

MEXICO

Breaches in the constitutional structure for the separation of the judiciary from the executive, disparity of quality in the justice provided by federal and states courts, the overly wide powers of the Office of the Public Ministry, the lack of independence of labour and military tribunals and the obstacles that indigenous people face in accessing justice were among the problems of the judiciary during the period under review. The failure on the part of the judicial authorities to account for large-scale impunity, corruption and human rights violations has caused public distrust in the judiciary. The murder of a prominent human rights lawyer in November 2001 posed doubts about the safety of human rights defenders and the possibility of a smooth transition to democracy.

BACKGROUND

The United Mexican States' (Mexico) Constitution, adopted in 1917, establishes that the country is a democratic, representative and federal republic. The hierarchy of sources of law in the civil tradition, to which Mexico's legal system belongs, is the Constitution, legislation, regulations and custom.

Mexico is politically divided into 31 states and one Federal District. The Constitution provides for the separation of powers, which are exercised through the legislative, executive and judicial branches. In addition to the federal Constitution, each Mexican State has its own Constitution and executive, legislative and judicial systems. The President of the Republic is both chief of State and head of the Government and is elected by direct popular vote for a non-renewable period of six years. The President has broad powers of appointment and removal, fiscal powers, control of the military, and the power to initiate and veto legislation. Although the Constitution provides for separation of powers, in reality the presidency is by far the most important political State office in Mexico, due to constitutional provisions and a well-institutionalised tradition of near absolute power.

Congress exercises legislative power. It is composed of two chambers, a 500-seat Chamber of Deputies and a 128-seat Senate. The deputies are elected for a non-renewable three-year term. In the Senate, each one of the 32 political entities of the federation is represented by three members, two of whom are elected by a relative majority, with the third seat being given to the second most voted party. The 32 remaining seats are elected from national lists according to the principle of proportional representation. The senatorial term is six years. Senators and deputies may not serve two consecutive terms.

The Judiciary is reserved to a court system headed by the Federal Supreme Court. The President and the Congress are involved in the procedure for appointment of the General Prosecutor and the members of the Federal Supreme Court.

General elections were held in July 2000. Recently instituted legal reforms that increased the independence of the federal elections monitoring agency introduced quick counts and allowed

observers to monitor elections, playing a key role in making possible the fairest elections in Mexico's history. For the first time in 71 years the Revolutionary Institutional Party (PRI) lost the presidential elections. The Alliance for Change (*Alianza por el Cambio*) candidate, Vicente Fox Quesada, was elected President and assumed office in December 2000. During his campaign, the new President had promised to distribute Mexico's wealth more evenly, implement jobs programmes, almost double resources for education, create a "transparency commission" to investigate previous governmental abuses and fight corruption. President Fox led a coalition which includes his own party, the conservative National Active Party (PAN), and the Green Party (PVEM). The coalition did not secure a working majority in Congress, which means that the Fox administration must deal during his term with other political parties, including the PRI and the leftist Party of Democratic Revolution.

HUMAN RIGHTS ISSUES

In the period covered by this report, the overall human rights situation remained problematic. In February 2000, the Chairperson-Rapporteur of the Working Group on Indigenous Populations of the Sub-Commission for the Protection and Promotion of Human Rights undertook a visit to Mexico. The UN High Commissioner for Human Rights, Mary Robinson, visited Mexico in December 2000 and signed a Technical Cooperation Programme with the new Government. In May 2001, the Special Rapporteur on the Independence of Judges and Lawyers also went to Mexico.

The National Human Rights Commission (*Comisión Nacional de Derechos Humanos*), Mexico's Ombudsman Office, continued to carry out its mandate on human rights. Following the 1999 Constitutional amendment, the procedures for appointment of the Commission's members were amended. Its Advisory Council is constituted of ten members elected by a vote of two thirds the Senate for a five-year term. Every year the two members that have served the longest periods are replaced, unless they are ratified in their positions. The Commission's chairperson serves a five-year term, which may be renewed only once. The chairperson is elected in the same way as the members of the Council. According to the Constitution, the Commission enjoys economic and administrative autonomy. The Commission presents a periodic report to parliament, however its findings and recommendations are non-binding. Some Mexican NGOs have pointed out that as in the past, the executive continues to control the Commission's budget

President Fox announced the beginning of negotiations with the UN Office of the High Commissioner for Human Rights (UNOHCHR) for the establishment an office in Mexico. The signing of a Technical Cooperation Programme with the UNOHCHR was a positive development. The Programme, which commenced in January 2001, focuses on national human rights initiatives; indigenous rights; administration of justice; economic, social and cultural rights; and vulnerable groups, especially women, children and migrants.

