Attacks on Justice

The Harassment and Persecution of Judges and Lawyers

June 1991 - May 1992

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 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.

Affiliates - Contributors

Jurists' organizations wishing to affiliate with the CIJL are invited to write to the Director. Organizations and individuals may support the work of the CIJL as Contributors by making a payment of Swiss francs 200 per year. Contributors receive all publications of the CIJL and the regular publications of the International Commission of Jurists.

Subscriptions to CIJL Publications

Subscriptions to the Yearbook and the annual report on "Attacks on Justice: The Harassment and Persecution of Judges and Lawyers" are Swiss francs 15 per year surface mail, or Swiss francs 18 airmail. As of January 1993 new rates will apply: Swiss francs 25 each, or for combined subscription Swiss francs 43, including postage.

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JUST-CIJL*ATT

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To the Colombian and Italian judges
who have sacrificed their lives
for the cause of justice

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Organization for Human Rights; the Committee for the Defence of Human Rights and Democratic Freedoms in Syria; Dr. Amin Mekkin Meddani, Adam Abdel Moula, and the Sudan Human Rights Association; advocate Asma Khader (Jordan), advocate Nadia Khalipha, and the Association of Judges (Yemen).

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The entries in this report were prepared by Suzanne Seltzer, Peter Mason, Haseena Enu, Béatrice Séne, Michelle Anderson and Carime Diaz-Triana, law interns with the ICJ/CIJL, and Elena Manitzas of the Colombian Section of the Andean Commission of Jurists, an intern with the International Service for Human Rights. Fateh Azzam, Tina Meldrum and Jens Kristian Birthin also provided useful editorial assistance.

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INTRODUCTION

This issue of ***Attacks on Justice*** covers the period between 1 June 1991 and 31 May 1992. The report, now in its fourth year, is issued annually by the Centre for the Independence of Judges and Lawyers (CIJL) and documents cases of harassment and persecution of jurists throughout the world. In an effort to place these violations in a larger context, the report also describes some of the structural shortcomings found in legal systems. This study is based on the CIJL's conviction that if legal protection for human rights is to be universally preserved, judges and lawyers should be protected against improper interference while performing their duties.

Attacks on Justice is submitted annually to the United Nations Sub-Commission on the Prevention of Discrimination and the Protection of Minorities. Its purpose is to aid this body in assessing the ways and means of providing global protection for the defenders of justice.

Trends in 1991-92

This year's ***Attacks on Justice*** lists the cases of 447 jurists in 46 countries who have suffered reprisals for carrying out their professional functions. Of these, 35 were killed, 2 "disappeared", 17 were attacked, 67 received threats of violence, 103 were detained, and 223 were sanctioned professionally (167 of these consisted of dismissals in Peru).

In far too many countries of the world, violence against judges and lawyers has continued to escalate during the 1991-92 period. The world was shocked by the killing of Italian Judges Falcone and Borsellino at the hands of the Mafia. Attacks against the Colombian judiciary were also a frequent occurrence, which resulted in the killing of at least 18 judicial officers and death threats against at least 21 others. Such assaults highlight the

urgency of securing protection for members of the legal profession.

Indeed, too many jurists in the world continue to receive threats against their lives, in an attempt to deter them from pursuing their professional human rights duties. Judges and lawyers face such risks particularly in Brazil, Colombia, Ecuador, El Salvador, Guatemala, Peru, the Philippines, Rwanda, Sri Lanka, Turkey and Togo. Even jurists in Europe are not immune to these risks. Lawyers from Northern Ireland, for instance, prefer that the CIJL withhold their names from publication for fear of persecution.

Yet, jurists continue to be at the forefront of the struggle for the respect of human rights and fundamental freedoms. It is precisely because of this commitment that jurists are arbitrarily detained and sometimes even tortured in Haiti, Kenya, Syria, and Vietnam. In Nigeria, for example, human rights lawyers Femi Falana and Chief Gani Fawehinmi were arrested because they joined the call for a civilian rule in their country.

Judges and lawyers are also victims of unfair trials conducted by exceptional courts. These courts operate in countries such as Egypt, Ghana, Iran, Pakistan, Sudan, Syria, Tunisia, and Turkey. In the Palestinian territories occupied by Israel since 1967, military courts regularly try civilians. The serious structural defects of this legal system prevent lawyers from adequately rendering professional services to their clients. In addition, members of the legal community often face harassment and intimidation.

In the United States, human rights lawyers are subjected to monetary fines under a special procedure designed to prevent "groundless" law suits and "frivolous" legal arguments. In Sudan, the government went as far as confiscating the property of self-exiled human rights lawyers. Female judges were also removed from the bench.

However, nowhere in the world this year was the judiciary so disintegrated as in Peru, following President Fujimori's coup of

5 April 1992 against state institutions. The actions of Fujimori strikingly resemble the serious setbacks suffered by the judiciary in Sudan and in Kosovo in recent years. By mid-May 1992, 30 prosecutors and 137 magistrates had been dismissed.

Even measures which may be considered positive are not always entirely so. In Senegal, for instance, although the government restructured its court system, these changes hampered the independence of the judiciary insofar as they concentrated power in the hands of the President and did not allow adequate recourse to justice. In Malaysia, the government proposed a draft law to prevent lawyers from handling matters of public interest. Thanks to the efforts of many courageous Malaysian jurists, the adoption of this law was suspended.

This year also witnessed two judicial strikes in Mali and Yemen which paralyzed the entire system of justice in these countries. The judges demanded that their independence be guaranteed.

The Efforts of the CIJL in 1991-92

The CIJL was established for the specific purpose of responding to the growing number of attacks on judges and lawyers. Since its foundation in 1978, 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, it organizes conferences and seminars, sends missions and observers to trials, and publishes periodic reports. Such reports include the *CIJL Yearbook* which serves as a forum for discussion on the subject of the independence of the judiciary and the legal profession.

CIJL Alerts

When a case involving the harassment or persecution of a jurist comes to its attention, the CIJL verifies the facts and assesses the legality of the governmental measure in question on the basis of the above-mentioned UN Basic Principles.

If the measure violates these standards, the CIJL writes a letter to the government concerned and requests that it immediately remedy the violation. When appropriate, the CIJL makes its concern public by issuing a *CIJL Alert.* This Alert is distributed to a network of judges' and lawyers' associations, as well as to international, regional and national bar associations and interested human rights groups.

During 1991-92, the CIJL issued Alerts concerning death threats against lawyers Eduardo Umaña Mendoza (Colombia), César Anibal Banda Batalles and Ramiro Honorato Roman Marquez (Ecuador) and Wilfred D. Asis (The Philippines). CIJL Alerts also highlighted the arbitrary detention of lawyers Al Shadhly Ebeid Al Saghir (Egypt), Paul Muite and other pro-democracy lawyers (Kenya), Femi Falana, Chief Gani Fawehinmi and Dr. Osagie Obayuwana (Nigeria), and Aktham Nouaisseh (Syria).

Missions

From time to time the CIJL sends missions to investigate questionable situations, as well as the status of the bar and the judiciary in specific countries. Such missions make governments aware that international vigilance is being kept over adherence to the principles of judicial and legal independence. The findings of the missions are published in a report or are included in the *CIJL Yearbook*, as appropriate. Recent CIJL missions investigated the above-mentioned proposed amendment to the Legal Profession Act in Malaysia, and the May 1992 judicial strike in Mali.

Trial Observation

The CIJL sends observers to the trials of jurists. This method exposes particular legal systems to international scrutiny. It is also an effective way to demonstrate solidarity between jurists. Recent CIJL trial observations included the following:

- *Djibouti:* The ICJ/CIJL observed the trial of lawyer Aref Mohamed Aref, who was accused of involvement in a conspiracy against the state.
- *Ivory Coast:* On 26 February 1992, the ICJ/CIJL sent an observer to the trial of René Dégny Ségui, President of the Ivory Coast League for Human Rights, who had been arrested during a peaceful march in Abidjan.
- *The Philippines:* The ICJ/CIJL is observing the trial of lawyers Antonio C. Ayo, Jr. and Santiago Ceneta, members of the Free Legal Assistance Group who are accused of membership in a subversive organization.
- *Syria*: In March 1992, the CIJL sent a member of the ICJ Executive Committee to observe the trial of human rights lawyer Aktham Nouaisseh brought before the State Security Court of Syria. It was the first trial to be observed by an international organization in Syria in three decades.

These cases and more are covered in this report. Some countries are not mentioned in this study due to the fact that adequate information is not available. This does not mean, however, that judges and lawyers in those countries are immune.

The CIJL hopes that ***Attacks on Justice*** will contribute to raising public awareness about the severity of repression being inflicted upon judges and lawyers. It indeed highlights the urgent need for institutionalizing international and domestic systems to protect the defenders of justice.

Mona A. Rishmawi
CIJL Director
August 1992

ALGERIA

Ali Yahia Abdennour: Lawyer and President of the Algerian League for the Defence of Human Rights. Abdennour is the main defence lawyer for the leaders of the Islamic Salvation Front (FIS) who went on trial in June 1992. A civil complaint was filed against Abdennour by a private citizen. Owing to the nature of the complaint and the likelihood that the complaint would destabilize the defence of the FIS leaders, there is reason to believe that the plaintiff was not acting on his own.

The plaintiff, M.C. Boudjedra, is an Algerian citizen and a former "moudjahid". He claims to have been "shocked, horrified, and his dignity attacked" after reading comments made by Abdennour in an interview with Spanish journalists in Madrid in which Abdennour criticized the Algerian Government for its human rights abuses. In his complaint, Boudjedra stated that he believed Abdennour's allegations against the government were unfounded and were an insult to the Algerian people.

Brahim Taouti: Lawyer. Taouti was the victim of a suspicious office robbery which may have been motivated by his involvement in the defence of the above-mentioned FIS leaders. The robbery occurred during the period in which Taouti was helping to prepare the case challenging the government's dissolution of the FIS. On the morning of 29 April 1992, a man came to the door of Taouti's office claiming to have an important message for him. When the secretary replied that Taouti was not in, the man said he wanted to make sure of this himself. Two men then came up behind him and they all forced their way in. One of them had a gun and some metal wire. They threatened the secretary and then entered the lawyer's office, taking Taouti's personal computer, but leaving other visible small but expensive equipment, such as his dictaphone.

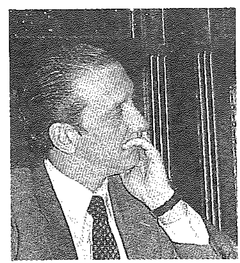
Taouti filed a report with the police, but they have yet to uncover any information. The police believe the robbery to be a

common crime. However, lawyers are rarely, if ever, the victims of such robberies in Algeria. Taouti believes the motive for the theft was suspicion on the part of the authorities that FIS underground publications were being edited and produced at his office.

ARGENTINA

Nerio Bonifati

Nerio Bonifati: Judge. On 22 November 1991, Bonifati received several threats against his life while present in his office. At the time, Bonifati was handling an investigation into the kidnapping of Mauricio Macri, the son of a well-known businessman. Members of the Argentine security forces are believed to have been involved in the kidnapping.



Jorge Casanovas

Jorge Casanovas: Judge of the Federal Court in Buenos Aires (second in hierarchy to the Supreme Court) (see *Attacks on Justice 1990-1991*). Casanovas is one of three judges hearing a sensitive case involving the prosecution of the leaders of the December 1990 military rebellion. Since beginning this case, he has received numerous death threats. Between 11 and 12 July 1991, he received three human skulls stuffed with threatening notes. The note attached to the first skull, which was delivered to his chambers, read in Spanish: "This is how your son's head will look."

In a statement presented to the Argentine Congress on 5 July 1991, Senator Hipolito Solari Yrigoyen denounced the threats against Casanovas. The Senator requested information on what preventive measures had been taken by the authorities to protect the lives of judges and to guarantee the independence of the judiciary. He also deplored such a climate of intimidation.

President Carlos Menem condemned the threats, stating that the government would provide Casanovas with all the necessary protection. The Minister of the Interior, Julio Mera Figueroa, prior to his resignation in early August 1991, announced that an investigation had been begun into the June 1991 shooting (see

Attacks on Justice 1990-1991) and other threats made against the judge. The Minister, however, claimed that these were "isolated acts, and we will not allow them to mushroom and become customary or habitual".

The Centre for Legal and Social Studies (*Centro de Estudios Legales y Sociales* - CELS) said that other court officials also received death threats during the course of the trial. Members of the Federal Chamber *(Cámara Federal)* publicly criticized the government and the federal police for failing to provide adequate protection.

Horacio Cattani

Horacio Cattani: Appeals Court Judge. On 11 July 1991, Cattani received threatening phone calls. The threats, which were widely publicized in the Argentine press, appeared to be connected to an appeal brought before Cattani, involving several members of the Argentine Army. According to Argentine law, sentences passed by military courts must be reviewed by a civilian appeals court.

Santiago Idiarte: Judge. Idiarte had presided over a criminal case brought against 14 policemen for their involvement in the torture and killing of a detainee in the province of Cordoba. On 13 June 1991, one week after he ordered the preventive detention of the policemen, Idiarte found a microphone hidden in his chambers. He was eventually removed from the case on 4 July 1991.

Ricardo Molinas: Lawyer and former special prosecutor and head of the *Físcalia National de Investigaciones Administrativas,* a government office which investigates alleged wrongdoing by public officials (see *Attacks on Justice 1990-1991*). On 24 September 1991, the Supreme Court of Argentina upheld the

validity of Molinas' dismissal, rejecting the claim that it was unconstitutional.

Ricardo Molinas

Molinas had been removed from public service in February 1991 by an executive decree issued by President Carlos Menem. The dismissal seems to have been related to an investigation being conducted by Molinas against Raúl Granillo O'Campo, a former senior presidential adviser (*Titular de la Secretaria Legal y Técnica de la Presidencia)* on charges of corruption.

Molinas filed a *recurso de amparo* before the proper administrative court challenging the legality of President Menem's decree. In March, the court ruled in his favour declaring the decree "null and void". However, as stated above, this decision was overruled by the Supreme Court.

José Ignacio Torrealday: Investigatory judge in the province of Neuquén. On 7 August 1991, Torrealday was removed from his post by the *Cámara Provincial.* At the time, he was investigating allegations of illegal adoptions of indigenous children from the Mapuche peoples. The *Cámara Provincial* claimed that "irregularities" were found in the cases. On 20 September 1991, Torrealday was brought to trial.

Leon Zimmerman: Lawyer for the Argentine League for Human Rights (*Liga Argentina por los Derechos del Hombre - LADH*). Zimmerman was sentenced to 14 months in prison and six months' suspension from practicing law on the grounds that he removed a document from a court wall. Upon appeal, he was acquitted on 23 July 1992.

The charges were brought against Zimmerman when he removed an edict from the wall in a La Plata courtroom in order to

photocopy it. Zimmerman was defending a person accused of giving false testimony in a case involving police shootings in the neighbourhoods of Ingeniero Budge and San Francisco Solano.

Despite the fact that Zimmerman replaced the edict, Criminal Court Judge of First Instance, Almicar B. Vara, ordered his detention and accused him of "suppressing a public document". The local bar association sent a letter to the judge expressing its concern over the incident. The court reportedly reacted by bringing contempt proceedings against the bar association. The status of those proceedings is not known.

BRAZIL

Maria da Conceicao Neves Barbosa: Lawyer for the Pastoral Land Commission *(Commissao Pastoral Terra)*. Since August 1991, Conceicao and Father Manoel Aparecido Monteiro, a priest in the state of Bahia, have been receiving death threats. The threats first started when they were involved in assisting more than 170 peasant families in Bahia in a dispute with neighbouring landowners. On 20 August 1991, two persons working with the landowners were killed. The peasants were accused of the killings.

Domingos Dutra: Legal counsel for the Maranhense Society for the Defence of Human Rights and Deputy of the Workers Party in Maranhao. On 26 October 1991, Dutra received several death threats. The threats were purportedly connected with his handling of a case against a landowner in Codo who was accused of hiring paid assassins (*pistoleiros*) to block the roads and prevent the passage of agricultural workers.

The local authorities as well as the Secretary of Security were duly informed of these incidents, although it appears that the allegations were not investigated.

Fausto Ribeiro da Silva Filho: Human rights lawyer. On 13 August 1991, 34-year-old da Silva was killed in Sao Miguel Paulista, in eastern Sao Paulo. According to eyewitness reports, as da Silva was leaving a bakery, he was shot three times in the head by unidentified gunmen firing from inside a car.

Da Silva had worked as a lawyer for the Urban Squatters Movement (*Movimento dos Sem-Teto*) at Our Lady of Fatima Church in Sao Miguel Paulista. Other lawyers working for this

group had reportedly received death threats over the course of several months. One of these, **Adelino Rodrigues da Silva** was allegedly threatened on 10 August 1991. The Bar Association of Brazil appointed two lawyers to follow up on the case of Fausto Ribeiro da Silva Filho.

On 5 February 1991, Amnesty International reported that "many Amnesty International members had received a letter from the State Public Security Chief's Office of the State of Sao Paulo (*Secretaria de Sequranca Publica do Estado de Sao Paulo, Gabinete do Secretario*), stating that two men had been charged with the crime and that they would be brought to justice".

According to Amnesty International, the two men referred to in the letter were briefly detained, but were released later due to insufficient evidence. The investigation has since been suspended.

Tania Maria Salles Moreira: Public Prosecutor of Duque de Caxias, Rio de Janeiro. Salles Moreira became known in Rio de Janeiro for her work in pursuing members of death squads who allegedly kill minors and young adults. She appeared in a documentary film about the killing of children in Brazil. Salles Moreira has received repeated death threats at work and at home. These threats intensified as of 9 February 1992.

In a speech delivered by the Minister of Health in January 1992, businessmen were charged with financing the death squads. The Minister promised that those involved would be brought to justice. Soon after, two men were arrested in Duque de Caxias, including Pedro Capeta, who is suspected of being the chief of the local death squad. Salles Moreira is in charge of prosecuting him.

When she began receiving the death threats, Salles Moreira had requested police protection. However, her request was allegedly denied.

CHAD

Joseph Behidi: Lawyer and Vice-President of the Ligue Tchadienne des Droits de l'Homme. At three o'clock in the morning on 16 February 1992, Behidi was shot dead by two off-duty soldiers. It is alleged that Behidi's murder was connected to his defence of the weekly newspaper, *N'djamena Hebdo*, against defamation charges filed by the army.

On 17 February 1992, the Chadian Embassy in Paris issued a statement in reaction to the assassination, informing that the Chief of Police and his deputy had been dismissed, and that the Chief of the Paramilitary Gendarmerie and his deputy had been removed from their posts.

CHINA

In November 1991, the Information Office of the State Council of the People's Republic of China (PRC) issued a document entitled "Human Rights in China", known as "the White Paper". In its introduction, the document asserts: "In every link of the work of public security and judicial organs and in the judicial procedure, China's law provides definite and strict stipulations to protect and guarantee human rights in an effective way." The Centre for the Independence of Judges and Lawyers (CIJL) welcomes the PRC's recognition of the importance of the protection of human rights. The CIJL remains concerned, however, about the independence and functioning of the judiciary in China.

Independence of the Judiciary

The White Paper states that courts "shall only obey the law and not be interfered with by any administrative organ, social organization or person". However, the judicial system is structured in such a way that judges come under considerable pressure from the Chinese Communist Party (CCP).

China's Criminal Procedure Law provides that court presidents, "when they consider it necessary", should submit "all difficult cases" for "discussion and decision" to an "adjudication committee". These committees are set up in each court to supervise judicial work and are composed of members of the judiciary as well as those of the Communist Party. This creates the potential for judges to be influenced

and pressured by the non-judicial members of the committees.

In practice, many cases are submitted to the adjudication committees prior to trial. A Chinese legal magazine noted in 1987: "This practice makes open trials degenerate into a mere formality... and inevitably results in false and unjust cases ..." Indeed, Chinese jurists openly refer to the practice of "verdict first, trial second". A reported average conviction rate of over 99 per cent also seems to support the conclusion that judges are indeed influenced by this process.

One example of the lack of judicial independence is offered by the trial of five employees of an automobile factory in Changchun, in northeastern China. Amnesty International reports that the public prosecutor in this case stated during the 27 November 1990 trial that, from the time it was filed for prosecution, this case had been collectively analyzed and discussed by the police, procuracies and local courts. It had furthermore been "agreed upon" by the relevant leaders of the city and province. The prosecutor added that these officials could not all be wrong. After a brief adjournment at the end of a one-day trial, the Chief Judge announced the judgement and sentences. He was reading from a long document which had apparently been prepared in advance.

Trial Procedures

The White Paper asserts: "The accused has the right to defence. According to the Law of Criminal Procedure, the accused, besides exercising his right to defend himself, can also entrust a lawyer, or close relatives, or other citizens to take up the defence on his behalf. When the public prosecutor institutes a case

before the court, if the accused does not entrust his defence to a lawyer, the people's court can appoint one for him." Despite these assertions, defendants in criminal trials in China do not have sufficient access to a defence lawyer.

Providing a court with the option of appointing a defence counsel is not sufficient for trials involving serious criminal charges. Furthermore, the White Paper fails to mention any method for informing the accused of his right to be defended by a lawyer as is required by Article 14 (3)(d) of the International Covenant on Civil and Political Rights.

Lawyers have reportedly been pressured to refuse appointments to defend individuals accused of political crimes. Prior to the trials of several individuals accused of offences relating to their participation in the 1989 pro-democracy movement, the Judicial and Law Bureau and the Committee for Political and Judicial Affairs reportedly distributed notices to all law firms in Beijing. These notices warned the firms to take "precautionary measures" if they were requested to defend participants of the pro-democracy movement, since "the cases of the 1989 incident involved complex background and policy issues". The distribution of these notices interferes with the right of lawyers to freely defend their clients.

The White Paper further requires the accused to be provided with a copy of the indictment, seven days before the opening session of the court. The document adds that such a provision ensures that the defendant has "enough time to prepare his defence and get in touch with his lawyer". This statement has been strongly criticized by the Lawyers Committee for Human Rights, in a report entitled *China's White Paper on Human Rights: A Critique of Chapter IV on*

"Guarantee of Human Rights in China's Judicial Work". The Lawyers Committee gives several reasons for its criticism. First, the White Paper fails to mention that this rule may be ignored in a wide variety of criminal cases under the 1983 Decision of the Standing Committee of the National People's Congress Regarding the Procedures for Rapid Adjudication of Cases Involving Criminal Elements Who Seriously Endanger Public Security. Second, the statement ignores the fact that suspects are generally detained for a substantial period of time prior to trial, during which the accused has no access to a lawyer. Since the pre-trial investigatory period plays an important role in the determination of an individual's guilt or innocence, this gives the prosecution an enormous advantage over the accused. The Lawyers Committee concludes that "it is preposterous to state that the seven-day rule, even when it applies, affords the defendant enough time to prepare his defence".

Furthermore, in cases where a lawyer is appointed, there is insufficient time and a lack of adequate facilities to prepare a suitable defence. Reportedly, lawyers often have no more than one or two days to prepare for trial. In the trial of journalist Wang Juntao, defence lawyers Zhang Sizhi and Sun Yachen were given only five days to prepare for trial. The government attempted to deny permission to the lawyers to meet witnesses for the defence until the last day before the trial. After threatening to refuse to defend the accused, they were granted immediate access to the witnesses. These witnesses, however, were not allowed to testify in the trial. Wang Juntao was sentenced to 13 years' imprisonment.

The White Paper asserts that "the people's courts carry out a public trial system. Cases should be tried

publicly, except those involving state secrets or individual privacy ..." However, there are reports that in cases involving "counter-revolution" charges, trials have frequently been closed to the public with, at best, only the defendants' closest relatives or members of their "work unit" allowed to attend. Moreover, requests by independent foreign observers to attend trials have consistently been rejected. The government has asserted that foreign observers are only permitted to attend trials if the alleged crime directly involved a foreigner or a Chinese citizen related to a foreigner.

The Right to Appeal

The White Paper claims that "the accused has the right to appeal to a higher court and the right of petition". Although this is generally the case in China, there are two serious deficiencies in the system of appeals. Appellate courts often merely confirm the decisions of the lower courts without a serious review of the merits. For example, the trials of economist Chen Ziming and journalist Wang Juntao both focused on the validity of factual evidence, but the appellate courts for both cases failed to question the factual findings of the lower courts. Furthermore, the decision in the case of Wang Juntao was affirmed without a hearing.

A serious handicap to the right of appeal, ignored by the White Paper, is a 1983 amendment to the criminal law which reduces the time limit for appeals by defendants from 10 days to three days in cases involving "criminal elements who seriously endanger public security". This substantial reduction in the time available for lawyers to prepare appeals has

been accompanied by a dramatic increase in the number of death sentences imposed throughout the PRC.

The Legal Profession

The legal profession in China is severely constrained and limited in its effectiveness. One reason for this seems to be a serious shortage of lawyers. According to national statistics for 1987, lawyers were available in only 20 per cent of all criminal cases. In September 1991, an official in the Ministry of Justice admitted to a European Parliament delegation that trials in China were conducted too rapidly due to a lack of defence lawyers. An Australian human rights delegation visiting Shanghai in July 1991 found that out of the 16,000 criminal cases filed in that city during 1990, fewer than half of the accused had a defence lawyer.Defence lawyers rarely contest their clients' guilt and instead, limit their function to requesting clemency for the accused. Some of those who have defended their clients' innocence have had their licences to practice law withheld and have been denied housing and other benefits. Since lawyers, like other Chinese citizens, generally depend on their work units for employment, housing and many other aspects of their lives, such actions can provide powerful incentives to comply with party policies.

Administrative regulations on the participation of lawyers in court proceedings, published in 1981 and 1986, set limits on the access of lawyers to judicial records and require that lawyers' visits to defendants comply with strict administrative procedures. One of these regulations stipulates that lawyers shall not be

"arbitrarily ordered to leave the courtroom". On 8 July 1988, however, a major national newspaper, known as the *Guangming Ribao*, reported that "in great numbers, defence lawyers in criminal cases have been demoted, expelled from the Party, driven out of the courtroom, even handcuffed, tied up and beaten up".

Due to the severe restraints imposed by the PRC on the flow of information out of China, it has been difficult for the CIJL to obtain information pertaining to individual cases of harassment and persecution of lawyers. More information is available on the detention and harassment of law students. However, this category is not included in this report. The following cases therefore provide only an illustration of the current situation in China.

Yu Haocheng: Lawyer and former legal scholar and director of the Chinese Legal System and Social Development and Research Institute (see *Attacks on Justice 1990-1991).* Yu Haocheng was arrested in Beijing on 27 June 1989. On 29 December 1990, he was reportedly "released" from Qincheng prison and placed under house arrest in a "guesthouse" in a Beijing suburb. There are unconfirmed reports that Yu Haocheng has been released from house arrest. In November 1991, the Chinese authorities received a list of prisoners from the United States Department of State which included his name. The response from the Chinese authorities was that Yu Haocheng had been "released". Yu Haocheng is in poor health and is unable to find employment.

Wan Qianjin: Professor in the Law Department of the Chinese University of Politics and Law in Beijing. The Chinese authorities reported that Wan Qianjin surrendered to police in

Shandong Province on 17 June 1989. He is accused of organizing the banned Beijing Citizens Autonomous Federation, making "inflammatory speeches" and spreading rumours. His present status is unknown.

Zhang Weiguo: Lawyer and journalist with the former *World Economic Herald* (see *Attacks on Justice 1990-1991).* In July 1991, Zhang Weiguo was arrested and held for 23 days in a Shanghai army barracks, where he was extensively interrogated on his alleged contacts with the foreign press and foreign personalities. He was released on bail pending further investigation. He has been informed that he could be rearrested at any time. Although Zhang Weiguo would like to continue working as a journalist, he has reportedly been told that he must find employment in a different area of work. He is currently unemployed.

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 for years has characterized this country's experience. The new Constitution replaces the Colombian Charter, which had been in effect since 1886, and is 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. However, the Constitution tends to give the legislature too much latitude in defining the scope of many key provisions and fails to create effective enforcement procedures.

The Structure of the Judiciary

The 1991 Constitution introduced significant changes to the Colombian judicial system. According to its provisions, the Supreme Court no longer examines constitutional matters. Instead, it acts as a *tribunal de casación,* the highest court for 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. The Constitutional Court also examines the constitutionality of international treaties and their ratifying laws, reviews referendums and plebiscites for procedural defects, and hears appeals of guardianship action (*acción de tutela*). The court is also authorized to review the constitutionality of legislative drafts rejected by the government on constitutional grounds.

As for administrative litigation, the Council of State **(Consejo de Estado)** remains the highest court. The Council also functions as the government's advisory body on administrative matters, hears actions for the annulment of decrees when the Constitutional Court lacks jurisdiction, and drafts and presents proposals for amending the constitution and legislative bills.

The 1991 Constitution also established a Superior Council of the Judiciary (*Consejo Superior de la Judicatura*) for the purpose of ensuring judicial independence. This body is empowered to examine the conduct of 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. Judges of the Supreme Court and the Council of State are chosen by members of the two courts from a list of candidates submitted by the Superior Council of the Judiciary. The Superior Council is divided into an administrative chamber and a disciplinary chamber. In the administrative chamber,

two judges are chosen by the Supreme Court, one judge by the Constitutional Court and three by the Council of State. In the disciplinary chamber, all seven judges are chosen by Congress from a list submitted by the President and ministers, although the members of the first disciplinary chamber shall be appointed by the President.

Constitutional Court judges are chosen by the Senate from lists containing three candidates which are submitted by the President, the Supreme Court and the Council of State. Transitory Article 22 of the 1991 Constitution provides, however, that the first Constitutional Court shall consist of seven judges, to be appointed as follows: two by the President, one by the Supreme Court, one by the Council of State, one by the Attorney-General and two by the judges themselves. All of these appointments are based on a list submitted by the President.

Under the 1886 Charter, judges of the Supreme Court and the Council of State were appointed for life by the sitting justices. This rule providing for life tenure was abandoned under the 1991 Constitution. Judges of the Constitutional Court, the Supreme Court of Justice, the Council of State and the Superior Council of the Judiciary will henceforth serve non-renewable eight-year terms. Since justices are likely to seek employment at the end of their terms, it is possible that the prospect of future employment will affect the impartiality of their decisions while on the bench. It is also possible that the turnover in justices every eight years may attune the courts to political developments. Finally, the courts' institutional competence and overall effectiveness may be reduced since individual judges often develop their expertise over a considerable length of time.

The Accusatorial System

Title VIII, Chapter 6 of the new Constitution provides for a fundamental change in the administration of justice by establishing a Prosecutor General's Office (*Fiscalía General de la República*) and an accusatorial system. Similar to criminal justice systems in common law jurisdictions, the Prosecutor General is responsible for investigating crimes and bringing charges against alleged offenders before the appropriate courts. The Prosecutor General is elected for a single four-year term by the Supreme Court from a list of three candidates submitted by the President.

Given Colombia's inefficient criminal justice system, the creation of the Prosecutor General's Office has received widespread approval. However, its creation has also been the cause of some concern. Particular concern has arisen over Article 250 (3) which states that the Prosecutor General shall direct and coordinate the functions of the judicial police "and other agencies assigned by law", which refers to the fact that members of the armed forces have assumed judicial police functions in the past. Yet the Prosecutor General has no disciplinary power over agencies which exercise judicial police functions.

Attacks against Jurists

Colombia has suffered widespread political violence for many years. Violence against members of the judiciary and the legal profession continues to be a feature of Colombia's political reality. Attacks against lawyers and judges have often resulted in virtual impunity.

In the period from June 1991 to May 1992, numerous lawyers, judges and employees of the judiciary have been killed, wounded, kidnapped or threatened at home, in their offices and in the street. There are reports of at least 46 such cases (32 of which are confirmed to be related directly to the legal profession, 3 of which are not certain and 11 of which lack sufficient information).

