured by a bullet fired at him by an unidentified individual

near his home on 11 April 1991. His assailant was allegedly a member of the Shining Path. His secretary, Gregorio Llonco Chávez, was also injured in the attempt.

Guillermo García Zamora: prosecutor (*Fiscal*) of the Province of Cangallo, Ayacucho department. García was in charge of investigating the detention and subsequent “disappearance” of the mayor, the lieutenant governor and the secretary of the municipal council of Chuschi in Ayacucho, who were detained and allegedly tortured by two police officers. The officers were later identified by eyewitnesses. The detainees were taken by an army patrol to the BIN 34 barracks in Cangallo, but officers at the barracks denied holding them. On 26 March 1991, García went to the barracks along with the mayor of Cangallo, the victims’ families and members of the technical police to inquire about the mens’ whereabouts. When they arrived at the barracks, bombs exploded all around them. After insisting for some time, the commander of the barracks refused to see García. When the group left bombs exploded once again and they were followed by members of the military. In a report, García stated that his life, that of his secretary, and that of nine others, was in danger. Subsequently, there was an armed attack on the mayor of Cangallo, one of the nine mentioned by García.

Fausto Gutarra Guerra: lawyer, public prosecutor, and former president of the Electoral Council (*Jurado Electoral*) of the Provinces of Tayacaja and Huancavelica. Gutarra was killed on 2 July 1990 as he was about to board a local bus in the city of Huancayo. His murder may have been a result of his election-monitoring activities. Although members of the Shining Path are believed to be responsible, local human rights groups are unaware of any pending investigation into his killing.

Omar León Vásquez: public prosecutor of Cabana province, Ancash department. At 9:00 p.m. on 25 August 1990, four hooded, heavily armed gunmen forcibly entered León’s home and reportedly beat him and threatened him with death unless he gave up his work. León resigned his position and fled the city. Human rights groups in Peru have not been informed of any pending investigation and no one has claimed responsibility for the acts. The attack, however, took place in an area where the Shining Path has a strong presence, and León may have been in charge of cases against their members.

Jhonny Lezcano Ancieta: human rights lawyer currently involved in a case concerning the murder of a young woman by her husband, a technical police lieutenant. On 27 October 1990 Lezcano’s home in Puno was dynamited, causing a fire and destroying his car. Lezcano identified a captain in the police force as being involved in the attack, whose arrest was ordered by the Prosecutor General’s office.

José Maceda Tito: public prosecutor in Ayacucho department and former president of the Ayacucho Department Electoral Council (*Jurado Departamental de Elecciones*). Maceda, along with three others, was injured on 14 July 1990 after a bomb exploded next to his house. Local human rights groups have been unable to obtain information on any pending investigation, but the Shining Path may be responsible for the attempt. The Shining Path opposed recent elections and may also have been opposed to Maceda’s work as a prosecutor in the area. Local groups have been unable to obtain information on any pending investigation.

Wilfredo Mujica Contreras: lawyer who has represented Osmán Morote Barrionuevo, a top leader of the Shining Path. On 1 June 1990, Mujica informed the press that he had received death threats from the *Comando Rodrigo Franco* (Rodrigo Franco Command).



Moisés Ochoa Giron

Moisés Ochoa Giron: investigatory judge (*juez instructor*) in the province of Huanta, Ayacucho department. Ochoa has handled cases against army officials implicated in the 1988 murder of journalist Hugo Bustíos Saavedra in Ayacucho, as well a case against Commander Gustavo Robles for illegal drug trafficking. After difficulties in the Bustíos case due to a lack of cooperation on the part of military authorities, who failed to identify the military men, known only by their pseudonyms, Ochoa opened an investigation against the officials in May 1991. He had recently issued detention orders against some of those allegedly implicated. On 29 May 1991, three members of the army went to the office of Ochoa demanding information about the case. Shortly thereafter, on 3 June 1991, military officers who claimed to be following orders attempted to enter Ochoa's home. However, Ochoa ar-

gued with the officers and allowed only one of them access. Although Ochoa has reported the incident and expressed concern that it is a form of intimidation, the military-political command of Huamanga claims that the incident was a normal occurrence (*una visita de rutina*) in the area. Nevertheless, the senior judge in Huanta, Dr. Toribio Vega Fajardo, has publicly complained about the "illegal search" of Ochoa's home which he has called an "affront to the judiciary." Vega called on the army to respect members of the judiciary.

Luis Paredes Macera: lawyer and president of the Grau regional assembly in northern Peru. On 7 January 1991, a group of unidentified individuals threw a stick of dynamite into Paredes' legal library, causing serious damage. The motive of the attack is unknown.

Dario Quispilaya Yauri: Justice of the Peace in the district of Pazos, Tayacaja province, Huancavelica department. Quispilaya was killed in the early morning hours on 26 September 1990 along with two others by a group of 20 heavily armed gunmen. Human rights groups believe that members of the Shining Path may be responsible.

Máximo Rico Bazán: lawyer in the legal office of the Ayacucho Development Corporation (*Corporacion de Desarrollo de Ayacucho*). He was killed by seven gunmen dressed in civilian clothes who entered his home between 1:00 and 2:00 a.m. on 19 July 1990. Rico, 39 and married with three children, also worked as an assistant to Zozimo Roca, another human rights lawyer, until 1988 when their office was bombed. Rico continued to work on behalf of victims of human rights violations. One week before his murder, the Corporation reported the disappearance of two of its employees. No arrests have been made in connection with Rico's murder, although human rights groups believe that the method of the killing and its similarity to others carried out in Ayacucho at about the same time point to paramilitary forces.

César Alberto Ruíz Trigoso: judge of the Eighth Court of Instruction (*Octavo Juzgado de Instrucción*) in Lima. Ruíz was killed on his way home from work on 16 November 1990. The judge had become well known as a result of his court orders resulting in the violent displacement of villagers. On 5 November 1990, he issued an order authorizing the police to remove striking factory workers who were occupying an office. Ten people were injured and 60 others detained. The magazine *Caretas* referred to him as the "*juez de*

los desalojos" (the eviction judge). Ruiz Trigoso had been receiving threats for some time as a result of his decisions. MRTA claimed responsibility for the murder

Wilker Ruiz Vela: lawyer who has brought charges against members of the police. Ruiz has received numerous death threats at his office since early 1990. He believes these threats are from members of the police.

Wilfredo Estanislao Saavedra Marreros: president of the Committee for the Defence of Human Rights (CODEH) in Cajamarca and legal aid attorney with the Cajamarca Superior Court. Saavedra was detained on 19 September 1989 by eight members of the Peruvian Investigative Police. The police entered the Superior Court and, without offering an explanation or presenting an arrest warrant, forcibly removed Saavedra from the court room. Saavedra alleges that he was tortured and forced to sign a declaration confessing to collaboration with the leftist group *Movimiento Revolucionario Túpac Amaru* (Tupac Amaru Revolutionary Movement); the declaration was allegedly used as the basis for charges against him under anti-terrorist legislation. During the first 30 days of his detention, Saavedra was denied access to an attorney. The Correctional Tribunal (*Tribunal Correccional*) has recently handed down a sentence against Saavedra. Although local groups have been unable to verify the exact sentence, it is believed to be between 10 and 15 years imprisonment. Saavedra has filed an appeal with the Supreme Court, which has not yet ruled on the case.

Saavedra was detained by the police and accused of alleged collaboration with "subversives" once before. On the first occasion, the charges were never proven and the Church intervened to secure his release.

Following the 31 October 1989 lodging of a criminal complaint against police officials whom Saavedra believes were responsible for his treatment, the chief prosecutor denied that Saavedra had been tortured. In his complaint, Saavedra named officials who allegedly stripped him and hung him from a rope, beat him about the abdomen, thorax and head, and submerged him repeatedly in salt water as if to drown him. Saavedra stated that after being tortured repeatedly over six days, he could no longer withstand the torture and therefore believed it necessary to admit to having been involved in an attack on *Radio Inca* in the Baños district in the hope that the abuse would end. Saavedra stated that he continued to be tortured following his forced admission. On 26 September 1989, a special commission consisting of Dr. Pedro Ortíz Cabanillas, dean of the Medical College, and other doctors and legislators, travelled to Cajamarca to investigate charges of torture in the prison. The commission confirmed that Saavedra's wrists showed signs of having been tied and that his body was bruised. The police argued that the case should be heard in a military court. The Supreme Court has yet to hand down a decision on whether civilian or military courts have jurisdiction over the case.

Abner Torres Pinedo: judge in Chanchamayo province, Junín department. On 28 September 1990, Torres intervened in an incident on the street during which a peasant farmer was being beaten by a member of the National Police in Villa Rica, Chanchamayo province. The police officer first ordered the judge to stay away, threatening him with a weapon. Torres continued his protest and the officer released the civilian but demanded that Torres go to the police station. Once at the station, the officer hit and injured the judge, who was taken to a local hospital for treatment. The incident was reported to the Attorney General's office of Chanchamayo and the police officer was later dismissed.

Imelda Tumialan: prosecutor in the Office for Peoples' Defence and Human Rights (*Defensoría del Pueblo y Derechos Humanos*) in Huancayo, Junín department. On 9 January 1991, sticks of dynamite exploded in Tumialan's office. A note was later found warning

her that she should leave her job and abandon the city. Approximately two weeks later, on 26 January 1991, Tumialan's office was further damaged after dynamite exploded for the second time. She was in Lima when the explosion occurred. Members of the Shining Path or paramilitary members are believed to be responsible.

Marcelino Valencia Alvaro: lawyer who ran a free legal consulting office in Chumbivilcas (Cuzco Department) in conjunction with the University of San Antonio Abad in Cuzco and the *Liga Agraria Arcadio Hurtado*, an agricultural organization. On 24 September 1990, a 20-year-old student Zacarias Pasca Huamani, from the university was detained by police. Several of Huamani's classmates witnessed the arrest, and went to Valencia's consultation office to seek help in tracking the student down. Valencia went to the police station in Santo Tomás, Cuzco, to inquire about the student. From that point on, neither Valencia nor Huamani re-appeared. The police at first denied holding them, and leaders of community organizations, including the church and peasant organizations surrounded the station to pressure the police to release information on the two. On 29 September 1990, the police granted access to the station, where a grave containing both bodies was uncovered. An autopsy showed that both men had been subjected to severe torture. An investigation of the deaths is pending before military courts (even though the crime is within the jurisdiction of civilian courts) and charges have reportedly been filed against police personnel. It is believed, however, that the policeman principally responsible for the murder has left the country.

Abel Vidal Flores: Justice of the Peace in Sanagorán, Huamachuco province, La Libertad department. On 13 October 1990 Vidal was killed along with several other officials of the town of Sanagorán, allegedly by members of the Shining Path. Local groups claim that serious investigations leading to the arrest of those responsible for human rights violations are often not carried out, but many of the killings of the justices are believed to be the work of the Shining Path.

Luis Vorrán: lawyer killed on 3 September 1990 in the city of Trujillo. Members of the Shining Path may be responsible for the crime.

Orlando Zamalloa Alcocer: Superior Prosecutor (*Fiscal Superior*) of Cuzco shot and seriously injured by unidentified gunmen on his doorstep on 11 December 1990. Human rights groups have no information on the status of the investigation. Because Zamalloa handled only civil cases, the motive of the murder attempt against him is unknown. The status of the investigation into the attempt is also unknown.

Augusto Zúñiga Paz: lawyer with the non-governmental Commission for Human Rights (*Comisión de Derechos Humanos, COMISEDH*) based in Lima. Zúñiga has handled several high-profile human rights cases and has also been actively involved in a well publicized *habeas corpus* proceeding filed in connection with the disappearance of Ernesto Rafael Castillo Paez, a 22-year-old student reportedly detained by police in a Lima neighborhood on 21 October 1990. The police deny holding Castillo. A *habeas corpus* petition presented on his behalf was granted by the first and second instance courts, but annulled by the Supreme Court on 7 February 1991 on the grounds that there were irregularities in the investigations conducted by the lower court judges. Zúñiga presented both oral and written statements to the court in connection with the proceedings.

During the course of his work on the Castillo case, Zúñiga received several death threats. Although he informed the Peruvian authorities of the threats, no measures were taken to protect him. On 15 March 1991, at approximately 4:00 p.m., a 25-year-old woman delivered a manilla envelope to the COMISEDH office in Lima. The envelope, which



Augusto Zúñiga Paz

had a return address of the office of the secretary of the President of the Republic, was addressed to the Legal Department of COMISEDH. Zúñiga, who was on his way to his office took the envelope, which contained an explosive device and exploded in Zúñiga's hands as he opened it. It blew off his left forearm and caused serious damage to his office. The woman escaped in a waiting car which. According to official reports, the explosive device was of a type used exclusively by the military. Human rights groups attribute the attack to parapolice groups, which may have been behind the disappearance of Castillo as well.

Human rights groups in Peru believe that the attack against Zúñiga was a result of his work on the Castillo case. Shortly before the attack, Zúñiga stated in a meeting that he had identified a police officer as the person responsible for Castillo's disappearance and identified the officer by name. A few days later, Zúñiga received threats and asked for protection, but no action was taken. Weeks before the attack, police officer friends of Zúñiga warned him that police linked to the disappearance of Castillo wanted him dead. They warned him to take steps to protect himself.

Despite national and international pressure (including a letter from the U.S. Committee on Foreign Affairs and the Human Rights Caucus of the U.S. House of Representatives) demanding that the authorities investigate and sanction those responsible, the case remains unresolved at the time of this writing. Because the initial prosecutor failed to sufficiently advance the investigation within a reasonable period of time, and ad-hoc prosecutor was appointed to continue the investigation. Zúñiga is currently in Europe where he is receiving medical treatment. He was recently given an award for his human rights work by the Bar Association in Friburg, Germany.

In the following cases, justices of the peace were subject to attacks allegedly by members of the Shining Path. Because of the difficulty in documenting such crimes, which generally occur in remote regions of Peru, local groups were able to verify only general information in each case.

Justice of the Peace in Huayan: On 5 August 1990, members of the Shining Path placed sticks of dynamite in the home of the justice and other officials of the town of Huayán, province of Aija, Ancash department.

Justice of the Peace of the District of Asillo: On 16 September 1990, members of the Shining Path murdered three villagers, attacked several local offices, and set on fire the home of the justice of the peace in the district of Asillo, province of Azangaro, Puno department.

Justice of the Peace of the District of Huaychaco: On 13 October 1990, members of the Shining Path entered the district of Huaychaco, Sánchez Carrión province and murdered the justice of the peace, the mayor and five peasants.

PHILIPPINES

The CIJL remains concerned about the failure of the Philippine Government to bring to justice perpetrators of crimes against judges and lawyers (see CIJL 1990 report). Problems with the investigation and prosecution of cases of murders and harassment of human rights lawyers are systemic, since suspects, such as the local chief of police, or members of the Philippine Constabulary, often conduct the investigations. The government-appointed Commission on Human Rights (CHR) is mandated by the 1987 Constitution to investigate human rights violations and provide legal measures to protect human rights. Their investigations, as well as those of the National Bureau of Investigation (NBI), often fall short of international legal standards. An ICJ delegation (see below) found that "virtually no element of Philippines society has any confidence in the CHR."

One of the most frequently cited problems in the prosecution of human rights violators has been Presidential Decree 1850 (PD 1850), a Marcos-era martial law decree which granted exclusive jurisdiction to military courts over offenses committed by any soldier, police officer, firefighter, or jail guard. In December 1989, the President vetoed a bill which would have repealed PD 1850. On 20 June 1991, however, PD 1850 was finally repealed through Republic Act 7055.

In 1990, an ICJ fact-finding mission visited the Philippines. The following comments were extracted from the mission report (ICJ, *The Failed Promise: Human Rights in the Philippines since the Revolution of 1986*, 1991).

The Independence of the Judiciary

A major characteristic of the Marcos administration was the destruction of the separation of powers among the various branches of government. In addition to the former government's efforts to destroy the independence of the judiciary, the judiciary itself, including the Supreme Court, acquiesced and abdicated its role in protecting its own independence as well as the basic rights of the people. The previous government's reorganization of the judiciary meant that security of judicial tenure was subject to interference.

After the overthrow of Marcos, the judiciary needed to regain its independence and restore its credibility as well. In one of her earliest actions, President Aquino restored the independence of the judiciary. The 1987 Constitution reaffirmed the separation of powers and contains safeguards to protect the independence of the judiciary, including security of judicial tenure and salaries, and fiscal autonomy for the judiciary.

The new Constitution has also strengthened the independence of the judiciary by establishing a Judicial and Bar Council to recommend to the President suitable candidates for appointment to the Supreme Court and lower courts. Whereas under the previous government, only President Marcos and his close associates chose the appointees, the present Judicial and Bar Council, prepares a list of three nominees for each vacancy for consideration by the President.