The *amparo* proceeding (*juicio de amparo* – a petition seeking protection for fundamental rights), first developed in the nineteenth century, is regulated in articles 103 and 107 of the Federal Constitution. The *amparo*'s purpose is to protect individual rights from state's actions or to remedy violations that have already been committed. Although *amparo* does not question the general constitutionality of a law, it may stop application of a law in a particular situation affecting an individual. The Federal Supreme Court of Justice has elaborated a bill in order to reform the *amparo*. This amendment would be welcome as, according to some Mexican NGOs, *amparo* has become neither effective nor accessible. The bill would widen the cases that may come under *amparo*, such as protection of individual and collective human rights recognised in international instruments. It would also broaden the concept of authority when dealing with violations of

individual guarantees by State agents. Finally, it would allow for a review of the constitutionality of any law.

Peace talks with the EZLN

Armed opposition groups, which included the Zapatista National Liberation Army (EZLN), the Revolutionary Popular Army and the Insurgent People's Revolutionary Army, continued to be active in Chiapas, Guerrero and Oaxaca states respectively. On 1 January 1994, the Zapatista National liberation Army (EZLN) took up arms and waged a 12-day rebellion to secure greater indigenous rights. After military intervention by the Mexican Army, a cease-fire was agreed and negotiations started. Although, formally, the cease-fire continues, peace talks have not taken place since 1996. EZLN's permanent presence in the jungles of Chiapas in Southern Mexico has led to the militarisation of the region and frequent encounters with pro-government forces.

Human rights abuses, including summary execution, torture and ill-treatment of detainees and forced displacement, have been attributed to the security forces and "armed civilians" functioning in Chiapas. In August 2000, paramilitary forces calling themselves "the Peace and Justice Group" caused the forced displacement of sixty families when they attacked a community in Yajalón municipality. In the same month, EZLN supporters allegedly launched an attack against PRI supporters living in a community of the Ocosingo municipality. (EZLN denied the accusations.)

In December 2000, the Government released 16 EZLN prisoners and dismantled the military checkpoints. The EZLN asked that three conditions be met before it would return to the negotiating table; a) the demilitarisation of Chiapas; b) the release of all Zapatistas in Mexican prisons; and c) the fulfilment of the 1996 San Andrés Accords, particularly, approval by the Congress of the bill on indigenous rights, drafted with the participation of EZLN and governmental authorities.

In April 2001, the Government allowed the members of the EZLN to carry out a peaceful demonstration across the country and, simultaneously, sent a bill on indigenous issues to the Congress, based on that demanded by the EZLN. The bill was amended during debate in Congress and was approved unanimously in the Senate and by a majority in the Chamber of Deputies. On 29 April 2001, the leader of the EZLN declared that the recently issued Constitutional amendment on Indigenous Rights and Culture was unacceptable and that the amendments betrayed the San Andrés Accords in main areas such as, autonomy, self-determination, legal status of the indigenous populations, and indigenous lands and territories. The EZLN decided to stop any communication with the Government until the Constitutional reform complied with their demands.

Impunity

The new Government has yet to fulfil its promise to establish a truth commission to investigate past human rights abuses. Some members of the Government have supported the formation of such commission, but others have opposed it on the basis that it might undermine the current institutions that administer justice in Mexico. In June 2001, an amendment of the Federal Penal Code established forced disappearance as a crime. The new law provides for penalties from five to forty years in prison for those who commit this crime.

The Mexican Government sent to the Senate for ratification the UN Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity and the Inter-American Convention on Forced Disappearances. However, the treaties contain two reservations:

“The statute of limitations will be applied to crimes committed before the entry into force of the treaty in Mexico” and “the Constitution of Mexico recognises the jurisdiction of military courts”.

The courts have arrested 44 public officials in connection with the 1995 *Aguas Blancas* massacre of 17 indigenous farmers. Thirteen of these officials have been sentenced to 18 years in prison, another nine have been convicted and sentenced to lesser terms, and three are fugitives. However, then-governor Rubén Figueroa Alcocer has not been prosecuted for his alleged involvement in the massacre, despite suggestions of culpability by the Inter-American Commission on Human Rights, the U.N. Special Rapporteur on Extrajudicial Executions and the Federal Supreme Court.

Human rights defenders came under political pressure during 2000 and 2001. Certain politicians, especially from the PRI, sought to ascribe blame to them for some of the country’s crime problems.