Statistical data also indicate that the Valle del Cauca Department has the highest level of violent acts (14 cases), followed by Antioquia (6 cases) and Bogotá, Arauca and Cundinamarca (5 cases each). There are 7 cases for which sound information is lacking. The victims are mostly criminal investigative judges (8 cases) and magistrates of superior courts (6 cases).

Amongst the identified cases, the principal perpetrators of violence appear to be members of the guerrilla groups (8 cases), followed by state agents and paramilitary groups (5 cases: 3 paramilitary, 1 member of the National Army, 1 member of the National Police) and drug dealers (4 cases).

Jesús E. Abella López: Third Public Prosecutor of Villavicencio (Meta), Vice-President of the sectional office of ASONAL Judicial (a labour union for judges and judicial employees). Abella was murdered on 30 October 1991. Two motorcycle gunmen shot him near the Governor's office building. Although Abella had received threats prior to the fatal shooting, he was not afforded police protection. On 12 March 1992, it was discovered that Jorge Riaño, an officer attached to the Prosecutor's Office, was also the victim of an attempted murder.

Furthermore, the 36th Criminal Investigations Judge of Villavicencio and **Jorge Rodríguez**, a magistrate of the Superior Court, were reportedly threatened and ordered to stop the investigation Abella had been conducting before his death. Indeed, the motives for his murder are thought to be linked to an appeal that Abella had made concerning the absolution of a former judicial officer accused of murder. Abella had also investigated the murder of presidential candidate Carlos Pizarro León Gómez when he worked as Judge 85 on Criminal Investigations in Bogotá. Abella was threatened for carrying this case and was forced to leave his post.

According to press reports, the two persons implicated in the murder of Abella belong to the paramilitary group directed by Víctor Carranza which operates in that region. Two suspects are currently being tried for the murder of Abella before a Public Order Court in Bogotá. According to the press, one of the suspects confessed to the crime while in prison.

Germán Arbeláez: Magistrate for labour affairs of the Superior Court in Medellín (Antioquia). On 17 November 1991, Arbeláez received death threats - along with judges **Mateo Uribe** and **Juan Guillermo Zuluaga**. The judges were involved in reviewing an appeal of two labour cases against a business corporation whose owner was presumed to be involved in drug trafficking. It is believed that the judges were threatened for ratifying the sentence against the corporation. The labour lawyer who had previously represented the workers at this corporation was murdered.

Martha Amparo Beltrán: Judge 73 of Criminal Investigations in Bogotá. Beltrán is under heavy pressure by the state for having pronounced a sentence in favour of a citizen in a guardianship

action (*acción de tutela*). In connection with this case, she ordered a disciplinary inquiry against the Director of the National Police, General Miguel Gómez Padilla. A disciplinary trial has been opened against her by the Attorney-General.

Raúl Caicedo Lourido: Lawyer and Health Superintendent in Cali (Valle del Cauca). On 1 June 1991, a grenade was thrown at Caicedo's office. He was not harmed, however, and the grenade caused only material damages. Although Caicedo was provided police protection, he resigned following this attempt.

It is presumed that Caicedo was attacked because of investigations he was conducting of several governmental offices, including the office of the State Pension Plan, the Departmental Liquor Enterprise, the State Lottery and the sectional office of the Social Security Institute. Caicedo had made public statements implicating several state employees based on these investigations.

Jaime Cardona Valencia: Judge 21 of Criminal Investigations in Saravena (Arauca). On 25 September 1991, Cardona was threatened with death by the FARC guerrillas. The threats were so serious that he was forced to resign from his post and leave town. The motives for the death threats are unclear.

María Victoria Carvajal Paredes: Judge 104 of Criminal Investigations in Bogotá. On 2 March 1992, Carvajal received death threats by telephone, as did her secretary, Luis Eduardo Méndez Bustos. These threats were reportedly related to a guardianship action (*accion de tutela*). The callers informed Carvajal that she and her secretary should collaborate to oppose the restoration of a plane retained by customs, which was the subject of the above-mentioned action. While no one claimed responsibility for the calls, Carvajal feels that they may have

been made by the US Drug Enforcement Agency, which was interested in retaining several aircraft, including the one related to this case, because it believed the aircraft were being used for drug-related activities. The American Embassy in Bogotá issued a press release vigorously denying this accusation. Carvajal and her secretary were forced to leave the country due to the threats.

José Edgar Collazos Aguado: Judge 17 of Criminal Investigations in Yumbo (Valle del Cauca). On 28 November 1991, Collazos received a note containing a death threat. The motives behind the threat are not clear, and Collazos did not wish to speculate on this for security reasons.

Luis Miguel Garavito: Criminal Investigations Judge. On 26 November 1991, in La Unión (Usme), a judicial commission composed of members of the 75 Criminal Investigations Courts of Bogotá and the Technical Judicial Police was attacked with dynamite, presumably by the FARC guerrilla. Garavito was one of the persons killed during the attack.

Also killed with Garavito were: **Héctor Ojeda** (prosecutor), Hernando Trujillo (secretary), Amanda Gómez (court writer), Alonso García (court photographer), Jaime Puerto (forensics doctor), Héctor Romero and Alfonso García Villagarraga (Technical Judicial Police investigators) and Elkin Ruiz (police officer).

Among the wounded were: Luis Ariel Sánchez, Jesús Alejandro Chaparro and Martín Barragán, members of the Technical Judicial Police.

According to the military and the police, the instigator of this massacre was the XLII front of the FARC, under the orders of Jorge Briceño ("Comandante Jojoy"). The military also stated that it had intercepted a radio transmission in which the guerrilla

leader said that the massacre was an "unfortunate accident" caused by an electrical problem which set off an explosive originally intended for a police patrol.

Jorge Gómez Lizarazo: Lawyer, former judge, founder and President of the Regional Committee for the Defence of Human Rights, known as CREDHOS, of Barrancabermeja (Santander) [see *Attacks on Justice 1990-1991*]. In July 1992, a member of the F-2 (police intelligence) told Gómez's government-appointed bodyguard that Gómez would be killed some time during the second week of July. The threat was not carried out.

Gómez had already been attacked by gunmen on 11 June 1992 in the Antonia Nariño neighbourhood of Barrancabermeja while returning from a visit with the relatives of victims of a multiple killing which had occurred in the Versalles neighbourhood of the city the previous day. He was in the company of a journalist who works with CREDHOS, two members of a community coordinating group (*Coordinadora Popular*) and a member of the workers' union (*Unión Sindical Obrera*) when six unidentified men, dressed in civilian clothing and heavily armed, opened fire on Gómez and the others. Fortunately, they saw their attackers before the shooting began and were able to throw themselves on the floor of the two taxis in which they were riding. No one was injured, although the taxis were hit with bullets. On 28 June, 17 days later, the head of security for CREDHOS in Barrancabermeja, 25-year-old Julio César Berrío Villegas, was murdered by two unidentified gunmen.

Gómez had begun receiving threats in January 1991. Human rights organizations in the region suspect that the threats were made by members of the Fifth Army Brigade in response to the fact that Gómez represented families affected by the Brigade's counter-insurgency operations in the Magdalena Medio region of the Santander and Antioquia departments during September of 1990. Gómez also received death threats in 1991 from a

paramilitary group known as the “Magdalena Medio Cleansing Committee” (*Comité de Limpieza del Magdalena Medio*). Futhermore, Gómez’s private bodyguard was murdered in March 1991 and his secretary in January 1992. A *New York Times* article written by Gómez was published shortly before the January 1992 killing, denouncing the Colombian military for human rights violations in the region.

In addition to threats against Gómez’s life, CREDHOS has been harassed by members of the military who have publicly labelled the human rights group “an organization dedicated to the benefit of subversives” and CREDHOS’ workers “auxiliaries of the guerrilla forces”.

Gómez was given the 1991 Letelier-Moffitt Human Rights Award in recognition of his work with CREDHOS and his efforts to document political killings in the Magdalena Medio region of Colombia.

[Human rights organizations in this region of Colombia have documented serious human rights violations by the army, including cases of extrajudicial execution and torture. This year in Barrancabermeja there have been a number of multiple killings and more than 194 homicides. These statistics indicate the staggering level of violence that has been inflicted upon the civilian population.]

Following the murder of his secretary in January 1992, the Colombian Government assigned bodyguards to Gómez. It has also initiated an investigation into the threats made against him. However, no arrests have been made to date. Colombia’s Presidential Adviser on Human Rights (*Consejero Presidencial para los Derechos Humanos*), Dr. Jorge Orlando Melo, issued a press release following the 11 June 1992 attack against Gómez, promising that there would be a full government investigation and that those responsible would be brought to justice. Nevertheless, the safety of Gómez and other CREDHOS workers remains a matter of concern.

Nohora Luz Grass García: Lawyer from Cúcuta (Norte de Santander). On 22 November 1991, Grass García disappeared with her chauffeur, William Bermúdez Carvajal. On 5 December 1991, the Administrative Security Directorate (DAS) found her body in a mass grave on the outskirts of Cúcuta along with 16 other victims.

The investigation undertaken by members of the DIJIN, SIJIN and DAS, with the aid of the Technical Judicial Police of Venezuela and Interpol, indicated that Grass García was acting as a front for Larry Salvador Tovar Acuña, head of a Colombo-Venezuelan drug-trafficking network, who is currently imprisoned in Venezuela. According to the investigation, Grass García did not want to transfer ownership of property in her name to another confidant of Tovar Acuña, which suggests that this might be the motive behind her death. A judicial team composed of three criminal investigations judges initiated a preliminary investigation to identify the victims as well as those responsible for the massacre and their motivations. In late March 1992, 13 police agents based in Northern Santander were linked to the murder. The agents were suspended from their jobs pending further investigation.

Judicial sources informed the press on 5 May 1992 that a group of private assassins, organized with the support of members of the Cúcuta Police, were the real perpetrators of the massacre. This contradicts the earlier police account of the acts.

Luis Omar Herreño Niño: Second Customs Penal Judge in Bucaramanga (Santander). Herreño was murdered on the evening of 27 January 1992 by two motorcycle gunmen while walking down a main city street. He was wounded and taken to a hospital but was pronounced dead upon arrival. Sources close to the judiciary stated that the murder of Herreño was related to a

sensitive case, which had been carried and filed by his predecessor and which Herreño had reopened.

6th Judge of Criminal Investigations: Based in Cali (Valle del Cauca). In mid-August 1991 someone entered this judge's office located in the Palace of Justice and burned the file of a sensitive case carried by the judge. A note, addressed to the judge, was left on a desk. It read: "Drop the case immediately unless you wish to face the fate of the file" (i.e. be burned to death). The source of this information chose not to reveal the judge's name or the subject of the case for security reasons.

3rd Judge of Criminal Investigations: Based in Barranquilla (Atlántico). This judge informed the state security forces of death threats he received on 7 October 1991. He suggested that these threats might be related to cases he was carrying against several employees of municipal enterprises in Barranquilla, for embezzlement of more than 1,500 million pesos.

Judge (*Juez Promiscuo*): Based in Tame (Arauca). This judge was murdered on 30 October 1991. Two days before his death, he spoke from the altar of a local church accusing several public officials of being closely linked to drug trafficking.

Public Order Judge: Based in Bogotá. This public order or faceless judge (unidentified to the public) was the victim of an attempted murder, carried out by several individuals when the judge was driving through the northern section of Bogotá. The attackers blocked the judge's armoured car and began shooting at it. The judge was being escorted by three members of the Administrative Security Directorate who responded to the

gunfire. The shoot-out lasted several minutes until the attackers fled towards the south of the city.

The possible motive behind this attempted murder is that the 103rd Public Order Court, headed by the judge in question, had sentenced several persons on 17 June 1991 for their involvement in massacres which took place on the Honduras and La Negra banana plantations and in Punta Coquitos, in the region of Urabá. Those sentenced were members of a paramilitary organization; they include: Ricardo Rayo (imprisoned), Mario Zuluaga Espinel (at large), both sentenced to 30 years; Víctor Hugo Martínez Barragán and Mario Usuga Guez, sentenced to 20 years; Luis Alfredo Rubio Rojas, former mayor of Puerto Boyacá (at large), Gonzalo Pérez and his sons Henry and Marcelo (murdered), Fidel Antonio Castaño Gil (at large), Adán Rojas Ospino, Hernán Giraldo Serna and Reinel Rojas, all sentenced to 20 years.

Iveth Cecilia Lafaurie Perdomo: Municipal judge from Pailitas (Cesar). On 23 November 1991, Lafaurie, along with the town mayor, treasurer, municipal controller (*personero*), secretary of education and sports and several councilpersons were kidnapped by the Camilo Torres Restrepo column of the ELN guerrillas. A week later, the public officials were released, but the mayor was forced to resign. According to the press, the reason for the kidnapping was to organize "a trial on responsibilities for administrative and financial mismanagement of Pailitas".

Patricia Larrota: 7th Judge of Criminal Investigations from Tame (Arauca). On 30 October 1991, Larrota received a death threat from individuals presumed to be guerrillas. Despite the gravity of the threats and the fact that she was accorded special permission to leave town, she remained at her job.

Oscar Elias López: Lawyer and legal adviser for the Regional Indian Counsel of Cauca (CRIC) in Santander de Quilchao (Cauca). López was murdered on 30 May 1992 by two unidentified motorcycle gunmen on a main street in town. According to the CRIC, López had been followed for two or three days before his murder.

López had been providing legal advice to indigenous communities in the north of the Cauca department where, in December 1991, more than 20 indigenous people were massacred by a paramilitary group on a farm in the municipality of Caloto.

Luis Eduardo Méndez Bustos: Secretary of the 104th Court of Criminal Investigations. On 2 March 1992, Méndez received telephone calls threatening him and Judge María Victoria Carvajal Paredes with death (see above). These threats are presumed to be related to an appeal presented before this court.

Manuel Mora Cuellar: 26th Public Order Prosecutor in Miraflores (Guaviare). On 8 January 1992, Mora Cuellar was the victim of a murder attempt along with Miraflores Judge Carlos Vaquero Torres, Police Captain Miguel Rojas Bojaca, the head of the Public Order Investigations Unit and a police agent. These persons were part of a commission that was investigating the murder of a judge. They were attacked by presumed members of the FARC guerrillas, who shot at the commission when they were outside the headquarters of the IX Company of Anti-Narcotics Police. Injured during the attack were Captain Rojas Bojaca and agent Luis Romero Sandoval. Their investigation was suspended.

José Gustavo Núñez Suárez: 21st Judge of Criminal Investigations of Saravena (Arauca). On 18 October 1991, Núñez received an "order" to leave town or else he would be tried and executed (*ajusticiado*). This order was delivered to his office by a

man acting as an emissary of the FARC guerrillas operating in the region.

On 13 October 1991, five days before receiving this threat, a man who was killed by the police after murdering a cattle rancher was found to have a list of names of individuals who would be executed. This list contained the name of Judge Núñez.

Given the severity of the threat, Núñez asked the Superior Court in Villavicencio for an immediate transfer or a leave of absence for security reasons. It should be noted that for 20 days Núñez had been acting as replacement for Judge Jaime Cardona Valencia (see above) at the time he received this threat.

Héctor Ojeda: Lawyer and prosecutor of the 75th Court of Criminal Investigations. Ojeda was murdered on 26 November 1991 when a judicial commission was attacked by the FARC guerrillas in La Unión (Usme). For more information, see the above-mentioned case of Luis Miguel Garavito.

Víctor Flówer Ortiz: 1st Criminal Circuit Judge of Cali (Valle del Cauca). On 15 June 1991, Ortiz received a letter in the mail threatening him with death. It stated: "Our justice and defence organization is better armed and trained, it is more efficient, and can act with surprise attacks, thus indicating that it is useless to have bodyguards when the moment of truth arrives." The letter was signed by MAJUC (an unknown and presumably new organization called "Death to Judges").

Ortiz presumed the letter was from a criminal who had been convicted by him on charges of extorsion and who was allegedly an amnestied member of the ELN guerrillas. Ortiz requested that the prisoner be transferred from a jail in Medellín to a jail in Bogotá. The threats stopped after the transfer was made.

Antonio de Jesús Posada: Lawyer and former president of the Superior Court in Cali (Valle del Cauca). Posada was shot on 1 March 1992 on a main street in the city of Cali and died at the hospital. The murder is thought to be connected to Posada's work as a magistrate. At that time, he had opened an administrative corruption case against several individuals who had robbed a Cali-based business. It is worth noting that the previous Superior Judge who heard this case was the victim of a murder attempt in March 1987 in which he was wounded. That judge continues to receive death threats for the work he undertook.

Próspero Quintero: Lawyer, human rights activist and member of the Regional Committee for the Defence of Human Rights in Antioquia, based in Medellín. Quintero received death threats, presumably connected to his work as a civic leader in eastern Antioquia, and was forced to leave the region.

Germán Enrique Samudio: Judge in the municipality of Tunungua (Boyacá). Samudio was shot and wounded on 9 February 1992 in Briceño. The police chief of Boyacá, Colonel Ramón Jaime Samudio, stated that the attacker was able to flee the scene. Meanwhile, ASONAL Judicial, the judges' union, stated that Samudio was being threatened by well-known persons in the region.

Pedro Julio Triana Romero: Employee of the Special Investigations Office of the Attorney-General's Office (*Procuraduría General*) in Bogotá. Triana was shot and killed on 23 May 1992 while returning home from work. He had been assigned to work with office correspondence. Sources from the Attorney-General's Office suggest that he may have been murdered to further intimidate several Special Investigations workers researching allegations of administrative corruption in several government entities.

Eduardo Umaña Mendoza: Defence lawyer for political prisoners and human rights activist in Bogotá. Umaña is a well-known lawyer who also defends victims, and relatives of victims of human rights violations. According to information received by the Centre for the Independence of Judges and Lawyers (CIJL) in late September 1991, the lawyer received a number of anonymous phone calls at his office, known as the "Colectivo de Abogados José Alvear Restrepo" (a human rights organization formed by lawyers), and at his home, warning him to stop his human rights activities or he would be killed.

During October 1991, Umaña received a call informing him that those who had made the threats were on their way to kill him. Umaña left the country in the beginning of October; upon his return to Bogotá he again began receiving death threats.

The Colombian Government has provided Umaña with police protection. The CIJL welcomes the government's response, but remains concerned about the inadequacy of these measures. The death threats seem to come from the intelligence services of the army, and it is believed that the threats stem from Umaña's human rights activities, particularly his involvement in the case of the Fusagasugá massacre, involving members of the XIII Army Brigade.

Mateo Uribe: Magistrate for labour matters of the Superior Court in Medellín (Antioquia). Uribe was threatened with death on 17 November 1991 along with Juan Guillermo Zuluaga and Germán Arbeláez. The three were reviewing an appeal on two labour-related cases against a company whose owner was allegedly involved in drug trafficking. Uribe wrote the opinion against the company. The labour lawyer that represented the workers of the company had been murdered before these threats were made.

Several officials of the Attorney-General's Office (*Procuraduría*) in Bogotá. Several officials were threatened and harassed while working on disciplinary cases involving irregular dealings in budget assignments within the State Council. These cases involve 39 councilpersons and the former mayor of Bogotá, Juan Martín Caicedo Ferrer. The origin of the threats is unknown.

Several officials of the Attorney-General's Office (*Procuraduría*) in Arauca. On 23 May 1992, the Attorney-General (*Procurador General*), Carlos Gustavo Arrieta, announced to the press that several officials in the *Procuraduría* in Arauca were being threatened. They were investigating a case of embezzlement of the municipal budget. Their investigation led them to file over 30 charges against the former mayor of the town, José Gregorio González Cisneros. The Administrative Security Directorate is providing bodyguards for the threatened officials.

Several officials of the Attorney-General's Office for Civil Affairs in Bogotá. On 26 May 1992, several officials were threatened and received announcements to their own funerals (*sufragios*). The threats were apparently related to an investigation into administrative irregularities found in a state-run pension plan known as CAJANAL.

Juan Guillermo Zuluaga: Magistrate for labour matters of the Superior Court in Medellín (Antioquia). On 17 November 1991, he received death threats, along with two other colleagues, in a case against a company whose owner was involved in drug trafficking. For more information, please see the above-mentioned case of Mateo Uribe.

The following are cases in which members of the legal profession have been subjected to threats, attacks, "disappearance" and murder. However, we are unable to obtain sufficient information about the cases to determine whether or not the attacks were related to the lawyers' or judges' professional activities.

Rodolfo Alvarez Ruiz: Lawyer in Cali (Valle del Cauca). On 9 January 1992, as Alvarez was watching television with his family, a man entered the house and shot him. Alvarez died at the hospital; his sister was wounded.

José Wîlmar Correa Restrepo: Lawyer in Cali (Valle del Cauca). On 30 November 1991, as Correa was leaving a restaurant with some friends, a man shot him and escaped in a car. Correa died at the hospital.

Mirella Luz Gómez Fernández: Lawyer in Cali (Valle del Cauca). In early January 1992, Gómez disappeared from her house. Her body was found in the Cauca River near the municipality of Puerto Tejada.

César Augusto Jiménez Quinceno: Lawyer in Bogotá. He was shot and killed in downtown Bogotá on 12 June 1991. The police reported that the assailants were riding a motorcycle.

José Alonso Pérez Vélez: Lawyer in Medellín (Antioquia). Pérez was murdered on 26 March 1992 by several assailants in the western end of the city of Medellín.

Eduardo Enrique Rueda Lemus: Lawyer in Medellín (Antioquia). On 27 January 1992, several men burst into Rueda's

office and shot him to death. The assailants were able to flee the scene of the crime.

Mauricio Valencia López: Magistrate and President of the Superior Court in Cali (Valle del Cauca). On 24 September 1991, as Valencia spoke to the press about the death of his colleague Fabiola Borrero Viuda de Campo (see case below), he revealed that he had received anonymous threats against his life.

Alvaro Valencia Rosero: Lawyer in Cali (Valle del Cauca). On 28 November 1991, Valencia was talking to a colleague in the street when shooting began. Both were injured along with two other people. Valencia died at the hospital.

Hugo Varela Mondragón: Lawyer in Palmira (Valle del Cauca), journalist and President of the National Body of Community Housing Organizations (*Central Nacional de Organizaciones de Vivienda Popular*). On 21 April 1992, armed men who identified themselves as members of the police intelligence agency F-2, detained Varela. Witnesses say that he was forced into a vehicle and taken to an unknown destination. On 22 April 1992, his lifeless body was found close to the community of Puente Vélez, municipality of Jamundí, reportedly indicating signs of torture.

The motive for his murder is not clear. Along with the activities listed above, Varela had also worked as a member of the commission set up by former president Belisario Betancur to negotiate peace with the armed opposition groups in Colombia.

Several Magistrates of the Superior Court in Cali (Valle del Cauca). Magistrate Mauricio Valencia López (see above)

announced to the press on 24 September 1991 that several magistrates of the Superior Court in Cali had received death threats and that an anonymous note had been left at the Mayor's Office which stated that the Municipal Palace of Justice would be bombed.

Alberto Vera Paloma: Lawyer in Barrancabermeja (Santander). On 30 October 1991, Vera was shot and killed by two motorcycle gunmen who were later captured by the police. However, their names and the motives for the murder were not made public.

Henio Vidarte Benavídez: Lawyer in Cali (Valle del Cauca). Vidarte was also Secretary of the Cali office of the Nuevo Liberalismo political movement. On 8 January 1992, Vidarte was forced into a car in the Junín neighbourhood of the city by several armed men.

CZECHOLSOVAKIA

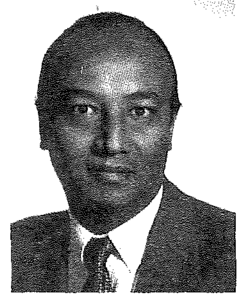
Eve Burianovej, Ladislav Kuoirkovej, Jaroslavovi Novotnemu, and **Janovi Pelikanovi**: Judges. These are four of the eight judges accused by the Prosecutor General for decisions they made in 1982. Five of the judges still hold judicial office. The judges were charged in December 1991 and January 1992 with "misuse of power of the public functionary", in accordance with Section 158(1) (2) of the Czechoslovak Penal Code. This provision states: "Every public functionary, who with an intent to cause damage to anybody, exercises his power in a way contradicting a law and causes therefore considerable damage or another serious effect shall be punished by imprisonment from three to 10 years." Judges are included within the term "public functionary".

The charges against the judges are based on decisions made by them in 1981 and 1982, when they rejected the appeal of dissidents for release from custody. The dissidents had been sentenced to 10 years. The Public Prosecutor General now claims that the judges did so, "although it was evident from the records and the circumstances of the case that there were no grounds for custody at the time of the court's decision". The decision to prosecute was made without any initial intrajudicial investigation, disciplinary proceedings or hearings of the respective judges.

DJIBOUTI

In 1978, one year following Djibouti's independence, an Executive Ordinance was passed to establish special national security courts. The courts are authorized to hear cases involving espionage, treason, acts which threaten the public order or acts against the "interest of the Republic". The Ordinance contravenes Djibouti's Constitution which stipulates that the Parliament - not the executive branch - holds the power to establish new courts.

The Ordinance requires that a member of the executive branch, who is not a professional magistrate, preside over the trials. Magistrates are appointed to these courts on an annual basis by decree. The following case illustrates how the courts function.



Aref Mohamed Aref

Aref Mohamed Aref: Lawyer at the Djibouti Bar. Aref, a well-known human rights lawyer, was arrested on 13 January 1991, together with his uncle Ali Aref Bourhan, the former prime minister of Djibouti and a prominent government opponent.

Aref was arrested at the Palace of Justice while his office and home were thoroughly searched. He was taken into custody and held for 36 hours in a dark damp, cell, without food, water or a place to sleep.

On 5 July 1992, Aref was tried before a special national security court allegedly for an attempted *coup d'etat* . Despite the charged atmosphere and the shortcomings in the proceedings, Aref was acquitted after 18 months. His uncle, however, was sentenced to 10 years solitary confinement. The International Commission of Jurists (ICJ) and its Centre for the Independence of Judges and Lawyers (CIJL) sent French lawyer Béatrice Séne to observe the trial.

ECUADOR

César Anibal Banda Batalles: Lawyer and head of the Legal Social Defence Project of Defence for Children International in Ecuador, and **Ramiro Honorato Roman Marquez**: Lawyer with the Ecumenical Human Rights Commission. On 4 February 1992, the Centre for the Independence of Judges and Lawyers (CIJL) intervened with the Government of Ecuador to express its deep concern over the death threats received by Banda Batalles and Roman Marquez. The lawyers were representing the interests of Carlos Santiago Restrepo Arismendi (17 years old) and Pedro Andres Restrepo Arismendi (15 years old), two Colombian citizens residing in Ecuador who disappeared on 8 January 1989. Since November 1991, Banda Batalles and Roman Marquez have been handling the legal action brought by the parents. The previous lawyers received threats which caused them to withdraw from the case.

The disappearance is being considered by the Supreme Court of Justice. Thirty-two defendants have been implicated in the case, including two former government ministers and numerous officials and ex-officials of the police and armed forces.

Banda Batalles and Roman Marquez began receiving death threats shortly after becoming involved in the case. The threats were delivered by telephone and warned the lawyers to withdraw from the case. Banda Batalles received threats almost daily. Additionally, both lawyers were threatened by both uniformed and plainclothes police officers. The office of Defence for Children International in Ecuador also received threatening telephone calls, at the rate of approximately one per week, during the same period.

EGYPT

The regular judiciary in Egypt maintains a degree of independence from the executive branch. However, under the state of emergency invoked following the October 1981 assassination of President Anwar Sadat, legislation was enacted to create exceptional tribunals. This exceptional system of justice infringes upon the independence of the judiciary and affects the proper functioning of the legal profession. The state of emergency has been in effect in Egypt since 1981. In May 1991, the People's Assembly voted to extend it and the President's emergency powers until 30 June 1994.

The Regular Judiciary

Under the regular court system, criminal cases are heard by panels of judges in public trials. The criminal procedure used in these courts requires that arrested persons be charged with specific offences, have the right to a judicial determination of the legality of the arrest, be formally charged within 48 hours of arrest or failing this, be released.

Judges in the regular courts are appointed by the President of the Republic, based on nominations from the High Council of the Judiciary, a constitutional body whose purpose is to ensure the independence of the judiciary. Similar in nature to the French system, the Council is composed of senior judges, lawyers, and law professors, and is chaired by the President of the Court of Cassation. It regulates judicial promotions, salaries, transfers and disciplinary actions.

During the course of 1991, the ordinary courts have ruled on a number of cases which examine Egypt's respect of international human rights obligations. For example, the Supreme Administrative Court in the Conseil d'Etat overruled Egypt's electoral law and ordered the dissolution of the People's Assembly, elected under this law. The court based its decision on the belief that the electoral law discriminated against independent candidates and unduly infringed on the freedom of expression. In another attempt to safeguard this freedom in Egypt, the court approved the showing of **Darb el Hawa**, a film previously banned in Egypt for eight years. In justifying its decision, the court cited Article 19 of the International Covenant on Civil and Political Rights (ICCPR), which guarantees freedom of expression.

The Exceptional Tribunals

The Emergency Law provisions assign powers to the executive branch that are traditionally exercised by the regular judiciary. For example, the Minister of the Interior may detain a person without charge for up to 90 days. Furthermore, although Article 71 of the Egyptian Constitution allows a detainee to appeal his detention within 24 hours, this constitutional provision does not apply in the case of administrative detainees. Under the Egyptian Emergency Law, administrative detainees must wait 30 days before appealing.

Also authorized to operate in Egypt are two special tribunals with criminal jurisdiction. These are the Court of Ethics and the State Security Courts. Created by former president Sadat to quell opposition, the Court of Ethics hears cases based on

charges such as inciting youth "to depart from religious values and loyalty to the homeland".

The State Security Courts have jurisdiction over serious offences under both the Emergency Law and the Penal Code. Three judges preside over upper and lower-division tribunals, however, two military officers may be added by presidential decree to the upper-division tribunal. When an indictment is made under the Emergency Law, the court is designated as an Emergency State Security Court. There is no method of appeal in such cases. However, decisions of the Emergency State Security Court must be confirmed by the President, who may amend, commute, or cancel a sentence, or order a retrial.

The State Security Courts continue to interfere with the judiciary's attempts to protect human rights, including the right to freedom of expression. These tribunals also deal with cases that do not involve security matters. For example, the State Security Court in Cairo sentenced Ala' Hamid, a well-known Egyptian author, and his publisher to eight years' imprisonment for the publication of his book, *A Margin in a Man's Mind*. He was accused of undermining the Islamic faith. The decision is not subject to judicial appeal.

The Anti-Terrorism Law

In June 1992, the President of the Republic proposed an Anti-Terrorism Law, reportedly to combat the growth of religious fundamentalism in Egypt. The law proposes to amend the Penal Code

by broadening the definition of the crime of "terrorism". It also mandates public prosecutors to exercise certain powers presently reserved for judges, including authorizing detentions, searches, and confiscations. Currently, these measures are not subject to judicial review.

Negad El Borea'i

Negad El Borae'i: Lawyer and member of the Board of Trustees of the Egyptian Organization for Human Rights (EOHR). While El Borae'i was travelling from Cairo Airport on 22 November 1991, he was detained there and questioned for one and a half hours by intelligence officers from the State Security Police. El Borae'i was on his way to Kuwait to investigate human rights violations as a member of an EOHR fact-finding mission. Before they would allow him to travel, the officers forced him to leave behind reports he was carrying which documented human rights offences in Iraq and Kuwait.

Upon his return to Cairo on 26 November 1991, El Borae'i was again detained for an hour while his papers were searched, although this time nothing was confiscated.

Abdallah Khalil

Abdallah Khalil: Lawyer and member of the Board of Trustees of EOHR, and **Amir Salem**: Lawyer and Director of the Legal Research and Resource Center for Human Rights. On 4 December 1991, Khalil and Salem were

detained for several hours at Cairo Airport upon their return from a human rights symposium which had been held in Tunisia. Their passports were taken and the State Security Intelligence Police prevented them from leaving the airport until their papers had been searched.

