Attacks on Justice

The Harassment and Persecution of Judges and Lawyers

June 1992 - June 1993

Centre for the Independence of Judges and Lawyers
Geneva - Switzerland

Editor: Mona A. Rishmawi

Established in 1978 by the International Commission of Jurists in Geneva, the Centre for the Independence of Judges and Lawyers:

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

In pursuing these goals, the CIJL:

- works with the United Nations in setting standards for the independence of judges and lawyers. The CIJL was instrumental in the formulation of the UN Basic Principles on the Independence of the Judiciary and the UN Basic Principles on the Role of Lawyers endorsed by the UN General Assembly;
- organizes 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. National workshops have been organized in Cambodia, India, Nicaragua, Pakistan, Paraguay and Peru;
- sends missions to investigate situations of concern, or the status of the bar and judiciary, in specific countries;
- provides technical assistance to strengthen the judiciary and the legal profession;
- publishes a Yearbook in English, French and Spanish. It contains articles and documents relevant to the independence of the judiciary and the legal profession. Over 5,000 individuals and organizations in 127 countries receive the CIJL Yearbook;
- publishes a yearly report on "Attacks on Justice: The Harassment and Persecution of Judges and Lawyers" world-wide.

Appeals Network

Jurists and their organizations may join the world-wide network which responds to CIJL appeals by intervening with government authorities in cases in which lawyers or judges are being harassed or persecuted.

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INTRODUCTION

Fundamental human rights and liberties can only be preserved in a society where the judiciary and the legal profession enjoy freedom from interference and pressure. In its fifth year, *Attacks on Justice*, the annual report of the Centre for the Independence of Judges and Lawyers (CIJL), demonstrates that in too many countries of the world, violence against individual judges and lawyers continues to escalate. While cases of individual jurists remain our focus, the report attempts to examine them within the context of a country's legal system. Over the years, the report has devoted more attention to legal systems themselves. This year, *Attacks on Justice* assesses the level of respect for judicial and legal independence in most of the countries mentioned.

The report was presented before the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities. Since 1989, the UN Sub-Commission has given special attention to monitoring attacks against the judiciary and the legal profession. The French expert in the UN Sub-Commission has produced four excellent successive reports indicating measures taken by states to strengthen or weaken judicial and legal independence. This year, the Sub-Commission recommended that its parent body, the Commission on Human Rights, appoint a Special Rapporteur on the Independence of the Judiciary and the Legal Profession. This recommendation will come before the February 1994 meeting of the Commission for adoption. The CIJL welcomed the recognition by the United Nations that the independence of the judiciary is a principal core of the legal protection of human rights.

Trends in 1992-1993

This year's *Attacks on Justice* catalogues the cases of 352 jurists in 54 countries who have suffered reprisals for carrying out

their professional functions. Of these, 32 were killed, 3 were "disappeared," 34 were attacked, 81 received threats of violence, 95 were detained, and 107 were professionally sanctioned. This violence has been carried out not only by governments, but also by opposition groups, land-owners, guerrilla, and para-military groups.

A particularly sad event this year was the death of Orton Chirwa on 20 October 1992. Chirwa, the first African barrister in Malawi, died in his cell after 11 years in prison. Orton Chirwa and his wife Vera, the first Malawian woman lawyer, were unfairly tried before a traditional court for opposing the regime of Life President Banda. The CIJL hopes that the recent efforts made in Malawi to move to a multi-party system will help to enhance the independence of the judiciary in this country.

The report finds that in Colombia alone, 18 jurists were killed, 10 received death threats, 7 were kidnapped, and 3 were tortured. Colombia has traditionally experienced widespread violence. Although the Colombian government has set up several supervisory and investigative organs over the last two years, attacks against judges and lawyers continue to occur with impunity.

In Haiti, pro-democracy lawyers and judges have been tortured, attacked and killed. The CIJL sincerely hopes that the UN plan to restore democracy in this country will help to pull the judiciary out of this tragic phase.

Death threats against human rights lawyers continue to occur in an attempt to deter these lawyers from carrying out their professional duties. This trend particularly increased in Northern Ireland. Thirty-nine lawyers have been subjected to threats and intimidation by the police this year, in contrast with 11 such reported cases last year. The CIJL had to withhold the names of these lawyers for fear of reprisals. The government's failure to resolve the case of Patrick Finucane, a leading human rights

lawyer murdered in February 1989, maintains our concern over the safety of these lawyers. Jurists receive threats also in Sri Lanka, Argentina and Brazil.

In many countries of the world, lawyers are punished for their human rights work. In Mauritania, for instance, twenty-three defence lawyers are facing harassment by the government, including excessive taxation and severing of contracts with governmental bodies, because they are fighting against the impunity granted to several military officers who were involved in executing more than 500 black Mauritanians between 1989 and 1992.

In Turkey, lawyers associated with the People's Legal Aid Bureau are being detained and tried. The CIJL is observing the trial of six such lawyers. Lawyers affiliated with the Turkish Human Rights Association are also targeted. The chairman of this Association in Elazig, lawyer Metin Can, was killed in February of this year. Jurists are also arbitrarily detained in Nigeria, Cameroon, Ghana and Indonesia.

Judicial dismissals and removal from office were also a frequent occurrence. In Guatemala, as a result of President Serrano Elias's coup d'état in May 1993, the justices of the Supreme Court were placed under house arrest. The Supreme Court and the Congress were then dissolved. Due to domestic and international pressure, Guatemala elected a human rights lawyer as its new Head of State. The justices returned to their offices. Judicial officers are dismissed or removed from office also in Albania and Argentina. Honduras subjects some of its judges to governmental pressure.

The February 1993 presidential elections posed unprecedented challenge to judicial neutrality in Senegal. Justice Kéba Mbaye, the president of the Constitutional Council, resigned, and the Vice-President was assassinated apparently by the opposition.

The treatment of women within the judiciary is a matter of concern. Iran and several other countries in the Middle East do not permit women to enter the judiciary. Sudan has dismissed female judges.

Apart from the treatment of individual jurists, the report pays special attention to the context in which violations of legal and judicial independence occur. This is because we believe that structural defects in legal systems continue to hinder legal and judicial independence. The UN Basic Principles on the Role of Lawyers states that lawyers are entitled to form and join self-governing professional associations. However, in several countries, lawyers are prevented from enjoying this right. In Sudan and Syria, there are restrictions imposed by not only the executive, but also by the ruling party. The majority of lawyers boycotted the 11 March 1993 elections of the Sudanese Bar due to restrictions imposed by the Registrar of Trade Unions. Syrian lawyers are prohibited from freely joining Arab or international jurists organizations without permission from the Ba'ath Party. Human rights lawyers continue to be imprisoned in these two countries.

In the Israeli Occupied West Bank, lawyers are not allowed to organize themselves in a recognized independent bar association. Since 1967, the Israeli Military Officer in Charge of the Judiciary continues to select, promote and dismiss judges. Human rights lawyers continue to suffer from the sweeping power granted to the Israeli soldiers to restrict freedoms.

In many countries, judicial independence is undermined by the creation of special courts to deal with terrorism and violent political opposition. The governments of these countries claim that special courts speed up the judicial process and provide greater protection to judges. As stated in Article 5 of the UN Basic Principles on the Independence of the Judiciary, however, "tribunals that do not use the duly established procedures in the legal process shall not be created to displace the jurisdiction

belonging to the ordinary courts...." Justice requires that every person be entitled to a fair and public hearing by a competent, independent and impartial tribunal.

In Algeria, in addition to military courts, a 30 September 1992 anti-terrorism law created special courts, presided over by civil judges appointed by the President of the Republic. Of particular concern is that the courts hold *in camera* trials. Not only are the names of the judges not released, but the anti-terrorism law makes it a crime to release their identities. Thus, there is no way to ensure that the trials are conducted by qualified, independent and impartial judges.

Similarly, in Peru, recently defined crimes of treason and terrorism are tried by hooded judges in secret military tribunals using summary proceedings. In Colombia, judges in special courts are given anonymity. Trials are closed to the public. The government claims that this system was devised to prosecute large offenders, evidence shows that these courts have mainly tried small-scale coca producers, student leaders or peasants.

The Efforts of the CIJL in 1992-93

In 1978, the CIJL was established to respond to the growing number of attacks on judges and lawyers. Since then, the CIJL has sought to develop practical mechanisms to promote and protect judicial and legal independence. In addition to having been instrumental in the adoption of the 1985 UN Basic Principles on the Independence of the Judiciary and the 1990 UN Basic Principles on the Role of Lawyers, the CIJL intervenes with governments in particular cases involving the persecution of jurists, organizes conferences and seminars, sends missions to countries and observers to trials, and publishes reports. The following is a list of examples of CIJL activities over the last twelve months.

Individual Cases: Alerts and Interventions

Attacks on Justice is the annual culmination of the CIJL's work on individual cases of harassment and persecution of judges and lawyers. As the most serious cases come to our attention, we act immediately by contacting the respective government with our concerns and request that the violation be remedied. Over the last twelve months, the CIJL has contacted many of the countries listed in this year's report.

When appropriate, the CIJL makes its concern public and issues a *CIJL Alert.* The *Alert* is distributed to a network of judges' and lawyers' associations, the international press, and various human rights organizations, as well as to other interested groups and individuals. The CIJL reserves the use of *Alerts* for the most grave cases in which the response of our network is the most appropriate course of action.

Trial Observation

The CIJL sends international observers to important trials of judges and lawyers prosecuted for their professional activities. In other trials, not involving judges or lawyers as parties, the CIJL focuses on the principles of the independence of the judiciary and monitors whether these principles are applied. This year, for example, the CIJL observed the trials of six Turkish lawyers who were indicted in November 1992 in connection with their representation of persons accused of membership in an outlawed organization (see the chapter on Turkey). It has been alleged that evidence in support of their indictment was derived from coerced statements of detainees.

CIJL Yearbook

Published in April, the second volume of the CIJL Yearbook is devoted to an analysis of the legal protection of lawyers. This issue provides a forum for several distinguished lawyers from all

over the world to evaluate this protection at the national and international levels. The countries discussed include India, Egypt, Belgium and Cambodia. Special attention is given to how legal protection, or the lack thereof, affects the lawyer's role to protect human rights.

Technical Assistance and Missions

From 5 to 23 July, the CIJL held a Seminar on Judicial Functions and Independence in Cambodia. The Seminar was a three-week technical assistance programme for 56 potential judges of the Supreme Court and the Court of Appeals likely to serve under the newly elected government. The Seminar aimed to lay the groundwork on which to build an impartial Cambodian judiciary and to introduce the concept of judicial independence.

Over the three weeks, the CIJL brought seven prominent judges and lawyers representing the major legal systems of the world to Phnom Penh to lead the Seminar. The instructors covered a wide range of criminal, civil and constitutional law and procedure in order to further the legal education of the participants and to illustrate how an independent court functions in different situations. Subjects included, for example, the Rule of Law, the separation of powers, court structure, criminal procedure, appellate court decision making, and judicial review. Introductory lectures on specific topics were followed by spirited discussion in plenary and in small working groups. Instructors also conducted role playing and moot court exercises to further develop the concepts presented.

At the close of the Seminar, the 56 participants made a Final Declaration. The Final Declaration of the Seminar emphasizes the importance of the complete separation of powers in Cambodia; the judiciary should be free from not only direct pressure, but from all forms of intimidation, harassment and persecution. It stresses the importance of the presumption of innocence and that judges should not be members of political

parties. In the Final Declaration, the participants also list their problems and shortcomings, and propose possible ways to remedy them.

Our work is made possible by the efforts of legal and human rights organizations and dedicated individuals on the local, national and regional levels. In fact, the best way to protect both the ideals of the legal profession and the lives of legal professionals is through international solidarity. The CIJL hopes that the fifth-annual *Attacks on Justice* helps to bring the legal profession one step closer to mutual understanding and protection.

Mona A. Rishmawi
CIJL Director
August 1993

AFGHANISTAN

In the past year, the political situation in Afghanistan was in a state of flux. In April, the former President resigned when groups of armed Mujahideens took over the capital city of Kabul, and, since then, there have been several changes in leadership.

The scant reports that are available indicate that the Rule of Law has broken down along with uniformity in the legal system. In May, the government declared all laws void that did not conform to Islamic tenets and proceeded to set up Islamic courts. It appears that many individuals have received the death sentence in these courts without a right of appeal and following rapid trials conducted *in camera.*

The government issued a general amnesty in April 1992 for former government members. Nonetheless, it has been unable to enforce such guarantees, and former officials and prominent figures have suffered attacks and were the victims of revenge killings despite the amnesty.

Abdul Karim Shadan: Former Chief Justice. The judge was reportedly kidnapped, tortured and killed on 3 May 1992, in reprisal for his activities with the previous government.

ALBANIA

An interim government was replaced by one led by President Sali Berisha after elections held in March of 1992. The Berisha Government appointed a commission to draft a Constitution; in the meantime, the 1991 Law on Major Constitutional Provisions has served as the only stable legal foundation of the government. This law has not prevented Parliament and the President from enacting repressive legislation. Many new statutory laws encroach on basic freedoms. For example, in 1992, Parliament created the Rapid Deployment Force and gave its officers broad authority to use force to restore public order and combat vandalism. The law also permits Force members wide latitude in conducting searches of homes, offices and vehicles and has led to intrusions on fundamental liberties. Force members may take anyone into custody who refuses upon request to identify him- or herself.

Similarly, Parliament enacted a statute governing weapons possession that also affords police nearly unlimited authority to search homes at any time. Parliament passed legislation that banned ethnically based parties from participating in the elections held in March. New statutory laws were also introduced which gave employers wide-ranging discretion in hiring and firing.

The judiciary can provide only limited recourse to those victimized by reactionary legislation because the government has yet to permit full judicial independence in practice. The International Helsinki Federation for Human Rights reported widespread harassment of judges who disagree with President

Berisha's and other government officials' views. The two cases described below are illustrative of this point. It was reported that lawyers representing persons accused of misdeeds under the prior regime, or who are critical of the new one, are subject to public criticism.

Parliament has the ability to appoint or to dismiss judges of the newly created Constitutional Court, but other appointments are carried out by the Supreme Judicial Council. In the spring of 1992, a new law entered into force delineating parliamentary responsibilities and those of the Council in appointing and dismissing judges. Prior to enactment of this law, several judges of the higher courts from the former regime resigned in anticipation of being dismissed. Discussion surrounding the drafting of a new Constitution shows potential for future strengthening of the judiciary's independence; however, it is unclear when a draft might be finalized.

Anonymous Judge: Judge in Tirana, whose name was not available. The judge was dismissed from his position in August of 1992 after being reprimanded by the Supreme Judicial Council. This action was apparently a consequence of the Berisha Government's opposition to the judge's decision to release a defendant-judge on bail. The judge was reinstated after several other judges exerted pressure on the government. In addition to successfully demanding a meeting with the President on the matter, the judges essentially conducted a work stoppage in protest.

It has been reported that dismissals by the Supreme Judicial Council have become a common method of sanctioning judges for decisions with which the Council disagrees. Drafts of the new Constitution, however, would permit life tenure for judges.

Maksim Haxhia: Former Attorney General, professor of law and chair of the Albanian Bar Association. Haxhia was fined and relieved of his duties as Attorney General. When he attempted to leave the country to attend legal conferences, the authorities confiscated his passport. According to Haxhia, these actions reportedly resulted from a parliamentary vote of no confidence taken after Haxhia became a vocal critic of the parliamentary law governing weapons possession for the broad discretion it gives to Albanian police to conduct warrantless searches of private homes (see above). Haxhia attacked the law as unconstitutional and was subsequently accused of overstepping the mandate of his office as Attorney General. He has also been a critic of excessive use of force by police. In addition to his dismissal, he has not been permitted to return to his former position as a professor of criminal law at the University of Tirana, where he was also the vice-dean of the law faculty. Haxhia has apparently claimed that the discharge also related to longstanding governmental hostilities provoked by Haxhia's refusal to seek the arrest and prosecution of persons against whom there was inadequate evidence to support a charge.

Parliamentarians have criticized Haxhia for his allegedly derogatory remarks concerning the justice system in Tirana. The Parliament claims, however, that the action against Haxhia was linked to its perception that Haxhia was not acting swiftly enough to investigate former government officials suspected of having committed crimes under the previous regime and that he was lax in carrying out other prosecutions. Radio reports stated that Haxhia was being discharged because of, among other things, his lack of objectivity and general sluggishness in prosecuting cases, particularly one involving servicemen from Sazan Island.

Albanian law prohibits the dismissal of an Attorney General except in cases of mental incompetence or serious criminal misconduct. Haxhia challenged his dismissal, but the Albanian Constitutional Court dismissed the case on grounds that Parliament's action constituted a legitimate exercise of its

authority to control the activities of the Office of the Attorney General. Subsequent to the dismissal, parliamentary deputies brought criminal charges against Haxhia for allegedly falsifying documents in connection with the appointment of several prosecutors. Radio reports purported that Haxhia had manipulated one or more of the appointments by unilaterally choosing prosecutors instead of allowing the decision to be made by the proper body, the Supreme Judicial Council. Further, it was claimed that Haxhia then untruthfully reported to Parliament that the decision had been made by the proper council.

Prior to the trial of 5 December 1992, Haxhia was kept under surveillance. He was convicted at trial and fined approximately a half-month's pay. The trial contravened international standards; it was a closed proceeding and rules of evidence were unevenly applied. Pursuant to the Albanian Law on Major Constitutional Provisions, all trials are to take place in public unless that would require revelation of information affecting national security. Moreover, the court ignored the defence when it sought to allow certain witnesses to testify and to issue subpoenas; more specifically, Haxhia attempted to call members of the Supreme Judicial Council in an effort to show that they had indeed known of the prosecutorial appointments. The trial court denied these requests.

ALGERIA

Algeria adopted its current constitution in 1989, creating a one-party executive, headed by the National Liberation Front (FLN) and a multiparty parliament. After the first round of National Assembly elections in 1991, however, in which the Islamic Salvation Front (FIS) prevailed, President Chadli Bendjedid was forced by the army and various government factions to resign. The new government cancelled the parliamentary elections and declared the FIS illegal.

A state of emergency has existed in Algeria since February 1992. Since the declaration of emergency rule, thousands have been detained in camps without benefit of counsel or due process. The Islamic Salvation Front has been carrying out violent attacks against the government and its supporters, which have led to numerous deaths, including the death of former President Mohammed Boudiaf.

The Military Court System

The Algerian legal system includes Military Courts which are controlled by the Direction of Military Justice of the National Defence Minister. According to Article 25 of the Military Justice Code, these courts have jurisdiction over crimes committed by military personnel as well as crimes committed by civilians against the security of the state. In contrast to the Special Courts (see below), the names of Military Court judges are made public.

In 1989, before the events of January 1991, the Military Courts relinquished their competence and

sent pending cases to the ordinary criminal court system. The Military Courts were reactivated after 1991, however, and were given discretionary power to hear certain cases considered to be politically sensitive. Exemplary of this arbitrary exercise of jurisdiction is the Blida Military Court decision to hear the case of the leaders of the Islamic Salvation Front. The ICJ, denied entry into Algeria to observe the trial, criticized the judicial procedure in this case because the trial was conducted behind closed doors and also because it took place before the Military Court. The Military Court system, with its discretionary jurisdiction and its subordination to the executive, constitutes an exceptional court system in contravention of Article 5 of the UN Basic Principles on the Independence of the Judiciary.

The Anti-Terrorism Law

On 30 September 1992, the Government of Algeria issued a new anti-terrorism law, Legislative Decree 9203, which provided for a system of Special Courts. The provisions of the decree, which outlaws "crimes of terrorism," are vague and essentially prohibit all speech critical of the current regime. Article 1 declares subversive and terroristic "all behavior which infringes upon the security of the State, its territorial integrity, and the stability and functioning of its institutions, and which is geared to sow fear in the population and to create a climate of insecurity...."

Further, Article 5 provides that whoever reproduces or disseminates documents the content of which violates Article 1 is also in violation of the anti-terrorism law. The anti-terrorism law not only suppresses freedom of speech in Algeria, it has also

resulted, in one case, in holding a lawyer liable for the contents of a client's documents (see the case of Brahim Taouti below). This is in violation of Principle 18 of the UN Basic Principles on the Role of Lawyers, mandating that lawyers not be identified with their clients' causes.

The new law also extends the legal length of *incommunicado* detention from forty-eight hours to twelve days, without provision for access to counsel. According to Article 7 of the UN Basic Principles on the Role of Lawyers, governments must ensure that detainees have access to a lawyer no later than forty-eight hours from the time of arrest or detention.

Since both the anti-terrorism laws and the April amendment were issued by governmental decree, the National Union of Algerian Bar Associations was not consulted about the proposed changes in Algerian criminal procedure. The Algerian Bar opposed the amendment because it will greatly attenuate the already infringed-upon independence of the judiciary and the ability of lawyers to provide adequate defences for their clients.

The Special Courts

The anti-terrorism law provides for three Special Courts, with civil judges appointed by the President of the Republic. The decree's establishment of Special Courts contravenes Article 5 of the UN Basic Principles on the Independence of the Judiciary, which states that "[e]veryone shall have the right to be tried by ordinary courts or tribunals using established legal procedures." Of particular concern is the fact that the Special Courts hold *in camera* trials. Not only are the names of the judges not

released, but also Article 17 of the anti-terrorism law makes it a crime to reveal their identities. Thus, there is no way for the public to ensure that the trials are conducted by qualified, independent and impartial judges.

Hundreds of government opponents have been summarily tried in Special Courts, often without benefit of counsel; at least nineteen defendants have been sentenced to death by the Special Courts. Six of those condemned by the State Security Courts were executed earlier this year. On 2 August 1993, a Special Court sentenced seven more members of the FIS to death, bringing the number of those condemned to death to about 165. Six defendants in this case were tried *in absentia* for crimes "linked to acts of terrorism."

In April 1993, a new amendment to the anti-terrorism laws was issued to give the Special Courts even greater power in order to "reinforce the efficiency and the effectiveness" of the Courts. The authority of the Presidents of the Special Courts has been augmented, giving them the power to expel from court any lawyer who uses "dilatory and obstructionist manœuvers," and even the power to suspend the lawyer's professional activity for a period of three months to one year. The public prosecutor's office has also been given greater discretion. Such exorbitant and discretionary power given to the appointed heads of the Special Courts risks violating Article 16 of the UN Basic Principles on the Role of Lawyers, which states that "[g]overnments shall ensure that lawyers ... are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference...."

Lawyers' Access to Court Proceedings

Under both the Military Court and the Special Court systems, lawyers may not appear in court without first having obtained permission. In the Military Courts, the President of the Military Court must agree to their court appearance; in the Special Courts, permission must be given by the Procurator General. Even when permission is eventually granted to lawyers to appear in Special Courts, the presiding judge often places obstacles in their way. For instance, the letter of permission generally arrives after the proceedings have already begun. In this case, the hearings are carried out in prison. In addition, in cases in which lawyers are permitted to attend the proceedings of the Special Courts, they do not have access to all necessary documents; the Procurator General selects which documents may be viewed by the defence. These obstacles put in the path of lawyers who attempt to appear in the Special Courts are contrary to Article 2 of the UN Basic Principles on the Role of Lawyers, which states: "Governments shall ensure that efficient procedures and responsive mechanisms for effective and equal access to lawyers are provided...."

Anonymous Lawyer. In June 1992, a lawyer was struck by a police officer in the Tribunal d'Hussein Dey. The prosecutor did not deal effectively with the lawyer's complaint. There have been numerous reports of harassment of lawyers by police officers and of subsequent judicial acquiescence to such police behavior.

Anonymous Prosecutor: Deputy prosecutor for the Tribunal of Algiers. This prosecutor was assassinated leaving his home, reportedly by the FIS.

Eleven Anonymous Lawyers. Because of irregular and unfair procedures in the Special Courts, some Algerian lawyers called for a general boycott. As a result, eleven lawyers were sanctioned by the Alger Special Court, and they were given a three-month suspension authorized under the April 1993 amendment to the anti-terrorism laws. The Algerian Bar Association objected to the sanctions, and the suspensions were cancelled.

Bekai Mahfoud: Judge and President of the Kolea Court and the Blida Military Court. Mahfoudh was assassinated on 15 June 1993, near his district in Bougara, apparently by the Islamic Salvation Front.

Brahim Taouti: Lawyer. On 2 February 1993, Taouti was arrested for violating Article 96 of the Algerian Penal Code, which outlaws the dissemination of "subversive tracts." Taouti was accused of carrying a document out of prison at the request of his client, Ali Belhadj, deputy chief of the Islamic Salvation Front (FIS), and distributing it to FIS leaders and human rights organizations. The authorities claimed that in the document Belhadj advocated armed struggle against the Algerian Government. Taouti admitted to having brought the document out of the prison, but he stressed that he did so with the full knowledge of the prison director and that he only distributed the document to the members of the defence team as well as human rights groups. He stressed that the Belhadj document is to be used in preparation of his client's defence.

Taouti was held in preventive detention from the date of his arrest, and, on 3 May 1993, the Blida Military Court sentenced him to three years in prison, the maximum sentence allowed by law.

Taouti has been active in defending human rights since the government began cracking down on the FIS in June 1991. At the time of his arrest, Taouti was preparing to appeal the convictions of FIS leaders he was representing.

Ali Zouita: Lawyer. Zouita has been detained without being formally charged since 1 February 1993, for "disseminating subversive documents" given to him by a client, Abdelkader Hachani, who is a leader of the FIS. He has also been accused of, among other things, incitement to murder and subversion, belonging to an armed movement, and possessing weapons. Zouita continues to be held *incommunicado*. Before his arrest, Zouita had been defending members of the FIS, and he was preparing to argue an appeal of their convictions before the Algerian Supreme Court.

ARGENTINA

The increased replacement of laws passed by the legislature with executive decrees is a worrisome development in Argentina. The President claims that decrees speed up the judicial review, but it is clear that decrees are used as a method to circumvent the judiciary and as an attempt to politicize the legal process in the country.

The Declining Independence of the Judiciary

The Argentinean Constitution, which ensures the defence of freedoms and avoids the concentration of power into the hands of one institution, has come under intensified attack due to the continued use of executive decrees. The independence of the judiciary in Argentina has been usurped by executive decrees which are justified as "necessary and urgent," but which are not recognized by the Constitution. More than half of the new laws passed have taken the form of executive decrees that have had no legislative review. The governmental practice has blurred the distinction between laws and decrees. This lack of distinction can serve as a cover for an executive accrual of legislative power. As a result, the separation between administrative and legislative powers appears to be dissolving. The propensity to use decrees instead of laws passed by Congress and ratified and implemented by the judiciary has affected many constitutional guarantees. One of the most worrisome judicial developments is found in the decrees that suspended certain judicial procedures (Decrees 34/91, 53/91, 383/91, 1216/91 and 1536/91)

as well as the supremacy of the judiciary (Decree 2071/91). Other decrees have surpassed the Constitution and now mandate worker relations, private enterprise and public utilities. Public debate on new laws has been suppressed, which brings an otherwise exclusive competence of the Congress in doubt.

The Attorney General and assistant lawyers were removed illegally by decree (265/91), ignoring the precepts of law 21.383, which requires that a political judgment be rendered by the Senate before such an action can take place. With another decree (2254/90), the President unequivocally retired four of five judges (who had been protesting the proliferation of decrees in the legal system) of the Supreme Court.

Reforms in Trial Procedures

The Constitution and Penal Code call for trials before panels of judges and for appellate review of all judicial rulings. Judges render verdicts on the basis of written evidence. In a positive step, the Congress in September passed legislation implementing public trials for criminal offences based on oral testimony, which replaces the traditional written trials. About 10% of cases reach the stage of a public oral trial.

The new design of criminal justice, with the reformed trial procedures, puts the *Cámara de Casación* (Chamber of Cassation) in charge in an active way. It permits the Chamber to decide on the interpretation of criminal norms and to impose its decisions on the other tribunals as well as on the control functions that guarantee individual freedoms and the constitutionality of laws passed.

A sign of the politicization of the judiciary and resulting lack of its independence are visible in the nomination of judges to the Supreme Court based on their affiliation with the political administration.

Ricardo Mario Fernández Bernengo: Criminal judge from San Martín. In May 1992, he received various death threats at his home and his office. The threats are apparently connected to his investigations of the "irregularities" occurring in the nation's asphalt industry. Another reason might be his authorization of a raid on a police station and the preventive detention that Fernández Bernengo ordered for five policemen who were allegedly involved in extortion and corruption.

Ana María Capolupo de Durañona y Vedia: Civil court judge. On 9 October 1992, the judge stated that she had been "a victim of a campaign orchestrated against her because of her complete alienation from politics and political influence." As a result, her candidacy to serve on the National Chamber for Criminal Cassation was withdrawn. The judge has served for twenty-five years in the Argentinean judiciary.

Diego Guglielmi: Judicial prosecutor from Catamarca. He was threatened with death and attacked due to his investigation of the rape and murder of María Soledad Morales, a crime which shocked the community. Three men in a car blocked Guglielmi's road as he was driving his car. The suspects then jumped out of their car and threatened him with a police handgun and told him to cease his investigations. Before departing, one of the men hit him on the head with the butt of the gun. The attacker belonged to an influential family in a region which has strong ties with the local government.

Pedro Federico Hooft: Judge from Buenos Aires. The judge was investigating alleged extortion and kidnappings conducted by a Gang of Commissars (*Polibando*). In April 1992, there was a bomb threat which required the evacuation of the courthouse of Mar del Plata, where the judge was presiding over a case related to the investigation.

Guillermo Johnson: Investigatory judge from Córdoba. In March 1992, he received death threats that appear to be connected to his investigation into the assassination of former senator Regino Medres. The family of Medres received death threats as well, while several witnesses were greatly intimidated. As a result, it is believed that they have not testified to the truth.

Orfeo Maggio: Correctional judge from Buenos Aires. In March, his life was threatened by an anonymous telephone call which warned that a bomb had been placed in the Common Court in the Quilmes section of Buenos Aires, where the judge was presiding at the time. The act is believed to be connected to Maggio's investigation into the vandalizing of tombs at the Jewish cemetery of Berazategui in Buenos Aires.

Roberto Marquevich: Federal judge from Buenos Aires. He received threats due to his investigation of various large industries that have dumped untreated waste into the Reconquista River. The investigations and actions by the judge have resulted in various raids and closures of industries as well as a string of judicial proceedings related to waste dumping. An executive from one of the corporations was jailed for a short time, and, in May 1992, Minister for Natural Resources and the Human Environment María Julia Alsogarai told the judge to maintain a low profile during the investigations and warned him that he might encounter many difficulties in ascertaining responsibility for those corporations accused of contamination.

Silvia Nogueras: Investigating and correctional judge from Santa Fe. She received death threats as a result of her investigations into illegal gambling and prostitution in Casilda. It appears that local police officials are involved.

Susana Medina de Rizzo: Judge from Paraná. She has received various death threats by telephone since 12 May 1993. The most recent was a bomb threat at her house. After searching the area, it appeared to be a false alarm. The threats are apparently connected to her prosecution of the commissar Eloy Fernando Heinze, who had suddenly stopped the judicial investigation into a case of kidnapping and murder.

Carlos Rousseau: Principal judge of a criminal court in Buenos Aires. He received death threats related to his investigation into the desecration of tombs in the Jewish cemetery of Berazategui.

José Luis Ventimiglia: Judge. In February 1992, he declared that he was put under "crude political pressure" at both national and provincial levels in connection with his investigation into the rape and murder of María Soledad Morales.

Antonio Vivanco: Judge and President of the Supreme Court in Buenos Aires. During his review of the judicial conduct of Judge Ricardo Borrazas from Mar del Plata, in July 1992, he received various death threats.

AUSTRALIA

The Federal Constitution of Australia secures the independence of the High Court and other federal courts by protecting judicial tenure. However, absent effective safeguards provided by state law, state judges must rely on protections afforded by general conventions and customs upholding judicial independence and on bipartisan respect for the importance of judicial tenure. Recent events in Victoria with regard to the Accident Compensation Tribunal, described below, reveal the need for state constitutional anchors of judicial independence.