The office of the All Rights for All Mexican Human Rights network (*Red de Organismos Civiles de Derechos Humanos Todos Derechos para Todos*, known as the Red) in Mexico city was subjected to surveillance by the National Security System (SISEN). Harassment and death threats against human rights activists were numerous. Human rights defenders from abroad continued to face restrictions on carrying out their work in Mexico. The threats and the use of expulsion from the country continued to be exercised by the Mexican authorities. During his campaign, President Fox had announced that he would ease the visa requirements once he became President, but this pledge has remained unfulfilled. In October 2001, in one of the worst attacks against human rights defenders during the past decade, human rights lawyer Digna Ochoa was murdered in her office. (*See Cases.*)

On 24 August 2000, Ricardo Miguel “Serpico” Cavallo, alleged to have been responsible for torture in Argentina during the military regime (1976-1983), was arrested in Mexico as he was leaving for Argentina. The arrest was carried out on the basis of an international arrest warrant issued by Spanish judge Balthazar Garzón from the *Audiencia Nacional* (Spanish National Court). He remains in custody in Mexico pending a judicial rule on a petition of *amparo* filed by his lawyers against the Mexican Minister of Foreign Affairs’ decision to authorise his extradition. The legal process to determine whether Cavallo may be extradited under Mexican Law may take some time and any decision will undoubtedly be appealed. If Cavallo were to return to Argentina, he might benefit from amnesty laws that Argentina has adopted for crimes committed during the rule the military Government (These amnesty laws are presently being challenged, see chapter on Argentina). Mexican Federal courts have universal jurisdiction in cases of torture, as provided under the Convention against Torture, to which Mexico is a party.

THE JUDICIARY

The main legal sources for the functioning of the Mexican Judiciary are the Federal Constitution (Title 3, Chapter IV), the 1996 Law of the Judiciary (*Ley Orgánica del Poder Judicial de la Federación*), and the 1996 Law of the General Prosecutor (*Ley Orgánica de la Procuraduría General de la República*).

Structure

The Federal judiciary is composed of the Federal Supreme Court (*Suprema Corte de Justicia de la Nación*), the Electoral Tribunal, the District Tribunals (*Tribunales Colegiados del Distrito*), One-judge Circuit Tribunals (*Tribunales Unitarios del Circuito*), the District Courts (*Juzgados del*

Circuito), and the Federal Council of the Judiciary (*El Consejo Superior de la Judicatura Federal*) (Article 94). Among the offences that come under federal jurisdiction are those relating to organised crime, drug-trafficking and violations of human rights. The State judiciary has jurisdiction over murders, robberies, kidnappings and other common criminal offences.

The Federal Supreme Court is composed of eleven justices and functions either as a plenary assembly or in two chambers. As a plenary, it has jurisdiction over constitutional disputes between the political entities of the United Mexican States, petitions of unconstitutionality, and review of decisions taken by lower courts on constitutional matters and on petitions of *amparo* (as noted above, a petition seeking protection of constitutional rights). The Federal Supreme Court in plenary sessions also elects a president from among its members for a non-renewable period of four years.

For any law or treaty to be declared unconstitutional, the Federal Supreme Court must agree by the assent of eight of its eleven members. Actions that challenge the compliance of legislation with the Constitution may only be brought before the Federal Supreme Court by qualified parties, i.e. the Federal Attorney or members of federal or state legislative bodies, but not by regular citizens. The requirement of a qualified majority for favourable decisions and existing constraints on exercising the petition render this procedure a limited system of constitutional review.

The Federal Council of the Judiciary is composed of seven members, including the President of the Federal Supreme Court, two Circuit Court Judges, one District Court judge, two members designated by the Senate and one by the President. It is mandated to administer, monitor, discipline and implement the judicial career system of the federal judiciary, except for judges of the Federal Supreme Court and the Electoral Tribunal.

Several judicial bodies exist that are not part of the regular federal court structure. The most important of these are the Tax Court, Labour Courts, Agrarian Courts and Military Courts. In these courts the executive acts simultaneously as judge and interested party. As a result, impartiality may be impaired, as the executive itself resolves conflicts regarding its own decisions and omissions. The Labour Courts (*Juntas Federales y Locales de Conciliación y Arbitraje*) have jurisdiction over claims of violations of the Labour Law, disputes over collective bargaining and issues related to strikes. Although Mexican Law recognises most labour rights for workers, the labour courts have not been fully independent or impartial. The system previously functioned as a political instrument of the PRI. The fact that Mexico restricted the right to association and empowered non-representative workers organisations is another problem that has affected the impartiality of the judiciary, as labour union members take part in the labour courts. Labour tribunals have generally lacked impartiality when dealing with unlawful dismissals.