Al-Shadhly Ebeid Al-Saghir: Lawyer. Al-Saghir was arrested on 9 September 1991, was held under administrative detention in Tora prison and was tortured until the time of his release in November 1991. No formal reason was given for Al-Saghir's arrest, although it is believed that it may have been in response to his representation of prisoners and detainees from the Islamic opposition.

Al-Saghir was arrested with four other men from the Red Sea coastal town of Safaga. The five men were immediately taken to the Central Security Forces Camp in Ghurada where Al-Saghir was subjected to hanging by his limbs, electric shocks, and beatings. This was the fourth time Al-Saghir had been placed under administrative detention since 1986, and the second time in 1991. He had been arrested on 7 June 1991, and detained for 10 days at the Security Forces Camp in Ghurada. There were reportedly clear indications on his body that he had been tortured. At that time, the EOHR submitted a complaint to the Public Prosecutor's office, requesting that Al-Saghir be examined by a forensic expert. However, this examination did not take place until after his release. No action was taken against those who were responsible for torturing him.

On 21 October 1991, during Al-Saghir's latest detention, the EOHR submitted a new complaint to the Public Prosecutor. There is no indication that this complaint was ever seriously considered. The Centre for the Independence of Judges and Lawyers (CIJL) also intervened on behalf of Al-Saghir,

requesting that the incidents of torture be thoroughly investigated and that he be given the benefits of due process or released immediately.

Al-Saghir appealed his administrative detention one month after his arrest, in accordance with the provisions of the Egyptian Emergency Law. As a result, on 23 October 1991, the State Security Court ordered his release. Since the Emergency Law allows the Minister of the Interior to appeal this decision within 15 days, Al-Saghir was kept in custody pending the decision of the Minister. Al-Saghir was released in mid-November following a second court decision ordering his release.

EL SALVADOR

Luis Edgar Morales Joya: Judge. On 9 August 1992, an unidentified individual threw a hand grenade at Morales while he was sitting in his car outside his home in San Salvador. The grenade exploded underneath his car causing serious injuries to his feet and legs. One week before the attack, a person claiming to be a member of the opposition group, Farabundo Marti Front for the National Liberation (FMLN), had telephoned the judge's court to inform Morales that he had 30 days to leave the country.

The attack has not been adequately investigated by Salvadoran authorities. The Special Investigative Unit waited until one week after the attack before taking Morales' statement. Moreover, two weeks after the incident, Judge Morales still had not been questioned. He therefore contacted the justices of the peace responsible for his case to offer information. Morales thereafter left El Salvador.

As a judge of the First Criminal Court, Morales had presided over a number of sensitive cases. Among these was a highly publicized trial involving the murder of Herbert Anaya, Coordinator of the non-governmental Human Rights Commission. The human rights organizations and Anaya's widow believed security forces to be responsible for the murder. However, in 1987, a member of FMLN was arrested as a suspect and confessed to the crime. This suspect later claimed that he had been coerced into making the confession. In 1990, Morales dismissed the case on evidentiary grounds. The Court of Appeals overruled Morales' dismissal of the case, and later that year Morales was demoted from the criminal court to a traffic court. The defendant in the Anaya murder trial was convicted in October 1991.

Edward Sidney Blanco Reyes and **Alvaro Henry Campos Solorzano**: Lawyers and former prosecutors (see *Attacks on Justice 1990-1991*). Blanco and Campos were the principal prosecutors in a trial involving the murder of six Jesuit priests and two women employees in November 1989. On 8 January 1991, Blanco and Campos resigned from the Prosecutor's Office in protest, allegedly because the Attorney-General had instructed them not to press charges against certain military leaders and had barred them from bringing charges of perjury against military witnesses. On 6 May 1991, Blanco and Campos re-entered the case on behalf of the victim's families. In a document submitted to the court, the two lawyers alleged that the leadership of the armed forces were involved in the killing of the Jesuits. The following day the Minister of Defence, General Rene Ponce, threatened to sue Blanco and Campos for slander. After the conclusion of the trial in September 1991, Blanco and Campos fled to Spain in fear of persecution.

GHANA

Ghana has a dual system of justice in which both sections are subject to the influence of the Provisional National Defence Council (PNDC), the military government currently in power. The first part of the system is a pre-revolutionary court founded on British legal principles. Trials are public, and defendants have a right to be present, to be represented by a lawyer, to present evidence and to cross-examine witnesses. The government's authority to discipline judges and its discretion in regulating judicial tenure, however, undermines any independence in this branch. For example, Ghana law enforces a compulsory retirement age of 65 for all justices of the superior courts, including the Chief Justice. The PNDC may nonetheless extend the tenure of any judge who reaches retirement age. According to prominent lawyers in Ghana, the PNDC has rejected applications for tenure extensions to justices with reputations for being outspoken or who have adjudicated against the government's interests. This places pressure on judges who are nearing retirement age to rule in the state's favour. The PNDC also has the power to summarily dismiss judges merely on the basis of "the public interest".

The other section of the court system is made up of more stringently government-controlled "public tribunals". The tribunals were established by the PNDC in 1982 to bypass the regular court system and speed up the judicial process by restricting the procedural rights of defendants. This structure directly contravenes both articles 3 and 5 of the

United Nations Basic Principles on the Independence of the Judiciary.

Article 3 states that: "The judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law." Despite this principle, many serious cases are removed from the judiciary without its approval.

Article 5 states that: "Everyone shall have the right to be tried by ordinary courts or tribunals 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." Yet, it is specifically this lack of due process which distinguishes the public tribunals from the regular courts. Individuals tried by the public tribunals are afforded no procedural protection in the interest of bringing about a speedy conclusion to the trials.

Public tribunals are predominantly used to try serious cases, including murder and sensitive political cases. Moreover, under PNDC Law 78, the public tribunals may impose the death penalty for any crime specified as a capital offence by the PNDC, even if the crime is not punishable by death under regular statutes. The only appeal from a public tribunal is to a separate appellate tribunal, the National Appeals Tribunal, which was not established until 1985. The public tribunals are not subject to the appellate and supervisory jurisdiction of the Superior Court of Judicature, including the High Court, the Court of Appeal, and the Supreme Court.

In an August 1991 interview in *West Africa* magazine, the Chief Justice of Ghana, Justice Philip Edward Archer, did not question the validity of these public tribunals. Justice Archer believes that these courts should be retained because they relieve the regular courts of their work and one need not "go through the whole elaborate process of committal proceedings and trial by jury". The only problem he saw with this structure was the dichotomy of the judicial system because "it is not very nice to have two separate legal systems. If the highest court in the land is the Supreme Court, then all appeals must lie before it, so that all legal principles are enunciated at the top." In Justice Archer's view, the "independence of the judiciary demands that judges not be subject to outside control and that they be free to try cases considering the available evidence and deliver judgement according to their conscience. I can say the Ghana bench has enjoyed this independence."

For the head of the judiciary to claim independence while denying the existence of an obvious encroachment on judicial functions, such as the removal of important cases from the review of experienced justices, is strong evidence of a lack of judicial independence in Ghana. Justice Archer's view not only fails to take into account the problem of government-controlled "tribunals", which offer no procedural protections, but also fails to acknowledge the impact of government control of judicial posts on judicial independence. This manipulation of the judicial system affects individuals in all aspects of their lives. As the following cases illustrate, even lawyers have been subjected to this lack of due process in Ghana.

Kwesi Armah: Lawyer and former government minister. Armah has been held in administrative detention without charge or trial since 25 October 1991. On 15 November 1991, his detention was authorized by a Preventive Custody Order. Armah's arrest is apparently in response to an article in the *Christian Chronicle* which he wrote with Nana Okutwer Bekoe, a former leader of the ruling party under the previous government. Both were arrested on 25 October 1991 by officers of the Bureau of National Investigation (BNI), the security police. Although the Secretary for the Interior, Nana Akuoko Sarpong, stated on 19 December 1991 that Armah and the editor of the *Chronicle,* George Naykene, were being investigated on charges of criminal libel, charges have yet to be brought against them.

The Preventive Custody Law, PNDC Law 4 of 1982, permits unlimited administrative detention "in the interest of national security". Courts are effectively barred from inquiring into detentions under PNDC Law 4 by the Habeas Corpus (Amendment) Law, PNDC Law 91 of 1984, which removed the right of habeas corpus. A habeas corpus petition for Armah and Naykene was dismissed by a high court in Accra on the grounds that the court had no power under PNDC Law 91 to examine the application. Political detainees have been held under Preventive Custody Orders for long periods in cases in which the authorities were apparently unable to substantiate their accusations.

Both Armah and Naykene were questioned about the article in the *Chronicle* which publicized alleged misconduct involving members of the Armed Forces Ruling Council (AFRC), which is the military government that held power from June to September 1979 following a coup. Leading members of the AFRC currently head the government's ruling party, the PNDC. The article alleged that the AFRC had profited from an illegal foreign loan obtained by the previous ruling government, the People's National Party (PNP). Armah was the legal adviser to the PNP and had been sentenced to nine years' imprisonment in October 1982 for his part in the affair. He was released in October 1989.

Bekoe was released on 28 October 1991 due to severe health problems. Armah, who has also experienced health problems, has been held since mid-February 1992 in the police hospital in Accra, and has been receiving medical treatment for hypertension.

John Ndebugre: Lawyer, former government minister, and General Secretary of the Movement for Freedom and Justice. On 10 December 1991, Ndebugre was arrested and detained without charge, apparently for not standing up promptly when the national anthem was played. Ndebugre was held in administrative detention under the Preventive Custody Law, which allows indefinite detention without charge or trial of any person suspected of threatening the security of the state. The arrest occurred in Bawku, Upper East Region in northern Ghana after a traditional rally that had been attended by the head of State, Flight-Lieutenant Jerry Rawlings, who is Chairman of the Provisional National Defence Council (PNDC). Flight-Lieutenant Rawlings' bodyguards arrested Ndebugre, reportedly beat him, took him into custody, brutally shaved his head, and forced him to practise standing up for the national anthem. Ndebugre was released unconditionally on 18 December 1991.

GUATEMALA

Ernesto Rolando Corzantes Cruz: Lawyer and clerk in the 4th Criminal Court of Investigation of First Instance and **Jose Lopez Mendoza**: Lawyer and head of the Attorney-General's Office of the Public Ministry. Both lawyers are involved in the judicial investigation into the murder of anthropologist Myrna Mack Chang. They have been receiving death threats since Noel de Jesus Beteta Alvarez, a former sergeant who served with the Presidential High Command, was charged with the crime. Mack Chang was killed in Guatemala City under circumstances suggesting security forces involvement.

Lopez Mendoza began receiving telephone threats at his home and office after he participated in a reconstruction of the murder. The caller threatened: "Be careful on the matter of Beteta, do not dig too deep or you will suffer the consequences." On 31 December 1991, Corzantes Cruz was threatened by a man he recognized as a member of the Presidential High Command. Later that day, he received an anonymous telephone threat, warning him: "Be careful, we are going to kill you."

HAITI

Bernard Benoit: Lawyer, and **Pierre Charles Douze**: Justice of the Peace. On 15 December 1991, Benoit and Douze were illegally arrested by soldiers in the town of Arcahaie. They were accused of belonging to a group that favours the return of Jean Bertrand Aristide, Haiti's democratically elected President, who was forced into exile following a military coup on 29 September 1991. Benoit and Douze are reportedly still in detention.

Roger Cadichon: Justice of the Peace. On 2 December 1991, Cadichon was arrested by soldiers without a warrant and held incommunicado in the town jail. Cadichon remains in detention.

Emmanuel Clairsaint, **Knox Coq**, and **Osney Févry**: Lawyers. On 18 September 1991, these lawyers were reportedly arrested during a meeting with then Minister of Justice Karl Auguste at the Ministry of Justice. The three were detained in the National Penitentiary for two days and then released. At the time of their arrest they had been representing Roland Seide on drug trafficking charges. The lawyers were charged with creating a "public disorder" but have not been prosecuted.

In June 1991, Févry withdrew from representing Roger Lafontant, the alleged mastermind of the unsuccessful 6 January 1991 coup attempt. Févry stated that he withdrew because of the constant threats he and his law firm had received.

Paul Yves Joseph: Lawyer. Joseph has been receiving threats since January 1992, soon after he began representing the family

of Jean Claude Museau, a youth who died in detention as a result of torture. On 5 May 1992, heavily armed soldiers came to Joseph's house which he also uses as a law office and a school. They declined to enter the premises after Joseph insisted that they first produce a warrant. The soldiers left his house after threatening him. On 30 May 1992, army soldiers returned to the house while neither Joseph nor his family were there and destroyed papers and files. Joseph has gone into hiding as a result of these incidents.

Jaquelin Kébreau: Judge. Kébreau was arrested in the town of Hinche sometime between 1 and 4 November 1991. Kébreau had been nominated to the bench by President Aristide. He had previously worked at the Catholic Church's Commission for Justice and Peace. Kébreau has been released, but the date and circumstances of his release are unknown.

Jean Claude Nord: Lawyer and Secretary General of the Haitian League for Human Rights. On 12 October 1991, Nord was detained and questioned by members of the Haitian Armed Forces. He was accused of being a terrorist and of calling meetings to plot against the army. His house was also illegally entered and searched by the military without a warrant. Nord did not go to his office for several months following the September coup.

Raynard Pierre: Lawyer and Executive Director of the Lafontant Joseph Centre for the Promotion of Human Rights. In October 1991, Pierre was unable to meet a delegation from the Organization of American States because his hotel was

surrounded by soldiers and opponents of President Aristide. Instead, he sent the delegation a telefax reporting violations that the Lafontant Joseph Centre had compiled. Soon after, armed soldiers came to the Centre in search of Pierre, but he had escaped and gone into hiding. On 12 November 1991, armed civilians and soldiers went to the home of a senior employee of the Centre to demand the whereabouts of Pierre. As of March 1992, Pierre remains in hiding.

INDIA

Justice Ajit Singh Bains: Retired judge of the Punjab and Haryana High Court and founder and Chairman of the Punjab Human Rights Organization. On 3 April 1992, Bains was arrested at approximately 9 a.m. by Chandigarh and Punjab police. During the arrest, Bains was handcuffed, in violation of a decision of the Supreme Court of India which specifies that no one arrested should be handcuffed unless there is a real danger of his escaping from custody. According to the *Times of India*, the Punjab Government admitted to the Supreme Court on 10 July 1992 that Bains was, in fact, handcuffed at the time of his arrest. However, the Advocate General of Punjab, Mr. G.K. Chatrath, informed the court that the police officer who handcuffed Bains had been penalized by having his two-year service "forfeited".

Subsequent to his arrest, Bains was taken to the police post in Sector 11 where he was reportedly ill-treated by the police and by P.S. Malik, an inspector of the CIA staff. During the course of the day and the night, he was moved repeatedly and was not permitted to contact his family or a lawyer.

On the morning of 4 April 1992, Bains was taken to an interrogation centre in Ropar and was questioned by CIA Inspector Jaspal Singh and his assistant, Sub-Inspector Harpal Singh. During the course of this interrogation, Bains was subjected to further ill-treatment and was allegedly threatened with torture if he did not cooperate.

That afternoon, police and paramilitary forces brought Bains to his house in Chandigarh and forced him to stand handcuffed in the sun for several hours while his house was being searched. His family was away at the time, attempting to locate him. During the

search, the police removed books, papers and files from Bains' study and also allegedly took some jewellery and cash.

On 5 April 1992, Bains was brought before Karam S. Singh, Deputy Commissioner of Ropar, who remanded him into police custody for two days.

Mrs. Rachpal Kaur Bains filed a writ of habeas corpus on 6 April 1992 in the High Court of Punjab and Haryana. Justice J.B. Garg, who heard the petition, appointed warrant officer S.S. Aulakh to determine if Bains was in the custody of the Ropar police. He asked that Bains be produced in court and that the court be furnished with Aulakh's report before 8 April 1992.

On 8 April, Bains was not produced in court, in violation of the court order of 6 April. Nevertheless, Bains' petition was still heard and was subsequently dismissed.

Mrs. Rachpal Kaur Bains later filed proceedings in the Supreme Court of India, challenging the legality of the continued detention of her husband. On 16 June 1992, the case was adjourned until 9 July 1992, in order for the government to prepare a counter affidavit. The government was ordered to provide minimum facilities, proper food, and medical attention to Bains during his detention in the Chandigarh jail.

On 9 July 1992, the Supreme Court refused to rule on the validity of Bains' detention. The court is scheduled to hear the matter on the merits on 15 July 1992.

Hem Lall Bhandari: Lawyer who practiced in the Bombay High Court, now Convener of the Citizens for Democracy. Bhandari was arrested at 11:30 p.m. on 24 October 1991 while at his home. Nearly 50 police officers reportedly participated in the arrest which was made without a warrant. Bhandari was never

informed of the grounds for his arrest or detention but was simply told by the police that he was charged with sedition, in accordance with Section 124A of the 1860 Indian Penal Code. During the arrest, the police searched Bhandari's home for five hours and removed files, books, and nearly 200 volumes of law books. In the detention centre, Bhandari was locked in a cement cell without light, ventilation, or sanitary facilities.

The following day, Bhandari was handcuffed and taken through the streets to the court. Bhandari was then produced before the Executive Magistrate who remanded him into police custody without giving him a chance to speak. From 25 October to 5 November 1991, Bhandari was allegedly tortured every night by police officers. As a result of the torture, Bhandari's hearing in his right ear is now impaired, his spleen was ruptured and his right hand was almost fractured. In addition, he was reportedly denied medical aid, access to sanitary facilities and was poorly fed.

During the period of his detention, visitors and family were not allowed to see Bhandari, nor was he allowed to consult a lawyer. Furthermore, after the expiration of the initial remand of five days, he was never produced before a judge or a magistrate.

On 7 November 1991, Bhandari was transferred to Sikkim State Prison. Access to medical facilities continued to be denied. Bhandari remained in incommunicado detention until 22 November 1991, when two lawyers from the Darjeeling District of West Bengal moved a bail petition in the Court of Additional Sessions. The petition was granted on the conditions that Bhandari report to the Gangtok Police Station every day (this condition has since been waived) and that he not leave the State of Sikkim without a court order.

Furthermore, on 25 October 1991, Bhandari's home was reportedly ransacked. All of his files and documents were destroyed or removed and his library was ruined.

Bhandari has also been the victim of harassment and persecution on several other occasions.

On 29 October 1986, Bhandari was reportedly arrested by three Sikkim Police officers pursuant to an order of detention passed by the Government of Sikkim under Section 3 of the National Security Act of 1980. On 30 October 1986, the Bombay High Court, per Sawant J., stayed the order of detention, although Bhandari was reportedly taken to New Delhi in defiance of the court order. On 1 November 1986, the Supreme Court directed Bhandari's release on bail and finally on 28 January 1987, the apex court quashed the order of detention on the grounds that the State of Sikkim had violated his personal liberties under articles 21 and 22 of the Constitution of India and the legal safeguards under Section 8 of the National Security Act of 1980.

On 6 June 1990, Bhandari was reportedly abducted from his home. Yet he was able to escape when the vehicle's tire was punctured and his captors left to search for a new tire. Bhandari reported the incident to the relevant authoritites, but apparently no action was taken.

Nara Prabhadara Reddy: Lawyer, Secretary of the District Bar Association and District Convenor of the Andhra Pradesh Civil Liberties Committee in Warangal, Andhra Pradesh, India. Reddy was shot and killed by unidentified gunmen at his home on 7 December 1991. It is alleged that the killers may have been members of the Warangal Police Force. Although the killing was immediately reported to the local police station, which was very close to Reddy's house, the police did not arrive until several hours later. Upon their arrival, the police reportedly sealed off the house, removed the body and cleaned the bloodstains before allowing the district magistrate and lawyer to enter the house. No

inquest has been held into the killing, despite provisions of the Code of Criminal Procedure which make such inquests mandatory for all killings which are accidental or the result of unnatural causes. No arrests have been made.

In 1990, Reddy and Dr. B. Ramulu revived the Warangal district unit of the Andhra Pradesh Civil Liberties Committee (APCLC), which had been inactive since the murder of District President, Dr. Ramanadham in 1985. As a member of APCLC, Reddy became known for providing legal aid and assistance to individuals accused of being "Naxalite" activists. Reddy often defended persons charged under the Terrorist and Disruptive Activities (Prevention) Act (TADA) and was frequently successful in getting them released on bail. In addition, much of this work was reportedly done for free as many of his clients were poor peasants and labourers.

In 1990, Reddy was charged along with 700 villagers with "illegally occupying lands" following a demonstration which took place in December 1990. When the local people asked the D.S.P. Jangaon why Reddy had been included in the case, they were reportedly told: "We take so much trouble to book people in TADA cases and arrest them and this man gets them released free of charge in as little time as it takes us to type the remand papers. Do you expect us to keep quiet?"

Although the charges against Reddy were dropped, he soon began to receive threats informing him that he was on a police "hit list". One caller reportedly told him: "There are 17 names, you are on the top."

IRAN

Although Article 35 of the Iranian Constitution guarantees the right to legal counsel, defendants before Islamic Revolutionary Courts are regularly denied legal representation. In October 1991, a new Parliamentary Act was approved which appeared to guarantee a defendant's right to legal counsel. The law provides that "[t]he parties to a legal case have the right to appoint an attorney and all courts which are formed according to the Law are obliged to receive the attorney." In practice, however, the Act may fall below international standards for the right to legal counsel. It refers only to an "attorney", who apparently need not be a legally qualified person. Furthermore, no mention is made of a defendant's right to be assigned a lawyer. Thus, the law fails to meet the requirements of the International Covenant on Civil and Political Rights (ICCPR) to which Iran is a state party.

The Iranian Government also exerts control over the Iranian Bar Association. Although the Law on the Independence of the Bar Association is still in effect, the government presently controls the Bar's offices, library, and funds. Iranian lawyers are also unable to freely elect their own representatives. Elections of members of the Bar Council were scheduled to take place on 9 October 1991 but were postponed indefinitely because a law on the reform of the Bar Association was passed on 8 October 1991, creating a "Reconstruction Council" to dismiss certain lawyers from the legal profession before any elections could be held.

Ali Ardalan: Lawyer and former head of the Executive Committee of the Association for the Defence of Freedom and Sovereignty of the Iranian Nation (see *Attacks on Justice 1990-1991*). The Centre for the Independence of Judges and Lawyers (CIJL) continues to be concerned about the case of Ardalan. Recent reports indicate that 75-year-old Ardalan was sentenced to three years' imprisonment at a secret trial held in Evin Prison during late May or June 1991. Ardalan was not represented by legal counsel at the trial, nor were any observers allowed to attend.

Furthermore, there is concern that in late July 1991, Ardalan was transferred from Evin Prison to the Ministry of Intelligence detention centre in central Tehran. The conditions of his detention there are reportedly worse than at Evin Prison. Ardalan is apparently being held in solitary confinement without natural light or sufficient ventilation. There is reason to believe that the move was meant to pressure him into signing a confession and a statement of repentance for his alleged crimes. Ardalan was arrested in June 1990 after signing an open letter to President Rafsanjani that criticized the government's failure to uphold rights and freedoms provided for in the Constitution.

ISRAEL AND THE OCCUPIED TERRITORIES

Lawyers practicing in the territories occupied by Israel since 1967 operate under professional hardships. Immediately after the occupation, Military Order N°. 2 was enacted, establishing a military government in the West Bank and the Gaza Strip. This government assumed authority over the legislative and executive powers, as well as control over the judiciary. Since the occupation, the military has enacted more than 1,369 Military Orders in the West Bank and 1,256 Military Orders in the Gaza Strip. The Military Orders have altered substantially the laws which were in force before the occupation.

The majority of the Military Orders violate Article 64 of the 1949 Fourth Geneva Convention. This provision permits the occupier to pass new laws only if they are necessary for the safety of the occupying forces or if the new provisions benefit the local population. Instead of abiding by the provisions of the Fourth Geneva Convention, the Military Orders enacted since the occupation unnecessarily restrict all aspects of life in the Occupied Territories, including those of a political, economic, social and cultural nature.

The Military Orders grant extensive power to Israeli soldiers. By virtue of Order 378, a soldier of any rank may, without a warrant, enter and search any property and arrest any person upon suspicion that the person has committed an offence. The arrested individual must wait 18 days to appear before a judge. In addition, soldiers have the power

to impose administrative fines and to punish parents for acts committed by their minor children.

Military Order 378 also establishes military courts. Four military courts operate on a daily basis in the Occupied Territories. Military prosecutors have the power to decide whether a case should be handled by a military court or a civil one. Military courts have jurisdiction to examine cases which are not security related, such as taxation and antiquities. These courts are composed of Israeli military officers. A single judge considers offences punishable up to five years' imprisonment. A panel of three judges examines offences punishable up to either life imprisonment or the death penalty. (However, since the occupation, the death penalty has not been imposed in the Occupied Territories.) Only the presiding judge of the panel must possess legal qualifications.

Military Order 378 permits judges to deviate from normal rules of evidence. The main evidence before these courts is normally a detainee's confession, which is often extracted under duress. As the Israeli legal system allows the use of "moderate physical force" to extract confessions, it is difficult to challenge such statements in court. Torture is widely used in Israeli detention centers. Since December 1987, at least 22 individuals have died in custody.

Other military tribunals and objection committees supplement the regular military courts. These tribunals review administrative measures taken by the military authorities, such as deportation, administrative detention (this is detention without charge or trial for a renewable period of one year or less) and land confiscation. These tribunals normally

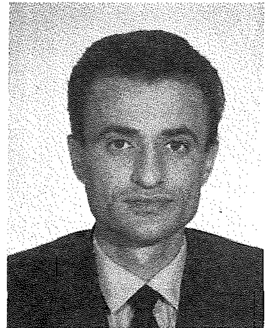
pass recommendations to the military commander, who has the discretion to accept or reject them. The tribunals are also permitted to deviate from normal procedures. For example, military evidence used to prove the guilt of a deportee or of an administrative detainee is submitted in secret. Neither the lawyer nor the client has access to such evidence. This, in effect, reverses the presumption of innocence and seriously infringes upon the right to defence.

Although civilian courts are still in operation in the West Bank, as is clear from the above, military courts seize jurisdiction in matters of Israeli interest. The military officer in charge of the judiciary has even seized the power of the High Council of the Judiciary in selecting, promoting, and disciplining judges. Moreover, the military has denied many requests to establish a professional bar council. Despite the existence of a law which permits the establishment of such a bar, the Israeli military officer in charge of the judiciary continues to assume the powers of the bar.

The structural defects in the legal system operating in the Occupied Territories prevent lawyers from functioning properly. In addition, members of the legal profession are often harassed, insulted or intimidated while performing their duties. The following examples illustrate these trends.

Hussam Arafat: Lawyer from Tulkarem, West Bank. On 2 July 1992, at 10 p.m., Arafat was on his way home. He was stopped at a military checkpoint. He identified himself as a lawyer and gave the soldiers his regular and professional identity

cards, which are issued by the Israeli military government. The soldiers asked him what he was doing out at night. Arafat responded that he was visiting clients in Jerusalem.


Hussam Arafat

The soldiers ordered Arafat to step out of his car. One soldier beat Arafat, then pushed him back inside the car and ordered him to leave.

Soldiers also beat Arafat a few weeks prior to this incident. Late at night the soldiers came to his house in Tulkarem and ordered him to go with them to remove slogans written on a wall outside his house. The soldiers beat Arafat when he refused to go with them.

Jamal Huwaila: Lawyer from the Gaza Strip (see *Attacks on Justice 1990-1991*). On 7 July 1992, Huwaila was representing clients before the Gaza Military Court. While the court was in session, Israeli soldiers ordered everyone to leave the hall, claiming that a detainee had escaped from custody. Consequently, everyone left the room. Huwaila and several other lawyers asked the military judge about their cases. He replied that all cases were adjourned and told the lawyers that they could leave.

As the lawyers were leaving the military compound, a guard at the gate stopped them and ordered them to go back. When they informed the guard that they were lawyers and that the judge had said they could leave, the guard responded that he does not take orders from the judge.

The lawyers went back to the court and sat outside the courtroom. Two guards came and asked them to stand outside in the sun. When the lawyers objected, the guards told them that if they failed to move, they would be forced to do so. Huwaila then told the guards that lawyers are officers of the law and that they should therefore be treated with respect. One guard insulted

Huwaila using suggestive terms, and threatened to beat him. Other guards prevented the soldier from carrying out his threat.

Subhia Jumaa': Lawyer from the Gaza Strip. On 12 October 1991, at 7 p.m., soldiers entered Jumaa's house. The soldiers immediately started to search the house, claiming to be looking for stonethrowers. When they saw Jumaa's 7-year-old son, they attempted to arrest him. When she informed them that she was a lawyer and that the boy was her son who was doing his homework, a soldier pushed her out of the room.

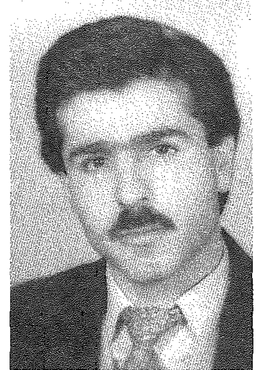
Another soldier started to search Jumaa's desk and began throwing away her files. When she informed him that the files belonged to her clients and that he should not open them, he did not react. The soldier continued to go through the files mixing them together. The soldiers left about 30 minutes later.

Mustafa Miri'

Mustafa Miri' and **Abdel Karim Hannon:** Lawyers from Tulkarem, West Bank. On 24 September 1991, Miri' and Hannon were going to the Nablus Military Court. At the gate, the military guards stopped them. The lawyers showed their professional identity cards. After checking their papers and searching their briefing bags, a guard told Miri' and Hannon that he intended to conduct a body search. When the lawyers objected, the guard began shouting insults at them. As the guard insisted on doing the body search, the lawyers agreed to be searched, fearing that they would not be able to arrive in court on time. The soldier searched the lawyers in a provocative manner.

Objecting to this degrading treatment, all lawyers appearing before the court that day decided to boycott the procedures. They informed the secretariat of the court of their decision. The

secretariat told the lawyers not to worry, stating that they would deal with the matter. When an officer went to the guard and asked him to stop the degrading treatment, the soldier started shouting in Arabic and Hebrew saying: "Dogs. I know how to put you in your place. Nobody is coming in or out of this gate without a search." He then pointed his gun at the lawyers. As a result, the lawyers boycotted the court that day. The next day, the guard was moved to another location.



Abdel Karim Hannon

ITALY

In Italy, the Mafia's increasing threat to the judiciary is a situation of grave concern. The recent assassinations of Judges Giovanni Falcone and Paolo Borsellino reinforced the Mafia's disregard for the Rule of Law and their ability to eliminate those who make them accountable to the legal system. The state has responded vehemently. Mayor Aldo Rizzo of Palermo stated: "It's a war with no limits and we must prepare ourselves to resist. We cannot dupe ourselves into believing this is the end."

In the aftermath of Judge Paolo Borsellino's death, the second judge to be assassinated this year, the government rounded up and jailed hundreds of suspected Mafiosi. Moreover, army units cordoned off Palermo's main prison while 55 Mafia inmates, including leaders Michele Greco and Francesco Madonia, were flown out of Sicily to be dispersed among other Italian penitentiaries. The government's hope was to sever the channels of communication which enable them to run illegal businesses from their cells. The government stated that 2,000 more police officers were on their way to Sicily to contend with the Mafia.

At least eight out of 12 high-profile assassinations since 1971 have involved individuals who render a judicial function. The eight deaths for which the Sicilian Mafia is believed to be responsible are listed below.

Pietro Scaglione: Chief Prosecutor. On 5 May 1971 he was killed with his driver at the cemetery where his wife is buried.

Cesare Terranove: Judge. On 25 September 1979 he was killed with police official, Lenin Mancuso.