Previously, the military used to pressure judges at court hearings and briefed judges as to the state of armed insurgency. By contrast, the present administration is credited with respecting the independence of the judiciary. At the lower court level, however, the local military and military-supported armed group seem to continue the practice of trying to intimidate the judiciary. For example, on 26 March 1989, Leyte Regional Trial Court Judge Gervanuo Cadavos was shot and killed (see CIJL 1990 report). The National Bureau of Investigation (NBI) believes that Judge Cadavos was killed because he was considered a "communist sympathizer," since he had dismissed 67 out of 80 cases before him that

involved accused NPA members. There have been no arrests so far although the NBI has filed murder charges against Philippine Constabulary officers and former Civilian Home Defense Forces members as well as four unidentified individuals. It is extraordinary that serving military officers and paramilitary associates have not been able to be found to answer these charges.

In another case, the local military removed a detainee from the court while his habeas corpus petition was being heard. Concordio Condiman, an organizer of the militant peasant organization Panaghugpong sa mga Nag-uuma sa Sugbu (Federation of Peasants in Cebu), was arrested by members of 46 RSAF on 5 April 1990 at his house in Bgy. Bangkito Tuburan, a town located 97 kilometers from Cebu City. Condiman was accused of helping wounded NPA rebels who had sustained injuries in an encounter with the military close to Condiman's village. The soldiers also accused the peasant organization of being a front for the NPA. At the time of his arrest, Condiman was beaten and threatened with death. The military even measured Condiman's body with a stick to determine the dimensions of the grave to be dug for him. Later Condiman was taken away and the soldiers told his wife not to follow them. She was threatened with arrest if she attempted to follow.

Mrs Condiman and several human rights workers searched for Condiman in various military camps. They located him on 9 April at RSAF 7 headquarters in Cebu City. Meanwhile, on 9 April, a habeas corpus petition was filed on behalf of Condiman. The petition was heard on 11 April at Branch XVII of the Regional Trial Court in Cebu City. For the hearing, Condiman was produced to the court where he complained to his relatives and friends that he was suffering from abdominal and back pains due to torture inflicted on him by the soldiers. While describing the treatment he received from his captors, one of his military escorts grabbed him and forcibly took him outside the court room. When confronted by Condiman's lawyer, the soldier told him it was none of his business. Condiman's relatives and friends prevented the military from removing him from the court compound whereupon the judge ordered the military to commit Condiman to the Cebu Provincial Detention and Rehabilitation Centre and that he be referred to a government doctor for a physical examination. The military totally disregarded the court order and did not arrange the medical examination. Moreover, Condiman was only transferred to the Detention Centre on 16 April after a lapse of five days.

In another case in Cebu, in April 1990, Regional Trial Court Judge Burgos granted bail to several defendants arrested in September 1989 for subversion. A rally to protest his decision was called by KADRE, a vigilante group, and the National Alliance for Democracy. Three armed persons went inside to see the judge. Judge Burgos then took himself off the case on the motion of the prosecution.

The Legal Profession

Imposition of martial law by Marcos and the repression that followed led to the emergence of a group of committed human rights lawyers and several human rights lawyers organizations were established. They played a significant role in defending human rights under the government of President Marcos. After 1983, a majority of the legal profession opposed Marcos.

Even the conservative Integrated Bar of the Philippines (IBP) became active against Marcos. The IBP is a body created by the Supreme Court, bringing together the entire legal profession of the Philippines under one organization. It is compulsory for a practising or functioning lawyer to belong to the IBP. As an official agency, the IBP enjoys an influence that ordinary bar associations do not have. The IBP's opposition to Marcos after the Aquino assassination was significant because of its prestige and influence. Local chapters of the IBP even conducted fact-finding missions and publicized human rights violations.

In short, opposition to Marcos by lawyers and lawyers' organizations resulted in human rights-related work becoming routine for many lawyers. This fact, which has not changed, has a bearing on the post-Marcos developments concerning the legal profession in the Philippines.

With the overthrow of Marcos, the previous dichotomy between human rights lawyers and other lawyers manifested itself again. Whereas most lawyers went back to more traditional forms of income-producing work, the human rights lawyers, who had so creatively used law under Marco's repressive government and dependent judiciary, retained their enthusiasm for defending the rights of political prisoners and other victims in the context of a democratic government and an independent judiciary. Many human rights victims, however, are considered by the military to be identified with the Communist Party and the New Peoples Army (CPP-NPA). Since even labour unions and other people's organizations are branded by the military as "communist fronts," lawyers who defend members of legal organizations have found themselves also labelled communist sympathizers.

The military, or at least local commanders, have developed or simulated an attitude that the legal system is protecting the rebels. This fear was expressed by the Defence Department in terms of "abuse of democratic space" by the rebel movement and also "lack of legal weapons to prosecute the rebels." After the breakdown of peace talks between the government and the rebels in 1987, the antagonism between the armed forces and human rights lawyers intensified. In October 1987, the Free Legal Assistance Group (FLAG) complained to the then Defence Secretary Rafael Iletto about harassment of and threats to FLAG lawyers. As a result, General Ramos issued guidelines to military commanders on relations with FLAG. Acknowledging that there were cases where "some AFP operating elements were involved in deplorable acts," General Ramos ordered regional commanders of the Philippines Constabulary (PC) to (1) function as contact points with FLAG, (2) institute regular dialogues with FLAG at all levels, (3) cooperate with FLAG lawyers on reports of human rights abuses, and (4) invite them to give seminars in military camps.

Despite such guidelines and other assurances, the attacks on lawyers continued. Lawyers were increasingly and openly identified as NPA supporters by military and military-backed vigilante groups. This fact was evident at the time of the ICJ delegation's visit. For example, in Cebu, the ICJ delegation was told by a leader of a right-wing organization that a well known human rights lawyer in Cebu was a communist. The reason given was that a majority of the cases handled by that lawyer involved defending suspected rebels. This perspective is evidently not uncommon. At best, it manifests a gross misrepresentation and misunderstanding of the role and work of lawyers, and represents a further example of typecasting everyone who is not on the side of the official authorities as a communist or a fellow traveller.

The consequences of identifying lawyers with their clients has been tragic. Killing and intimidation of lawyers increased to an unprecedented level as compared with the Marcos period. Between October 1987 and June 1989 seven lawyers were killed. Between July 1989 and June 1990, two lawyers working with the government were killed (see CIJL 1989 and 1990 reports). The decline in the number of incidents is believed to be a result of, or has at least been influenced by, international and national public attention.

Human rights lawyers expressed their concern to the ICJ delegation that very few of those involved in murder and harassment of lawyers have been brought to justice. In the case of Alfonso Surigao, the civilian killer was convicted, but Major Rico Palcuto, who is charged with ordering the murder, has not been arrested and remains at liberty. (Major Palcuto's case is currently being heard -ed.) In the cases of David Bueno, Ramos Cura, Emmanuel ("Noel") Mendoza, and Oscar Tonog - all murdered - no arrests have been made. In the case of Vicente Mirabueno who was also murdered, a suspect known as "Cedic" escaped from custody under mysterious circumstances. He was not indicted and there have

been no other arrests in the case (see CIJL 1989 and 1990 reports).

The ICJ delegation understands that complaints of harassment and even serious threats against lawyers are normally not investigated by law enforcement agencies. Although for the present the problems faced by lawyers seem to have abated, possibly due to official intervention following the CIJL report and other international protest, there still exist residual anxieties among them. Vigorous investigation and prosecution of past cases would help reduce the anxiety of human rights lawyers. The delegation understands that the IBP has not taken any major steps to protect the security of its members or to care for the widows and families of those killed.

It is regrettable that apart from publishing a brief summary of the CIJL's report in its newsletter to the profession, the IBP appears to have taken no steps to support its members or their families who have been threatened. The ICJ delegation was informed that the IBP's Human Rights Committee has no or few members and never meets. The IBP does not appear to have regarded this problem as serious, despite the proven facts and the organizations' pre-eminent role in the profession. Nor does it seem to have acted to diffuse the problem by introducing schemes to spread the responsibility for taking human rights cases among many more of its members. (IBP Elections, however, were recently held and it appears that the organisation intends to be more supportive of lawyers. For instance, the IBP protested the treatment of attorney's Ayo, Ceneta, and Santisteban (see below), and co-sponsored an ecumenical service held on 5 July 1991 in memory of murdered lawyers. -ed.)

Angelito Alisuag: lawyer and member of PLLP from Palawan. On 21 February 1991, the offices of *Haribon* were raided. Several persons were arrested and later charged with subversion. Alisuag, who represented those arrested, was himself later charged with subversion.

Antonio C. Ayo, Jr. and Santiago Ceneta: lawyers and members of FLAG from Daet, Camarines Norte, Bicol Region. Ayo and Ceneta were both charged with "subversion," a violation of Republic Act No. 1700 as amended, before the Municipal Trial Court of Daet on 11 May 1991. Both Ayo and Ceneta defend persons alleged to be members of the New People's Army. Lt. Col. Manuel Porras of the Philippine National Police, assigned to Daet, had publicly declared that a lawyer who defends suspected NPA members is aiding the NPA and should be considered a subversive.

Romeo Capulong: lawyer, member of the Protestant Lawyers League of the Philippines (PLLP) and FLAG, and newly-elected head of the IBP in his region. Capulong represents, among others, persons accused of being involved with the Communist Party of the Philippines (CPP) and the New People's Army (NPA), both of which are illegal under Philippine law. On 18 March 1991, while Capulong was in court defending two alleged members of the CPP, a military prosecutor accused Capulong of trying to elicit information from a prosecution witness that could be used by the NPA for an assassination. The next day, on 19 March 1991, as Capulong was on his way to Nueva Ecija province in Central Luzon, he was followed by a 4-door Toyota Cressida vehicle with tinted glass and license plate N° NRB 838. This vehicle followed Capulong for several hours from Manila to San Isidro, Nueva Ecija. A second incident occurred on 1 April 1991. During the arraignment of six persons alleged to be members of the NPA, an unidentified armed man approached Capulong's driver and asked if he was in the courtroom. Capulong was eventually identified by one of the military personnel who was guarding the defendants. A second unidentified man approached the first and they both left the courtroom. The two men, followed by Capulong's driver, drove away on a red Honda motorcycle without license plates.

Solema P. Jubilán: lawyer, member of FLAG and the Protestant Lawyers League of the Philippines from Kidapawan, North Cotabato. Jubilán's secretary received several anonymous telephone death threats on 22 May 1990 against Jubilán and her family. One caller reportedly said "the Jubiláns will be finished - their end is near - first Sol Jubilán." These threats came after an article was published in the 12 May 1990 edition of *Mindanao Cross* alleging that an orphanage run by Jubilán was a front for fundraising activities of the NPA and the Philippine Communist Party. The article was attributed to an unnamed "Philippine Constabulary Major based in Cotabato province." The Philippine Commission on Human Rights reported that it could "neither confirm nor negate the veracity of the allegations, and much less, to obtain workable knowledge of who the probable perpetrators were."

Fausto M. Lingating: lawyer and FLAG Regional Coordinator from Pagadian, Zamboanga del Sur. He was accosted by unidentified persons on 16 May 1991 who allegedly belonged to the intelligence unit of the PNP.

Oscar Musni: FLAG regional coordinator for Region X-A, of Cagayan de Oro, Misamis Oriental. During September and October 1990, Musni received death threats and was followed by unidentified men on motorcycles without license plates. Musni represents the family of attorney Alfonso Suriago, killed on 24 June 1988 (see CIJL 1990 report). Major Rico Palcuto, a military intelligence officer, was named by the gunman convicted of killing Suriago, as the person who gave the order to murder Suriago. Musni is assisting in prosecuting Major Palcuto. After Major Palcuto's arraignment on 6 September 1990, an operative from Palcuto's army unit informed Musni's friend that Musni would be killed if he left the city. Members of the military were seen at a training seminar conducted by Musni. Musni has been harassed in the past for his human rights work. On 1 December 1989 he and two other lawyers were twice detained while on route to investigate a military blockade of food and resources destined for residents of Lantad. They were detained for approximately five hours on 1 December 1989, first in Balingasag, Misamis Oriental, then at Camp Evangelista, Cagayan de Oro City. About thirty other people were detained with them.

Inocencio Pagalaran: lawyer and FLAG Regional Coordinator for Region X-C, Northern Mindanao. In April 1989, following the March 1989 murder of Pastor Minda Gran, Pagalaran was told by soldiers that he would soon follow Pastor Gran to the grave (see 1989 CIJL report.). He has abandoned his law practice and he and his family have fled their home. Pagalaran has recently taken a position as lawyer with the Securities and Exchange Commission in Metro Manila.

Pepito G. Rivas: lawyer in Catarman, Northern Samar, and FLAG Regional Coordinator for Eastern Visayas. In June 1990, a member of the military informed Rivas that he was targeted for assassination, and warned him against travelling to outlying towns of Samar. In March 1989, Oscar Tonog, another prominent FLAG lawyer in Samar, was killed outside of his home by an unidentified gunman. (See CIJL 1990 report.) It is believed that Rivas was to have been murdered at the same time as Tonog.

Olegario Santisteban: lawyer and FLAG regional coordinator in Iloilo City, Panay Islands. Santisteban's home was searched without a warrant on 27 May 1991 by Captain Rogelio Estampador of the Philippine National Police. Captain Estampador was accompanied by four armed policemen and two civilians. Santisteban was not at home at the time of the incident. According to the occupants of the house, the searchers attempted to plant a gun, but were unable to do so. Later, when the occupants reported the incident to the police, the officer receiving the report refused to record it in the police blotter.

Vidal Tombo: lawyer. Tombo and several colleagues were shot at and injured on 17 July 1991 as they sat outside of Tombo's home. Tombo had noticed a motorcycle and a red jeep pass in front of his home. There were two unidentified individuals in each vehicle. Five minutes later the vehicles returned and two men jumped out and began firing at Tombo and the others for around 10 minutes. Tombo and three others were injured in the incident. Tombo suffered injuries in his right arm and stomach. As the victims made their way to the hospital, the same red jeep followed them.

Nerio G. Zamora: lawyer, member of the Protestant Lawyers League of the Philippines and a PC Provincial Coordinator for FLAG from Tagbilaran, Bohol. Zamora received threats from the Provincial Commander Lt. Col. Antonio Dadula in Bohol Province after being denied access to visit his clients. Zamora was seeking to meet with his clients, who were allegedly mistreated, on 1 January 1991. The next day, Zamora obtained a court order from the Bohol Regional Trial Court and returned to see his clients. The guards again refused him access, but brought him to Col. Dadula, who reportedly threatened Zamora with death. According to the Philippine Commission on Human Rights, which investigated the incident, Dadula claimed that if Zamora had approached him personally he would have allowed him to see his clients. He also is reported to have said that he was not angry at Zamora, but rather that he was employing "psychological warfare ... normally used by military personnel to gain leverage or advantage over the opponent." Zamora has filed charges against Dadula. The PLLP has filed a disbarment proceeding against Dadula, who is also a lawyer, which is being processed by the Committee on Bar Discipline of the IBP.

RWANDA

Despite a law providing for the establishment of an independent bar in Rwanda, the legal profession is unable to function independently. Fifty or so "*mandataires de justice*" (legal advisers) have been licensed by the Ministry of Justice, but fewer than half have the competence and the independence necessary to truly function as lawyers. Among the others are former judicial police officers and dismissed magistrates.

Stanislas Mbonampeka and **Felicien Ngango**, lawyers in Kigali, and **Filip Reyntjens** Belgian law professor and expert on Rwandan law. Following the October 1990 invasion of the country by the rebels of the *Front Patriotique Rwandais* (FPR), 8,000 civilians were arrested - the vast majority without any evidence - for assisting or associating with the FPR. Two trials of about twenty alleged collaborators were held before the *Cour de sureté de l'Etat* (State Security Court) in Kigali between the end of December 1990 and January 1991. In a trial which ICJ observer Philippe Dahinden (Switzerland) described as unfair, seven of the so-called "Munyambarage Group" of eight intellectuals were sentenced to death and one acquitted.