Failures in the Mexican labour law system have become more evident when dealing with the increasing number of *maquiladoras* functioning in the country (companies established in Mexico looking for cheaper labour and access to American markets in the context of NAFTA –The North-American Free Trade Agreement). Such companies have tended to disrespect international minimal labour standards. The new Government expressed its intention to include the labour courts in the regular federal court structure. Although this pledge has not yet been fulfilled, some improvement has been noted in the impartiality of the Labour Tribunals and the increased number of unions not controlled by the PRI.

With respect to the state judiciaries, article 116 of the Constitution, section III, establishes that they will be composed of tribunals established by state constitutions, which must guarantee their independence.

Prosecution

The Mexican prosecution system is based upon Mexico's federated system. At the Federal level, the Office of the Federal Public Ministry, commonly known as *Procuraduría General de la República* (*PGR*), exercises prosecution functions. It is headed by the General Prosecutor (*Procurador General de la República*), whom the President appoints and whose term is ratified by Congress. It forms part of and depends on the federal executive for financial and personnel resources. This office is mandated to prosecute before the tribunals all criminal offences (Article 102A Constitution).

Former Military Prosecutor, General Rafael Macedo de la Concha, was appointed to the position of General Prosecutor. A number of Mexican NGOs have criticised this appointment, as General Prosecutor Macedo has a poor record of prosecuting members of the military involved in human rights violations. The new General Prosecutor has appointed ten military officers to positions of influence, which has confirmed fears of militarisation of the Federal Public Ministry.

The prosecution functions in the 31 states, and the Federal District consists of 31 Offices of the Public Prosecutor of the States (*Procuradurias Generales de los Estados* PGE) and the Office of the Public Prosecutor of the Federal District (*Procuraduría General de Justicia del Distrito Federal* PGDF). They are under the direction of the respective prosecutors. All these offices are assisted by sectional judicial police.

Mexican prosecutors conduct pre-trial investigation proceedings (*averiguación previa*), in which crimes are investigated and suspects identified by collecting evidence and interviewing suspects, witnesses and victims. Once this proceeding is finished, the case passes to a judge, who is able to issue a warrant of arrest only by confirming that the crime has "probably" been committed and that it can probably be attributed to the person. If the defendant was caught in "flagrance", the judge only has to certify that the arrest has complied with the law. In any case, the suspect must make a declaration to a judge, which is known as a preparatory declaration (*declaración preparatoria*). The judge bases the decision as to whether to proceed with the process based on this declaration. If the case goes forward, the Public Ministry will continue to gather information. Judicial Police officers may also carry out investigations, subject to orders of the Public Ministry. Only declarations submitted before a judge or a prosecutor may be considered in a trial. Prosecutors enjoy exclusive power to conduct investigations and prosecutions, meaning that neither victims nor judges may open investigations.

Reforms introduced since 1993 to the Constitution as well as to the Code of Criminal Procedure, which contains most of the Public Ministry's functions (*see Attacks on Justice 2000*), have given wide powers to prosecutors in order to fight the high levels of criminality in Mexico. Prosecutors are able to arrest persons suspected of having committed an offence during pre-trial investigations. They may order the arrest of a person without judicial order in "urgent" and "serious" cases and to "prevent the suspect from escaping from justice". The *flagrance* situation, in which a person may also be arrested without judicial order, has been widened. The suspect of a crime can be detained within 72 hours after the crime has been committed. Moreover, in flagrant and urgent cases, the prosecutors can hold the suspect for 48 hours (96 hours in cases of organised crime) before taking him or her to a judge. Suspects may not see their lawyer during this period.

The Constitution provides that a decision not to prosecute an offence may be judicially challenged as determined by law. However, the legislation needed to implement this constitutional provision has not been enacted. Attempts have been made to execute the constitutional provision through the procedure of *amparo* before the ordinary courts, resulting in conflicting jurisprudence on the matter. While certain courts have endorsed the use of *amparo* procedures to protect victims' rights and have

willingly granted the petition ordering the prosecutor to reopen investigations, others have decided differently. This conflicting jurisprudence was resolved by a Federal Supreme Court decision, adopting the view that *amparo* petitions were appropriate. However, it has been reported that prosecutors now tend to avoid making any formal decision concerning prosecution, causing the investigations to slow down.