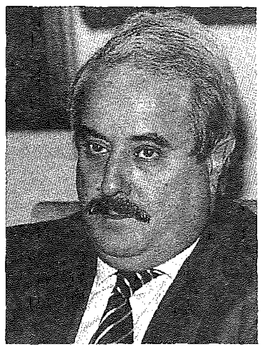
Gaetano Costa: Prosecutor. On 6 August 1980 he was killed while returning home.

Giacomo Montalto: Anti-Mafia Investigator. On 26 January 1983 he was killed at Valderice.

Rocco Chinici: Chief Prosecutor of Palermo. On 29 July 1983 he was killed outside his home, along with two police officers.

Rosario Livatino: Judge (see *Attacks on Justice 1990-1991*). On 21 September 1990 he was killed while driving on the highway.

Giovanni Falcone: Judge. Falcone was appointed head of the new Anti-Mafia Task Force. On 23 May 1992, Falcone was killed when a car bomb exploded near his car on a highway in Sicily. The Mafia is believed to be responsible for the assassination. His wife and three bodyguards were also killed in the incident.



Giovanni Falcone

Falcone had recently been appointed to head a new agency to combat organized crime. He was one of Italy's leading anti-Mafia investigators. In 1984 he was credited with persuading former

Mafioso, Tommaso Buscetta, to confess. The confession led to the arrests of more than 300 members of the Mafia, including leader Michele Greco. During the Greco trial, Falcone escaped an assassination attempt in Sicily.

Paolo Borsellino

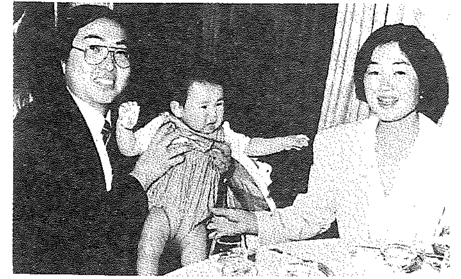
Paolo Borsellino: Judge and Chief Public Prosecutor. After Giovanni Falcone's killing, Borsellino was appointed head of the Anti-Mafia Task Force. On 19 July 1992, less than two months after the Mafia assassination of Falcone, Borsellino was also killed by a car bomb which exploded on the street as he was about to enter his mother's house. Five bodyguards were also killed.

Italian Prime Minister Giuliano Amato said that Borsellino had "feared that the decree strengthening cooperation between the police and the judiciary and lengthening the time for investigation could not be approved in time by Parliament" for the Task Force to be able to function. Amato had assured Borsellino of its passage just a few hours before his death.

In reference to Judge Rosario Livatino's death in September 1990, President of the National Association of Magistrates Raffaele Bertoni said: "Once more a judge has paid with his life for the inertia, the hesitations and the fears of the political powers faced with the onslaught of the Mafia." Borsellino acknowledged before his death that he feared his destiny and had lost "enthusiasm for my job".

JAPAN

Tsutsumi Sakamoto: Lawyer in Yokohama (see *Attacks on Justice 1990-1991*). Sakamoto and his family disappeared from their home on 3 November 1989. Despite an extensive police investigation and the efforts of a national rescue committee of lawyers, no evidence of the family's whereabouts has been found. On 29 May 1992, the General Assembly of the Japan Federation of Bar Associations adopted a resolution that the Sakamoto's case must not be forgotten and that lawyers should continue their efforts to find them and to seek public support.



Tsutsumi Sakamoto with his son Tatsuhiko and his wife Satoko

Takashi Naito: Lawyer and member of the Tokyo Bar Association (see *Attacks on Justice 1990-1991*). Oral proceedings in a civil suit, filed by Naito against the police on charges of unlawful detention, will be completed in August 1992. A judgement is expected on the merits of the case by the end of the year. Naito filed the suit after he was arrested and detained on 17 June 1990 while acting as a legal observer at a demonstration against the US-Japan Security Pact. Naito was detained for 30 hours before being released, following protests filed by the Japan Federation of Bar Associations.

IVORY COAST

On 17 and 18 May 1991, a student meeting was violently dispersed by military troops at the Maracana Stadium on the university campus of Yopougon. Public opinion in the country, inspired by the stand taken by Cardinal Yago, was virtually unanimous that the President should never have repressed the student meeting.

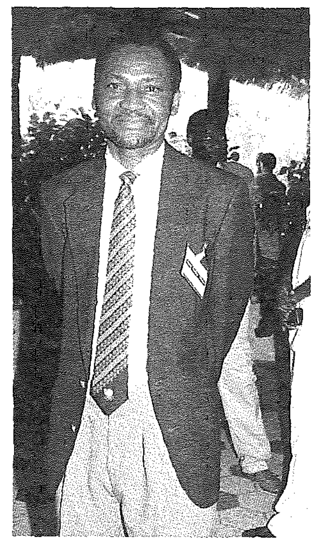
In response to these pressures, the President of the Republic appointed a commission of inquiry to determine accountability for the violence. Despite the recommendations made in the report, the President decided not to sanction those responsible for the events.

In response to the President's decision not to prosecute, several peaceful protest marches were planned by student unions and opposition political parties. On 18 February 1992, the Popular Front of the Ivory Coast (FPI) organized such a march. The Ivory Coast Human Rights League participated. These marches, sought to protest the President's decision and to make appeals for democracy and the respect of human rights. Twenty members of various political parties and of the Ivory Coast Human Rights League were arrested and later brought to trial.

René Degny Segui: Lawyer, President of the Ivory Coast Human Rights League and Dean of the Faculty of Law at Abidjan. On 18 February 1992, Segui was visiting Marcel Ette, a

teacher who had been involved in the above-mentioned march. While Segui was there, the police came to arrest Ette. Segui asked them to produce an arrest warrant or a writ of capias which is necessary to legalize the arrest of a person at his home. The police were not able to produce this document and proceeded to arrest Segui in stead of Ette.

Following his arrest, Segui was subjected to degrading treatment. He was forced to strip in the presence of his students and forced to sign a statement regarding his involvement in the march. Later during the trial, Segui requested that this statement be set aside as it was made in humiliating circumstances. His request was denied by the trial court.



René Degny Segui

On 27 February 1992, Segui, together with other individuals accused of involvment in the march, were brought to trial before the Court of First Instance of Abidjan. The International Commission of Jurists (ICJ) sent advocate Grace D'Almeida Adamon of Benin to observe the proceedings.

In her trial observation report, advocate Adamon noted that the trial court was composed of the court president, the director of public prosecutions and the head of the Prosecution Department. The hearing took place in a tense atmosphere and the room was under tight military control. During the trial, the president of the court threatened to imprison Sheik Ba, the Senegalese counsel for the defence, claiming that he continued to interrupt the judge.

The accusations were mainly related to the 18 February march. The defendants were tried in accordance with the procedure for *flagrante delicto* established by Section 53 of the Code of Criminal Procedure of the Ivory Coast. They were accused of having committed acts of physical assault against magistrates and of having prevented them from carrying out their

functions. They were also accused of jointly and severally destroying or damaging vehicles and buildings belonging to third parties. At the trial the prosecution failed to prove these accusations.

In addition to raising substantive arguments, the defence maintained that the procedures used to arrest Segui and others violated the law in force in the Ivory Coast. Among others, they violated the rule stipulating that those charged under Section 53 be brought immediately before the prosecution for a hearing. Yet the defendants in this case were not presented to the head of the Prosecution Department until 21 February, three days after their arrest. The prosecution issued a charge sheet on that same date.

During the trial, Segui acknowledged that he had called upon members of his organization to participate in the march of 18 February. He asserted, however, that the march was legal since all the necessary administrative formalities had been observed.

Indeed, the government had authorized the march of 18 February. However, on the eve of the march, the President signed Ordinance N°. 92/80 which was dated 17 February 1992. This ordinance sanctions any person who enters a public or private building during a demonstration. The purpose of the ordinance was to enable the public authorities to arrest the leaders of the opposition. The text of the ordinance was not published in the *Official Gazette*, as is duly required.

The 1990 United Nations Basic Principles on the Role of Lawyers specifically provides for the right of lawyers to participate in the political community. Article 23 provides that: "Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their

meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization."

Despite these shortcomings, Segui was sentenced to two years' imprisonment and fined 300,000 francs. This decision was appealed. The hearing before the Court of Appeal was presided by Mr. Yanon Yago, the Court's First President. Because of a suspicion based on newspaper articles that Mr Yago belonged to the same democratic movement as the accused persons, the case was adjourned for one week. At the instruction and order of the Minister of Justice, the Attorney-General then filed a procedure for legitimate suspicion under Article 631 of the Penal Code. This procedure for legitimate suspicion is rarely used and appeared to be a means of impeding the appeal process. According to Article 631, Segui's appeal, including his bail application, must be stayed while the procedure is pending, thus leaving him in detention.

On 29 July 1992, an amnesty law was passed. Degny Segui was able to benefit from this law and was released from detention on 31 July 1992.

KENYA

Lawyers and members of the legal profession have been in the forefront of the movement for democratic change and respect for human rights in Kenya. Leading the way is the Forum for the Restoration of Democracy (FORD), an organization which includes many lawyers. FORD was established in August 1991 to work non-violently for democracy and human rights in Kenya and to advocate against the one-party system.

In order to further these goals, a pro-democracy rally was scheduled for 16 November 1991 at the historic Kamukunji Grounds in Nairobi. The government attempted to prevent the rally by arresting at least 12 pro-democracy workers, including lawyer Gitobu Imanyara, at their homes in Nairobi on 14 November. Despite the arrests, other FORD leaders in hiding continued to call for the rally to proceed. Others were arrested as they tried to attend the rally at Kamakunji on 16 November. Those arrested included the lawyers: Paul Muite, Chairman of the Law Society of Kenya (LSK); Japtheth Shamalla, acting Vice-Chairman of the LSK; James Orengo, Oginga Odinga's lawyer; Gervase Akhabi, council member of the LSK; and Njuguna Waititu, Nairobi lawyer.

The rally ground at Kamukunji was sealed off by the paramilitary General Service Unit (GSU). Hundreds of people demonstrating peacefully nearby were violently dispersed by the GSU. Eighty-six people who participated in the Kamukunji rally were arrested and arraigned before various courts in the

city. Charges included behaving in a manner likely to cause a breach of the peace, setting tires on fire, mounting road blocks, throwing stones, shouting multiparty slogans, and giving the two-finger salute (supporting a second political party).

The activists detained in connection with the 16 November 1991 rally were initially held incommunicado for several days and were then charged with offences under the Public Order Act for involvement in the allegedly illegal rally. The Public Order Act gives the authorities the power to control public gatherings, which are defined as a public meeting, a public procession, or any other meeting, gathering or concourse of 10 or more persons. Most of those arrested had their first application for bail denied. On 23 November 1991, the International Commission of Jurists (ICJ) and the Centre for the Independence of Judges and Lawyers (CIJL) intervened with the Government of Kenya expressing their deep concern about the crackdown on multiparty activists in Kenya.

It was in response to these same pressures that President Daniel arap Moi stated in December 1991 that Kenya would adopt a multiparty system. Section 2(A) of the 1982 Kenyan Constitution provided that: "There shall be in Kenya only one political party, the Kenyan African National Union." This section was repealed by the Kenyan Parliament in December 1991 by its decision to convert to a multiparty system. This decision coincided with the decision of 25 November 1991 on the part of Kenya's major aid donors to withhold aid to Kenya for a six-month provisional period until improvements are made in the area of human and democratic rights. Release on

bail was granted around this same date and the charges were dropped completely by early December 1991, presumably in response to national and international protest over the arrests.

Moi's announcement of the change to a multiparty system, however, came on the heels of major crackdowns on the multiparty democracy movement and was preceded by his public statements that Kenya was not ready for the transition to multiparty democracy. Moreover, the necessary legal and constitutional environment for multiparty politics is still missing. A number of statutes, including the Public Order Act, which curbs freedom of expression and association, and the Preservation of Public Security Act, which allows administrative detention without trial, are still active parts of the legal system.

Paul Buti: Lawyer. On 23 January 1992, Buti was placed in detention by court orderlies following an order by District Magistrate P.D.J. Mwangulu. Buti immediately filed a complaint to Chief Justice A.R.W. Hancox. This ordeal, which lasted 90 minutes, left Buti's client without representation.

According to Buti, upon his entering the courtroom he asked a colleague whether the court was dealing with hearings or mentions. The magistrate berated the lawyer, ordering the court orderlies to "lock this man up". The magistrate maintained that he had found Buti guilty of contempt of court and asked the lawyer to apologize.

Commenting on the situation, Buti stated: "I do not know and still do not understand what procedure, legal or otherwise, this particular magistrate used to come to such a finding." Buti added that "an advocate is an officer of the court just as much as the

prosecutor and magistrates, although each plays roles which are distinct from each other."

Gitobu Imanyara: Lawyer, founder, Editor-in-Chief, and Publisher of the *Nairobi Law Monthly* (see *Attacks on Justice 1990-1991*) and **John Khaminwa**: Lawyer. On 29 October 1991, these lawyers received copies of false Ugandan passports containing their pictures, but falsifying their names and occupations. In the 1970s, similar false Zambian documents were used by Kenyan officials to explain the disappearance of J.M. Karuiki, an outspoken government politician. In actuality, Karuiki had not left the country but had been tortured and killed. Upon receiving these documents, Imanyara wrote to President Moi, "The implications of these documents are so grave that we cannot treat them confidentially. We are therefore making our letter public and the enclosures public."

Gitobu Imanyara

Imanyara has been frequently targeted for harassment by the government. Imanyara's passport was confiscated on 31 May 1991, hours before he was supposed to travel to Greece to accept the Golden Pen of Freedom, which he had been awarded by the International Federation of Newspaper Publishers. His passport was returned in March 1992. **Chris Mburu**, a lawyer whose passport was also confiscated upon his return from accepting the award for Imanyara, also had it returned to him in March 1992.

Clement Muturi Kigano: Lawyer. On 19 November 1991, Kigano was arrested when he went to inquire about his client Andrew Ngumba. Ngumba, an opposition politician, was reportedly detained at the Ngomongo Police Station in

connection with the above-mentioned FORD rally. On 21 November 1991, Kigano was charged under the Public Order Act with publishing notices to hold an unlicensed meeting. The charges were dropped along with the others on 28 November 1991.

Mirugi Kariuki: Lawyer in Nakuru, former parliamentary candidate, and **Rumba Kinuthia**, Lawyer in Nairobi, former parliamentary candidate (see *Attacks on Justice 1990-1991*). Kariuki and Kinuthia, as well as six others, are still being held in Kamiti Maximum Security Prison awaiting trial for treason. Kinuthia, whose health has deteriorated during his stay in prison, is currently being held in Kenyatta National Hospital in Nairobi. His doctor and his family have been denied access to him. He suffers from acute high blood pressure and has been hospitalized intermittently since March 1992. Kinuthia spends 23 hours a day chained to the hospital bed, with breaks of 30 minutes only in the morning and the evening.

Kinuthia's condition was greatly aggravated when he was beaten by a prison warder while trying to stop another guard from beating his mother for a minor infringement of visiting rules. He is now being given intravenous hydrallazine in an attempt to control his blood pressure and prevent a stroke. He is also suffering persistent headaches, loss of sleep, pain in his right arm and shoulder which was dislocated when he was beaten, and depression. On 8 July 1992, his doctor was reportedly denied access to him despite a court order of 15 April 1992 granting access. Hospital staff attending to Kinuthia have been harassed by the armed prison warders guarding him.

The defendants have been accused of being members of an underground organization called the Kenya Patriotic Front (KPF). The government has accused this organization of advocating its overthrow by force. The defendants have alleged that they have been tortured and abused while incarcerated. These allegations include being badly beaten and initially denied food and access to legal counsel. In March 1992, Kariuki and

another defendant, well-known politician Koigi wa Wamwere, were moved without explanation to isolation block cells where they are still being held in solitary confinement.

In a pre-trial hearing, the defence counsel argued that the charges should be withdrawn since the defendants' right to a fair trial had been violated. The defence counsel cited a number of flaws in the case thus far, including the failure of the lower court to investigate torture charges. In the pre-trial hearing, the Chief Magistrate refused to order an investigation into the torture allegations, saying that such complaints should be addressed to the High Court. A similar pre-trial application to the High Court was overruled on the grounds that the torture allegations could only be addressed by the trial court. The result is that to date no court at any level has investigated these serious allegations. The refusal of both the Attorney-General and the trial judge to investigate the charges of torture undermines the validity of the trial process.

Paul Muite: Lawyer and Chairman of the Law Society of Kenya (LSK). In October 1991, leading members of the LSK were held in contempt of court and fined for making "political" statements. Pro-government members of the LSK had earlier sought and been granted an injunction against LSK Chairman Paul Muite to prevent him from speaking on political topics in his official capacity. The injunction did not define what was included within the term "political statements". When the LSK Council passed a resolution questioning the independence of two judges, four lawyers brought an action for contempt of court against Muite. The judge who permitted the action to go forward was Justice Dugdale, one of the two judges criticized in the LSK resolution.

Paul Muite

In his closing argument, Muite stated: "If our going to prison will hasten the day when Kenya can have a truly free and independent judiciary, we'll assist in the achievement of meaningful and peaceful reforms...It will be a small price to pay." On 23 October 1991, the High Court of Kenya found Muite and six of his colleagues guilty of contempt of court for disobeying the injunction. Their conviction was based on a statement calling for the creation of a tribunal to investigate a "line of decisions and ruling by the Hon. Justice Dugdale the juridical basis of which is extremely difficult to discern". They were ordered to pay a fine of 10,000 Kenyan shillings (approximately US $350). They had faced the possibility of six months' imprisonment.

Attorney-General Amos Wako denied any government involvement in the lawsuit, claiming that the dispute was between LSK members and the LSK Council. Earlier, Attorney-General Wako had rejected an application by Muite to engage an English barrister for the contempt proceedings. Justice Dugdale dismissed Muite's application for leave of court to challenge Wako's decision, stating that it was in the Attorney-General's discretion to refuse the engagement of a foreign lawyer and that such decisions were therefore not subject to court jurisdiction.

Attorney-General Wako also stated that it was inappropriate for the LSK Council to take a political stance as part of its official function, since the objective of a bar association should not include advocating for a particular political party. Muite and other lawyers have advocated multiparty democracy in their capacity as members of the LSK Council. However, restrictions on their ability to participate in public debate interfere with their rights under the United Nations Basic Principles on the Role of Lawyers. Article 23 states that: "Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion of human rights."

Martha Njoka: Lawyer, Member of the Law Society of Kenya Council (see *Attacks on Justice 1990-1991*). On 2 April 1992, Njoka was physically assaulted when she attempted to meet with her clients, a group of women who were on a hunger strike to demand the release of their sons whom they believed were being held on politically motivated treason charges. The women were fasting at the All-Saints Cathedral in Nairobi. On that same day, several heavily armed security forces surrounded the cathedral. When Njoka identified herself to the police and tried to enter, the senior officer gave an order to physically bar her entrance and to remove her from the site. She was pushed and kicked in the legs and back by a number of police officers. When Njoka attempted to file a complaint at the police station, the presiding officer refused to accept it. Moreover, the Commissioner of Police, Phillip Kilonzo, refused to meet with her because he was "too busy". The duty judge at the High Court, Akilano Akiwumi, also refused to hear an urgent application asking for restraint of the police.

On 31 October 1991, Njoka was suspended from practice by High Court Judge Mbito. The suspension stemmed from the 23 October 1991 contempt finding against the LSK Council (see above). It occurred during a divorce case before Justice Mbito, in which Njoka was a legal representative. During the argument, the opposing counsel, Nora Nyaanga, objected to Njoka's official presence in court. Justice Mbito upheld the objection and ordered that Njoka be suspended from "acting as an advocate of the High Court until the appeal in the contempt case is determined or until further orders of this court."

The suspension of Njoka violated the principle of double jeopardy and failed to follow the proper legal procedure for suspending qualified advocates. On 30 November 1991, the Court of Appeals overruled Justice Mbito's decision and Njoka was permitted to resume practicing law.

Oki Ooko Ombaka: Director of the Public Law Institute and leading counsel for the Ominde clan of the late foreign minister, Dr. Robert Ouko. Ombaka was arrested and interrogated on 8 January 1992 in connection with statements he had made that the government's dissolution of the commission for the inquiry into Minister Ouko's death was nothing more than a cover-up. Ombaka was informed that he was being investigated on possible sedition charges.

In 1991, Dr. Ouko was found murdered and his body burned and mutilated. On 2 October 1991, a commission of three judges was appointed to look into the circumstances of Dr. Ouko's death. Ombaka was the Ominde clan's representative before the government's judicial commission of inquiry into the murder. This commission was disbanded in November 1991 when findings seemed to implicate top government officials. The official reason was that it was necessary "to enter into the next stage of the inquiry" by initiating "further police investigations". Nothing was ever done in this regard.

On 11 December 1991, Ombaka held a press conference during which he stated that the dissolution of the commission was unconstitutional. *Society* magazine interviewed Ombaka on this subject. On 5 January 1992, the issue containing the interview was impounded by security officials in contravention of Kenyan law.

James Orengo: Lawyer. One of the lawyers arrested in the 16 November 1991 FORD rally (see above), Orengo was again arrested in connection with his FORD involvement on 13 January 1992. He is charged under Section 66 of the Penal Code which makes it a misdemeanour for anyone to make "any false statement, rumour or report which is likely to cause fear and alarm to the public". The arrest followed a 10 January 1992 press conference in Nairobi given by FORD members during which they claimed that the government intended to hand over

power to the army and expressed fears for their safety as government opponents. All nine members of FORD present at the press conference were arrested, including Orengo, although he made no public statement.

Orengo is an outspoken advocate. Prior to the repeal of Section 2(A) of the Kenyan Constitution, the National Democratic Party sought to have the High Court reverse the Attorney-General's decision not to register the pressure group under the Societies Act. The following exchange took place between Orengo and Justice Dugdale:

Orengo: In view of the cases that have come before you affecting constitutional matters, most of which touch on the rights and freedoms of individuals as stipulated in Section 70-83 of the Constitution, and in which you have always ruled in favour of the State, the applicants in this case feel you should disqualify yourself from this case.

Dugdale: (Warning Orengo that he was in contempt of court): You have said enough. Say more on previous cases and you have had it! (Dugdale summoned the police). You have already said you have nothing against me. This is propaganda.

LESOTHO

The 1966 Constitution of Lesotho was suspended in 1970 when Prime Minister Chief Leabua Jonathan seized power. Since then courts have been operating without constitutional guarantees for their independence. The only current legal reference to the independence of the judiciary in Lesotho are sections 2(1) and 16(b) of the Human Rights Act of 1983.

Lesotho has been under military rule since 1986. A Military Council, composed of six individuals, has assumed legislative and executive power as well as control over the judiciary. Laws may be passed at the discretion of this Council without prior consultation with the population.

On some occasions, laws are enacted to pre-empt court rulings when decisions are likely to go against the government. Indeed the State Counsel and the Attorney-General may advise the government in these matters of legislation. In such cases, the State Counsel requests a postponement. When the court reconvenes, the State Counsel brings a newly enacted law which takes the matter out of the hands of the court.

Matanzima Churchill Maqutu: Lawyer and President of the Law Society of Lesotho. On 4 July 1991, Maqutu's passport was seized on orders of the Minister of the Interior. Maqutu was planning to attend a conference in London on democracy and

human rights in Africa. No official reason was given to Maqutu for the confiscation. However the Lesotho newspaper, *The Mirror*, reported that the Minister justified the action saying he was following Kenya's example. Kenya had confiscated passports of Kenyan nationals who wanted to attend the conference on the basis that the conference might destabilize Kenya. Maqutu's passport was returned in October 1991 after pressure was exerted on the government.

MALAWI

Orton Chirwa: Lawyer, first African barrister in Malawi, founder of the Malawi Freedom Movement, and former minister of justice and attorney-general, and **Vera Chirwa**: first Malawian woman lawyer and former state attorney in Tanzania. The Centre for the Independence of Judges and Lawyers (CIJL) and the International Commission of Jurists (ICJ) continue to be concerned about the prolonged detention of Orton and Vera Chirwa in Malawi, now entering their eleventh year. The Chirwas are currently being held in separate sections of Zomba Central Prison and are reportedly in poor health.

Orton Chirwa had previously been held for some time in another prison where he spent long periods manacled and handcuffed to an iron bar at night. In late May 1991, he was reportedly put into leg irons after his correspondence was intercepted by prison authorities. He was subjected to two days of "cell punishment" in which he was confined to his cell and forced to squat on the floor with his arms and legs in irons chained to a metal rod behind his back.

The Chirwas were first arrested on 24 December 1981. They were reportedly abducted along with their 25-year-old son in Zambia near the Malawian border. On 28 July 1982, the Chirwas were brought to trial before the Southern Regional Traditional Court on charges of treason. The court was composed of tribal chiefs without legal qualifications. No defence lawyer or other representation was permitted. In 1983, they were sentenced to death. On 30 June 1984, following an international outcry, their death sentences were commuted to life imprisonment by Life-President Hastings Kamuzu Banda. In the year before the sentence was commuted, the ICJ contacted then Secretary General of the United Nations, Javier Perez de Cuellar, who directly intervened in Malawi with President Banda.

The CIJL/ICJ is sorry to report that there has been no positive change for the Chirwas since their death sentence was commuted to life imprisonment. Indeed, their health and well-being have continued to deteriorate. Since the beginning of their detention, the CIJL/ICJ has been concerned with their situation and has repeatedly intervened on their behalf. The ICJ, in conjunction with SOS Torture, most recently called upon individuals and organizations to intervene on behalf of the Chair was in June of 1992.

MALAYSIA

The legal profession in Malaysia has recently survived several threats to its independence. In November of 1991, the Minister of Justice, Syed Hamid Albar, proposed that the 1977 Legal Profession Act be amended. This proposal was apparently made in retaliation for persistent criticism of the government by the Malaysian Bar Council. The proposed amendments would have altered the Act in two significant ways. First, Section 42 1(a) of the Act would have been repealed. This section provides that one of the purposes of the Malaysian Bar is "to uphold the cause of justice without regard to its own interests or that of its members, uninfluenced by fear or favour". Second, a provision would have been added to the Act which would have allowed a "political power" to oversee the actions and the discipline of lawyers.

The conflict between the Malaysian Government and the Bar Council began in earnest on 9 July 1988 when the Bar Council passed a resolution condemning Lord President of the Supreme Court, Hamid Omar (*see Attacks on Justice 1990-1991*). The refusal of the Bar Council to repeal or modify this resolution resulted in the resignation of Bar Council President Manjeet Singh and the development of substantial tension between the Malaysian Government and the Bar Council.

This was illustrated on 17 March 1992 when lawyers Encik Zainur Zakaria and Datuk Zaki Tun Azmi appeared before the Supreme Court. Before

hearing the case, Supreme Court Senior Assistant Registrar Rozana Ali Yusof read a statement to the effect that lawyers appearing in the Supreme Court who dispute the powers and position of Lord President Hamid Omar would have to explain their stand. After this statement was read, Hamid Omar asked the two lawyers if they had anything to say. Both lawyers replied in the negative.

A mission sent by the Centre for the Independence of Judges and Lawyers (CIJL) in December 1991 was able to meet with the Minister of Justice to discuss the proposed amendments. During the course of their meeting, Albar assured the CIJL representative that the proposed amendments would not be introduced. Indeed this proved to be the case on 10 December 1991, when the Minister of Justice tabled the Amendment Bill to the Act which lacked the proposed amendments.

However, these events were quickly followed by additional measures. On 2 January 1992, Prime Minister Datuk Seri Dr. Mahathir Mohamad proposed making the Malaysian Attorney-General the head of the Bar Council, "in order to overcome the actions of a few individuals which have politicized the Council". This proposal was also strongly opposed by the International Commission of Jurists (ICJ), the CIJL, the Malaysian Bar Council and other international organizations.

Finally, the Malaysian Government began reviewing the legal services rendered to it by members of the Bar Council. The review was directed at those lawyers who performed legal work for the government while simultaneously criticizing

government practices. Although no official program of blacklisting lawyers who criticize the government is in place, reportedly such discrimination is subtly carried on.

Antalai Sawing: Lawyer, member of the IIban tribe in Sarawak, and frequent advocate for indigenous people in Sarawak. On 8 February 1992, the Malaysian Special Branch reportedly questioned Sawing's wife concerning his whereabouts. At the time, Sawing was speaking on indigenous peoples' issues at a conference in Australia, organized by the Australian Section of the ICJ. It was further alleged that a tap had been placed in his home and that both his home and his law office were under surveillance. In response to these reports, the CIJL contacted the Malaysian Government to express its concern that Sawing might be arrested upon returning to Malaysia.

Upon his arrival in Malaysia, Sawing was interrogated by Malaysian authorities but was not arrested. However, Sawing was informed by the authorities that they had considered arresting him upon his return.

MALI

On 6 May 1992, the Association of Judges in Mali called for a strike to protest state interference in judicial independence. All judges complied with this call. That same month, the Centre for the Independence of Judges and Lawyers (CIJL) sent a special representative to Mali to investigate this matter.

In his report to the CIJL, Dr. Bacre Waly Ndiaye noted that the main demand of the judges was the enactment of a special law which would protect their independence. The magistrates stated that despite the positive provisions contained in the Constitution of 12 January 1992 concerning the independence of the judiciary, several previously enacted laws seriously violated this principle. These laws substantially reduce the powers of the High Council of the Judiciary by granting the President of the Republic wide discretion to amend its decisions. In exercising such power, the President was able, for instance, to order the removal of Judge Diakite Danioko from the bench, despite a resolution from the High Council of the Judiciary that she should only be given a warning (see *Attacks on Justice 1990-1991*). The laws also endanger judges' security of tenure. The judges requested that the law be changed to:

- limit the number of non-magistrates in the composition of the High Council of Judiciary;
- repeal the discretion granted to the President of the Republic to alter the decision of the High Council of the Judiciary;
- grant judges better financial benefits; and

- improve the working conditions of judges and, in particular, establish a library.

On the fourth day of the strike, the government agreed to grant the judges some of the financial benefits they had demanded. Neither the composition of the High Council of the Judiciary nor the President's power to interfere with its decisions was changed, however. The government did agree that the Supreme Court should be consulted when the President exercised such discretion.

Lawyers in Mali have not achieved full independence either. The 1988 law regulating the legal profession is severely at odds with international standards. The Minister of Justice, rather than the Bar Council, possesses the power to admit individuals to the profession. The Court of Appeals has the jurisdiction to take disciplinary measures against lawyers, and in some cases even the Minister of Justice may intervene. Moreover, under this law, lawyers may not leave the country without informing the Procurator-General and the President of the Bar Association in writing.

MYANMAR (BURMA)

In 1991, the International Commission of Jurists (ICJ) sent a fact-finding mission to Myanmar to investigate reports of a total breakdown of the Rule of Law in that country. The ICJ believed that a fact-finding mission was necessary because of the numerous restrictions on the flow of information imposed by the Government of Myanmar. After receiving no response from the government to repeated requests for permission to send a fact-finding mission, the ICJ decided to send the mission in January-February without specific government approval. The following are excerpts from the mission's report, entitled *The Burmese Way: To Where?*

On 18 September 1988, the State Law and Order Restoration Council (SLORC) abolished all government bodies established under the 1974 Constitution, including the judicial system. With a stroke of the pen, the perverse legal system created by General Ne Win was done away with. The judges were told not to come to work and they submitted. When the ICJ asked how the judges responded to such summary justice, the answer was: "They just stopped coming to their offices."

SLORC assumed not only executive and legislative authority but also judicial powers. On 26 September 1988, however, it delegated some

judicial powers to civilian courts under the Judiciary Law of 26 September 1988. At the apex of these civilian courts is the Supreme Court which is composed of a Chief Justice and not more than five judges. It hears appeals from decisions of the state and divisional courts and exercises original jurisdiction in certain matters, but not all its judges are lawyers or persons with a legal education, nor have they been provided with any security of tenure or with any protection against removal. An office of the Attorney-General was also established (the incumbent Attorney-General is a bureaucrat with some legal education).