Eleven Judges of the Victorian Accident Compensation Tribunal. In December of 1992, the Victorian Parliament abolished the Accident Compensation Tribunal and, in the process, removed from duty eleven of its judges, only one of whom was transferred to another judicial post. The government has held firm to its decision despite earlier statements made by the Victorian Premier and the Attorney General, when formerly members of the parliamentary opposition, that no judges would be removed in such a fashion. Similar assurances were made before Parliament during its consideration of the bill that eventually abolished the Compensation Tribunal.

The failure of the government to reassign the judges to another court provoked the condemnation of respected members of the legal community who perceived the action as a threat to judicial autonomy. The removal of the judges also drew a letter of protest to Victorian Attorney General Jan Wade signed by thirty-one Supreme Court and other judges in New South Wales and several Australian states. The signatories described the action as a "breach of a fundamental constitutional convention protecting judicial independence and tenure in Australia [and as a] breach

of a basic principle of judicial independence internationally recognized." They urged the Victorian Government to reverse the decision and reassign the judges.

Ten of the judges are suing the Victorian Government for wrongful dismissal. They are alleging that the government's actions were unconstitutional, violative of natural justice, and a breach of their contracts. They are claiming that they are entitled to reappointment, but are seeking damages in the alternative. Pursuant to international principle, as articulated in the draft *Universal Declaration of the Independence of Justice*, "in the event that a court is abolished, judges serving on that court shall not be affected, except for their transfer to another court of the same status." The Government of New South Wales has adopted similar provisions in its state constitution, but no such protections exist in Victoria.

The CIJL intervened before the Attorney General on 2 December 1992, expressing its concerns over the failure to reappoint the judges and the ramifications for judicial tenure and independence. Victorian Attorney General Wade, in response, offered as an explanation that there is no equivalent court on which these judges could sit. Wade denied the assertion that reassignment to County Courts or the Administrative Appeals Tribunal would be appropriate, particularly without regard to whether these judges would represent the best appointments available. However, Wade's explanation has been heavily criticized for its potential to serve as a pretext. The decision and its rationale could be invoked to support future removals of judges through tribunal reconstitution by politicians thereby emboldened to use this mechanism to ensure judicial compliance with partisan objectives. Moreover, if other judges perceive their tenure as vulnerable to the whims of changing governments, it may erode their independence as decision-makers charged with watching over basic rights and liberties, including as against government infringement.

P. Gerard Nash, QC: Lawyer, practising member of the Victorian Bar, former dean of Monash University and vice-president of the Victorian Section of the International Commission of Jurists, and **Dr. Colin Howard:** Lawyer, practising member of the Victorian Bar and former Hearn Professor of Law at the University of Melbourne. Barristers Nash and Howard appeared on behalf of the plaintiffs in an application before the Supreme Court of Nauru seeking an interlocutory injunction in a civil action in which one of the defendants was the Government of Nauru.

During the course of the proceedings, the Nauru Government introduced into the unicameral Parliament the Nauru Island Council Act, which was quickly enacted into law. The Act directly affected the subject matter of the case in question and was wholly inconsistent with submissions made to the court by Nash and Howard. Alarmed by this apparent legislative interference in the judicial process, Nash and Howard met with Chief Justice Donne *in camera* to explain their concerns and press for the court to draw the matter to the attention of the Parliament, which the Chief Justice declined to do.

Thereafter, it became clear that the Chief Justice had indulged a request by the Speaker of Parliament to reveal the nature of prior *in camera* proceedings. Consequently, the question was raised before Parliament whether the submissions of Nash and Howard constituted contempt of Parliament and the issue was sent to the Privileges Committee for review. Nash and Howard perceived the news as a threat that, having offended the Nauru Government, they might not be permitted back to continue the case as a result of the Privileges Committee's actions. The threat of adverse action against the lawyers in turn posed a threat to the clients' case by jeopardizing the status of counsel and calling into question the right of the clients to be represented, unhindered, by counsel of choice.

The Chief Justice acknowledged in court that he had disclosed the content of the *in camera* discussion to Parliament. After hearing objections by Nash and Howard on the interference of Parliament with the administration of justice, the Chief Justice declined to issue any kind of a responsive order, but did make a statement to the effect that interference with proper activities of counsel would not be tolerated. Despite the events in Parliament and the Chief Justice's acknowledgements, Nauru Acting Chief Secretary K. Deduri Emiu denied the reasonableness of Nash's and Howard's apprehension of a threat to them on the grounds that no action was ultimately taken against them. Emiu categorically rejected any implications that the Nauru court is subject to pressures of the executive or the legislature.

BAHRAIN

Arbitrary arrest and *incommunicado* detention remain a problem in Bahrain. Provisions of the State Security Act of 1974 governing detention lend themselves to such abuses; according to the Act, persons accused of subversive or anti-government activities can be detained without trial for renewable periods of up to three years. Detainees can only appeal their detention after three months and then every six months thereafter, although there is no legal mandate that detainees even be informed of this right and in fact it is rarely availed. Article 1 of the Act permits detention if there is evidence

> "that a person has made statements ... or contacts which are damaging to the ... security of the country, or to the country's religious or national interests, or to its fundamental structure ... or amount to discord, which affects, or could affect, relations between the people and the government, or between the various institutions of the state ... or which aim to assist in the commission of acts of sabotage or harmful propaganda, or the dissemination of heretical principles."

The Act is used by security forces as a source of intimidation to thwart, among other things, the exercise of free speech and association.

Another prevalent method of governmental suppression of views and actions of which it disapproves is the use of sanctions against individuals in the form of passport denials, deportation or denial of entry into the country upon return from travelling

abroad. Victims of forcible exile are frequently not given reasons for their deportation or an opportunity to challenge the legal bases for it in the courts. During 1992, the Emir issued two limited amnesties allowing for the return of some deportees; however, there are reportedly hundreds of deportees and others forced to stay abroad despite provisions of Article 17 of the Bahraini Constitution declaring deportation or denial of entry into the country prohibited. Even when citizens are permitted entry, they are often subject to re-deportation. It is estimated that nearly 110 citizens were re-deported last year.

The Bahraini Legal Profession Statute, governing lawyers in matters ranging from qualifications to discipline, does not secure the right of lawyers to freedom of expression on legal matters. Additionally, Law 21 of 1989, the Law of Societies, at Article 18, prohibits any society from involvement in "politics or financial speculation." This provision effectively prevents members of the Bahraini Bar Society from taking part in public discussions on human rights matters; commentary on issues of human rights generally seems to fall under the definition of "political activities." If the Bar Society seeks to hold a public assembly, it must first submit names of speakers and subjects in advance for approval or disapproval. This provision appears to dissuade the Society from attempting public discourse on issues related to human rights.

The Law of Societies also places the Bar Society under the control of the government by permitting the government full access to its records and funding sources. Lawyers are appointed to the Bar by the Minister of Justice; this Ministry is presided over by

the ruling family. An advocate's job is difficult, too, because of unfair trial and court procedures that contravene international standards. Lawyer-client confidentiality is not well respected, and lawyers are routinely denied access to files needed to prepare client cases. A lawyer's role is further frustrated by the admissibility of forced confessions in court, a corollary of widespread practices of torture in detention. The history of the profession in recent years is replete with instances of lawyers subjected to harassment and arbitrary treatment at the hands of the Bahraini Government.

Sheikh Abdul Emir al-Jamri

Sheikh Abdul Emir al-Jamri: Judge. Al-Jamri, despite legal restraints on the removal of judges, was suspended several years ago from his duties as a judge of the Religious Court, a part of the Ministry of Justice, due to his vocal opposition to the implementation and enforcement of the State Security Act and the suspension of the National Assembly. In November of 1992, al-Jamri, along with five others, including Dr. Abdul Latif al-Mahmoud (see below), sponsored a petition signed by hundreds of Bahraini notables calling for the restoration of the National Assembly and the Constitution in Bahrain as well as for the release of political prisoners and the return of exiles. Instead, the Emir appointed a thirty-member Consultative Council lacking the legislative powers of the National Assembly, with advisory powers only and with members appointed rather than elected by the people. Sheikh al-Jamri was invited twice in March to speak in Manama mosques to present his political views at two seminars; each time, he was harassed by security forces and threatened with arrest. On 27 March 1993, he was threatened with deportation because of

his affiliation with al-Mahmoud and because of his own speeches critical of the regime. He has also undergone interrogations at the Ministry of the Interior.

Jassim Issa Khalid: Lawyer. He was among those denied entry into Bahrain this past year (see above).

Sheikh Abdul Latif al-Mahmoud: Law professor. His passport was withdrawn from him, and he was suspended from his university position. These measures were taken subsequent to his release from detention. He had been detained upon his return from a conference in Kuwait, at which critical views were expressed of the Gulf Cooperation Council. His religious activities have also been restricted. In November of 1992, al-Mahmoud served as one of six sponsors of a petition calling for restoration of the Constitution and the dissolved Parliament. Reports indicate that the Government of Bahrain has since kept close track of his personal contacts with other activists and has sought to curb them (see above).

Ahmed al-Shamlan: Lawyer. He has had his passport confiscated in addition to having his writings banned from appearing in the country's press. This action was taken against him after his return from a seminar in the United Arab Emirates where he spoke on the need for greater human rights protection in the Gulf states. He was informed that he would lose his passport at a meeting with the Bahraini Minister of the Interior, who summoned him when he returned from the seminar.

BRAZIL

Brazil is a constitutional federal republic with a directly elected President, a bicameral legislature and an independent judiciary. Public security responsibility is shared by federal, state and local police. Numerous local and state police officers were implicated in human rights abuses, including extrajudicial killings and physical abuse of detainees. Extrajudicial killings have become commonplace in Brazil and form its most serious human rights problem. Many local and international human rights organizations claim that hired killers, police officers and other vigilante groups kill hundreds of persons suspected of committing petty crimes, particularly children and other youths. Persons suspected of street killings are rarely tried. Nevertheless, on 26 July 1993, three policemen recognized as the murderers of seven street children killed on 23 July were arrested and face sentences of between twelve and thirty years. The Commander of the Fifth Police Corps of downtown Rio de Janeiro to whom the three policemen were subordinated was also discharged of his functions.

The judiciary is independent from the government. The structure includes courts of first instance, appeals courts and the Supreme Court. The right to a fair public trial is provided for by law and is generally respected. Defendants are entitled to counsel, and, if they cannot afford one, a lawyer is provided at public expense. The judicial system, however, is inefficient and continues to suffer from a serious backlog; many cases are not tried for years. Many analysts point out that there is an urgent need for court reforms.

Raimundo Claudemir Bezerre de Queiroz: Indigenous lawyer from the Archdiocese of Tefe in the state of Amazonas. He is regularly threatened with death when he defends peasants in land disputes or indigenous people claiming abuse by local authorities. Last fall, he headed an action against corrupt candidates running for mayor in Tefe. He was threatened with death, while his four children were threatened with kidnapping and torture. He also defended indigenous fishermen against large corporations who have emptied and destroyed whole lakes containing fish, thus depriving livelihood from indigenous populations. He has requested protection of the local authorities in Tefe.

Raimundo Claudemir Bezerre de Queiroz

Domingos Dutra: Lawyer from Maranhão. The lawyer received various death threats between March and May 1992 due to his work in defence of land squatters. Ranch owner Savigny Sauaia, who felt disadvantaged by the actions of the lawyer (see dos Santos Junior), stated that he would not be satisfied until the lawyer is dead.

Paolo Fontelles de Lima: Human rights lawyer and former state deputy. On 11 June 1987, the lawyer was on his way to Belem to represent rural workers in a court case when he was shot and killed by gunmen at a gas station. Prior to the incident, he had received various death threats. He also declared that he was on a death list. After this death list was presented to the government, no more actions were taken.

Three suspects were arrested in 1987, and, in 1988, another five were arrested. All but one were released due to the fact that witnesses willing to testify were threatened and went into hiding. On 23 June 1992, James Sylvio Vita de Lopes was arrested and

charged with allegedly functioning as an intermediary in the assassination of the lawyer. On 23 January 1993, Vita Lopes was sentenced to twenty-one years in prison. The person responsible for ordering the murder still remains free.

Aglaete Nuñes Martins: Lawyer, ex-secretary general of *Diretório Academico Rui Barbosa da Facultade de Direito Candido Mendes*, lawyer with the *Associação pré-Sindical dos Empregados Domésticos* and secretary of the Board of Directors of the Lawyers Union. Judge Shirley Abreu Bionde, of the 21st Criminal Court of Rio de Janeiro, meted out a sentence of three months' detention to Nuñes Martins on 19 April 1993. The sentence was related to her published allegations of racial discrimination in the *Tribuna do Advogado* in 1991. In that publication, she claimed that she had been victimized and that she had therefore not been elected in 1987 to the position of executive secretary of the Women's Commission of the *Ordem dos Advogados do Brasil.*

Celso Sampaio Gomes and **Valuzia María Cunha Santos:** Two lawyers from the state of Maranhão. The lawyers are representing twenty-four peasant families in an ongoing land dispute with landowner Fabio Borges. As a result of their activities, the lawyers were threatened with death and harassed. In addition, the local district judge of Santa Luiza, Luís de Franca Belchior Silva, stated that he would no longer allow the lawyers to practise in his district and ordered the public courthouse closed. According to local newspapers, in this incident the judge even shouted threats at the lawyers before closing the courthouse.

The judge also went to visit the area in dispute. He was accompanied by some forty military police officers. On this occasion, the judge intimidated the families and harassed the lawyers by not allowing them to meet with the families they were representing. Upon order of the judge, military police pointed

guns in the faces of the lawyers in order to keep them away from the peasants. Some twenty groups and individuals petitioned the government on 17 June to guarantee the safety of the lawyers and reinstate their right to practise.

Gervásio Protásio dos Santos Junior: District Court judge of Rosario in the state of Maranhão. He was threatened by four gunmen when he visited the Sitio Novo ranch, whose ownership was in dispute. The threats were related to the Act of Reintegration, which allows land squatters to return to their settlements. The gunmen have a list of names of individuals who support the squatters. On 21 February 1993, the general commander of the military police had evicted nineteen squatter families without judicial order. These families had apparently been living on the site since the turn of the century. The houses and property of the families were razed by military police who had rented bulldozers from another ranch owner.

On 16 March 1993 Judge Gervásio Protásio told the nineteen peasants to return to the Sitio Novo ranch, in accordance with the Resettlement Act. Two days later, the families returned, and, in June, the Brazilian government offered them 303 hectares of land.

Mariza Rios: Lawyer from Maranhão. She was threatened with death by a local landowner, Beto Barreto, as a result of her representation of peasant farmer Barbosa in a land dispute. Accompanied by eight hired gunmen, the landowner ordered Rios's client off the land. In that incident, the landowner threatened to kill anyone, including Rios, if they interfered again. Rios initiated a legal action in order to try to establish the peasant's right to return to the land. She requested police escort to visit the property but was refused. Recently, she did have the opportunity to visit the property with the assistance of the police of the nearby town of Neopolis.

CAMEROON

On 11 October 1992, Cameroon held multiparty presidential elections. The election was widely criticized both within the country and by international observers. On 23 October 1992, the Cameroonian Supreme Court proclaimed the incumbent, Paul Biya, President. In response to this decision, massive demonstrations took place in Bamenda, and a state of emergency was declared in the entire Northwest Province on 27 October 1992.

According to the Law Relative to the State of Emergency, enacted on 19 December 1990, a "state of emergency can be declared by presidential decree for up to six months, and people who are considered to be a threat to public safety may be held in administrative detention without charge or trial...." Detainees may be held for up to four months. The law provides no safeguards against the abuse of emergency powers or against arbitrary detention.

After the presidential election, hundreds of opposition figures were arrested by the security forces of the government, including the principal opposition candidate, Ni John Fru Ndi, of the Social Democratic Front (SDF). The detainees were held *incommunicado,* and, according to a Yaounde-based lawyer who attempted to gain permission from the court to enter the prison and confer with his clients, officials of the Ministry of Justice and Defence instructed the court not to allow anyone to visit the detainees. This violates both Article 5 and Article 7 of the UN Basic Principles on the Role of Lawyers which requires that the accused be informed of his or her right to counsel and be accorded prompt access

to counsel, at the latest, within forty-eight hours of arrest.

Not only have government security forces targeted political opposition leaders, but they have also arrested many lawyers who represent these political leaders (see below). These arrests are in contravention of Article 18 of the UN Basic Principles on the Role of Lawyers which specifies that "[l]awyers shall not be identified with their clients or their clients' causes as a result of discharging their functions."

Simon Abongwa, **Ngalla Nfor**, **Francis Sama** and **Ophelia Sendze:** Lawyers, and **Nyo Wakai:** Former President of the Supreme Court. Between 26 and 28 October 1992, these lawyers who were representing opposition SDF leaders were arrested. **Luke Sendze** went into hiding to avoid being arrested. Some reports say that Wakai and Ophelia Sendze were beaten in addition to being detained.

The lawyers were held without charge at *Brigades Mixtes Mobiles.* Ophelia Sendze was released on 14 December 1992, and the others were released in December, at the end of the State of Emergency.

CHAD

The Habré regime in Chad, which was supplanted in 1990 by that of President Idriss Déby and the Patriotic Salvation Movement, was rife with human rights abuses, including arbitrary detention, torture and the alleged execution of over 300 political prisoners shortly before the government's collapse. President Déby took power from Hissein Habré on 1 December 1990, avowing to institute democratic reforms in Chad. However, from the new government's inception, human rights violations abounded during fighting between Déby's forces and opposition groups. It was not until 1993 that concrete steps were taken toward democratic reform. Composed of over 800 delegates, a Sovereign National Conference, held between January and April 1993, appointed a Prime Minister and a transitional legislative body, the Higher Transitional Council (CST), to guide the country's democratization. The Conference culminated in a transitional constitution, the *Charte de la Transition*, and a program to implement the constitution, the *Cahiers des Charges*. Acknowledging that "[t]orture, murder, abductions and arbitrary arrests, deportations, humiliations, deprivation of freedoms are a daily occurrence," the Conference included among its proposed reforms the demand to release political prisoners and to cease such unlawful practices. The program also called for commissions to conduct inquiries and to bring those responsible for human rights abuses to justice.

Proposed Judicial Reform

The Conference acknowledged the weak state of the Chadian judiciary, a branch dependent upon and controlled by the executive. Often, in the past, members of the government have put pressure on judges and lawyers to influence judicial decisions or to avoid prosecution. In response to this past lack of judicial independence, the National Conference ordered the transitional government to reorganize the judiciary to ensure its independence, impartiality and competence. The Conference advised the transitional government to:

- abolish the Special Court of Justice and the Court-Martial, courts of exceptional jurisdiction in violation of Article 5 of the UN Basic Principles on the Independence of the Judiciary, which requires all accused persons to be tried in ordinary courts with procedural guarantees;
- create a Higher Council of the Magistrature that is, in reality, independent of the executive;
- inaugurate Courts of Appeal, a Supreme Court and other specialized jurisdictions;
- forbid interference in the judiciary by other branches of government and non-judicial personnel;
- maintain a sufficient level of legal training, especially of judges, to ensure judicial competence; and
- extend the jurisdiction of the Special Criminal Court of Justice, created in February 1993 to try individuals accused of human rights and other violations, to cover crimes committed since 1960, the year of Chadian independence.

Results of the Conference

Little information regarding the status of proposed reforms or the activities of the CST has been made available since the end of the Conference in April 1993. The government does not appear to have taken many steps to implement the human rights goals of the Conference. It is not known whether political prisoners have been freed since April 1993. In February 1993, President Déby signed an ordinance law establishing a Special Criminal Court of Justice to try those accused of political crimes and human rights violations under the Habré regime. However, it is unclear whether this ordinance has been amended as proposed by the Conference to extend the Court's jurisdiction to cover crimes since 1960. According to Amnesty International, in June 1993, the government reported its intention to abolish both the Special Court of Justice and the Court-Martial, but the government has not disclosed when it plans to implement this measure. Although the government abolished the Centre for Investigation and Coordination of Intelligence, President Habré's special security force, it replaced it with another service that has exercised similar powers of arbitrary arrest and detention.

CHINA

Pre-trial and trial practices and procedures in China fall short of international standards. Guarantees of China's Criminal Procedure Law against arbitrary arrest and limiting the time an individual can remain in custody without charge are often ignored in practice and are vulnerable to numerous exceptions, many of which were allegedly abolished by criminal law reforms but which are in fact still being used. Provisions of criminal procedure mandating notification of detention to family members are frequently violated as well. Torture is particularly prevalent in custody and is used to extract confessions that later form the basis of convictions in criminal actions. These abuses are known to occur with special frequency in cases in which the defendant is accused of violating Articles 90 through 104 of the Chinese Criminal Law outlining the "crimes of counter-revolution," particularly when charges are rooted in violations allegedly committed during the pro-democracy movement of 1989.

Courts are subject to policy guidelines issued by the Chinese Communist Party, and Chinese government officials often predetermine or approve trial outcomes. The role of the defence lawyer in a criminal case is severely limited. Typically, these lawyers are assigned to clients just prior to trial, and sources indicate that defence lawyers are present for only a small number of trials. Furthermore, the trials themselves are often carried out quickly. Trials often occur behind closed doors, insulating possibly unfair procedures from public scrutiny. Despite unfair trial practices, the Chinese government executed over

1,000 prisoners this past year and sentenced almost 2,000 others to death.

Li Gouping: Lawyer. Gouping had her professional licence to practise revoked and confiscated by the Shanghai Judicial Department when, in July of 1992, she called for her husband's release from detention in a Hong Kong newspaper. Her husband, Yang Zhous, was a writer and alleged member of a human rights group of Shanghai. The Ministry of Justice, on review of an appeal made by Gouping, upheld the revocation of her licence. She has since initiated legal action with the Intermediate People's Court. Gouping was verbally reproached by authorities at the Public Security Bureau, where she was granted an interview after inquiring into her husband's situation without having told them that she was the writer's wife.

Zhang Sizhi: Lawyer, Beijing No. 5 Legal Affairs Office. Sizhi experienced numerous difficulties when he recently represented the political activist Bao Tong in what has been termed one of the most significant political trials in China in years. Bao Tong, former political secretary to the Politburo's Standing Committee, was a reformer and a former aide to Zhao Ziyang.

Bao Tong was held without charge and *incommunicado* for nearly three years. He was tried before the Beijing People's Intermediate Court and convicted in July of 1992 for "leaking an important state secret" and for promoting "counter-revolutionary propaganda and incitement." He was found guilty on 21 July 1992 and sentenced to a total of seven years' imprisonment with a subsequent two-year loss of political rights.

While Bao Tong's family pressed for Attorney Zhang Sizhi to be appointed lead counsel for the defence, Bao Tong's custodians apparently failed to communicate this to him, and the court produced a letter with the supposed authorization of Bao Tong to permit Attorney **Yang Dunxian** of the Beijing Xuguang Legal

Affairs Office to function as lead counsel. Zhang Sizhi was known for his vigorous defence of a journalist who, like Bao Tong, had been labelled by the government as a "black hand" of the pro-democracy movement. Yang Dunxian was repeatedly summoned to the court prior to trial for "consultation." The two lawyers were not allotted sufficient time to prepare an adequate defence; their appointment as counsel did not occur until two and a half weeks before the trial (pursuant to Chinese law, a defence team cannot be designated until a trial date is set, which can occur as little as one week beforehand). Consequently, they were not able to meet with the accused more than twice prior to trial.

Reportedly, the two lawyers were also warned that they were not to discuss the case, even with Bao Tong's family, and that, if they did, they might be subjected to disciplinary action by the Ministry of Justice. The lawyers were apparently followed by plain-clothes police seeking to ensure that these warnings were heeded. Moreover, there was no allowance for the defence to examine witnesses. Bao Tong's wife, a potential witness in the case, was effectively prevented from appearing when informed that, if she did appear, Attorney Zhang Sizhi would be removed from representation of the accused. The trial itself, which lasted a mere six hours, was not open to the public until the reading of the verdict. Bao Tong's appeal was rejected on 6 August 1992.

Wang Tiancheng: Law lecturer at Beijing University. Tiancheng was arrested in November in Beijing. Reports have it that his arrest was related to a government charge that he was a member of the Young Marxist Party and the Democratic Freedom Party.

COLOMBIA

On 4 July 1991, Colombia promulgated a new Constitution. This document was enacted against a background of widespread political violence and serious problems in the administration of justice, which the country has been experiencing for years. The new Constitution replaced the Colombian Charter, which had been in effect since 1886, and was said to be aimed at advancing the protection of human rights and the proper administration of justice in Colombia.

Chapter One of the section entitled "Rights, Guarantees and Duties" incorporates fundamental principles of the Universal Declaration of Human Rights.

The Structure of the Judiciary

The 1991 Constitution introduced significant changes to the Colombian judicial system. According to the provisions of the new Constitution, the Supreme Court no longer examines constitutional matters. Such matters now fall under the jurisdiction of the Constitutional Court. Instead, the Supreme Court acts as a *tribunal de casación*, the highest court of ordinary jurisdiction, and is given the power to investigate and try members of the political branches of government.

The new Constitution provides for the establishment of a Constitutional Court (*Corte Constitucional*). The Court has the power to review a wide range of legal matters, including ordinary laws passed by Congress, and decree laws and legislative

decrees issued pursuant to a state of emergency. The aim of the Court's review is to ensure that these laws conform to constitutional norms (see *Attacks on Justice 1991-1992*). As for administrative litigation, the Council of State (*Consejo de Estado*) remains the highest court.

The 1991 Constitution also established a High Council of the Judiciary (*Consejo Superior de la Judicatura*) for the purpose of ensuring judicial independence. This body is empowered to examine the conduct and to discipline members of the legal profession, to prepare the judiciary budget for submission to the government, to establish regulations necessary for the administration of justice and to resolve jurisdictional disputes between courts.

The creation of new courts and judicial functions has led to major changes in the process of appointing judges (see *Attacks on Justice 1991-1992*). Under the 1886 Charter, judges of the Supreme Court and the Council of State were appointed for life by the sitting justices. This rule, which provided for life tenure, was abandoned under the 1991 Constitution.

In addition, the Office of the Defender of the People, a national-level ombudsman, became fully operational in 1992, as well as the *Procuraduría General* (or Procurator General), an independent government agency conducting investigations into human rights abuses.

The judicial reforms implemented to improve respect for human rights raised questions, however, about whether defendants' rights were adequately protected. This refers to the right to due process provided for in the Constitution, especially regarding

the right to representation by counsel. In practice, this representation is largely inadequate, mostly due to an overburdened judiciary and a traditional reluctance to grant bail. As a result, many detainees never come to trial and serve the minimum applicable sentence for the crimes which they are alleged to have committed.

Particularly troublesome is the systematic practice of the violation of the independence of judges and lawyers when it comes to the rendering of sentences in favour of a citizen in a guardianship action (*acción de tutela*), a cause of action created by the new Constitution. This action is a measure to put a disputed object in possession of one party to the conflict or in the hands of a third party, pending the outcome of the case. Judges in particular appear to experience tremendous pressure from the state when deciding such sentences in politically sensitive cases.

The Faceless Judges

In theory the Colombian judiciary is independent of the executive and legislative branches. In practice, however, some politically sensitive cases are influenced by executive decree. Nonetheless, the judiciary has been subject to intimidation: many magistrates, judges and lawyers have been subjected to subornation, threatened with death, or killed. In January 1991, the government established special courts (known as regional jurisdiction) to persecute narcotics, terrorism and public corruption cases. These courts were introduced pursuant to a state of exception declared in 1988 by executive decree and converted into permanent legislation in November 1991. The Colombian authorities claim that these

courts are established to provide security for judges and prosecutors and to speed up the processing of cases with the goal of increasing convictions. The protection offered to the judges is primarily in the form of anonymity (and they are thus otherwise known as the *jueces sin rostros* or faceless judges).

Nonetheless, several questions related to due process are raised by the system of the faceless judges. The trials in these special courts are closed to the public, although representatives of the Procurator General must be present during the proceedings. Defendants before the special courts enjoy the same procedural rights guaranteed by the Constitution. In such courts, the "faceless judges" and prosecutors try cases in which witnesses can also remain anonymous, while defendants are prohibited from copying documents to be used as evidence against them. A defence lawyer cannot impeach a witness, nor can he or she bring charges of malfeasance or incompetence against the judge. Although the system of regional jurisdiction was devised to prosecute grave offenders, the regional jurisdiction has primarily prosecuted cases against small-scale coca producers, student leaders, or peasant leaders instead of more serious offenders. The anti-terrorism laws carry penalties of up to sixty years' imprisonment.

Attacks on Jurists

Colombia has traditionally experienced widespread violence in the political arena. This includes violence against the members of the judiciary and the legal profession. Although the Colombian government has set up a host of supervisory and investigative organs over the last two

years, attacks against judges and lawyers continue to occur with impunity.

In the period from June 1992 to May 1993, numerous lawyers, judges and other employees of the judiciary have been harassed, threatened, kidnapped or killed. There are reports of at least thirty-two such cases. Twenty-three cases are confirmed to be directly related to the exercise of the legal profession and have produced a total of fifty-two victims as a result.

Statistical data indicate that most threats are directed against members of the staff of the prosecutor (fifteen), and against lawyers (eighteen). In addition, statistics show that paramilitary groups commit violent attacks mostly against lawyers, while drug dealers appear to engage primarily in attacks on judges.

The most common form of violence is murder (eighteen cases), followed by death threats (ten cases), kidnapping (seven cases) and torture (three cases). The Department of Antioquia has the highest level of violent attacks, followed by Bogota D.C., Santander and Magdalena.

Eduardo Lancheros Abriu: Jurist and technical investigator of the Office of the Prosecutor for the Department of Antioquia. Abriu was assassinated on 12 March 1993 by a woman standing at the entrance of a shopping centre situated in the middle of the city. Lancheros was conducting inquiries into various assassinations of union leaders and union representatives of the municipality of Medellín. It appears that his assassination is connected to these investigations.

Lucía Munar de Ardilla: Lawyer and staff member of the Procurator General from Bogotá in charge of surveillance of the independence of the judicial system. On 9 September 1992, her husband, prosecutor **José Ardilla**, opened the garage door of their residence situated in the city, where four youths were waiting for him in a taxi in front of their home. The youths approached him and knocked him down with the butts of their revolvers. Two of the youths stayed with him and told him to remain calm and that nothing would happen, while the other two entered the home of the couple. Once inside, the lawyer, Munar de Ardilla, was stabbed by one of the suspects. In a critical state she was transported to the hospital, where she later died.

The Attorney General of the Republic, Carlos Gustavo Arrieta, told the press that he had no doubt that the crime was connected to inquiries into the corruption of the administration of the social security provision, with which many judges and lawyers were involved. The police stated that all judicial investigators were threatened.

Jair Barrera, Luis Enrique Conde Mora, José Andrés Navarro, Carlos Alberto Hernandez Navia, Carlos Forero Romero and **Carlos Hernán Vernandía Prieto:** Jurists and technical investigators of General Prosecutor of the Nation for the section of Barrancabermeja. On 6 September 1992, the men were abducted by FARC guerrillas from a site called "La María," upon return from the exhumation of the cadaver of Mrs. Berta Padilla Muñoz. Many days later, they were finally set free.

Alirio de Jesús Pedraza Becerra: Human rights lawyer. Pedraza Becerra was abducted on the night of 4 July 1990 in Bogotá by eight armed men in civilian clothes (see *Attacks on Justice 1990-1991*). At the beginning of October 1992, two members of the judicial police were arrested on suspicion of being materially responsible for the lawyer's abduction. A

security guard who had witnessed the abduction positively identified the two suspects. According to reports from January 1993, one of the judicial police confessed to kidnapping Pedraza and described how Pedraza Becerra was drugged so heavily during interrogation by the police that his mental faculties broke down. Pedraza Becerra was then left on a street in Barranquilla. The Procurator's Office has been trying unsuccessfully to locate the human rights lawyer.

Martha Amparo Beltrán: 73rd Judge of Criminal Investigations from Bogotá. Beltrán is under pressure from the state for pronouncing a sentence in favour of an agent of the police in a guardianship action. During her handling of the case, she was frequently pressured and threatened. In connection with this, she ordered various high functionaries of the National Police investigated, including General Miguel Gómez Padilla.