The system that regulates the Public Ministry has been the subject of criticism. Prosecutors have the power not only to search for evidence, but to decide the judicial weight to be accorded such evidence. According to some experts, prosecutors act as *de facto* judges in the Mexican system, since their findings are considered as evidence without further evaluation. The fact that the main objective of the prosecutors is to accuse and not to judge impartially renders judicial control necessary. Prosecutors obtain and analyse evidence, bring accusations and additionally have the power to incarcerate persons in a wide range of cases. The wide-ranging powers of prosecutors to arrest and detain suspects before presenting them to a judge leaves suspects prone to human rights violations committed to obtain evidence. Detainees are subject to torture or other ill treatment during prolonged arbitrary detention. Studies have shown that the length of arbitrary detention was determined by the time the suspect's wounds needed to heal. Legislation and some jurisprudence provide that evidence obtained through human rights violations, although potentially implicating criminal responsibility on the part of the State agent, may be considered in trials, although evidence obtained through torture is invalid. Certain judges attach great credibility to the first declaration of the suspect and in many cases do not pay attention to allegations that the declaration was achieved through torture, giving greater judicial weight to declarations made before prosecutors or police officers and without the presence of the accused's advocate than to statements made directly by the accused in their presence.

Article 20 of the Constitution was recently amended to expand the rights of victims, including the right to name a lawyer to serve as co-counsel with the prosecutor. This reform was directed toward assuring adequate investigation and prosecution of crimes, contributing to fulfilment of right of victims to have the offender punished and to receive reparation.

Military justice

Military justice is administered by the Military Supreme Court, the Ordinary Courts Martial and Special Courts Martial. The prosecution is carried out by the Military Public Ministry and assisted by the Judicial Military Police. These latter two bodies operate under the authority of the General Prosecutor of Military Justice. The Ministry of Defence appoints all members of the military judiciary.

The Military Code of Justice provides that military courts have jurisdiction over common crimes committed by military officers "while on duty or for reasons related to their own duty". This imprecise formulation has allowed the military tribunals to try not only offences related to legitimate military functions, but also any other common crime committed by a military officer. If a member of the military commits a crime and is arrested by civil authorities, the agent has the right to ask for immediate transfer of the case to the military justice system.

The use of military courts constitutes a principal cause of impunity with regard to human rights violations and common crimes committed by members of the military. Civilians are not permitted to participate in military trials and the military judiciary is dependent on the Federal Executive, meaning that the military justice systems contravenes international standards regarding impartiality and independence of the judiciary.

In 2000, the Inter-American Commission on Human Rights (IACHR) reiterated its previous recommendations to the Mexican State regarding the military courts. The IACHR concluded that the State had not fulfilled its obligation to investigate the arbitrary detention, rape and torture of four women. According to the IACHR, to allow the potentially implicated organs to conduct the investigations clearly affects the independence and impartiality of the judiciary. The IACHR disregarded Mexico's argument according to which the case had to be considered by military courts because the alleged abuses were committed by members of the armed forces during duty. The IACHR reasoned that the alleged abuses had not been committed during the exercise of the legitimate functions of the army.

Military justice has also been used as a means of political reprisal. Brigadier José Francisco Gallardo continued to be deprived of his liberty in retaliation for his criticism of the army and his proposal for the establishment of an Ombudsman's Office to investigate human rights violations. In 1993, General Gallardo was sentenced to more than 20 years in prison, ostensibly for crimes against military discipline. The IACHR considers General Gallardo to be a prisoner of conscience and has asked the Government to release him. The case is currently under review by the Inter-American Court of Human Rights following the November 2001 submission of the case to the Court due to the reluctance of Mexican authorities to release the General.

Administration

Since 1984, the Government has been investing in improvements to the Federal Judiciary. It has raised salaries, restored locations and increased the number of tribunals. At the state level the situation is less positive, with states commonly providing poor remuneration, lacking basic equipment and maintaining large workloads, with the result that penal processes may last up to five years before being resolved. It is necessary to increase the budget for both the federal and state judiciary in order to retain judges at better pay and reduce the incentive for corruption.

Appointments and tenure

The President enjoys wide-ranging power concerning the appointment of justices of the Federal Supreme Court. The President may send to the Senate a list of three candidates for every vacant seat at the Federal Supreme Court. The Senate, having previously conducted hearings with the proposed nominees, selects the justices. Two thirds of the Senate must agree on the names within 30 days. If there is no agreement in the Senate, the President designates the justice from among the list he has sent. The justices of the Federal Supreme Court serve a non-renewable 15-year term.

