Peru

The Rule of Law and democracy further deteriorated in Peru where the judiciary is often politically manipulated and judicial proceedings, especially those before military tribunals, offer few guarantees of due process of law. The independence of judges at all levels is seriously undermined as up to 80% do not enjoy security of tenure.

The Constitution provides for the division of powers between an executive, the legislature and a judicial branch of government. The executive power is exercised by the President of the Republic with the help of a Council of Ministers whose members are appointed and dismissed at will by the President, Mr. Alberto Fujimori, who was re-elected for a second term in 1995, and continued in office during 1999. The legislature is composed of a 120-seat unicameral congress in which the ruling party enjoys a majority. The judicial branch comprises the ordinary judiciary, a Constitutional Court and the Public Ministry (Ministerio Público).

1999 was dominated by political issues related to the pre-electoral campaign for the general elections to be held in April 2000. In December President Fujimori officially confirmed his long-predicted decision to run for a third term in office despite the constitutional prohibition in that regard and strong public criticism. This decision prompted a wave of public protest from the opposition and strong criticism from human rights organisations. The Constitution allows only two consecutive terms in office. Mr. Fujimori's decision was legally challenged before the National Electoral Board without success. The Fujimori administration has frequently been accused of using public resources to support his bid for a third term in office and to fix the rules of the electoral game to ensure his re-election.

Human Rights Background

Although the human rights situation has somewhat improved as a result of the ending of anti-terrorist campaigns, recent years, and especially 1999, have seen new violations, this time related to the electoral campaign. There were credible allegations of harassment and even physical attacks against opposition political groups, journalists and human rights defenders. The security forces, in particular the intelligence service, were singled out as being responsible for the harassment.

There were frequent allegations of violations of freedom of expression in the form of harassment and attacks against independent journalists. The government controls part of the written press and open television channels, using them to harass opposition leaders. It also uses the judiciary to persecute journalists who publish information that does not please the government. On 15 May two judges who had initiated criminal proceedings against Mr. Hector Faisal for libel against seven journalists were transferred to other posts and had to drop the case (see cases below).

Prison conditions remain extremely poor and special concern has been raised about those prisons specially designed to host people accused or convicted of terrorism or treason. The treatment and facilities provided for prisoners are inconsistent with international human rights standards on the matter.

Thousands of peasants with outstanding arrest warrants remained in an uncertain legal situation despite some positive steps taken by the Supreme Court which established a "mobile

chamber" to try them in their own villages. Most of the defendants were reportedly accused with the testimony of informants as the only evidence. The Office of the Ombudsman believes that their number reaches 5,000, out of which only a handful have been acquitted so far by this "mobile chamber".

According to human rights organisations there still remain hundreds of innocent people in prison convicted for terrorism under the emergency laws enacted in 1992 to combat the terrorist phenomenon. These laws provided for summary trials which did not respect the minimum guarantees of the due process of law.

The withdrawal of Peru from the compulsory jurisdiction of the Inter-American Court of Human Rights constituted one of the most important and controversial events during the year (see analysis below). Throughout 1999 various international non-governmental organisations (NGO's) visited the country illustrating the international community's deep concern about the human rights situation in Peru. Among these organisations are, inter alia, the International Federation of Human Rights (FIDH), the Inter-American Press Society (SIP) and the Carter Centre.

In November the UN Committee against Torture (CAT) examined Peru's third report and issued its Concluding Observations. The CAT showed concern at "the lack of independence of those members of the judiciary who have no security of tenure", "the use of military courts to try civilians" and "the use of amnesty laws which preclude prosecution of alleged torturers…". The CAT reiterated its recommendations issued in 1998, including:

"The state party should consider repealing laws which may undermine the independence of the judiciary, and take account of the fact that, in this area, the competent authority with regard to the selection and careers of judges should be independent of the government and the administration"

The Judiciary

The Constitution provides for the independence of the judiciary (Articles 139 and 146), but in practice it is continually subjected to gross interference by the executive and legislative branches. This interference dates back to 1995 when the judiciary was declared to be in "reorganisation" and ad hoc commissions - the so-called "Executive Commissions" - appointed by the government and parliament, were tasked with carrying out the reform of the judiciary and the Public Prosecution Service, and were given extensive powers to this effect.