She had to submit to two criminal procedures and had two disciplinary charges brought against her. The criminal procedures concluded in favour of Beltrán. The two disciplinary charges continue and in one charge, the Procurator requested the Superior Court of Bogotá to sanction the judge for having exceeded her authority.

María Victoria Carvajal: 104th Criminal Investigations Judge of Bogotá. During the month of March 1992, Carvajal was in charge of a judgment regarding a guardianship action case related to the repossession of an airplane intercepted by Colombian customs. Two days after the guardianship case was submitted on 24 February 1992, at 5 p.m., the American Embassy directed an official letter to Rafael Antonio Ballen Molina, of the Procurator General, stating that "there appear to be irregularities with regards to Judge 104 of Criminal Investigations ... who is ready to hand over an airplane ... to its supposed owner...." The letter also mentioned that this airplane had been apparently involved in

drug-trafficking. Since March 1992, Carvajal has been receiving continuous death threats by telephone, forcing her to decide against the guardianship action brought before her.

After delivering the airplane to the petitioner in the case, she left the country. The United States Drug Enforcement Agency (DEA) and the American Embassy were particularly interested in the guardianship action not taking place. As a result, they applied pressure to have the judge investigated in order to bring disciplinary charges against her. Unable to remain in hiding, Judge Carvajal returned to Colombia where she was brought up on two disciplinary and two criminal charges related to her decision on the guardianship case.

The two disciplinary measures were ultimately merged into one. As a preventive measure, Carvajal was suspended from her legal work for sixty days. This measure, normally taken against the gravest offenders, is not subject to appeal, and was ordered when Carvajal was still outside the country. On the other hand, the evidence presented by her defence lawyer was rejected. This evidence would have demonstrated that the decision proffered by Carvajal was not only correct, but based on prior decisions of the Constitutional Court. After rejecting the evidence, the Procurator decided, on 22 October 1992, to initiate a sanction against Carvajal from the Superior Court.

The criminal charges were also merged, incriminating Carvajal of the crime of subornation. The charges of subornation were published in a national newspaper, which initiated a slanderous campaign against the by-then ex-judge. An order for her arrest has been issued.

Juan David Castaño and **Victoria María Muñoz Roque:** Lawyers from Bogotá. They were assassinated on 5 April 1993 by three suspects belonging to the armed faction known as "*Perseguidos por Pablo Escobar*" ("those pursued by Pablo Escobar") (Los PEPES), a group of ex-collaborators of the drug

lord. The defence lawyers had just left the model prison of Bogotá where various members of the Medellín Cartel were being held.

Los PEPES had declared several days before that it would resume its actions against the drug cartel. The group also stated in a press release that both the Attorney General and the General Prosecutor of the Nation were giving favourable treatment to Pablo Escobar.

Salmón Lozano Cifuentes, Gilberto Gómez, William Gonzáles and **Santiago Uribe Ortiz:** Lawyers from the municipality of Medellín in the Department of Antioquia. The lawyers were threatened with death by a notice hanging around the neck of slain lawyer Raul Jairo Zapata Vergara (see below). The lawyers are defending members of the Medellín Cartel. Lozano was ultimately assassinated on 8 July 1993, in downtown Medellín. The police stated that Lozano was gunned down by two unknown assailants dressed in sportswear. Lozano is now the fourth of Pablo Escobar's lawyers to be killed in Colombia.

Willian Duarte Cristancho and **Wilson Ivan Rodriguez:** Technical investigators of the office of the prosecutor of northern Santander. The two men were assassinated on 20 March 1993, in the city of Ocaña while they were leaving a public establishment. They were conducting inquiries into a band of motorcycle thieves who extorted money from the owners for the return of the stolen goods. The investigation was about to reveal identity of the thieves and extortionists.

Victor Hugo Córdoba Fernandez: Secretary of the Court from Medellín. Córdoba Fernandez was assassinated on 17 October 1992. He was shot several times by various individuals as he was walking in the Campo de Valdez neighbourhood, in the northeastern part of the city.

María Nelly Guerra de Guerra: Lawyer and notary from Medellín. She was assassinated on 22 October 1992. A hitman impersonating a farmer awaited her entrance into the Alpujara administrative centre. As soon as she was seated behind her desk, he entered the building and shot her at point-blank range, causing instant death. Two suspects were spotted fleeing the scene on motorcycles.

Janeth Angulo de Kloetznse: Lawyer from Cali. Early in the morning on 7 July 1992, four suspects, among them Oswaldo Galvis Valencia, came to the residence of Janeth Angulo attempting to kidnap her by force. The suspects fled the scene in a taxi, but a police patrol that happened to be passing by pursued the kidnappers. While trying to outmanœuver the police car, the criminals crashed into another vehicle, at which time the police managed to apprehend one suspect and save the victim. The reasons for the kidnapping remain unknown.

Jorge Goméz Lizarazo: Lawyer, former judge, founder and president of the Regional Committee for the Defence of Human Rights (CREDHOS) (see *Attacks on Justice 1991-1992*). Despite police protection, he was attacked by machine-gun fire on 11 June 1992. He survived the attack, but left the city of Barrancabermeja, after receiving a tip announcing the arrival of a unit carrying orders for his assassination. The lawyer fled to Bogotá from where he took an airplane to the United States. With the financial aid of various lawyers' foundations, Lizarazo managed to gain employment.

Miriam Rocío Velez de Lopez: 6th Public Order Judge from Medellín. On 18 September 1992, she was assassinated when she was driving to the administrative centre of La Alpujarra. Her bodyguards were attacked as well by individuals firing multiple shots from a white vehicle. The judge, heavily wounded, was then transported to a nearby clinic where shortly afterwards she passed away.

Miriam Rocío Velez de Lopez

Judge Velez de Lopez had received various death threats. The most probable reason for her death stems from her involvement with the assassination case of the Director Guillermo Cana Isaza of the daily newspaper *El Espectador*. She was about to hand down a sentence regarding the case. She was also dealing with a case involving a dangerous head of a gang of hitmen (*sicarios*), known by the alias "*Caliche*." She had received various serious death threats from this group.

Esperanza Leon Martinez: Lawyer from Bogotá. On 9 March 1993, Martinez was shot by two men as she was waiting in her car in front of a red light close to her office.

Eduardo Umaña Mendoza: Human rights lawyer and law professor (see *Attacks on Justice 1991-1992*). Mendoza has received four anonymous phone calls threatening to kill him if he does not immediately cease his human rights activities. Mendoza has been repeatedly threatened in the past as a result of his work. The most recent threats are believed to be connected to Mendoza's work on the case of sixteen telecommunications technicians charged with offences under anti-terrorist legislation. They were charged in February and March 1993, and of the sixteen charged, thirteen are already in prison. Three have yet to be arrested.

The technicians are charged with sabotaging Colombia's telecommunications computer system during a strike in April 1992, leaving the country without telephone service for a week. The strike was declared illegal by the Colombian Government.

Charges were originally brought against the technicians in an ordinary criminal court, but the case was later transferred to a special court (regional jurisdiction) that hears cases involving drug-trafficking, terrorism and political offences. The procedural rules followed in these courts raise questions of due process.

The Colombian government's use of an anti-terrorism law in a labour dispute is troubling, especially given the restricted due process guarantees under the law (see above "The Faceless Judges").

Alvaro Meneses and **Another Lawyer:** Lawyer and director of the Colombian Petroleum Company (ECOPETORL). The two lawyers, belonging to the same institution, were threatened with death. On 20 May 1993 they received a sheet of paper stating: "Family members, friends and relatives are invited to attend the funeral at 12:30 p.m. honouring the two lawyers' remains at the parish of Cristo Rey and to afterwards accompany the procession to the cemetery."

The lawyers were advising a legal project seeking to define the rights of the state over the subsoil and the oil fields in the Cusiana region, in the Department of Canare, in order to avoid paying more than $ 600,000 million to the landowners. The author of this project, Senator Eduardo Chavez Lopez, of the Democratic Alliance M-19, also received a similar threat.

Guido Parra Montoya: Lawyer from Medellín. Montoya was assassinated on 16 April 1993. His body, containing several bullet wounds, was found in the trunk of a taxi along with that of his eighteen-year-old son **Guido Andres Parra** and the taxi driver. The lawyer and his son were abducted from their apartment hours earlier. Various suspects belonging to the group Los PEPES were seen leaving the apartment.

The bullet-ridden bodies of Guido Parra and his son Guido Andres

At his home, a letter was found saying: "What do you think of this trade for the bombs of Bogotá Pablo? — Los PEPES." In 1991, Montoya had represented Pablo Escobar Gaviria in negotiating the surrender of Escobar to the authorities. Nonetheless, since 1992, Montoya had not rendered his services to the Medellín Cartel.

César Amaya Moreno: Ex-Criminal Investigations Judge 103 from Bogotá. In 1992, a guardianship action regarding the repossession of an airplane was presented to him. A previous judge did not desire to decide the case, although the owner insisted that his possessions be returned to him, since there appeared no legal foundation for the impoundment. Judge Amaya Moreno decided on a provisional return of the airplane to its owner. Reliable sources indicate that the reason he was not again re-elected the year after is due to supposed "moral

reserves" against him. A few days later, the Superior Court of Bogotá reversed the decision of the guardianship action and decided to have Judge Amaya Moreno investigated.

Disciplinary actions were taken. On 9 October 1992, a warrant was issued for his arrest. Bail was denied in spite of Articles 415 and 417 of the Code of Criminal Procedure, which clearly states that every detainee has the right to bail in cases with a maximum possible sentence of not more than thirty-six months. In the event that Amaya Moreno would be condemned, he should not receive a sentence of more than eighteen months in prison for allegedly having received bribes in connection with the case.

Leonel Proveda Moreno: Member of the staff of the prosecutor from Medellín. Moreno was assassinated on 22 November 1992. When he was returning to his home in the afternoon, he was overtaken by several suspects who then shot him repeatedly. In a critical state, he was transported to the hospital where he was declared dead on arrival.

Freddy Yesid Martinez Murillo and **Jaime Benito Parrado:** Members of the staff of the prosecutor and technical investigators of the judicial section of the police department of Antioquia. On 4 February 1993, the two men were abducted by FARC guerrillas while travelling in an official vehicle. Their bodies were found on 9 February 1993, with signs of torture and bullet wounds. The reason for their assassination remains unknown.

Antonio Suárez Niño and **Fabio Hernandez Forero:** 22nd Criminal Investigations Judge from Bogotá and Prosecutor. The two men are the president and vice-president of ASONALJUDICIAL (the organization representing the judges and lawyers employed by the Colombian judiciary). On 19 November 1992, the judges and lawyers working for the state

organized a national day of protest. Niño and Forero defended the interests of the protesting jurists. On 18 June 1993, the Procurator General of the Nation brought disciplinary sanctions against these and other members, for their defence of the interests of the judges and lawyers of the country. The Procurator General has apparently initiated a hunt for all jurists who oppose his attempt to criminalize the protest conducted by the members of ASONALJUDICIAL. The Procurator General has also written-up repressive statutes that limit the freedom and public guarantees offered to the government jurists.

Yolanda Arenas de Ordoñez: Lawyer from Santander. On 1 September 1992, Ordoñez was abducted by a guerrilla group. Ransom money was demanded for her release, while the motivation for the abduction remained unclear. When her husband finally paid the ransom, he himself was assassinated in retaliation for the police capture of the suspect receiving the money. In March 1993, she was finally released.

José William Páez: Public Order Prosecutor from Bogotá. Páez was assassinated on 18 September 1992. His body was found the following day on the border between Bogotá and La Calera. Páez moved to Bogotá in order to meet with an informant, who afterwards was identified as the girlfriend of Alberto Guzmán Chaparro (alias Victorino). The investigation was connected to the trade of illegal drugs, and Chaparro surfaced as one of the main suspects.

Gustavo Rodríguez: Member of the staff of the Second Criminal Municipal Court of Barrancabermeja. Rodriguez was assassinated on 2 September 1992 when he was about to hand over a subpoena. According to official sources, the judicial staff member was injured when he descended from a bus in the northeastern section of the city. Eyewitnesses explained that three armed men fired at Rodriguez, who then managed to climb

into a municipal garbage truck. Nonetheless, the attackers still caught him, forced him from the garbage truck and assassinated him.

Cesar Pompeyo Rodriguez: Judge of the Superior Court from Magdalena. On 8 September 1992, two heavily armed suspects waited until 8 p.m. at the exit of his office. A police patrol, informed about the situation, was dispatched to the location, after which the suspects fled the scene. The case was considered an attempt to intimidate the members of the judicial system of the Municipality of Santa Marta.

Ricardo Villa Salsedo: Lawyer from Santa Marta and ex-Senator of the Republic and activist for the Democratic Alliance M-19. Salsedo was assassinated on 9 January 1993 by a suspect who shot him seven times. The motivation for the attack appears related to the fact that the lawyer had been denouncing the municipal mayor for receiving personal benefits connected to a group of extortionists who were operating in the city. In addition, Mr. Salsedo had also denounced the mayor for electoral fraud, resulting in that mayor's resignation.

Luis Angel Sánchez and **Claudia Vallejo:** Members of the Attorney General's Office from the municipality of Medellín. On 4 March 1993, they were threatened with death by Los PEPES, through a notice hanging from the body of slain lawyer Raul Jairo Zapata. They were supervising the case brought by the Colombian Government against some members of the Medellín Cartel.

Isabel Cristina Guevara Valencia: Lawyer for the Ministry of Health from Bogotá. On the night of 28 August 1992, three suspects identified themselves at the lobby of the residence of the lawyer and then ascended to her apartment. For reasons unknown, she opened the apartment door for them, at which

time they fired four gunshots at her, fatally wounding the lawyer. Three neighbours who were awakened by the commotion came to her aid, but were threatened by the assassins, who tied them up in front of the bleeding body of the victim. The lawyer had apparently been investigating cases of corruption and other financial irregularities occurring at various pharmaceutical laboratories.

Silvia Valderrama Velez: Lawyer from Medellín. Fernandez was assassinated on 17 October 1992, by a youth just as she was leaving a public establishment in the western part of the city.

Raul Jairo Zapata Vergara: Lawyer from Antioquia and defence lawyer for one of the members of the Medellín Cartel, who had voluntarily submitted himself to the authorities. The lawyer was assassinated by Los PEPES. They decided to declare a war on the Medellín Cartel, and on the early morning of 4 March 1993, twenty armed men entered the apartment of the defence lawyer. The suspects drove many different cars and impersonated policemen. The body of Zapata Vergara was discovered in the northeast of Medellín. He had been tied up, tortured and shot several times.

Around the neck of the lawyer the attackers hung a sign which read: "For the unscrupulous defender of the cartel — Los PEPES." The notice also carried an additional six threats to other lawyers of the Office of the Attorney General (see next case).

Jarry Hernando Leal Villalba: Member of the staff of the prosecutor from Bogotá. Leal Villalba was assassinated on 23 December 1992. As the investigator of the General Prosecutor of the Nation was heading to his home, the road he was travelling was blocked by a bus. The man in the bus was identified as a member of the staff of the prosecutor as well. Some minutes later

the suspect's brother also arrived at the scene in a car. After a long discussion, the two men fired six shots with a 7.65-mm gun at Leal Villalba. In turn, the jurist fired back and injured the two suspects. Under police supervision, the two suspects were taken to a nearby hospital to recover from their injuries, while Leal Villalba died thereafter due to multiple bullet wounds.

Anonymous Judges and **Magistrates.** An assassination of several judges and magistrates was attempted in Medellín on 7 January 1993. Two suspects abandoned a vehicle containing approximately 100 kilograms of dynamite in the basement of the Valderobles residence. The building was the home of various judges, magistrates and other governmental and municipal functionaries. The explosion killed the two suspects, while causing a large fire in the building. Twenty persons were wounded. In the same area, another car bomb of approximately 100 kilograms of dynamite exploded a month earlier on 28 December 1992.

DOMINICAN REPUBLIC

The Dominican penal court system consists of a Supreme Court, appellate court and courts of the first instance. All judges are appointed by the Senate. In general, their terms of office correspond to those of the President and Senate. After the election of a new Senate, judges can be removed or reconfirmed. There are some concerns about the independence of the judiciary. Courts are underfunded and corruption seems to occur.

There remain long delays in the judicial process. Of about 11,000 persons detained, only about 10% have been convicted. Preventive detention is commonly used, and persons can remain in custody for long periods of time before going to trial. Credible reports state that prisoners, often from marginal- or low-income backgrounds, are beaten or mistreated by the police in order to extract confessions.

Rafael Caamaño Castillo: Lawyer from the Elías Pina region. In August 1992, he was attacked by several police officers after attempting to intervene on behalf of a group of Haitian merchants who had been marketing their products in the town of Comendador. The Haitians were trying to sell their goods when a group of police officers began to disperse them by beating the Haitians with clubs. Caamaño Castillo asked a police corporal why the action was taking place, and in response he received blows in the neck and to the body.

Rafael Efraín Ortiz: Human rights lawyer belonging to the local section of the Dominican Committee for Human Rights in Azua. He was shot and killed on 20 September 1992. For the

500th anniversary of Columbus' landing on the island, the Dominican government had erected a monument in the shape of a cross. The construction, which started in 1990, required land obtained by a mass eviction of thousands of poor people whose houses were destroyed. Efraín Ortiz was a member of a national organization that promoted neighbourhood groups working to promote common interests (*Comité de Organizaciones Populares*). The group was holding a protest on 20 September 1992 in Santiago against the forced dislocations. The protesters were infiltrated by police officers in civilian clothes who suddenly started shooting into the crowd at point-blank range. Efraín Ortiz was shot dead from a distance of ten feet. The whole incident was recorded on video. Shortly thereafter, on 22 September 1992, Police Chief Guerrero Peralta announced that six officers of the secret service were arrested in connection with the killing. Two secret service majors in the implicated group managed to flee the country, while the other four members are still awaiting trial pending further investigations.

EGYPT

The regular judiciary in Egypt enjoys independence. Litigation occurs on three levels: first instance, appeal and cassation. The administrative courts also function on three levels, and the Egyptian *Conseil d'Etat* is reputed for its high-level judgments and independence.

The High Council of the Judiciary controls the selection, promotion and transfer of judges. In September 1992, the High Council announced its decisions to transfer hundreds of judges from their positions to other locations in Egypt. This decision was met with severe protest from the judges. On 29 September 1992, the General Assembly of the Association of Judges held a meeting in its headquarters in Cairo. The judges demanded the following:

- that the composition of the High Council of the Judiciary be reviewed to allow for the heads of the courts of appeals as well as other levels of litigation to be represented;
- that the Law of Judicial Power specify the rules on the selection, promotion, transfer and delegation of judges. The judges demanded that these rules not be altered except by the enactment of legislation. This law should be enacted after prior consultation with the General Assembly of Courts;
- that the High Council of the Judiciary select its Secretary-General for a term of office of three years that is renewable by the Council. This Secretary-General should have the power to add matters on the Council's meeting agendas; and

- that the Ministry of Justice bear the moving expenses of the transfer of judges, and compensate those who were financially affected by this recent decision.

The Exceptional Justice System

In an attempt to deal with clashes between Egyptian security forces and Islamist groups, the government introduced several measures that have had an adverse impact on the independent functioning of both the judiciary and the legal profession. Moreover, authorities responsible to the executive have occasionally shown disrespect for the Rule of Law by disregarding court decisions, especially those ordering the release of individuals detained pursuant to emergency legislation.

Military Courts and Civilian Defendants

Egyptian President Hosni Mubarak, in October 1992, issued Decree No. 370, pursuant to which the President could refer civilian cases in which the defendants are accused of committing "terrorist acts" to military courts. The President justified the measure by stating that the stability of the nation requires that some cases be tried rapidly and without what he viewed as protracted procedures. Additionally, it was stated that civilian judges often feel intimidated when hearing cases involving those accused of terrorism.

The Egyptian routing of civilian cases through military courts is a matter of particular concern in that military court procedures circumvent many of the safeguards of civilian courts. Trials conducted before these courts are routinely swift and result in

the imposition of stiff penalties. Moreover, military courts are staffed by members of the executive branch of government and thus lack any significant measure of independence. Their members consist of military judges not necessarily chosen by competence, and they are selected without any requirement that they hold a law degree. These judges serve for renewable periods of two years. The right to counsel is not fully respected in these courts. Defendants are often tried *in absentia*. Moreover, they are unlikely to have full access to their lawyers, who complain of inadequate time and means to prepare their cases.

Verdicts handed down by military courts are not appealable to a higher court, a practice which contradicts international norms defining fair procedures as set out in Article 14 of the International Covenant on Civil and Political Rights, to which Egypt is a party, a violation of particular gravity with regard to military court death sentences. As of July 1993, over twenty death sentences had been issued in these military courts, and several executions had been carried out. The independence of the courts is questionable in light of the fact that they are responsible only to the President, who ratifies its verdicts.

The use of military tribunals to try such cases violates Article 5 of the UN Basic Principles on the Independence of the Judiciary, pursuant to which "[e]veryone shall have the right to be tried by ordinary courts using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals."

The Alexandria Trials for Terrorism

The President referred to military justice, in the latter half of 1992, a civilian case involving forty-eight defendants accused of terrorist activities and several alleged members of the Islamic opposition *Jihad.* Following trials in the fall, death sentences were handed down against eight defendants, seven of whom were tried *in absentia.* At least one defendant, Sherif Hassan Ahmed, has already been hanged. Thirty-one others were given lesser sentences. Charges against the defendants included membership in an underground "terrorist" organization, conspiring to assassinate state officials and theft.

Lawyers for the defence experienced several difficulties in carrying out their functions. They complained that they were not given enough time to study the files, locate and call witnesses or speak with experts who had prepared reports on evidence. Because the defendants were referred to the state procuracy without notification to the defendants' lawyers, the lawyers were also not present during initial questionings. The lawyers were reportedly harassed by security police and searched prior to meetings with their clients. Finally, the trial was not fully public, and, as noted above, the verdict is unappealable, except to the extent that it must be ratified by the President.

Defence attorney **Abdel Halim Mandour**, lead defence counsel in the trial for tourist attacks (see below), challenged the decree permitting the referral of the terrorism cases to military justice. However, the Egyptian Constitutional Court, in a ruling of 30 January 1993, upheld the decree, finding that the

President was empowered to issue it in light of the State of Emergency existing since the 1981 assassination of Anwar-al-Sadat. The decision came despite a prior determination of the Higher Administrative Court in December 1992 that the military tribunal was without jurisdiction to hear the case because of the lack of a connection between the case and the armed forces.

The decision of the Constitutional Court simultaneously upheld the death sentences imposed in the fall trials before the military court (see above). The case marks a broad validation of presidential referrals to military justice and would seem to lend a stamp of approval to trial procedures contravening internationally accepted standards defining fairness.

Attacks on Tourists and Military Courts

Several other cases have been referred to military justice and tried in discordance with internationally accepted standards. In March, the government announced the categorical referral to military justice of all cases involving attacks on tourists. Throughout March and April of 1993, the first case of this nature was tried. Six of over forty civilian defendants were tried *in absentia*. Seven of the convicted defendants were hung on 8 July 1993. Another disturbing element of the trial was that several defendants were minors under the age of eighteen.

Here, also, defence lawyers complained of difficulties defending their clients (see below). The CIJL had an observer present at the March 1993 military trials of those accused of attacking tourists. Initially, the defence was given inadequate time to

prepare its case, although a two-week extension was granted upon request. In protest over the obstacles faced by defence counsel, the lawyers temporarily withdrew, informing the court that they would return. In apparent reprisal, the court appointed several lawyers to the defence, and, on 15 April, denied the lawyers access to the court and refused to allow them to cross-examine prosecution witnesses. The court was presided over by three high-ranking military officials, one of whom, the Court President, was invited to sit on the case for a defined period even though he had been forced to resign from the Court several months before. This led some observers to call into question the independence of the judge.

The CIJL remains concerned over executive referrals to military courts and has made that position known to the President of the Republic.

Throughout the spring and summer of 1993, trials of civilians before military courts continued. To date, at least twenty-two death sentences have been meted out to individuals tried before these courts, and, between 13 June and 9 July 1993, the government executed nine of them.

Badri Maklouf Husayn: Lawyer. During the spring 1993 trials for attacks on tourists, Badri Maklouf Husayn was sentenced to life imprisonment.

Ali Ishmail Hussein: Defence lawyer in Giza. It is believed that in March 1992, state security agents invaded Hussein's home and took several dossiers containing information on a client. The documents removed by the agents allegedly implicated the state security forces in the torturing of the client. The client is accused of membership in a banned Islamic organization thought to have

been behind the murder of Parliament spokesperson Dr. Rifa't al-Mahgoub three years ago.

Safwat Sayid Mahmoud: Lawyer specializing in criminal defence. Mahmoud was denied entry into the Bani Suwaif Criminal Court in April 1992. The action sparked a sit-in protest by more than 1,500 lawyers.

Abdel Haris Medani and **Montasir al-Zayyat:** Two lawyers for the defence in the March-April 1993 trials of several individuals accused of attacking tourists.

The lawyers complained that they were deprived of access to voluminous prosecution reports until the trial had begun. After walking out in protest, the two were denied re-entry for a time and were kept from engaging in cross-examinations eventually conducted by two court-appointed lawyers. The government has denied these allegations.

Radwan al-Tuni Ibrahim Muhammed: Lawyer in Assyut and chair of the civil liberties section of its bar association, and **Mustafa al-Sayyid Husayn Abd-al-'Al:** Lawyer. These two lawyers were acquitted in the above-described trial in a military court of those accused of attacking tourists. It has been reported that these two, while known to be innocent, were included among the defendants as a means of intimidating lawyers who become involved in politically sensitive cases. Al-Tuni had previously made several attempts to assist Bastawi Abd-al-Magid Abu-al-Sa'd, an eighteen-year-old suspected of attacking a tourist bus and who was also allegedly subjected to mistreatment at the hands of Egyptian authorities.

Both lawyers were apparently mistreated in custody and credible reports indicate that al-Sayyid was tortured. Al-Tuni had been arrested on 5 December 1992 outside an Assyut

courthouse. Al-Tuni was transferred from one detention site to another and was reportedly mistreated by his custodians in efforts to extract a confession. Al-Sayyid was held at Cairo headquarters and was also reportedly subjected to torture and was blindfolded.

Hassan al-Charbawi Shehata and **Sha' ban 'Ali Ibrahim:** Lawyers. Despite repeated court orders calling for their respective releases, each lawyer has been held in administrative detention. Al-Charbawi's whereabouts are unknown; he was acquitted of charges levelled against him following an arrest in January 1989.

Amal Watani: Lawyer specializing in criminal defence. Watani was assaulted by a policeman in Alexandria in March of 1992 while attempting to review investigatory files relating to one of her clients at the police station. Alexandria lawyers held a strike in protest for a day following the assault.

Two Anonymous Lawyers. Middle East Watch representatives who visited Egypt this past year learned that, after their departure, two of the Egyptian lawyers with whom they had visited in Qena, whose names have been withheld, were detained and held for several hours of questioning by the General Directorate for State Security Investigations.

EL SALVADOR

The Salvadoran penal court structure is divided into four levels: justices of the peace, courts of the first instance, courts of the second instance (appeals courts) and the Supreme Court. Sentences can be appealed, but jury verdicts can be neither overruled by a judge nor appealed to a higher court. The nominal independence of the judiciary is severely weakened in practice by political pressures. Political criteria are used when appointing judges, while professional capabilities are often neglected.

The government made some progress in addressing the problems of the judiciary by improving administrative functions of the courts, updating legal codes and improving the overall professionalism of the system. Two important judicial reform bills were approved by the National Assembly in December. One establishes a new National Council on the Judiciary, and the other regulates judicial careers.

The current Supreme Court was selected by the majority party in the Assembly. In keeping with the reforms adopted in December 1991, the National Assembly now elects Supreme Court magistrates for terms of nine years by a two-thirds majority vote of the deputies (magistrates formerly served five-year terms). The Assembly chooses magistrates from a list of candidates drawn up by the National Council on the Judiciary; half of the candidates will come from bar associations. The Justices' terms will be spread out, so that one-third of the Court's membership is up for renewal every three years.

Justices of the peace play a critical role during the initial phases of any criminal investigation. They are the first judicial authority on the scene of a crime, and they must ensure that all evidence relevant to the investigation is preserved and not tampered with. The Supreme Court appoints all justices of the peace. Most continue to be chosen based on their political affiliation rather than on professional competence.

Other sections of the Salvadoran judiciary include the Attorney General's Office (*Fiscalía General de la República*), the Procurator General or Chief State Council's Office (*Procuradoría General de la República*) and a new Human Rights Ombudsman's Office established in July 1992.

Acute Problems of the Judiciary

The Attorney General's Office has traditionally been weak and susceptible to political pressure. The Salvadoran justice system lacks an independent criminal investigatory body. Judges often complain about inadequate case files that are missing evidence or accounts of witnesses. Both judges and police generally fail to follow procedure during the preliminary investigation. Many justices of the peace and justices of the courts of first instance act with negligence when securing the scene of a crime, obtaining evidence or in the execution of other activities. Testimony carries more weight than technical evidence. Prisoners are unaware of their right to select a defence lawyer at the start of proceedings. Some prisoners have been incarcerated for many years and claim never to have seen a lawyer. Long pre-trial detention remains the most common practice in El Salvador as well. Nearly 90% of the prison population consists of pre-trial detainees.

Generally, release on bail is not permitted. The 1991 constitutional reforms gave the Attorney General's Office the specific responsibility for criminal investigations. A criminal investigative body will function under the Attorney General's supervision.

The National Council on the Judiciary

The law that passed in 1989 ensured that the Supreme Court's powers were not limited by the creation of the National Council on the Judiciary. Under the law, five of the ten members of the Council must be sitting members of the Supreme Court. The remaining five were selected from the Lawyer's Federation (three) and from the nation's law faculties (two). This system gave the Supreme Court control over the Council's decisions. The 1991 reforms called for the "independence" of the Council and for the increase of its mandate. The Council is now to propose candidates for the Supreme Court, courts of first and second instance and the justices of the peace. The Legislative Assembly determined that members of the Council have to be elected by a two-thirds majority of the Legislative Assembly. Nonetheless, sources state that in fact this is contrary to the Chapultepec peace agreements concluded in Mexico between the National Liberation Front (FMLN) and the government. Instead of guaranteeing the independence of the Council from the government and political parties, it allows for one or two parties who have a qualified majority in the Legislative Assembly to split the appointments among themselves, thereby politicizing the justice system.

The law finally approved for the National Council on the Judiciary was disappointing for those seeking

more judicial independence. Although the Supreme Court will change in 1994, the current Court will nominate the members to the Council, who will serve until 1997. The law fails to establish clear procedures for the selection of judges, and it does not define the kinds of examinations to be given or establish criteria for the evaluation of judges.

ONUSAL (UN Observer Mission in El Salvador) still complains that the judiciary is very unreceptive to proposed changes. The former Supreme Court President Mauricio Gutiérrez Castro stated on various occasions in 1992 that he does not consider the Chapultepec agreements binding on the judiciary.

José Eduardo Pineda Valenzuela: Former lawyer with the Human Rights Ombudsman's Office and lead prosecutor in the investigation of the 1989 Jesuit Murders. Pineda Valenzuela was attacked by two unidentified gunmen who seriously injured him at his home on 31 July 1992. The two men confronted Pineda Valenzuela as he was closing the gate of his home, and escorted him into his house where his wife was waiting. Once inside, the attackers forced Pineda Valenzuela to his bedroom where one of the men shot him in the side of his neck. As a result of the attack, Pineda Valenzuela was paralyzed from the neck down. The gunmen returned to the home on 17 August 1992 and threatened to harm Mrs. Pineda if she continued to collaborate with police investigators. José Eduardo Pineda Valenzuela died on 17 March 1993, as a result of the injuries he had sustained in the July 1992 attack.

GHANA

Governed throughout 1992 by the Provisional National Defence Council (PNDC), Ghana moved toward democratization in January 1993 by the inauguration of a newly elected government. A new Constitution, approved by referendum in April 1992, effectively abolished the National Public Tribunal, the highest special court system. Contrary to Article 5 of the UN Basic Principles on the Independence of the Judiciary, the National Public Tribunal courts were not independent of the executive and were not subject to traditional rules of judicial procedure.

