

institutions; exceptional measures implemented by the government to prosecute civilians charged with terrorism and treason; anti-terrorism legislation relative to international standards; the Ad Hoc Commission for Pardons; the need for judicial reform; and the situation of lawyers and human rights defenders.

The report recalls that, in previous years, the SR had expressed concern over the use of "faceless" judges and anonymous witnesses as a means of protecting the judiciary from acts of terrorism. The SR had stated that these tribunals violated the independence and impartiality of the justice system and was an issue requiring further study. The primary focus of the mission, therefore, was to look into the use of "faceless" judges for both civil and military courts to try civilians charged with terrorist-related crimes and treason within the context of accepted international standards concerning the independence and impartiality of the judiciary, and the right to due process. During the mission, attention was also paid to such issues as the procedures for appointment of judges, security of tenure, discipline and dismissal, remuneration, and the role of lawyers and the extent of their independence.

The report describes the human rights situation at the time of the SR's visit as one in which there had been considerable improvement in the security situation and a decline in human rights violations by government officials. Reports of torture and involuntary disappearance had been recorded, however, and there was concern over the impunity enjoyed by those government officials involved in past human rights violations. The report also notes that as of 7 March 1997 more than 15 per cent of the national territory remained under a state of emergency and that in the civilian courts the use of "faceless" tribunals was discontinued in October 1997. Information from non-governmental sources, however, indicated that these tribunals were still being used in the military courts.

The commentary on the military courts notes that the Military Code stipulates that only crimes arising from the line-of-duty function (*delitos de función*), committed by military and police personnel or civilians employed by the military, are to be tried by military courts. Exception to this stipulation is provided, however, by the 1993 Constitution which grants these tribunals jurisdiction to try civilians charged with terrorism or treason. Other factors related to military courts are noted as including the fact that: military judges on active duty are subject to the Code of Military Justice; except for the prosecutor and the auditor, these judges do not belong to the judicial branch; police personnel subject to the Code of Military Justice are tried by special police tribunals; and in cases of military justice, the Supreme Court may only resolve conflicts of competence, rule on requests for extradition, and hear in first instance the competence proceedings of the military courts against, for example, the President, government ministers, members of Congress and members of the Supreme Council of Military Justice.

The review of exceptional measures taken by the government to prosecute civilians charged with terrorism and treason, up to and during the time of the visit, notes, *inter alia*, that: Decree-Law 25.475, 6 May 1992, defines "terrorism" as an act aimed at "provoking, creating or maintaining anxiety, alarm and fear in the public or a sector thereof"; investigations of terrorist-related crimes are carried out by the Anti-Terrorism Department (DINCOTE); access to detainees by relatives and defence lawyers is allowed under amendments to the law; DINCOTE has the power to decide whether the evidence is sufficient to bring charges and determines what charges will be brought and whether the detainee will be charged before a civilian or a military court; DINCOTE continues to have unlimited time in the questioning of suspects and the formalizing of charges; under emergency legislation, a judge must open an investigation and order an arrest once a person has been accused of terrorism, even if the facts do not necessarily support the allegation of a terrorist crime having been committed; and, judges of the courts of first instance or superior courts may order the unconditional release of an accused if there is insufficient evidence against that person.

The report further notes, *inter alia*: as of 1996, police were no longer allowed to present detainees charged with terrorist offences to the news media but were allowed to continue this practice in the case of detainees charged with treason; the right of access to a lawyer from the moment of detention was restored by the government and the presence of the public prosecutor during the police interrogation was made mandatory; anyone accused of treason is to be tried by a single tribunal composed of four active-duty military officers who are assisted by a military lawyer; a treason trial should be completed within 10 days, and an appeal before the Supreme Council of Military Justice in five days; military courts are conducted in camera; in treason cases, the 15-day period of incommunicado detention can be extended for another 15 days.

According to information received: often the defence evidence submitted at trials is not accepted while the evidence provided by DINCOTE is given more credence; judicial decisions are often not based on the evidence submitted at the trials; and very often the tribunals rely on police investigations and reports submitted to the tribunal which are not disclosed to defence counsel. Information also indicated that: the amnesty laws of 1995 had been declared by some judges as not being applicable in specific cases already under investigation; Congress subsequently adopted Law 26.492, prohibiting judges from declaring the previous law unconstitutional. The report notes that, as a result of the amnesty laws, about 1,000 victims of human rights violations — such as torture, arbitrary detention and enforced or involuntary disappearances — would be prevented from having access to justice.

Bearing in mind these and other measures, the SR states that, with regard to the state of emergency that was still in effect in some parts of the country at the time the