Structure

The Peruvian judiciary is composed of a Supreme Court as the highest judicial authority in the country, High Courts in each of the 25 different judicial districts and lower courts (first instance judges and Justices of the Peace). There are also specialised tribunals on minors. The military justice system is a separate judicial branch and virtually independent, although its decisions are subject to review by the Supreme Court. Serious offences relating to terrorism and drug-trafficking are dealt with by a specialised chamber (Sala Corporativa) which was created in 1997. There is a Constitutional Tribunal and a Public Prosecution Service (Ministerio Publico) which are constitutionally independent and autonomous.

In 1995 two "Executive Commissions" were created to carry out and oversee the reform programme for the judiciary and the Public Prosecution Service respectively. The Executive Commission of the judiciary is made up of four Supreme Court judges and an Executive-Secretary, all appointed by the government and parliament. The composition of the Executive Commission for the Public Prosecution Service follows the same lines. These commissions have powers not only with regard to organisation and management of resources within the judiciary, but also regarding appointment, transfer and dismissal of judges and prosecutors working on a temporary basis. These Executive Commissions can create and merge tribunals, or create specialised tribunals or chambers for certain kinds of offences. Politically sensitive cases are frequently sent to some courts and not to others, or assigned for prosecution to prosecutors commissioned on an ad hoc basis for that purpose. The exercise of judicial power by the ordinary courts is continually interfered with by these decisions.

A specialised chamber on terrorism and drug-trafficking was set up to replace the "faceless tribunals" in existence until 1997 in the civilian jurisdiction. "Faceless judges" in the system of military justice were also eliminated at the same time and have been replaced by ordinary military tribunals. The jurisdiction of this specialised chamber covers the entire country. It works in two separate chambers which move across the country. In April, the work of this tribunal was questioned by the State Procurator (attorney who represents the state in suits of law) for its alleged leniency in releasing suspected terrorists. This gave rise to an investigation by a parliamentary committee on abuse of power.

In June the specialised chamber adopted the decision to discontinue criminal proceedings, or otherwise annul convictions already passed by the former civilian "faceless tribunals" against a number of alleged terrorists who have already been convicted in military tribunals. This decision illustrates how frequent cases of double jeopardy were, and still are, in the Peruvian criminal courts. Given the vague definition of crimes such as terrorism and treason, many cases are tried simultaneously by the military courts as treason offences and by civilian courts specialised on terrorism-related offences.

According to Law 27009, published on 5 December 1998, the terms of the two Executive Commissions for the judiciary and the Public Prosecution Service were extended until 31 December 2000. During the year judicial authorities reiterated assurances that these Executive Commissions will cease to exist at this date as the judicial reform programme, for which they were created, will also end on that date.

The Constitutional Tribunal is the judicial body in charge of controlling the constitutionality of laws and other norms of a general character. It is also the last instance of review of sentences on petitions of Habeas Corpus and amparo (special remedies to protect constitutional rights). In 1997 three of its seven members were dismissed by parliament on the alleged grounds of misconduct and usurpation of functions as the three judges voted to declare unconstitutional, and therefore non-applicable, the law permitting President Fujimori to run for a third term in office. The three magistrates brought a complaint to the Inter-American Commission on Human Rights which issued a resolution recommending Peru to reinstate the judges. After Peru refused to abide by this resolution, the Commission presented the case to the Inter-American Court of Human Rights which has already started an examination of the merits, despite the alleged withdrawal of Peru from its jurisdiction (see below).

Meanwhile the Constitutional Tribunal has been unable to perform its duties with regard to the control of the constitutionality of laws. In statements to the press, the acting President of this body recognised that at least 16 petitions challenging laws for unconstitutionality are waiting since May 1997. The tribunal cannot make decisions on them because according to its statutory regulations it needs six votes out of seven to take a decision on the matter whereas it is working with only four members at the moment.