Other developments this year in Ghana include the repeal, in September 1992, of two laws which allowed detention without charge or trial: the Preventive Custody Law, PNDC Law 4 of 1982, and the Habeas Corpus (Amendment) Law, PNDC Law 91 of 1984. These two laws were replaced by the Public Order (No. 2) Law, PNDC Law 288 of 1992, allowing the Secretary of Interior to order twenty-eight days of preventive detention for those whose actions are likely to encourage or to engage in ethnic conflict, violence or armed robbery. After fourteen days, the detention must be reviewed by a three-judge panel. Once this panel renders a decision, the courts may not challenge the detentions. While the provisions of this law do not conform fully to international standards requiring a maximum detention of forty-eight hours before being charged, it represents an improvement over the old laws which allowed indefinite and arbitrary detention.

Johnny Hansen: Lawyer, former Secretary of the Interior for the PNDC Government during 1982-1983 and currently a member of the People's Heritage Party. Hansen was arrested by security officials on 25 November 1992 for suspected involvement in three bomb attacks in Accra and Tema in November 1992. He was detained without charge or trial, and possibly subjected to torture and other mistreatment, until his release in late 1992.

GUATEMALA

Guatemala's 1985 Constitution calls for election by universal suffrage of a one-term President, unicameral Congress and municipal officers. It mandates an independent judiciary and also a Human Rights Ombudsman (*Procurador de Derechos Humanos*), who is elected by and responsible to Congress. In 1992, President Jorge Serrano served his second year of the five year term. In January Congress elected new Presidents of Congress and of the Supreme Court. In August 1992, Ramiro de León Carpio was re-elected as the new Human Rights Ombudsman (see ICJ publication *Guatemala: Taller de capacitación para miembros de grupos y comunidades indígenas*).

On 25 May 1993, President Serrano Elías staged a *coup d'état*, and, in the process, suspended the Constitution and placed the justices of the Supreme Court under house arrest. He then dissolved both the Supreme Court and the Congress. The Constitutional Court, the country's highest judicial body, declared President Serrano's move unconstitutional. As a result the President proclaimed this body dissolved as well. On 1 June 1993, many civilians took to the streets and succeeded in having the military join the political and judicial authorities to reverse President Serrano's actions. On 6 June 1993, the Congress elected Ramiro de León Carpio as the new head of state. The officials dismissed by President Serrano have resumed their old posts, and those who have resigned in protest of Serrano's actions have been requested to resume their positions.

The new Human Rights Procurator, María Eugenia Morales de Sierra, declared on 14 June 1993 that she was opposed to granting amnesty to the participants in the *coup d'etat.* Until Serrano's departure, fear played an important role in corrupting the judicial system, as has the authorities' failure to protect the security of those whose function it is to see that justice is carried out. Frequently, judicial authorities are themselves the target of death threats and attacks because of their work investigating cases of human rights violations under their jurisdiction and pressing for legal remedies to end impunity. Harassment has also taken the form of statements by government officials trying to discredit those lawyers and judges carrying out their legitimate professional activities, by accusing them of being the "civilian arm" of the armed opposition or of responding to "insurgent directives."

The Death Penalty

The Guatemalan Penal Code provides for the death penalty in limited cases of aggravated homicide of the President or of the defendant's immediate family, killing a kidnap victim and rape of a child under the age of ten. The last executions were carried out in 1982 and 1983 under the government of General Efraín Ríos Montt. Concerns are raised over the fact that, in September 1992, the Guatemalan Congress approved a new law against drug-trafficking activities, which in fact extends the scope of the use of the death penalty. The new law makes drug-trafficking activities which result in the death of others, either through drug consumption or acts of violence, punishable by death.

This measure contradicts the American Convention on Human Rights, to which Guatemala is a party. The Convention states that the application of the death penalty shall not be extended to crimes to which it did not apply at the time of ratification. In fact the consultative opinion of the Inter-American Court of Human Rights determined that "the Convention imposes an absolute prohibition on the extension of the death penalty and that, consequently, the government of a State Party cannot apply the death penalty to crimes for which such a penalty was not previously provided for under its domestic law and that a reservation restricted by its own wording to Article 4(4) of the Convention does not allow the government of a State Party to extend by subsequent legislation the application of the death penalty to crimes for which this penalty was not previously provided."

Judicial Reforms

In September 1992, the Guatemalan Congress approved a new code of criminal procedures, which should enter into force by September 1993. The new Code provides for oral trials before a panel of three judges. It mandates that a translator be provided if the language of one of the parties is not Spanish. This measure was taken as a step towards respecting the rights of indigenous peoples, which constitutes 60% of the population. The new Code also places criminal investigations, which currently are the responsibility of the investigating judge, under the responsibility of the Attorney General's Office.

Other reforms being studied by the authorities prior to the forced resignation of President Serrano are the creation of a special criminal investigations

force separate from the police and under the responsibility of the judiciary, and the establishment of so-called "justices of peace" in every municipality of Guatemala City.

Héctor Hugo Peréz Aguilera, Mario René Díaz Lopez and **Mario Guillermo Ruiz Wong:** Judges of the 4th Guatemalan Court of Appeals from Guatemala City. The judges received anonymous death threats after upholding the conviction of Noel de Jesus Beteta Alvarez, a former sergeant from the Security Section of the Presidential High Command. In February 1990, a lower court convicted Beteta Alvarez of the 1990 stabbing to death of Guatemalan anthropologist Myrna Mack Chang, a crime which shocked the Guatemalan community, and sentenced him to twenty-five years in prison. The Office of the Guatemalan Human Rights Ombudsman characterized the killing as a political crime. The threat gave the judges twenty-four hours to leave the country.

Ramiro de Leon Carpio: Current President of Guatemala and former Human Rights Procurator. In his function as Human Rights Procurator, he has received various anonymous death threats since the period of the dissolved Congress. He was also dismissed and had to go into hiding as a result of the political situation

José López Mendoza: Head lawyer of the Attorney General's Office. Since December 1991, he has received continuous death threats related to his investigation of the 1991 assassination of anthropologist Myrna Mack Chang.

Juan José Rodil Peralta and **Edgar Tuna Valladares:** President of the Supreme Court and acting Attorney General. These two jurists were threatened as a result of the institutional

situation in Guatemala following measures taken by President Serrano on 25 May 1993. Since the resignation on 1 June, Peralta and Valladares are no longer under any threat of arrest.

Manuel de Jesús Soto Rodríguez: Attorney General's Office representative for Quetzaltenango. In June 1992, he was shot in the abdomen and wounded by two men in civilian clothes.

HAITI

In theory, as provided for by the Constitution, Haiti has both an independent judiciary and the right to a fair public trial. However, since the coup in September 1991, resulting in the overthrow of the democratically elected President Jean-Bertrand Aristide, the independence of the Haitian judiciary has eroded, and judges, prosecutors and other Aristide appointees have faced reprisals by the current regime. Human rights abuses pervade the judicial process, including extrajudicial killings by security forces and beatings and mistreatment of detainees in order to extract confessions. The Haitian military has been acting as the country's police force. According to Amnesty International, in 1992, at least ten people allegedly died in detention as a result of torture. Although the Constitution requires the prison system to be administered by the Ministry of Justice, it is currently controlled by the military.

The Haitian Constitution provides that a person may only be arrested if apprehended during the commission of a crime or pursuant to a warrant. Despite this provision, arbitrary arrests by security forces commonly occur in Haiti. Constitutional provisions mandating the presence of legal counsel at interrogations are also routinely violated. Detainees do not usually have access to lawyers at any stage in judicial proceedings, although currently five lawyers offer *pro-bono* defence services in Port au Prince.

In practice, the Haitian judiciary is poorly staffed, undercompensated and inadequately trained. Further, the practice of arbitrarily appointing and removing judges according to political whim has

exacerbated the judiciary's state of decline. The constitutionally regulated local administration system has fallen into decay, as implementing legislation has been delayed in Parliament since the fall of Aristide. Military officials have taken over local administration, and the military persists in its failure to record who is arrested, creating both confusion and difficulty in documenting abuses. Although the Constitution provides for two criminal sessions per year in order to hold jury trials, these sessions have not been held consistently, and, consequently, pre-trial detainees often remain in jail for years at a time.

The future may be brighter for Haiti and the independence of its judiciary. General Raoul Cedras, the leader of the September 1991 coup that removed President Jean-Bertrand Aristide from power agreed on 2 July 1993 to a UN plan to restore democracy in Haiti. The UN plan, helped by OAS efforts, would enable Aristide to return to power by October 1993.

Marcel Amonasi: Magistrate in Anse d'Hainault. On 28 September 1992, Amonasi was found dead. His eyes had been gouged out and he had been shot numerous times, apparently in retaliation for his pro-Aristide politics.

Jean Claude Clergé: Justice of the Peace. On 1 April 1993, Clergé was severely beaten, allegedly by military officers commanded by Captain Gerard Pierre Charles. Clergé is an Aristide appointee.

Sténio Clergé: Judge. Since June 1992, Clergé has been in hiding because he is wanted by the police for his opposition to the 1991 coup.

Réné Dorcély: Magistrate and member of Pro-Aristide Front for Change and Democracy. On 6 June 1992, he was arrested, and the reasons for his detention have not been given.

Evens Ducasse: Justice of the Peace. Since the coup, local military officers have prevented Ducasse from appearing in court. On 7 December 1992, his home was searched without a warrant. Security forces took his possessions and physically harmed his family.

Paul Yves Joseph: Lawyer and teacher of human rights (see *Attacks on Justice 1991-1992*). Joseph was arrested on 8 September 1992 as he was pleading a case at the City Tribunal in Les Cayes. Although he was released soon thereafter, this incident exemplifies the harassment and threats by Haitian armed forces suffered by Joseph and his family. Joseph continues to be targeted because he provides free legal advice to the poor and because he often represents the victims of illegal arrest. He was appointed to a senior position in the regional education department, but was forced to resign after the coup.

Enord Mastiné: Magistrate. In October 1992, Mastiné was arrested by military officers who had taken over his district following the distribution of pro-Aristide pamphlets. After several hours of detention, Mastiné was released. He has subsequently gone into hiding to avoid further reprisals by the military.

HONDURAS

Impunity for military personnel continues in Honduras. Although the judiciary is independent in theory, in practice the government wields considerable influence over judicial procedures. In particular, the militarization of the country and the infiltration of officials representing the interests of the armed forces have paved the way for a judicial system that appears to favour government supporters while punishing the opposition. During a meeting of the Superior Council of Armed Forces on 12 March 1993, the military agreed to voluntarily place the secret police (National Department of Investigations (DNI)) under civilian control. However, the offer was conditioned upon the ratification of two constitutional articles which would authorize the trial of officers in military courts, even when charged with common crimes. On 25 March 1993, the legislative assembly refused to ratify the proposed articles, arguing that the Constitution clearly establishes the supremacy of civilian courts whenever there is a conflict of interests. A DNI deserter, Josue Eli Zuniga, has been at the source of much debate about the Honduran security forces.

Aida Colindres: Civilian judge. On 5 March 1993, she freed three members of the DNI due to heavy pressure. The three suspects had been accused of the murder of two anti-narcotics agents in May 1992. Former secret police agent Josue Eli Zuniga testified against the three suspects. Nonetheless, a police spokesperson claimed that there was not enough legal justification to keep them in custody. According to the Honduran Human Rights Commission, the judgment was reached under duress. Various secret police officers have been implicated in drug-trafficking in recent months.

INDIA

While Indian law provides legal safeguards for individual rights and for an independent judiciary, numerous incidents of human rights abuses were reported and threats against the independence of the legal profession and the judiciary remain substantial in some areas. Excesses by police, military and paramilitary forces were especially concentrated in Punjab, Assam and Kashmir. Political killings were reported in these areas along with what are often termed faked "encounter killings" in which, generally, police detain militants or their supporters, interrogate and perhaps execute them, and later claim that the detainees died in an armed encounter with police and security forces.

Particularly troublesome are the Armed Forces Special Powers Act of 1983 and the Punjab Disturbed Areas Act of 1983, which have afforded paramilitary and police officers in certain areas such as Punjab broad discretion in using deadly force.

Removal of Judges

The Indian Constitution formally assures the independence of the judiciary and the legal profession from government influence by providing for lifetime appointment of Supreme Court and High Court Justices. A judge of a High Court or of the Supreme Court of India can be removed from office by the President solely for "proved misbehaviour" or "incapacity" and pursuant only to a procedure prescribed in Article 124(4) of the Indian Constitution. A motion for removal passes following a vote of at least half of the membership of each House

of Parliament and of two-thirds of the voting members of each House. While aiming to protect judicial independence, the provisions for removal can work to the contrary, posing insurmountable hurdles to the removal of a judge engaged in serious misconduct.

The efforts to remove **Justice V. Ramaswami** in 1993 illustrated the ponderous nature of the process and the potential vulnerability of removal provisions to control by a single political party. In that case, a Report of the Committee of Judges appointed under the Judges Inquiry Act of 1958 concluded that Ramaswami's conduct revealed "wilful and gross misuse of office, purposeful and peristent negligence in the discharge of duties ... and reckless disregard of statutory rules...." Nonetheless, when impeachment proceedings came to a vote, 207 members of Parliament, all of one political party, abstained. This mass abstention resulted in the defeat of the motion for removal. In response, some commentators have proposed that mechanisms such as judicial councils, internal to the judiciary, be established which can investigate charges of judicial misconduct and which can exercise powers short of removal to curb judicial abuses and whose presence may deter abuses.

The Human Rights Commissions Bill

The Human Rights Commissions Bill, Bill No. 65 of 1993, was introduced into Parliament by the Indian Government on 14 May 1993. The bill, if enacted into law, would create human rights commissions on a state and national level. The Bill would give the Commission extensive investigatory powers; however, it would then play a primarily advisory role in recommending action to the government upon

concluding any inquiries. The members of the commission would hold office for periods of five years and could be removed only for cause upon inquiry by the Supreme Court. Members would be appointed by a committee including an individual of the rank of a Supreme Court Judge and four others with experience in police and administrative affairs. It is hoped that the commission, which is responsible to the government, will not derogate from the availability of remedies to Indian citizens through an independent judiciary.

K. Balagopal: Lawyer and general secretary of the Andhra Pradesh Civil Liberties Committee. Balagopal was detained overnight by local police on 3 February 1993. He was released the next day after outcry by human rights activists. He was beaten shortly thereafter while travelling. Medical personnel reportedly provided only partial treatment for injuries that he sustained, expressing fear of police reprisal. A complaint filed with the police has thus far not yielded an investigation.

Nilay Dutta: Human rights lawyer and founder of the human rights organization MASS. Dutta was arrested for "anti-national" activities under the National Security Act following production of a sixty-five-page report by MASS, detailing security force abuses in Assam. His arrest has been viewed by many as retaliatory for his activities with MASS and its allegations of prevalent rapes and deaths in police custody. (The Indian Constitution protects freedom of speech and the press; however, local governments in some areas have made use of various authorities to curb these freedoms.) Dutta was eventually released, but no further information was available.

Rajendra Sail: Lawyer and organizing secretary of the People's Union for Civil Liberties. Sail was arrested on 2 July

1992 after going to Bhilai to investigate reports of authorities firing on striking workers protesting the highly politicized murder of a leader a political organization, the CMM. The local press suggested that Sail was detained to prevent the investigation. In contravention of constitutional standards on the treatment of arrested persons, Sail was not arraigned within twenty-four hours of his arrest; moreover, he was denied access to medical attention. He was released fourteen days later on the condition that he not enter the Urla Industrial Area in Raipur and that he inform police when leaving the Raipur district.

Kulwant Singh Saini: Lawyer practising in the District Court of Ropar, Punjab. Saini, his wife and their 18-month-old son were found dead with bullet wounds several months after their disappearance on 25 January 1993, en route to the Ropar police station. Saini had been requested by a leader of Budha Bhauru village to try to secure the release of two detainees (a mother and son) who had been arrested that same day and who were being held at the station. After receiving assurances from the Ropar Deputy Superintendent of Police that the detainees would be released, Saini was asked to drive to the station to escort them. Saini and his family left for the station, disappeared and remained missing until their bodies were found.

Suspicious of police involvement in the disappearances and subsequent deaths, the legal community reacted to the initial disappearance with strikes, calling for official efforts to locate Singh. Days after the Harayana High Court Bar Association became involved in pressuring for an investigation of Singh's whereabouts, the police issued statements claiming that Saini and his family were the victims of Sikh militants who had since committed suicide and that Saini himself was a terrorist kingpin. This statement contradicted earlier reports by the deputy commissioner of Ropar to a team from the Punjab Human

Rights Organization indicating that Saini had not been wanted by the police. The team was headed by **Justice Ajit Singh Bains**, who was released from prison this year (see *Attacks on Justice 1991-1992*).

In March, a rally of nearly 2,000 members of various bar associations was held near the Punjab and Haryana High Court, where it was urged that an independent investigation into the situation be conducted. In the same month, a Division Bench of the Punjab and Haryana High Court dismissed on technical grounds a petition seeking judicial inquiry into the disappearance. Media reports indicated that one of the petitioners in fact withdrew under pressure from the government. Many remain suspicious of involvement in the killings by the police and security forces, and it does not appear that any official investigation has been conducted into these allegations.

Jagwinder Singh: Lawyer. On the pretext that the Senior Superintendent of Police of Kapurthala, Punjab, wished to consult with him on a legal matter, Singh was removed from his home in the early hours of 25 September 1992 by three uniformed policemen identifying themselves as officers of the Central Bureau of Investigation. Singh's removal was witnessed by his family, and, despite outcry and requests for information concerning Singh by members of the national and international legal communities, he has subsequently "disappeared." Although Punjabi officials, including the Chief Minister and Chief Secretary of the Punjab state, offered assurances early on that Singh's whereabouts would be disclosed, his location remains unknown. The Senior Superintendent of Police reportedly denied any knowledge of Singh's whereabouts upon inquiry by representatives of the Karputhala and Jalandhar District Bar Associations, which conducted strikes in protest of Singh's disappearance.

Jai Sudharasan: Lawyer practising in the Madras High Court, offering free legal assistance to the traditionally underrepresented. It is reported that Sudharasan is subjected to repeated harassment by local authorities and the police. This harassment has taken the form of several arrests within a five-year span, the most recent of which took place in May of 1993. Sudharasan's home and office have been raided by both tax officials and the officers of the Central Bureau of Investigation of India; however, cases brought against him have been repeatedly quashed. Reportedly, many of Sudharasan's arrests have been vindictive in nature and have not been followed by official charges or investigation.

INDONESIA
&
EAST TIMOR

Because Indonesia lacks a fully independent judiciary, the judicial system can do little to correct obstructions of justice taking the form of unfair trials and trial practices. The rights of the accused, including the right to counsel, in Indonesia are not fully respected in practice, and the use of forced confessions is prevalent. Defendants are also sometimes given little, if any, time to consult with counsel prior to trial. Such practices constitute improper interference in the professional functioning of attorneys, counter to the tenets set out in the UN Basic Principles on the Role of Lawyers.

The Trial of Xanana Gusmao

The trial of Xanana Gusmao, leader of East Timor's rebel movement, in Dili District Court, which took place from February through May of 1993, was observed by a representative of the ICJ. Gusmao was tried primarily for leading a rebellion and scheming to overthrow the government. The trial sparked concern at the national and international level for its unfair procedures after a life sentence was handed down by the court in May 1993. Gusmao was convicted for leading a rebellion and illegal possession of firearms.

It is reported that, at the trial, the prosecution made use of testimony of other political detainees, several of whom were themselves in custody and awaiting trial. Their testimony was admitted despite

its apparent unreliability. Furthermore, the defence experienced great difficulty finding an adequate number of witnesses who were comfortable with testifying. Moreover, the court failed to have sufficient interpretation available for Gusmao and others who cannot speak Indonesian fluently. At the end of the trial, the court prevented Gusmao from reading out his defence statement in Portugese, the only language in which he is fluent.

It was widely believed that an alleged rejection by Gusmao of an offer of representation by the Indonesia Legal Aid Institute (*Lembaga Bantuan Hukum* (LBH)) was not voluntary. His "rejection" of LBH contradicted efforts by his family to authorize LBH to conduct the defence. The tendency of the Indonesian authorities to dissuade defendants from accepting services by LBH is well known. Furthermore, Gusmao himself, in his defence statement, asserted that his letter appointing LBH as his representative was withdrawn under pressure from military authorities and that defence council, Mr. Sudjono SH, was appointed by the military intelligence agency.

The Anti-Subversion Law

Another threat to the integrity of the legal profession in Indonesia is the Anti-Subversion Law. Originally introduced by presidential decree in 1963, the Law remains in effect in Indonesia, posing a grave threat to those charged under it. Its sweep is broad, and it is used to imprison thousands of suspected government opponents. According to Amnesty International, there may be as many as 500 political prisoners in custody in Indonesia and East Timor under the Law. The Law carries a maximum penalty of

death and criminalizes acts that can distort or undermine state policy or ideology or which could arouse hostility, disturbances or anxiety among the populace. Broadening its reach even further, the Law does not require the state to prove that the acts actually endangered state security. It has been reported that only two individuals charged under the Law have ever been acquitted. While the Indonesian Criminal Procedure Code (KUHAP) provides for numerous protections for the accused, the Anti-Subversion Law places those suspected of its violation outside of the Code's protections. Defendants charged under this law are often held incommunicado and denied access to legal counsel.

While KUHAP theoretically protects the rights of an accused individual to various procedural safeguards, including the right to legal counsel of choice at each phase of an investigation and trial, these rights are in practice often not respected. This problem is compounded by the lack of available recourse to a truly independent judiciary. Not only does the Supreme Court not have the right of judicial review over parliamentary laws, but also judges are civil servants employed by the executive, reportedly subject to considerable pressure from the government and the military. KUHAP makes it a felony to insult or sow hatred against the government; additionally, the military in Indonesia is given broad authority for internal security and, in fact, the Agency for Coordination of Assistance for the Consolidation of National Security (BAKORSTANASDA) operates outside of KUHAP's constraints and retains wide discretion to detain and interrogate those suspected of threatening national security. These conditions, along with the

excesses of security and police forces in many areas, combine to create significant hurdles for lawyers such as Dadang Trisasongko (see below) who seek to defend the rights of individuals against the state.

Dadang Trisasongko: Human rights lawyer, practising with the Indonesia Legal Aid Institute (*Lembaga Bantuan Hukum*), which provides legal assistance to the indigent and to victims of human rights violations. Trisasongko was arrested and detained for four days in October 1992 in connection with his representation of some residents of the village of Singosari-Gresik near Surabaya who were involved in a dispute with the government-run National Electricity Company. The Company has apparently been building a power grid which many believe creates a hazard to the community because of potential radiation emanating from high-tension wiring over local homes. Some of the villagers were reportedly threatened with eviction to make way for construction. Trisasongko faces charges by authorities in Surabaya, East Java, of "expressing hostility toward the government" and "incitement," for which he could face a combined prison sentence of up to thirteen years. He was previously charged with subversion under Indonesia's Anti-Subversion Law, but that charge was dropped upon his release.

The arrest occurred at Tanjung Perak port and was carried out by about twenty police officers. After the arrest, and although he complained of feeling ill, he was interrogated at the provincial police headquarters, during which he was denied the right to have counsel present in apparent violation of Indonesia's Criminal Procedure Code, KUHAP, as well as internationally accepted standards for fair trials. The link between his arrest and his professional activities as an advocate was made especially clear through statements to the press made by the military commander of East Java, Major General Hartono, of BAKORSTNASDSA. Hartano offered, among others, the following reasons for Trisasongko's arrest: Trisasongko had kept a

file on the situation in Singosari and had funded trips by locals to see a similar electrical project elsewhere; Trisasongko facilitated contact between villagers and other community groups and misrepresented to them the impact of another, similar case; he had undertaken all of these activities without first consulting the regional security agency BAKORSTANADSA and had, through his conduct, "threatened national stability." The harassment and charging of Trisasongko in this regard can only serve to intimidate and deter others from undertaking sensitive cases that might be perceived as counter to governmental interests.

IRAN

Although, according to the Constitution, the Iranian judiciary is independent of other branches of government, this independence is subordinated to the "criteria of Islam" (Article 61). The judiciary is dominated by the will of the religious leaders, or "mollahs," who have the authority to judge any type of case and to pronounce a variety of sentences including death, stoning, amputation or flogging. According to Mohammed Yazdi, head of the Iranian judiciary, Ayatollah Ali Khameneï, head of the Islamic Council, has the last word in judicial judgments.

Islamic Law in Iran

Until the 1979 revolution, Iranian jurisprudence was a mixture of the Islamic principles of *Shari'a* and of Napoleanic civil law. The post-revolutionary Constitution, issued in December 1979, altered this balance, creating an Islamic legal system. Article 4 of the Constitution states that "[a]ll civil, penal, financial, economic, administrative, cultural, military, political laws and regulations, as well as any other laws or regulations, should be based upon Islamic principles...." On 22 August 1982, Ayatollah Khomeini ordered the prosecution of judges who continued to enforce secular law; if post-revolutionary legislation does not cover a particular area of law, the judges in Iran are either to render judgements on the basis of their own knowledge of Islamic law or to seek the opinion of the head of the Islamic Council.

Iranian Legal Procedures

Iranian judicial procedure thwarts international standards. The presumption of innocence is not respected; rather, Article 198 of the Criminal Code recognizes as presumptively guilty all those who "sympathize" with an opposition group. Further, contrary to Article 5 of the Basic Principles on the Independence of the Judiciary, special Islamic revolutionary and military courts are in operation in Iran (see *Attacks on Justice 1991-1992*). Frequently, trials are closed to the public, are conducted summarily and are held inside prisons without the assistance of counsel. Defendants are not allowed to call witnesses. Relying on Islamic principles rather than on codified legal principles, judges exercise wide discretion in Iran. For instance, if a person commits an act not expressly prohibited by law but deemed by a mollah to violate "public order and modesty," the person can be given a sentence of seventy-four lashes. Indiscriminate judgments, not based on codified law, violate Article 2 of the UN Basic Principles on the Independence of the Judiciary mandating judicial decisions on the basis "of facts and in accordance with law."

The Qualification of Lawyers in Iran

Article 10 of the Basic Principles on the Independence of the Judiciary requires judicial appointments to be made upon the basis of a person's training and qualifications in law. Iran's 1982 Law on the Qualifications for the Appointment of Judges, which specifies strict religious, political and gender requirements for judicial appointments, is therefore in violation of Article 10. Because the head of the Iranian judiciary has the authority to appoint,

promote or dismiss judges, the result is precarious tenure for judges and a judiciary qualified not on its judicial competence but, rather, on the basis of religious and political acceptance. Judges are often appointed from a special religious/judicial school in Qom to replace secular judges. In addition to religious criteria, judicial appointments are also made on the basis of gender in violation of Article 10 of the UN Basic Principles. The Iranian Constitution explicitly prohibits females from serving as judges because, according to Article 163, women are incapable of rendering fair judgements.

Abolfazl Mirshams Shahshahani: Judge in pre-revolutionary Iran before being appointed General Prosecutor for Tehran by the Bazargan Government in 1979. Shahshahani was arrested in June 1990 and detained without charge until May or June 1991. He is a member of the Association for the Defence of Freedom and Sovereignty of the Iranian Nation, and he was one of more than twenty people arrested after signing an open letter to President Rafsanjani criticizing the government's failure to uphold human rights standards. He was sentenced to three years in prison along with **Ali Ardalan** (see *Attacks on Justice 1991-1992*) after a secret trial in Evin Prison. Shahshahani was released in February 1992 as part of the amnesty program marking the thirteenth anniversary of the Islamic Republic. Ali Ardalan was also released.

Anonymous Lawyer: This lawyer tried to establish an independent lawyers' organization in Iran. Bar elections were to be held in August 1991, but were cancelled, and are now postponed indefinitely. In early 1992, this lawyer was summoned by security forces, blindfolded and questioned. His house was searched twice. After going into hiding, he was finally able to flee the country in April 1992

ISRAEL
&
THE OCCUPIED TERRITORIES

Around two and a half million Palestinians live under Israeli rule. The majority live in the territories occupied by Israel since 1967, which are known as the West Bank and Gaza. The rest live inside Israel proper. They are considered Israeli citizens.

The Palestinians in the West Bank and Gaza

In the West Bank and Gaza, Palestinians live under the Israeli military rule of occupation. For more than twenty-six years, Palestinians have been denied participation in any decision that affects their daily lives. Since 1967, Military Orders vested all the legislative and administrative powers in the hands of the Israeli military commanders of the West Bank and Gaza. They were also given control over the judiciary.

More than 62% of the total area of the Occupied Territories has been illegally alienated for the use of Israeli settlers. As citizens of Israel, the settlers are represented in the Israeli Parliament, known as the Knesset. They also occupy some key positions in the Israeli Civilian Administration, a branch of the Military Government in the Occupied Territories that controls daily life. The settlers are officially armed and are treated as privileged citizens. Policies used in the Occupied Territories are tailored to enhance the settlers' goals of judiazation.

The Judicial System of the West Bank

The judicial system is divided into two parts: civilian and military. The civilian courts are administered by Palestinian judges, under the control of the Israeli Officer in Charge of the Judiciary. The judges are selected, promoted and dismissed by this officer.

After the illegal annexation of East Jerusalem, the Israelis moved the centre of the court system in the West Bank from Jerusalem to Ramallah. They also cancelled the highest level of litigation. Currently, the highest level of litigation in the West Bank is on the level of appeal.

Moreover, the jurisdiction of the civilian courts have been diminished in favour of the military justice system. These courts do not have the jurisdiction to rule over any matter implicating Israeli interests. Their competence over such matters as taxation, some land disputes or even antiquities has been given over to military tribunals.

The military courts in the West Bank and Gaza operate on a daily basis. Such courts are located in five towns in the West Bank and comprised one level of litigation in Gaza until 1989 when a military court of appeal was added to the system. The courts are run by Israeli military officials. A court composed of one judge has the jurisdiction to impose sentences of up to five years. A panel of three judges may impose sentences that include the death penalty. No death sentence has been imposed by Israel since the Occupation, however. These courts try civilians. The military prosecutor decides which cases go to the civilian courts and which ones are referred to the military courts.

Parallel Objection Committees have also been established to deal with matters such as land disputes and pensions. These Committees are also composed of military personnel. They do not pass judgements, however. Rather, they pass recommendations which the military commander may accept or reject.

The military orders grant soldiers sweeping powers: soldiers may enter any property upon suspicion; they may search it without a warrant; they may arrest any person for up to eighteen days without judicial review. A military commander may order an area closed and impose a curfew. Soldiers are also given wide power to use force.

There continues to be no bar association in the West Bank. Lawyers in the Occupied Territories, like other citizens, are harassed and intimidated by the Israeli soldiers. The cases below demonstrate the sweeping and arbitrary power of soldiers in the Occupied Territories.

The Human Rights Situation after the Negotiations

Since the beginning of the Israeli/Arab negotiations in 1991, there has been a marked deterioration in the human rights situation in the Occupied Territories. More than 400 individuals were deported to Lebanon in December 1992. Israel claimed that this move came in response to the kidnapping and killing of a Israeli soldiers by Hamas. Despite the apparent arrest of the perpetrator of the act, and UN Security Council Resolution 997 calling upon Israel to return the deportees, the deportees are still in South Lebanon.

Moreover, Israel closed the Occupied Territories preventing Palestinians from entering Israel including East Jerusalem. This has affected the lives of thousands of Palestinian workers who have been working for years as cheap labourers in Israel because of the weakened Palestinian economy under the occupation. The closure also cut off the centre of the West Bank Jerusalem from the rest of the Occupied Territories. All major hospitals, Christian and Moslem holy places, institutions, the Legal Aid Centre and other locations essential for the daily life of Palestinians are based in Jerusalem.

The Palestinians Inside Israel Proper

Israel has no written constitution or bill of rights. The Israeli civilian courts are advanced and independent, however. These courts grant adequate human rights protections to the majority of the Israeli citizens, mainly the Jews. There is also an independent bar association. Some of the members of the Bar Association, however, serve as judges or prosecutors in the Occupied Territories during their military.