Before the trial, then Minister of Justice Theoneste Mujyanama refused the accuseds' request to be represented by foreign counsel, (though he later admitted that this decision was not in conformity with Rwandan law). Seven of the eight accused requested legal representation before the Security Court. Kigali lawyers Stanislas Mbonampeka and Felicien Ngango, though not in sympathy with the FPR, agreed to take on the defence. Both are well known for their civil and commercial work, and Ngango is also the Vice-President of the recently-created Rwandese National Association for Human Rights. The two lawyers immediately became the targets of political pressure to drop the case. At the trial, which lasted from 21 to 24 January, the two lawyers were repeatedly prevented from carrying out their work. They were prevented from attending the examination of defendants other than their own clients, on the ground of avoiding collusion. According to the ICJ observer, the court clearly showed its prejudice against the defendants, in particular by asking that they demonstrate their innocence, while the national radio rallied the populace against them. On the third day, as the 200 courtroom spectators and the 1,000 outside listening to loudspeakers applauded the prosecutor's statements and the court's questioning became more and more hostile, Mbonampeka asked the court to respect the presumption of the defendants' innocence and to focus on seeking the truth rather than accusing his clients. One of the judges (a military officer) thereupon called Mbonampeka a rebel sympathizer and the presiding judges threatened to charge him with contempt of court. Mbonampeka replied that he was surprised that magistrates could prejudge questions in the manner of simple folk ("*paysans*"). The court responded by charging Mbonampeka with contempt of court, a charge which is still pending.

As he left the courthouse, Mbonampeka was surrounded by the crowd which taunted and threatened him. Throughout that night, both he and Ngango received telephone calls threatening them with death if they continued on the case.

In the face of these threats, public hostility, and the connection being made by the court between the rebels, the accused, and the accused's lawyers, and believing that the right of a defence was being violated, Mbonampeka and Ngango withdrew from the case in favour of the Belgian law professor Filip Reyntjens who had been following the case. Reyntjens, who had received authorizations from the defendants, unsuccessfully asked the court for a suspension of a few days to prepare his closing arguments and was physically removed from the courtroom as he tried to press his case. When one of the

defendants asked that Reyntjens be allowed to plead for them, the presiding judge replied that the court did not need a lawyer to explain the law to it. The court then convicted seven of the eight persons accused. (The majority of the 2,000 detainees have since been freed by the new Minister of Justice Sylvestre Nsanzimana, who began his tenure in February 1991.)

Felicien Mutalikanwa: Kigali lawyer. Mutalikanwa was one of five lawyers detained during a wave of arrests in October 1990 for presumed complicity with the rebels. Arrested on 9 October, Mutalikanwa was not released until 22 February 1991 without ever having been charged or informed of the reasons for his arrest. He believes, however, that his arrest was related to his activity as legal counsel for a commercial firm in neighbouring Burundi. Mutalikanwa's pregnant wife, arrested together with him, was released after Mutalikanwa. Even after his release, obtained through the intervention of Maître Iorio, an Italian lawyer practising in Kigali, Mutalikanwa has been the victim of harassment. For instance, his telephone service was cut off for no reason and had not been restored.

SINGAPORE

Teo Soh Lung: lawyer, officer of the Singapore Law Society and founding member of its Criminal Legal Aid Scheme, a project to provide legal assistance to the poor. Teo has also provided legal services to the Catholic Centre for Foreign Workers and is an active campaigner for human rights. Until her release on 1 June 1990, she spent over two years in solitary confinement without being charged or tried.

Teo was among 22 persons arrested in 1987 under the Internal Security Act (which allows detainees to be held indefinitely without charge or trial) for alleged involvement in a Marxist conspiracy. She was released in September 1987, subject to restrictions on her freedom of movement and association. Teo and eight other original detainees were re-arrested in April 1988, again under the Internal Security Act, after they issued a public statement describing their alleged mistreatment while in detention and reiterating their innocence against accusations that the government continued to level against them. In early December 1988, the Chief Justice of the Court of Appeal ordered the release of Teo and three other detainees after they filed writs of *habeas corpus*. The four were released but re-arrested by Internal Security Department officers within minutes and issued with new detention orders.

In January 1989, the government amended the Constitution and the Internal Security Act to prevent the courts from declaring detentions under the Act illegal. The amendments also eliminated the courts' power to review decisions by the executive to detain an individual under the Internal Security Act. The right of appeal to the Judicial Committee of the Privy Council in the United Kingdom, previously Singapore's highest appellate court, was also abolished.

On 20 February 1989, the Singapore Controller of Immigration barred Teo's British lawyer, Anthony Lester, Q.C., from practising law in Singapore as of March 1989, stating that Lester had interfered in Singapore politics by criticising its government, courts, and judges. (British Queen's Counsel may practice law in Singapore only with the permission of the Singapore Government.) (See CIJL 1989 and 1990 reports.)

In April 1989, the Singapore High Court rejected Teo's appeal for a writ of *habeas corpus*. On 17 June 1989, the government extended her detention order for an additional year. On 3 April 1990, the Court of Appeal upheld the High Court judgment, ruling that her detention under the ISA could not be challenged. She was held in solitary confinement at the Whitley Road Detention Centre until her release on 1 June 1990.

Teo was released on, and is still subject to, several conditions: she is forbidden to issue public statements, associate with former political detainees, hold office, or participate in the activities of any organisation without the government's permission. She is also barred from travel outside Singapore without the written consent of the authorities. After her release, the government denied her request for permission to leave Singapore for a holiday in either Australia or London. Teo has now returned to practice, though her clientele is said to be limited.

SOMALIA

Ismail Jummale Ossobleh: Somalia's most prominent human rights attorney, former head of the official Somali Lawyers Corporation and former Minister of Information. In 1982, 1986 and 1988, he represented defendants in important political trials. Ossobleh long sought to promote human rights in Somalia, and to establish an independent bar association. He was imprisoned for several years after the 1969 coup which brought President Siad Barre to power. Ossobleh was again arrested in 1989 several days after taking part in a meeting with President Siad Barre to demand improvements in human rights and increased political freedoms. Deemed a "prisoner of conscience" by Amnesty International, Ossobleh was detained for three months in National Security Service (NSS) headquarters before being returned to his house, without charge or trial, on 21 October 1989, the 20th anniversary of President Barre's accession to power (See CIJL 1990 report). Ossobleh left the country to receive medical treatment just before a "manifesto" calling for reform and political reconciliation, prepared by Ossobleh and other prominent Somali leaders and signed by 114 people, was presented to the President on 15 May 1990 (*Mogadishu Manifesto N° 1*).

On 10 and 11 June 1990, 46 leading opposition figures were arrested including **Bogor Abdullahi Bogor Musse**, former judge **Abdirahman Sheikh Nur** and **Hassan Dhimbil Warsame**. Two practicing attorneys who signed the manifesto, **Shekh Ali Mohamed** and **Mumin Omar Ahmed**, fled the country fearing arrest. On 15 July, all of those arrested in connection with the *Mogadishu Manifesto N° 1*, the "Manifesto Group," were charged under Article 18 of the National Security Law with "making or distributing anti-state propaganda" for which there is a mandatory death sentence. After a four hour in-camera hearing, the 46 were acquitted on the basis of insufficient evidence and released. The order to acquit the Manifesto defendants apparently came directly from President Siad. Police reportedly shot and wounded several people who were demonstrating outside the court during the trial. Ossobleh died in Rome on 22 July 1990 from a heart attack. More than 500,000 people attended his funeral in Mogadishu.

SOUTH AFRICA

Saad Cachalia: human rights lawyer in Pietersburg. He has received threatening telephone calls, including a 22 August 1990 call from a self-identified member of *Wit Wolwe*, a white extremist group responsible for several acts of violence. The caller said that Cachalia's name was on a list of five people targeted for death.

Bheki Mlangeni, human rights lawyer, member of the National Association of Democratic Lawyers (NADEL) and an African National Congress (ANC) Branch chairman. On 15 February 1991, Bheki Mlangeni was killed when a parcel bomb exploded in his home in Soweto, Johannesburg. The bomb was enclosed in the headphones of a portable tape recorder containing a tape labelled "evidence of hit squads" which Mlangeni had received in the mail.

Mlangeni was a highly-respected member of the legal community. He represented the Independent Board of Inquiry into Informal Repression, a private group which investigates allegations into government death squad activities. The Board submitted information to the Harms Commission, a government board of inquiry, which investigated assertions that the police and the secret military Civil Cooperation Bureau (CCB) operated death squads. (The CCB's charter makes it a covert governmental unit that aims to gather intelligence and act against "aggressors." The CCB, formed in 1987, has been linked to the murders of anti-apartheid activists.)

The bomb which killed Mlangeni was apparently intended for former security police officer Captain Dirk J. Coetzee, who gave evidence in 1990 to the Harms Commission about assassinations of government opponents by members of his police unit. One day before his death, Mlangeni received a "return to sender" package postmarked 10 May 1990 at his law offices addressed to "D.J.Coetzee" in Lusaka, Zambia. The return address on the package was "Bheki" and included his law firm address. Mlangeni unwrapped the package in his office and took the contents home. Mlangeni's wife, Sepati, said that her husband took the tape recorder and tape into his room and, at about 9:30 p.m., the bomb exploded and Mlangeni was instantly killed.

The South African Minister for Law and Order, Adriaan Vlok, condemned the attack and stated that it would be thoroughly investigated by the police. South African human rights groups have suggested that the circumstances surrounding the killing and the sophistication of the bomb point to members of the South African Police as the most likely suspects.

Mangel Panchia: lawyer. On 12 November 1990, Panchia was arrested and detained in the Mafikeng area of the nominally independent "homeland" of Boputhatswana. Panchia was held without charge under the Boputhatswana state of emergency regulations which provide for detention without charge or trial for up to six months. Panchia was arrested while acting on behalf of two of his clients, Dr. Thabo Rangaka and Nomvula Hlongwane, both detainees in Boputhatswana. Panchia was released on 16 November. No charges were ever filed against him.

J.B. Sibanyoni: human rights lawyer in the "homeland" of KwaNdebele. Sibanyoni was detained on 28 June 1990, and arrested for allegedly harboring guerillas. Sibanyoni has represented people arrested in connection with a consumer boycott in Bronkhorstpruit, as well as the ANC and its allied organizations, and COSATU, the country's largest union federation. At the time of his detention, he was serving as one of the attorneys in actions against the Minister of Law and Order arising out of police misconduct, and as defence counsel in the Delmas 3 trial in which the defendants were charged with plot-

ting to overthrow the government. Sibanyoni has been actively involved in community affairs in KwaNdebele, as chair of the Ekangala Civic Association and treasurer of the local chapter of the National Association of Democratic Lawyers (NADEL).

On the morning of his arrest, Sibanyoni filed an application with the court for the release of two youths, Tshepo Matlala and Sello Mathebe, who had been detained on the previous day. Sibanyoni was arrested that night by security police, who also searched his house without a warrant. In opposition to an urgent application for Sibanyoni's release, the police claimed that Sibanyoni had been recruited by Mathebe for subversive activities and that he had harbored Mathebe in his home. Sibanyoni was placed the next day under detention pursuant to Section 29 of the Internal Security Act which allows for indefinite detention. (The South African authorities have frequently invoked their powers under section 29 of the Internal Security Act to detain people indefinitely, incommunicado and in solitary confinement. Between January and early October 1990 at least 183 people were held under that provision for various lengths of time.) Sibanyoni was later charged with harbouring an ANC guerilla. The authorities denied all persons, including his lawyer, access to see him.

On 6 July 1990, the Pretoria Supreme Court dismissed (with costs) the application for his release. Applications by Sibanyoni's lawyer to the Ministry of Law and Order and the Commission of Police for permission to see him were unanswered. According to Amnesty International: "In view of Mr Sibanyoni's background as a human rights lawyer and local community activist, he may have been imprisoned on account of his professional activities as a lawyer and is probably a prisoner of conscience."

Sibanyoni was the subject of further harassment on 29 June 1990 when his landlord terminated his office lease and (unsuccessfully) moved for summary judgment to evict him. He has reportedly previously received death threats from the white supremacist *Wit Wolwe* (see 1990 CIJL report).

In October 1990, the police unexpectedly allowed Sibanyoni's lawyers to consult with him at Sandton police station, Johannesburg, where he was being held. The conversation was monitored and recorded by the security police. Sibanyoni told his lawyers that on 17 August he had been verbally threatened and physically assaulted by a police captain at the station. In an affidavit signed on 26 October, Sibanyoni stated that he was verbally and physically abused by Captain Zeelie of the Security Police during an interrogation. Sibanyoni stated that Zeelie "hit me with an open hand ... very hard. I put up my hands to protect my face and he punched me in the stomach. ... [Zeelie] then said: 'Remember you are being held at John Vorster Square where people fall out of top stories.'" Sibanyoni also told his lawyers that he had been threatened during a 2 October interrogation.

On 2 November, Sibanyoni's lawyers applied to the Pretoria Supreme Court for an interdict restraining the police from threatening or assaulting him. They also sought an order for his release on the grounds that his continuing detention under section 29 was unlawful because the police had acknowledged that they had completed their investigations and had handed Sibanyoni's docket to the attorney general for a decision regarding possible prosecution. Sibanyoni was therefore being held contrary to the purpose of section 29 detention. On 8 November, Justice Harms rejected the application, but did criticize the police for denying further legal access to Sibanyoni. Sibanyoni was eventually released uncharged on 14 December 1990.

Dumisani Tabata: lawyer in partnership in King William's Town active in committees of the National Association of Democratic Lawyers (NADEL) and the ANC which are both preparing recommendations for a future South African constitution. On 29 November 1990, Tabata was detained by members of the Ciskei security forces who stopped him at a roadblock when he was returning to his home from Port Elizabeth. On 30 November,

the Commission of Police informed his colleagues that Tabata was being held under the terms of the Ciskei National Security Act, which permits indefinite, incommunicado detention for the purposes of interrogation. Tabata had been previously detained and released uncharged in March 1990. Tabata was released uncharged from the custody of the Ciskei police on 13 December after lawyers representing him filed a court application for his release. The Ciskei police failed to provide any reasons for his detention. Tabata was reportedly treated satisfactorily during his detention, although conditions in Ciskei prison are known to be harsh.

SPAIN

Jaime Sanz de Bremond and **Fernando Salas**: lawyers, Vice-President and President of the Association against Torture in Spain. Sanz de Bremond and Salas were victims of an apparent assassination attempt on 5 December 1989, when 5 kilograms of explosives were discovered under a car in front of their offices. The *Grupo Antiterorista de Liberación* (Anti-terrorist Liberation Group, GAL, which has been implicated in the killing of various suspected members of Basque separatist organizations) claimed responsibility for the attempt and allegedly repeated its threats against the lives of Sanz de Bremond and Salas. Salas represents the civil complainant in a Madrid prosecution against senior police officials suspected of being organisers of the GAL. Sanz de Bremond had, in a previous case, proven the guilt of a policeman in the murder of a suspected criminal. The GAL has recently become reactivated, claiming responsibility for the 20 November 1989 assassination of a member of parliament from the Basque Independent Coalition.

On the weekend of 4-5 August 1990, Sanz de Bremond and Salas received the following death threat on Bremond's answering machine: "Don't think you are safe ... don't forget you are condemned to death and, as such, the sentence will be carried out. A few of us are still free. This [threat] extends to Fernando Salas. Salas as well as you are going to fall, and soon." Sanz de Bremond informed the court before which he was appearing of the threat and provided the court with a copy of the taped message. Sanz de Bremond claimed that he recognised the voice on the message as belonging to Angel Duce, a policeman who has been detained for his involvement in the bombing death of a Basque separatist deputy at the Alcalá hotel in Madrid. The judge in charge of the case, Baltasar Garzón, also received telephone threats over the weekend from what appeared to be the same source.

SRI LANKA

Due to the dangers faced by lawyers who take human rights cases in their individual capacity, the Bar Association of Sri Lanka (BASL) has taken over many of these cases. The BASL assigns cases involving fundamental human rights and *habeas corpus* applications to lawyers. Unfortunately, several lawyers appointed by the BASL have been threatened with death for their representation in human rights cases; many have been forced to flee the country. Judges are also subject to influence and pressure, sometimes involving threats (see below). In the past three years 16 human rights lawyers have been killed, while 36 human rights lawyers have fled the country after receiving death threats.

Ranjit Amerasingha: judge of the Supreme Court of Sri Lanka who received a postcard with a threatening statement in connection with a case applying fundamental rights. The postcard was addressed directly to Amerasingha. Respondents in the case are the Attorney General, the Army Commander, the Inspector General of Police, a police officer and the Superintendent of Remand Prison. In January 1991, Amerasingha forwarded information on the case as well as the postcard to the Inspector General of Police and the Secretary of the Ministry of Defence for investigation.

K.A. George: lawyer and human rights activist. George was arrested on 29 June 1990 while he was sending abroad information about the human rights situation in Sri Lanka. He was held for several days in Bambalapitiya police station in Colombo, and was denied the right to meet or speak with anyone. George is now in the Netherlands where he is seeking political asylum.