Appointment and Security of Tenure

The Supreme Court is composed of 37 justices who should be, according to the Constitution, appointed by the Council of the Judiciary. The rest of the judges of the high courts and lower courts should also be selected, appointed and ratified by the Council from among those candidates who have graduated from the Judicial Training Institute (Academia de la Magistratura). In practice, the Council has not appointed anyone since the time it came into being in 1997 due to various factors, most notably the continuous transfer of its powers to other bodies (in particular, the Executive Commissions described above).

The National Council of the Judiciary is the organ in charge of the selection, appointment, ratification and dismissal of judges and prosecutors at all levels (Articles 150 - 154 of the Constitution). As to the powers to appoint judges and prosecutors, the Executive Commissions of the judiciary and the Public Prosecution Service are empowered, by law, to appoint, remove and dismiss judges and prosecutors serving on a temporary basis, which constitute the vast majority of all judges and prosecutors. The Council cannot appoint tenured judges or prosecutors until the candidates have received the necessary minimum training in the relevant judicial training institution.

Under Law 27009 of December 1998, extending the terms of the Executive Commissions until December 2000, it was restated that the Executive Commissions can decide "without any limitation, the end of the terms of all temporary judges and prosecutors". Law 27147, published on 25 June 1999, grants to the Executive Commission of the Public Prosecution Service the power to decide whether or not a criminal proceeding should be initiated, including the immediate arrest, against High Court judges and prosecutors for crimes committed whilst on-duty. If the Executive Commission so decides, it will instruct the corresponding public prosecutor to proceed with the criminal investigations or, if it considers that only a disciplinary fault has been committed, it will forward all the evidence to the corresponding disciplinary body. Observers have underlined that this power granted to the Executive Commission should normally be exercised by the Attorney General, who is the nominal head of the Public Prosecution Service.

According to the Andean Commission of Jurists, which quotes official figures released during the year, 80% of judges at all levels are working on a temporary basis. Of the 37 justices of the Supreme Court 24 are temporary and, therefore, they do not enjoy security of tenure and can be removed or transferred at any time by a decision of the Executive Commission of the judiciary. Article 146 of the Constitution guarantees the judges' independence and provides that no judge will be transferred without his or her consent, but this only applies to tenured judges.

The National Council of the Judiciary has been unable, so far, to appoint tenured judges due to a number of reasons which hampered its work. The Council can only select and appoint candidates who have already graduated from the Judicial Training Institute. The first training

programme ended in April 1998 with 366 graduates. The Council then began preparations for the public competitive examinations for available posts of judges and prosecutors to be filled from amongst these graduates. However, the Executive Commission of the judiciary decided that the training period should be extended up to two years (one theoretical and one practical). In this way the training programme for the first group of candidates for tenured judges and prosecutors is due to end in August 2000. Observers have noted that the decisions of the Executive Commission in this regard are politically motivated and aimed at preventing the Council from appointing tenured judges and prosecutors.

The Council of the Judiciary's powers to ratify and dismiss tenured judges have been either diminished or transferred to the Executive Commissions. Since the creation of the Council no period of seven years has yet elapsed to carry out the ratification process of the few existing tenured judges and prosecutors. As for the power of dismissal, it has also been limited since the Council can only dismiss justices of the Supreme Court and prosecutors working at the same level, upon the request of the Executive Commissions (see Attacks on Justice 1998) in open contradiction with Article 154 of the Constitution.

The splitting of the Council's powers has led to conflicts between the Council and the Executive Commissions on the one hand, and between the Council and the Judicial Training Institute on the other. In September the President of the Council, Mr. Carlos Hermoza - a former Minister of Justice who took office when the former President and members of the Council resigned in 1998 in protest against the curtailing of the Council's powers (see Attacks on Justice 1998) - declared that these commissions were taking decisions in regard to the suspension and dismissal of temporary judges and prosecutors without any co-ordination with the Council, which is entrusted with the task of selecting and appointing tenured judges and prosecutors under the Constitution. The lack of co-ordination may lead, in Mr. Hermoza's opinion, to the absurd situation in which a judge who has been dismissed by the Executive Commission can try again to apply for the post through the Council's process of selection.