The Federal Council of the Judiciary appoints the judges of lower tribunals. Article 97 of the Constitution provides that these judges shall hold their posts for a period of six years. If the judges are elected or promoted to higher posts, they will no longer be subject to removal. Therefore they only enjoy effective security of tenure if promoted to a higher tribunal or if ratified.

The appointments carried out by the Federal Council of the Judiciary should be based in objective criteria and in accordance with the law. Admission and promotion of judges of Circuit Tribunals and District judges are carried out through an internal exam. The organisation of these exams is undertaken by the Federal Judicial Institute (*Instituto de la Judicatura Federal*) based on terms it establishes and with preference for those candidates that are in the immediately inferior category.

In Mexico City, the City's Chief of Government submits a proposal to the Mexico City Legislative Assembly for appointment of the judges of the supreme Tribunal. Once approved, magistrates also remain in their post for six years. The Mexico City Judicial Council appoints the first instance judges.

At the state level it is generally the case that judges of state supreme courts are appointed for six-year terms by the state Governor with the approval of the state supreme court. Although the Constitution provides for the Federal Council of the Judiciary and the Mexico City Judicial Council, no similar provision was established with regards to the state's judiciary. Not all of the states carry a judicial council within their judiciaries, which has allowed the state supreme courts to maintain administrative and monitoring powers.

Only the justices of the Federal Supreme Court enjoy security of tenure. The IACHR has pointed out that the constitutional structure, which provides for a six-year term subject to ratification for other judges, undermines the independence of the judiciary in relation to the executive. The requirement of ratification for judges of lower tribunals compromises their independence and makes them vulnerable to political pressure. As a result, the membership of the judiciary typically changes as new governments come to power, resulting in the absence of continuity in the administration of justice and pressure on judges during the first six years to issue rulings not offensive to the ratifying authorities.

Disciplinary Control

The Federal Council of the Judiciary carries out disciplinary control of the Federal judiciary, except with respect to the Federal Supreme Court and the Electoral Tribunals. However, it lacks the requisite independence to monitor the actions of judges, as four of its seven members, including the President, are themselves members of the judiciary to be reviewed.

In a report published in May 2001, the Federal Council of the Judiciary Council outlined its recent actions. It designated 206 Circuit Court Justices and 248 District Judges. It strengthened administrative control and investigated 2,155 complaints against judicial personnel, 287 of which resulted in sanctions, some of them dismissals. The Council created 62 new courts, including two new Circuit Courts. It completed 1,935 visits to District and Circuit Courts, where the performance of judges and lawyers was evaluated. Finally, 5,511 judges and judicial staff were trained in several courses.

Removal

The Federal Supreme Court justices, Circuit judges, and District judges, as well as the Justices of the Mexico City Supreme Court (*Tribunal Superior de Justicia del Distrito Federal*), may be removed only pursuant to the terms established by the Constitution regarding the obligations of civil servants. Article 109 establishes that a political trial (*juicio político*) be carried out in cases in which civil servants have committed acts or omissions that affect the law, honour, loyalty, impartiality and efficiency in the discharge of their functions. Crimes are to be sanctioned according to criminal law.

For a political trial to proceed, the Chamber of Deputies must act as the accusing party, and the Senate as a court of judgement, designating any appropriate penalty by resolution of two thirds of the senators present at the session. The declarations and resolutions of the Congress are incontrovertible. Criminal proceedings against Federal Supreme Court Ministers for crimes

committed during their serving period may be initiated after the Chamber of Deputies has declared by a majority of its members that there is a basis to proceed against the accused, in which case the accused is removed from the post.

Public Defence System

The Public Defence system suffers serious deficiencies due to lack of resources. Few defence attorneys are employed and many lack training. Public defenders are poorly paid, receiving some US\$ 12,000 per year.

The Public Defence system has also attracted criticism over allegations of corruption. It has been reported that in some cases, the defendant's lawyer was more interested in helping the prosecutors than his or her client. Those who need court-appointed defence attorneys are situated at the bottom of the socio-economic spectrum and usually receive harsher punishment. The Human Rights Commission of the Federal District (HRCFD) acknowledged the deficiencies of this system and confirmed (recommendation 3/96) that on many occasions the public defender only formally acts as counsel, solely completing procedural requisites such as signing declarations, without even being present during the trial. Thus, even if the judicial record contains defenders' signatures as witnessing what happened during the trial, an adequate defence may still have been lacking.