Sam Tammbimuttu: lawyer and human rights activist and member of parliament representing the Elam People's Revolutionary Liberation Front, which is political opposed to the guerilla group Liberation Tigers of Tamil Eelam (LTTE). Tammbimuttu was murdered on 7 May 1990. The incident took place as he was leaving the Canadian High Commission's office. Two gunmen on motorcycles sprayed his car with gunfire, fatally wounding both Tammbimuttu and his wife. Tammbimuttu was obtaining a visa to travel to Canada to speak on human rights violations in Sri Lanka. According to the Sri Lanka government, investigations have indicated that an LTTE member was involved in the killing.

Batty Weerakoon: lawyer, trade unionist, and leader of the Lanka Sama Samaja Party (LSSP). On 30 May 1990 and 1 June 1990, he received death threats as a result of his representation of Manorani Saravanamuttu in a magisterial inquiry into the abduction and killing of her son, Richard de Zoysa. After his investigation into the case, Weerakoon was convinced that de Zoysa, a broadcaster, journalist and actor, was killed by police personnel in Colombo. On 30 May 1990, an anonymous caller told Weerakoon that he should not attend court on 1 June because the "procedures related to the death of a traitor."

On 1 June, upon returning home from court, Weerakoon received a letter from the "Organisation for the Protection of the Motherland" which said:

Action to win human rights for people who have been traitorous to the country is itself traitorous action. Therefore please be warned that your life rests on the manner in which you react to this letter. Neither the security forces nor the police nor any other groups can protect you. It is only your silence on the matter stated above that can protect you.

The government provided bodyguards for Weerakoon and, in a letter to the Civil Rights Movement of Sri Lanka, the Secretary to the President stated that the President had directed that "those responsible for the death threats on him should be apprehended and dealt with according to the law." However, those responsible for the threats have not been identified, nor has any in-depth investigation been undertaken. In addition, two plainclothes officers assigned to protect Weerakoon have themselves received death threats. On the morning of 22 June 1990, two letters addressed to the police officers by name arrived at Weerakoon's house. The letters warned the guards that they should leave Weerakoon or face death. BASL informed the Inspector General of Police (IGP) of the threats and that no police inquiries had been made on the threats. The IGP said that he would see if security could be increased that night and would look into the lack of inquiries.

In a 25 June letter to the police, Weerakoon asserted that the circumstances surrounding the death threats suggested that the threats came from the police. On 28 June, a letter from KHJ Wijayadasa, Secretary to the President, stated that the President acknowledged receipt of Weerakoon's letter and would take appropriate action on the threats to Weerakoon and his security guards.

SUDAN

Since independence in 1956, Sudan has had three periods of civilian governments, under which the judiciary has enjoyed varying degrees of independence, alternating with three military regimes which placed severe curbs on the judiciary. The present military government of Lieutenant-General Omar Hassan al-Bashir, however, has waged an unprecedented attack on the judiciary, the legal community and the Rule of Law.

The Judiciary before the 1989 Coup

Under the 1973 Constitution President Gaafar Mohamed Nimeiri was entitled to appoint and dismiss all Judges. He also held legislative powers when the People's Assembly was not in session, could issue provisional orders with immediate effect and enjoyed wide emergency powers.

In 1975, Nimeiri drastically curtailed safeguards against arbitrary detention through the State Security Act, which allowed for detention without charge or trial. A 45,000-man strong security apparatus was distrusted by both the general public and the armed forces. In 1983, President Nimeiri created the High Judiciary Council over which he presided and whose members he appointed and dismissed. Total executive control of the judicial process was assured by the President's authority to establish "special" criminal courts and "special" procedural rules applicable in those courts. In September 1983, President Nimeiri introduced a version of Islamic Law (*shari'a*) with changes to the Penal Code, the Judiciary Act, the Code of Criminal Procedure, the Rules of Evidence, and the Judicial Sources of Law Act. These "September Laws," permitted free "interpretation" or *igtihad*, allowing a judge to search the Koran and *hadith* (sayings of the prophet) for a charge that he deemed more appropriate, even if the charge did not exist in the codified law. A notorious application of this principle was the trial and execution of Mohmoud Mohammed Taha in 1985 for apostasy (the renouncing of Islam), an offense which did not exist in the Penal Code. The "September Laws" also prescribed "*huddud*" punishments such as flogging, amputation, and stoning.

Most judges showed reluctance to enforce this version of Islamic law. On 29 April 1984, however, Nimeiri declared a state of emergency and set up "emergency courts" to implement *shari'a* laws. When the state of emergency was lifted five months later, the "emergency courts" were renamed "prompt justice courts."

One of the major causes of the March-April 1985 uprising was the frustration caused by these laws, and one of the prominent demands made by the demonstrators was their repeal. New Prime Minister Sadiq al Mahdi therefore promised to restore judicial independence, and abolish the September laws. Although pressure from the National Islamic Front (NIF) prevented Sadiq al Mahdi from resolving questions of *shari'a* law, the judiciary itself asserted its independence, often to the irritation of the government. The judiciary overruled the government on issues such as the right of the MPs from Darfur in Western Sudan to organize a peaceful demonstration in Khartoum to protest government neglect of the situation in Darfur.

Aftermath of the 1989 Coup

Since the coup d'état on 30 June 1989, the military government of Lieutenant-General Omar Hassan al-Bashir has destroyed the Rule of Law. The régime has undermined the independence of the judiciary, through the replacement of the secular court system

with a militant Islamic judiciary. It has banned all legal and human rights organizations, including the Sudanese Human Rights Organization, the Sudanese Bar Association, the Sudan Legal Aid Association, and all non-Islamic trade unions and professional associations.

In July 1989, the National Salvation Revolutionary Command Council (NSRCC) passed two key emergency laws. Decree 1 repudiated the 1985 transitional constitution and dissolved the Constituent Assembly (parliament). Decree 2 declared a nationwide state of emergency. Section 7 of Decree 2 permits the authorities to arrest and detain anyone suspected of being a danger to political or economic security, denying all due process protections. Under Section 16, the authorities may arrest anyone or restrict her movements and the security forces may arrest without a warrant and use indefinite administrative detention without charge or trial. Detainees may not challenge the legal grounds of their detention before any court. Under these decrees, hundreds of individuals, including lawyers, political and human rights activists, academics, and journalists were arrested and detained without charge.

On 31 July 1989, a group of professional associations and trade unions, including the Sudanese Bar Association, the Association of Legal Advisors, and the Attorney General's Chambers, presented a memorandum to the government, protesting the ban on all non-religious organizations. The memorandum prompted the government to arrest many of the prominent signatories, including the president of the Bar Association (see below). Those detained were held without charge or trial.

The NRCC's assault on the judiciary has been unprecedented, even by Sudanese standards. Upon assuming power, the government established military courts following summary procedures and without the right to defence counsel to try and convict prominent political leaders. Within weeks of the formation of the new military courts, the government dismissed nearly sixty judges. What began as individual expressions of protest by secular judges against the new tribunals then developed into strong opposition on the part of the judiciary. On 21 August 1989, judges organized a strike, leading to the government's removal of dozens more judges from the bench, and the detention of twenty. Four days later, on 25 August 1989, a general assembly of judges, convened to respond to the destruction of the Rule of Law, submitted a memorandum to al-Bashir demanding the immediate dissolution of the military courts and an annulment of all of their decisions and sentences as well as assurances that the government respect the independence of the judiciary. By 27 August 1989, 58 judges had been removed from the bench including 7 Supreme Court Judges, 8 Appeal Court Judges, 10 Provincial Judges, and 3 First Class Judges. (See CIJL 1990 report) Many judges also resigned, presumably in anticipation of their dismissal by the government. In the aftermath of the coup, 12 legal advisors to the Attorney General's chamber were also dismissed from office.

The junta appointed Jalal Ali Lutfi as Chief Justice to run the affairs of the judiciary. Jalal had last been a member of the judiciary twenty years ago, when he resigned and established an office for advocacy. He reportedly works under the supervision of a shadow committee composed of fundamentalist members of the National Islamic Front such as Jalal Mohammed Osman, Abdel Rahman Sherfi, Mohammed Idris Teeta, Aba-Yazeed Hassan Ahmed, and M. el Nwairi. They have taken over the role, formerly belonging to the High Judicial Council, of appointing judges and have installed ex-judges who zealously applied the "September Laws" under Nimeiri. For example, Mohamed Sir Khatim Majed, the judge who confirmed the death sentence of Mahmoud Mohammed Taha (see above) is now a high court judge and chairman of the Northern State's Judiciary.

In September 1990, at least 70 more judges were dismissed without any public explanation. All 70 judges, as well as those previously dismissed, have been replaced by Islamic fundamentalists, many of whom have little qualification for the position other than possession of an unused law degree. Many of the new appointees were employed

in non-legal related occupations, such as teaching, in Saudi Arabia, Yemen, and other Gulf States.

The dismissal and replacement of the non-fundamentalist judges has followed swiftly on the heels of the purge of southern (non-Moslem) Sudanese from the judiciary which began early in 1990. At least 11 senior southern Sudanese judges have been dismissed. All Southerners have also been dismissed from the Attorney-General's chambers and excluded from recruitment as new judges and legal officers. Between February and June 1990, the following southern Sudanese Judges and Legal Officers were dismissed:

Appeal Court Judge **James Bol Aluenge**; Province Judge **Akile deng Achuil**; District Judge **Achol Mading**; **Bullen Panchol**; **Michael Makuei**; **Dengtil Ayuen**; **Joseph Aguoth**; **Aleu Akecchak**; **Michael Manyon**; **John Kiliso** and **Joseph Modesto**.

On 27 September 1989, the government eliminated the military courts, and replaced them with "Revolutionary Security Courts" and a "Revolutionary Security High Court." These courts differ little from the special courts. Due process protections are scant and the right to counsel is severely circumscribed. The law creating these three-judge courts stated that the judges are to be selected by the RCC on the basis of their competence and expertise. The cases of those sentenced to death or 30 years imprisonment are to be referred to the Revolutionary Security High Court for reconsideration.

It has also been reported that a third type of "public order" courts have been created, also composed of army officers. They handle, *inter alia*, land and landlord-tenant cases.

At the end of December 1990, Lieutenant-General al-Bashir, announced the immediate implementation of *shari'a* Law in northern Sudan. On 22 March 1991, a new Penal Code based on the controversial "September Laws" was introduced. This establishes a series of laws based on interpretation of Islamic jurisprudence by allies of the ruling military council, and which provide for *huddud* punishments such as the amputation of limbs, execution, crucifixion, and floggings. A number of Muslim religious scholars oppose this interpretation of *shari'a* law which, they say, is not compatible with Islam's spirit of compassion and mercy. The code added the offence of apostasy to an already expanded list of offences punishable by death, giving rise to fears that opponents who challenge the government's interpretation of Islam may be liable to prosecution on charges of apostasy.

On 30 April 1991, al-Bashir announced that 299 political prisoners, who he said constituted all political prisoners held in Sudan, would be released. Despite the government's announcement, it is not clear whether all political prisoners were to be released. Of those released from prison so far, many had restrictions placed on their movements prohibiting them from leaving the capital of Khartoum, and some were apparently required to sign undertakings that they will not oppose the government. Following al-Bashir's statement, Sudan's Chief Justice said that in the future people arrested for political reasons would be referred to the judicial authorities rather than detained without charge or trial.

Reports indicate that all the lawyers listed below, except for Santino John Akot, have been released since the 30 April 1991 announcement.

Ali Saaid: lawyer. detained after 1991 amnesty and reportedly being held without charge.

Mustafa Abdelkadir: member of the executive committee of the now-banned Sudan Bar Association for over 17 years as well as a member of the banned Sudanese Organization for Human Rights. He was arrested in August 1989 for his opposition to the gov-

ernment's suspension of trade union and other professional activities. He was being held without charge or trial in Kober prison in Khartoum. He is assumed to still be in detention.

Santino John Akot: lawyer from southern Sudan. Arrested on 6 March 1990 and reportedly held in Kassala prison in Eastern Province.

Sadiq Al-Shami: member of the executive committee of the now banned Sudan Bar Association and active member of the now banned Sudanese Organization for Human Rights. He was detained on 30 June 1989 for his opposition to the government's suspension of trade union and other professional activities. He was released uncharged on 6 November 1989. He was rearrested in December and detained briefly at a secret detention site in Khartoum, where, according to Amnesty International, he was severely tortured. In late May 1990, Al-Shami was arrested once again and detained in secret place before being transferred to Kober prison. The authorities have not explained the reasons for his third arrest since the 1989 coup. He was reportedly released, without charge, in 1991.

Jalal el Din al-Sayed: deputy secretary of the Bar Association, was arrested on 29 July and held in Kober prison before being transferred to the high security Shalla prison. He is known to have campaigned against the introduction of *shari'a* laws. He continues to be detained without charge or trial. Al-Sayed suffers from jaw problems and has been denied medical treatment. He was, however, permitted to leave prison to attend his father's funeral. He was reportedly released, without charge, in 1991.

Abddalla al-Hassan: president of the Bar Association, was put under restriction orders around 6 August after he and seven other trade union leaders had signed a memorandum submitted to the National Salvation Revolution Command Council (NSRCC) in late July protesting the suppression of trade unions and calling on the government to allow trade unions to participate in the drafting of a new trade union law. He was released from detention in early November 1989.

Said Issa: member of the Bar Association of Khartoum. He was held without charge in Kober prison before reportedly being released in 1991.



Amin Mekki Medani

Kamal Al-Jazouli: member of the Bar Association. Detained on 10 August 1989 and held in Port Sudan.

Amin Mekki Medani: executive member of the Sudanese Bar Association and vice-president of the Sudanese Organization for Human Rights, was arrested on 7 September 1989 and held without charge in the hot, isolated prison in Port Sudan where he was unable to see his family. He campaigned for human rights for many years and an end to the war in the south of Sudan. He taught at the University of Khartoum and has worked at the office of the United Nations High Commissioner for Refugees and at the World Bank. In 1985, he served as Minister of Construction and Housing. He has been an outspoken critic of Islamic Law punishments and advocated their removal from the penal code. He was adopted as a "prisoner of conscience" by Amnesty International. He was released in November 1990

after international pressure, and left the country for Egypt, where he now practices law. He is to receive an award from the American Bar Association on behalf of the dissolved Sudanese Bar Association.

Saleh Mahmoud Mohammed Osman: member of the Bar Association of Nyala. Detained in coup aftermath. Place of detention unknown.

Galal-Eddin Mohammed al-Sayid: lawyer. detained in Shalla prison. Reportedly suffering from fractured jaw.

Motassim Ibrahim Sudan: member of the Bar Association of Medani. Detained on 21 August 1989. First held in Kober prison, current whereabouts unknown.

Abdel Azim Awad Surur: member of the Bar Association of Khartoum. Held in Kober prison before being released.

Abdel Rahman Azhari: lawyer. Detained in coup aftermath. Whereabouts unknown.

Hassan Hussein Mohamed: lawyer. Detained on 21 August 1989. Held in Shalla prison.

Ishaq al Gassim Shadad: former secretary general of the Bar Association, was detained in July or August.

Al-Tayb Abu Gediri: lawyer. detained in Shalla prison. Reportedly suffering from fractured jaw.

A number of Sudanese lawyers have had their licenses to practice law withdrawn by the Chief Justice without any explanation. Among those are **Kamal Shanter**, **Al Ser Khalil** and **Salim Essa**. The third, who as a lawyer with the Attorney Generals Chamber in 1986 prosecuted officials accused of corruption during the Nimeiri era, was suspected, but never been formally charged, of murdering his estranged wife. He has been detained in police custody for over one year without charge.

SYRIA

Riad al-Turk: 60 year old lawyer and First Secretary of the Political Bureau of the prohibited Communist Party. Al-Turk has been detained since 28 October 1980 and held incommunicado in administrative detention, without charge or trial. He is presently being held at the Military Interrogation Branch detention centre in Damascus under the authority of Military Intelligence. According to Amnesty International, al-Turk has been "severely tortured at various stages throughout his detention as a result of which his life has been in danger and he needed to be rushed to intensive care." Additionally, al-Turk has been denied essential medical care for a number of health problems, including diabetes, kidney failure, chronic heart disease, high blood pressure, and difficulty moving his limbs.

Since his detention in 1980 al-Turk has been denied family visits. His wife had been arrested before him and held hostage while the authorities searched for him. She remained in detention until the end of 1982 even after al-Turk was arrested.

In 1988, it was reported that the Syrian authorities had set up a committee to review al-Turk's case. The findings of this committee, however, remain unknown.

During March 1991, reports indicated that al-Turk had gone into a coma as a result of renal failure, had been hospitalized for about two weeks, and then returned to the detention centre without making full recovery.