Despite being citizens of Israel, the Palestinians living inside the borders of Israel proper suffer hidden as well as "legal" discrimination. Some of the Arab villages are not considered as legal entities. This prevents them from receiving basic services such as running water and electricity. There is also discrimination in the allocation of funds to the Arab and Jewish Local Council. Town planning also works in favour of the Israeli Jews.

When accused of security violations, Arabs and other minorities are tried before the Military Court.

They are not granted adequate due process rights. The case of lawyer Burghal (see below) demonstrates that this discrimination is even present in the Bar Association.

Mohammed Suhail Ahmad Ashour: Lawyer from the West Bank. On 15 February 1993, a curfew was imposed on his town, Hebron, preventing all of its population from leaving their houses. Ashour, however, had a court hearing scheduled that day before the military court of Hebron. Ashour left his house to go to the court. Israeli soldiers stopped his car, asking him to present a permit from the Israeli Military Government permitting him to move during the curfew. Ashour submitted a letter from the Israeli Officer in Charge of the Judiciary testifying that he was a lawyer under training. Ashour said that he had a case hearing before the military court. A soldier responded with a slur against lawyers.

Ashour was handcuffed and arrested. He was taken to the Military Government Compound in Hebron with other Palestinians accused of violating the curfew. Other lawyers who appeared before the Military Court that day saw him and protested strongly to the Military Prosecutor. Ashour was released upon the intervention of the Prosecutor.

Mohammed Burghal: Palestinian-born law graduate in Israel. Burghal has been denied entry into the Israeli Bar. Burghal applied for admission in 1991 and was asked repeatedly to produce an arrest record. The Bar Association announced its decision to deny Burghal's application in December of 1992, after obtaining information on a prior conviction against Burghal following an *in camera* trial before a civil court almost twenty years ago and for which he served four years in prison.

It has been suggested that the decision of the Israeli Bar Association may be related to Burghal's Palestinian background, given the Bar's admittance of Israeli-born lawyers with similar arrest records. In fact, the Bar recently agreed to the admission of an Israeli law graduate with a more recent and serious prior felony conviction for firing into a bus carrying Arab civilians and injuring several of the travellers.

Burghal, through his lawyer, applied for a rehearing. In May 1993, the Association reversed its position and declared that Burghal could register. Nevertheless, Burghal's admission is once again being opposed by several lawyers who have brought a petition against him; the case is currently pending before the Israeli Supreme Court. A decision against Burghal because of his Palestinian background would be contrary to, among other things, Article 10 of the UN Basic Principles on the Role of Lawyers, which states: "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, ethnic origin, political or other opinion, or national or social origin.

George Banoreh and **Sameeh al-Salibi:** Lawyers from the West Bank. On 18 January 1993, the two were among a number of lawyers who were arbitrarily stopped by Israeli soldiers that day between Hebron and Dahiriyyeh on their way to visit Ketsyout Military Detention Centre. The lawyers were forced to construct a one-metre wall in the middle of the street.

Jan Feinberg: Lawyer. On 18 April, he was attacked and died of knife and hatchet wounds. Feinberg, an Israeli, worked in the organisation Co-operative Development, an independent consultant of the European Community on the question of housing subsidy in Gaza. He had served as a legal advisor to the Israeli Military Government in Gaza.

Mohammed al-Roumi: Lawyer from the West Bank. He was arrested on 18 January 1993 for violating the curfew.

Sa'd Abdel-Hadi Mohammed al-Suwaiti: Lawyer from the West Bank. On 19 April 1993, as he was sleeping in his house, a number of soldiers forced themselves into the house. They asked for Suwaiti's identity card, and searched the house without a warrant. They left after around fifteen minutes. Their commander, however, asked them to return for a more thorough search. The soldiers returned, turning the furniture upside-down and spilling food. Nothing illegal was found in the house.

The soldiers then filled out a questionnaire about the social status of the family. They also took two photos of the lawyer. This indicates that they are opening an investigation file on the lawyer.

IVORY COAST

Yanon Yapo: President of the Appeal Court. Yapo was removed from the bench following a 1992 appeal of the convictions of participants in a demonstration opposing the government. During the appeal, Yapo had announced a delay in judgement, indicating possible government pressure on his independent decision-making. The Public Prosecutor filed a request to remove Yapo because of possible bias in favour of the defendants. The Supreme Court failed to address this issue in time, but Yapo was nonetheless removed from his position despite reports of international observers that he was in fact independent and unbiased.

René Dégny Ségui: Dean of the Faculty of Law at the University of Abidjan and president of the *Ligue Ivoirienne des Droits de l'Homme* (see *Attacks on Justice 1991-1992*). In order to leave the country, nationals of the Ivory Coast must first obtain governmental authorization. Ségui has been denied permission to leave the country four times this year. He was unable to leave the country in February 1993 and again for a meeting in Paris. In June 1993, Ségui was prevented from attending the Vienna World Conference on Human Rights. Finally, he was forbidden to leave the country to teach courses in Strasbourg at the Institute of Human Rights.

René Dégny Ségui

KENYA

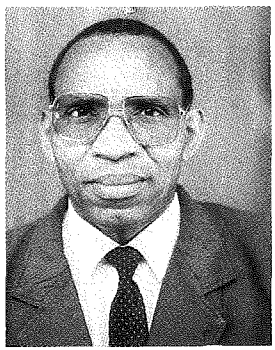
On 12 July 1993, the ICJ sent a mission to Kenya to examine issues related to human rights and judicial independence in the country. Composed of four members, including ICJ Secretary General Adama Dieng, the mission found that the current political climate in Kenya impedes people's enjoyment of human rights, both as contained in the domestic Constitution and in instruments of international human rights law to which Kenya is a party. The mission found the one-party political framework as the reason for the less than full independence of the country's judiciary. The mission noted that despite the restoration of the security of tenure of judges in the country, the judiciary still lacks sufficient interaction between judges and sufficient physical facilities. The ICJ mission made the following recommendations to strengthen the independence of the judiciary and the legal profession in Kenya:

- There is an urgent need for constitutional review of outmoded laws in Kenya to allay the suspicion that the government intends to continue functioning as it did under the one-party system. Pending institution of this review, certain statutes should be repealed, including the Preservation of Public Security Act, the Public Order Act, the Societies Act, the Chiefs Authority Act, Sections 52-58 of the Penal Code, the Books and Newspapers Act and the law on Trade Licenses. Further, criminal procedure should not be used to quell political opposition.

- The mission called on the Attorney General to take the lead in ensuring that the people of Kenya make the necessary constitutional revisions.
- Noting that the UN Basic Principles on the Independence of the Judiciary require adequate provisions for lawyers, the ICJ group recommended improvement of the retirement system for judges.

Focusing on the need for more efficient interaction between lawyers and the citizens of Kenya, the mission also proposed that cadres of "barefoot lawyers" be trained in rural areas to educate the people about their rights. These lawyers could then work in conjunction with urban lawyers in the preparation of cases.

Ahmednasir M. Abdullahi: Lawyer and lecturer in law. Abdullahi went to the Central Police Station in Nairobi on 26 May 1993 to speak to a client whom he had heard was in detention. When he asked to see the list of those detained, the police officer in charge refused. When Abdullahi insisted, the police officer struck him on the head. He was later carried to a cell and detained overnight on charges of creating a disturbance. Two police witnesses are scheduled to testify against Abdullahi at trial.



Mirugi Kariuki

Mirugi Kariuki: Human rights lawyer. He was detained on the same charges as Kinuthia (see above and see also *Attacks on Justice 1991-1992*). The government dropped the charges on 13 January 1993.

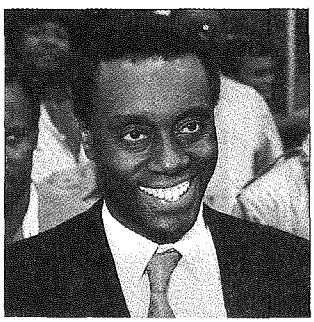
Kivutha Kibwana: Dean of Nairobi Law School. After having closed the Law School and

having brought proceedings against numerous students, the government dismissed Kibwana in October 1992. He was discharged because he complained about the government's denial of the students' due process rights, such as their right to counsel, during the disciplinary hearings against them. The school has since been reopened, and Kibwana is contesting his discharge.

Rumba Kinuthia: Lawyer and leader in campaign to restore democracy and human rights (see *Attacks on Justice 1991-1992*). On 13 January 1993, the government dropped treason charges against Kinuthia who had been incarcerated since October 1990.

Kinuthia's mistreatment during his two and one-half years in prison has been consistently criticized by human rights organizations; he was chained to a hospital bed twenty-three hours a day, and reportedly was beaten. In August through December, his health was in serious condition, but the hospital refused to treat him. He suffered from high blood pressure and severe hypertension, he coughed blood and his arm was dislocated by a prison guard. Despite the fact that Judge Effie Owuor ordered medical treatment of Kinuthia, her orders were not followed.

Paul Muite: Lawyer, Chairman of the Law Society of Kenya (LSK) and first vice-chairman of the opposition Forum for the Restoration of Democracy (FORD). On or around 23 October 1992, Muite was attacked by police officers at a rally where he was talking with constituents. The police said he was in the vicinity of the ruling party's zone while there was a rally. Following the



Paul Muite

assault, Muite underwent medical treatment for a damaged ear.

On 1 February 1993, the Criminal Investigations Department attempted to arrest Muite because of a press statement issued by Muite decrying a security breakdown in the Northeastern Province. The arrest was prevented by Muite's driver who summoned the press, friends and lawyers.

On 6 April 1993, while participating in a peace demonstration, Muite was beaten by police.

James Orengo: Secretary for constitutional and legal affairs of the Ford-Kenya opposition party and Member of Parliament from Ugenya. He was attacked by Alsatian dogs released by police as he attempted to attend a seminar on resettlement of victims of politically instigated ethnic clashes on 23 March 1993.

On 6 April 1993, after leading a prayer at a peace demonstration protesting the poor economic performance of the country, Orengo was beaten by police and was injured in his back.

Jeremiah Samba: Lawyer for a Democratic Party of Kenya candidate. Samba was attacked while presenting the candidate's papers. The briefcase containing the papers was snatched at the nomination centre, he was knocked down, and when he tried to retrieve the briefcase, the police knocked him down again and threatened to shoot.

Anonymous Lawyer: Lawyer for Henry Cheboiwo, Democratic Party of Kenya candidate. This candidate for the December 1992 multiparty elections sent his lawyer to present his candidacy papers. The lawyer was abducted, put in a vehicle and dumped in a forest. When he attempted to present the papers later, he was physically stopped by armed men from presenting the papers.

REPUBLIC OF KOREA

In January 1992, the two Korean countries concluded the Agreement on Reconciliation, Non-Aggression and Exchanges and Cooperation Between the South and the North. Despite this, the Republic of Korea did not repeal its National Security Law (NSL). The Law contains a broad definition of espionage and is used to detain hundreds of people for "antistate" activities or for affiliations with "antistate" organizations viewed as supportive of the Democratic People's Republic of Korea in the North.

Dozens were brought to trial last year for alleged involvement in such spy rings. There were many complaints of mistreatment in custody, and allegations of extended detention for those charged under the law were also common. However, the Constitutional Court of Korea in April 1992 issued a ruling that detentions under the NSL for up to fifty days without charge are unconstitutional except in cases involving the most serious of offences. It concluded, though, that fifty days' detention might be warranted for the most serious offences under the NSL, including membership in "antistate" organizations.

Persons accused of violating the National Security Law are also known to experience significant interference with their right to counsel. In fact, lawyers for the defendants in the spy trials in the fall of 1992 had to seek court orders to force the Agency for National Security Planning to permit them access to some of their clients. Those detained under the law are denied access to counsel most frequently during

the investigation phase, even though the Constitution provides for a formal right to counsel. The case described below reveals other difficulties lawyers may have in defending clients charged under the NSL. Nonetheless, two recent court rulings in 1992 served to strengthen the right to counsel. Pursuant to a January 1992 decision of the Constitutional Court, law enforcement officials may no longer be present at, or record, meetings between lawyers and prisoners. Furthermore, in April 1992, a Seoul high court upheld a lower court decision compensating a lawyer who had been denied access to a client of his, who had been charged under the Law.

Yong Whan Cho and **Baik Seung-Hun:** Lawyers in Seoul. These two lawyers were harassed by security division officers who came to their law offices on 15 July 1993. The officers were seeking to arrest a client of Yong Whan Cho. The lawyer repeatedly requested the officers to produce a warrant; however, all that was shown them was a photocopy, which Yong Whan Cho found to be lacking legally necessary information such as a summary of charges and the location at which the client was to be detained. Additionally, the officer refused to inform him of the charges. When the lawyers then stated that the police could not detain the client under those circumstances, the officers insulted the lawyers, threatened and physically harassed them.

The client was to be arrested for alleged violations of the National Security Law (see above). The client had been working with the Korean NGO Network for the World Conference on Human Rights and in this capacity had contact with organizations regarded as "antistate." He was also affiliated with the Family Association of Political Prisoners.

LAOS

The Bar Association

It has been reported that, last year, the government suspended the Laotian bar pending enactment of regulations. It is said that, because of this suspension, no private lawyers have been engaged in the practise of law since late 1992. However, a representative of the Laotian Embassy in France informed the CIJL that, while regulations are currently being revised, lawyers may nonetheless practise.

The Right to Counsel and the Sam Neua Trials

Three political prisoners received fourteen-year sentences in November 1992 passed by a tribunal in Sam Neua, which lies in the northern province, Houa Phanh. While the three were charged with, among other things, preparing to commit "rebellion," it is believed that their detention is related to their advocacy of a multiparty political structure. The three were denied access to legal assistance both at the pre-trial and trial stages, reportedly upon order of the Laotian Minister of Justice, who suspended provisions of the recently enacted Criminal Code that should have allowed the defendants legal representation.

In another case tried in November before the same court, three political prisoners were given life sentences for crimes allegedly committed over twenty years ago. Prior to trial, they had been detained without charge for nearly seventeen years in a "reeducation" camp. These three defendants were also denied access to a lawyer at their trial.

LEBANON

Nasri al-Khoury: Lawyer. In what was apparently a politically motivated action, al-Khoury and three others were abducted in August 1992 in Tibnin, an area under the control of the United Nations Interim Force in Lebanon. The four were returning from attendance at an election rally in Israel's self-pronounced security zone. Al-Khoury was released in November 1992. The body of one of the others was found in south Lebanon.

Eli Mahfoud: Lawyer and president of the *Mouvement de Changement.* Mahfoud was arrested on 6 July 1993. According to official sources, he was arrested for interrogation following a news conference in which he charged the Lebanese government with arbitrarily detaining hundreds of persons without trial.

LIBYA

On 18 November 1992, Colonel Mu'ammar al-Gaddafi denounced the legal profession in a speech to the General People's Congress. He said, in part, "We do not need professions that do not produce anything; the source of the crisis in the capitalist world is that non-producers are greater in number than producers...." According to Gaddafi, the legal profession is "useless," and "Libyan citizens are capable of defending themselves."

Jum'a Hassan al-Jazwi: Lawyer. After only a few years of legal practice, al-Jazwi was arrested in 1981 or 1982 for suspected opposition to the Gaddafi government. Al-Jazwi continues to be detained in Abu Salim Prison in Tripoli, and he has not been publicly charged or tried.

Wanis al-Sharef al-Warfali: Lawyer at the Secretariat of the People's Committee for Economy and Planning. Arrested on 23 April 1990 for allegedly supporting an outlawed Islamic opposition party.

MALAWI

Malawi has been under the rule of Life President Dr. H. Kamuza Banda for the past thirty years. Recently, efforts to democratize Malawi have intensified. To help prepare the country for a referendum to determine its political future, Adama Dieng, ICJ Secretary General, acted as UN special envoy to Malawi between 11 and 14 May 1993. He successfully mediated between the government of Life President Banda and the opposition Public Affairs Committee to determine the method of voting to be used in the election.

On 13 June 1993, under the watchful eye of international observers, including a four-member mission of ICJ representatives designated as Senior District Observers, 63% of the Malawian voters rejected one-party rule and opted for a multiparty system. The transition to democracy and the loosening of President Banda's grip should greatly enhance the independence of the Malawian judiciary.

The Judiciary Under Life President Banda

Under President Banda, the Malawian judiciary has not been independent, although this year the government has enacted a series of "reforms." A recent constitutional amendment allows the President to remove any judge when he considers it to be in the national interest.

Traditional Courts

The Malawian High Court has concurrent jurisdiction with the Traditional Courts, but it is

government policy that certain crimes, especially capital crimes such as homicide and treason, are tried in Traditional Courts. The rules of evidence are not strictly enforced in these courts. Magistrates are civil servants controlled by the Office of the President and Cabinet in contravention of Article 2 of the UN Basic Principles on the Independence of the Judiciary, which states that the judiciary should render impartial judgements without external influence. According to the Traditional Courts Act of 1962, the Minister of Justice has the power to dismiss any member of the Court "who shall appear to have abused his power or be unworthy or incapable of exercising the same justly, or for other sufficient reason." No lawyer may appear in the Traditional Court unless the Minister gives prior authorization, and the Minister has never given authorization for lawyers to appear in Regional Trial Courts. Currently over seventy prisoners who were denied representation by counsel at trial await execution. Access to appeals is strictly limited.

Preventive Detention

Detention without trial is justified by the 1960 Preservation of Public Security Act, which allows the Minister of Justice to make regulations to maintain order and national security. Until this year, detention orders were only subject to review every six months and by the same Minister who issued the order. The police have great discretionary power in detaining individuals as well. Officers may detain anyone when they "reason to believe that there are grounds which would justify that detention" (Regulation 3(7)). Since 1965, such detention may not exceed twenty-eight days.

Recently Attempted Human Rights Reforms

In August 1992, various human rights reforms were enacted to meet the requirements of countries donating aid to Malawi. First, the Preservation of Public Security Act was amended to provide for a detention tribunal to review cases of individuals detained without trial, particularly where the government believes a trial will be "prejudicial to national security." This marks only a slight improvement to an unsatisfactory law which allows detention without trial by soldiers, police and anyone else "authorized" by the government. Further, the tribunal is appointed by the government and has only advisory capacity; it has no power to authorize release.

The second reform reduces the sentence for sedition from life imprisonment to five years' imprisonment. While this marks an improvement, this reform fails to address the extremely broad definition of sedition in Malawian law, which prevents most political criticism.

Finally, the Forfeiture Act was reformed to allow those whose property has been confiscated due to their "seditious" activities an opportunity to seek an advisory opinion as to the factual correctness of the forfeiture order. However, the government is not bound by the court's findings. Thus, persons suspected of subversion or of damaging the Malawian economy are still subject to the possibility that their homes, belongings, etc., will be confiscated.

Though the reforms marked a beginning of the modification of the legal system of Malawi, they failed to address the overriding problem that the

entire judiciary was under the control of the Life President. More positive steps toward judicial independence are now possible following the 14 June 1993 referendum and the relinquishment of one-party rule.

Orton Chirwa: Lawyer, first African barrister in Malawi, founder of Malawi Freedom Movement and former Minister of Justice and Attorney General. Chirwa died on 20 October 1992, after 11 years in prison. After Chirwa and his wife were abducted from Zambia in 1981 and were tried with neither the benefit of counsel nor the possibility of questioning or calling witnesses, they were sentenced to death in 1982. They were convicted of violating Section 38 of the Penal Code: they allegedly "prepared, endeavoured or conspired to overthrow the lawfully constituted government of ... Malawi by force or other unlawful means." Specifically, they were accused of planning to assassinate President Banda, intending to take over the government, conspiring to take over the country by force, and of publishing revolutionary words. In fact, they were charged with treason because of their opposition to the single-party government of Life President Banda. Chirwa was often held in solitary confinement and in leg irons without adequate food or health care perhaps precipitating his death.

The CIJL/ICJ has been concerned with the Chirwas' situation from the outset and deeply regrets the death of Orton Chirwa. The CIJL denounced the arrests of the Chirwas, continually called for their release, and continues to assert that their trials did not comport with international standards as set forth in the International Covenant on Civil and Political Rights. Further, on 23 October 1992, the CIJL called for an independent investigation into the death of Orton Chirwa.

Vera Chirwa

Vera Chirwa: First Malawian woman lawyer and former State Attorney in Tanzania. Abducted with her husband Orton Chirwa in 1981 (see above), Vera Chirwa was not allowed to leave prison to attend her husband's funeral. She was subsequently released from custody on 24 January 1993.

Harry Chiume: Lawyer and Public Secretary of AFORD, an opposition group. Representing Chakufwa Chihana, Chiume was arrested on 29 October 1992. Although he was released the next day, this incident represents continual harassment of AFORD members. Mr. Chiume was arrested again on 20 December 1992 during a peaceful demonstration protesting the imprisonment of Chihana.

Collins C.C. Chizumila: Lawyer. Chizumila's request to see his clients at Blantyre prison was denied. When he asked to see the chief of police seeking an official explanation and apology, the officer on duty became angry and detained Chizumila in prison for three days and four nights. Chizumila reported that the conditions in the prison were lamentable, and that numerous inmates were tortured or illegally detained.

Raphael A.M. Kasambara and **Babezelenge Mwafulirwa:** Lawyers affiliated with AFORD. They were both arrested and beaten after a protest of Chihana's imprisonment. During their detention, the two lawyers were denied access to lawyers and to visitors. They reported poor prison conditions, overcrowding, the use of torture to extract confessions and incarceration under a presumption of guilt. They were granted bail on unknown charges.

Friday Makuta: Former Minister of Justice. Exemplary of the exercise of political influence on the judiciary (see above) is the resignation of Makuta on 23 March 1993. He cited as the reason for his resignation that he had been asked to influence court decisions regarding the state and the Malawi Congress Party.

Bazuka Mhango: Lawyer representing Chakufwa Chihana. On 2 June 1992, Mhango's passport was confiscated by authorities. On 4 November, the car carrying Mhango and Chihana was attacked as the two were leaving the High Court in Lilongwe.

Stanford Munyabe: A Chief Resident Magistrate. Munyabe was dismissed from the bench after rendering a not-guilty verdict in a particular case.

MAURITANIA

The 1991 Constitution of Mauritania delegates most power to the executive, which has been headed by Colonel Maouya Ould Sid'Ahmed Taya since 1984. Following allegedly faulty elections in January 1992, Taya became President of Mauritania. Although the Constitution guarantees speedy trials and access to counsel, these rights are not always accorded to detainees.

On 29 May 1993, against the background of severe human rights violations and in an avowed effort to create national unity and "harmony," the government of Mauritania granted amnesty to security force members for all offences committed between 1989 and 1992. During this period for which amnesty has been accorded, more than 500 black Mauritanians were executed with neither benefit of trial nor due process. Fifteen of those detained without charge apparently died as a result of torture. Most of those killed were black Mauritanian army officers or civil servants rounded up during mass arrests in 1990.

Yacoub Diallo, **El Houceinou Meciar Ba**, **Diabira Boubou**, **Dick Adana Demba**, **Brahim Ould Ebetty**, **Maoctar Ould Ely**, **Med Abdellahi Ould Cheikh El Hacen**, **Med Ould Med El Hacen**, **Mohameden Ould Ichidou**, **Med Mahmoud Ouldemat**, **Diagan Mamadou**, **Diabira Maroufa**, **Cheikh Ould Med El Moctar**, **Hacen Ould Moctar**, **Abdel Kader Ould Med Said**, **Ly Saidou**, **Yarba Ould Ahmed Saleh**, **Mohamdy Ould Salihi**, **Abdalla Cheikb Sidya**, **Ahmed Ould Cheikh Sidy**, **Kane Sidi** and **Ball Ahmed Tidjan:** Defence lawyers representing the families of the victims of the 1990-1991 military purge. The prosecutor

refused to pursue an investigation against 166 members of the armed services. He insisted that the plaintiffs needed an order to prosecute from the Commander of the Armed Forces.

The Supreme Court of Mauritania heard an appeal filed by these defence lawyers and ruled that there is no need to have such permission. The Court further held that disciplinary sanctions by the military are no substitute for criminal court proceedings. The Court indicated that according to ordinance 118-85, the prosecutor has the authority to commence the proceeding against the officers without an army order.

Faced with the prosecutor's continued refusal to pursue the case, the defence lawyers petitioned the Ministers of Defence and Justice demanding that the investigation go forward. In their letters, the lawyers accused Colonel Cheikh Ould Mohamed Sala, Colonel Sid'Admed Ould Boilil, Captain Abderrahmane Ould Yahya and Captain Sidi Mohamed Ould Vaid as those principally responsible for the executions.

Following these events, the government imposed an excessive tax on the defence lawyers, which could not be paid by most of them. As a result, some law offices were closed. The government severed many of the lawyers' contracts of representation and commenced a media campaign against them. The Ministry of Justice and other institutions refused the lawyers' letters. Notary publics were asked by the government not to notarize documents signed by these lawyers.

MEXICO

Mexico is a federal republic with a president, a bicameral legislature and a constitutionally independent judiciary. The Mexican judicial system is divided into federal and state court systems. The federal courts have jurisdiction over most civil cases and cases involving drug-trafficking. The court is politicized because judges' appointments must be renewed once before they are given tenure. The government denies such tendencies, but it is still contended that this diminishes the overall degree of impartiality. Low pay and a large amount of cases also contribute to continued corruption within the judicial system.

The Constitution requires that persons arrested be brought before an officer of the court as soon as possible, which is usually within twenty-four hours. A prisoner must be arraigned before a judge and found guilty of a crime within seventy-two hours of the initial arrest. If the deadline is surpassed, the detainee can file for habeas corpus (*amparo*), requesting immediate release. This situation appears to happen often.

There continue to be cases of extrajudicial killings by police forces. There are also repeated allegations of judicial police agent involvement in drug-trafficking or helping to cover up for friends in that field. In Mexico's rural states, violent disputes over land sometimes result in extrajudicial killings. The National Human Rights Commission (CNDH), established in 1990, has increased awareness of human rights in Mexico. Most prisons in Mexico are overcrowded and lack adequate facilities. Although

the government has established an early-release program, created by the CNDH, prison conditions remain dire.

María Teresa Jardí Alonso: Human rights lawyer working for the Department of Human Rights of the Archdiocese of Mexico. She has received numerous written death threats against her and her family since October 1992. The threatening letters warned that she and her family would suffer if she continues her human rights work and her investigation into the murder case of journalist and political activist Víctor Manual Oropeza.

MOROCCO

At an exceptional meeting on 2 March 1993 in Casablanca, the Association of Moroccan Bar Associations called for a lawyers' strike to protest excessive violations of the right to defence. This action was prompted by a 23 February 1993 announcement by the chamber of the criminal court that sessions could be held *in camera*, excluding even defence lawyers from the court proceedings.

At the meeting, the Association reviewed the way in which lawyers have been treated in politically sensitive cases. The Bar issued a statement highlighting the following cases and violations. In the case of trade unionist Noubi al-Amawi, several lawyers were harassed. They were not allowed to enter the courtroom, they were insulted and beaten and, consequently, they were unable to perform the duties of an adequate defence of their client. These are not isolated events. In the trial, and especially the appeal, of Ahmad Bala'shi, lawyers were prohibited from appearing in court. Similarly in the trials of Mr. Ghunimi and other trade unionists and political figures, lawyers were harassed and prevented from performing their duties in blatant violation of Article 16 of the UN Basic Principles on the Role of Lawyers, which states that "[g]overnments shall ensure that lawyers ... are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference...."

According to the Association of Lawyers, the government has used unpopular political cases to set dangerous precedents which infringe upon the independence of the judiciary in Morocco. The

Association asserted that its goodwill was ignored by the government, so more drastic measures were warranted. Thus, in calling for all Moroccan lawyers to strike for two hours on 8 March 1993, the Association sent a message to the government containing the following points:

- The Association stressed that the lawyers' strike is to be viewed separately from the context of the cases of political corruption in which their activities were quelled;
- The Association also condemned arbitrary procedures facing lawyers and reiterated the need for uniform and consistent judicial procedure; and
- Finally, the Association asserted that the exclusion of lawyers is in clear violation of international law, specifically of the UN Basic Principles on the Role of Lawyers and the UN Basic Principles on the Independence of the Judiciary.

MYANMAR (BURMA)

In January of 1993, the ruling Burmese State Law and Order Restoration Council (SLROC) ordered the release of those prisoners detained for "political reasons" on the condition that they did not pose a threat to national security. This order affected several lawyers, all of whom were serving sentences of twenty-five years or more. In *Attacks on Justice 1991-1992*, the release of several of these imprisoned lawyers was announced. Additionally, **Attorney San Win** has been released under the order. She was a prosecutor from Alon Township. She had been arrested in 1990 in connection with her participation in demonstrations in 1988 protesting government abuses of human rights.

In September 1992, the SLORC also revoked two Martial Law Orders, thereby disbanding certain summary military tribunals meant to try those accused of violating martial law. Despite this development, many of those imprisoned after unfair trials before the military tribunals remain incarcerated. These tribunals had wide-ranging powers to punish offenders of orders of the SLORC, were virtually unfettered by rules of evidence and did not respect the presumption of innocence. There are no known cases of acquittal in this tribunal or on appeal from a conviction.

Unfair trial practices are believed to be common in civilian courts as well. Civilian courts are known to be subjected to intimidation by the military, particular with regard to cases implicating politically sensitive issues. Illustrative of this intimidation are the statements reported to have been made by Major

General Khin Nyunt to judicial and law officers in a state radio broadcast in January 1992:

> I instructed that in dealing with those who violate the law, sentences severe enough to deter further offences should be passed to ensure the prevalence of law and order.... Some judges are still not following this instruction.... Action has been taken against a total of 170 judicial officers for bribery, misconduct, and partiality since the SLORC assumed power.

Anonymous Judge. In January 1992, security forces arrested the deputy Divisional Justice of the Ayeyarwady Division Criminal Justice Department in Pathein for his participation in the release of nearly fifty people arrested during a military operation in late 1991 in the Ayeyarwady Delta aimed at suppressing alleged recruitment by the insurgent group, the Karen National Union. The judge was tried and convicted in one day for his action and sentenced to six years' imprisonment. Reports indicate that state employees, among them several lawyers, were made to surround Karen villages during raids and observe innumerable shootings and arrests.

U Htun Htun, U Tin Ngwe and **U Tin Oo:** Lawyers in Pathein. The three lawyers were arrested this past year, apparently because of their advocacy on behalf of prisoners. It is thought that they remain in detention, although it is unclear whether they have been charged or tried.

Nan Zing La: Lawyer from Myitkyina. It is believed that he has been released from prison this past year. He had been serving a five-year sentence imposed because of speeches that he made in connection with pro-democracy demonstrations in 1988 (see *Attacks on Justice 1991-1992*).

Nay Min: Lawyer. Nay Min, also known as Win Shwe, was apparently arrested in October 1988 without a warrant while awaiting a call from contacts at the BBC, for whom he did journalistic work. It appears that he remains held at Insein Prison in Yangon. He was initially kept in custody at the Myanmar military intelligence headquarters in Yae Kyi Aing, where he was tortured. Nay Min was sentenced to fourteen years of hard labour after an unfair and summary trial before a military tribunal. He was charged with violations of the Emergency Provisions Act of 1950 and with "sending false news to foreign agencies to cause alarm and create disturbances" (see also *Attacks on Justice 1990-1991*).

On 9 December 1992, the UN Working Group on Arbitrary Detention declared the detention of Nay Min to be arbitrary, in contravention of Article 19 of the Universal Declaration of Human Rights and Article 19 of the International Covenant on Civil and Political Rights.

Shwe Ohn: Lawyer and former chair of the Democratic League for the National Races of the Shan State. Ohn was arrested and imprisoned in December of 1992 after circulating a critique that he had written of the proposed Constitution of the SLORC.

NIGERIA

Despite hopes raised by the democratic elections held on 12 June 1993, the government of Nigeria cancelled the results of the presidential election and annulled two decrees which pertained to the transition from military to civilian rule. General Ibrahim Babangida, head of state since 1985, announced new conditions for candidacy which would effectively exclude the present contenders for the presidency. Having promised to hold elections in August 1993, President Babangida stated on 31 July 1993 that he had given up on the idea of a democratic election. Instead, the President plans on installing an unelected government to serve as an interim administration.