Civilian courts were also created at the township, division and state levels, and judicial officers were appointed to them; but not all of these officers are law graduates. These judicial officers have been given refresher courses by the office of the Attorney-General and the justices of the Supreme Court, and there are indications of efforts being made to appoint persons with a legal background to these courts. The reason for not appointing qualified personnel of known integrity and independence is said to be two-fold. First, General Ne Win has so thoroughly destroyed the legal profession and the judiciary that not many such persons are available. In the whole of Myanmar, it would be difficult today to find even half a dozen persons who possess the qualifications of the pre-Ne Win era for appointment to high judicial office. The other reason is that SLORC is not prepared to take the risks which would be inherent if the

judiciary were allowed to function and grow as an independent institution. If the courts are staffed by independent, qualified persons and are allowed to function freely, they may exercise some check on executive action and, over a period of time, may even attempt to impose some limits on the operations and authority of SLORC. They may assert their independence. Such a development might allow the courts to grow into meaningful fora of dispute resolution and bring the judiciary in collision with SLORC.

The Lawyers in Myanmar interviewed by the ICJ were of the view that, at least on the theoretical plane, some of the changes made by SLORC were for the better, as these have created a system which, in structure and shape if not in power, authority and independence, resembles the pre-1962 judicial structure. They are quick, however, to point out that these changes are formal. In practice, the courts function as an adjunct of SLORC with little independence. The general fear of SLORC and its complete control over every institution makes judicial independence and the independence of lawyers impossible.

The People's Courts, which were presided over by three members and advised by one judicial officer, have been abolished but lawyers claim that the rates of bribery, instead of going down, have gone up. The new judges demand a higher sum on the ground that litigants now have to bribe only one person as opposed to the three judges and one adviser they had to bribe under the Ne Win system. As the entire

transaction is a one-window affair, they must therefore pay at least twice as much as they used to pay earlier to an individual member of the People's Courts. In these circumstances, the judiciary, even in its present form, does not command the respect of either the lawyer or the litigant. Justice in Myanmar is what SLORC wants, and in cases in which SLORC is not interested, it is a purchasable commodity.

People have little confidence in the courts or their independence. Although the Code of Criminal Procedure can be used to question an illegal detention, this recourse is not made use of. Lawyers dare not file habeas corpus petitions, as this would place their own life and liberty at risk.

Lawyers within Myanmar were able to point out only three instances where this legal provision had been invoked since 1962. All three cases involved individuals who had been detained for very long periods of time for non-political reasons. Even in these cases, no findings were made, as the government dropped the charges and released the prisoners.

Those who had been tried in criminal cases by the civilian courts state that the judges were acting under orders. Although the 1988 Judicial Law provides that, except when prohibited by law, judicial proceedings must be in public and the defendant has the right to argue his case and make appeals, in reality, cases have been tried in a summary manner and verdicts were apparently determined beforehand. In cases

where they had received orders to convict, judges warned lawyers that overzealous conduct in the case might prove detrimental to the interest and liberty of the lawyer.

On 17 July 1989, SLORC, with a view to more effectively carrying out its "security tasks, ensuring the rule of law and prevalence of peace and tranquillity", conferred "the executive and judicial powers" on military tribunals in three major military regions of the country. The Command Commanders were authorized to exercise the powers directly or to delegate the same.

The Command Commanders are authorized to have the offender tried either by courts formed under the existing law or by military tribunals formed by them. Cases concerning defiance of orders issued by SLORC, by the government or by the Command Commanders, are tried exclusively by the military tribunals. Apparently, the tribunal is the sole and final judge of which witnesses are necessary and which are not. The decision and sentences of the tribunals are final. Sentences of death and life imprisonment, however, must be approved by the Command Commanders. In other matters the Command Commanders can be requested to revise the sentence or decision of the tribunal.

The tribunals have not, as yet, tried civil cases. So far as ordinary criminal cases are concerned, it is within the discretion of the Command Commanders to have the accused tried by the civil courts or the military tribunals.

By 9 August 1989, 15 military tribunals had been established in the three Command regions.

Until 27 July 1990, SLORC had not made clear whether it had rejected or accepted the 1974 Constitution. On that date, however, it made clear that it did not observe any constitution. The military tribunals are, therefore, not constrained by any constitutional norms or limits.

The tribunals consist of a chairman and two members. The chairman is a lieutenant-colonel and the two members are junior officers from any one of the three branches of the armed forces. A number of ad hoc military committees were established to try cases at the township level. The persons charged before the military tribunals are tried summarily without any regard for the procedures which are generally considered essential for the due process of law. The tribunals are quite free to accept or reject evidence and do not show much concern for the quality of evidence. The accused is not presumed innocent. The tribunal can reject "unnecessary witnesses" if it is established that a crime has been committed. In such circumstances, sentence may be announced even without examining the prosecution witnesses.

The tribunals are not open to the public and usually a defence lawyer is not allowed. Even when a defendant is allowed to engage counsel, the role of the latter is limited and subdued because of the fear of what he/she may have to suffer if the defence is conducted vigorously. There is no real

right of appeal from decisions of these tribunals and the appeals to the Military Commander or the Commander in Chief, as the case may be, depending on the nature of the sentence, are more in the nature of mercy petitions. There is no right of hearing and no reasoned orders are passed by the appellate authorities. There are no reported instances of anyone being acquitted by these military tribunals.

At a military press conference held at the end of 1989, it was stated that more than 100 people had been sentenced to death since July 1989. Amnesty International reported that SLORC admitted that 100 people were sentenced to death in the three months after the military tribunals began to operate, 24 of them by military tribunals.

In principle, the right of appeal exists against the orders passed by the tribunals in some cases, and in other cases a revision can be filed. Sentences up to three years' imprisonment may be appealed to the regional commander within 30 days. Sentences of over three years' imprisonment, life imprisonment and death can be challenged by a revision to the army Commander-in-Chief within 30 days. In practice, the military authorities have hampered the appeal process by non-cooperation with and intimidation of lawyers. The right of appeal and revision is illusory, as the Command Commanders do not consider the merits of an individual case and usually rubber stamp the findings of the trial court.

SLORC has used a combination of old laws as well as newly promulgated ones to curb democratic norms and fundamental freedoms. It has used the Emergency Measures Act, 1950, which stipulates seven years' imprisonment for anyone spreading news or stories "disloyal to the State". Under the State Protection Law, 1975, the authorities can detain without trial, for up to three years, a person who, in their belief, "endangers the security or sovereignty of the State". Order 2/88 imposed a night curfew and a ban on public gatherings of more than five people. Order 8/88 banned all activities, speeches, literature and propaganda "aimed at dividing the Defence Forces". Order 16/89 amended the Printers and Publishers Registration Law, 1962, increasing the maximum punishment to seven years' imprisonment and a 30,000 kyat fine. Martial Law Order 3/89 permits martial law regulations to be used against political parties, publishers and organizations publishing documents without registering with the Ministry of Home and Religious Affairs.

The sentences passed by these tribunals are excessive, and their proceedings contravene the fair trial procedure mandated by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

Lawyers, like other citizens of Myanmar, suffer from the insufficiencies in the legal system of Myanmar. Most lawyers have been arrested under one of the following two laws:

1. Section 5 of the Emergency Provisions Act of 1950, which makes individuals guilty of a criminal offence if they:

(a) violate or infringe upon the integrity, health, conduct and respect of State Military Organizations and Government employees towards the elected Government, and/or disrupt or hinder, in one way or the other, those who are carrying out their duties;

(b) cause or hinder the State Military Organizations and Government employees from carrying out their duties satisfactorily or intend to persuade them from performing their duties;

(j) cause or intend to disrupt the morality or the behaviour of a group of people or the general public, or to disrupt the security or the reconstruction of stability of the Union;

2. Section 122 (1) of the Burmese Penal Code, which states: "Whoever commits High Treason within the Union of Burma shall be punished with death or transportation for life."

Many of the lawyers listed below are members of Parliament as well. They have all been disqualified from holding their seats in Parliament and are banned from standing for re-election for between five years and life, depending on their sentence.

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

Saw Hlaing: Lawyer and member of Parliament of the National League for Democracy (NLD) for the Indaw constituency in Sagaing Division. Hlaing was sentenced to 25 years' imprisonment under Section 122(1) of the Burmese Penal Code. He was released on 27 May 1992 under Declaration N°. 11/92, dated 24 April, in which SLORC announced that it would release "those detained for political reasons, other than those who affect national security".

Khin San Hlaing: Lawyer and NLD member of Parliament for the Wetlet 2 constituency, Sagaing Division. She was sentenced to 25 years' imprisonment under Section 122(1) of the Burmese Penal Code. Released on 4 May 1992 under Declaration N°. 11/92.

Win Hlang: Lawyer and NLD member of Parliament for Tatkone 2 constituency, Mandalay Southwest. He was sentenced to 10 years' imprisonment under sections 5(a), 5(b), and 5(j) of the 1950 Emergency Provisions Act.

Ohn Kyi: NLD member of Parliament for the Myittha 1 constituency, Mandalay Division. She was sentenced to 25 years' imprisonment under Section 122(1) of the Burmese Penal Code. Released on 4 May 1992 under Declaration N°. 11/92.

Bawk La: Lawyer, Baptist preacher and NLD member (see *Attacks on Justice 1990-1991*). He was sentenced to five years' imprisonment in October 1989.

Nan Zing La: Lawyer and leader of the Baptist Church (see *Attacks on Justice 1990-1991*). He was sentenced to five years' imprisonment in October 1989.

Thaung Myint: Lawyer and NLD member of Parliament for the Khin U 2 constituency, Sagaing Division. He was sentenced to 25 years' imprisonment under Section 122(1) of the Burmese Penal Code. Released on 4 June 1992 under Declaration N°. 11/92.

Khin Maung Than: Lawyer and Deputy Chairman of the National Politics Front. He was arrested in December 1990 and reportedly sentenced to 10 years' imprisonment.

Khin Maung Thein: Lawyer and NLD member of Parliament for the Khin U 1 constituency, Sagaing Division. He was sentenced to 25 years' imprisonment under Section 122(1) of the Burmese Penal Code. Released on 2 June 1992 under Declaration N°. 11/92.

Chit Tin: Lawyer and NLD member of Parliament for the Minhle constituency, Magway Division. He was sentenced to 25 years' imprisonment under Section 122(1) of the Burmese Penal Code. Released on 29 June 1992 under Declaration 11/92 .

San San Win: Lawyer and NLD member of Parliament for Ahlone constituency, Yangon. He was sentenced to 25 years' imprisonment under Section 122(1) of the Burmese Penal Code. Released on 1 May 1992 under Declaration N°. 11/92.

Ko Yu: Lawyer and member of the Yangon Bar Association and the NLD. He was arrested on 4 October 1989. Released in February 1991.

NIGERIA

Nigeria is ruled by a military government headed by General Ibrahim Babangida and a 19-member Armed Forces Ruling Council (AFRC). Since 4 May 1992, Nigeria has been experiencing violent outbursts of riots across the country. The riots began in reaction to a rise in transportation fares. In Agege, on the outskirts of Lagos, commuters attacked and set fire to several commuter vehicles as well as to buildings housing the offices of the two government-sponsored political parties, the National Republican Convention (NRC) and the Social Democratic Party (SDP). On the same day banks were looted and two people, including a police officer, were reportedly killed. The riots worsened in Lagos and across different parts of the country on 13 and 14 May. At this same time more than 300 people were killed and millions of Naira worth of property was destroyed in communal and religious clashes which originated in Zongan Kataf, Southern Kaduna State, between Muslim/Hausa Zongans and the Christian Katafs.

On 25 May 1992, during a televised broadcast to the nation, General Babangida outlined a series of security measures aimed at dealing with "threats to the peace", the well-being of the nation and "political snipers" in order to defend the integrity of the programme of transition to civil rule. According to the President, these measures included:

1. A crackdown on all persons, associations and groups that seek either to derail the transition programme or to destabilize the nation.

2. The establishment of a tribunal to try immediately all those suspected of involvement in the communal disturbances in Kaduna State.

3. Prior authorized intervention by armed commanders to immediately quell civil disturbances once reports are received.

4. The immediate establishment of a National Guard as a security outfit to deal with civil disturbances.

As a result of the President's new security scheme, special tribunals were introduced and severe measures were taken against human rights lawyers and organizations. Nigeria's military government already exerts strong control over the judiciary. A number of decrees prohibit the regular courts from inquiring into any official policy or programme of the military government. State Security (Detention of Persons) Decree N°. 2 of 1984 allows authorities to hold any person considered a threat to the economy or to the security of the state in administrative detention, without charge or trial, for renewable periods of six weeks. The detention cannot be challenged in court. This law does not conform to basic international principles of due process, including the right to be brought immediately before a magistrate and the right of the individual to know the charges being made against him or her.

The illegality of at least one arrest made under State Security (Detention of Persons) Decree N°. 2 of 1984 was recently recognized by the court. On 1 July 1992, the Lagos High Court ordered the government to pay one of these human rights workers, Dr. Beko Ransome Kuti, President of the Committee for Defence of Human Rights (CDHR)

and Chairman of the Campaign for Democracy (CD), some 50,000 Naira in damages for illegal arrest and detention. The court found that the order of detention, the legality of which was in dispute, had not been signed by the Vice-President of Nigeria as required by law. Moreover, the government's earlier disregard of court orders to produce Dr. Ransome Kuti evidenced contempt of court.

The special tribunals that have been established by the military operate as parallel courts to try suspects for specified offences. These tribunals operate under fluid rules of procedure with no guarantees of fairness or impartiality and without the right to a judicial appeal against their decisions. There is concern that the special tribunals which the government now proposes to establish to try suspected rioters will only serve the military's perception of justice.

In general, there have been many incidents of interference with human rights work in Nigeria. Lawyers representing clients disfavoured by the government, who are vocal in the human rights community, have been the constant target of harassment by Nigerian security officials. On a number of occasions the International Commission of Jurists (ICJ) and the Centre for the Independence of Judges and Lawyers (CIJL) have intervened with the government on behalf of these workers. For example, on 6 February 1992 the ICJ intervened with General Ibrahim Babangida, President of Nigeria, on behalf of Emma Ezeazu of the Civil Liberties Organization (CLO), whose passport was seized. In April 1992, the CIJL intervened when Olisa Agbakoba, also of the CLO, was prevented from attending a conference in the Netherlands. Moreover, the CIJL was alarmed by the Nigerian

Government's use of a substantial contingent of armed forces to physically close the Civil Liberties Organization from 22 to 24 May 1992. This restraint on the functioning of a legitimate organization is a breach of firmly established international principles of freedom of association and expression.

Olisa Agbakoba: Lawyer and President of the Civil Liberties Organization of Nigeria. In April 1992, Agbakoba had his passport seized by members of the State Security Service (SSS) as he was about to travel to the Netherlands to attend an international human rights conference on 21 April (see above). No reason was given for the confiscation. The Director of the CIJL protested to the Nigerian Ambassador in the Hague. While promising to be of assistance, he never responded to the complaint.

Femi Falana: Lagos lawyer, President of the National Association of Democratic Lawyers, and Executive Officer for the Campaign for Democracy, and **Chief Gani Fawehinmi**: Lawyer and member of the Campaign for Democracy (see *Attacks on Justice 1990-1991*). On 19 May 1992, Falana was arrested at the Ikeja High Court premises by armed State Security Service operatives. Chief Fawehinmi was arrested on 29 May 1992 after filing an action in court demanding the release of Falana and human rights workers, Dr. Ransome Kuti and Baba Omojola, Executive Officer for the CD. **Dr. Osagie Obayuwana**: Lawyer

Femi Falana

and Vice-Chairman of the Committee for the Defence of Human Rights (CDHR) was arrested along with Chief Fawehinmi. He was interrogated and released without being charged in early June. According to the Civil Liberties Organization (CLO), the arrests were related to the lawyers' participation in the Campaign for Democracy, a coalition made up of 25 opposition and human rights organizations which has been calling for the resignation of the Armed Forces Ruling Council, the main decision-making body of the military government.

Each advocate was initially held incommunicado in an undisclosed place. They were not brought before a magistrate until 15 June 1992, despite the Ikeja State High Court grant of habeas corpus on 22 May 1992 to produce Falana by 3 June 1992. A judge of the same court ordered that Falana be released, stating that his detention was "illegal, unconstitutional, null and void". This manner of detention violates the African Charter of Human and People's Rights, to which Nigeria is a party, specifically Article 6, which prohibits the arrest and detention of anyone in the absence of a legitimate reason.

The magistrates' court to which the lawyers were finally brought was in Gwagwalade, a small village 500 miles from Lagos. This change in venue was contrary to normal practice in Nigeria, where magistrates' courts have no jurisdiction to hear felony charges carrying the death penalty. The transfer appears to have been intended to reduce the number of observers. At the hearing, the detainees were charged with conspiracy and treason under sections 97 and 412(1)(b) of the Penal Code. The government alleged that they had conspired to compel a change in government policies, particularly the "transition to civil rule" programme, by overt acts including holding illegal meetings and issuing seditious pamphlets. Both Falana and Chief Fawehinmi represented themselves.

At the hearing, the judge ordered that Chief Fawehinmi be allowed access to his doctor. According to a British Broadcasting

Corporation report, he limped as he entered the courtroom. Chief Fawehinmi has been in poor health but has nonetheless been targeted for harassment. On 3 November 1991, SSS agents seized his passport as he was boarding a flight to London for a medical examination. In December 1991, the government reportedly indicated that the passport would be returned, but only to allow Chief Fawehinmi to obtain medical treatment.

On 15 June 1992, the Lagos and Ikeja branches of the Nigerian Bar Association (NBA) began an indefinite boycott of law courts to protest the government's failure to obey court orders directing the release of Falana and the production of the others. On 22 June 1992, the police attempted to disrupt a meeting of the executive of the Nigerian Bar Association. The boycott has since been suspended.

On 19 June 1992, the CIJL intervened with the Government of Nigeria, expressing its deep concern about the arrests and detentions of the three lawyers. This was not the first time that the CIJL had intervened on behalf of lawyers in Nigeria. Indeed, both advocates Falana and Fawehinmi had been previously detained because of their professional activities. Most recently Falana has been harassed for his representation of Jennifer Madike in a criminal case which may implicate the wife of the President of Nigeria. On 9 October 1991, Falana had his passport seized at the Lagos airport while on his way to a human rights conference in Zimbabwe. He was told to appear the next day at SSS offices and was interrogated for two days about the Madike case. His passport has not been returned. This repeated interference with the professional function of lawyers is contrary to the United Nations Principles on the Role of Lawyers (UN Principles). Article 16(a) of these Principles states, in part, that lawyers should "be able to perform all their professional functions without intimidation, hindrance, harassment or improper interference."

On 29 June 1992, Falana and Chief Fawehinmi were released on bail, having been charged with conspiracy and treason; they face a

maximum penalty of death. That same day, the government lifted the administrative detention orders against them under the State Security (Detention of Persons) Decree N°. 2 of 1984. The advocates have pleaded not guilty to these charges. A trial date was set for 23 October 1992.

Clement Nwankwo: Lawyer and Executive Director of the Constitutional Rights Project (CRP), and **Tayo Oyetibo**: Lawyer and Chairman of the CRP's Lawyers' Committee. In August 1991, Nwanko and Oyetibo were questioned by security officials of the Directorate of Military Intelligence (DMI) in Lagos in connection with their representation of Dora Mukoro, the wife of an army officer suspected of being involved in a 22 April 1990 coup attempt. Unable to find her husband, the government had arrested Mukoro and her five children. Mukoro was detained by the military authorities under State Security Decree N°. 2 of 1984. The CRP sued the government in August 1991, seeking a review of the legal basis for Mukoro's detention. The suit was dismissed on the basis of Decree 2 which permits indefinite detention without trial and prohibits any inquiry by the courts.

On 19 August 1991, a sergeant from the DMI visited Oyetibo's office, requesting that he and Nwankwo meet with military authorities to discuss the lawyers' request for a review of Mukoro's detention. Oyetibo was assured that this was the real purpose of the meeting. However, when the two lawyers reported on 20 August to the DMI office, they were questioned for three hours. They were asked to return the next day and were questioned separately for more than four hours by military officers who refused to disclose their names. The questions they were asked included the following: why had the CRP filed an action on behalf of Mukoro, who had briefed the CRP to file the case in court, what benefits or gains (financial) would accrue to the CRP for filing the case and why did the CRP always criticize the government? The security men were aggravated when the CRP officials told them that most of their questions threatened their

professional privilege as lawyers. Indeed, this interference with the professional function of lawyers violates Article 16, cited above, of the UN Principles.

Yinka Orikoto: Barrister and Secretary of the National Association of Democratic Lawyers (NADL). In July 1991, Orikoto was arrested and detained for two weeks without trial. The arrest was apparently in connection with his representation of student activists.

PAKISTAN

The Centre for the Independence of Judges and Lawyers (CIJL) remains concerned about the continued existence and operation of "special courts" to try "heinous offences" in Pakistan. Special courts can now be set up under a variety of legal instruments. The first of these instruments is the 12th Amendment to the Constitution, adopted in July 1991. Part One of this amendment inserts Article 212-B into the Constitution for a three-year period, empowering the federal government to set up special courts and providing for the composition and procedure of these courts. Each special court is to consist of a judge or former judge of the high court, or a district judge who is qualified to become a high court judge. Appeals are heard by supreme appellate courts, each consisting of a judge of the Supreme Court and two judges of high courts. Cases, as well as appeals, are heard within 30 days. Cases are referred to special courts by the federal government.

Special courts, however, have been in operation since before the adoption of the 12th Amendment. Indeed, special courts have been hearing cases under the Suppression of Terrorist Activities (Special Courts) Act since its passage in 1976. Furthermore, two additional ordinances grant the government the power to establish and maintain special courts: the Terrorist Affected Areas (Special Courts) Ordinance of 1991, and the Special Courts for Speedy Trial Ordinance of 1991 and 1992. Both of these ordinances have been adopted as Bills by Parliament and will enacted into law when signed by the

President. Parliament has made some amendments to the bills, however, notably in a provision allowing the government to fix the mode and manner of the carrying out of sentences. It was this provision that led to an order for the public hanging of a convict, which was later stayed by the Supreme Court.

The CIJL is concerned that trials conducted in these special courts fall below the international standards for fair trial for the following reasons. First, the courts set up under the 12th Amendment take cognizance of the cases referred to them by the federal government. Because this permits individuals accused of the same crime to be tried in different types of courts, depending on the recommendations of the government, the principle of equality before the law is breached.

Second, the requirement that all investigations should be completed within 14 days may lead the police to mistreat individuals in order to obtain confessions.

Third, persons tried in special courts are presumed guilty as charged unless they can prove their innocence. This violates Article 14(2) of the International Covenant on Civil and Political Rights, which states: "Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law."

Fourth, the limitation of 30 days to complete both the trial and any appeal, suggests that the accused may not have sufficient time to prepare properly for trial. This is particularly disturbing in the light of the prohibition on adjournments during the trial.

Furthermore, the government is given more time to appeal an acquittal than the accused is given to appeal a conviction.

Finally, the right to bail has been severely restricted.

In addition to its misgivings as regards the continued operation of special courts, the CIJL is concerned about the diminished independence of the judiciary. Under the Constitution, the judiciary should have been made independent of the executive by 1987, but this has not occurred.

Of particular concern is the second part of the 12th Amendment to the Constitution, granting the President the power to change .the salaries and pension scales of superior court judges. Previously, a constitutional amendment was necessary to fix or change these scales. The CIJL believes that this change may increase the amount of interference with the judiciary.

In addition, numerous judicial positions remain vacant owing to political interference with the appointment process. For three and a half years, no new judges have been appointed to the Lahore High Court. Several reports suggest that this may be because various politicians want to add their nominees to lists prepared by the Chief Justice.

Qazi Mohammad Jamil: Lawyer, Vice-Chairman of the Human Rights Commission of Pakistan from the Frontier Province, and former "additional" judge of the North West

Frontier Province (NWFP) High Court (see *Attacks on Justice 1990-1991*). Jamil has resumed his legal practice after having been dropped from the Peshawar High Court bench on 30 September 1990. His dismissal seems to have enhanced his reputation among lawyers, as he was subsequently elected President of the Peshawar High Court Bar Association despite government opposition.

Jamil was appointed to the bench, along with six others, as an "additional" judge on 1 October 1988 for a period of two years. If additional judges are not confirmed after a maximum period of two years, they must vacate their offices. One of the seven additional judges died before the expiration of the two-year period. Recommendations for the confirmation of all six remaining additional judges were sent to the President well in advance of the two-year expiration, but no confirmations were made until 30 September. The delay was reportedly engineered in order to observe the behaviour of Jamil and another additional judge, Ibn Ali, who were on the bench that was hearing a petition against the dissolution of the Provincial Assembly on 6 August 1990 by the Governor of the Province in consultation with President Ghulam Ishaq Khan. In a 3-1 decision the full bench of the High Court ruled that the Provincial Assembly had been unlawfully dissolved. Of the two additional judges on the bench, Jamil agreed with the majority and probably wrote the opinion, while Ibn-Ali disagreed. Four days later all additional judges were confirmed, except for Jamil.

Nabi Sher Jenejo: Judge of the Special Court for the Suppression of Terrorist Activities (see *Attacks on Justice 1990-1991*). Jenejo was shot and killed, along with his guard and driver, on 17 June 1991. The police held 17 persons responsible for the murder. However, only four of them, Rajab Ali Brohi,

Mohammed Akram, Dashir Ahmed, and Saleem Memon, were arrested. The others were declared absconders. The case was heard by Justice (Retd) Fakhruddin Sheikh, judge of a Special Court for Speedy Trial in Karachi. On 4 July 1992, the judge acquitted all four for lack of evidence and ordered that the case against the absconders be kept on the dormant file. The judge noted that only one prosecution witness had appeared in court, and that he had turned hostile. Three witnesses who had identified the accused at the line-up failed to appear in court. In addition, a material witness who was brought from Punjab with great effort disappeared as soon as he reached Karachi.

PERU

On 5 April 1992, the President of the Republic, Alberto Fujimori, formally suspended Peru's Constitution and revoked the independence of the judiciary. As Commander-in-Chief of the armed forces, President Fujimori placed the entire nation under military control and dissolved the Congress. After destroying the country's constitutional order, he assumed full power, taking a substantial step towards the establishment of a complete dictatorship.

The actions of 5 April constitute a major step backwards for Peru and for the entire continent, which has been moving towards democracy and putting an end to governments based on the rule of force. It was on 12 July 1979, after 12 years of military government, that Peru adopted a new Constitution. This Constitution went into effect in July 1980 and remained in force until its suspension by President Fujimori.

The extent of the attack on the judiciary is evidenced by the sheer number of magistrates, judges and prosecutors dismissed by the President. By mid-May 1992 the numbers were: 30 prosecutors (including the Prosecutor General, who resigned in protest); and 137 magistrates and judges, including 16 Supreme Court justices.

On 8 April 1992, the government dismissed the Comptroller General of the Republic, Luz Aurea Saenz, and ordered an inquiry into her actions which were deemed to be against the interests of the state.

The Comptroller General is responsible for monitoring the legality of the acts and contracts of the state. On 9 April, the government dismissed 13 members of the Supreme Court and all eight members of the Court of Constitutional Guarantees, accusing the latter of having annulled certain government decrees. The executive stated that these members had found the decrees to be unconstitutional, but that such judgements "had no legal or constitutional basis". On 19 April 1992, the government dismissed three Agrarian Court magistrates and ordered an inquiry into their professional conduct. On 23 April, it dismissed two Supreme Court magistrates (and three other magistrates resigned). On 24 April, it dismissed 33 members of the Superior Court of Lima, 8 members of the Superior Court of El Callao, 6 superior prosecutors of Lima, 23 provincial prosecutors of Lima, one superior prosecutor of El Callao and 10 judges sitting in juvenile courts in Lima. In addition, the government ordered an inquiry into the conduct of magistrates, judges and secretaries still in office, requesting that special attention be given to external signs of wealth shown by these officials or their spouses.

Not only were charges of corruption against the dismissed judges and prosecutors never "proven", but the dismissals were ordered without providing the accused with the right to defend themselves. These measures violate Article 17 of the United Nations Basic Principles on the Independence of the Judiciary as well as Peru's own Constitution.

Although there were concerns regarding the judiciary prior to 5 April 1992, the complete destruction of the independence of the judiciary has

certainly been a grave setback for Peru. While the President stated that the changes reflected the will and aspirations of Peruvians, he was not authorized by the Constitution to dissolve Congress, nor to dismiss judges and magistrates in what he termed a "reorganization of the judiciary".

Virginia Alcalde Pineda: Prosecutor for the Fourth Provincial District Attorney's Office of Lima. She was threatened with death on 10 August 1991 by an unknown individual who called her office and told her to abandon her investigation. Alcalde had secured shelter for at least 12 children who were being given up for adoption through an irregular procedure sponsored by corrupt judges, prosecutors and lawyers.

Zadi Anaya Castro: Prosecutor in the Huaraz Province, Ancash Department (see *Attacks on Justice 1990-1991*). Anaya and his family have been threatened repeatedly over the past year. Anaya is in charge of almost 90 per cent of the terrorism cases in his jurisdiction, as well as those in which the accused are police officers. The threats therefore come from both the Shining Path and from members of the police force. According to police information, the lives of the prosecutor and his family are in serious enough danger to require permanent police protection. There are also reports that Anaya's name is on the hit list of the Shining Path.

Edwin Barrios Blancas: Lawyer. On 5 March 1992, Barrios was abducted from his law office in the Junín Department by five armed individuals who reportedly identified themselves as members of the Túpac Amaru Revolutionary Movement. At the

time, Barrios was defending several members of the Shining Path. Previously he had also worked as a radio journalist and was critical of subversive groups and of the government's economic policies. Barrios reappeared on 13 March 1992. According to his son, Barrios looked exhausted but did not appear to have been mistreated during his captivity. The results of the investigation in this case are unknown.

Manuel Antonio Córdova Polo: Prosecutor of Angaraes-Lircay, Huancavelica Department. Córdova received death threats, attributed to the military, for his role in investigating the July 1991 murder of 15 peasants in Huancavelica's Santa Barbara community. Córdova informed the Special Office of Human Rights and the People's Defender that an armed military group had entered his office in Huancavelica's Public Ministry and threatened him. The chief prosecutor of Huancavelica, Humberto Parejas Raymundo, reportedly told Córdova to forget the whole incident and criticized his complaint.

Other employees of Huancavelica's Prosecutor's Office have received threats and have been attacked for their participation in the Santa Barbara case. The home of Inés Sinchitullo Barboza, a legal technician in the Prosecutor's Office, was bombed on 28 July 1991, damaging her son's hearing and causing her to miscarry. There were also material losses in her home. The prosecutor Luz Roque Montesillo has also been threatened repeatedly (see below).

Maria de la Cruz de Camacho: Prosecutor of Huancayo. Her work has included investigation into the trafficking of children for irregular adoption by foreigners. Judges, prosecutors, lawyers and their relatives have been implicated in the trafficking. De la Cruz reported in June of 1991 that she had received death threats over the phone, warning her to drop one such case. In December 1991, however, Superior Prosecutor, Adelaida Bolívar, who was

in charge of investigating the judges and prosecutors suspected of trafficking children, accused de la Cruz of being one of 14 prosecutors involved in such activities, together with 18 judges and 11 tribunal secretaries. De la Cruz has been suspended by the government.

José Macera Tito: Huamanga's Chief Prosecutor in the Ayacucho Department. Tito was murdered, presumably by the Shining Path, on 8 November 1991 at 7:25 a.m. while taking his three children to school. Ayacucho's Superior Court Magistrates denounced the murder and expressed their concern about the fact that some police officers had been just a few meters from where the murder took place. They apparently did not notice the act, nor were they able to capture any of the perpetrators.