TOGO

The legal profession has been in the forefront of the movement for democratic change in Togo. After a leading advocate, Maître Djovi Gally, called for a multi-party system at a conference on democracy in December 1989, the bar association was convoked to the ruling party's headquarters. One of the party's main figures was reported to have said: "*Nous allons créer pour cette mafia (des avocats) un camp retranché et là, je vous assure, il y aura des balles perdues.*" (We will create a military retrenchment for that mafia of lawyers and I can assure you that there will some stray bullets.) In August 1990, Bar President Kokou Koffigob publically denounced the arbitrary arrests and ill-treatment of political opponents. The statements of Kofi-Goh, (also President of the Togolese League for Human Rights), led to the dismissal of the director of state security. Events heated up in September 1990 during the trial of two persons charged with distributing anti-government tracts. On 5 October, when the verdict was to be announced, pro-democracy students demonstrated at the courthouse. The police brutally evacuated the court, touching off street demonstrations throughout Lomé which reportedly left twenty dead and dozens wounded. That evening, the Bar Association met in Lomé and decided on a 72-hour strike, calling for the resignation of the minister of justice and the public prosecutor and for sanctions against those responsible for the killings. On 19 October, the Lomé bar voted almost unanimously to support a "Declaration on the Political future of Togo" calling for a multiparty system. **Yawo Agboyibor**: former President of the government-sponsored National Human Rights Commission who resigned to become leader of the *Comité d'Action pour le Renouveau* (Committee for Renewal). On 16 March 1991, his house in Loma was hit by a bomb. The night before, two cars had been set afire in his courtyard. In addition, General Mawulplimi Améyi, then Minister of the Interior, had warned Agboyibor of reprisals if he did not stop supporting pro-democracy demonstrations. (As of this writing, President Eyadéma had agreed to hold a national conference to discuss a democratic transition.)

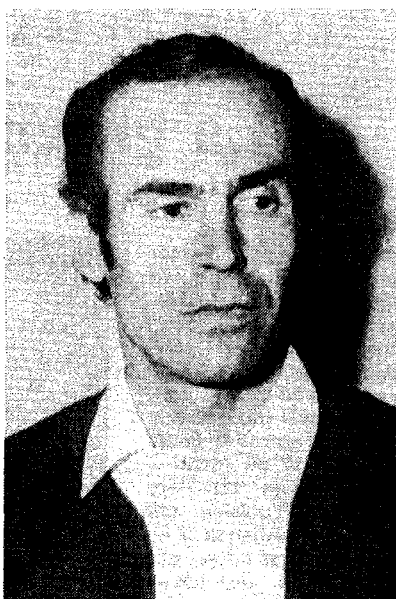
TUNISIA

The Tunisian judiciary is composed of both regular courts and military tribunals. In the highly centralized regular courts, the executive branch has retained control of the naming, assigning, transferring, and removing of judges. President Ben Ali, however, has recently publicly advocated a more independent judiciary. As a result, there are current attempts to grant the Judicial Council additional powers.

The military courts, initially modeled after French military tribunals, were created in 1957 after Tunisia was freed from the French Protectorate. All cases of national security, both internal and external, are heard by the military tribunal. The military courts are also empowered to try civilians, whether as principals or accomplices, for any crime committed against military personnel. In addition, the courts have jurisdiction over all military personnel, including retired, suspended, or inactive personnel, regardless of rank. All proceedings in military tribunals are held in secret. Their decisions are unappealable.

During peacetime, every tribunal is presided over by a civilian judge and four military officers who are nominated to their position by the defense minister. It is within the government's prerogative, however, during wartime, periods of martial law, or at any time deemed appropriate, to waive the requirement that the head of the tribunal be a civilian judge. The military courts have exclusive authority to decide whether they are competent to hear a case. Accordingly, if a party challenges the competence of the military courts before any other court, the latter court must first submit the case for review to military authorities which will then decide how the case should proceed.

In October 1990, a secret military tribunal convicted Mohammed Ali Mahjoubi, an official in the security service, of abuse of power and sentenced him to four years imprisonment. Mahjoubi's lawyers, the head of the Tunis Bar Association, **Mansour Chelfi**, and **Abdel Rahman Hila** complained in a lawyers' meeting that they had been barred from the trial and that the court-appointed lawyers failed to offer a defense. Consequently, in November 1990, the Tunisian Lawyers Association (TLA) called for the end of the Military Tribunals and staged a brief general strike. The strikers demanded that defence rights be respected and that exceptional rules and other procedural irregularities inherent in the system be canceled. The Ministry of Justice promised to investigate the TLA's grievances, but has not yet responded.



Bashir Essid

Bashir Essid: lawyer and founder of *Rassemblement National Democratique Nasserite* (RNDN) a political party which has not been registered, despite submitting several requests. In October 1990, the Criminal Chamber of the Appeals Court in Tunis sentenced Essid to four years imprisonment for forming a gang and conspiring to attack persons and property, defaming the President, distributing false information, and putting posters on public buildings without permission. Essid denied the charges, which were based on the uncorroborated testimony of a co-defendant. According to human rights groups, the investigation and trial were marked by serious irregularities, including police searches without proper judicial authorization. On the last day of the trial, Essid was allowed to address the court. As Essid commenced a lengthy speech, the judge stopped him and limited him to one

word. Essid's lawyer protested and the trial judge, Taieb Ben Abid, ordered Essid's lawyers to leave the courtroom before he would render his verdict. The court remained closed throughout the sentencing and the police refused to allow Essid's lawyers to enter the court. The judgment was rendered outside the presence of Essid and his attorneys. Subsequent to the trial, a group of Tunis lawyers declared a boycott of all cases before judge Ben Abid citing his "offensive and humiliating behavior" during the trial.

Essid, who has represented trade unionists, students, and others charged with political offences, was arrested on 15 September 1989 in his home by five plainclothes policemen in his home who did not have an arrest warrant. While in detention in the main prison, Essid was subjected to continuous shining light, 24 hours a day and denied access to medical care, despite a history of respiratory problems and allergies (see 1990 CIJL report).

Mohammed Nouri: lawyer. On 31 January 1991, a Tunis Military Tribunal sentenced Nouri to six months in prison on charges of "defamation of a judicial institution" under Articles 50, 51, 68 and 69 of the Tunisian Press Code. On 6 March 1991, the Court of Cassation denied Nouri's appeal and confirmed the sentence. On 9 March, Nouri was imprisoned. The charges stemmed from an article he had written criticizing the military tribunal system. The article was published in the 27 October 1990 issue of *Al-Fajr*, a weekly newspaper published by the banned Islamic opposition party *Al-Nahda*:

... the use of ... military courts in peacetime and their power to judge civilians violates basic principles of human rights. It also violates article 6 of the constitution which provides that all citizens are equal in rights and obligations and are to be treated equally under the law...Military courts have been abolished by most states which respect human rights. ... It is our opinion that the continued existence of military courts, which are considered martial courts, violates the constitution.

The editor of the newspaper, Hamadi Jebali, who is also a member of the executive council of *Al-Nahda*, was tried with Nouri and received a 12-month prison term.

TURKEY

In Turkey, tension continued between the government and the Istanbul Bar Association (IBA). Members of the IBA trace the conflict between the Ministry of Justice and the IBA to the 1980 military coup which enabled the Ministry to take the IBA under its sphere of influence.

Following the 1980 coup d'état, a military court sentenced lawyer Alp Selek to 8 years in prison for belonging to the illegal Workers' Party of Turkey. The Public Prosecutor asked for his disbarment in 1986. The IBA Executive Board reviewed Salek's prison sentence and refused to disbar him because his condemnation was apparently unrelated to his activities as a lawyer. In 1987, the Ministry of Justice renewed its demand that Selek be disbarred and threatened legal action against the bar association. Under this threat, the IBA executive board in 1987 disbarred Salek. In 1989, Selek reapplied to the Bar to reverse the previous board's decision. After deliberation, the Bar reversed its decision and Selek resumed his practice. In November 1989, Justice Minister Oltan Sun-gurlu asked the chief prosecutor in Istanbul to institute legal proceedings against the bar association for the dismissal of its executive board based on its decision to readmit Salek.

The trial against the IBA Executive Board in October 1990 was attended by Niall MacDermot, former ICJ Secretary-General, on behalf of the CIJL, as well as the President of the International Union of Lawyers, the Chairs of the Athens, Barcelona, Belgium, Nanterre, Norway, and Paris Bar Associations, and representatives from Helsinki Watch. The prosecution moved for an adjournment, which was granted. On 28 October, elections produced a new Executive Board. On 19 November 1990, the Court therefore ruled the action abated as moot with the expiration of the executive's term of office. The new IBA leadership believes that the government will respect the newly elected board and not reinstate their charges.

Ayhan Aksozek: lawyer and deputy president of the Human Rights Association in Kars. On 24 October 1990, Aksozek was detained following a visit to a client in police custody and formally charged two days later with collaborating with the illegal Kurdish Worker's Party (PKK). While in custody, Aksozek was held *incommunicado* and allegedly tortured. He was reported to be in very poor health and he suffered a heart attack while incarcerated. On 21 February 1991, Aksozek was provisionally released. It is believed that Aksozek is currently on trial in Erzincan State Security Court, although the CIJL has been unable to verify this information.

Sehart Bucak: lawyer and proprietor of the newspaper *Yeni Ulke* (New Land). Bucak was detained by police on 31 July 1991 for interrogation in connection with the events following the funeral of Vedat Aydin (see below). Bucak alleged that he was beaten by the police in the disturbance following the funeral, and that he suffered a fractured arm. Bucak has served as defence counsel in many prominent political trials. His newspaper covers events in southeastern Turkey where most of the Kurdish minority live, and it has been frequently confiscated on the grounds that it contains separatist propoganda. Since April 1991, 16 legal proceedings have been initiated against the paper.

Murat Demir and Bedii Yarayici: lawyers and members of the Istanbul Bar Association. In June 1991, Demir and Yarayici were detained and charged with "having acted as couriers" for the illegal organization *Dev Sol* (Revolutionary Left). *Dev Sol* claimed responsibility for a number of political assassinations in recent months involving high-ranking military and police officers. The Parliamentary Human Rights Commission de-

terminated that the two had been subjected to torture while in prison.

Orhan Dogan: lawyer and Cizre representative of the Human Rights Association. He has served as lawyer for inhabitants of Yesilzrut village who were allegedly tortured in January 1989. Dogan also represents a group charged with participation in an illegal demonstration in March 1990. *Cumhuriyet* reported that a bomb exploded in the dustbin in front of Dogan's house on 22 June 1990 at 10:30 p.m. A few days before, the commanding officer of the gendarmerie unit that raided the village of Yesilzrut was convicted by a court in Ankara for ordering the ill-treatment of Dogan's clients. Although the officer received a sentence of two and a half months' imprisonment, it was commuted to a fine and suspended.

Kemul Ilter: lawyer and Human Rights Association branch secretary in Sakarya. On 30 November 1990, Ilter was sentenced to three months imprisonment by the Criminal Court in Sakarya for distributing political material on behalf of the HRA with the inscription "No to War." His sentence was later commuted to a fine.

Fuat Erdogan: lawyer in Istanbul. He was detained on 7 May 1990 and taken to Ankara. Despite repeated requests, Erdogan was not allowed to see anyone. He was apparently charged with membership in the illegal organisation *Dev Sol* (Revolutionary Left). At the time of this writing, the trial in which Erdogan was the only defendant is ongoing.

Husnu Ondul, lawyer and Secretary of Ankara Branch of the Human Rights Association of Turkey, and **Esin Fatma Kulac**, lawyer. On 4 January 1991, Ondul and Kulac were detained in the Political Police Centre in Ankara for statements they made in protest of a ruling by the Ankara State Security Court. The lawyers had protested the actions of the Chief Prosecutor at the Ankara State Security Court who had initiated an investigation against those who had participated in the general strike of 3 January. Halit Celenk, their attorney, was not allowed access to his clients. On 5 January, Kulac and Ondul's homes were searched by the civil police who confiscated documents, books and publications. Kulac and Ondul went on a hunger strike until their release on 14 January.

Mustafa Ozer and **Ahmet Zeki Okcuoglu**, lawyers, and **Vedat Aydin**, People's Labour Party Branch President. On 28 October 1990, the Turkish Human Rights Association (IHD) held its annual general meeting in Ankara. Aydin, an IHD member from Diyarbakir, addressed the meeting in Kurdish, which Okcuoglu translated into Turkish. Ozer then expressed his support for Aydin's speech. Each left the meeting separately and was detained on the street as soon as he left. All were held in incommunicado detention and denied access to their attorneys at the First (Political) Branch of Ankara Police Headquarters. On 5 November, the three lawyers were brought before a judge and charged under Article 142/3 of the Turkish Penal Code and Law 2932. Article 142/3 (which was abolished on 12 April 1991) provided that: "Whoever makes propaganda in order to destroy or weaken national feelings or to abolish partially or entirely public rights guaranteed in the Constitution, on grounds of race, shall be punished by heavy imprisonment for five to ten years." According to Amnesty International, the speech given by Vedat Aydin did not advocate the use of violence. Article 2 of Law 2932 (which was also abolished on 12 April 1991) established that "no language may be used for the expression, dissemination and the publication of ideas other than the first official language of any country recognized by the Republic of Turkey," whereas Article 3 stated: "The mother tongue of Turkish citizens is Turkish." Aydin and Okcuoglu were committed to Ankara Central Closed Prison to await trial. Mustafa Ozer was released conditionally.

The first hearing of the trial began on 18 December with legal observers from human rights organizations in attendance. Aydin spoke in court in his mother tongue,

Kurdish, which was not acceptable to the presiding judge who deemed the language “incomprehensible.” Ozer and Okcuoglu argued that preventing Aydin from speaking in Kurdish would damage their collective defence and refused to participate in the trial until Aydin was permitted to speak in Kurdish. The court provisionally released Aydin and Okcuoglu but ruled that Aydin had forfeited his right to defence by his refusal to speak in Turkish.

On 5 June 1991, three persons who identified themselves as “policemen” came to Aydin’s house around midnight and took him to an undisclosed location. His family, concerned at his disappearance, inquired with the police who denied any knowledge of Aydin’s detention. On 8 June, Aydin’s body was found with 8 bullet holes at the roadside near Eargani, 60 kilometers from his home. Shortly before his death, Aydin reportedly visited another IHD member who was hospitalised after being injured in the 25 June bomb explosion (see above). After his visit, Aydin made a speech in Kurdish outside the hospital. Over 1,000 people attended Aydin’s funeral and participated in a mass demonstration in support of the Kurdish Worker’s Party. Police fired into the crowd, killing at least three people including a 14-year-old boy. Unofficial reports cited nine other deaths.

In the early morning of 18 June 1991, a bomb was detonated in Ozer’s car which was parked in front of his house in Diyarbakir. According to Amnesty International, the blast was extremely powerful and left an 80cm crater in the street and caused extensive damage to nearby glass windows. It is still unclear who planted the bomb or what the motives behind the bombing were, but the effects on the car suggest that military explosives were used. Two more bombings followed the attack against Ozer. On 25 June 1991, a midnight explosion destroyed the Diyarbakir office of the Turkish Human Rights Association. One man was reportedly injured and the offices of two political magazines located in the same building were also badly damaged. It is reported that the association’s telephone register as well as photographs of members of the association were missing. On 2 July 1991, a bomb exploded in Batman in the car of Huseyin Siddik Tan, a board member of the local Human Rights Association branch. Tan was injured in his eye and his son and another passenger also suffered injuries. The Turkish Human Rights Association, founded in 1986, has faced considerable political pressure and threats in the past. Many of its officials have been detained and imprisoned and tried on a variety of charges. Most trials, however, have eventually ended in acquittal.

Fethiye Peksen: lawyer and member of the Istanbul Bar Association. On 3 July 1991, Peksen was detained by the police in Istanbul and transferred to Ankara. Peksen was subsequently charged under Article 168 of the Turkish Penal Code and under Articles 4 and 5 of the “Anti-Terror” law, with being a member of and participating in the illegal organization *Dev Sol*. It is believed that she was detained in connection with the detentions and arrests of journalist Deniz Teztel and lawyers Bedii Yarayici and Murat Demir (see above and below). On 15 July 1991, Peksen was released.

Hasan Huseyin Reyhan: lawyer and President of the Iskenderun branch of the Turkish Human Rights Association. On 14 December 1990, Reyhan, his wife and three-month old child were detained and held at Iskenderun Police Headquarters. Reyhan and his wife were charged with membership in an illegal terrorist organization and Reyhan’s home was searched. On 23 January, Reyhan was provisionally released. On 6 June 1991 Reyhan and his wife were acquitted by the Malatya State Security Court.