The Council's relationship with the Judicial Training Institute, which is dependent on the Executive Commission of the judiciary, has also been marked by conflict. The plans by the training institute to start a training programme for judges and prosecutors to make them fit for promotion to higher positions generated friction as it was revealed that this programme was intended also for those judges and prosecutors working on a temporary basis. By law, both tenured and temporary judges and prosecutors have equal rights (see Attacks on Justice 1998). This plan was opposed by the Council of the Judiciary on the grounds that this may lead to distortions in the judicial career and that only tenured judges and prosecutors are entitled to promotion to higher tenured posts. In December the Executive Commission for the judiciary finally made it clear that the training programme will be addressed to all judges and prosecutors, but will only entitle tenured ones to promotion to higher posts. Those who are temporary will be entitled only to apply for a tenured post at lower levels.

During the year some progress with regard to combating corruption was made by the governing bodies of the judiciary, although mainly at the normative level. Law 27197, published on 8 November 1999, modifies Article 196 of the Law of the Judiciary relating to prohibitions on magistrates. It forbids magistrates from accepting gifts or donations of any kind from the parties to the proceedings or their attorneys. This norm aims at strengthening the anti-corruption efforts of the government within the judiciary.

Judicial Reform and Modernisation Programme

As to the reform and modernisation programme itself, it suffered a severe blow in 1998 when the World Bank loan providing the necessary funding was first suspended, and then cancelled. The decision came as a reaction to the laws curtailing the powers of the Council of the Judiciary (see Attacks on Justice 1998). During the year authorities of the Executive Commission of the judiciary repeatedly requested the administration to transfer the 22.5 million dollars necessary to continue with the reform and modernisation programme. The government had promised that amount to the judiciary to fill the financial gap left by the cancellation of the World Bank loan. The failure to provide adequate funding to the programme is putting at risk the few positive aspects of the initiative, such as the improvement of infrastructure and the provisions of technical facilities.

The Withdrawal from the Jurisdiction of the Inter-American Court

On 8 July 1999 the Peruvian parliament passed a resolution by which it decided the immediate withdrawal of Peru's declaration accepting the Inter-American Court's compulsory jurisdiction issued in 1981. Notification of the resolution was then given to the courts' secretariat. This decision intended to take Peru from within the jurisdiction of the only regional jurisdictional body for the protection of human rights and deprives its citizens of the additional guarantee of their rights by this international protection mechanism. Human rights organisations and many foreign governments have criticised this decision of Peru.

Peru's decision came as a result of successive adverse rulings against Peru adopted by the court in cases of violations of the provisions of the American Convention on Human Rights. The case that provided the instant excuse for the government was the decision of the court in the Castillo Petruzzi and Otros Case (four Chileans convicted for treason by a military "faceless" tribunal). In its judgement in the case (4 June 1999) the court ordered Peru to provide a new trial for the claimants, this time in full respect of the due process of law, and to reimburse the expenses incurred by their relatives in taking the case to the court. The judgement was received by the government with strong criticism and a defamatory campaign against the court started soon afterwards, accusing the judges of the court of complicity in terrorism. President Fujimori publicly declared that Peru would not enforce the court's decision in the case as it would jeopardise its anti-terrorist policy. On 13 June 1999 the Supreme Council of Military Justice declared the Inter-American Court's ruling in the Castillo Petruzzi case as non-enforceable.

Peru's decision to withdraw from the compulsory jurisdiction of the Inter-American Court was widely seen as a pre-emptive move in light of the many very sensitive cases Peru still has pending before the court. Among these cases is the that of three judges of the Constitutional Tribunal who were dismissed in 1997 (see Attacks on Justice 1996) and whose reinstatement was recommended by the Commission before submitting the case to the court. Peru has the highest number of cases pending in the Inter-American system of protection of human rights at the moment: the number of cases before the Inter-American Commission reaches 21 and the cases pending before the court is 11.