Juan Luís Pérez Coronado: Lawyer and legal adviser to the regional government of "Los Libertadores-Wari". On 23 October 1991, while leaving his home in Ayacucho's Huamanga city, he was shot by two unidentified persons and wounded in the spine. It still has not been established if the perpetrators belonged to the Shining Path or to one of the region's paramilitary groups. Five days later the police managed to defuse a letter bomb addressed to Pérez's wife and delivered to his house.

Luz Gladis Roque Montesillos: Prosecutor of Huancavelica's Special Office for the Prevention of Crime. She performed the initial investigation of the Santa Barbara case in which the military murdered 15 peasants, according to the declaration of Córdova (see above). She reportedly had been threatened repeatedly. In addition, her daughter suffered a lip wound from a fragment of a police

Luz Gladis Roque Montesillos

bullet, fired in circumstances which remain unclear, while in the arms of her grandmother just a few meters from the Prosecutor's Office.

Róger Salas Gamboa: *Vocal* of the Supreme Court. On 23 October 1991, he reported that he had been threatened over the phone and warned not to seek further information in the lawsuit against ex-president Alan García for unjust enrichment, and against four ministers of his government for the misuse of MUC funds. Salas is one of approximately 200 magistrates who have been suspended by the government.

César San Martín Castro

César San Martín Castro: *Vocal* of the Superior Court of Lima. He was working in the 12th Tribunal, which was responsible for trying crimes of terrorism until 31 December 1991. At the end of November 1991, when a case was heard in which Shining Path members were severely condemned, Shining Path members threatened members of the tribunal with death, singling out San Martín, whom they blamed for what had happened in the penal system. Several days later, on 10 December, he and his family received two telephone death threats at their home. On 14 December, his wife, also a member of the Judicial Power, narrowly escaped a murder attempt while she was at a market near her home. Two individuals were captured following the attack which has been attributed to the Shining Path Movement.

Gregorio Vargas: Judge, Ulcumayo. Vargas was murdered in August 1991. The Shining Path is presumed to be responsible, although no further information is available.

Arturo Zapata Carbajal: Provisional Judge of Lima's 34th Criminal Tribunal and ex-judge of criminal execution of the Miguel Castro Castro Penitentiary, where those accused of terrorism are interned. On 10 April 1992, at 9:30 a.m., members of the security forces forcibly entered his home seeking to detain him. Zapata's family was threatened and interrogated regarding his whereabouts. Later, after spending hours in his home and removing documents, photographs, videos, and judicial case files, they left. The complaint that his wife sought to file in the police station was not accepted. The accusations against him by the police remain unknown.

Weeks before the breakdown of Peru's constitutional order, the government had initiated a campaign against Zapata, accusing him of permitting the liberation of condemned terrorists. The Judicial Control Organ was investigating this accusation. As a judge of criminal execution, Zapata was responsible for evaluating and ruling on applications for penitentiary benefits, such as parole, submitted by persons condemned for terrorism. Many were able to apply for such benefits due to the fact that their crimes pre-dated the complete prohibition of benefits to convicted terrorists and drug traffickers. Zapata was suspended by a legislative decree published on 24 April 1992.

Association of Democratic Lawyers: On 7 April 1992, security forces arrested members of the Association of Democratic Lawyers, a group that defends Shining Path members in court. Those arrested and liberated days later were: **Jorge Cartagena Vargas**, **Manuel Ascencios Martell**, **Violeta Roque**, **José Salazar** and **Carlos Villanueva**.

Like the arrests of members of Parliament and of others following the incidents of 5 April, these arrests were based on verbal orders received by security force members. As in other such cases, the precise causes for the arrests are unknown. It

appears, however, that the arrests were not exclusively based on the lawyers, defence of the Shining Path. Police units specializing in the struggle against subversives are convinced that members of Shining Path support groups, such as the Association of Democratic Lawyers, form part of their military and planning apparatus.

In the events that occurred in the Miguel Castro Castro Penitentiary between 6 and 9 May 1992, where approximately 40 Shining Path members died, two of the victims included **Yovanka Pardavé** and **Tito Valle Travesaño**, who had been detained on charges of terrorism. Both were members of the Association of Democratic Lawyers. Their direct involvement with the Shining Path was made known to the police in a confiscated video in which the two appear with Abimael Guzmán and members of the Shining Path's Central Committee. The circumstances of these deaths have not been duly clarified owing to the fact that no one may enter the penitentiary except the security forces in charge of the operation.

Ismael Paredes Lozano: President of the Superior Court of Ancash. On 17 May 1992, the Shining Path attacked with explosives the homes of various authorities of the city of Huaraz in the Ancash Department, causing material damage to the home of Paredes.

Delfín Arosquipa: Justice of the Peace of the San Pedro District, Cuzco. On 13 May 1992, a group of approximately 50 Shining Path members reportedly entered this district and set fire to the local municipal building and two public service buses. They violently removed from their homes Arosquipa and the mayor, the governor and the president of the peasant community. At the public plaza they subjected them to a "popular trial" and murdered the first three mentioned. They spared Arosquipa at the request of his family.

Cipriano Balbuena Díaz: Justice of the Peace, Huancayo. He was murdered on 19 November 1991. The Shining Path is reportedly responsible, alhough no other information is available.

Roberto Corcino Casiano Yanac: Justice of the Peace of the Acopampa District, Carhuaz Province, Ancash Department. He was murdered on 15 March 1992 in front of his wife and four children by a group of hooded individuals said to be members of the Shining Path. The group carried out several attacks in Acopampa, and murdered serveral peasants in front of their relatives. The causes of these murders are unknown.

Manuel Gavilan: Justice of the Peace of the San Miguel District, Capital of the Province of La Mar, Ayacucho Department. Gavilan was murdered on 24 June 1991 in San Miguel's *Plaza de Armas*, reportedly by a group of Shining Path members who also murdered 14 other residents.

Alejandro Quispe Torres: Justice of the Peace of the Huasahuasi District, Tarma Province, Jumín Department. He was murdered on 11 November 1991 along with 10 other people. It appears that the Shining Path, which accused the victims of belonging to the "peasant patrols" (*rondas campesinas*), was responsible for the murders.

Juan de Dios Solorzano Chavez: Justice of the Peace, Pachacomas District, Antabamba Province, Jumín Department. He was murdered on 5 March 1992 along with two other persons in Pachacomas' *Plaza de Armas*, reportedly by Shining Path members.

Alcides Zúñiga Costa: Justice of the Peace of Pallasca, Chavín Region, Ancash Department. He was murdered on 14 January 1992, reportedly by Shining Path members who attacked in the locality and used explosives to destroy the seat of the national police office, the post office, the national bank, and the municipality office, among others.

Moreover, following the 5 April suspension of the Constitution, the prosecutors, judges, and Magistrates listed below were dismissed:

Prosecutors

Pedro Méndez Jurado

Luis Matta Peña

Daniel Caballero Cisneros

Adolfo Méndez Méndez

Lidia Vegas Salas de Garrido

Edmundo Amoretti Mendoza

Luzmila Huaman Bringas

Rosa Angélica Sedo Mendiola de Prieto

María Eva Astete Carbajal

Luisa Elizabeth Aguilar Olano

Socorro Ponce Dios

Avelino Trifón Guillen Jauregui

Virginia Alcalde Pineda

Víctor Rosell Espino

Roxana del Pilar Torres Vega

César del Pino Aguilar

Luciano Alpiste La Rosa

Javier Villavicencio Alfaro

Pablo Livia Robles

Silvio Máximo Crespo Holguin

César Marcelo Girao Zegarra

Luisa Ivonne García Gatty

Manuel Carlos García Márquez

Carlos Eloy Velásquez Martinez

Nelly Malaren Cáceres

Ludgarda Tacuri García

Luis Bayetto Acosta

Leoncio Paredes Cáceres

Juan León Gamarra

Flor de María Vega Zapata

Aurelio Julio Pun Amat

Hugo Denegri Cornejo

Magistrates and Judges

Juan Manuel Méndez Osborn

Isaac Gamero Valdivia

Horacio Valladares Ayerza

Roger Salas Gambos

José Angulo Martínez

Federico Peralta Rosas

Carlos Espinoza Villanueva

Guillermo Cabala Rostand

Walter Vásquez Bejarano

Antonio Pajares Paredes

Lorenzo Matos Becerra

Eloy Espinoza Saldaña

Hector Beltrán Rivera

Oscar Alfaro Alvarez

José Ramos Arnao

Juan Bardelli Lartirigoyen

Carlos Torres Cueva

Eddy Arestegui Canales

Angel Romero Díaz

Vicente Walde Jauregui

Pedro Ortiz Portilla

Julián Garay Salazar

Raúl Valdez Roca

Julio Biaggi Gómez

José Mieses Vargas

Edmundo Peláez Bardales

Juan Zegarra Chavez

Máximo Antezana Espinal

Eduardo Leturia Romero

César Vega Vega

Juan Vidal Morales

Gastón Macassi Sánchez

Teodoro Jiménez Raymond

Wills González Muñoz

Jorge Gallegos Guevara

Juan Vergara Gotelli

Juan Cabello Vargas

Raúl Nato Pino

Luis Gazzolo Villata

Mariano Torres Carrasco

Ramiro Garrido Chaparro

Victor Guevara de los Ríos

José María Veramendi Serra

Julio Pachas Avalos

Oscar Gamarra Cabeza

Angel Osorio Bernuy

César San Martin Castro

Jorge Esquerra Cáceres

José Tello Solis

Victor Raúl Haya de la Torre Barr

Otto Egusquiza Roca

Héctor Rojas Maraví

Gastón Molina Huaman

Martin Santos Peña

Daniel Peirano Sánchez

Diodoro Antonio González Ríos

Alejandro Rodriguez Mendoza

Rafael Menacho Vega

Raúl Lorenzzi Goycochea

Oscar Leon Sagastegui

Luis Molero Miranda

Rosa Sotelo Palomino

Benjamín Enríquez Colfer

Raúl Quezada Muñante

Eduardo Contreras Morosini

Luis Sánchez Gonzáles

José Antonio Ostolaza Nano

Hernán Saturno Vergara

Rubén Mansilla San Miguel

José Espinoza Córdova

Ida Rodriguez Rodriguez

Luz Inés Tello Valcárcel

César Emilio Mendoza Rodriguez

Alvaro Suárez Milla

César Cruz Saco

Manuel Lora Almeida

Rómulo Torres Ventocilla

Pablo Matías Huarcaya

Hildebrando Roca Oliveros

Julio Milla Aguilar

Malzon Urbina la Torre
Herminio Vigo Zevallos
José Fernández Gálvez
Orlando Carrera Conti
Adger Julca Luna
Arturo Zapata Carbajal
Luz E. Jauregui Basombrio
Jorge Ramírez Velasco
Raúl Rosales Mora
Andrés Paredes Laura
Jesús M. Soller Rodríguez
Julio Magan Gálvez
Julio Martínez Azurza
Pablo Bravo Cárdenas
Otilia Vargas Gonzáles
Manuel Carranza Panigua
Rita Meza Walde
José Antonio Sandoval Pelaez
Carlos Iturrizaga Berrocal
Nancy Avila León de Tambini
Josefa Izaga Pellegrini
Gustavo López-Mejía Vega
Félix Salazar Huapalla
Dilo Huamán Quintanilla
Baltazar Otarola Benavides
Miguel Angel Fernandez Torres

Ricardo Chumbes Paz

Ana Luzmila Espinoza Sánchez

Rosario Donayre Mávila

Elena Salguero Fernández

Pablo Mario Solis Bravo

Guillermo Gestro Montellanos

Eduardo Meneses Delgado

Modesta Baldramina Gonzales Vidal

Carmen Torres Valdivia

Juan Parra Solís

Felipe Sahua Jamachi

Elina Chumpitaz Rivera

Fernando Montes Minaya

Irma Chirinos Cárdenas

Gino Yangali Iparraguirre

Bertha Ramos de Gamarra

Carlos Gutierrez Paredes

Sergio Alberto Venero Monzón

Pablo Ladrón de Guevara Sueldo

Guillermo Nue Bobbio

Roberto Acevedo Mena

Carlos Tacanga Ramos

José Rojas Sierra

Elmer Rubina Angulo

Sabino León Ramírez

Ernesto Tambini Matos

PHILIPPINES

The Independence of the Judiciary

The 1987 Constitution of the Philippines introduced several provisions designed to restore the independence of the judiciary. These provisions reaffirmed the separation of powers by establishing Judicial and Bar Councils which recommend suitable candidates to the President for appointment to the Supreme Court and lower courts. Furthermore, the Constitution protects the independence of the judiciary by providing for security of judicial tenure and salaries, and the judiciary's fiscal autonomy. The Supreme Court now has the power to discipline and order the dismissal of lower court judges by a majority vote of members taking part in the deliberation on the case.

The military, however, retains substantial influence on the judicial system. Through the mechanism of the Special Criminal Courts Judges Association, the military is able to brief judges on the activities of the accused, based on military dossiers. Meetings attended by judges, prosecutors and the military, at which pending cases are reportedly discussed, are said to be held often.

In addition, no real protections exist to prevent the military from manipulating the media or the judicial system so as to prejudice the outcome of a trial. Article 32.16 of the New Civil Code does provide a civil remedy if public officers impair an individual's right to a fair trial. In practice, however, this has proved to be an ineffective remedy in light of the military's practice of presenting the accused to the

media after they have been detained incommunicado without benefit of counsel. The military is able to provide reporters with certain "facts" which reportedly often are obtained from extrajudicial confessions.

Although these newspaper accounts have no evidentiary value for the purposes of a trial, they may have an impact on the objectivity of the judge. One example of this occurred in the case of *People v. Itaas*, decided in the Regional Trial Court of Q.C. (Branch 88). In his decision convicting the accused, Judge Tirso Velasco alluded to certain facts that were never mentioned during the trial but figured prominently in newspaper accounts of the killing of Col. James Rowe.

Finally, the military periodically releases to the public its "Reward List", a list of persons wanted by the military and the corresponding reward, as well as its "Order of Battle", a list prepared by military intelligence with a ranking of so-called "communist terrorists". The Centre for the Independence of Judges and Lawyers (CIJL) is concerned that the publication of these reports may also serve to prejudice criminal trials.

The Legal Profession

The Philippines' legal profession is organized and monitored by the Integrated Bar of the Philippines (IBP) which is established by the Supreme Court. It is compulsory for a practicing or functioning lawyer to belong to the IBP. Furthermore, as an official agency, the IBP enjoys an influence that ordinary bar associations do not have. During the Marcos Administration the IBP became active in opposing Marcos. As a result, work related to human rights became routine for many lawyers. Following the

change of government, however, a dichotomy between human rights lawyers and other lawyers developed. As a result, the prior unity was disrupted and human rights lawyers became particularly vulnerable to attack.

The CIJL is encouraged by several recent changes in the laws of the Philippines that promise to have a positive impact on the ability of lawyers to perform their professional duties. Republic Act (RA) 7438, on the Right of Arrested Persons, was passed in February 1992 and approved by President Aquino on 27 April 1992. This new law requires public officials involved in the arrest, investigation and detention of arrested persons to inform them of their right to the assistance of the counsel of their choice. The law also makes interference with assistance of counsel punishable by four to six years' imprisonment or a fine of P4,000 or both. If a public official or officer does not inform a prisoner of his/her rights, the officer may be fined P6,000 or imprisoned for a term of eight to 10 years, or both. It is hoped that this law will be enforced, unlike similar laws enacted previously.

The Witness Protection, Security and Benefit Act, passed in 1991, applies to witnesses and state witnesses who are endangered by their testimony. However, this act has several flaws. First, law enforcement officers cannot receive the benefits of the act, even if they are testifying against other law enforcement officers. This discourages police officers from testifying against colleagues who commit human rights abuses. The willingness of an officer to testify against a colleague may encourage victims of human rights abuses to press their cases because officers are often the only persons present when human rights abuses occur. Second, the law uses terms such as "when circumstances warrant," or

"whenever practicable", which gives the government enough discretion to avoid granting benefits. Third, witnesses testifying against the military or the police may not feel secure about being guarded by individuals who belong to these same organizations.

Human Rights Lawyers

On 1 June 1992, Mr. Larry Soycano, a spokesperson for the military, thrice labelled the Free Legal Assistance Group (FLAG) a front organization for the banned Communist Party of the Philippines (CPP). His comments were aired live over radio station DXCC, Cagayan de Oro City. FLAG has sought to obtain a transcript of the programme, which the station manager has refused to provide, despite an order from the Regional Office of the National Telecommunications Commission.

The CIJL is extremely concerned about the attitude of the military, as exemplified above, towards the legal profession. Many of the persons alleging that their human rights were violated are accused of membership in the CPP or the New People's Army (NPA). Consequently, members of the military increasingly believe that the legal system serves to protect rebels. Thus, individual lawyers and human rights groups defending alleged CPP and NPA members have been publicly accused of being subversives themselves.

Individual lawyers continue to be identified with their clients and are subjected to harassment and persecution for their work. In a recent development, several lawyers have been charged under RA 1700, as amended. This Act penalizes membership in the CPP and its armed counterparts. Any person who is found to be a member of the CPP is considered to be a "subversive". The prosecution of lawyers under this

act may violate Article 18 of the United Nations Basic Principles on the Role of Lawyers, which states "Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.".

In response to the publication of the 1990-1991 edition of **Attacks on Justice**, Narcisa L. Escaler, Permanent Representative for the Philippines, submitted to the CIJL a letter dated 25 July 1991 designed to "disprove the allegation that the military commit human rights violations in the Philippines with impunity". The letter contained a list of military personnel convicted of serious human rights violations in the Philippines from 1986 to date. Of the 42 individuals listed, 39 individuals were convicted for crimes of frustrated homicide (A), homicide (B), multiple homicide (C), attempted murder, frustrated murder (D), murder (E), and/or multiple murder (F). These 39 individuals were sentenced to imprisonment as follows:

Crime	Nº Imp	1 year	1-5 years	6-10 years	11-15 years	16-20 years	Life
A		1	3	1			
B	3		5	4	4	1	
C				1	1		
D				1			
E				3	1	6	2
F							2
Total	3	1	8	10	6	7	4

One individual who was found guilty of grave threats and slight physical harm was sentenced to 30 days' imprisonment. The CIJL is concerned that the sentences imposed on these individuals are so light that they fail to create an effective deterrent against future violations.

Finally, the CIJL was encouraged to learn that Major Rico Palcuto, who is charged with ordering the murder of Alfonso Surigao (see *Attacks on Justice 1990-1991*), has been arrested and is currently being tried. However, no arrests have been made in connection with the murders of lawyers David Bueno, Ramos Cura, Emmanuel ("Noel") Mendoya, and Oscar Tonog (see *Attacks on Justice 1989-1990*).

Angelito Alisuag: Lawyer, Chairman of Haribon Foundation, Inc., and member of the Protestant Lawyers League of the Philippines (PLLP) from Palawan (see *Attacks on Justice 1990-1991*). Alisuag was scheduled to be arraigned on 30 September 1991 for the charge of "subversion". Alisuag was reportedly implicated by a client whom he defended in a murder trial. Prior to his arraignment Alisuag filed a Motion for Reinvestigation with the court. Consequently, the arraignment was held in abeyance pending the decision of the court on the Motion for Reinvestigation. On 1 April 1991, Alisuag's mother posted a cash bond of P2,000 for his provisional release. Alisuag's client has been acquitted of the murder charges against him.

Alisuag reportedly exposed the involvement of the military in illegal logging activities and the smuggling of logs in Palawan, including, most recently, the smuggling of kamagong flitches in Sitio Tegpas, Barangay Latud, the Municipality of Riyal, Palawan. In addition, he has handled a number of human rights cases including the eviction of urban poor and harassment against farmers and tribal groups.

Antonio C. Ayo, Jr. and **Santiago Ceneta**: Lawyers and members of FLAG from Daet, Camarines Norte, Bico Region (see *Attacks on Justice 1990-1991*). The two lawyers are scheduled to be tried in August for "subversion", a violation of Republic Act No. 1700, as amended. Ayo is charged with membership in a subversive organization and faces a maximum penalty of several months' imprisonment. Ceneta is charged with leadership of a subversive organization, which carries a maximum sentence of life imprisonment.

Both Ayo and Ceneta defended persons alleged to be members of the New People's Army (NPA). One of their clients reportedly confessed his guilt, against the advice of the two lawyers. After his conviction, he reportedly turned state's witness and accused Ayo and Ceneta of subversion. Before formal charges were brought against the two lawyers, Lt. Col. Manuel Porras of the Philippine National Police, assigned to Daet, publicly declared that a lawyer who defends suspected NPA members is giving aid and comfort to the NPA and thus should be considered a subversive.

The CIJL, which intervened in May 1991 on behalf of the two lawyers, is concerned that a guilty verdict in these trials could substantiate the military's claim that FLAG and/or its members are subversive, and therefore acting illegally. Furthermore, a guilty verdict may discourage lawyers from taking human rights cases for fear of prosecution on subversion charges. The International Commission of Jurists and the CIJL have sent a representative to observe the trial.

Wilfred D. Asis: Lawyer and member of FLAG. Asis defended six people who were accused of membership in the NPA. All six were acquitted of charges of subversion on 22 August 1991. On 29 August, Asis received a letter dated 14 August, from Butuan City, sent by one "Gunyong", who claimed to represent the National Democratic Front (NDF). The

letter acknowledged Asis' human rights activities; however, it stated that he was under investigation for the killing of two persons named "Leo" and "Mike". The letter ended with the statement: "Happy condolence na lang sa imong kamatayon" (Happy condolence for your death).

On 9 September 1991, Asis met with the Philippine National Police Superintendent, Lt. Col. Deliso to discuss the letter. Deliso reportedly told him that it was possible that certain elements of the armed forces had been contemplating his demise. Deliso also reportedly refused to offer Asis protection and told him to seek assistance from Justice Secretary Bello.

In an open letter dated 16 September 1991 Asis denied that he had ever known any person named Gunyong, Leo, or Mike, and that he had never been involved in any way in the killing of any person. Furthermore, Asis challenged the NDF to confirm or deny publicly their responsibility for the letter.

The NDF denied any responsibility for the death threats in a letter signed by Gorgonio Labrador for the NDF, also dated 16 September. The letter further "cleared" Asis from any involvement in the deaths of the two individuals identified as Leo and Mike.

As a result of interventions by the CIJL and other international organizations, the Department of Justice provided Asis protection by the Philippine National Police.

However, despite this protection, Asis reportedly continued to be under surveillance by unidentified individuals. Furthermore, Asis reportedly received reliable information in November 1991 that he was included in the Order of Battle of the 402nd Brigade, Philippine Army, stationed at Bangkasi, Butuan City, Augusan del Norte. In the past, being listed in an Order of Battle was often a prelude to being kidnapped, forced to "disappear", or killed.

No further threats to Asis have been reported as of this date. However, the CIJL remains concerned for his safety.

Romeo Capulong: Lawyer, member of the PLLP and FLAG, and head of the IBP in his region (see *Attacks on Justice 1990-1991*). On 18 March 1991, while Capulong was in court defending two alleged members of the CPP, a military prosecutor accused Capulong of trying to elicit information from a prosecution witness that could be used by the NPA for an assassination. On 19 March 1991, and again on 1 April, Capulong was reportedly subjected to clandestine surveillance by unidentified individuals. No further instances of surveillance have since been reported.

Solema P. Jubilan: Lawyer, member of FLAG and the PLLP from Kidapawan, North Cotabato (see *Attacks on Justice 1990-1991*). An article was published in the 12 May 1990 edition of *Mindanao Cross* alleging that an orphanage run by Jubilan was a front for NPA and CPP fund-raising activities. The article was attributed to an unnamed "Philippine Constabulary Major based in Cotabato province". The Philippine Commission on Human Rights reported that it could "neither confirm nor negate the veracity of the allegations, and much less, obtain workable knowledge of who the probable perpetrators were". After the article's publication Jubilan's secretary received several anonymous telephone death threats against Jubilan and her family. No further instances of death threats have since been reported.

Fausto M. Lingating: Lawyer and FLAG Regional Coordinator from Pagadian, Zamboanga del Sur (see *Attacks on Justice 1990-1991*). He was accosted by unidentified persons on 16 May 1991 allegedly belonging to the intelligence unit of the military. No further instances of harassment or surveillance have been reported.

Oscar Musni: FLAG Regional Coordinator for Region X-A, of Cagayan de Oro, Misamis Oriental (see *Attacks on Justice 1990-1991*). During September and October of 1990, Musni received death threats and was followed by unidentified men on motorcycles without number plates. At the time these attacks occurred, Musni was representing the family of lawyer Alfonso Suriago, who was killed on 24 June 1988 (see *Attacks on Justice 1989-1990*). In addition, Musni was assisting in the prosecution of Major Palcuto, who was implicated in the killing of Suriago by a convicted gunman. No further instances of harassment or surveillance have been reported.

Olegario Santisteban: Lawyer and FLAG Regional Coordinator in Iloilo City, Panay Islands (see *Attacks on Justice 1990-1991*). Santisteban's home was searched without a warrant on 27 May 1991 by Captain Rogelio Estampador of the Philippine National Police. Captain Estampador was accompanied by four armed policemen and two civilians. Santisteban was away from home at the time of the incident but several occupants of the house witnessed the search. When these individuals later went to the police station to report the incident, the officer receiving the report refused to include it on the police charge sheet. The CIJL intervened on Santisteban's behalf on 18 June 1991. No further incidents of harassment have been reported.

Vidal Tombo: Lawyer (see *Attacks on Justice, 1990-1991*). The CIJL continues to be concerned for the safety of Vidal Tombo, who was shot along with several colleagues on 17 July 1991. Tombo has reportedly recovered from his injuries although he continues to fear for his safety and to take precautionary measures against further attacks. Tombo is a respected human rights lawyer who has handled the cases of political prisoners and suspected NPA members in the Central Luzon region.

Nerio G. Zamora: Lawyer, member of the Protestant Lawyers League of the Philippines and a PC Provincial Coordinator for FLAG from Tagbilarnan, Bohol (see *Attacks on Justice 1990-1991*). Provincial Commander Lt. Col. Antonio Dadula has reportedly made efforts to settle the law suits filed by Nerio Zamora against him. Zamora filed the law suits after Col. Dadula reportedly threatened him with death on 2 January 1991 after refusing him permission to see his clients despite a court order from the Bohol Regional Trial Court.

RWANDA

Despite a law providing for the establishment of an independent bar association in Rwanda no such bar has yet been founded and the legal profession is unable to function independently. Some 50 or so legal advisers (*mandataires de justice*) have been licensed by the Ministry of Justice. However, fewer than half have the competence and the independence necessary to function truly as lawyers. Among the others are former judicial police officers and dismissed magistrates.

Joseph Kavaruganda, President of the Supreme Court (*Cour de Cassation*). In October 1991, a grenade thrown at was Kavaruganda's[14] bedroom window shortly after several laws proposed by the government had been held unconstitutional. The attack occurred hours after the curfew which is strictly enforced by the military and the police. Kavaruganda was unexpectedly not at home at the time of the attack and was not injured. His home was seriously damaged.

SENEGAL

On 30 May 1992, the National Assembly of Senegal adopted a constitutional amendment which altered Senegal's court structure. The Supreme Court was abolished and three new independent jurisdictions were established. These include: the Constitutional Council *(Conseil Constitutionnel)*, the State Council *(Conseil d'Etat)* and the Court of Cassation *(Cour de Cassation)*. Basic laws were enacted to implement this change.

According to the new amendments, the Constitutional Council has the jurisdiction to examine the constitutionality of state legislative actions, including laws. It also has the competence to supervise, *inter alia*, the constitutionality of international engagements and resolve questions related to the conflict of jurisdiction between the State Council and the Court of Cassation. The Constitutional Council is composed of five members, selected for one six-year term.

The State Council is the only legal body in charge of reviewing cases involving state abuse of administrative power. The functions of the Council include inspecting election lists and acting as a cassation court on budgetary rulings passed by the Court of Budgetary Discipline. The Council also assists the President of the Republic, the government, and the National Assembly with the Appropriation Act *(Loi de Finances)* and with public accounting, as well as advising the government on legislative bills.

The Court of Cassation is a high-level appeals court responsible for hearing appeals related to common law matters. It generally hears all cases falling outside the competence of the Constitutional Council or the Council of State.

This restructuring of the Senegalese court system was largely inspired by the French model. While it has the potential of improve the administration to justice in Senegal, the way in which the changes occurred seriously infringes upon the independence of the judiciary and the right to defence. In this regard, the Centre for the Independence of Judges and Lawyers (CIJL) has the following points of criticism:

- The lack of adequate consultation with the judiciary. Despite elaborate changes in the legal system, neither the judiciary nor the legal profession in Senegal were adequately consulted about this move.

- The suspension of the High Council of the Judiciary. According to the new amendments, the President of the Republic selects the members of the three courts. Article 6 of Basic Law N°. 92.22 suspended the High Council of the Judiciary as a transitional measure, transferring its powers to the President of the Republic. The concentration of power in the hands of the executive branch infringes upon the separation of powers and the independence of the judiciary in Senegal.

- The lack of transitional measures. Article 26 of Basic Law N°. 92.23 abrogated the Supreme Court which had been functioning in Senegal since 1960. Two other Basic Laws transferred all matters pending before the Supreme Court to the State Council and the Court of Cassation. Abolishing the Supreme Court in this manner created a gap, especially since the amendments did not specify when the new courts would be institutionalized.

SINGAPORE

Francis Seow: Lawyer, former president of the Singapore Law Society and former solicitor general of Singapore (see *Attacks on Justice 1989-1990*). In October 1991, a court in Singapore reportedly tried and convicted Seow, *in absentia* and without the presence of legal counsel, on 60 counts of tax evasion and related charges. Seow was sentenced to pay $238,000 in fines and an additional $42,000 in penalties. Seow is also subject to eight years' imprisonment should he fail to pay the fines.

Seow was arrested in April 1988, a few hours after filing petitions of habeas corpus for two of his clients. The government purported that its reason for arresting Seow was to examine his dealings with United States officials, as part of an investigation into U. S. efforts to influence Singapore politics. This claim was discounted by local human rights groups.

Seow was released on 16 July 1988, subject to restrictions on his freedom of movement and association. On 11 August 1988, he was charged with several counts of income tax evasion, the evidence for which appeared to have been gathered from materials seized from his office after he was arrested in May. Before his trial in December 1988, Seow travelled to the United States, where he was advised by a cardiologist to avoid further travel. As a result, he did not return to Singapore. Seow was tried *in absentia* and found guilty on most of the charges. A warrant for his arrest was issued on 22 May 1989. While in the United States, Seow has reportedly been harassed by the Singapore Government.

SOUTH AFRICA

Brian Currin: Lawyer and Director of Lawyers for Human Rights. Currin is currently being sued for libel by Judge Louis Leipoldt Esselen, a judge of the Transvaal Provincial Division of the Supreme Court of South Africa. The basis for the suit is an article written by Currin that appeared in the newspaper *The Star* in March 1990, entitled "A Tale of Two Tree Murders: Was Justice Colour Blind in Passing Sentences?" The article compared two similar cases, the "Witbank Tree Murder Case", involving black on white violence, and the "Louis Trichardt Tree Murder Case", involving white on black violence. In the Witbank case, the defendants were initially sentenced to 10 years' imprisonment, although the convictions were set aside by the Appellate Division. The defendants in the Louis Trichardt case were fined. Judge Esselen was the presiding judge in the case referred to as the "Witbank Tree Murder".

Bheki Mlangeni: Lawyer, member of the National Association of Democratic Lawyers (NADEL) and an African National Congress (ANC) Branch Chairman (see *Attacks on Justice 1990-1991*). The official inquest into the murder of Mlangeni is currently in progress. Last year the CIJL reported that on 15 February 1991, Bheki Mlangeni was killed when a parcel bomb exploded in his home in Soweto, Johannesburg. The police investigation into his murder was completed on 5 October 1991. After consideration by the Witwatersrand Attorney-General, the investigation was officially closed. The government stated that as no perpetrator was found, there would be no prosecution.