Hasan Sahin and Gürbüz Özaltinli: Ankara attorneys and members of the Human Rights Association in Turkey. They were detained between 28 May 1990 and 6 June 1990. During the first day of their detention, Sahin and Özaltinli were reportedly placed in a cold cell with a leaky ceiling. The two lawyers allegedly had to stand in water for 24

hours. According to reports by human rights groups, they did not receive the food their families brought for them. The prosecutor asked for their arrest as alleged leaders of the Turkish Communist Party (TBKP), under Article 141 (1), which calls for eight to fifteen years' imprisonment for founders and leaders of organizations whose objectives are to destroy the established order in the country. However, the arrests of Sahin and Özaltnli may have been in response to their representation of Nihat Sargin and Haydar Kutlu, president and secretary of the TBKP, respectively. In April 1991, the legislature repealed Article 141 (1), resulting in the lawyers' acquittal.



Esber Yagmurdereli

Esber Yagmurdereli: blind lawyer who represented numerous defendants, including trade union leaders, in political trials in Bursa and the Black Sea region in Turkey in the 1970s. Until his release in May 1991, he was in detention since 5 March 1978. At that time, arms were found in the possession of one of his clients. A search of Yagmurdereli's house and office turned up left-wing publications. Police found stolen gold and jewellery in the flat of a neighbor who alleged that the goods belonged to Yagmurdereli. In the following days, several detainees "confessed," after prolonged incommunicado detention, to have stolen

the goods on behalf of the illegal *THKP/C Acilciler-Halkan Devrimci Oncüleri* (Turkish People's Liberation Party/Urgency Front - Vanguard of the People's Revolutionaries) and to have handed them over to their "leader," Yagmurdereli. It took more than seven years, including trial, appeal and retrial, before a final verdict was rendered against him. Virtually all the defendants alleged before the Samsun Criminal Court that their statements had been extracted under torture. Yagmurdereli also alleged that he was subjected to *falaka* (beatings on the soles of the feet), electric shocks, ice-cold water hoses and cigarette burns. He denied any connection with the goods or involvement in an illegal organization, and stated that the charges were intended to prevent him from representing political prisoners. Although the prosecutor asked only for a conviction for hiding stolen goods, which carried a maximum prison term of three years, Yagmurdereli and five other defendants were convicted on 9 November 1979 of membership in an illegal organization and sentenced to 36 years' imprisonment. The verdict was quashed on 9 July 1980 after martial law was established, and the case was transferred to a Military Court. It was then remanded back to Samsun Criminal Court, which again convicted Yagmurdereli on 8 March 1985 without hearing further evidence. This time, however, he was sentenced under the more serious charge of leadership in an organization trying to overthrow the government by force, and was sentenced to death. His sentence was commuted to life imprisonment. The verdict was later upheld. Yagmurdereli is currently serving his sentence in the high-security Bursa E-type prison.

Amnesty International called Yagmurdereli's trial "unfair" both because the Samsun Criminal Court did not investigate the claims of torture-induced confessions, despite the existence of corroborating medical reports, and because of "severe restrictions" on his right to present a defence, given that he was not in court for most of his trial and retrial.

On 12 February 1990, Yagmurdereli rejected an offer by the Minister of Justice for a pardon in view of his "ill-health," since a pardon would suggest an acceptance of the "unjust trials of 12 September" (following the military coup of 12 September 1980). He asked for a fair retrial instead. On 7 December 1990, the Samsun 2nd Criminal Court rejected Yagmurdereli's application for a reopening of his trial.

Yagmurdereli was released in May 1991, benefitting from a general amnesty.

UGANDA

Inheriting a legacy of unconscionable human rights abuses, a destroyed infrastructure, a faltering economy, and a raging AIDS epidemic, the military government of President Yoweri K. Museveni has made major efforts to overcome the past and build for a democratic future. Despite marked progress and laudable intentions, however, the human rights situation in Uganda is still bleak. The criminal justice system is not independent and the National Resistance Movement (NRM) government has not demonstrated a commitment to providing guarantees of individual rights under international and Ugandese law. Resources allocated to the justice system are woefully inadequate, resulting in an erosion of public respect for a system which is unable to function adequately or efficiently. Low-level magistrates and court personnel are suspected by both the public and government of taking bribes because of the extremely low salaries they receive.

The lack of resources interferes with the proper functioning of the criminal justice system and has resulted in disregard for legal requirements for prompt arraignment. Citizens are detained on "holding charges" before adequate investigations have been conducted to produce evidence of probable cause. Persons are detained for periods as long as four years awaiting trial and often are not represented by legal counsel.

The NRM has also openly criticized judges, lawyers, and the legal process and encourages public discontent with the system. The NRM has also criticized lawyers who represent criminal defendants and judges who render unpopular decisions. According to the Association of the Bar of the City of New York, which sent a delegation to Uganda to investigate the human rights situation, the NRM has called lawyers "unpatriotic" and has accused them of helping criminals to escape under a cloak of legal "technicalities." The NRM has attacked judges as corrupt. While some lower grade magistrates have reportedly accepted bribes, on the whole the judiciary is thought to be honest. President Museveni reportedly met with members of the judiciary to discuss military complaints that too many defendants were being released on *habeas corpus* petitions. After the meeting, the judiciary promised to review the list of those released to determine if any had been released improperly.

The government has openly attacked due process principles as being "un-Ugandan." Specifically, the NRM has cited the right to bail, presumption of innocence, and evidentiary rules as "technicalities" and "vestiges of colonialism" and has criticized the courts and the bar for insisting on these "technicalities." Rather than provide the necessary funding to the existing system, the government has entertained proposals to expand the jurisdiction of lay courts, in which judicial independence and basic guarantees of a fair trial would be eliminated. A controversial law, enacted in 1989, that permitted the establishment of special magistrates courts in insurgent areas and would have eroded many guarantees to a fair trial, however, was never put into effect.

The failure of the judicial system to prosecute cases in a timely fashion, combined with the government's criticism, has provided the military with a rationale for intervening in the civilian law enforcement process, in particular in cases of treason and armed theft. According to the Uganda Bar Association (quoted by the New York City Bar, *supra*), the military has taken individuals into custody and detained them in military barracks without charge despite judicial orders for their release for periods lasting up to three years. For example, Ben Izongoza was detained without charge for one and one-half months in military barracks under torture. His family obtained writs of *habeas corpus* ordering his appearance in court, which the military refused to obey. Similarly, Freddie Musingi Kalende was detained for three years without charge until the High Court ruled on 12 January 1991 that he was being unlawfully detained. Despite this court

ruling, Kalende still remains in military detention. In the highly-publicized case of Major Fred Kiberu Mpio, the military refused to obey eight writs of *habeas corpus* ordering the National Resistance Army to produce Mpio in court. Mpio had been acquitted of treason charges and released by the High Court in 1988. Upon leaving the courthouse, Mpio was rearrested by the military and held unlawfully in military barracks. The eventual intercession of the Attorney General and the Inspector General of Government resulted in Mpio's release in August 1990.

A recent highly-publicized case also demonstrates government interference in the judicial process. In February 1991, three journalists were arrested and charged with the "defamation of a foreign dignitary" for posing probing questions to visiting President Kenneth Kaunda of Zambia during a press conference. After the Chief Magistrate Hensley Okalebo ordered the release of one of the journalists, Festo Ebongu of *The New Vision*, Ebongu was promptly rearrested and detained illegally without charge. The Chief Magistrate was subsequently transferred and another Chief Magistrate, Edward Bamwite, was brought in, who re-examined the case and ruled that the charges were appropriate. Subsequently, the High Court and later the Supreme Court dismissed the defamation charges on the same grounds on which Magistrate Okalebo had earlier. In a letter to President Museveni, the Uganda Law Society raised this case as evidence of the government's attempt to interfere with the independence of the judiciary.

UNION OF SOVIET SOCIALIST REPUBLICS

The Soviet judiciary, under the policies of President Gorbachov, has gradually been achieving a new measure of independence. The constitution was amended to provide that "Judges and Peoples' Assessors shall be afforded conditions for unhindered and effective realization of their rights and duties. Any interference with the activities of Judges and Peoples' Assessors related to the administration of justice shall be deemed unlawful and punished in accordance with the law." This, and new legislation on contempt of court, are aimed at curbing so-called "telephone justice" by which party leaders telephoned instructions to judges. In addition, legislation on the status of judges has increased their personal independence. Judges are now elected for ten years instead of five years, and there have been calls for life tenure. Judicial salaries have been increased.

The Chairman of the Supreme Court is nominated by the president of the USSR and appointed with the consent of the Congress of People's Deputies. Upon the nomination of the Chairman of the Supreme Court, the Congress appoints three deputies and 26 justices. The justices are accountable to the Congress and may be removed by it, a factor which has the capacity to weaken judicial independence. While the party still controls the naming of many judges, judges of district and city courts are increasingly elected by upper-level Soviets of People's Deputies.

Sergei Leonidovich Kotov: lawyer. Kotov was defending Tamara Tselikova on the charge of insulting the honour of the President of the USSR in a trial in Tver, RSFR. On 14 January 1991, he and his co-counsel complained in writing to the judge about alleged irregularities in the trial, including the failure to inform the defence of the identities of the lay assessors who made up the panel with the presiding judge, T.E. Perksina. The next day, having received no answer, they informed the court that they were withdrawing from the case. The Procurator thereupon moved to bring a contempt action against Kotov, and Judge Perksina filed the action. According to the Lawyers Committee for Human Rights, fights then broke out in the courtroom and Kotov, without any apparent provocation, was arrested by the militia, beaten and dragged to a police vehicle. He was sentenced to ten days administrative detention for having resisted arrest. After the Procurator's office filed a protest against Kotov's detention, he was released after seven days.

UNITED KINGDOM

William Johnson: former judge. On 27 February 1991, two bombs exploded on the grounds of Johnson's north Belfast home, injuring several policemen. The judge was uninjured but officers were caught by a secondary blast as they went to investigate the first explosion. Several members of the judiciary have been killed in Northern Ireland by bombs linked to the Irish Republican Army (IRA). At the same time, lawyers who have represented suspected members of the IRA have often received threats.

UNITED STATES OF AMERICA

In the United States, defence attorneys are being increasingly subpoenaed to give testimony concerning matters relating to the representation of their clients. While some of these subpoenas are necessary for providing information to grand juries, in other cases, prosecutors may be able to obtain this information through other channels. (Grand juries are impanelled by prosecutors to return indictments on major offenses). In addition, using an attorney subpoena can have an intrusive impact on the attorney-client relationship by forcing attorneys to become "witnesses" for the prosecution and divulge privileged information. This privilege is seen as necessary to a confidential relationship under which clients are encouraged to make full disclosure to their attorneys, promoting the attorney's ability to render sound legal advice. After an attorney testifies before a grand jury, the conflict created between her being a factual witness and the representation of her client may lead to her inability to continue to represent her client, thereby threatening the defendant's right to counsel (as guaranteed by the Sixth Amendment to the U.S. Constitution).

Further, when these subpoenas are viewed in conjunction with newly amended "fee forfeiture" statutes, they are considered by many to pose a threat to the autonomy of the defence bar and to a defendant's ability to obtain criminal representation. These fee forfeiture statutes, enacted by Congress to help fight the "war on drugs," authorize the forfeiture of property constituting or derived from proceeds of criminal activity. Under these statutes, an attorney who receives payment from a defendant is subject to losing those fees if they are traceable to the client's illegal activities. In order for an attorney to defend against the forfeiture, however, it is often necessary for her to disclose information otherwise subject to the attorney-client privilege.

The defence bar contends that these statutes provide prosecutors with a means of depriving accused but not yet convicted persons the right to use their assets to retain an attorney of choice. Moreover, it is argued that the statutes allow the prosecution to intrude upon the confidential relationship between attorney and client and create the possibility of conflict when an attorney is forced to be a witness and divulge information that can later be used to implicate her client.

Although there is a natural tension between the public's interest in the effective functioning of the grand jury and trial system, and the confidentiality of the client's defence, the ever-increasing flow of subpoenas being issued to attorneys is, according to many in the defence bar, unnecessary, overbroad, and a threat to a criminal defendant's Sixth Amendment right to counsel and the presumption of innocence.

Justice Department statistics, gathered since 1988, as documented in the November 1990 report of the Congressional Committee on Government Operations, (*Federal Prosecutorial Authority in a Changing Legal Environment: More Attention Required,*) reveal a marked increase in attorney subpoenas. In 1988, 268 attorneys were issued subpoenas for information on clients who were defendants in criminal actions, or targets or subjects of grand jury investigations. In 1989, there were 308 such subpoenas, and for the first six months of 1990, 167 were reported. The Department of Justice also reports an overall increase in attorney subpoenas through April 1991.

According to the Department of Justice, the rise is due to an increase in assistant U. S. attorneys (federal prosecutors) and the number of cases under investigation. According to an ABA witness at the congressional committee hearings, however, the practical effect of these subpoenas is to force the defence attorney to defend herself instead of her client. The National Association of Criminal Defense Lawyers (NACDL), which provides assistance to subpoenaed lawyers, challenged the Department of Justice's figures with its own higher numbers.

Because of recent court decisions and the criminal statutes enacted to fight the drug war, prosecutors have considerable discretion in issuing these subpoenas. Although there are specific guidelines with which each assistant U.S. attorney seeking to subpoena an attorney should comply, the congressional committee was met with resistance when it attempted to learn what steps the Department of Justice is taking to ensure such compliance.

On the other hand, attorneys are rarely successful in quashing such subpoenas. Individual federal judges differ greatly on the exercise of their supervisory power and the federal circuit courts of appeal all have different standards. The appellate courts of the Fourth and Ninth Circuits require a preliminary showing of need for an attorney subpoena but others, such as the Second, Seventh, Eighth and Eleventh, do not.

A 1985 study of attorney subpoenas by the Association of the Bar of the City of New York's Committee for Criminal Advocacy suggested that certain attorneys may be targeted by the Justice Department because of their representation of political activists. In a recent fee forfeiture case before the U.S. Supreme Court, Justice Harry Blackmun warned in a vigorous dissent that the government will be tempted to use the forfeiture provisions against defence attorneys who are particularly aggressive in their clients' behalf, thus posing a threat to the adversarial system.



Linda Backiel

Linda Backiel: criminal defence attorney and member of the National Lawyers Guild. Backiel was freed on 10 June 1991, after serving six months in prison on a civil contempt charge for refusing to provide information to a grand jury about her former client. (Refusal to answer questions before a grand jury, other than for reasons of self-incrimination, is punishable by contempt of court.)

In September 1989, a grand jury was meeting in the United States District Court for the Eastern District of Pennsylvania to determine whether to charge political activist Elizabeth Ann Duke with bail jumping. While Backiel had not represented Duke, she was one of five attorneys into whose custody Duke was released. On 11 September 1990, Backiel was subpoenaed to testify before the grand jury and bring documents relating to Duke. Backiel was believed to possess a note from Duke informing her of Duke's intention to flee. Although prosecutors had a copy of the document, they wanted Backiel's alleged original to authenticate their copy. Backiel refused, stating that she would not "answer questions in secret about a client because I understand my first obligation is to protect the interest and confidences of my clients, not to become a witness against them."

After appeals to the U.S. Third Circuit appellate court and the United States Supreme Court, the case was remanded to Judge Charles Weiner of the U.S. District Court in Philadelphia for a new hearing. After the hearing on 10 December 1990, Judge Weiner sentenced Backiel to remain in jail at the Bucks County Correctional Facility in Pennsylvania until she agreed to testify or until the grand jury disbanded (which eventually took place on 19 June 1991). Backiel chose to serve out her sentence rather than "be turned into a witness for the prosecution."

Backiel's ethical responsibilities were governed by Pennsylvania's Rules of Professional Conduct, which closely mirror the American Bar Association's (ABA) Model Rules of Professional Conduct. Rule 1.6 (a) provides in part that "A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation." Although the text does not allow for exceptions, the ABA comments (which are guides to the text, not authoritative rules) state that "the lawyer must comply

with the final orders of a court...requiring the lawyer to give information about the client." The rule leaves the attorney with either an ethical or a legal dilemma. In Backiel's case, choosing to follow the text of rule 1.6 meant a contempt charge and incarceration. Complying with the order would have betrayed the attorney-client privilege and possibly infringed her client's right to effective assistance of counsel.