The validity of the Peruvian unilateral withdrawal was assessed by the court in the context of its decision on jurisdiction in the Constitutional Tribunal Case and the Baruc Ivcher Case in September 1999. The court held the view that states, by declaring their acceptance of the court's jurisdiction under the facultative clause, become bound by the treaty in its entirety. Having regard to the absence of a provision in the American Convention permitting the withdrawal of such a declaration, and considering also the object and purpose of the

Convention as a human rights treaty, the court concluded that "The state party can only withdraw from the court's jurisdiction by denouncing the Covenant as a whole" (paragraph 45). Consequently, the court considered itself as having jurisdiction on the two cases in question and declared the Peruvian declaration of withdrawal as inadmissible.

The government of Peru reacted angrily to the decision of the court and President Fujimori declared that future decisions of the court in cases involving Peru will be irrelevant and without any legal effect in the country. However, Peruvian authorities will continue as defendants in cases admitted by the court before Peru unilaterally declared its withdrawal.

The Continuing Expansion of the Military Courts' Jurisdiction over Civilians

The Constitution (Article 173) limits the jurisdiction of the military justice system to crimes committed by members of the armed forces whilst performing their functions, and to the crimes of treason and terrorism committed by civilians. This provision includes, nevertheless, the recognition of a de facto extension of military courts' jurisdiction over civilians in the aftermath of the 1992 coup d'etat. The 1992 decrees on terrorism and treason granted military courts jurisdiction over civilians who had committed these crimes. Parts of these decrees were repealed in 1997, primarily provisions regarding the institution of "faceless judges", but the jurisdiction of the military justice system was boosted again in 1998 when several legislative decrees were passed to combat the growing common criminality. On that occasion a new crime was added to the list of vague and poorly defined crimes of terrorism and treason: the crime of so-called "aggravated terrorism" (see Attacks on Justice 1998). In December 1999 a new law (Law 27235) repealed some of the provisions of these decree laws, re-labelling the crime as "special terrorism" (terrorismo especial) but without substantially changing the definition of the crime, which remains vague. It also transferred jurisdiction to try these crimes from military tribunals to a new civilian special tribunal on gangs (Sala Corporativa Nacional de Bandas), but the cases which were already started before the military tribunals will continue there.

The procedures before military tribunals are characterised as being very summary. Military commanders take pride in saying that they can pass convictions within less than two months. Additionally, several, if not all, guarantees of the due process of law are restricted or simply not respected. This entails a severe limitation on the work of lawyers (see below) as well as the virtual elimination of any freedom of appreciation on the part of the military prosecution or the investigating judge. To start with the investigation is carried out by a military prosecutor, hence limiting the powers of the civilian prosecution which has no role to play in the procedure. Legislative Decree 897 makes it compulsory for the military prosecutor to issue an indictment, even if there is not enough evidence. Likewise, the military investigating judge is obliged to grant authorisation to the police to keep a suspect under arrest for investigation and to order the detention of the accused while awaiting trial. In both cases the discretion inherent in the prosecutorial and judicial functions is curtailed.

This legislation has permitted military tribunals to try numerous civilians in recent years. According to official figures published in the official gazette on 12 August 1999, since 1992 military tribunals have heard 1284 trials of civilians for the crime of treason and handed down 429 convictions with life imprisonment as a sentence. Further, between May 1998 and August 1999 the same military tribunals have tried 283 civilians for "aggravated terrorism" handing down 66 convictions with life imprisonment.

Apart from the sweeping powers given to it by law or decree law, the military system of justice has assumed de facto additional powers to try retired military officers for crimes other than terrorism, treason or "aggravated terrorism" - in other words, for ordinary offences such as fraud and robbery in prejudice of the armed forces.

In February 1997 Captain (retd.) Eduardo Cesti Hurtado was arrested and criminal proceedings were instituted in a military court. His relatives presented a Habeas Corpus petition which was granted by a civilian tribunal, but was disregarded by the military court. Mr. Cesti Hurtado then petitioned the Inter-American Commission on Human Rights which, in January 1998, recommended Peru to stop the proceedings against Mr. Cesti Hurtado in the military courts and to release him and provide him with adequate compensation. As this recommendation was disregarded also the Commission lodged the corresponding complaint before the Inter-American Court which, on 29 September 1999, took a decision on the case, declaring that by trying Mr. Cesti Hurtado in a military tribunal Peru has violated his right to a hearing by a competent tribunal as provided for in Article 8.1 of the American Convention (paragraph 151 of the sentence). The court resolved, therefore, that the trial of Mr. Cesti Hurtado in a military tribunal was incompatible with the American Convention on Human Rights and ordered Peru to annul the trial, and to carry out the Habeas Corpus granted by an ordinary civiliancourt in favour of the complainant (paragraphs 1 and 8 of the decision).