As a result of Babangida's cancellation of election results, violence ensued in Nigeria in July 1993. At least seventeen were reported killed by Nigerian forces, and other reports place the number of deaths much higher. The candidate widely believed to have won the election, Moshood K.O. Abiola, called for a boycott of any future second election. The judiciary has refused to intervene in the executive's action. On 23 July 1993, the Nigerian Supreme Court unanimously rejected a suit filed by Abiola contending that the Nigerian government had no right to annul the 12 June ballot. This decision followed an executive decree ordering the courts to take no action regarding the leadership crisis.

The resort to violence, such as that following the cancellation of election results, is symptomatic of the lack of satisfactory legal remedies in Nigeria; the factions of the Nigerian government often ignore

legal mechanisms and employ emergency measures to quell dissension and to preserve the current regime's political tenure. In a paradigmatic incident, demonstrating the executive's response to opposition and turmoil, ethnic and religious violence broke out in Zango-Kataf and in Zaria and various other cities in Kaduna state in May 1992 (see *Attacks on Justice 1991-1992*). Although the government reported that 300 were killed, many estimate that thousands died during this incident.

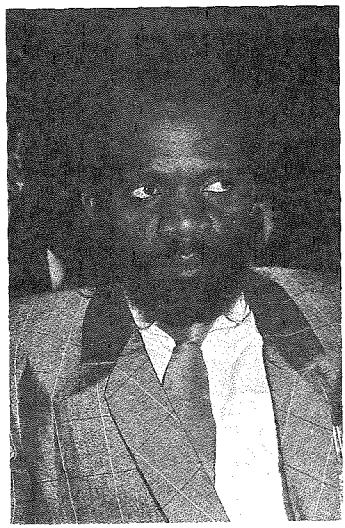
In response, the governor dissolved the local government of Zango-Kataf and appointed Mallam Haruna Zok as the region's administrator. The Nigerian government created a special tribunal to adjudicate those accused of responsibility for the violence. This special court, the Zango-Kataf Civil and Communal Disturbances Tribunal, violates Nigerian law, the Civil Disturbances Decree 53 of 1987, which requires the government to conduct investigations through a specially created commission before indictment, which it did not do in this case.

Major General Zamani Lekwot, Major James Atomic Kude, Yohanna Karau Kibori, Marcus Mamaman, Yahaya Duniya, Julius Sarki Zamman Dabo and others were arrested and detained incommunicado from 18 May 1992 until 29 July 1992, when they were charged with unlawful assembly with intent to suppress the Haussa community in Zango-Kataf. After the prosecution in this case filed a motion to dismiss due to lack of evidence and the defendants were released, the six were immediately rearrested and recharged, this time with culpable homicide. At the second trial, the presiding judge, Justice Okadigbo, exhibited obvious prejudice

by reprimanding the defendants and threatening to throw the defence lawyers in jail if he did not approve of their line of questioning. One member of the court resigned midway through the trial citing collusion among the other justices; he was absent for medical reasons for one day of the proceedings, and he returned to find that two defendants had been sentenced to eighteen years of imprisonment, despite insufficient evidence presented by the State.

While defence lawyers sought an injunction to stop the trial, the government announced on December 1 its Decree 55 of 1992, removing the authority of the regular courts to hear any case regarding abuse of constitutional rights by the special Tribunal. The Decree, made retroactive to July 30, 1991, provides that constitutional rights may be overridden or annulled by military decree and that the tribunal's proceedings could not be heard in another court. In protest, all of the eleven defence lawyers resigned, criticizing the decree as placing the defendants totally at the mercy of the Tribunal. The defendants refused the government's attempt to assign its own defence counsel, and the trial was adjourned. On 2 February 1992, the Tribunal summarily sentenced Lekwot, Kude, Kibori, Mamman, Duuniya and Dabo to death. Others were also subsequently sentenced to death.

Olisa Agbakoba: Lawyer and president of the Civil Liberties Organization of Nigeria. Agbakoba was arrested on 5 December 1992, when security officers shut down a CLO seminar on "human rights in a future civilian government." He was released several hours later.



Femi Falana

Femi Falana: President of the National Association of Democratic Lawyers and Executive Officer for the Campaign for Democracy (see *Attacks on Justice 1991-1992*). Falana was arrested on 9 March 1993 and again on 16 April 1993, and he was detained briefly both times. Following the government's failure to adhere to the June 1993 election results, Falana was again arrested on 7 July 1993. This latest arrest came after Falana and Fawehinmi (see below), representing the Campaign for Democracy, called for a week of protest against the government's decision not to announce election results.

Chief Gani Fawehinmi: Human rights lawyer and member of the Campaign for Democracy (see *Attacks on Justice 1990-1991* and *1991-1992*). Fawehinmi was arrested, along with Femi Falana, on 7 July 1993 as a result of the Campaign for Democracy's call for protest against the government cancellation of election results. Prior to that incident, Fawehinmi was arrested on 3 July and detained until 5 July.

John Matthew: Lawyer. The police reportedly issued a warrant for his arrest after a 3 December 1992 raid on CLO offices. Matthew was wanted for his role in disseminating Campaign for Democracy pamphlets. He remained in hiding while his house was surrounded for over a week.

PANAMA

Italo Antinori: Lawyer and constitutional law specialist. Antinori was harassed, threatened with death and assaulted. He was approached by a group of citizens, some of them belonging to the *Partido Alianza Popular*, to file a criminal complaint charging Ms. Omaira Judith Correa Delgado with violation of the electoral codes. Correa Delgado was accused of illegally using state resources for the benefit of the *Partido Alianza Popular.*

On 26 March 1993, the lawyer presented the charges to the Electoral Prosecutor of the Nation. Since that time, the lawyer has been subjected to harassment and death threats by Correa Delgado and some of her collaborators. In addition, on 21 April 1993, more criminal charges were presented against her for other violations of the 33rd and 35th article of the Electoral Code. On 28 and 29 April 1993, during a cross-examination of witnesses, Correa Delgado, circulated various notes in the courtroom with death threats against the witnesses and the lawyer.

On 21 May 1993, between 5:40 p.m. and 6 p.m., when the lawyer was about to leave his office in the company of his assistants, he was alerted at the door that a man in a brown car (identified as José Diaz, an ex-member of the Panamanian air force) was awaiting the lawyer with a machine gun pointing out of his car window. The lawyer quickly returned to his office and alerted the police and the media. From the office, two more cars were witnessed at other strategic street corners. When two journalists arrived, they were threatened with guns by the men in the cars, and one journalist was hit over the head with the butt of a gun. Once the police arrived, the suspects rapidly fled the scene. They were apprehended shortly afterwards, and various handguns and automatic weapons were confiscated. They admitted working for Correa Delgado. The case is now being investigated by the police, and it is expected that charges will soon be brought.

PERU

On 5 April 1992, Peru's President Alberto Fujimori suspended the Constitution, took control of the judiciary and started ruling by decree. Decree law No. 25,418 established the aims of the new Government of Emergency and National Reconstruction. A change in the constitutional and judicial structures resulted in the dismissal of more than 165 judges and prosecutors (see *Attacks on Justice 1991-1992*). Since then, Peru's human rights situation has worsened.

The decree that established the aims of the new Government of Emergency and National Reconstruction also stated that "the government ... ratifies and respects the treaties, covenants, pacts, agreements, contracts and other prevailing international obligations subscribed to by the State of Peru." The international and regional treaties ratified by Peru include the International Covenant on Civil and Political Rights, the American Convention on Human Rights (ACHR) and the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The first two were ratified in 1978 and the latter one in 1988. The suspension of constitutional rule immediately put in further jeopardy the protection of human rights.

Government forces continue to carry out extrajudicial executions, disappearances, torture and rape. Two armed insurgent groups, the Shining Path (*Sendero Luminoso*) and, to a lesser extent, the Túpac Amaru Revolutionary Movement, also continue to sow widespread violence and terror.

President Fujimori stated that he used the new powers he granted himself in April 1992 in order to help radically transform the judicial administration in Peru. According to him, corruption would be minimized, and the judicial administration would become impervious to intimidation by armed groups. The fact that the courts had been unable to administer justice in the past helped give President Fujimori the leeway he desired with popular support. In addition, an intensified campaign of car bombs, machine-gun attacks and political assassinations launched by the armed resistance groups (especially the Shining Path) created a large popular support to have the insurgents and suspects punished, even if this meant suspending due process and re-introducing the death penalty.

Instead of improving the judiciary, President Fujimori introduced more negative measures. In fact his use of decrees and the revision of the Constitution is an attempt to legalize acts and judicial procedures that were previously illegal or contradicted the Peruvian Constitution. Some results of President Fujimori's new actions are:

- The judiciary is now entirely dependent upon the executive. As such, it has become a tool to help lock up suspected terrorists and to silence the voice of legitimate opposition parties;
- The Court of Constitutional Guarantees, which helps to protect individual rights, has been dissolved;
- Many judges and prosecutors, known for their integrity, have been arbitrarily dismissed and replaced with supporters of the Dictator's regime;

- The right to *habeas corpus* and *amparo* have been decreed unavailable for those accused of terrorism or treason until after trial is completed; and
- The government has also threatened to take the unprecedented step in extending the death penalty and thus violating the ACHR, which might remove Peru from the inter-American system of human rights protection and deny Peruvians the right to appeal to the Inter-American Commission of Human Rights and the Inter-American Court.

In November 1992, elections were held which resulted in the establishment of the Democratic Constituent Congress (*Congreso Constituyente Democrático* [CCD]). The new eighty-member, single-chamber Congress, formally inaugurated on 30 December 1992, replaced the two-chamber Congress disbanded by the President in April. On 5 January 1993, the CCD approved a law validating the 1979 Constitution and confirming President Fujimori as the Constitutional President of the Republic. The law also stated that the decree laws issued by the President and his Council of Ministers, between 6 April and 30 December 1992, including new anti-terrorism decrees, would remain in effect until such time as they are revised or revoked by Congress. The CCD through its Constitution Commission began to draft a new Constitution in January 1993. The Commission is expected to submit a final draft in July 1993. The CCD was charged with drafting a new Constitution and carrying out those legislative functions established in the 1979 Constitution.

Faceless Judges and Anti-Terrorism Legislation

The decree laws issued by President Fujimori and his Council of Ministers following the suspension of the Constitution include wide-ranging anti-terrorism measures. These decrees broaden the definition of terrorism-related activities and grant the police virtually unlimited pre-trial powers. These decrees also accelerate trial procedures and significantly lengthen the period of imprisonment for those convicted. Decree Law No. 25,475 provides that the National Police of Peru to hold suspects incommunicado for a period of up to fifteen days. Such a decision does not rest with a judge; rather, the judge in conjunction with the Public Ministry need only be informed of the action.

Decree Law 25,564 reduces the age of criminal responsibility for "crimes of terrorism" from eighteen to fifteen years. Within the broader redefinition of "crimes of terrorism," an important decree is Decree Law No. 25,659, which defines the crimes of treason. Those crimes which have been reclassified as treason range from serious offences such as detonation of car bombs, armed assault and assassinations of government officials to nonviolent expression, such as teaching in a way that is considered pro-Shining Path. The anti-terrorism branch of the police force need only to inform the military justice system of detention in cases of treason. During the investigation, the police are allowed to detain the suspect indefinitely, and once charges are formalized, defendants awaiting trial can remain in prison custody for up to thirty months in terrorism-related cases "of a complicated nature" in which more than ten people are involved. In cases which prove "extremely difficult" or require a

"special extension of the investigation," the period of pre-trial imprisonment can be extended to five years. These crimes of terrorism or treason are then tried by hooded judges in secret military tribunals under summary proceedings. It is reported that between August 1992 and January 1993, 154 individuals accused of treason have been tried in these secret courts. Of the accused, it is reported that 131 have been convicted, 104 of whom face life sentences without parole.

While the crime of terrorism and the crime of treason against the nation (*traición de la patria*) appear to be similar in nature, the treason cases are tried before a military court consisting of military personnel presiding over both guilt and sentencing. Peruvian human rights groups have pointed out that the trial of civilians by military personnel violates Article 282 of Peru's own Constitution (this article states that civilians shall not be subject to military jurisdiction). In addition, military jurisdiction over civilians also violates the right to be tried by an independent and impartial tribunal. Faceless judges do not only appear in military courts, but like in Colombia, the practice has spread to civilian courts. The utilization of anonymous judges, prosecutors and witnesses as well as other procedural rules deviate from both the Peruvian legal standards and international human rights laws. In fact, these courts present a grave violation of fundamental guarantees. The trials proceed at a much slower pace, and hundreds of people are claimed to remain in prison awaiting trial, since pre-trial detention is required in all terrorism cases until a final verdict is rendered.

In practice, the anti-terrorism laws have managed to extend the definition of "terrorism" beyond its actual

context, and are also used as a tool by the executive to weed out other opposing forces to the Peruvian government. The political opposition, human rights workers, the defence bar and common criminals have become targets for prosecution in a jurisdiction that is characterized by many inefficiencies and great disregard for due process. It is reported that even defence lawyers are being targeted by government measures in order to remove them as obstacles in the way of prosecution.

The Extension of the Scope of the Death Penalty

President Fujimori stated repeatedly that he favoured the death penalty for those convicted of treason and announced that the government would be renouncing its obligations not to extend the death penalty as stipulated under the American Convention on Human Rights. Article 4(2) of the Convention clearly prohibits the extension of capital punishment to crimes to which it does not presently apply. In addition, Article 4(4) prohibits its use in cases of political offences or common crimes.

On 10 June 1993, the Congressional Committee in charge of drafting the new Constitution approved an article which would allow the imposition of the death penalty for acts of terrorism and treason (as defined by the previous section). In the current Constitution, the death penalty applies only to acts of treason when Peru is at war with another state. The clause still has to gain approval by the full Congress in late July, and politicians stated that they did not expect this to be a problem for the President. Legal analysts stated that the change would only come into effect once the whole new Constitution is approved. As a result, detainees accused of terrorism should not face execution.

Attacks On Judges and Lawyers

In Peru, the situation with regard to international laws and human rights has decayed to a level which allows for daily violations. Reports indicate that prisoners are displayed in metal cages, and they are condemned by the government and the press often before they go to the military tribunals. Groups fighting for human rights are often portrayed negatively. Lawyers defending criminals or human rights groups as a result become victims of heavy repression as well.

Miguel Olazabal Ancajino, Victor Sigüennas Campos, Ruben Bustamante Banda, Ernesto Cuba Montes and **Gilver Alarcon Requejo:** Lawyers. These lawyers were arrested in early December 1992 in Chiclayo and were charged with subversion and "apology for terrorism." They were originally under the jurisdiction of a military tribunal, but have been passed to a regular court where they are being prosecuted.

Carlos Chipoco: Human rights lawyer and co-founder of the Lima-based Institute for Legal Defense. Chipoco represented victims in two important cases before the Inter-American Court on Human Rights. His name appeared in the criminal file of certain alleged terrorists, probably because of his previous work with Americas Watch and on his current work before the Inter-American Court.

Alfredo Crespo Bragayrac and **Jorge Cartagena Vargas:** Defence lawyers from Lima and members of the Democratic Association of Lawyers. The two were arrested on 12 January 1993 for their defence of Abimael Guzmán (leader of the Shining Path) and Martha Huatay Ruiz. Abimael Guzmán has been convicted and sentenced to life imprisonment. The intelligence of

Armed and Police Forces (DINCOTE) claimed that they found several boxes containing propaganda in favour of the Shining Path at Crespo's office. In the public eye these lawyers are regarded as collaborators with the Shining Path. Crespo stated that he had received various death threats for his representation of Guzmán. The head of DINCOTE held a press conference after the arrest and alleged that Crespo belonged to the Shining Path and served as a link between detained members and those still active in the organization.

DINCOTE is accused of abuse and torture during detention. On 15 January 1993, after being tried by a military tribunal, they were accused of "treason against the nation" and sentenced to life in prison. They are now serving their time in the Yanamayo Prison. In the course of the arrest on 12 January 1993, another lawyer **Andrés Coello** was also detained.

James Gagel: A US lawyer who works in Peru and arranges adoptions of Peruvian children by North Americans. He was arrested on 24 February 1992 by the Commander and other members of the Disappeared Persons Unit of the Lima Police. He was beaten around the head and face at the time of the arrest. He is accused of falsifying adoption documents and is awaiting trial. The charge of falsification of documents connects him to other illegal activities such as the kidnapping and trafficking of children, and impersonating government officials.

He was held in prison until March 1993. After his release, all charges were dropped. The most probable reason for the initial arrest was the fact that Gagel had filed a complaint against the Commander after the lawyer's home and office were illegally entered and searched by the aforementioned Police Unit.

Tito Guido Gallegos Gallegos: Lawyer responsible for the legal section of the Solidarity Vicariate of the Prelacy of July, in the

Department of Puno. He is being subjected to an illegal judicial investigation on the grounds of alleged "collaboration" with terrorists.

The situation resulted because of a writ of *habeas corpus* issued before the Second Investigation Tribunal of Puno in favour of Héctor Otazu Quisepe, age thirteen, who was detained on 4 September 1992 by members of the army and accused of terrorism. On 7 September 1992, Félix Pinazo Ponce, the Second Examining Magistrate, declared the writ of *habeas corpus* justified and ordered the release of the child to his parents. However, the following day, the Second Examining Magistrate accompanied by the clerk of the court came to the offices of the Vicariate claiming that he had been deceived by the writ and demanding the return of the child to the authorities. On 9 October 1992, the Magistrate warned that he would have the lawyer detained if the latter failed to present himself to the tribunal within three hours. On 22 October, Pinazo Ponte issued a detention order for the child, while he also accused Gallegos Gallegos of having acted with malice and bad faith by bringing an improper action (the writ of *habeas corpus* in favour of a minor). For these reasons, the Magistrate claimed that the lawyer was guilty of the crime of terrorism, which carries a minimum sentence of twenty years.

Desanti Massimo, **Giovana Paganni** and **Reiner Koch:** European lawyers representing the Democratic Lawyers Association who were invited by the Shining Path. They were in Peru to monitor the trial and treatment of Abimael Guzmán and other individuals arrested for terrorist crimes. On 27 October 1992, Massimo, Paganni, Koch and three other unidentified foreigners were arrested by police who raided the group's hotel room as they were about to hold a press conference. They were released three days later.

Demonestenes Mamani Ocampo: Human rights lawyer. Mamani and his wife Patricia Bensa Morales are being prosecuted by the current government and fear imposition of the death sentence for Mamani's legal defence of various political prisoners in Peru. He has also promoted adherence to International Conventions and respect for human rights. On 31 August 1992, a call was made to different international organizations in order to help the couple leave the country.

Alberto Borea Odria: Lawyer, former Congressman and member of the Christian Popular Party. He has been harassed due to his commitment in defending General Salinas Sedo, who fled the country to Costa Rica as an asylum seeker because of threats by the Fujimori Government.

Anne-Marie Parodi and **Martin Heiming:** French and German lawyers working for a group of lawyers calling themselves the Ad Hoc Legal Observation Delegation. In October, they were together with two other lawyers from the United States of America in Lima to observe the trial of Abimael Guzmán, leader of the Shining Path (PCP). During their stay they were intimidated, and, on the night of 4 October 1992, they were visited by an official from the Public Ministry who informed them that he had received complaints about the organization they represented. A translator working on behalf of the delegation was physically attacked in the street by unidentified persons while he was accompanying other members of the delegation.

Heriberto Benitez Rivas: Defence lawyer currently representing the relatives of nine students and one lecturer who "disappeared" on 18 July 1992. Benitez Rivas has reportedly been receiving various death threats on the phone due to his involvement in the case.

The students and lecturer were abducted on the campus of the Enrique Guzmán y Valle University of Education, otherwise known as *la Cantuta*. Witnesses identified members of the armed forces.

Benitez Rivas and his family have been threatened with death in the past for participation in the legal defence of members of the army who in November 1992 were accused of having participated in an attempt to overthrow President Alberto Fujimori's government.

Martha Isabel Huatay Ruiz: Lawyer of the Association of Democratic Lawyers and a member of the PCP. She was detained on 17 October 1992. During the police investigation she was subjected to torture. After a violation of various human rights she was ultimately sentenced to life imprisonment by a military tribunal. She is was jailed in Yanamayo-Puno Prison with serious skull damage, and she was denied help by the International Red Cross. On 3 May 1993 Huatay Ruiz was transferred to the "Santa Monica" prison in Chorillos, Lima. The Lima Bar Association voted unanimously to condemn the police torture.

Wilfrido Terrones Silva: Lawyer arrested on 26 August 1992 when leaving the Palace of Justice in Lima. Later, he was declared missing. Witnesses stated that the abduction and disappearance were carried out by members of the Armed Forces. Terrones Silva, like many other members of the Democratic Lawyers Association, had been representing individuals accused of terrorism. Some sources state that he was lured out of his office by government authorities after a false report of disturbances at the Miguel Castro Prison.

Jorge Cartagena Vargas: Lawyer from Lima. On 20 July 1992, the lawyer was attacked and shot while working at his office at night. He was seriously injured by machine-gun fire. The attack was the second in recent years against him.

THE PHILIPPINES

Antonio Ayo Jr. and **Santiago Ceneta:** Lawyers in Daet, Camarines Norte, Bico Region, and members of the Free Legal Assistance Group, a human rights law group in the Philippines. Charges filed in May of 1991 against Ayo and Ceneta under Republic Act No. 1700, accusing them of subversion or membership in the banned Communist Party were dropped following the repeal on 22 September 1992 of the Filipino Anti-Subversion Law, legalizing the Communist Party for the first time in thirty-five years.

Their arrest occurred in connection with their representation of several individuals accused of membership in the New People's Army, which is the armed wing of the Communist Party. The identification in the Philippines of lawyers with their clients was made plain in a public statement of Lieutenant Colonel Manual Porras of the National Police who remarked that those who represent members of the People's Army should be considered subversives assisting the forbidden organization. This sentiment stands in direct contrast to Article 18 of the UN Basic Principles on the Role of Lawyers, which provides: "Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions."

Many suspect that the individual who identified the lawyers and others as subversives was himself a suspected member of the People's Army who made the identification in return for a lighter punishment.

THE RUSSIAN FEDERATION

In the past two years, the Russian Federation has reached some consensus on the broader goals of legal reform. This has been embodied in two documents — the Declaration of the Rights and Freedoms of the Individual and Citizen and the Conception of Judicial Reform. While neither is legally binding, they may serve as conceptual blueprints for the development of more focused legislative and constitutional reform.

The documents envisage a separation of powers, inalienable individual rights and a justice system whose chief actors, the judiciary and the procuracy, maintain distinct and separate functions. As intended, the documents have been used as guides for the production of draft codes for an improved criminal justice system, both legally and procedurally. In April 1992, the Code of Criminal Procedure was amended to reflect explicitly a right to *habeas corpus*. Nonetheless reports indicate that the judicial system still remains subject to extrajudicial pressures and accusatorial bias. Furthermore, new laws have been enacted that have not followed the guiding principles of the new documents. For example, a new law on the procuracy was enacted in 1992, which, contrary to the views set forward in the Conception, does not much diminish the prosecutor's role to an accusatorial one.

Conception of Judicial Reform

The Conception of Judicial Reform, or *Konseptsiia Sudebnoi Reformy v RSFSR*, was adopted by the Supreme Soviet in October of 1991. It

both critiques the former system of justice and foresees the development of incremental yet eventually sweeping changes in the Russian Federation's judiciary and legal profession.

The guiding principle of the Conception is the achievement of a fully independent judiciary worthy of the public trust. The drafters of the document noted that the Soviet judicial system was beholden to the government and the Party, was regarded with suspicion by the populace and was generally ineffectual. One of the measures proposed by the document is the establishment of tenure for judges; judges would be appointed by Parliament either for life or until a mandated retirement age. The Conception envisions a three-tiered federal judiciary with tenured judges and a right to appeal from decisions at the first two levels. Likewise, it conceives of a parallel structure for the republics, limited only by adherence to a Constitution now in the draft stages.

A key provision of the Conception is that delineating the optimal structure and power of the Office of the Attorney General. The Conception would limit the power of this Office to its accusatorial and prosecutorial function and eliminate the current conflicting role it plays in judicial oversight. Moreover, the decisions of the Office, such as those regarding arrest or detention, would be subject to judicial review. The Conception also foresees reforms in criminal procedure that would level the playing field between the prosecution and the defence and that calls for development of new, more uniform and reliable rules of evidence for court proceedings.

Declaration of the Rights and Freedoms of the Individual and Citizen

This document was adopted by the Russian Federation in November 1991. The Declaration is in many ways patterned after the International Covenant on Civil and Political Rights. In Article 1, it declares the supremacy and self-executing quality of international human rights law over domestic law.

With regard to the criminal system, the Declaration makes explicit provision for a presumption of innocence, guarantees the right of appeal, prohibits double jeopardy and compelled self-incrimination and insists on the inadmissibility in court of illegally obtained evidence. Moreover, it foresees a right to legal counsel from the time of detention.

The Constitutional Court and Judicial Independence

In May of 1991, the Supreme Soviet created, through legislation, the Constitutional Court. Its judges are not accountable to the executive. According to June 1992 legislation that has not yet been fully implemented, the Court's judges are to enjoy lifetime tenure or tenure until the age of sixty-five. Furthermore, a judge's salary may not be decreased while in office. Judges are also formally granted greater powers of self-regulation.

Several cases decided by the Court since its establishment have provided opportunities to observe the degree of the Court's authority and independence:

January 1992

The first ruling made by the Court overturned a presidential decree issued by President Yeltsin ordering the merger of the KGB and MVD. The Court found that President Yeltsin had overstepped his authority. The President adhered to the ruling and thereby legitimized its review of executive action and evinced respect for the Court's independence.

November 1992

The Court upheld the legality of a ban on the Communist Party that was ordered by President Yeltsin. Nonetheless, it did not concede in its opinion to all of the arguments put forward by the executive in favour of the ban's legality.

March 1993

The Court's independence was threatened in March 1993 when the Court upheld Yeltsin's call for a referendum on issues including presidential and parliamentary elections and constitutional reform. However, prior to the Court's deliberation, the Court chair announced his views on the case. Subsequently, the Court hearing apparently proceeded even though the Court did not have the documents before it upon which it claimed to base its decision.

Tamara Tarnopolskaya: Judge of the People's Court in Moscow. The judge, in September 1991, was intimidated while presiding over a case. The case was one in which Moscow police were accused of having shot and killed an unarmed, eighteen-year-old woman after forcing entry into her apartment. Moreover, police, when they came to her apartment, did so in error, having obtained a wrong address. At the victim's apartment, police allegedly engaged in a physical struggle with two young men present there as well.

Judge Tarnopolskaya ruled against the officers: despite visits to her by police seemingly attempting to persuade the judge of the officers' innocence; despite regular visits from a police officer who was also a member of the Moscow City Council whose members elect People's Court judges; and despite receiving telephone death threats. After she issued her ruling, she received notice from the regional City Council that a new apartment that she was to inhabit in relation to her election as judge was no longer available to her.

RWANDA

The Rwandan judiciary has failed to provide proper recourse for victims of human rights abuses. Atrocities in the country include the government-sanctioned killings of over 2,000 Rwandan citizens between October 1990 and January 1993. Accounting for the largest number of deaths, the country's Tutsi minority has been consistently persecuted. Still more deaths occur in the midst of civil strife as government opponents, including the Rwanda Patriotic Front, clash with the country's government militia. In addition to killings, government soldiers have also engaged in rape and looting with impunity. The response of the justice system, weak at best, has been the frequent arrest of suspects; however, these detainees are subsequently released and none has been brought to trial. For instance, in the case of the January 1993 massacres, 150 people were arrested and charged, but no trial has been held.

The judiciary is neither respected by the executive nor by the Rwandan public. Evidence of the public's attitude is the fact that both supporters and opponents of President Habyarimana have stormed jails to secure the release of detainees; in January 1993, for example, members of the *Mouvement Républicain National pour la Démocratie et le Développement* freed prisoners from jails at Gisenyi and Ramba. The government stance toward the judiciary is exemplified by the vacancy, since 1 January 1993, of the position of Minister of Justice. Both the attitude towards the judiciary and the events that have taken place in Rwanda, including extrajudicial killings, "disappearances," torture and the failure to bring murderers to justice, manifest a

complete paralysis of the Rule of the Law in the country.

The government of Rwanda, in response to the 8 March 1993 report by an International Commission on Human Rights Abuses in Rwanda, comprised of a coalition of international human rights organizations, acknowledged that three massacres had taken place in the country. However, the government claimed that these had been carried out by unruly members of the army. The official Rwandan response to the Commission report stated that the government "deplores and condemns" the violations committed in the country and expressly affirmed respect for the independence of the Rwandan judiciary. Further, the government indicated the desire both to improve prison conditions and to shut down detention facilities other than prisons, such as military camps. Despite the Rwandan government's avowal to improve the country's human rights record, several so-called human rights organizations have arisen since January 1993, whose main goal is apparently to dispute the findings of the International Commission. No further steps toward greater judicial independence and improved human rights in Rwanda have been taken.

Fidèle Kanyabugoyi: Lawyer, employee of the Ministry of Public Works and legal representative for KANYARWANDA (*Association pour la Promotion de l'Union pour la Justice Sociale*), a human rights group. Kanyabugoyi was arrested on 29 March 1992 by intelligence officers who also confiscated papers at his home regarding the massacre of the Tutsi minority in Rwanda. Kanyabugoyi has called for democracy in Rwanda and for an investigation into the Tutsi massacre, which occurred in 1991 after Tutsi rebels invaded Rwanda from Uganda. Kanyabugoyi was

provisionally released on 3 April, on the condition that he not move outside a 20-kilometre radius of Kigali and also on the condition that he be subject to arrest at any time.

On 25 August 1992, Kanyabugoyi was questioned by the General Procuracy for the Court of Cassation (*Parquet général auprès de la Cour de Cassation*) regarding his allegations that a local government figure was implicated in the Tutsi massacre.

On 29 August 1992, Kanyabugoyi's house was attacked by nine men, one of whom was dressed in combat fatigues and carrying assault weapons. Kanyabugoyi's wife and a neighbour were assaulted with a machete, and several items were stolen. The police arrived twenty minutes later. Despite the appearance of robbery, the actual motive for the attack, according to Amnesty International, may have been either to kill Kanyabugoyi himself or to intimidate him from proceeding in his investigation of the massacre.

Jean Damascène Munysanga: Attorney General, and **Alphonse Marie Nkubito:** Magistrate. In December 1992, Munysanga was held hostage in his office while Nkubito was attacked in his car. Nkubito's windshield was cracked and his watch was stolen.

SAUDI ARABIA

Saudi Arabia, in addition to lacking an independent judiciary and bar association, lacks a criminal code and code of criminal procedures. Few laws are written, and the judiciary is not structured around modern models. Instead, it is based on old and outdated *Shari'a* models. Legislation derives from *Shari'a,* or Islamic, law, which as interpreted by the Council of Senior *Ulama* (religious scholars) provides for broad application of the death penalty for various offences.

The Committee for the Defence of Legitimate Rights

Saudi governmental respect for freedom of assembly and association is in general quite limited. That lawyers are not immune from encroachment on these basic freedoms was evident in May 1993 when Saudi authorities shut down the offices of the recently established Committee for the Defence of Legitimate Rights in Saudi Arabia and dismissed from their government posts several of the group's founders. The action was apparently taken following a decision by the Supreme Council of *Ulama.* The Supreme Council, the highest religious authority in the country, based its decision on the governance of Saudi Arabia by *Shari'a,* or Divine Law, and the ability of individuals to bring complaints to *Shari'a* courts, which implicitly preempts the need for such human rights organizations. It denounced both the establishment of the Committee and the statements it released to the media. The Committee was unpopular for its critical posture towards the

ruling family's implementation of Islamic law and failure to effectively share political power. Saudi authorities have attempted to justify the action by arguing that the Committee was a *de facto* political party, the formation of which is illegal in Saudi Arabia.