Progressive legal organizations, including the 8,000 member National Lawyers Guild, the National Conference of Black Lawyers, and the Puerto Rican Legal Defense and Educational Fund who had joined in an *amicus curiae* brief to the Supreme Court, believe that Backiel may have been a target of the prosecution and that the information sought was unnecessary. In September 1989, Backiel defended Puerto Rican independence movement leader, Filiberto Ojeda Rios, in what was perhaps the most publicized political trial in recent Puerto Rican history. Backiel has also represented eleven *independentistas* charged with conspiracy to use \$7 million taken from Wells Fargo Bank in Hartford, Connecticut to fund *Los Macheteros*, a clandestine independence organisation (see CIJL 1990 report).

Dominic P. Gentile: Las Vegas, Nevada, defence attorney, author of articles about criminal law and procedure and former Associate Dean of the National College for Criminal Defense Lawyers and Public Defenders. In February 1988, a day after his client was indicted on charges of theft, Gentile held a press conference proclaiming his client's innocence and suggesting that the actual perpetrator of the crime was an undercover police officer. At the time of Gentile's press conference, the case had been the subject of a year-long investigation with intensive pre-indictment publicity and leaks to the press from law enforcement officials, overwhelmingly suggesting the guilt of Gentile's client. The trial took place six months later and Gentile's client was acquitted.

The State Bar of Nevada filed a complaint against Gentile, alleging a violation of its Rule 177, governing pre-trial publicity. Similar to American Bar Association (ABA) Model Rule of Professional conduct 3.6, Rule 177 prohibits an attorney from making "an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding." Rule 177 (3) (a), however, provides that a lawyer "may state without elaboration ... the general nature of the ... defense." After a hearing, the Southern Nevada Disciplinary board of the State Bar found that Gentile had violated Rule 177 and recommended that he be reprimanded. Gentile appealed to the Nevada Supreme Court, which affirmed the State Bar's decision. Gentile appealed to the United States Supreme Court.

In a decision rendered on 27 June 1991, the Supreme Court split over two major issues. Concerning the constitutionality of rule 177, the majority concluded that "the substantial likelihood of material prejudice" test applied by the State Bar of Nevada and other States did not violate the First Amendment. The court held that the speech of lawyers representing clients in pending litigation can be regulated in the courtroom and out, and that a state may demand adherence to rules regulating such speech because of the likelihood that extrajudicial statements may pose a threat to a pending proceedings fairness. The court held, however, that the Nevada rule was "void for vagueness" and that it had misled Gentile into thinking that his press conference would not result in any disciplinary action. It therefore reversed the ruling of the Nevada Supreme Court.

Many in the national defence bar believe that ABA ethical rule 3.6 and other regulations of attorney speech (which are similar to rule 177 involved in the Gentile case) establish a double standard of ethics for defense attorneys and prosecutors. The ABA rules permit attorneys to say anything that is of "public record," thereby allowing the prosecutor to hold a press conference at the indictment stage as long as pre-trial documents are filed. Defence attorneys, however, rarely file such pre-trial documents. Justice

Anthony Kennedy, who disagreed on the First Amendment issue in the *Gentile* case, concludes that "[t]he police, the prosecution, other governmental officials, and the community at large hold innumerable avenues for the dissemination of information adverse to a criminal defendant, many of which are not within the scope of Rule 177 or any other regulation. By contrast, a defendant cannot speak out without fear of incriminating himself ... and most criminal defendants have insufficient means to retain a public relations team apart from defense counsel for the sole purpose of countering prosecution statements."

Lynne F. Stewart: criminal defence attorney and member of the New York State Bar Association. Stewart was indicted by a Manhattan grand jury on 17 April 1991 for refusing to disclose the source and amount of legal fees she received from her client, a suspected drug dealer. A subpoena for her to testify was upheld by the New York State Court of Appeals. Although the court held that enforcement should be stayed until her client's case had been terminated, it found that the fee information sought was not privileged nor incriminatory of clients who already stood indicted.

The indictment had been sought by Sterling Johnson Jr., the special narcotics prosecutor for New York City. He argued that the information was essential to uncovering a criminal conspiracy whose legal fees were guaranteed by a "benefit package" for gang members. In the case of Stewart's client, the prosecutor believed that the third party paying her client's fee was in a leadership position in the conspiracy and that Stewart's testimony was needed to corroborate prior testimony as to who had paid the fee. Stewart, who has represented numerous radicals, such as Larry Davis, for whom she won acquittal on charges of attempted murder of six police officers in 1989, contended in her brief to the court that she was being "singled out for prosecution" because of her work. She also argued that the information the prosecution seeks is privileged and that she refuses to be a witness for the prosecution against her own client.

While subpoenas regarding fee forfeitures are often upheld, a criminal contempt charge is a particularly harsh sanction and Stewart faces up to four years in prison and automatic disbarment. The New York State Association of Criminal Defense Lawyers filed a brief in her behalf and other members of the defense bar have been actively involved in her defence.

VENEZUELA

Marielba Barboza Murillo: lawyer, member of the Sub-Commission on the Defence of the Family in the House of Representatives, member of the Unity of National Support of the National Association of Clinics and Voluntary Legal Assistance (*Unidad de Apoyo Nacional de la Asociación Nacional de Clínicas y Asistencia Jurídica Voluntaria, ASOCLIVA*) and permanent lawyer for the *Servicio Clínico "24 de Julio"* ("July 24th" Service Clinic) of ASOCLIVA in Maracaibo, department of Zulia. Some of Barboza's professional activities have included defending peasants in a land dispute in Sur del Lago, Zulia department; investigating the trafficking of children by supposed religious organisations; providing legal representation to a Venezuelan family in an alleged illegal adoption of children by United States citizens; monitoring the petroleum unions' elections in Zulia (Barboza, along with the Attorney General, denounced the electoral process as tending to favour groups intent on dominating independent unions); and advocating the protection of the *Sierra de Perijá* ecological system, home of the *Yucpas* and *Barí* indigenous peoples, from cattle ranchers and a government agency.

On 3 April 1990, Barboza was informed that the disciplinary tribunal of the Bar Association of Zulia department was initiating an inquiry into her professional activities. According to reports, she was not informed of the nature of the charges against her before appearing before the tribunal and was denied access to an attorney.

Local groups in Venezuela believe that the disciplinary inquiry was initiated to dissuade Barboza from pursuing her investigations. In the course of her work, Barboza has questioned powerful interest groups which have close ties with national and regional political parties. According to the Venezuelan Program on Human Rights Education and Action (*Programa Venezolano de Educación-Acción en Derechos Humanos, PROVEA*) several members of the Tribunal are implicated in Barboza's cases. On 23 April 1990, Barboza registered a complaint with the Attorney General's Human Rights Office requesting an investigation and the appointment of a prosecutor from the Public Ministry to guarantee the impartiality of the inquiry. Two ASOCLIVA lawyers, Miguel Santana Mujica and Guillermo Marsiglia, have assumed Barboza's defence.

In a letter dated 8 July 1991, Barboza informed the CIJL that the disciplinary tribunal was still in the process of formulating charges against her. She believes the attorney (*fiscal*) appointed by the Bar Association to investigate her actions has unduly prolonged the inquiry. In fact, a friend of the *fiscal* reportedly told Barboza that he was under continual pressure from other members of the tribunal to bring charges against her, and a representative of the tribunal informed Barboza that she would be convicted no matter what. Although the *Fiscalía General de la República* initially submitted a report stating that Barboza's rights had been violated, it has not given her any support since then. After continual harassment and pressure from members of the judiciary in Zulia department, Barboza was compelled to move to Caracas, where she continues to work on behalf of human rights.

VIETNAM

Nguyen Khac Chinh: lawyer and member of the Vietnamese Lawyers' Association. Nguyen Khac Chinh, who was arrested in December 1975, is believed to be currently held in detention at Nga Ba Ong Don, Trai Giam, Xuan Loc. He reportedly suffers from stomach ailments and weakness due to age. He has yet to be charged or tried.

Doan Thanh Liem: lawyer, allegedly detained for investigation in Ho Chi Minh City in April 1990, along with Do Ngoc Long, a finance expert, and Nguyen Van Tan, a former journalist. The three, along with Do Trung Hieu, an architect detained in Danang, were allegedly held in detention for their association with Michael Morrow, a U.S. businessman, and for their non-violent criticism of Vietnamese government policy. Morrow was reportedly held for questioning about alleged espionage activities and actions to destabilize the Government of Vietnam, both of which Morrow denies. In addition, Doan Thanh Liem was reportedly accused of helping to prepare a new constitution and of signing a petition to the Archbishop of Ho Chi Minh City, which urged a more critical attitude towards government policy. Although neither the legislation under which the four are held nor the charges are known, Amnesty International believes they may have been detained under Article 71 of the Criminal Procedure Code, which allows "temporary detention" for the purpose of investigation. The four detainees may have been denied access to relatives and legal counsel.

Doan Thanh Liem is reportedly being held at a villa, Cuong De, in Ho Chi Minh City. According to a person who was able to see him in February 1991, Doan Thanh Liem is seriously ill and although he cannot speak, he continues to be regularly interrogated.

YUGOSLAVIA

Since early 1990, the authorities of the Yugoslav Republic of Serbia have suspended or destroyed most of the institutions of the its constituent Autonomous Province of Kosovo. The government, legislature and other administrative organs have been dissolved. (Ethnic Albanians make up almost 90% of the Province of Kosovo. As Serbian domination of Kosovo increases, the Albanian population seeks either full republic status for the province or independence and union with Albania.) According to the opposition, some 75,000 persons have been dismissed from state employment since a 3 September 1990 general strike. Beginning in September 1990, the Serbian Assembly dismissed an estimated 300 judges, public prosecutors, public attorneys and social self-management attorneys of ethnic Albanian origin. According to the Pristina Council for Human Rights, this procedure was illegal as the officials were appointed by the (dissolved) Kosovo Assembly which alone is competent to order their removal according to procedures and on grounds established by law.

As a result of these dismissals, the judiciary and prosecutors offices in Kosovo are reportedly now staffed almost exclusively by Serbs and Montenegrins who together make up only about 10% of the province's population.

On 15 and 16 July 1991, the Serbian Assembly took a further major step by abolishing the Supreme Court of Kosovo as well as the Public Prosecutor's Office of Kosovo, transferring their functions to the Supreme Court and the Public Prosecutor's Office of Serbia, respectively.

According to the Official Journal of Serbia (*Sluzbenog glasnika SR Srbije*) number 53/90, the following 96 officials, all ethnic Albanians, were dismissed on 27 September 1990. No reason was given:

Tadej Rocici: President, Supreme Court of Kosovo
Saban Kajtazi: President, Labour Court of Kosovo
Hailil Iljazi: Judge, Supreme Court of Kosovo
Cerim Meta: Judge, Supreme Court of Kosovo
Adilj Fetahu: Judge, Supreme Court of Kosovo
Redzep Tarana: President, Labour Court of Djakovici
Naim Hljiti: Judge, Labour Court of Pristina
Eljez Hodza: Judge, Kosovo Supreme Court for Infractions (*Pokrajinskog veca za prekr-saje Kosova*)
Biljana Redzic: Judge, Kosovo Supreme Court for Infractions
Hilmi Piraj: Judge, Kosovo Supreme Court for Infractions
Bashkim Ljatifi: District Labour Court of Pristina
Seljatin Ahmeti: District Labour Court of Pristina
Adem Ajvazi: District Labour Court of Pristina
Muhamet Shala: District Labour Court of Pristina
Reshat Millaku: District Labour Court of Pristina
Dzevat Berisha: District Criminal Court of Pristina
Hilmi Zhitija: District Criminal Court of Pristina
Shefki Sylja: District Criminal Court of Pristina
Esat Shala: District Criminal Court of Peci
Avdurrahman Mulla: District Criminal Court of Peci
Hazir Avdiu: District Criminal Court of Peci
Refik Halili: District Criminal Court of Gnjilane
Ymer Huruglica: District Criminal Court of Gnjilane
Musa Mustafa: District Criminal Court of Gnjilane

Haki Lecaj: District Prosecutor of Pristina
Nedzat Ajro: Assistant Prosecutor of Pristina
Osman Kryeziu: Assistant Prosecutor of Pristina
Bademe Sllamniku: Assistant Prosecutor of Pristina
Sevdije Morina: Assistant Prosecutor of Pristina
Skender Morina: Assistant Prosecutor of Prizrenu
Sabit Malici: Assistant Prosecutor of Gnjilanu
Vahid Idrizi: Assistant Prosecutor of Gnjilanu
Fljamur Kelmendi: Assistant Prosecutor of Peci
Zyhra Ademi: Assistant Prosecutor of Mitrovici
Alji Aljiu: President, Communal Tribunal of Peci
Becir Bytyqi: President, Communal Tribunal of Vucitrnu
Aziz Podvorica: President, Communal Tribunal of Podujevo
Hadzi Derguti: President, Communal Tribunal of Klini
Memin Sylja: President, Communal Tribunal of Kamenici
Ramadan Avdiu: President, Communal Tribunal of Vitini
Ekrem Pira: President, Communal Tribunal of Vitini
Emin Mustafa: Judge, Communal Tribunal of Mitrovici
Kojicn Velija: President, Communal Tribunal of Dragaau
Dzevat Abazi: Judge, Communal Tribunal of Mitorovici
Kadri Sylja: Judge, Communal Tribunal of Gnjilanu
Sefcet Dzeljilji: Judge, Communal Tribunal of Gnjilanu
Masar Morina: Judge, Communal Tribunal of Gnjilanu
Seljim Berisha: Judge, Communal Tribunal of Peci
Haki Ademaj: Judge, Communal Tribunal of Peci
Dzeljilj Radonici: Judge, Communal Tribunal of Peci
Cemajlj Zubi: Public Prosecutor, Djakovici
Hasan Sadiku: Public Prosecutor, Gnjilanu
Iljaz Sahiti: Public Prosecutor, Gnjilanu
Haj riz Ljubistani: Public Prosecutor, Gnjilanu
Naser Musaj: Public Prosecutor, Peci
Gëzim Baljoku: Public Prosecutor, Peci
Sadri Mucaj: Public Prosecutor, Prizrenu
Haljit Dragaj: Public Prosecutor, Mitrovici
Haljilj Redza: Public Prosecutor, Mitrovici
Osman Mehmeti: Public Prosecutor, Podujevu
Baki Krasnici: President, High Court for Infractions (*Opstinskogveca za prekrasaje*), Pristina
Alji Ljatifi: Judge, High Court for Infractions, Pristina
Zene Ij Hajdari: Judge, High Court for Infractions, Pristina
Iljaz Kryeziu: President, High Court for Infractions, Gnjilane
Dzemsit Dzemsiti: Judge, High Court for Infractions, Gnjilane
Dran Simoni: Judge, High Court for Infractions, Vitini
Sherif Sherifi: Judge, High Court for Infractions, Vitini
Idriz Sylja: Judge, High Court for Infractions, Vitini
Sabri Seljmani: Judge, High Court for Infractions, Mitrovici
Elhami Keljmendi: Judge, High Court for Infractions, Mitrovici
Haljilj Derguti: Judge, High Court for Infractions, Mitrovici
Naim Murselji: Judge, High Court for Infractions, Mitrovici
Emrush Potoku: Judge, High Court for Infractions, Vucitrnu
Avni Madzuni: Judge, High Court for Infractions, Vucitrnu
Jashar Sinani: Judge, High Court for Infractions, Liljpljane

Merushe Lugici: Judge, High Court for Infractions, Lipljane
Bedri Berisha: President, High Court for Infractions, Kacaniku
Isa Demaku: President, High Court for Infractions, Decane
Isljam Musa: President, High Court for Infractions, Urosevcu
Daljip Bega: Judge, High Court for Infractions, Urosevcu
Ramadan Shabani: Judge, High Court for Infractions, Urosevcu
Idriz Eljsani: President, High Court for Infractions, Suvoj Reci
Basic Ajsa: Judge, High Court for Infractions, Suvoj Reci
Skender Zarici: President, High Court for Infractions, Glogovcu
Rifat Ismajli: Judge, High Court for Infractions, Srbici
Azamaine Nimani: Judge, High Court for Infractions, Srbici
Aqif Tahiri: Judge, High Court for Infractions, Srbici
Ragip Bajro: President, High Court for Infractions, Dragasu
Gani Keljmendi: President, High Court for Infractions, Peci
Jusuf Veljiu: Judge, High Court for Infractions, Kamenici
Shaban Spahiu: Judge, High Court for Infractions, Kamenici,
Saljih Dzekaj: Judge, High Court for Infractions, Decane
Sefedin Bajraktari: Judge, High Court for Infractions, Dragasu
Muska Fazlija: State lawyer for labour affairs, (*Opstinskog javnog pravobranioca*), Dragasu
Miriman Vehapi: State lawyer for labour affairs, Dragasu
Hasan Përvetica: State lawyer for labour affairs, Poedujevo

