

the Independence of the Judiciary, one of the basic rights of the accused in any criminal trial is to know who is sitting in judgment of the case. As well, the basic right to dispute and rebut the testimony offered by a witness is severely restricted by the use of secret witnesses within the regional jurisdiction.

On conditions of service, the SR emphasized that respect for such conditions, as set out in the Basic Principles on the Independence of the Judiciary, would contribute to the achievement of an independent judiciary. The SR stated that it is the duty of the government to provide adequate resources to the judiciary for its appropriate functioning and to ensure that the judiciary functions without any restrictions, improper influences, inducements, pressures, threats or interference. Points related to security and security measures included, *inter alia*, that during 1996 13 jurists were killed for carrying out their professional duties, attacks against judges had increased and a number of judges and prosecutors had received death threats from various sources, including members of the armed forces, paramilitary groups, guerrillas, common criminals and drug cartels, in particular the Medellín cartel. With regard to lawyers and human rights defenders, the report notes that: these individuals are frequently subject to attacks or threats against their lives and that in many cases human rights lawyers representing persons accused of terrorist related activities were identified with their clients' cause or were accused of collaborating with subversive elements.

Narrative on the conditions of service of the Government Procurator's Office reviews the bodies which play an important role in monitoring public institutions, and makes a number of points, including that: serious funding problems of the Human Rights Division hamper its efficiency; civil and military authorities were not cooperative and did not provide access to prisons and military establishments; because of lack of funds the People's Advocate was unable to follow up on communications forwarded to other institutions, in order to establish whether any action was undertaken or not; in terms of the Personería Municipal — made up of the municipal representatives (personeros) who act in more than 1,000 municipalities — in recent years, personeros have been killed or forced to leave their activities after receiving death threats from different groups, including the military and guerrilla forces.

With regard to impunity, the report refers to information from both official and non-governmental sources stating that the failure to investigate and prosecute properly human rights violations, both at civil courts and, in particular, at military courts, is the most serious concern with respect to the administration of justice. Factors contributing to impunity were noted as including the fear of further violence of victims and witnesses, preventing them from taking legal action, and the lack of effective investigations and penalties, leading government officials and other persons to believe that their actions will go unpunished. The SR stated that the military jurisdiction is one of the primary sources of impunity, partly because the effectiveness of military courts in investi-

gating and prosecuting crimes committed by members of the armed forces varies depending on the nature of the offences tried before military courts. The report cites information from the Procurator-General's Office showing that, out of 7,903 judgements handed down by military criminal courts from early 1992 to mid-1994, 4,304 were convictions and 4,103 of those were for violations of internal military regulations.

The reasons for the lack of effectiveness of military courts to try and sentence cases concerning human rights violations committed by members of the armed forces against civilians are alleged to be: structural deficiencies in the military justice system, which guarantee that military and police officials are not criminally sanctioned for such offences; the main structural deficiency is the fact that military courts are composed of active officers and it is common for officers to judge subordinate officers who are from the same unit; the concept of "due obedience defence" relieves the soldier of liability and places the sole responsibility on the superior officer, meaning that subordinates can therefore argue that the judges sitting on the bench ordered them to commit the crime; and, under the extremely broad application given to the meaning of "service-related" conduct, cases from the ordinary civilian system are often assigned to the military tribunals.

The SR stated that reform of the Military Penal Code should address three main areas: it should establish who will judge cases concerning human rights offences committed by members of the armed forces; it should determine whether crimes covered by military jurisdiction include serious human rights violations; and, thirdly, the reform should establish whether the due obedience clause exempts members of the army who commit human rights violations from criminal responsibility.

The report refers to recommendations made previously by the Human Rights Committee (CCPR/C/79/Add.76) and the Special Rapporteur on summary/arbitrary execution and recommended that as a matter of priority, the government, *inter alia*:

- ♦ in order to combat impunity, adopt stringent measures to ensure that all allegations of human rights violations are promptly and impartially investigated, that the perpetrators are prosecuted, that appropriate punishment is imposed on those convicted and that the victims are adequately compensated;
- ♦ ensure the permanent removal of officials convicted of serious offences and the suspension of those against whom allegations of such offences are being investigated;
- ♦ adopt special measures, including protective measures, to ensure that members of various social sectors, particularly journalists, human rights activists, trade union and political leaders, teachers, members of indigenous populations and judges, are able to exercise their rights and freedoms, including freedom of expression, assembly and association, without intimidation of any sort;