Because of the political nature of the case and the considerable criticism of the police investigation, a higher-level judge, rather than a magistrate, was appointed to conduct the inquest. The inquest has revealed evidence suggesting a police cover-up insofar as circumstances, such as the type of bomb used, point to police involvement. Moreover, the investigating officer, Captain Andre Kritzenger, gave testimony of his investigation which conflicted with that of the witnesses he was supposed to have interviewed. In June 1992, during his testimony, Captain Kritzenger was instructed by the court to continue pursuing these conflicts and other new pieces of evidence that had come to light during the proceedings.

SPAIN

Manuela Carmena: Judge. Carmena is currently the "Judge of Penitentiary Vigilance", in charge of overseeing prison conditions and handling prisoners' grievances in the Carabanchel Penitentiary in Madrid, one of Spain's largest prisons. She has an office at the prison and makes regular visits to tour the institution and speak with the inmates. In June 1991, she invited delegates from the Human Rights Watch Prison Project to join her on one of her visits. Human Rights Watch had been denied access to Spanish prisons by the Secretary General of Penitentiary Affairs. Carmena was well aware of this situation. However, her mandate allows her to invite whomever she chooses. This visit was also opposed by the director of the prison. In order to protect the director's position, Carmena produced an affidavit for him to sign, notarized by her law clerk, in which she stated that she was taking the delegates inside the prison so they could observe her work and that she did this against the will of the director.

The Secretary General of Penitentiary Affairs, Antoni Asunción, was extremely upset by this visit. He informed Human Rights Watch that he intended to initiate disciplinary procedures against Carmena for possible improper conduct. The General Council of Judicial Power spent several months investigating the matter. In December 1991, she was exonerated by the Council.

SRI LANKA

During the last several years, lawyers, witnesses, human rights groups, and even a judge of the Supreme Court have been threatened with reprisals if they continue to pursue legal action against the Security Forces of Sri Lanka.

In an attempt to reduce the danger faced by lawyers who take on human rights cases, the Bar Association of Sri Lanka (BASL) has taken over many of these cases. BASL files suits involving fundamental human rights and habeas corpus applications and then assigns them to lawyers. However, lawyers have continued to receive death threats after their initial appearance in court.

Kalyananda Tiranagama, and **Mohan Seneviratne**: Lawyers and the Secretary-General and Legal Officer, respectively, of Lawyers for Human Rights and Development (LHRD). The Centre for the Independence of Judges and Lawyers (CIJL) is particularly disturbed by recent reports of death threats received by the LHRD involving these two individuals.

Around midnight on 29 June 1992, four armed men wearing black clothes and dark glasses came to the organization's office on the third floor of a house along Cotta Road, Borella, Colombo. The men reportedly threatened the office clerk before inquiring whether Tiranagama and Seneviratne were in the office. When the clerk informed them that the lawyers were not there, the men left, saying they would return later. The following evening a group of men came to the office and rang the doorbell on three occasions between midnight and 2:30 a.m. Although the

lawyers were present at the time, they did not answer the door but on the second occasion they noticed a Pajero jeep parked near the office. These vehicles are reportedly often used by security forces.

On 1 July, the lawyers reported the incidents to the Inspector General of Police, the Chief Justice and the Attorney-General. The police recorded their statements and made arrangements to provide a police guard at the office from 11 p.m. to 6 a.m. That evening, approximately one-half hour after police left the LHRD office, a Pajero jeep without number plates was seen parked opposite the office. The police were notified, but the jeep disappeared before the police arrived.

The following evening several members of the LHRD office staff noticed suspicious persons loitering near the office. Around 7:45 p.m. the office clerk was followed by two unidentified persons while returning to the office. At approximately 9 p.m. the office clerk encountered an armed man on the third-floor balcony of the office. The police were called immediately and arrived within five minutes, but were unable to find the man.

On the morning of 3 July, at about 11:10, the office clerk was stopped on his way to the post office by a man dressed in civilian clothes. The man, who apparently insinuated that he was the one who had climbed onto the balcony the previous night, told the clerk not to be afraid as they did not mean to harm him personally, but suggested that he leave the office within a week as he was a hindrance to them. The man informed the clerk that the LHRD could complain to whomever it wished, but that it would do no good. Finally, the man told the clerk to inform Tiranagama and Seneviratne to stop appearing in fundamental rights applications.

The LHRD has a membership of about 50 lawyers who conduct legal literacy programmes and provide free legal advice and legal assistance to persons in distress.

SUDAN

Since July 1989, when Lieutenant-General Omar Hassan al-Bashir came to power, 322 of 386 judges have been dismissed or have resigned in protest against governmental actions related to the judiciary. The dismissal and replacement of non-fundamentalist judges was followed by a purge in 1990 of southern non-Moslem and northern Coptic Christian Sudanese members of the judiciary. Recent campaigns also included the removal of female judges from the bench.

In addition, lawyers, like other citizens of Sudan, have been subjected to serious violations of human rights. The most recent illustrations of such violations include the confiscation of passports and property of self-exiled Sudanese, including lawyers and their families.

The Introduction of Islamic Law

The introduction of Islamic law in Sudan dates back to the military regime of Gaafar Nimeiri which came to power in 1969. In 1983, Nimeiri passed a series of laws known as the "September Laws". The most important feature of these laws was the introduction of Islamic punishments (Huddud) for certain offences. These punishments included judicial amputations, execution, crucifixion and flogging. The September Laws were met with strong opposition by the judiciary and the legal profession in Sudan, which in many cases refused to implement its provisions. The 1983 Judiciary Act was therefore introduced,

granting the President the power to dismiss and appoint judges and to establish special courts.

In 1985, Nimeiri was overthrown. The transitional government which succeeded him committed itself to upholding more democratic values. However, it failed to repeal the September Laws. Nevertheless, during this time Huddud punishments were suspended.

On 30 June 1989, as a result of another military coup, Lieutenant-General Omar Hassan al-Bashir assumed power, and his government immediately identified itself with the National Islamic Front (NIF). It suspended the 1985 Transitional Constitution of Sudan and declared a state of emergency. All political and trade union institutions, including the Sudanese Bar Association and the Sudanese Legal Aid Association, were dissolved. Moreover, the 1983 September Laws, including the Huddud punishments, were reactivated.

Legislating by decree, the military regime acted quickly to undermine judicial independence. By virtue of Military Decree N°. 1, the judiciary was put under the direct control of the ruling Revolutionary Command Council (RCC). Decree N°. 2 declared a state of emergency, preventing judges from reviewing arrests, detentions, torture, searches, curfews or restrictions on the freedom of expression. The High Court was also denied the jurisdiction of reviewing death penalty sentences imposed by the Special Security Courts. Exceptional courts were also established. Immediately following the coup, Special Courts were formed. These courts applied summary procedures which lead to the execution of several

individuals accused of offences such as dealing in foreign currency and corruption.

In September 1989, the Special Courts were abolished and replaced by the Revolutionary Security Courts. These courts had the same jurisdiction as their predecessors and were equally devoid of procedural protections. A Revolutionary Security High Court was also established as an appeals court. Sentences passed in the Security Courts involving the death penalty or more than 30 years' imprisonment had to be confirmed by the Military Council. Judges operating within this system were directly appointed by the RCC.

The civil court system was also seriously affected by these changes. As stated above, the majority of non-fundamentalist judges were dismissed. The RCC initiated a scheme to replace qualified secular judges with young fundamentalist graduates, many of whom had not yet passed their bar examinations. In an act that deprived even these new judges of their discretionary powers, in November 1990 the Chief Justice instructed the judges to inflict the harshest punishments allowable for each offence brought before them.

In March 1991, the government further institutionalized its vision of Islamic law by adopting a new Penal Code. This code was based on drafts prepared by Dr. Hassan El Turabi, the NIF leader (who was Minister of Justice before the coup in 1989). Although the new Penal Code was initially implemented only in northern Sudan, it was extended to the Christian south in December 1991. This new code has had a devastating impact on

human rights and the independence of the judiciary and the legal profession in Sudan.

During December 1991, another amendment to the Code of Criminal Procedure was introduced, adding more rules which effectively jeopardized judicial independence. This amended code expanded the ability of the Chief Justice to constitute and determine the jurisdiction of "special" criminal courts. The code also abolished the "Major Courts". These were three-member trial courts within the regular criminal justice system which had jurisdiction over offences carrying the death penalty or long terms of imprisonment. Because trials were conducted with jury-style protections, Major Courts were believed to ensure that the rights of the defendant were respected in criminal cases with potentially grave consequences. According to the December 1991 amendments, however, such offences are now tried by single magistrates. Considering the seriousness of the offences and the calibre of magistrates remaining after the purge in the judiciary, there is increased concern about the possibility for fair trial in the administration of criminal justice.

The Dismissal of Judges

In September 1991, the government of Lieutenant-General al-Bashir dismissed five female judges in what is thought to be an attempt to remove all women from the judiciary. The following are among the latest group of dismissed judges.

Appeals Court Judges

Nur Alhuda Al Awadh (female)
Rashidah Fadul (female)
Ihsan M. Fakhri (female)
Mohammed Ibrahim
Cafar El Sanosi

Provincial Court Judges

Maymonah Mirghani Ageed (female)
Tarik Sid Ahmed
Amnah Abdel Mageed (female)
Abdel Moniem Abdel Rahim

Courts of First Instance Judges

Abbas Abdallah
Abdel Gader M. Ahmed
Hashim Abu Bakr
Nagm El Din El Hassan
Aber El Mahi
Mohammed El Muatanim
Mohammed El Mustafa
Omar El Sehikh

Santino John Akot: Lawyer from southern Sudan. Akot was arrested on 6 March 1990 and reportedly held in Kassala Prison in the Eastern Province. He was released from prison during the last quarter of 1991, never having been charged or tried for any crime.

Farouk Abu Eissa: Lawyer and General Secretary of the Arab Lawyers Union; **Dr. Mansour Khalid**: Lawyer, ex-minister of foreign affairs, and member of the Sudanese People's Liberation Movement (SPLM); and **Dr. Amin Mekki Medani**: Lawyer, President of the Sudan Human Rights Organization and President of the Sudanese Bar Association (see *Attacks on Justice 1990-1991*). These lawyers are among the leading Sudanese citizens living in self-imposed exile in Egypt and Europe and have recently had their property in Sudan confiscated by the military regime of General al-Bashir. The government's justification for its action is that such persons are working in organized opposition to the regime from outside Sudan. The confiscations are based on decrees of the governing Military Council and are not the result of any prosecution or juridical process. The confiscated property included houses, automobiles, money in bank accounts and movable property such as furniture.

Amin Mekki Medani

When information regarding the confiscations became public, one leading member of the Military Council, Mohammed Elamin Khalifa, publicly denied the confiscations had taken place. However, Dr. El Turabi, leader of the NIF, declared during his visit to the United States in the spring of 1992 that such action was taken because the persons concerned had been involved in criminal offences including a plot to overthrow the regime by force. No such accusations or charges have yet been brought against those whose property was confiscated.

Kamal Al-Gizouli: Lawyer and General Secretary of the banned Sudanese Writers' Union. He was arrested on 12 February 1992 along with Lawyer **Adnan Zahir Surer**, who was released near the end of May 1992. Before the February arrest, Surer had been arrested three times between December

1989 and August 1991, when he was released following a heart attack.

Al-Gizouli remains in detention, has reportedly been subjected to severe torture and has not been allowed visits from his family. He was previously detained on 10 August 1989. On 1 May 1991 he was released, never having been charged or tried. Following his release, Al-Gizouli resumed practising law until he was arrested again on 12 February 1992 at his office during a public demonstration protesting the devaluation of the Sudanese currency. There is no evidence to indicate that he was involved in the demonstration. Furthermore, in the middle of May, the contents of his law office were confiscated by the government.

Dr. Ahmed El Sayed Hammad: Lawyer and leading member of the Democratic Unionist Party; and the wife and children of **Adam Abel Moula**: Lawyer, who now live in the United States. These lawyers and their families recently had their passports confiscated when they approached a Sudanese embassy for passport renewal or other consular services requiring the presentation of passports.

Sudanese embassies have recently begun to confiscate the passports of Sudanese citizens and their families, including lawyers, living abroad whom the government considers to be members of or sympathetic to the opposition. These citizens face the possibility of virtual statelessness when their passports expire as there is serious doubt that their passports will be renewed. This is particularly so in Egypt, where hundreds of thousands of Sudanese live. The official Egyptian policy does not recognize the Sudanese in Egypt as refugees. Therefore, the question of obtaining refugee travel documents does not arise.

Gassim Mohamed Saleh Hassan: Lawyer. Arrested on 4 July 1991 and released at the end of August 1991. No charges were ever brought against him. During his detention Hassan was subjected to various forms of torture. He was dismissed from the Attorney-General's office in March 1990 along with 16 colleagues on suspicion of having anti-government sympathies.

Sid Ahmed Al Hussein: Lawyer and Deputy Secretary-General of the Democratic Unionist Party. Recent information indicates that 61-year-old Al Hussein was sentenced to life imprisonment by a Military Tribunal held secretly on 9 July 1992. He was arrested in early May 1992 under suspicion of recruiting tribal members of western Sudan for the Sudanese People's Liberation Movement. Al Hussein has reportedly been beaten and tortured by Sudanese security forces.

Al Hussein was arrested twice before May 1992. He was first detained from July 1989 until February 1990. He was again detained in September 1991 for his involvement in an alleged coup d'etat. He was released in November with no charges ever having been brought against him.

Ahmed Osman Omer: Lawyer. Omer was arrested at his office and detained. To date, no charges have been brought against him. He is reportedly being subjected to brutal torture.

Abdel Bagi A. Hafize El Rayah: Lawyer. In December 1991, Abdel Bagi's left leg had to be amputated as a direct result of the torture he endured while in a secret detention centre in Khartoum. During his detention Abdel Bagi was put in a barrel of ice for three hours for three consecutive days. When asked why he thought he had been detained by the present government, he replied: "I am a liberal and a secularist and I believed in, and actively defended, democracy.".

SYRIA

Syria has been under a state of emergency since 8 March 1963. During this time, laws have been enacted which considerably undermine the independence of the judiciary. Specifically, these laws create irregular courts that follow summary procedures and provide no opportunity for appeal. They fail to specify the rights of the defendant and only vaguely define serious illegal activities. The emergency laws also transfer powers formerly delegated to the regular courts to the Emergency Law Governor.

The State of Emergency Law authorizes the creation of irregular courts, comprised of State Security Courts and Military Field Tribunals. Decree N°. 47 of 28 March 1968 established the State Security Courts. Article 6 of the State of Emergency Law gives jurisdiction to these military courts over cases concerning crimes jeopardizing state security and public order, crimes against public authority and crimes which jeopardize public confidence in the Revolution. In addition, Article 5 of Decree N°. 47 gives the State Security Courts jurisdiction over "any case referred to it by the Emergency Law Governor". Sessions of the State Security Court are held *in camera*.

Article 6 of the Law to Protect the Revolution permits the military courts to deviate from the procedures followed in the ordinary courts. The lack of procedural protection affects not only the trial process, but also the stages of surveillance and detention. Judgements resulting from trials held *in*

absentia are not subject to retrial in cases where the defendant is later arrested, unless the person accused voluntarily surrenders to the police.

Decree N°. 109 of August 1968 authorized the Military Field Courts to be established only during states of war and only in places where there is military activity. As a result of the continuing Arab-Israeli conflict, a constant state of war has been in effect in Syria; therefore these courts have been functioning continually. The Field Courts hear cases of grave security infractions as defined by the Emergency Laws. The courts may also deviate from normal court procedures, including established rules of evidence. Defendants are not permitted legal representation at field court proceedings, which are also held in secret.

Finally, the decisions of the military courts are not subject to any form of legal review, either normal or exceptional. Rather, the decision of the tribunal must be confirmed by the President of the Republic, who has the power to reject, commute, or reduce the sentence, or order a retrial.

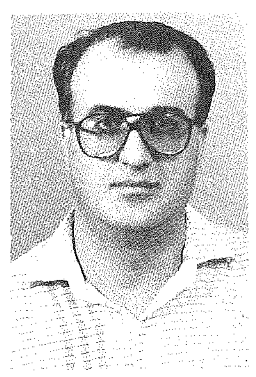
Moreover, the State of Emergency Law delegates to an Emergency Law Governor exceptional powers which are normally exercised solely by the judiciary. These powers are stated in Article 4 which also authorizes administrative detention and surveillance and seizure of persons and property. Furthermore, the acts of the Emergency Law Governor are generally not reviewable by the regular courts.

In addition to these restrictions on the independence of the judiciary, Syrian law also codifies government control over the Syrian Bar

Association. Prior to 1980 the Syrian Bar Association was active in defending fundamental human rights. Then, in 1980 the Bar Association, along with several other professional organizations, petitioned the government demanding that the state of emergency be lifted and that fundamental rights and freedoms be restored. In response, the government took harsh punitive action against these organizations. Since then, lawyers and their organizations have been a target for government repression. In addition to passing a restrictive Advocacy Act in 1981 that removed all vestiges of independence from the Syrian Bar Association, the Syrian Government has arrested and detained numerous lawyers.

Human rights activists, too, face repression in Syria. In 1980 the Syrian League for Human Rights was created. Later that year the League's entire leadership was arrested. As a result of these arrests, compounded by the continued restrictions of the state of emergency, the League became defunct. Recently, another attempt was made to establish a human rights association in Syria. The Committee for the Defence of Democratic Freedoms and Human Rights in Syria (CDF) was created in 1989 and since then has attempted to conduct regular activities. Most importantly, the CDF criticized human rights abuses committed during recent elections. The case of Aktham Nouaisseh (see below), a human rights lawyer who was arrested for such criticism, illustrates the Syrian Government's continuing attempts to block the work of human rights activists.

Despite the mass release of political prisoners following two presidential amnesties in December 1991 and March 1992, the following lawyers remain in detention in Syria.


Aktham Nouaisseh

Aktham Nouaisseh: Lawyer. Nouaisseh was sentenced on 17 March 1992 by the Supreme State Security Court in Damascus to nine years' imprisonment with hard labour. Among other charges, Nouaisseh was convicted of violating Article 4 of Legislative Decree N°. 6 of 1965, which lists as illegal the following activities:

> Opposing the fulfilment of unity between Arab countries, or opposing any of the goals of the Revolution, or obstructing these goals by participating in demonstrations and assemblies, or conducting disorderly acts, or inciting for them, or publishing false news with the aim of causing disorder and shaking the confidence of the masses in the aims of the Revolution.

The Centre for the Independence of Judges and Lawyers (CIJL) sent an observer to the trial of Nouaisseh and 16 other human rights defenders. In the view of the CIJL, the trial fell short of international standards pertaining to fair trial, especially with regard to procedures, specifically the right to a proper defence. Although the defence team was composed of lawyers chosen by the defendants or their families, the lawyers were prevented from meeting with their clients except in the courtroom during the hearings. When the defence attempted to call witnesses and to present other evidence to be added to the court's file, its requests were denied.

Additionally, the court failed to investigate allegations of torture made by the defendants. Nouaisseh had to be carried into the courtroom with the help of other defendants because he was paralyzed and could not stand or walk by himself.

Nouaisseh was arrested along with five others by members of the Military Intelligence on 18 and 19 December 1991, allegedly owing to their association with a statement issued by the CDF.

The statement, issued on 10 December 1991, criticized human rights violations during the recent presidential elections. Nouaisseh's brother, Samir Nouaisseh, was arrested on 18 January, apparently in an effort to put pressure on Aktham Nouaisseh to divulge information about the CDF.

Because the trial of Aktham Nouaisseh lacked important safeguards to ensure its fairness, the CIJL intervened with the Syrian Government after Nouaisseh received his sentence. Although four other human rights activists who were also sentenced during the trial were released around 5 June 1992, Nouaisseh remains in prison.

Riad al-Turk: Lawyer and First Secretary of the Political Bureau of the banned Communist Party (see *Attacks on Justice 1990-1991*). The 60-year-old Al-Turk has been detained since 28 October 1980. He is presently being held at the Military Interrogation Branch Detention Centre in Damascus under the authority of the Military Intelligence. He has been held in incommunicado detention for almost 12 years since his arrest and has never been charged or tried.

Riad al Turk

Al-Turk suffers from several medical problems. As a result of being severely tortured at various stages throughout his detention, his life has been in danger and he has required intensive-care treatment. Additionally, he has been denied essential medical care for a number of health problems, including deafness, diabetes, kidney failure, chronic heart disease, high blood pressure and difficulty in moving his limbs. There is concern that al-Turk's health has seriously deteriorated in the past year. He was hospitalized in March 1991 after entering into a coma as a result of renal failure. He remained in the hospital for two weeks and was then returned to the Military Interrogation

Branch Centre without having fully recovered. Reports indicate that at the beginning of 1992 al-Turk's conditions of detention improved. He has been allowed books and newspapers. However, his health remains unstable. Medical facilities at the Military Interrogation Branch Centre are said to be inadequate for the proper monitoring of his condition and in providing the medical care he needs. Thus, there is reason to believe that the Government of Syria is not acting in accordance with Article 22 of the United Nations Standard Minimum Rules for the Treatment of Prisoners, which requires that prisoners receive proper medical treatment.

Ahmad Ayash: Lawyer, detained since 1982 without charge or trial.

Mahmud Baidun: Lawyer, detained since 1971. Baidun is a Lebanese lawyer who has been detained for over 20 years without charge or trial in Syria for his active support of the 1966-1970 government of President Salah Jadid.

Najib Dadam: Lawyer, detained since May 1983 without charge or trial.

Muhammad Daqqo: Lawyer, detained since 1986 without charge or trial.

Ibrahim Hakim: Lawyer, detained from 29 October 1980 until his release in January 1992. He was never charged or tried.

Abdel Karim Hamoud: Lawyer, detained since 7 October 1987 without charge or trial.

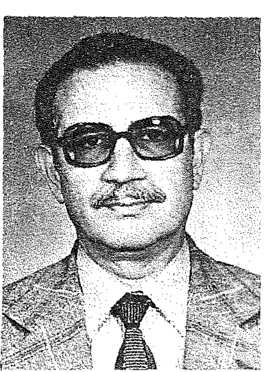
Naif al-Hamoui: Lawyer, detained since 16 January 1991. Hamoui is reportedly in critical condition. He was arrested along with over 50 other lawyers after he signed a leaflet protesting Syria's involvement in the Gulf War.

Philippe Khalaf: Lawyer, detained since 1981 without charge or trial.

Afif Mizher: Lawyer, detained since 18 December 1991 without charge or trial.

Walid Mouteiran: Lawyer, detained since January 1991 without charge or trial.

Mounir Msouty: Lawyer, detained since 5 September 1987 without charge or trial.



Mounir Msouty

Abdallah Qabara: Lawyer, detained since April 1987 without charge or trial.

Darwish el-Roumi: Lawyer, detained since 1986 without charge or trial.

Yousef al-Said: Lawyer, detained since 1982 without charge or trial.

Ahmed Shahin: Lawyer, detained since October 1980 without charge or trial.

Daoud Shihadeh: Lawyer, detained since January 1991 without charge or trial.

Shakour Tabban: Lawyer, detained since January 1991 without charge or trial.

Nash'at Tu'ma: Lawyer, detained since 25 February 1989 without charge or trial.

Mahmoud Khalil Younes: Lawyer, detained since 15 December 1987 without charge or trial.

Muhammad Zlaykha: Lawyer, detained since 19 November 1987 without charge or trial.

TOGO

In July 1991 a dramatic turn of events in Togo found Kokou Koffigoh, lawyer and former president of both the Ligue Togolaise des Droits de l'Homme and the Bar Association of Togo, appointed head of the Togo Government. Almost one year later, on 17 June 1992, the International Commission of Jurists (ICJ) was informed of the creation of a Human Rights Ministry within the Government of Togo, headed by lawyer and human rights advocate Djovi Gally. These changes were made in response to growing political and economic discord in Togo.

It is precisely the members of the legal profession and the human rights activists who have been leading the way towards the process of democratization and a multiparty system. In July and August 1991 a national conference was held to organize a transitional government for the purpose of creating a multiparty democracy. The conference received several recommendations from the Ligue Togolaise des Droits de L'Homme including proposals for the right to a lawyer, an end to secret and illegal detentions, the maintenance of the National Commission for Human Rights and investigations into past human rights abuses. The national conference adopted an interim constitution which greatly minimized the authority of President Gnassingbe Eyadema, in power for 24 years, and established the Prime Minister as the head of the government and Commander-in-Chief of the military. It was also during this conference that Kokou Koffigoh was appointed Prime Minister of Togo. Fundamental rights, including freedom of

speech, assembly, and association as well as separation of powers, including an independent judiciary, were also incorporated into the interim constitution.

Elections are planned for 28 August 1992, and it is expected that the new Constitution will have already been adopted by then. However, because of his concern about the military, Prime Minister Koffigoh has requested that international organizations send missions to observe the elections in Togo.

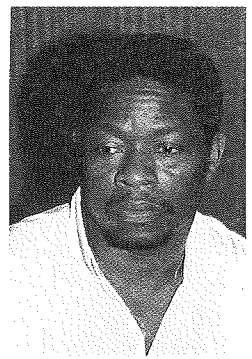
Togo has been marked by instability since early in the process of transition. There have been repeated attempts by the military to impede the development of a multiparty system. On 1 October 1991, elements of the military, including the Presidential Guard, occupied the radio station and attempted to kidnap Prime Minister Koffigoh. Following the attack on the Prime Minister, unarmed civilian militias attacked and looted the homes of supporters of President Eyadema. On 28 November 1991, the army again took control of the radio station and surrounded the Prime Minister's office, killing his guards and randomly shooting civilians. These military factions are believed to be loyal to President Eyadema. Both President Eyadema and the military belong to the Kabye ethnic group. President Eyadema has officially denied any involvement.

On 3 December 1991, Prime Minister Koffigoh surrendered to the military and was taken unharmed to the President's residence. This arrest followed several days of negotiations between President Eyadema and Prime Minister Koffigoh on the political future of Togo. The Prime Minister was released on 6 December having been asked to appoint a new government.

In April 1992, the military once more attempted to interfere with the transitional government. In a bloody incident, the army again occupied the Prime Minister's office, killing five people. Around the same time, on 5 May 1992, there was an attempt to assassinate the opposition leader Gilchrist Olympio. Gilchrist Olympio was injured but escaped and fled to Paris. This assassination attempt had the effect of temporarily slowing the transition to democracy.

The increased influence of President Eyadema and the military in the new transitional government has, among other things, prevented adequate investigation into past human rights abuses. In response to these reports, the army merely states that these revelations are nothing more than fabrications and lies. Amnesty International reports that while many of the abuses have been publicly examined by Togo's National Commission of Human Rights, no one has been brought to justice for violating human rights.

Ahlonki Dovi: Lawyer and President of the Bar Association of Togo and the National Commission for Human Rights (NCHR). During the military unrest of 28 November 1991 there was an assassination attempt on the life of Dovi. A few days later, Dovi and others who had been involved in human rights work in Togo were asked to report to the military for "their own security". Fearing persecution, Dovi left the country and fled to Benin. On 19 December 1991, the ICJ intervened by telephone with both the President and the Prime Minister of Togo on behalf of Dovi. During these conversations,


Ahlonki Dovi

assurances were given regarding the safety of Dovi. Soon after this intervention, Dovi returned to Togo.

Dovi has been very active in publicizing the human rights abuses attributable to General Eyadema's government. In July 1991, the NCHR announced its findings that the army was responsible for the deaths of 28 civilians whose bodies were discovered in a lagoon near Lome. Although two international human rights organizations and a commission appointed by the Eyadema Government initiated investigations, only the NCHR had reported by the end of 1991. Following the statement of their findings, two members of the military publicly admitted their participation in the murders.

TUNISIA

Tunisia applies a dual system of justice. In addition to regular courts, there are military tribunals which have jurisdiction over cases concerning "national security". Their proceedings are not public and there is no possibility of appeal. The tribunals are usually presided over by a civilian judge and four military officers appointed by the Executive. In addition, the Executive retains the right to appoint another military officer as the head of the tribunal.

This military tribunal system violates the United Nations Basic Principles on the Independence of the Judiciary. Article 5 of the Basic Principles stipulates: "Everyone shall have the right to be tried by ordinary courts or tribunals 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."

Mohammed Nouri: Lawyer. Nouri, sentenced to six months' imprisonment on 31 January 1991, was not released until March 1992 despite the expiration of his sentence in September 1991. Nouri was convicted on charges of "defamation of a judicial institution" under articles 50, 51, 68, and 69 of the Tunisian Press Code for an article he wrote criticizing the military tribunal system (see *Attacks on Justice 1990-1991*). According to Tunisian officials, Nouri's detention was extended because of an investigation in to alleged armed plots against the government by *Al-Nahda*, the prohibited Islamic opposition party. No new charges were filed against him.

TURKEY

Since it was enacted on 12 April 1991, the Law to Fight Terrorism has been the source of further constraints on the functioning of lawyers and the independence of the judiciary in Turkey. This law, commonly known as the "anti-terror law", introduced a broad and ambiguous definition of "terrorist" activities that may invite abuses of power by security forces. However, it also commuted previously stipulated capital sentences, amnestied thousands of prisoners, and nullified articles 141, 142, and 163 of the Penal Code, the so-called "thought crimes articles".

The anti-terror law was subjected to a review by the Turkish Constitutional Court. On 31 March 1992, the court announced that certain provisions of the law would be annulled. In theory, the court's decision was to have enhanced access to lawyers and promoted greater independence for the judiciary. In practice, however, the Turkish system still does not ensure the protection of such rights.

Lawyers practising in Turkey are routinely denied access to their clients. In its decision concerning the anti-terror law, however, the High Court abolished Article 10, which limited the number of defence lawyers for those accused under the law to three (it is customary in Turkey in significant political cases for defendants to be represented by many lawyers). Another result of the decision on Article 10 is that prison officials will no longer be allowed to attend meetings between lawyers and their clients in custody. In May 1992, the Justice Ministry issued the

latest in a series of circulars requiring police and prosecutors to ensure that detainees are allowed access to a lawyer. Nevertheless, many detainees continue to be denied access to legal counsel, particularly those charged with collective or political crimes. The final decision is left to the independent prosecutors, who usually deny access on the basis that it would prejudice an on-going investigation.

In its recent decision, the Constitutional Court also repealed Article 15, Paragraph 3. This provision of the anti-terror law encroached on the independence of the judiciary by making it more difficult to bring criminal allegations against police officers or intelligence agents. Under this provision, all such claims were referred to a local administrative council, which had the power to block legal proceedings against an officer accused of human rights violations. As a result of the court's decision, complaints involving police and intelligence officers will once again be dealt with directly by public prosecutors instead of being referred to the local administrative council. However, in the 10 southeastern provinces still under emergency legislation because of the Kurdish separatist movement, investigations into allegations of human rights abuses by security forces will continue to be subject to the approval of the local administrative councils.

The use of administrative councils to rule on formal complaints appears to be a clear breach of international principles concerning the independence of the judiciary. Article 3 of the United Nations Basic Principles on the Independence of the Judiciary states: "The Judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its

decision is within its competence as defined by law." Article 5 of the Basic Principles provides that: "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." Finally, Article 10 of the Basic Principles requires that persons holding judicial office have appropriate training or qualifications in law.

Contrary to this, the administrative councils are comprised of members of the local executive branch who have no legal background. Moreover, there is the concern that they may be open to influence from local security force commanders. In certain districts, deputy governors serving on the councils may even be local commanders of the gendarmerie. Hearings of the administative council are conducted *in camera* and complainants and their lawyers are not able to follow closely the course of their cases. Only if the Administrative Council decides that a case should be forwarded to a local court are complainants and lawyers again permitted to participate in the process.