The following 71 officials were removed by the Serbian Assembly on 26 November 1990 according to the Official Journal of Serbia (*Sluzbenog glasnika SR Srbije*) 112/90 of 3 December 1990. No reasons were given. All are ethnic Albanians. On the same day, 39 judges were reportedly named to fill some of the vacated posts: all but one were Serbs:

Haljilj Keljmendi: Judge, Supreme Court of Kosovo
Haljilj Haljiljaj: Judge, Supreme Court of Kosovo
Suzana Sejdiu: Judge, District Economic Court of Pristina
Lirije Coku: Judge, District Economic Court of Pristina
Burbucé Hatipi: Judge, District Economic Court of Pristina
Vjolca Canhasi: Judge, District Economic Court of Pristina
Garajfilja Bytyçi: Judge, District Economic Court of Pristina
Hazbije Ramadani: Judge, District Economic Court of Pristina
Nezir Bytyçi: Judge, District Economic Court of Pristina
Meliha Gashi: Judge, District Economic Court of Pristina
Osman Tmava: Judge, District Court of Mitrovici
Nuhi Uka: President, District Court of Pristina
Xhavit Krasnici: Judge, District Court of Pristina
Veton Kajtazi: Judge, District Court of Pristina
Shemsije Sheholli: Judge, District Court of Pristina
Sanije Muçolli: Judge, District Court of Pristina
Ibrahim Maxhuni: Judge, District Court of Pristina
Fehmi Shala: Judge, District Court of Pristina
Ramiz Krasniqi: Judge, District Court of Pristina
Rexhep Fusha: Judge, District Court of Podujevu
Shaban Ganiu: Judge, District Court of Podujevu
Bedri Krasniqi: Judge, District Court of Podujevu
Muharrem Sadiku: Judge, District Court of Podujevu

Rrahman Ratkoceri: Judge, District Court of Lipljanu
Ekrem Agushi: Judge, District Court of Lipljanu
Besim Kolshi: Judge, District Court of Lipljanu
Shaqir Behrami: President, District Court of Glogovcu
Sefer Gjekaj: Judge, District Court of Glogovcu
Avdi Haxhaj: Judge, District Court of Glogovcu
Arif Hasani: Judge, District Court of Glogovcu
Ibrahim Dobruna: Judge, District Court of Glogovcu
Rifat Abdullahu: President, District Court of Urosevcu
Isak Neziri: Judge, District Court of Urosevcu
Abdurrahim Islami: Judge, District Court of Urosevcu
Habib Livoreka: President, District Court of Kacaniku
Vehbi Kashtanjeva: Judge, District Court of Kacaniku
Mustafe Dardhishta: Judge, District Court of Kacaniku
Fatmir Bajraktari: Judge, District Court of Kacaniku
Jashar Kabashi: President, District Court of Suvoj Reci
Xhevdet Elshani: Judge, District Court of Suvoj Reci
Sadik Kuçi: Judge, District Court of Suvoj Reci
Hashim Qollaku: Judge, District Court of Prizrenu
Hezer Dumja: Judge, District Court of Prizrenu
Emrush Kastrati: President, District Court of Malisevu
Dibran Bucaj: Judge, District Court of Malisevu
Imer Krasnici: Judge, District Court of Malisevu
Faik Halilaj: Judge, District Court of Malisevu
Demush Krasnici: Judge, District Court of Malisevu
Rasim Zllonoga: Judge, District Court of Orahovcu
Agim Metbala: Judge, District Court of Orahovcu
Sylë Lokaj: President, District Court of Decane
Safete Tolaj: Judge, District Court of Decane
Hasan Riza: Judge, District Court of Decane
Haki Balaj: Judge, District Court of Decane
Bedri Goranci: Judge, District Court of Klini
Avdullah Mecinaj: Judge, District Court of Serbici
Kojcin Velija: President, District Court of Gori
Adem Sefedini: Judge, High Court for Infractions, Urosvecu
Isuf Hakiu: Judge, High Court for Infractions, Urosevcu
Imri Sejda: Judge, High Court for Infractions, Urosevcu
Azem Marmullaku: Judge, High Court for Infractions, Klini
Augustin Lazraj: Judge, High Court for Infractions, Klini
Ramush Ademi: Judge, High Court for Infractions, Gnjilanu
Mirvete Ismajlji: Judge, High Court for Infractions, Gnjilanu
Emine Salihu: Judge, High Court for Infractions, Gnjilanu
Naser Krasniqi: Judge, High Court for Infractions, Kacaniku
Selim Idrizi: Judge, High Court for Infractions, Kacaniku
Beqir Halilji: Judge, High Court for Infractions, Vucitrnu
Bajro Ragip: Judge, High Court for Infractions, Gori
Sudan Gorani: Judge, District Court, Peci
Hidajete Veseli: Judge, District Court, Peci

On 28 December 1990, the following 9 ethnic Albanian judges were removed according to the Official Journal of Serbia of 31 December 1990.

Gani Avdiu: Judge, Communal Tribunal of Srbici
Ramadan Jashari: Judge, Infractions Court of Pristina
Mejreme Zekaj: Judge, Infractions Court of Pristina
Mustafa Selimi: Judge, Infractions Court of Pristina
Faik Hoxha: Judge, Infractions Court of Pristina
Ljushe Camaj: Judge, Infractions Court of Pristina
Ilaz Krasniqi: Judge, Infractions Court of Pristina
Havaja Ahmetaj: Judge, Infractions Court of Pristina
Dalip Krasniqi: Judge, Infractions Court of Orahovcu

The same day, the following prosecutors were dismissed:

Shahin Bajgora: Deputy Prosecutor of Kosovo
Ismet Ujkani: Communal Prosecutor of Mitrovici
Ali Demii: Communal Prosecutor of Orahovcu
Elez Berisha: Communal Prosecutor of Istogu

Isa Demukaji judge (see above), **Pashk Kuqi**, lawyer, director of town council **Nijazi Hillaj**, lawyer and legal advisor to Decane town administration **Xhevedet Lataj**, lawyer **Isat Muskolaj**, investigating judge **Zeqir Ramosaj** lawyer, secretary to town council. On 10 November 1990, these six lawyers from Decane, Yugoslavia were arrested and detained. The six, all ethnic Albanians and local officials in the town council of Decane, wrote a draft statute for the town council of Decane, based on the "Constitution of the Republic of Kosovo." The Constitution of Kosovo was adopted by ethnic Albanian members of the dissolved Kosovo Parliament on 7 September 1990. The authorities of the Republic of Serbia, of which Kosovo province is a constituent part, have denounced the latter document as void and illegal. In a related action, on 21 December, 17 ethnic Albanian judges from the town of Pec in Kosovo were dismissed. Among the 17 were several judges who had refused to try a group of ethnic Albanians accused of political crimes.

The lawyers were charged under Article 116(2) and 138 of the Yugoslav Federal Criminal Code as having "made preparations for an attempt to change the borders within Yugoslavia in an unconstitutional way." At the time of their arrest, the six were dismissed from their positions in the town council. The trial was adjourned immediately after it started on 11 February, after the lawyers challenged the composition of the court. On 13 March the trial was resumed and ended the next day. All six were found guilty as charged and sentenced as follows: Mushkolaj: four years and six months imprisonment; Lataj: four years; Ramosaj: four years; Demukaj: two years and six months; Kuqi: three years; and Hylaj: two years. The six were released from detention and will remain free awaiting the outcome of their appeal.

Idriz Gervalla: lawyer. On 21 March 1991, Gervalla was arrested in his home and taken before a local magistrate's court where he was sentenced to 60 days imprisonment for "having caused disruption to public order." As a lawyer, Gervalla has acted as defence counsel in various political trials of ethnic Albanian citizens of Kosovo. Gervalla had been previously arrested and held in detention in December 1990 after police searched his home and found a supply of copies of the Albanian-language magazine *Alternativa*.

Eva Brantley: U.S.-based human rights lawyer. On 2 July 1990, Brantley, who is blind, was detained by police and questioned for several hours about her activities in Yugoslavia on behalf of the Boston-based International Human Rights Law Associates. Serbian officials blocked entry to the building where a meeting between Brantley and local hu-

man rights activists to investigate trade union rights violations was to occur. The meeting was held outside, where several armed police officers approached Brantley and requested that she accompany them to the police station for questioning. During questioning, Brantley's British passport was confiscated and her seeing-eye dog kicked causing it serious injuries. When Brantley's passport was returned, her U.S. permanent resident card was missing and she was informed that she had to leave Yugoslavia immediately and would be *persona non grata* for three years.

Basic Principles on the Role of Lawyers

The Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, at its meeting in Havana, Cuba, from 27 August to 7 September 1990 adopted by consensus Basic Principles on the Role of Lawyers.

In its resolution 45/121 of 14 December 1990, the General Assembly "welcomed" the instruments adopted by the Congress and invited "Governments to be guided by them in the formulation of appropriate legislation and policy directives and to make efforts to implement the principles contained therein ... in accordance with the economic, social, legal, cultural and political circumstances of each country." In resolution 45/166 of 18 December 1990, the General Assembly welcomed the Basic Principles in particular, inviting Governments "to respect them and to take them into account within the framework of their national legislation and practice."

BASIC PRINCIPLES ON THE ROLE OF LAWYERS

Whereas in the Charter of the United Nations the peoples of the world affirm, *inter alia*, their determination to establish conditions under which justice can be maintained, and proclaim as one of their purposes the achievement of international co-operation in promoting and encouraging respect for human rights and fundamental freedoms without distinction as to race, sex, language, or religion,

Whereas the Universal Declaration of Human Rights enshrines the principles of equality before law, the presumption of innocence, the right to a fair and public hearing by an independent and impartial tribunal, and all the guarantees necessary for the defence of everyone charged with a penal offence,

Whereas the International Covenant on Civil and Political Rights proclaims, in addition, the right to be tried without undue delay and the right to a fair and public hearing by a competent, independent and impartial tribunal established by law,

Whereas the International Covenant on Economic, Social and Cultural Rights recalls the obligation of States under the Charter to promote universal respect for, and observance of, human rights and freedoms,

Whereas the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment provides that a detained person shall be entitled to have the assistance of, and to communicate and consult with, legal counsel,

Whereas the Standard Minimum Rules for the Treatment of Prisoners recommend, in particular, that legal assistance and confidential communication with counsel should be ensured to untried prisoners,

Whereas the Safeguards Guaranteeing Protection of Those Facing the death penalty reaffirm the right of everyone suspected or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings, in accordance with article 14 of the International Covenant on Civil and Political Rights,

Whereas the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power recommends measures to be taken at the international and national levels to improve access to justice and fair treatment, restitution, compensation and assistance for victims of crime,

Whereas adequate protection of the human rights and fundamental freedoms to which all persons are entitled, be they economic, social and cultural, or civil and political, requires that all persons have effective access to legal services provided by an independent legal profession,

Whereas professional associations of lawyers have a vital role to play in upholding professional standards and ethics, protecting their members from persecution and improper restrictions and infringements, providing legal services to all in need of them, and co-operating with governmental and other institutions in furthering the ends of justice and public interest,

The Basic Principles on the Role of Lawyers, set forth below, which have been formulated to assist Member States in their task of promoting and ensuring the proper role of lawyers, should be respected and taken into account by Governments within the framework of their national legislation and practice and should be brought to the attention of lawyers as well as other persons, such as judges, prosecutors, members of the executive and the legislature, and the public in general. These principles shall also apply, as appropriate, to persons who exercise the functions of lawyers without having the formal status of lawyers.

Access to lawyers and legal services

1. All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings.

2. Governments shall ensure that efficient procedures and responsive mechanisms for effective and equal access to lawyers are provided for all persons within their territory and subject to their jurisdiction, without distinction of any kind, such as discrimination based on race, colour, ethnic origin, sex, language, religion, political or other opinion, national or social origin, property, birth, economic or other status.

3. Governments shall ensure the provision of sufficient funding and other resources for legal services to the poor and, as necessary, to other disadvantaged persons. Professional associations of lawyers shall co-operate in the organization and provision of services, facilities and other resources.

4. Governments and professional associations of lawyers shall promote programmes to inform the public about their rights and duties under the law and the important role of lawyers in protecting their fundamental freedoms. Special attention should be given to assisting the poor and other disadvantaged persons so as to enable them to assert their rights and where necessary call upon the assistance of lawyers.

Special safeguards in criminal justice matters

5. Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence.

6. Any such persons who do not have a lawyer shall, in all cases in which the interests of justice so require, be entitled to have a lawyer of experience and competence commensurate with the nature of the offence assigned to them in order to provide effective legal assistance, without payment by them if they lack sufficient means to pay for such services.

7. Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention.

8. All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.

Qualifications and training

9. Governments, professional associations of lawyers and educational institutions shall ensure that lawyers have appropriate education and training and be made aware of the ideals and ethical duties of the lawyer and of human rights and fundamental freedoms recognized by national and international law.

10. Governments, professional associations of lawyers and educational institutions shall ensure that there is no discrimination against a person with respect to entry into or continued practice within the legal profession on the grounds of race, colour, sex, ethnic origin, religion, political or other opinion, national or social origin, property, birth, economic or other status, except that a requirement, that a lawyer must be a national of the country concerned, shall not be considered discriminatory.

11. In countries where there exist groups, communities or regions whose needs for legal services are not met, particularly where such groups have distinct cultures, traditions or languages or have been the victims of past discrimination, Governments, professional associations of lawyers and educational institutions should take special measures to provide opportunities for candidates from these groups to enter the legal profession and should ensure that they receive training appropriate to the needs of their groups.

Duties and responsibilities

12. Lawyers shall at all times maintain the honour and dignity of their profession as essential agents of the administration of justice.

13. The duties of lawyers towards their clients shall include:

- (a) Advising clients as to their legal rights and obligations, and as to the working of the legal system in so far as it is relevant to the legal rights and obligations of the clients;
- (b) Assisting clients in every appropriate way, and taking legal action to protect their interests;
- (c) Assisting clients before courts, tribunals or administrative authorities, where appropriate.

14. Lawyers, in protecting the rights of their clients and in promoting the cause of justice, shall seek to uphold human rights and fundamental freedoms recognized by national and international law and shall at all times act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession.

15. Lawyers shall always loyally respect the interests of their clients.

Guarantees for the functioning of lawyers

16. Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interfer-

ence; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

17. Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

18. Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.

19. No court or administrative authority before whom the right to counsel is recognized shall refuse to recognize the right of a lawyer to appear before it for his or her client unless that lawyer has been disqualified in accordance with national law and practice and in conformity with these principles.

20. Lawyers shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority.

21. It is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time.

22. Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential.

Freedom of expression and association

23. Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession.

Professional associations of lawyers

24. Lawyers shall be entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity. The executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference.

25. Professional associations of lawyers shall co-operate with Governments to ensure that everyone has effective and equal access to legal services and that lawyers are able, without improper interference, to counsel and assist their clients in accordance with the law and recognized professional standards and ethics.

Disciplinary proceedings

26. Codes of professional conduct for lawyers shall be established by the legal profession through its appropriate organs, or by legislation, in accordance with national

law and custom and recognized international standards and norms.

27. Charges or complaints made against lawyers in their professional capacity shall be processed expeditiously and fairly under appropriate procedures. Lawyers shall have the right to a fair hearing, including the right to be assisted by a lawyer of their choice.

28. Disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court, and shall be subject to an independent judicial review.

29. All disciplinary proceedings shall be determined in accordance with the code of professional conduct and other recognized standards and ethics of the legal profession and in the light of these principles.

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ATTACKS ON JUSTICE

The Harassment and Persecution of Judges and Lawyers

Fundamental human rights and liberties are best guaranteed in a society where the judiciary enjoys freedom from political interference and pressure and where lawyers are free to take up all cases – even unpopular ones – without fear of reprisal.

This is the third annual report by the Centre for the Independence of Judges and Lawyers cataloguing the harassment and persecution of judges and lawyers worldwide. It lists the cases of 532 jurists in 51 countries who have suffered reprisals between 1 June 1990 and 31 May 1991 for carrying out their professional duties. Of these, 55 were killed, 103 were detained, 8 were "disappeared," 42 were attacked, 65 received threats of violence and 234 were professionally sanctioned (by disbarment, removal from the bench, or travel restrictions).

The report also describes some of the structural problems faced by lawyers and bar associations across the world, and looks, in selected cases, at infringements on the independence of the judiciary.

As this third report again demonstrates, many governments attempt to undermine the judiciary when it seeks to preserve the rule of law. In all too many countries, lawyers risk their liberty and even their lives when they carry out their professional obligations.

INTERNATIONAL COMMISSION OF JURISTS