Obstacles to the Exercise of the Legal Profession

Defence lawyers face multiple and serious obstaclesin carrying out the tasks related to their profession. Suspects held in detention are frequently prevented from seeing their attorneys before or during interrogation by the police, or at any time at all. The prosecutor, who is supposed to take care that the rights of the suspect are fully respected, is generally absent from the police station. This situation leaves the police with wide powers to pursue the interrogation of the suspect and to abuse him in order to obtain self-incriminatory declarations.

However, the most serious obstacles for defence lawyers are in regard to the prison regime applying to those convicted of terrorism and treason. Most of them are placed in Maximum Security Prisons which are located in inaccessible, distant areas. Others, those who have not been convicted yet, are placed in overcrowded and poorly equipped prisons. Defence lawyers, especially those linked to human rights groups, have repeatedly reported systematic and serious restrictions on their work and the rights of their defendants.

Lawyers can see their clients only for 15 minutes, and very often only after a waiting period of many hours to obtain the authorisation to do so. Any visit, by a relative or legal counsel, has to be notified to the prison authorities some days in advance and can be refused. This is particularly so in the case of the Challapalca prison - located over 4,000 metres above sea level - to which access is extremely difficult and requires many hours, and even days, to reach to see a prisoner. Often relatives and defence lawyers travel all the way just to have their request to see a prisoner refused when they arrive. Lawyers from the human rights non-governmental organisation (NGO), the Ecumenical Foundation for Peace (FEDEPAZ), reported instances when they were denied access without apparent reason, or otherwise found, at the moment of getting to the prison, that the regulations for visits had changed without the corresponding rule being published in the official gazette.

Appropriate places for lawyers and defendants to meet are sometimes unavailable. When such a room does exist, in general it is inappropriate and unequipped to serve the needs of a proper defence. Light is poor and no facilities are available. Lawyer and defendant are separated by a thick sheet of glass and can hardly see, or much less hear, each other. Furthermore, a warden remains at a close distance throughout so that any confidentiality is precluded.

Hearings are often carried out inside prisons. Each prison has a room that can serve as a court room. This practice is overtly inconsistent with recognised standards regarding the publicity of trials. Lawyers and relatives have often been denied entry to the prisons to attend such hearings. The rights of the defence are further limited when the tribunal does not permit the defence counsel direct communication with his or her client during the hearings.

Lawyers also face serious restrictions in relation to access to the dossiers of their clients. These restrictions are more serious in military tribunals, but there are also problems in civilian ones. Very often lawyers are only allowed to see the dossier immediately before the hearings take place and only for a very short period. This obstacle becomes even more serious in the cases dealt with by the specialised chamber on terrorism matters.

This situation is incompatible with the principles and standards of the UN Basic Principles on the Role of Lawyers, the American Convention on Human Rights and the International Covenant of Civil and Political Rights.

Attacks on the Bar Association

On October 15 1999 the Lima Bar Association revealed that its bank accounts had been frozen following an order issued by a local authority. The measure was allegedly motivated by the failure of the Bar Association to pay its overdue property taxes, but the Dean of the Bar Association denounced the move as being a politically motivated measure, taken in retaliation for the critical and independent stance adopted by the Bar Association in defence of the Rule of Law and the constitutional order in the country. In a public communiqué the Bar Association said that the government was using the local authorities to intimidate its members. The freezing of the bank accounts forced the Bar to cancel the Second Conference of Bar Associations of Latin America and the Caribbean to be held in November.