Indigenous Communities

The Chairperson of the Working Group on Indigenous Populations, Irene Erica Daes, suggested that the judiciary was viewed with mistrust by indigenous groups and echoed the concerns of other United Nations organs concerning impunity, the language difficulties faced by non-Spanish speakers, detention procedures, the widespread lack of transparency of the judiciary and the ignorance of indigenous peoples as to what constitutes a crime in Mexican law. For many indigenous defendants, some of whom do not speak Spanish, the right to a fair trial is denied. Although the law calls for translation services to be available at all stages of the criminal process, the courts do not generally enforce this rule. Therefore indigenous peoples may be convicted without understanding the reasons for their conviction.

According to the Mexican Commission for the Promotion and Protection of Human Rights, there are 7,431 indigenous prisoners in various prisons across Mexico. The State of Oaxaca has almost a quarter of such indigenous prisoners. In Oaxaca, the largest number of violations of the right to a fair trial are committed against indigenous persons. A study carried out by the Centre for Indigenous Rights and Culture in the prisons of Oaxaca found that the defence provided by court-appointed attorneys was deficient. In many cases the prisoners did not even know that they had a defence attorney. Furthermore, the study pointed out that many indigenous persons sentenced did not exhaust their potential appeals, because they lacked the necessary economic resources.

Judges and prosecutors often discriminate against indigenous populations, for instance by failing to consider in their decisions testimony and documentation presented by indigenous authorities in favour of indigenous prisoners. Among the gravest problems confronting indigenous people in the administration of justice are lack of translators of indigenous languages; offensive treatment of existing interpreters by judges and their staff; threats against the interpreters by the judicial police; ignorance of the legitimate presence of indigenous interpreters in the court system; interpreters not receiving salaries; indigenous persons unaware as to what actions constitute a crime under Mexican law; and inhumane treatment of the prisoners by prison personnel.

Visit of the Special Rapporteur to Mexico

In May 2001, the Special Rapporteur on the Independence of Judges and Lawyers, Dato' Param Kumaraswamy, visited Mexico for 10 days. He met with many persons involved with the administration of justice, including judges, lawyers, prosecutors, academics and NGOs. The Special Rapporteur also had meetings with the President of the Federal Supreme Court, the General Prosecutor, the Secretary of State for the Interior, officials of the Human Rights Commissions and the Ombudsman. He also visited the states of Chihuahua and Nayeret. In Chihuahua he went to Ciudad Juárez to inquire into the murders of a large number of approximately 200 women since 1994.

According to the Mexican Commission for the Defence and Promotion of Human Rights (*Comisión Mexicana de Defensa y Promoción de los Derechos Humanos*, CMDPDH), the visit was difficult but useful. During the Special Rapporteur's visit, the President of the Supreme Court criticised Kumaraswamy for not being sufficiently familiar with the Mexican judiciary system to issue criticism of it.

At a press conference, the Special Rapporteur expressed his preliminary impressions. He stated that while the judiciary had once been seen as an extension of the executive, since 1994 it had become more independent. However, this transition had been slow. The failure on the part of the authorities to account for large scale impunity, corruption and human rights violations had led to public distrust of the judiciary. Gaps in the constitutional structures regarding the separation of the judiciary from the executive contributed to this perception.

The Special Rapporteur welcomed the increasing independence of the Federal Supreme Court and took note of planned reforms. He pointed out that there was disparity in the quality of justice provided by Federal and states courts owing to the relative disparity in resources. This situation is especially problematic because access to justice for the vast majority of the people of Mexico is found in the state Courts.

The Special Rapporteur expressed concern over the disorganisation of the legal profession in Mexico; the lack of independence of labour, tax, juvenal offenders and administrative tribunals (which form part of the executive); the absence of separate juvenile courts; the problems that indigenous people face to access justice; and the parallel trials that some sectors of the press seemed to be carrying out in Mexico.

CASES

Juan López Villanueva {lawyer}: Mr. López works for the Fray Bartólome de las Casas Human Rights Centre. He received death threats by electronic mail in the following form: "If you continue to play the fool, I'll kill you. I hope that you think carefully before showing this message, if not you will come to a bad end". In January 2000, a complaint concerning the death threats was filed and is currently under review by the National Human Rights Commission.