Compounding the constraints placed on them by the anti-terror law, members of the Human Rights Association (HRA) also face attempted coercion by police forces. The Istanbul HRA branch was raided by the police on 21 March 1992 and again on 24 April. During the raids, police seized documents, announcements and membership lists. Visitors to the HRA office in Siirt reportedly undergo identity checks by the police. On 15 May 1991, police raided the Siirt office and beat a number of people. These attacks against the HRA, and the failure of the government to take action against them, are of

particular concern because of the government's promises in November 1991 to "accept the supremacy of law as an indispensable principle", and to ensure that individuals and organizations enjoy rights and freedoms in accordance with international human rights commitments. As the following cases illustrate, lawyers as well as their clients in Turkey are at risk because of the lack of adequate legal mechanisms to protect human rights.

Zübeyir Aydar, **Orhan Dogan**, **Sedat Yurttas**, and **Abdülkerim Zilan**: Lawyers and members of the Turkish Parliament, and **Cabbar Laygara**: Lawyer from Diyarbakir. The names of these lawyers appeared with the names of 23 other people on death threat leaflets distributed in various towns in the predominantly Kurdish southeast of Turkey. All of the 28 people are either Kurdish members of Parliament, have in some way spoken out publicly on behalf of Turkey's ethnic minority, or have taken up or investigated cases of human rights violations against them. The leaflets also contained threats against the lives of correspondents and writers of certain publications. The assassination on 8 June 1992 of Hafiz Akdemir, a journalist for the daily *Ozgur Gundem*, is evidence that those named in the leaflet still face threats to their lives.

Zübeyir Aydar (see above): Lawyer, Deputy President of the Turkish Human Rights Association, and member of the General Executive Committee of the People's Labour Party (HEP, generally perceived as representing Kurdish interests). Aydar began to receive death threats after having done research into and having made publicly known in early 1989 the existence of the so-called "Butcher's River" near Siirt, allegedly a dumping ground for victims of extrajudicial executions. Local military commanders are said to have threatened that his body, too,

would be found in the "Butcher's River". Further death threats followed his publicizing the deaths of three detainees who allegedly died under torture in Findik, Siirt province.

In September 1989, Aydar was internally exiled to Malatya under emergency legislation currently in force in southeastern provinces, including Siirt. This caused obvious problems for the clients he was representing at the time. He was eventually allowed to return to Siirt. A second order for exile was issued in July 1990, but was later cancelled.

In May 1991, Abdülkerim Celek of Tasli village was killed by the Kurdish Workers' Party (PKK). His relatives were visited by the regimental commander of the provincial gendarmerie who allegedly told them: "The PKK killed your man. Their man is Zübeyir Aydar. Go and kill him. I'll help in whatever way I can." In July 1991, after the assassination of Vedat Aydin (see *Attacks on Justice 1990-1991*), the police allegedly told a detainee in Siirt, "We killed Vedat Aydin, and within a month we'll have killed Zübeyir Aydar."

The Aydar family received word in August 1991 that five guards from Tasli village had been told by members of the political police to kill Zübeyir Aydar and promised protection if they carried out the murder. On 7 August 1991, the five guards were seen standing in a small park opposite Aydar's law office in Siirt. The lawyer's office was very crowded at the time and it is thought that this may have prevented the attack. During the following weeks witnesses saw the village guards outside Aydar's office on four different occasions. Aydar's wife informed the authorities of these threats, but she received no response.

Zübeyir Aydar and his wife Evin, who is also at risk owing to her work as an investigative journalist and as President of the Human Rights Association branch in Siirt, continue to receive constant threats by telephone and mail.

Meryem Erdal: Lawyer and Ankara Branch President of the Contemporary Jurists Association. Erdal stated that she was tortured while in detention after being taken into custody following a May Day demonstration in Ankara. After acquiring a medical report documenting the torture, Erdal filed an official complaint with the Ankara Republic Prosecution Office in which she stated that she was subjected to heavier torture and insults when she told the police that she was a lawyer. She added, "They beat me up in front of hundreds of people. They kept us standing for a long time at the Political Police Headquarters and insulted us frequently." Erdal has demanded that charges be brought against the police officers who mistreated her during the 18 hours she was detained.

Erdal Geçit: Lawyer. Geçit was detained in Cizre in late June or early July 1992, along with 17 others. The detainees appear to be Kurdish supporters. The homes of all the detainees were searched and several detainees were severely beaten. After first being held at the Cizre Police Station for four days, Geçit was taken to Slrnak Police Headquarters where he was reportedly punched by some 50 police officers. On 16 July 1992, Geçit appeared before a judge, and on 17 July he was released.

Yasar Günaydin and **Nural Uçurum**: Public Prosecutors. Günaydin was killed and Uçurum was seriously injured in two separate but similar armed attacks. In both cases the prosecutors were being driven to their offices when unidentified gunmen opened fire. The illegal Devrimci Sol organization, "the Revolutionary Left", claimed responsibility for both attacks.

Although the functions and duties of public prosecutors differ from those of judges, Turkish law declares that both categories of officials shall be independent in the discharge of their duties and shall have security of tenure. The Centre for the Independence of

Judges and Lawyers CIJL) believes that public prosecutors should not be harassed, persecuted or transferred for persisting in an inquiry or taking a particular decision.

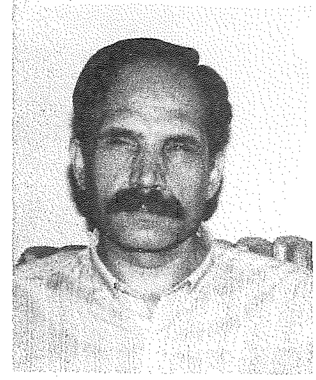
Hüsnü Ondül: Lawyer, Secretary of the Ankara branch of the Human Rights Association of Turkey, and Human Rights Foundation executive board member. Ondül was acquitted on 17 September 1991 in a trial in which he was tried in accordance with the anti-terror law on charges of "belonging to an illegal organization". On 4 January 1991, he had been detained by the Political Police in Ankara for statements he made protesting a ruling by the Ankara State Security Court (see *Attacks on Justice 1990-1991*). In the recent trial, Ondül was tried along with three other lawyers: **Aydin Erdogan**, **Ali Yildirim**, and **Esin Fatma Kulaç**. A decision of "no responsibility" was issued for the other three lawyers, who were charged with "staging an unauthorized demonstration".

Ali Ortas: Lawyer. Ortas initiated a case against two members of the Special Team forces for the intentional killing of Mustafa Ilengiz, a suspected member of the Kurdish Workers' Party (PKK). Since obtaining an indictment this year against the Special Team defendants, Ortas has become the object of attempted intimidation by the security forces. Ortas' clients were told, during their interrogation by the local police and gendarmerie, to pass on threats to his life. He continues to receive such threats. In addition, he has been followed and visitors to his house have been harassed.

Seref Turgut: Lawyer and member of the Torture Observation Commission of the Istanbul branch of the Human Rights Organization. At the beginning of March 1992, Turgut claimed to have been beaten by a police officer at Istanbul Security

Headquarters when visiting his detained client. Turgut reportedly was kept in detention for an hour after saying he would file a complaint against the police officer. He was later released.

Esber Yagmurdereli: Lawyer. On 4 February 1992, a trial began at Istanbul State Security Court against Yagmurdereli. The charges arose from a speech he made at a meeting of 18 September 1991 arranged by the Istanbul branch of HRA. Yagmurdereli is charged under Article 8 of the anti-terror law with "making separatist propaganda" and faces a possible two to five-year prison sentence.



Esber Yagmurdereli

Yagmurdereli is blind. Prior to his release in May 1991 he had been in detention and was subjected to severe torture since 5 March 1978 (see *Attacks on Justice 1990-1991*). During the 1970s he represented numerous defendants, including trade union leaders, in political trials in Bursa and the Black Sea region.

UGANDA

As was reported last year, and despite the efforts of the current government in Uganda to overcome a legacy of oppression, the legal system in Uganda is still not independent. Adequate commitments to provide guarantees of individual rights under international and Ugandan law have yet to be demonstrated. The independence of the judiciary is limited by the President's power to dismiss high court and supreme court judges. Although the Judicial Service Commission must concur in these dismissals, its members are appointed by the President.

Resources allocated to the justice system remain inadequate. Accordingly, there is a lack of public respect for a system which is unable to function efficiently. Low-level magistrates and court personnel are suspected by both the public and the government of taking bribes to supplement the extremely low salaries they receive. This lack of resources further interferes with the proper functioning of the criminal justice system by making it difficult to comply with legal requirements for prompt arraignment. Under Ugandan law a suspect must be charged within 24 hours of his arrest and brought to trial within 480 days. Yet neither of these requirements is strictly enforced. Frequently, citizens are detained on "holding charges" before adequate investigations have been conducted to produce evidence of probable cause. Treason is most often used as a holding charge while investigations of individuals are undertaken. Persons are detained for periods as long

as four years while awaiting trial and are often not represented by legal counsel.

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

Henry Kayondo: Lawyer. On 14 April 1992, Kayondo was charged with illegal possession of government documents. Kayondo was the defence lawyer for Zachary Olum, who is currently facing treason charges. The documents in Kayondo's possession were two letters from the Gulu district administrator to officials in the National Resistance Movement (NRM) Secretariat. These letters accused leaders of the North Ugandan Democratic Party of encouraging and being involved with insurgents, and declared the intention "to destroy politically Andrew Adimola, Zachary Olum and Okwonga Latigo". These letters were crucial for the defence and either were about to be served or had just been served. Kayondo is still facing charges.

Daniel Omara Atubo: Lawyer, member of Parliament and former minister for foreign and regional affairs. Omara Atubo is being held on charges of sedition in Luzira prison near Kampala. On 15 April 1991, he was arrested and charged with treason along with 17 others, but without any explanation. Following his arrest, Omara Atubo was flown to Lira in northern Uganda. He was held in military custody for three weeks before being returned to Kampala to be charged. On 7 May 1991, he and the 17 others were charged with treason at a preliminary hearing in the Chief Magistrate's court. The basis of the charge was the alleged plotting to overthrow the government between 1989 and 1991. No details were provided to support the allegations. On 12 August 1991, the High Court ruled that the charges were defective. However, the judge did not order the release of the defendants; instead, he urged the prosecutor to provide more details of the crime "as soon as possible". The judge's reasoning was that the defendants would only be rearrested.

At a hearing on 20 May 1991, Omara Atubo and the other defendants stated that they had been tortured. Amnesty International reported that, "Atubo showed physical signs of ill-treatment when he appeared in court." Moreover, according to the US Department of State, the Ugandan Government admitted that the defendants were tortured while in northern Uganda. Omara Atubo's lawyer, Ugandan Law Society President Remmy Kasule, was refused permission to see him at this hearing.

By 15 January 1992, the treason charge had been dropped against 14 of those charged, including Omara Atubo. However, Omara Atubo was then charged with sedition and was not released along with the others. The initial arrest was apparently related to advocacy of a multiparty political system.

UNITED KINGDOM AND NORTHERN IRELAND

The intimidation of defence lawyers in Northern Ireland has intensified since the murder of Patrick Finucane, a leading human rights lawyer, in February 1989 (see *Attacks on Justice 1988-1989*). Since that time, lawyers have had to work under the constant strain that the threats against their lives are real.

The Centre for the Independence of Judges and Lawyers (CIJL) has received reliable information concerning 11 lawyers who received death threats. The majority of these threats were passed by police officers in Castlereagh Police Station. Most of the lawyers are reluctant to release their names for fear that their lives may be seriously endangered. Although some have agreed to make their names known, the CIJL has decided to withhold them due to the serious nature of the threats.

Threats against Lawyers

Most threats against defence lawyers are made by police officials and transmitted to the lawyers through their own clients. In the reported cases, police officers make comments during interrogation sessions, suggesting that the particular lawyer's life is in danger. In the majority of the cases, however, the clients are unable to identify the officials because the police do not normally provide their name, identification number or rank during interrogation. The following accounts illustrate the problem:

- In a statement taken by a solicitor, the client said: "The police have been coming up to see me a number of times over my remand period. They have been talking about my solicitor. They said that [the solicitor] would end up like Pat Finucane".
- In a BBC 2 television production in the *Open Space* series, a Protestant woman who had been detained at Castlereagh Police Station said the police made these comments about her Catholic solicitor: "They asked me did I remember a solicitor called Pat Finucane and they said, 'Well, you know what happened to him, he ended up in a body bag [dead]. And they said that my solicitor, and named a second solicitor, they said that they would end up the same way, in body bags, because they were all Provies [Provisional Irish Republican Army] under the belt".
- A lawyer interviewed on the same BBC 2 programme stated: "When Pat was killed, practitioners suddenly realized that they weren't immune from the violence that was going on around them. There's that sense lurking about that it is a very dangerous thing".

The repeated use by the police of Pat Finucane's name symbolizes the serious nature of these threats.

Access to a Lawyer

The emergency legislation currently in force permits detention for seven days without charge. During that period lawyers are often denied access to their clients for 48 hours under the pretext that the lawyer will pass information that will aid terrorists.

Indeed, police officers view solicitors who defend suspected terrorists as "IRA solicitors". Identifying the lawyer with the cause of his client directly contravenes the 1990 United Nations Principles on the Role of Lawyers. Article 18 specifically states that "Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions."

Courts in Northern Ireland, however, have used this pretext to uphold this restriction. Even when lawyers have submitted sworn affidavits stating that they have never experienced pressure from terrorist organizations to divulge confidential information, courts have upheld the police order. In one such case, *In Re McKenna and McKenna (1991) CA,* the judge ruled:

> The fact that [the solicitor] and other members of this firm had no experience of any pressure being brought to bear on a solicitor by a terrorist organization to divulge information to it...[does] not invalidate the strength of the reasons advanced...I am so satisfied because the Provisional IRA is a completely ruthless and unscrupulous terrorist organization which would be fully prepared by force or threat, against him or his family, to compel [the solicitor] against his will and in breach of his undertaking, to disclose to it what the applicants had told him in the course of consultations.

Even when solicitors are permitted access to their clients, police have the right to attend these meetings. There have also been indications that private legal consultations have been monitored. One lawyer stated that the police knew the content

of a private legal consultation, repeating it back to the client.

Lawyers' Reluctance to File Complaints

Despite this long-term and continuing harassment, defence lawyers generally do not file formal complaints for fear of their safety. They believe that official complaint mechanisms are inadequate to tackle the intimidation of defence lawyers and the abuse and ill treatment of suspects, which they think is inextricably linked. Moreover, defence lawyers are concerned that in order to bring defamation charges for derogatory comments made by police during interrogations, they would have to ask their clients to testify in court. They fear that clients may suffer reprisals at the hands of the police.

Official Response

The British Irish Rights Watch (BIRW) sent its December 1991 report on this matter to the Royal Ulster Constabulary (RUC), the Independent Commission for Police Complaints (ICPC), the Police Authority, and the Secretary of State for Northern Ireland. The RUC and the ICPC merely noted receipt of the report. The Police Authority suggested that they might respond at some time. On 28 April 1992, the BIRW met with a civil servant from the Northern Ireland Secretary of State Office to discuss the problems of client access. He asserted that according to the police, certain lawyers passed on information to terrorists. In response to the BIRW's request for any specific details to support this accusation, he simply replied, "I am not sure that there is much more information I can usefully give you."

UNITED STATES OF AMERICA

In an increasing number of civil rights and civil liberties cases, lawyers in the United States are being subjected to monetary fines under Rule 11 of the Federal Rules of Civil Procedure (FRCP). Rule 11 is designed to prevent "groundless" lawsuits and "frivolous" legal arguments.

Rule 11 was enacted in 1938 in an attempt to reduce the workload of the already overburdened court system. The 1938 Rule provided that a lawyer's signature on a pleading certified that he had read the pleading and that "to the best of his knowledge, information and belief, there is a good ground to support it; and that it is not interposed for delay". The Rule provided for appropriate disciplinary action to be taken only in cases of "willful" violations of the rule.

Despite the lack of systematic evidence that Rule 11 was failing to curb litigation abuses, in 1983 the Judicial Conference Advisory Committee on the FRCP recommended amendments to Rule 11. These amendments were designed to "streamline the litigation process by lessening frivolous claims or defences". They eliminated the subjective bad faith requirement and also made the imposition of sanctions mandatory if a pleading or other document failed to meet objective standards of reasonableness. Under the current Rule 11, filing of a document or pleading certifies that :

a) The lawyer has read the document;

b) To the best of the lawyer's knowledge, information and belief, formed after a reasonable inquiry, (i) it is well-grounded in fact and (ii) is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law;

c) The document is not interposed for any improper purpose such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

From 1983 to late 1991, there were more than 3,000 reported cases concerning amended Rule 11 in the federal courts. Of these cases, a disproportionate number involved civil rights claims. Although civil rights cases reportedly accounted for only 7.6 per cent of the civil filings between 1983 and 1985, 22.5 per cent of the Rule 11 cases involved civil rights claims.[1] Another survey indicated that in the period from 1983 to 1987, civil rights litigation comprised approximately 28 per cent of the reported cases involving Rule 11. This survey also demonstrated that sanctions were considered against plaintiffs in 86 per cent of the civil rights cases, as compared to 14 per cent against defendants. Sanctions were actually imposed against plaintiffs in 72 per cent of the cases in which they were considered.[2]

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[1] Nelken, *Sanctions Under Amended Federal Rule 11 - Some "Chilling" Problems in the Struggle Between Compensation and Punishment*, 74 Geo. L.J. 1313, 1327 (1986).

[2] Georgene Vairo, *Rule 11 Sanctions: Case Law Perspectives and Preventive measures* (1990), Appendix G.

The Centre for the Independence of Judges and Lawyers (CIJL) believes that such disparate application of Rule 11 may reduce the number of lawyers willing to take civil rights cases and may discourage victims of civil rights abuse from seeking a just remedy in a court of law.

The ambiguity of the language used in Rule 11 provides a further disincentive for lawyers interested in taking civil rights cases. Phrases such as "warranted by existing law" and "good faith argument for the extension, modification or reversal of existing law" leave judges substantial discretion in determining when to impose sanctions. Furthermore, the requirement that pleadings be "well grounded in fact" is particularly troublesome in civil rights cases because much of the factual evidence used in these cases is obtained during the pre-trial discovery period or during the trial itself.

Procedural shortcomings in Rule 11 cases may also discourage lawyers from taking civil rights matters. Discovery may not be permitted in Rule 11 cases and large monetary sanctions may be imposed upon a lawyer with only an oral hearing. No witnesses or evidence need be heard in order to impose sanctions. Furthermore, appeals of Rule 11 sanctions are subject to an "abuse of discretion" standard, the lowest possible standard of review. This makes it very unlikely that a lower court's decision will be overturned.

In the light of the number of petitions filed for Rule 11 sanctions in civil rights cases, the wide discretion afforded judges, the fact that sanctions are currently mandatory under the rule and the substantial penalties that have been imposed upon

highly qualified lawyers, it is likely that lawyers will be very reluctant to take the risk of being subject to the wide discretion of a judge, should a Rule 11 petition be filed.

Daniel Sheehan: Lawyer. Sheehan has been fined US $1 million for his role as a leading counsel for the Christic Institute in the well-known case, *Avirgan v. Hull.* In this case, Sheehan attempted to prove that past and present officers of the CIA and other US Government military and civilian agencies, as well as Cuban and Nicaraguan operatives, were involved in a conspiracy which resulted in a bomb explosion that killed eight persons and wounded dozens in Nicaragua in 1984.

On the basis of an affidavit supplied by Sheehan, which outlined the purported testimony of 79 witnesses who reportedly had actual knowledge of the bombing incident, the trial court granted the plaintiffs two years of discovery. This discovery failed to reveal evidence which would be admissible in a US court of law. Earlier, the plaintiffs had challenged an order issued by the trial judge limiting the scope of available discovery, but this order was upheld on appeal under an "abuse of discretion" standard.

After dismissing the complaint, the trial court imposed sanctions of over US $1 million upon both the Christic Institute, a non-profit organization, and Sheehan, claiming that the plaintiff's lawyers "had every reason to know they stood no chance of proving" their allegations. On 12 June 1991 the US Court of Appeals upheld these sanctions.

William Kunstler: Lawyer and Vice-President of the Center for Constitutional Rights. Kunstler was sanctioned for his representation of two Native American men arrested for taking

hostages in their efforts to expose drug trafficking and corruption in Robeson County, North Carolina.

William Kunstler

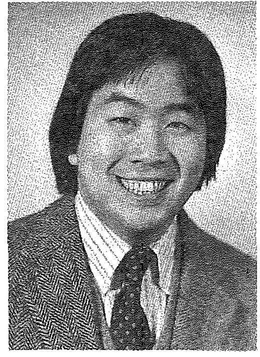
During the course of the trial, the defendants initiated a lawsuit in federal court alleging attempts by state and county officials to inhibit their First Amendment right to free speech and their Sixth Amendment right to counsel. When these activities ceased, the plaintiffs requested that the court dismiss the suit. The court dismissed the suit but upheld sanctions requested by state and county officials against the defendants.

Without the benefit of an evidentiary hearing, the trial court determined that the plaintiffs had filed the lawsuit for the improper purpose of gaining publicity and embarrassing state and county officials. The District Court assessed fines of US $120,000 against Kunstler and lawyers Barry Nakell and Lewis Pitts.

On appeal to the Fourth Circuit Court of Appeals, the imposition of sanctions was sustained on 18 September 1990 although the amount was reduced to US $92,000. The appeals court also reversed the District Court's order of a US $10,000 sanction against each lawyer for their efforts to publicize their allegations through the media. The Fourth Circuit remanded the case to the District Court to reconsider the fines levied for legal fees. On remand, this amount was subsequently reduced on 3 September 1991 to US $50,000.

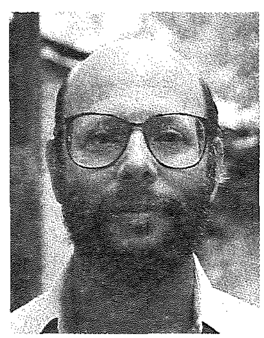
William Kunstler is a founder of the Center for Constitutional Rights, a non-profit organization dedicated to the protection of constitutional and civil rights. Since the early 1960s, Kunstler has represented such clients as: Martin Luther King and Stokey Carmichael in their efforts to eliminate racial discrimination,

Daniel Berrigan and the "Chicago Eight" in their protests against US domestic and foreign policy, and leading Native Americans, including Dennis Banks and Russel Means, for the events at "Wounded Knee".


Harold Hongju Koh

Harold Hongju Koh: Professor at the University of Yale Law School; and **Michael Ratner:** Lawyer and former legal director of the Center for Constitutional Rights. Koh and Ratner are currently facing sanctions for their role in challenging the US Government's treatment of Haitian refugees.

As part of the Bush Administration's efforts, in the aftermath of the coup which overthrew Haitian President Jean-Bertrand Aristide, to prevent boatloads of Haitian refugees from reaching US shores and seeking asylum, Haitians were interdicted on the high seas and held at the US military base at Guantanamo, Cuba. Many of these refugees were screened by the Immigration and Naturalization Service and determined to have a "credible fear" of political persecution in Haiti, thus making them candidates for political asylum in the United States.


Michael Ratner

When the administration departed from its earlier practice of allowing refugees who passed this first screening to be brought to the US for a full adjudication of their rights, Koh, Ratner and a group of Yale law students from the Lowenstein Human Rights Law Clinic attempted to visit these refugees at Guantanamo to advise them of their rights. The administration prohibited this visit. On 18 March 1992, Koh and Ratner brought a suit against the government on behalf of the refugees.

The Justice Department promptly filed a motion requesting Rule 11 sanctions against Koh and Ratner. The Justice Department maintained that the claims were frivolous and in bad faith because the issue had been previously litigated in another lawsuit relating to Haitian refugees. However, the District Court determined that the exact issue before it had not been litigated and on 27 March 1992 it granted the plaintiffs a temporary restraining order preventing them from being repatriated to Haiti. The refugees were subsequently successful in obtaining a preliminary injunction on 7 April against their forcible return while the case was being adjudicated on its merits. The injunction was upheld on appeal on 10 June. Despite this series of losses, the Justice Department refused to withdraw its motions for sanctions against the two lawyers. In fact, the Justice Department requested that the plaintiffs be required to post a bond of US $10 million to secure the injunction, the largest bond ever sought in a New York federal court. The trial judge instead required only a US $5,000 bond.

The government's request for sanctions drew widespread criticism. Koh is a leading professor of international and human rights law, and Ratner has brought numerous leading cases on human rights and US foreign policy to court. He has also provided representation to progressive groups at odds with the US Government.

VIETNAM

The Centre for the Independence of Judges and Lawyers (CIJL) is encouraged that the Constitution of Vietnam, adopted on 15 April 1992, includes several articles which highlight the independence of the legal system. Article 130 states that "during trials, judges and people's jurors are independent and subject only to law". Furthermore, Article 132 states that:

> The defendants' right to plead their cases is guaranteed. Defendants may plead their cases themselves or ask others to help them. A jurist organization may be formed to give legal assistance to the defendants and other persons concerned to protect their rights and legitimate interests and to contribute to protecting the socialist legal system.

Despite these significant changes, the CIJL is concerned that political control over the legal system will continue. Article 135 states that the presiding judge of the Supreme People's Court shall be responsible and accountable to the National Assembly, and that presiding judges of local people's courts shall be responsible and accountable to the people's councils. The CIJL believes that the implementation of this article may violate Article 4 of the Basic Principles on the Independence of the Judiciary, which states: "There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision."

The CIJL's concerns are substantiated by reports that party committees have directly intervened in the activities of the people's courts in order to ensure that decisions are in accordance with party and government policies. A presiding judge of Ho Chi Minh City's Municipal People's Court was quoted in the 2 August 1988 edition of **Tuoi Tre** (Youth), as saying:

> The intervention of the central government in the functions of public security agencies, the organ of control, and the courts is too deep and specific, even [to the extent] of directly conducting trials, and supervision is specific to an abnormal degree whether a crime has been committed or not, no matter what the nature of the crime or the level of the court...

There is evidence that criminal trials in Vietnam are failing to satisfy the minimum standards for fair trial. The CIJL is concerned that the fundamental principle that an accused person is presumed innocent until proven guilty has been seriously undermined in some cases by the publication of politically motivated accusations through the official media prior to criminal trials. In addition, there have been reports of several individuals being tried and convicted within several hours.

Finally, all professional and legal institutions in Vietnam remain under the control of the one-party state. Consequently, in order to form a Lawyers' Union, lawyers must satisfy the requirements delineated by the central government, the people's councils, the people's committees of provinces and municipalities, and the Committee of the Vietnam Fatherland Front, an umbrella political organization controlled by the Communist Party.

Nguyen Khac Chinh: Lawyer and member of the Vietnamese Lawyers' Association (see *Attacks on Justice 1990-1991*). The CIJL continues to be concerned about the case of Nguyen Khac Chinh, who has been detained without charge or trial since his arrest in December 1975. On 4 June 1992, a spokeswoman for the Vietnamese foreign ministry was quoted in a Reuters news release as saying, "Pursuing a lenient policy [and] depending on the attitude during 're-education' of former collaborators with the former regime, by 30 April 1992 all the detainees in the 're-education' camps had been released."

Amnesty International asserts that Nguyen Khac Chinh falls into this category of prisoners and should therefore be released. However, Nguyen Khac Chinh continues to be held at Xuan Loc Camp in the Dong Nai province. He is now 70 years old and is reported to have been in poor health for the past several years.

Doan Thanh Liem: Prominent lawyer, former legal counsellor for the South Vietnamese Senate, and former judge for the Saigon Municipal Court (see *Attacks on Justice 1990-1991*). Doan Thanh Liem reportedly was arrested in April 1990 for his involvement in the drafting of an unauthorized constitution, and for signing an open letter addressed to the Archbishop of Ho Chi Minh City which urged the Roman Catholic Church to adopt a more critical attitude towards government policy. Doan Thanh Liem's association with a US businessman, Michael Morrow, and in particular his assistance to Mr. Morrow in drafting legal contracts, may have been an additional reason for his arrest. Doan Thanh Liem was reportedly brought to trial at the municipal court in Ho Chi Minh City on 14 May 1992 and was sentenced to 12 years in prison for spreading "anti-socialist propaganda". He continues to be in poor health.

YEMEN

On 15 July 1992, over 2,000 Yemeni judges initiated a strike to protest their lack of professional independence. The strike, which was in effect in the capital city of Sanaa and 17 other districts, has now been temporarily suspended to allow for negotiations with the government.

Led by the Judges' Association, a professional organization which was founded to uphold the independence of the judiciary, the striking judges have set forth specific demands. Most importantly, they have proposed the enactment of a law which guarantees the independence of the court system. In their view, the constitutional provisions for an independent judiciary have not been sufficient to prevent executive interference. In addition to requiring a separate and independent budget for the judiciary, the law proposed by the judges creates other mechanisms to ensure the independence of judges as individuals and of the judiciary as an institution.

The judges also demand institutionalized solutions for other problems. Specifically, many Yemeni judges have been denied promotions without justification. They are now asking that all qualified judges be elevated. Also, they are asking the government to investigate all cases that constitute attempted harassment or coercion of judges and to arrest and prosecute those suspected of committing such offences. Lastly, the striking judges demand that the government institute an adequate system of court inspection in which the higher courts oversee lower

courts in order to ensure that the minimum professional standards required for the administration of justice are upheld.

By their strike, the judges also hope to speed the re-unification process in Yemen, particularly as it affects the judiciary. The interim Constitution of May 1990 laid the foundation for the reunification of the Yemen Arab Republic and the People's Democratic Republic of Yemen. Although this Constitution calls for a single Supreme Court to function throughout all of Yemen, the precise jurisdiction of the Supreme Court has yet to be determined. Furthermore, there continue to be essentially two systems of lower courts in the country, divided along pre-unification lines.

On 25 July 1992, negotiations began between the striking judges and the High Council of the Judiciary, whose function is to address administrative aspects of the judicial process, including appointments, promotions, discipline and the removal of judges. The High Council is headed by the Head of State and is composed of the President and two Vice-Presidents of the Supreme Court, the Minister of Justice, the Deputy Minister of Justice, the Attorney-General, and three other Supreme Court judges who are appointed to the Council by the President. At the time of this writing the judges and the High Judicial Council had concluded the first of four scheduled meetings. Reports indicated that the judges' demands were being seriously considered.

"YUGOSLAVIA"

Kosovo is an autonomous territory of Serbia whose the population is 90 per cent Albanian. Serbia passed an Act which went into effect in June 1991 and which directly impacts the judiciary in Kosovo. This legislation concerns the appointment and removal of judges and changes the initial regulations established by Kosovo.

In Kosovo, judges were appointed and/or removed by an appointment commission on the proposal of either the Mayor or the Parliament of Kosovo, depending on the jurisdiction. The Serbian law, however, has established a procedure in which judges with an unlimited term are appointed by the Parliament of Serbia on the proposal of the Minister of Justice. This appointment may be terminated after conducting a professional evaluation of the judge's work. In practice, however, the result of this Act has been that Albanian judges in Kosovo have been removed by the Parliament of Serbia before the end of their term, without any compensation or grounds being given. Many times their names have been published in the *Official Gazette* before they themselves were notified of the decision.

The Albanian judges have been replaced by Serbian and Montenegran judges. This directly contravenes the United Nations Basic Principles on the Independence of the Judiciary. Article 10 specifically establishes guarantees against abusive and discriminatory appointments. Article 20 stipulates that an impartial body shall be responsible for

reviewing decisions of removal. The Parliament of the Republic of Serbia has not respected such principles, thus failing to respect the independence of the judiciary in accordance with international principles.

Mikel Marku: Albanian lawyer. On 11 November 1991, Marku died as a result of injuries sustained while in police custody. On 31 October 1991, Marku was arrested after the police stopped him while he was travelling with his nephews in a car. The authorities were aware that he was a lawyer. He was taken to the police station where he was beaten and tortured. As a result of his injuries, he fell into a coma. He was not taken to the hospital until the next day. No proceedings were taken by the prosecutor to investigate the case. On 6 January 1992, his family initiated penal action against the police.

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