Cases

Manuel Aguirre, Delia Revoredo, Guillermo Rey Terry (judges of the Constitutional Tribunal): The three judges were dismissed in May 1997 by parliament on charges of ussurpation of authority. They had declared that a law allowing President Fujimori to stand for a third consecutive term in office was inapplicable, thus barring Fujimori from running in the 2000 elections. The Inter-American Commission on Human Rights recommended that the state of Peru reinstate the three judges in office, but its recommendation was disregarded by the Peruvian Government. The Commission then presented the case to the Inter-American Court of Human Rights which is still dealing with the merits of the case, after having decided in September 1999 that it has jurisdiction over the case despite Peru's withdrawal of its acceptance of the jurisdiction of the court.

Ivan Bazán. (lawyer): Mr. Bazán is lawyer and director of the NGO Ecumenical Foundation for Peace (FEDEPAZ). He works for the defence of people accused of terrorism, treason or

"aggravated terrorism", and often pleads cases before military tribunals. On 8 July 1999, he was denied access to the Maximum Security Prison of Yanamayo where some of his clients are detained, despite the fact that he had requested such access in due time and following the existing regulations. He was told that the prison regulations had changed. The new regulation in question, however, was not published in the official gazette and later, when Mr. Bazán wrote to the authorities asking for information about the new regulations and why they had not been published in the official gazette, he was given a photocopy of it.

Juan Carbone Herrera (judge): Mr. Carbone works as a judge of the First Instance Criminal Court in Lima. He was dismissed from his post, reportedly for his denunciation of cases of undue influence and extortion within the judiciary. The decision to dismiss Judge Carbone was made by the President of Lima's High Court of Justice who is in charge of discipline. The judges denounced by Judge Carbone have been suspended and are facing criminal proceedings. Judge Carbone has reported repeated acts of harassment and reprisal against him.

Elba Minaya. (judge): In May 1999 Ms. Minaya was removed from her post, first as a result of her initiating criminal proceedings against Mr. Héctor Faisal, who was reportedly working for the intelligence service and publishing libel on the internet against independent journalists. Then, later in the year, she was denied permission by the Executive Commission of the judiciary to comply with a summons to testify before the Inter-American Court of Human Rights in Costa Rica. The decision came after she had already left the country. On her return Judge Minaya faced investigations and threats of dismissal for misconduct (leaving the country without formal authorisation). After this she resigned from her post but the disciplinary proceeding against her continued, allegedly as a reprisal for her collaboration with the IACHR. Later in the year, her candidacy for a seat in parliament was successfully challenged, without apparent legal grounds.

David Pereira Flores and Marcial Ruelas Flores (lawyers): Mr. Pereira and Mr. Ruelas work as defence lawyers for the NGO Association for the Defence of Human Rights (Asociación de Defensa de Derechos Humanos - ADDEHT) in the southern city of Tacna. On 4 December 1999, they tried to get access to the Maximum Security Prison of Challapalca (in Tarata, located at 4000 metres above sea level) to meet some of their clients, but they were denied such access. At the time a number of inmates were carrying out a hunger strike. The two lawyers left the prison without meeting their clients and on 9 December they lodged a petition before the Inter-American Commission on Human Rights (IACHR) to issue a precautionary measure in favour of the inmates. The government has alleged before the IACHR that the prison authorities acted pursuant to existing legal provisions when they denied access to the prison to the lawyers. However, the Code of Prison Enforcement (Código de Ejecución Penal) states that "The prisoners have the right to meet in private with their attorney and in an adequate environment. This right cannot be suspended...".

Antonia Saquicuray (judge): In May Ms. Saquicuray was transferred without her consent to an administrative post within the judiciary, allegedly in retaliation for her instigation of criminal proceedings against Mr. Hector Faisal, who was accused of libel against seven journalists. Until the date of her transfer Judge Saquicuray was working as a criminal judge in Lima and enjoyed security of tenure. Her transfer was carried out in open disregard for the constitutional provisions that require the judge's consent for any transfer.

Godofredo Sihuay (lawyer): Mr. Sihuay was arrested and is currently being held in prison facing criminal proceedings on charges of treason, before a military tribunal. Mr. Sihuay is charged with treason because of his work defending persons accused of having committed the same offence. His trial is due to be held during the first months of the year 2000.