Reports indicate that Committee members and sympathizers have been subjected to harassment; searches have taken place at the Sheikh Safar al-Hawali Centre for Publishing and Translation, and authorities have frozen charity bank accounts of Sheikh Suleiman al-Awdeh, hoping to thwart efforts to assist families of Committee members. Some forty-four sympathizers were arrested, and the son of one of the founders, Muhammed al-Masa'ri, was taken into custody. Additionally, government security officers reportedly surrounded the homes of the various Committee members in the days following the group's disbandment.

Abdallah bin Abdel-Rahman al-Jibbarin: Jurist. As part of the banning of the Committee for the Defence of Legitimate Rights and the subsequent closing of law offices, al-Jibbarin was dismissed from the General Council of *Ifta'a*.

Abdallah bin Suliaman al-Masa'ri and **Suleiman bin Ibrahim al-Rashoudi:** Jurists and co-founders of the Committee for the Defence of Legitimate Rights in Saudi Arabia. Their law offices and branches throughout the Saudi Kingdom were ordered closed and their licences to practise law revoked as part of the authorities' response to the organization of the Committee. Al-Masa'ri, Committee spokesperson, has been subjected to torture in a new prison for political prisoners. Relatives and friends have been barred from entering the prison.

Abdallah bin Humoud Tuwaijri: Islamic law professor at a government-run university. The professor was one of those dismissed from his job following the shutdown of the Committee for the Defence of Legitimate Rights.

SENEGAL

In 1992, Senegal adopted a new court system composed of the Constitutional Council, the Court of Cassation and the Council of State (see *Attacks on Justice 1991-1992*). While this change represented a step towards greater judicial independence, several political events this year have tainted the integrity and credibility of the Constitutional Council and, thus, the judiciary in general.

The Nomination and Resignation of Kéba Mbaye

Circumstances surrounding the nomination and resignation of Kéba Mbaye to the Constitutional Council have had implicit ramifications for the independence of the Senegalese judiciary. Kéba Mbaye is a former vice-president of the International Court of Justice in the Hague and the former president of the International Commission of Jurists. More recently, he served as the president of the National Commission for Electoral Reform, and was named president of the new Constitutional Council by President Abdou Diouf.

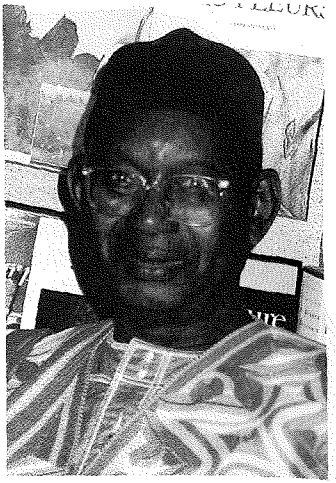
Political events led to Mbaye's subsequent resignation from the Council. In February 1993, members of the *Commission Nationale de Recensement des Votes* (National Electoral Commission) disagreed about the results of the presidential election. The Commission at this time was a deliberative body presided over by the President of the Court of Appeal and composed of a representative of each party, coalition of parties or independent candidates in the election. Due to

political disharmony, the Commission reached a standstill and sought a decision from the Constitutional Council. The Constitutional Council, headed by Mbaye, refused to deliberate on election results because, in order for the Court to have proper jurisdiction, the Commission must first at least render a provisional decision. The Commission was unable to do this. Since Mbaye had led the meeting of political parties which had written the Electoral Code and since the political parties were decrying the Code, he took responsibility for the perceived shortcomings of the Code and resigned on 3 March 1993. However, Mbaye faulted disagreements among political parties for the failure of the Code.

After Mbaye's resignation, the political decisions of the executive further undermined the independence and the credibility of the Constitutional Council. While, according to its charter, the Constitutional Council could still have functioned with its remaining members, President Diouf, whose victory had not yet been confirmed by the Election Commission, issued Decree #93/186/PR on 9 March 1993, officially accepting Mbaye's resignation, and Decree #93/187/PR, issued the same day, naming Youssoupha Ndiaye, the President of the Court of Cassation, as new President of the Constitutional Court. Ndiaye's nomination was met with suspicion by some of the opposition parties, which viewed Diouf's action as politically motivated.

The Constitutional Council proclaimed Diouf the winner of the presidential election on 13 March 1993. In protest, the People's Liberation Party boycotted the legislative elections of 9 May 1993.

Babacar Seye: Vice President of the Constitutional Council. On 15 May 1993, apparently in retaliation for the Council's politically unpopular decisions regarding the presidential election, Seye was assassinated. An organization called the People's Army claimed responsibility for the assassination. In a telephone message to the newspaper *Sud Quotidien*, members of the group stated that the killing was a "warning to other magistrates of the Constitutional... Council so that they will actually respect the people's will." Claiming not to be a political party, the group cited as their motive the desire to bring about "a change in regime." The assassination marked an unprecedented occurrence in the history of Senegal.



Babacar Seye

SINGAPORE

Golpan Nair: Lawyer. In September 1992, a panel of judges found Nair guilty of "serious misconduct," sentencing him *in absentia* to a two-year suspension from practising. The charges were filed after Nair wrote two letters to the Singapore Attorney General Tan Boon Talk, asking his opinion on the conviction of J.B. Jeyaretnam, a leader of the Workers' Party. Nair told the Attorney General in his letters that he would make the correspondence public if the Attorney General failed to respond. According to the court, Nair's misconduct consisted of efforts at "discrediting the Attorney General." Prior to trial, Nair emigrated to the United States.

Teo Soh Lung: Lawyer. In June of 1992, the government renewed its restrictions on Lung, preventing her from associating with former detainees held under the Internal Security Act (ISA), from making public statements or statements before public meetings and from holding office in or assisting any organization without prior governmental permission from the Internal Security Department. The restrictions were first placed on Teo Soh Lung following her release from prison in 1990. At that time, she was also restricted from travelling abroad, although this prohibition was lifted with the recent renewal of the orders. The release followed closely on the heels of a prior arrest under the ISA made after she publicly described previous mistreatment suffered at the hands of the authorities while in detention.

Teo Soh Lung was arrested at least three times since 1987 for supposed violations of the ISA. She was suspected of being part of a Marxist conspiracy to overthrow the government and was kept in indefinite administrative detention. Singapore allows for such indefinite detention without charges or trial.

SOUTH AFRICA

The current South African government, created by the Constitution of 1983, is based upon parliamentary sovereignty and dominated by the white minority (13% of the population) to the exclusion of the black majority (75.5% of the population). According to the Constitution, the judiciary is subordinate to the almost unlimited powers of Parliament. Recently, however, the South African government proposed a Charter of Fundamental Rights which may change the current parliamentary omnipotence. If adopted, this Charter would create a new, more limited parliamentary system geared to the preservation of both the Rule of Law and individual rights. Another positive development in South Africa which could affect the independence of the judiciary is the first free elections by all races scheduled for 27 April 1994.

The Draft Charter

The stated purpose of the Charter is to "protect individuals against abuse of power by State authorities." The Charter enumerates basic individual rights which are binding on all executive, legislative and judicial institutions (§1(2a)). Considered to be fundamental are the right to life and human dignity and the right to equal treatment under the law. Consequently, the Charter guarantees equal access to the courts and legal remedies to those whose rights are infringed. The Charter also provides for political rights and for freedom of expression.

Particularly important is the provision in the Charter guaranteeing legal competence: "Every

person shall have the right to perform juristic acts, and to acquire rights and incur obligations" (§16). This guarantees lawyers the right to act in their professional capacities without fear of reprisals from the government. The Charter further provides for the protection of arrestees' legal rights. Section 24 states that detainees shall have the right "to be given a reasonable opportunity to communicate and consult with a legal practitioner." Section 26 guarantees the right to a fair trial including a presumption of innocence and the right to a lawyer. The Charter upholds the rights of parties to settle disputes by litigation in a court of law, and it also upholds the rights of citizens to present their side of a case before an administrative organ renders a decision.

The Proposed Regime: The Draft Constitution

On 26 July 1993, the South African government introduced a draft of the country's first post-apartheid constitution. The proposed constitution calls for equal citizenship rights and voting without racial bias. The draft further calls for the election in April 1994 of a two-chamber legislature, five to ten regional parliaments and a constitutional court to protect basic constitutional principles.

Patrick Huma: Human rights lawyer. On 29 January 1993, Huma was arrested at his home by the Bophuthatswana police. The police did not inform him of the charges, allegedly assaulted him, and either broke or took many of his possessions, including some money. Huma was tortured on several occasions while in custody and, at one point, was handcuffed to the back of the police car at a shopping mall, reportedly so that some of his clients might see him and his professional reputation might be damaged. Huma was brought to the Ga-Rankuwa offices of the

Murder and Robbery Unit, where he was allegedly tortured by the police who were attempting to extract a confession from him as to illegal possession of firearms. While in custody, Huma suffered a broken arm and other injuries, but, despite a court order that he be examined by a government medical officer, the police refused to take him to a doctor. Finally, once released on bail, Huma was admitted to the hospital where he underwent four operations on his fractured arm. He has yet to regain full use of his right hand and wrist.

Huma was put on trial for armed robbery and theft of a motor vehicle although he has testified that he bought one of the vehicles from a used-car dealer and he was keeping the other car for a friend. Defence witnesses initially failed to appear at trial due to court rumours that the charges were to be dropped. Other potential defence witnesses were allegedly assaulted or detained. Recently, however, Huma was acquitted of these charges; the court dismissed the charges before the Prosecution finished presenting its case.

Huma has brought suit against the Bophuthatswana President and Law and Order Minister Lucas Mangope and members of the police force for injuries suffered during custody and also against Bophuthatswana Health Minister Nat Khaole and other hospital and medical practitioners for alleged negligence. He has been subject to several failed assassination attempts, one allegedly by a South African hit squad hired by the Bophuthatswana police. No action has been taken to apprehend those responsible for these attempts.

Though the authorities promised to investigate these allegations, no such investigation has been commenced. The police have refused Huma's request for protection unless he first withdraws the charges he has made against the police.

Bhekizizwe G. Mlangeni: Lawyer and member of the National Association of Democratic Lawyers and an African National

Congress branch chairman (see *Attacks on Justice 1990-1991*). In December 1992, Judge B. O'Donovan, ruling on an inquiry into Mlangeni's 15 February 1991 death, found that there was not enough evidence to convict those accused of the crime. However, Judge O'Donovan pointed out that there may have been sufficient evidence if the police had conducted a more efficient investigation. Although the police were given a list of suspects from the Vlakplaas military base shortly after Mlangeni's death, they waited three months to interrogate them and called the suspects the day before to inform them that officers would be questioning them.

Dumisa Ntsebeza: Human rights lawyer. A lawyer in Transkei and active in the defence of ANC members and those who have been tortured or detained without trial, Ntsebeza has a history of political imprisonment (1976-1981) and banishment. During 1992, Ntsebeza suffered harassment by the police apparently because of his defence of those in opposition to the government. Most recently, in a secret police report, Ntsebeza and his brother were mistakenly named as organizers of military training for the Azanian People's Liberation Army (APLA). The document became public in July 1992 when it was presented at a hearing in London on political violence in South Africa. If true, this allegation would subject Ntsebeza to criminal prosecution. The concern is that, in light of current measures by the South African government to take action against the APLA, this document will serve as licence for the police to subject Ntsebeza to arbitrary detention or perhaps even assassination, or, at the very least, discourage him and other lawyers from taking politically sensitive cases. According to Ntsebeza, if the government links him to this organization, the ANC and human rights organizations will not sympathize with him and he will be an easier target.

Since the release of the document, other events have occurred leading Ntsebeza to fear further danger and harrassment. On

16 August 1992, a vehicle rammed into the wall and gate surrounding Ntsebeza's home. Upon returning from the police station after reporting the incident, Ntsebeza found the gate moved enough to provide access for a car. During the first week of December 1992, Ntsebeza was stopped, searched and questioned at a road block.

On 1 April 1993, Transkei's military leader, Major-General Bantu Holomisa, announced that the Chief Justice of the Homeland would head an investigation into allegations that APLA had military bases operating in his homeland.

SRI LANKA

In past years, harassment of lawyers taking on human rights cases has not been uncommon. In some cases, harassment has taken the form of death threats; in others, the threats have been carried out (see *Attacks on Justice 1989-1990* and *1990-1991*). The Bar Association of Sri Lanka, as a protective measure, has taken over many cases involving *habeas corpus* applications on behalf of individuals, some of whom have "disappeared" after arrest by security forces and some of whom have been allegedly subjected to extended and illegal detention without charges, such as at the Boosa Detention Camp and other camps under control of the army.

Asoka Gunasekera: Lawyer. In April 1992, Gunasekera appeared jointly with, among others, the Bar Association of Sri Lanka in the Court of Appeals in support of *habeas corpus* applications on behalf of sixteen students of Embilipitiya Central School who were missing since their earlier arrest. In October 1992, after the court issued notice on the respondents, among whom were several army officers, Gunasekera began receiving phone threats from anonymous callers indicating that he would meet the same fate that had befallen other human rights lawyers. In February 1993, the callers issued Gunasekera an ultimatum: that he take affirmative steps to stop the applications or "be dealt with."

While the Attorney General had offered him police protection, the police are found by many to be ineffectual, often participating in abuses themselves; furthermore, compounding matters was the fact that Gunasekera was involved in *habeas corpus* applications previously in which police officers, including the assistant superintendent of police, were respondents. In May of

1993, the ICJ/CIJL intervened on behalf of Gunasekera to the Sri Lankan Attorney General.

Gunasekera received another ultimatum about one month before his departure, which coincided with the hearings to be held in the case in which he was involved. His departure was timely in that, not one week after he fled Sri Lanka, his wife received a call more ominous than the others, saying that he would have to be dealt with.

While the identity of the callers is unknown, the experiences of Gunasekera recall those of other human rights lawyers, such as Charitha Lankapura (see *Attacks on Justice 1989-1990*), who have appeared in *habeas corpus* proceedings only to then receive anonymous calls before being murdered under circumstances raising suspicion of the involvement of the Security Forces or police. As Gunasekera saw it, "it would appear ... that, even in the Courts of Law, if you stand up for the legitimate rights of the victimised in Sri Lanka, you place your life in jeopardy."

Fritz Kodagoda: Acting Magistrate in Kurunegala Magistrate's Court and human rights activist. Kodagoda was compelled to leave the country in August following repeated harassment after he remanded into custody several police officers charged with the murder of a prisoner. Not only did he receive numerous death threats, but the upper storey of his house was burned down a week after he made the remand order. Not receiving adequate protection from threats to himself and members of his family, he moved to a house in a neighbouring area, but that house too was attacked.

W.D. Samarakone and **R.M. Wijayawardana:** Lawyers and former practitioners in the Mt. Lavinia courts near Colombo. Both men fled the country, leaving their families behind, after receiving threats by the Security Forces as a consequence of their work in human rights cases.

SUDAN

The Sudanese legal profession continues to be subordinated to the government. Banned at the time of the January 1989 *coup d'état* (see *Attacks on Justice 1989-1990*, *1990-1991*, *1991-1992*), the Council of the Bar Association has, until this year, been administered by a Steering Committee composed of National Islamic Front (NIF) supporters appointed by the government. Attempting to give the Bar elections an appearance of legitimacy, the government announced on 11 March 1992 an amendment to the Advocates Act of 1983 to require election of Bar Council members under the Trade Unions Act of 1992. In spite of the fact that lawyers are part of an independent profession having no employer, this amendment relegates the Bar to the status of a workers' trade union, subjecting it to possible interventions by either the Registrar of Trade Unions or the Minister of Labour. This control by the executive is evidenced by the fact that the Registrar allowed only four days for the entire election process, from the announcement that it would take place to the actual voting on 15 March 1993. This did not allow enough time for all members of the central organization to come to Khartoum to vote.

Because of this manipulation by the Registrar of Trade Unions, the majority of lawyers in Sudan boycotted the elections and, consequently, the current members of the council are NIF members, most of whom were previously on the appointed Steering Committee. The Arab Lawyers' Union, an association of all Arab Bar organizations, has refused to recognize the new committee because it was not

elected in accordance with international legal standards. The control over the Sudanese Bar Association by the executive is contrary to Article 9 of the UN Basic Principles on the Independence of the Judiciary which calls for governments to allow free and independent formation of legal associations.

The Sudanese government further infringed upon the independence of the Sudanese legal profession when it refused to allow lawyers who were not members or supporters of the NIF to attend the 18th General Council of the Arab Lawyers' Union in Casablanca, Morocco, from 20-23 May 1993. Only those "elected" to the Steering Committee or supporters of the NIF were allowed to go. This latest harassment of members of the Sudanese Bar is compounded by the continued practice of the government to arrest, detain and torture lawyers.

Kamal al-Gizouli: Lawyer and Secretary General of the banned Sudanese Writers' Union, and **Adnan Zahir Surer:** Lawyer. After being arrested on 12 February 1992, and being held without charge since their arrest (*see Attacks on Justice 1991-1992*), the two lawyers were released. Surer was released sometime in May 1992. Al-Gizouli was released in July 1992. Despite poor health and injuries which arose from his torture and detention, al-Gizouli has been denied permission to travel abroad for treatment.

Hamid Mohammed Hamid: Lawyer and member of the political bureau of the Umma Party. Hamid was arrested on 12 April 1993, allegedly for conspiring against the government with other members of the Umma party or Ansar Sect. No charge was brought, and he was reportedly released in May 1993.

Abdul Rahman Idris: Former judge and Province Commissioner. Following his arrest in April 1992, and after several months in the "ghost houses" of Khartoum, Idris was sentenced to life imprisonment along with Sid Ahmed al-Hussein (see *Attacks on Justice 1991-1992*) for planning a "racist coup plot."

Jalal al-Sayed and **A. Zeidan:** Lawyers. Both were denied travel permits to attend the Arab Lawyers' Union meeting in Morocco on 20-23 May 1993.

Sadiq al-Shami: Lawyer and member of the banned Council of the Sudanese Bar Association. After having been detained and tortured on several occasions in 1990 and 1991, al-Shami, who suffers from severe heart problems, is currently being prevented from travelling abroad.

Several Anonymous Lawyers. In January 1993, the police raided a lawyer's house in El Basher, Darfur Region, where a group of lawyers were holding a farewell party for a colleague. Several were arrested for drinking alcohol, and one lawyer was sentenced to eighty lashes. In response to this incident, the following day, the Governor of the Region, Brigadeir El Tayeb Ibrahim, member of the National Islamic Front, took the opportunity to denounce lawyers and the legal profession as enemies of Islam and the Revolution and promised that, having eradicated banditry and armed robbery, the Revolution would next eradicate the legal profession. As a result of his statements, a group of Moslems organized demonstrations and raided a few lawyers' offices, breaking furniture and tearing files and books.

SYRIA

After twenty-nine years of martial law in Syria, members of the legal profession continue to suffer many forms of persecution, and defendants in political trials are consistently denied fundamental fair trial rights (see *Attacks on Justice 1991-1992*). Due to the prevailing state of emergency in Syria, declared in 1963, normal judicial procedure is often suspended in the name of preserving the Revolution.

Although people accused of "ordinary crimes" are generally accorded rights satisfying international standards for fair trials, including access to legal counsel, those accused of "political crimes" do not enjoy such rights. Political offences are defined in ambiguous terms. For instance, Decree No. 6 of 1965 is a sweeping prohibition of all behavior that is "inconsistent with the application of socialism in the state, violates the orders of the military governor, opposes the goals of the revolution or obstructs them, or disseminates false information with the aim of inciting instability and shaking the belief of the masses in the revolution" (Article 3). This Decree "legalizes" the detainment of human rights lawyers, writers, political leaders and almost anyone who criticizes or even comments on the regime. Recently five human rights activists were accused of belonging to an "illegal" organization, the Committees for the Defence of Democratic Freedoms and Human Rights in Syria (CDF).

Torture is systematically employed by Syrian police, usually during the arrest and interrogation of political detainees, and medical treatment, if

provided at all, is inadequate. Such mistreatment has been cited as a factor in the prison deaths of lawyers, such as Shakour Tabban (see below), and other prisoners.

Although the Principles of Criminal Trials Act of 1950 requires the accused to be informed of their right to counsel, those accused of treason or espionage are not informed of this right while the crime is still under investigation. Further, the court may at any time deny access to lawyers or object to the defendant's choice of counsel. State Security Courts that try cases of treason and espionage are exempt from criminal procedure laws and rarely allow lawyers to appear in court. Many lawyers are hesitant to appear in State Security Courts, even if given permission to do so, for fear of government retaliation due to their defence of those accused of subversive activities.

The State Security Courts

More than 500 political prisoners, members of the Political Bureau of the Syrian Communist Party, the Party of Communist Action, the Democratic Ba'ath Party (the 23rd of February), the Iraqi Ba'ath Party, the Popular Nasserite Party, the Socialist Arab Union and the Kurdish Popular Union Party have been indicted in the State Security Courts. Some, including Tareq Shabib and Muhammed Mustafa Ma'touq, were arrested in 1977, and the others were arrested between 1980 and 1992. The detainees have been accused of:

- Belonging to organizations whose goal is to modify the institutions of government or the social structure by violence;

- Diffusion of false information to shake the public confidence in the goals of the revolution; and
- Opposition to Arab unity, to socialism, and to other objectives of the revolution cited in Military Decree #6/1995, the Law to Protect the Revolution (Article 3-a,b,c,d,e,f).

The procedure in the State Security Court is a short examination by a judge executed in a non-public hearing. The accused has no right to counsel at any stage in the process, and those who do have counsel are denied access to it. There is no possibility of judicial review; only the President of Syria may change or commute a sentence.

Dozens of detainees have already appeared in court, and 185 have reached the examination stage. Of those standing trial, only fifteen defendants have been released due to lack of proof. On 24 and 29 June 1993, the State Security Court sentenced twenty-four political prisoners to ten to fifteen years in prison at hard labour. Most of those convicted were accused of belonging to the *Parti d'action communiste*. Proceedings against other political prisoners are pending in the Security Courts.

The State Security Court's indictments and proceedings against political prisoners, with expedited, unreviewable procedure and limited access to lawyers, clearly violate the UN Basic Principles. By processing political prisoners outside of the normal court system, the Syrian judiciary loses its independence and becomes an appendage of the government.

The Syrian Bar Association

Contrary to the UN Basic Principles on the Independence of the Judiciary, the legal profession in Syria is not independent. Under Article 7 of the Syrian Advocacy Act of 1981, the Bar Association is tightly controlled by the ruling Ba'ath party. Article 3 of the Law Regulating the Legal Profession specifies that the purpose of the Bar Association is to "work towards Arab Unity and to realize its aims by the principles of the Ba'ath party."

Lawyers in Syria are denied the right to associate freely, and their activities are under constant government surveillance and control. The Ba'ath Party must be notified in advance of Bar meetings, and government representatives must be allowed to attend. Moreover, since no opposition groups are allowed in Syria, only the National Progressive Front, dominated by the Ba'ath Party, presents "candidates" for Bar Council elections.

Lawyers must also first receive permission from the Ba'ath party before joining any Arab or international jurist organization. Article 73 of the Law Regulating the Legal Profession forbids lawyers from representing foreign clients without permission from the Minister of the Interior. Lawyers may not visit prisons without first receiving permission from the Bar Council.

Further, lawyers are not allowed to engage in public discussion of the Rule of Law or the functioning of the judiciary. In addition to its exercise of great control over the Syrian Bar Association, the government may also dissolve the organization at any time the Bar is deemed to have "deviated from its objectives." "Deviation" is not defined by the law.

The Prime Minister may subsequently call for elections to the Bar Association within fifteen days of its dissolution or appoint a "temporary" bar council. The law does not specify what is "temporary."

Persecution of Lawyers

In addition to interfering with their autonomy and their access to clients, the government actively harasses and persecutes Syrian lawyers. Lawyers are consistently prevented from leaving the country, and they are monitored and interrogated by security agents. Many lawyers have been detained without charge or trial. Because of secret detention and the difficulty of gathering information about abuses of Syrian lawyers, the long detention of some lawyers is only now being reported. Reported as detained in last year's *Attacks on Justice*, **Mahmud Baidun**, **Muhammed Zlaykha**, **Ibrahim Hakim** and **Mounir Msouty** have been released.

Syria's Response to Human Rights Criticism

Last year, the CIJL presented its 1991-1992 edition of *Attacks on Justice* to the UN Sub-Commission on the Prevention of Discrimination and the Protection of Minorities. In response to the criticism of Syria's denial of judicial independence and harassment of lawyers in the country, the Syrian representative complained that the report contained many errors. The representative further commented that the government had only just received the report of the UN Rapporteur on the Independence of the Judiciary and was not in a position to comment on it. The representative called the reports of nongovernmental organizations flawed and

"ridiculous," but offered no concrete information to refute the criticism, thus failing to address adequately the independence of the Syrian judiciary.

Ahmad Ayash: Lawyer (see *Attacks on Justice 1991-1992*). He has been detained since 1982 without charge or trial.

Najib Dadam: Lawyer (see *Attacks on Justice 1991-1992*). Dadam has been detained since May 1993 without charge or trial.

Muhammad Daqqo: Lawyer (see *Attacks on Justice 1991-1992*). Daqqo has been detained since 1986 without charge or trial.

Abdel Karim Hamoud: Lawyer (see *Attacks on Justice 1991-1992*). Hamoud has been detained since 7 October 1987 without charge or trial.

Naif al-Hamoui: Lawyer (see *Attacks on Justice 1991-1992*). He has been detained since 16 January 1991.

Abdalla Kabbara: Lawyer (see *Attacks on Justice 1991-1992*). Arrested on 14 April 1987 for allegedly being a member of the Communist Party Political Bureau, Kabbara is reportedly being held in Aleppo prison. It has been reported that Kabbara is experiencing problems with his vision.

Philippe Khalaf: Lawyer (see *Attacks on Justice 1991-1992*). Khalaf has been detained since 1981 without charge or trial.

Afif Mizher: Lawyer (see *Attacks on Justice 1991-1992*). Mizher has been detained since 18 December 1991 without

charge or trial for his human rights activities as a member of the Committees for the Defence of Human Rights and Democratic Freedoms in Syria.

Walid Mouteiran: Lawyer (see *Attacks on Justice 1991-1992*). Mouteiran has been detained since January 1991 without charge or trial.

Aktham Nouaisseh: Lawyer (see *Attacks on Justice 1991-1992*). He has been sentenced to nine years' imprisonment with hard labour at an unfair trial for his human rights activities as a member of the Committees for the Defence of Human Rights and Democratic Freedoms in Syria. Nouaisseh remains in prison.

Aktham Nouaisseh

Abdallah Qabara: Lawyer (see *Attacks on Justice 1991-1992*). He has been detained since April 1987 without charge or trial.

Darwish el-Roumi: Lawyer (see *Attacks on Justice 1991-1992*). El-Roumi has been detained since 1986 without charge or trial.

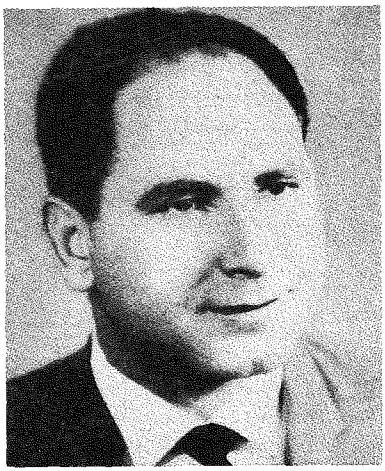
Yousef al-Said: Lawyer (see *Attacks on Justice 1991-1992*). He has been detained since 1982 without charge or trial.

Ahmed Shahin: Lawyer (see *Attacks on Justice 1991-1992*). Shahin has been detained since October 1980 without charge or trial.

Daoud Shihadeh: Lawyer (see *Attacks on Justice 1991-1992*). Shihadeh has been detained since January 1991 without charge or trial.

Shakour Tabban: Lawyer and officer of the Arab Socialist Union opposition party (see *Attacks on Justice 1991-1992*). He was arrested in January 1991 and died in custody at the end of November 1992, allegedly following mistreatment by authorities.

Nash'at Tu'ma: Lawyer (see *Attacks on Justice 1991-1992*). Tu'ma has been detained since 25 February 1989 without charge or trial.



Riad al-Turk

Riad al-Turk: Lawyer and First Secretary of the Political Bureau of the Banned Communist Party (see *Attacks on Justice 1990-1991* and *1991-1992*). Al-Turk has been detained since 28 October 1980 without charge or trial.

Mahmoud Khalil Younes: Lawyer (see *Attacks on Justice 1991-1992*). Younes has been detained since 15 December 1987 without charge or trial.

THAILAND

On 13 September 1992, general elections were held in Thailand. The interim Thai government, just forty-eight hours beforehand, issued an executive decree meant to alter the composition of the Judicial Commission responsible for the appointment of judges. This unilateral legislative step was of great concern because its provisions would have undermined the independence of the judiciary and had the appearance of an attempt by the interim Thai government to maneuver the judiciary into a more manipulable position just before the elected government came into power. The issuance of the Decree also followed on the heels of a struggle between the Judicial Commission and the Minister of Justice over the appointment of the Supreme Court President.

The Decree, passed without sufficient consultation with the judiciary, changed the makeup of the Judicial Commission from that mandated by the 1978 Judicial Administration Act. Under the Act, the Commission consisted of twelve members, eight of whom were elected by the judges and the remaining four serving ex-officio. The Decree expanded the composition to twenty-eight members, of whom judges could elect only six. Furthermore, the Decree changed the voting requirement for resolution of conflicts between the Minister of Justice and the Commission. Pursuant to the terms of the Act, the Commission could overrule the Minister by a simple majority vote, but the Decree sought to raise the required vote to a two-thirds majority. Another troublesome aspect of the Decree was its issuance in the absence of a state of

emergency, which is supposed to be a precondition to such a decree.

The CIJL, fearing that the Decree would work to seriously erode judicial and legal independence in Thailand, made its concerns known publicly that September. In October, the Permanent Mission of Thailand to the United Nations wrote to the ICJ, declaring that the House of Representatives of the National Assembly of Thailand had voted unanimously to reject the widely criticized executive decree. According to its report, eight judges were reelected to the twelve-member Commission to sit with the four ex-officio members, as had been the previous practice. The CIJL welcomed the position taken by the National Assembly.

Military Courts

Pursuant to the court structure of Thailand, ordinary courts may be designated to sit as military courts in order to hear cases deemed to fall within their competence. Military courts, in addition to trying cases in which the accused are military personnel, have been responsible for trying five types of offences: those involving threats to the Royal Family, those threatening international relations, those threatening national security, those relating to criminal association and those prescribed by the Anti-Communist Act.

The military court decisions are unappealable and therefore violate basic tenets of due process. A parliamentary committee looking into the matter decided to urge the government to abolish the use of civilian courts as military courts except possibly during states of emergency. Peeraphan

Saleerathavipark, spokesperson for the committee, has pronounced that the military court structure, in failing to provide for appeals, is contrary to constitutional principles defining fair trials.

Moreover, a public debate has been underway among prominent figures of the Thai legal community on whether, and the degree to which, the judiciary should be an open system.

Several Anonymous Lawyers. The trials of two ex-members of the banned Communist Part of Thailand continued. Lawyers for the defence experienced difficulties in their representation, exemplified by the court's denial of their request to obtain copies of witness statements on the grounds that these were closed-door proceedings. Subsequently, the two lawyers resigned from their representation.

TUNISIA

In a crackdown against members of the opposition, the Tunisian government arrested hundreds of suspected supporters of *al-Nahda*, the outlawed Islamist party, members of the *Parti communiste des ouvriers de Tunisie* and representatives of other left-wing parties between October 1990 and September 1991. The detainees were held incommunicado for longer than the ten-day period provided by Tunisian law, and they were allegedly subjected to torture. At least four detainees died in prison in circumstances which suggest that their deaths were caused by ill-treatment and torture. Under Tunisian law, the penalty for mistreatment of prisoners ranges from a fine to a prison sentence, but rarely does the government investigate and punish torture of prisoners. In an exceptional case, a police commissioner and his assistants were sentenced to five years' imprisonment in June 1992 for a 1987 death of a young prisoner.