Arturo Solis {lawyer}: Mr. Solis is Director of the Centre for Border Studies and Promotion of Human Rights (CEPRODHAC), in Reynosa, Tamaupilas State, bordering the United States. In February 2000, he was accused of defamation by a Government body after publicising charges of extortion and illegal traffic and ill-treatment of immigrants by officials of the National Immigration Institute (INM). Two witnesses who testified in favour of Mr. Solis were allegedly threatened and retracted their statements. Mr. Solis also was threatened. He and his family were followed by

unidentified persons in vehicles without licence plates. The Government began an investigation and, on 11 July 2000, the Office of the General Prosecutor in the State of Tamaulipas instituted protective measures to guarantee the safety of Mr. Solis.

Pilar Noriega García {lawyer}. From 1996, Ms. Noriega's work as defender of Manuel Manríquez San Agustín, an indigenous man convicted of murder, has come under repeated attack. Mr. Manríquez's case is before the IACHR for human rights violations related to his conviction. In 2000 and 2001 the harassment continued when she visited her client in the La Palma maximum security prison in the State of Mexico. On 31 March 2000, prison officials required her to remove her pantyhose, lift her skirt to the panty line, and lift her shirt over her bra. On 23 May 2000, she went to the same prison with a colleague to visit several clients, but they were informed that their clients were in a "notification procedure" and therefore could not see them. Finally, this prison requires lawyers to meet with their clients in a locked room, obliging lawyers to pound on the door and yell to be let out. This practice is allegedly unnecessary for security, because the prisoners are confined on the other side of a glass wall.

Leonel Guadalupe Rivero Rodríguez, Maurilio Santiago Reyes and María del Pilar Marroquín {lawyers}: On 29 March 2000, Mr. Rodríguez's house was burgled in an apparent attempt to steal files relating to his defence of students of the National Autonomous University of Mexico. On 12 May, stones were thrown through the windows of Mr. Rodríguez's house. On 9 May 2000, Mr. Santiago Reyes and Ms. Marroquín experienced acts of intimidation. A van without number plates passed by Mr. Santiago Reyes' house, and during the same night he received death threats. The Office of the State Procurator General initiated a preliminary investigation. The Oaxaca Procurator General reported that the lawyer concerned declined to be seen by the psychology expert from the Procurator's Office, which is apparently a requirement for the completion of the preliminary investigation.

Juan de Dios Hernández Monge {lawyer}: Mr. Hernández represents a group of students from the National Autonomous University of Mexico, who were being held in detention. On 3 May 2000, Mr. Hernández was attacked by a man while in his car. The attacker asked him if he was the lawyer of the students, then insulted him and cut his forehead. On January 2000, Mr. Hernández was beaten by unknown men in the parking lot of the National Autonomous University. Government officials stated that the office of the General Prosecutor for the federal district had initiated an inquiry jointly with the branch of the public prosecutor's office in Coyocán. In March 2000, a proposal was made to refrain from initiating criminal proceedings because the complainant had not appeared, despite having been summoned. The National Human Rights Commission decided not to intervene in the case.

Mario Alberto Gallardo {lawyer}: Mr. Gallardo is a political activist and former president of the non-governmental Comisión de Derechos Humanos en Comalcalco (CODEHUCO, Human Rights Commission in Comalcalco). In September 2000, he was accused of having robbed the keys of a car. Mr. Gallardo had complained against the use of public funds for political advertising in election campaigns and defended political activists detained for protesting electoral anomalies. Although Mr. Gallardo was never called before any judicial authority, an arrest warrant was issued. However, when the political opposition party, the PRD, won the local municipal election in Comalcalco in October 2000, the witnesses to the theft, allegedly members of the outgoing PRI, retracted and the case was concluded.

Digna Ochoa y Placido {lawyer}: While Ms. Ochoa was the head of the legal division of the Miguel Agustín Pro Juárez Centre for Human Rights (PRODH), she was the subject of a series of threats and attacks throughout 1999 by individuals reportedly linked with governmental agencies

(See *Attacks on Justice 2000*). The harassment was closely related to her work in PRODH, a non-governmental organisation that litigates domestically and internationally cases of torture, execution and arbitrary detention. In the year 2000, the death threats continued, and 24-hour police personal protection was provided by the State. After staying several months in the United States, Ms. Ochoa came back to Mexico to work as an independent lawyer, but police protection was not resumed. On 19 October 2001, Ms. Ochoa was found dead in her office. Unidentified individuals had shot her twice. The killers left a letter with death threats against members of PRODH. The lack of investigation into the death threats may have contributed to the death of Ms. Ochoa. Several human rights NGOs, the Inter-American Court of Human Rights and UN human rights mechanisms had made appeals to the Mexican Government to secure her protection. However as late as February 2000 the SISEN had kept her on a list of guerilla collaborators.