Trials of 279 members of *al-Nahda*, including fifty-one defendants tried *in absentia*, took place in exceptional military courts, tribunals contrary to Article 5 of the UN Convention on the Independence of the Judiciary. The ICJ sent observers to one of the two trials of these alleged *al-Nahda* members. It was reported that the defendants were indicted on vague charges, and they were prosecuted after long periods of incommunicado detention. The prisoners' access to lawyers was limited, and many had no access at all to counsel during eighteen months of detention. Article 1 of the UN Basic Principles on the Role of Lawyers stresses that "[a]ll persons are entitled to call upon the

assistance of a lawyer of their choice ... to defend them in all stages of criminal proceedings." Article 7 specifies that detainees shall be provided prompt access to a lawyer and "in any case not later than forty-eight hours from the time of arrest or detention."

Lawyers in these cases were unable to prepare adequate defences. They were not provided with all relevant documents, they received files a few days before trial, or the prosecution withheld evidence favourable to the defence. In addition to confronting obstacles in court, lawyers who defend prisoners accused of supporting *al-Nahda* have been subjected to pressure by the Tunisian government, including threats geared to persuade the lawyers to discontinue their defence activities. Both this intimidation of Tunisian defence lawyers and the placing of obstacles in the way of the lawyers' defence of their clients is contrary to Article 16 of the UN Basic Principles on the Role of Lawyers, which insists that "[g]overnments ... ensure that lawyers ... are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference...."

In June 1991, the President established a Committee of Inquiry to investigate alleged human rights violations. The Committee report acknowledged excessive human rights abuses and called for greater access to lawyers and for notification of families of arrestees. Recent events indicate a greater willingness to improve the country's human rights situation. Three cases are pending in which police officers charged with abuse of prisoners resulting in death. The Committee also visited prisons and detention centres to evaluate

conditions. The Government of Tunisia, moreover, has consistently responded to CIJL concerns.

Bechir Essid: Lawyer (see *Attacks on Justice 1989-1990* and *1990-1991*). Essid was pardoned by President Ben Ali in December 1992 after being tried and convicted in October 1990. His arrest and trial were marred by numerous procedural irregularities, including warrantless searches by the police and the prohibition of defence lawyers from being present during the verdict and sentencing. At the time of his pardon, Essid had served two years of his four-year sentence.

Al-Hadi bin Mehrej and **Najat al-Ya'qoubi:** Lawyers. On 19 October 1992, about seven unknown people attempted to break into these lawyers' house. When the lawyers opened the door, the intruders searched the house, damaging it and frightening the couple's children, ages two and four. Though the searchers were dressed in civilian clothes and had no identification, the lawyers suspected them to be agents of the government because they were looking for a relative of the wife who was accused of being a member of *al-Nahda*. The couple submitted a complaint to the Ministers of Justice and Foreign Affairs on 28 October 1992. The CIJL also intervened on the two lawyers' behalf, sending a letter to the Tunisian government stating that the warrantless search was in violation of both Article 9 of the Tunisian Constitution and also of Article 17 of the Covenant on Civil and Political Rights. The CIJL asked the government what steps have been taken to investigate this case and to punish the intruders.

The authorities promptly responded that the intruders were searching for a wanted man. They did not comment on the damage caused by the warrantless search.

Radia Nasrawi: Human rights lawyer. Nasrawi is married to a political activist who is wanted by the authorities for allegedly

being a member of the illegal *Parti communiste des ouvriers de Tunisie*. Her husband was sentenced *in absentia* to four years and nine months' imprisonment for distributing illegal materials.

Nasrawi has been harassed since November 1992 by police who force entry into her house late at night claiming that her husband is there. This has occurred on several occasions, and the police have searched her office without a warrant. Nasrawi has indicated that these events seem related to her legal work. Whenever she is working on a sensitive human rights case or files a complaint in court regarding torture, the authorities search her house.

TURKEY

Despite the new Coalition government's promises to establish order and to respect human rights, incidents of official abuse and torture in Turkey, a party to the UN Convention Against Torture, were widely reported. Lawyers who have sought to defend human rights were not immune from suffering gross infringements of their own rights as a result of their professional activities. An apparently common abuse consisted of torture of those in the custody of police or security forces, a practice confirmed by the findings of the European Committee for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment and noted in an unprecedented statement it released in December 1992. The Commission made particular references to such atrocities in the anti-terrorist departments of the Ankara and Diyarbakir police. Other frequently reported excesses included political and "mystery" killings as well as disappearances. Southeastern Turkey in particular continued to be the site of widespread and persistent human rights abuses.

Amendments to the Criminal Procedure Code

Some legislative progress holds potential to improve the treatment of detainees and the ability of their lawyers to defend them. The legislation took the form of a truncated judicial reform package to amend the criminal procedure code (*Deza Mahkemeleri Usul Kanunu* (CMUK)) passed during November 1992. The reformed legislation reduced the period during which most suspects can be detained without charge to eight days and should

improve access of detainees to lawyers. Moreover, it bans the use of confessions obtained under duress.

Nonetheless, many have complained that the Act has been ineffectual in practice and that lawyers are still routinely denied access to their clients. Another drawback is that the limitation on detention periods for those suspected of political crimes is thirty days.

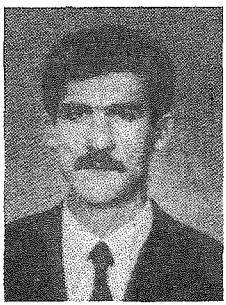
An unfortunate aspect of the reform is that new provisions of the Criminal Trials Procedure Law do not apply to political offenders, or those charged with terrorist acts that are within the jurisdiction of the State Security Courts. This omission represented a compromise made after an initial veto by the late President Ozal. Many have viewed this omission as continued governmental ratification of widespread torture practices by security forces. Ozal, in justifying his veto, cited other incidents in which fundamental rights are curbed, such as during a state of emergency, and reportedly stated: "When ordinary crimes are considered under the same conditions as terror crimes, certain inconveniences will arise."

Lawyers' and Human Rights Associations

As is evident below in the cases of Metin Can and Fevzi Veznedaroglu, lawyers and others affiliated with the Turkish Human Rights Association (IHD), a nongovernmental human rights organization with a membership of nearly 20,000 and nearly fifty branches, have been singled out for mistreatment and intimidations. This is further evidence that the government continues to identify lawyers with the clients whose rights they are perceived as advancing and that it persists in efforts to curb lawyers' freedom

of speech. During 1992, three IHD leaders were killed and four branch offices were closed.

Trials of several lawyers associated with the People's Legal Aid Bureau (*Halkin Hukuk Bürosu*) were underway this past year as well. The CIJL has sent observers to be present for the trials (see below).



Metin Can

Metin Can: Lawyer and chairman of the Turkish Human Rights Association in Elazig in the southeastern region of Turkey. Can, along with Hasan Kaya, a medical doctor, was found dead, his body revealing signs of torture, following a week-long disappearance.

According to several reports, on 21 February 1993, Can received a telephone call from someone claiming to be a policeman, who informed him that a client had been involved in a car accident. The caller, taking advantage of Can's sense of duty to his client, urged Can to come to the police station. Thereafter, Can contacted Dr. Kaya, and the two departed for the station. Conflicting reports indicate that Can and Kaya were called away from Can's home by two individuals claiming to be sympathetic to Can's client. In any event, the two did not return, and the next day, Can's wife received an anonymous call, during which she was told, "We killed Metin and Hasan. Our condolences." Other family members received similar calls. Can's car was later found in the Yazikonak district of Elazig.

Not quite a week later, on 27 February, the bodies of Can and Kaya were discovered about 120 kilometres outside of Elazig under a bridge. They were found with their hands tied behind their backs with wire and with evidence of cigarette burns on their bodies. Moreover, Kaya had had his eyes gouged out, and both had bullet wounds to the head. An autopsy later revealed

that Can had been strangled as well and had sustained a broken rib. Kaya's body showed marks of a cord around his neck, and he had a broken tooth.

Mrs. Fatma Can has since been threatened. It is thought that those responsible for the threats believe that she has information on the identity of the perpetrators. The secretary for the IHD, Serafettin Ozcan, is reported to have since left the country, apparently in fear of reprisals for information he is believed to possess.

The deaths sparked a number of protests against the Turkish government, and the burials were attended by nearly 2,000 people, with security forces conducting identity checks. Many suspect police involvement in the killings, a suspicion heightened by the failure of police to conduct an independent and impartial inquiry into the deaths. Some speculate involvement in the murders by the Kurdish Workers' Party, but the Party has not claimed responsibility, as is its custom. As noted above, the Human Rights Association has previously been a target of violence, often under circumstances giving rise to suspicion of government involvement. Rarely have authorities conducted investigations or made arrests after these occurrences.

In response to the deaths, a delegation was formed, headed by the Human Rights Association General President Akin Birdal, which approached the National Assembly in efforts to shed light on the incident. Some members of the delegation who waited outside of the Assembly entrance were beaten by police who sought to disperse them.

Murat Demir: Lawyer. A trial of Demir was underway this past year in which Demir was charged with violating provisions of the Turkish Penal Code prohibiting his acting as a "courier" for the banned *Devrimci Sol* (Revolutionary Left). He was also charged with violating the anti-terror law. Demir's

charges relate to his representation, through his work at the People's Legal Aid Bureau, of those accused with membership in the illegal group. Demir and Bedii Yarayici, with whom he was arrested (see below), have both claimed that they have suffered torture at the hands of the authorities. The two were originally arrested in June 1991 and held incommunicado for several days.

On 4 December 1992, the UN Working Group on Arbitrary Detention declared the detention of Demir to be arbitrary in violation of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (see *Attacks on Justice 1990-1991*).

Fuat Erdogan, Ulutan Gün, Ümran Gün, Fethiye Peksen, Zerrin Sari and **Bedii Yarayici:** Lawyers, members of the Istanbul Bar, all of whom have been associated with the People's Legal Aid Bureau. In November 1992 these lawyers were indicted in connection with their representation of persons accused of membership in the illegal armed organization *Devrimci Sol.* Peksen and Yarayici have been arrested previously and subjected to mistreatment by Turkish authorities because of their work on behalf of members of this group (see *Attacks on Justice 1990-1991*).

The November indictment charged them with violating a provision of the Turkish Penal Code prohibiting them from acting as "couriers" between imprisoned members of the organization and its outside leaders. Moreover, they stand accused of violating laws against "harbouring" or "assisting" members of *Devrimci Sol.* The prosecution has called for sentences of at least five years' imprisonment. Pursuant to the sentencing provisions of the 1991 Law to Fight Terrorism (see *Attacks on Justice 1990-1991* and *1991-1992*), if convicted, they could see the length of their sentences increased by 50%. It has been alleged that the evidence supporting their indictment was

derived from coerced statements of others in detention or threatened with serving time in prison.

Three of the defendants, Yarayici, Erdogan and Peksen, have since left the People's Legal Aid Bureau. Yarayici has withdrawn from political work altogether as a result of pressure from threats against him, prosecutions he has faced and other obstructions of his work. Erdogan was sentenced to ten years' imprisonment by the State Security Court in Ankara, where he was himself convicted for being a member of the *Devrimci Sol*; he has since gone into hiding. Peksen left the Bureau as a result of internal conflicts. After a trial before an Izmir State Security Court, she was sentenced to three years and nine months' imprisonment for helping the *Dev Sol* by allegedly giving organizational documents to prisoners in Izmir Buca Closed Prison.

The trials began early in 1993. The CIJL has had an observer present for the trials. The prosecution in the Istanbul case sought to join that case with another pending before an Ankara court in which Yarayici has been accused of being a member of *Devrimci Sol* and in which he faces a possible ten-year sentence. However, the request was denied. Further court proceedings in the trial are not scheduled until September 1993.

On 4 December 1992, the UN Working Group on Arbitrary Detention declared the detention of Bedii Yarayici to be arbitrary.

Ahment Eribal and **Metanet Öztürk:** Lawyers. Öztürk was a branch president of the Human Rights Association. A trial was launched against the two lawyers in which sentences of no less than two years have been sought. The lawyers and others are charged with the spread of separatist propaganda in connection with press statements that they had made. Öztürk was also one of the lawyers beaten outside of the entrance to the National Assembly while part of a delegation inquiring into the death of Attorney Metin Can (see above).

Ercan Kanar

Ercan Kanar: Lawyer, vice-president of the Turkish Human Rights Association and president of its Istanbul branch. Kanar has had a suit brought against him because of statements made at a press conference in 1992. Kanar, for whom a sentence of ten years' imprisonment is being sought, has been charged with insulting the state. Kanar allegedly referred to the state as both "terrorist" and "immoral."

Göksel Türk: Lawyer and member of the Istanbul Bar Association. Türk faces possible imprisonment or disbarment because of charges against him for "insult to the court" and "defamation of a bar association." The charges against him stem from his representation of Ali Uçak. During the proceeding against Uçak, Türk, distraught by what he perceived as slack and unjust judicial procedures, made a statement in court protesting the detention of his client following an *in camera* proceeding, conducted in the absence of legal assistance.

Fevzi Veznedaroglu: Human rights lawyer, chairperson of the Diyarbakir branch of the Human Rights Association in the southeastern region of Turkey. Veznedaroglu, who has been involved in the defence of political prisoners and documentation of extrajudicial killings supposed to have been committed by government agents, has received several death threats, some from Turkish security forces. He has received calls both at home and at the IHD office as well as a visit by plain-clothes police, all with messages to the effect that he would "end up like the others." These threats may have referred to the June 1991 murder of Vedat Aydin, former chair of the IHD.

Cuma Yakut: Lawyer. Yakut was tortured at the Ergani Gendarmerie Station, where he was interrogated and detained after a hearing held 21 October 1992 in Diyarbakir. Yakut was hospitalized following his detention. His treatment was condemned by the Diyarbakir Regional Bar President Fethi Gümüs. He was formally arrested on 3 November 1992 by Security Forces after fourteen days in detention.

UGANDA

Edward Bamwite: Chief Magistrate of Kampala. Bamwite was suspended from the bench in October 1992 at the President's request, apparently in retaliation for his failure to convict a former Permanent Secretary of soliciting bribes.

Mark Kabega: Deputy Director of Public Prosecutions, **Eridadi Mwangusha:** a senior Principal State Attorney, and **Mugambe Kliza:** a Principal State Attorney. All three were asked by the Attorney General in January 1993 to take an indefinite leave of absence. The Attorney General was acting pursuant to instructions of the President who had received information from the Criminal Investigations Department that the prosecutors were making decisions that were unfavourable to the government. The Criminal Investigations Department said that if the three were not removed, the government could not hope to win any cases.

Remmy K. Kasule: Lawyer and president of the Uganda Law Society (ULS). Kasule and the ULS have faced criticism for defending Henry Kayondo, former president of the ULS, who has been charged with illegally possessing an official document in violation of the Uganda's Official Secrets Act (see below and see also *Attacks on Justice 1991-1992*). Official criticism includes a May 1992 statement by the Attorney General and Minister of Justice, Abu Mayanja, who called the ULS an instrument of negative foreign interests. This comment was brought on by ULS criticism of the Ugandan human rights situation and in the midst of charges by the ULS of government interference in the judiciary.

Henry Kayondo: Human rights lawyer and former president of the Uganda Law Society (see *Attacks on Justice 1991-1992*). After having been charged with unlawful possession of official

documents, Kayondo was convicted *in absentia* on 28 May 1993 when he was in London for a medical operation.

Elly Turyamubona: Acting Chief Magistrate of Kampala. Turyamubona was suspended from the bench on 18 June 1993 on the grounds that he had improperly advised an accused.

In July 1992, Turyamubona presided over the case of a sixty-five-year-old charged with issuing false checks. The defendant pleaded guilty and was released on bail. On 6 May 1993, the defence lawyer told the court that his client wanted to enter a guilty plea. On 10 May 1993, the accused was convicted on his own plea of guilty, after having been cautioned by the court as to the implications of pleading guilty. Turyamubona was subsequently sanctioned for this proper instruction.

UKRAINE

The Ukraine has made some progress in increasing protection of basic human rights over the past year. A continuing process there has been the transition away from the former, centralized Communist government; however, many state officials from the prior regime still remain in power, some of whom still regard the expression of dissenting opinion with great intolerance.

Leonid Kurgansky: Human rights lawyer in Shosta, Ukraine. In April 1992, the Deputy Minister of Justice of the Ukraine deprived Kurgansky of his licence to practise law after trumped-up allegations were made against him by local authorities. These allegations stemmed from an investigation by the Ministry of Justice and charged that Kurgansky had conducted himself unethically and illegally in his representation of others. The investigation followed closely on the heels of Kurganksy's submission of protest letters to the Ministry of Internal Affairs, the General Prosecutor and the Commission on Law and Order concerning official misconduct Kurgansky believed to have uncovered in the course of his practice. Kurgansky reportedly learned through client representation of wrongful arrests, improper investigative methods, and torture and beatings carried out by officials against Ukrainian citizens. Furthermore, Kurgansky's licence was revoked despite provisions in Shosta law prohibiting such action against an elected People's Deputy, such as Kurgansky, without prior submission of the decision to the full board of Deputies. In the ensuing months, Kurgansky continued to receive threatening phone calls.

Kurgansky has been harassed on prior occasions because of his defence of unpopular persons such as victims of ethnically motivated violence, people with problems in housing and

conscientious objectors (notably, political prisoner Sergei Osnach). This harassment has taken the form of disturbing phone calls and physical threats made by agents of the militia or other authorities.

Sources indicate that, in apparent response to international pressure, Kurgansky, in January of 1993, was visited by a representative of the state prosecutor who promised to investigate his claims. Most recent information has it that Kurgansky's licence has not yet been returned to him.

UNITED KINGDOM
&
NORTHERN IRELAND

Tensions surrounding the unsolved case of Patrick Finucane, a leading human rights lawyer murdered in February 1989 (see *Attacks on Justice 1988-1989* and *1991-1992*), have exacerbated the harassment and persecution of defence lawyers in Northern Ireland. Confronted with allegations of collusion between Loyalists and security forces in Finucane's murder, the police have made no arrests in the case, and no one has been charged or tried for the crime.

Finucane's murder has not resulted in reducing the threats against lawyers. On the contrary, Patrick Finucane's name reportedly continues to be invoked by certain Royal Ulster Constabulary (RUC) officers and interrogators to threaten both detainees and their solicitors. Further, police continue to view lawyers who defend IRA members as "IRA solicitors" and as likely serve to transmit information to its members (see *Attacks on Justice 1991-1992*). This is contrary to Article 18 of the UN Basic Principles on the Role of Lawyers, which precludes identifying a lawyer with the cause of their client.

Last year, the CIJL reported that eleven lawyers had received death threats. This year, according to reliable sources, **thirty-nine lawyers** in Northern Ireland have been subjected to abuse and/or threats by police officers. To ensure the continuing safety of these lawyers, therefore, their names have been withheld. Because the official complaint procedure is through RUC channels, some of whose members are

alleged to be threatening solicitors, these lawyers have been reluctant to seek "official remedies" to their problems.

Access to Counsel

Under Section 14 of the Prevention of Terrorism (Temporary Provisions) Act of 1989 (PTA), a suspect may be detained for up to forty-eight hours without being given access to a solicitor if a senior police officer "reasonably believes that such access will interfere with the investigation, alert other suspects or hinder the prevention of an act of terrorism" (see *Attacks on Justice 1991-1992*).

Although in England and Wales solicitors are usually given fairly prompt access to their clients (reportedly within six hours), in Northern Ireland, according to the latest statistics, access to counsel is deferred in over half of the cases. In 1991, 825 out of 1,421 detainees under the PTA who requested counsel were denied immediate access. Detainees under the PTA may be held for up to seven days without charge, and often the police deny access to counsel for successive forty-eight-hour periods. In addition, Article 45 of the PTA requires the detainee to request a specific lawyer; thus, if the right to counsel is invoked in general terms, the detainee risks being denied access to a lawyer.

Once access to a solicitor is permitted, the consultation is often monitored by security officers. The PTA's limited access to counsel, with excessive discretion accorded to the Northern Ireland police, violates Article 8 of the UN Basic Principles on the Role of Lawyers, which requires that "[a]ll arrested, detained or imprisoned persons ... 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."

Official Response

At the August 1992 meeting of the UN Sub-Commission on the Prevention of Discrimination and the Protection of Minorities, Dr. Claire Palley, the British expert in the Sub-Commission, called for the audio- and video-taping of police interviews with suspects and also an investigation into the killing of Funicane. Because of the currently limited scrutiny of police interrogation methods, not one of more than 400 complaints about police misconduct between 1988 and 1992 was upheld. MP Michael Mates justified the lack of video-taping in PTA cases. According to MP Mates, "it is inevitable that suspects would be less prepared to offer vital information to the police ... if they believed that a permanent visual or audio record was being made of their co-operation." MP Mates also maintains that human rights groups have not provided sufficient "evidence to substantiate the[ir] claims ... or allow us to investigate them." Viscount Colville of Culross QC, appointed by the government to review the emergency laws, addressed the issue of intimidation of defence lawyers and recommended in his *Report on the Operation in 1992 of the Northern Ireland Emergency Provisions Act*, that there be an investigation into allegations that solicitors are systematically intimidated.

Both Lord Colville and the Secretary of State for Northern Ireland, Sir Patrick Mayhew, called on the British-Irish Rights Watch and other groups to

submit evidence to the RUC, so it could conduct an investigation. However, since some of the members of the RUC are allegedly responsible for threats and harassment against lawyers, the CIJL believes such an investigation might be more appropriately conducted by an independent commission.

UNITED STATES OF AMERICA

In the early 1980s, already-existing tensions between the US Department of Justice and the criminal defence bar began to grow as prosecutors stepped up the practice of issuing subpoenas seeking information on fees to criminal defence lawyers, particularly in cases involving racketeering and drug-related charges. The subpoenas complained of seek to solicit information on fee arrangements, and prosecutors are known to seek forfeitures of fees under recent drug laws. Under existing law, the fee transaction itself can potentially result in criminal prosecution; also, a court can issue a pre-trial restraining order restricting client funds and property, making it difficult to pay a lawyer at all.

The defence bar has criticized the breadth of prosecutorial powers for some time as encroaching on the constitutional right to legal counsel and on the attorney-client privilege. Also, commentators have suggested that overbroad use of forfeiture and tax-reporting laws may upset the balance of power between the prosecution and the defence necessary for the proper functioning of the adversarial system. Gordon Greenberg, former chief of the Financial Fraud Unit at the US Attorney's Office in Los Angeles, stated in an interview with the *Corporate Crime Reporter* that the "government, in my view, has stepped out of the area of fighting the drug war and is now impinging upon the attorney-client relationship."

Moreover, secondary litigation over subpoenas can be costly to the defence in terms of time and money and can bog down the primary litigation. The

fee-forfeiture laws governing prosecutorial subpoena powers have been upheld by the US Supreme Court, but defence lawyers continue to attack them as overbroad with potential for abuse in individual cases.

Recent controversy in the Eastern District of Virginia may be illustrative of problems that can attend use of the prosecutorial powers. There, several defence lawyers have brought challenges to these subpoenas. The challenges followed accusations that the US Attorney's Office there had begun a particularly sweeping campaign of subpoenaing defence attorneys. In early July, the president of the National Association of Criminal Defense Lawyers, Nancy Hollander, requested that US Attorney General Janet Reno conduct an inquiry into the Virginia practices. Others have registered their complaints with Reno as well. Reno has voiced her intent to seek improved relations between the Department of Justice and criminal defence attorneys.

Pursuant to Article 5 of the UN Basic Principles on the Role of Lawyers, a client retains the right to counsel of choice. In a complex drug case, a client seeking counsel with a specialized background could experience difficulty if forfeiture and related laws are so broadly applied as to discourage lawyers from taking such cases. Prior surveys published by the *New York Times* indicate a hesitance on the part of many criminal defence lawyers to accept certain cases due to federal laws permitting seizure of defendant assets and fees already obtained. Furthermore, according to Article 16 of the UN Basic Principles, "[g]overnments shall ensure that lawyers are able to perform all of their professional

functions without intimidation [or] hindrance ... and 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."

Joseph Lazarsky and **Glen Trimper:** Lawyers in Alexandria, Virginia. Lazarsky and Trimper assumed legal representation of co-defendants accused of participation in a cocaine distribution conspiracy. The government prosecutors in the case issued subpoenas to the two attorneys demanding that they reveal their fee arrangements. The prosecutors ignored Justice Department guidelines by which they should have first tried to persuade the attorneys to voluntarily disclose the information.

The two defence attorneys challenged the subpoenas in the District Court of the Eastern District of Virginia. After a hearing held on 29 June 1993, Judge Albert Bryan, Jr. quashed the subpoenas. The court found that the US attorney in the Eastern District of Virginia had developed a broad-based policy of issuing subpoenas to defence attorneys in such cases. Further, it found the policy improper because it was developed as a means of deflecting the appearance that the US Attorney's Office had earlier singled out prominent criminal-defence attorney William Moffitt (see below) for the particularly frequent issuance of such subpoenas. The court stated that the motive of the US government was in question.

Reportedly, US Attorney Gordon Kromberg told the judge at the hearing that the prosecutor's office "wanted to make sure that no one thought we were singling out lawyers." Other members of the office have denied these accusations, claiming that such subpoenas are issued on neutral bases.

William Moffitt: Criminal-defence lawyer. Moffitt is also the head of the Lawyers' Assistance Strike Force, a part of the

National Association of Criminal Defense Lawyers, through which he assists other harassed attorneys. Moffitt has been engaged in an ongoing struggle with the US Attorney's Office over its repeated efforts to subpoena his and his firm's financial records and fee arrangements in cases in which the defendants were accused of drug-related offences.

Hostilities arose in March of 1992 when Moffitt and his firm were representing a client charged with conspiracy to distribute cocaine. The prosecutors not only subpoenaed the firm's financial records but also cautioned that failure to comply with all of the reporting procedures could result in prosecution. The subpoenas, however, were quashed by US District Court Judge Albert Bryan, Jr. Nonetheless, prosecutors attempted to seize the firm's legal fees under criminal forfeiture laws.

Billy Ponds: Criminal-defence lawyer. Ponds, in the early part of 1993, took on a drug case for a client in Virginia. The federal prosecutors in the Eastern District of Virginia issued him subpoenas commanding disclosure of his fee arrangements and records. Ponds brought a challenge of the subpoenas in federal district court; subsequently, the prosecutor's office chose not to pursue the matter.

Ponds has asserted that he believes that the practice is especially frequent with regard to African American defence lawyers. Ponds has been quoted as saying, "I would not go out and litigate another case in Virginia because they would target us and tie us up in litigation over our fees." Ponds is being represented by Attorney William Moffitt (see above).

Judge H. Lee Sarokin: US District Judge, Carter appointee and former civil litigator. On 4 September 1992, the Third US Circuit Court of Appeals decided to remove Judge Sarokin from presiding over the case of *Haines v. Liggett Group et al.*, in which Susan Haines is seeking to hold a tobacco company liable for the

death of her father, who died of lung cancer in 1982. The ruling has been considered extraordinary by experts because Sarokin was disqualified for remarks in a judicial opinion based on information that was *not* extrajudicially obtained. The Third Circuit justified its removal of Sarokin based on the language in an opinion he wrote granting the plaintiff access to internal tobacco company documents. Sarokin, in the opinion, was critical of what he found to be typical concealment of critical health-related information from consumers, writing, "Who are these persons ... who believe that illness and death of consumers is an appropriate cost of their own prosperity!" The Third Circuit based its decision on what it termed the "appearance of impartiality," even though in the opinion removing Sarokin, Judge Ruggero Aldisert admitted that the court "would not agree that [Sarokin] is incapable of discharging judicial duties free from bias or prejudice."

Sarokin, on 11 September 1992, then recused himself from the case of *Cipollone v. Liggett Group et al.* The *Cipollone* case was the first in which a jury awarded damages to the estate of a smoker who died of lung cancer. A new trial has been ordered in that case, notable for some of the most extensive, protracted discovery phases in litigation history, due in large part to the reluctance of the defendants to produce documents requested by the plaintiffs. Lawyers for the defendant tobacco company in *Cipollone* had tried repeatedly to have Sarokin removed from that case as well. In his recusal from *Cipollone*, Sarokin cited to the *Haines* decision: "It is difficult for me to understand how a finding based upon the evidence can have the appearance of partiality merely because it is expressed in strong terms.... I fear for the independence of the judiciary if a powerful litigant can cause the removal of a judge for speaking the truth based upon the evidence...."

YEMEN

In February 1993, the General Assembly of the Yemeni Association of Judges requested that the law concerning the judiciary be amended in a manner which guarantees to the judiciary financial and administrative independence. It also asked that all forms of subordination to the executive be abolished.

The judges made specific recommendations on how judicial independence could be enhanced in Yemen. The recommendations included that the judges be given the right to choose the members of the High Council of the Judiciary from the Supreme Court members as well as from among lawyers generally. They also urged that the Department of Judicial Inspections be placed under the authority of the High Council of Judiciary.

The Assembly asked that special laws be enacted to protect the independence of the judiciary. The judges highlighted the need to promote this principle on the judicial, governmental and public levels. The judges stressed the need to promote the importance of judicial review. They said that such review should be carried out by the Department of Judicial Inspection, the Court of Appeal and the Supreme Court without infringing upon the independence of the judge.

The judges raised concerns about the qualification of judges in Yemen. They stressed that care should be exercised when selecting new judges to ensure that they are qualified and impartial. The judges also called for the training of the administrative staff in the judiciary and for reforms in the police system.

They demanded that plans be adopted on a long-term as well as short-term basis to reform the judicial system.

The demands of the judges were made against the background of the parliamentary elections in Yemen, which took place on 27 April 1993. It seems that the judges wished to make their concerns known before these elections. In July 1992, over 2,000 Yemeni judges initiated a strike to protest the lack of judicial independence in Yemen (see *Attacks on Justice 1991-1992*).

ZAIRE

A political struggle has ensued since the Sovereign National Conference, composed of 2,850 delegates, created a High Council as a new legislative body to direct Zaire's transition to democracy. Archbishop Laurent Monsengwo Pasinya was elected President of the newly established High Council, and Etienne Tshisekedi wa Mulumba, one of the leaders of the Union for Democracy and Social Progress, was elected Prime Minister. Although President Sese Seko Mobutu's mandate was extended for two years during this transitional period, the Supreme Court of Justice, in an 8 December 1992 ruling, declared the that the sovereign government was actually that of Prime Minister Tshisekedi. The Court also nullified the Second Constitution of Zaire in anticipation of the April 1993 constitutional referendum. President Mobutu has consistently challenged the authority of the new prime minister, and the police and security forces have violently suppressed opposition to Mobutu. As a result of the Court decision, numerous death threats, often published by the media, have been aimed at supporters of the Tshisededi Government, and especially against lawyers and those members of the Supreme Court responsible for the announcement of the legitimacy of the transitional institutions and the Transitional Constitutional Act.

Kamanda wa Kamanda: Lawyer, president of the *Front Commun des Nationalistes* and member of the High Council of the Republic. Kamanda has reportedly been targeted for assassination by presumed members of the security forces. His name appeared on a list of government

opponents on 30 December 1992 in the pro-Mobutu newspaper *Salonga*.

Professor Balanda Mikuin Leliel: Premier president of the Supreme Court of Justice. Balanda and his family have been harassed by armed men, apparently in retaliation for the decision affirming the Transitional Constitutional Act and the Transitional Government. Loyal to Mobutu, the security forces have taken no steps to protect Balanda.

Ngoma Kinkeka Masala: President of the Supreme Court of Masala, **Munona Ntambanzilanji** and **Kabamba Penge:** Members of the Supreme Court. The three have been targeted for assassination in retaliation for the Court decision against the Mobutu Government. Masala's name appeared with others who oppose the Mobutu Government on a list published 30 December 1992 in the pro-Mobutu paper *Salongo*.

Mukendi Wa Mulumba: Lawyer and adviser to Prime Minister Tshisekedi. On 13 December 1992, Mulumba was arrested. He was a member of a welcoming committee for the four-member French delegation from the *Comité Zaire Information*, the CIMADE (another human rights group), and the *Comité Rhodanien Acceuil Réfugiés et Défense Droit d'Asile*. All of the human rights delegates were turned away at the airport. Mulumba and seven other detainees were assaulted and arrested by Mobutu troops and were held incommunicado for three days.

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