every step in the process, and ends by preventing justice from being done," the Procuraduría, charged with investigating misconduct by state agents, has noted.[53]

A Procuraduría study of decisions handed down by the Higher Military court from early 1992 to mid-1994 revealed that out of 7,903 judgments, convictions had been handed down in 4,304 cases, almost all for violations of internal regulations like insubordination.[54] In contrast, accusations of human rights violations against the civilian population were almost all absolved or shelved.[55] Often, military tribunal verdicts contradict Procuraduría recommendations, robbing them of any meaning.[56]

Failure to act is reflected in the government's own reporting on human rights violations committed by state agents. The 1994 Procuraduría report revealed that reports of murder and torture increased from 1992 to 1993, by 18 and 24 percent respectively. This is despite an overall reduction in lesser complaints, like arbitrary detention. The Procuraduría holds the army responsible for the increase in violent human rights abuse.[57]

"This demonstrates the lack of a concrete policy against human rights violations by state agents," the Procuraduría points

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[53] Procuraduría General de la Nación, *III Informe sobre derechos humanos: Colombia 1993-1994*, July 1994, p. 17.

[54] Commission of Human Rights, "Joint Report of the Special Rapporteur on the question of torture, Mr. Nigel Rodley, and the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Bacre Waly Ndiaye," January 16, 1995, p. 27.

[55] Testimony of Hernando Valencia Villa, Procurador Delegado para los Derechos Humanos, Inter-American Court of Human Rights, Transcript of hearings before the court, November 28, 1994, pp. 568-569.

[56] After an investigation, the Procuraduría can only recommend an administrative sanction, like suspension or dismissal, but cannot impose it. Procuraduría, *III Informe*, p. 17.

[57] This increase is especially alarming given that complaints of lesser abuses used to outnumber more serious ones by four to one. Currently, the relationship is three to two. Procuraduría, *III Informe*, pp. 10-12, 15.

out.[58]

Despite President Ernesto Samper's 1992 pledge to respect human rights and begin a new era of accountability for human rights violations, other actions point to a contradictory policy.

"Disappearances" Bill: Drafted by Congress in 1994, the "Disappearances" Bill would have made the act of "disappearing" an individual, like trade unionist Diego Ortiz, punishable by the civilian courts. President Samper echoed his predecessor's main objection to the bill, which would have ended military court jurisdiction over soldiers and police officers accused of this crime.[59] Despite the support of the Procuraduría and Defensoría, which publicly questioned the assumption that a "disappearance" could be considered an "act of military service," the bill was tabled.[60]

Rural Security Cooperatives: Introduced as a concept by Defense Minister Fernando Botero in November 1994, rural security cooperatives give civilians the authority to carry out actions against guerrilla groups.[61] Critics opposed the idea on the grounds that it gives official sanction to groups similar to existing paramilitaries. At a time when the government was clearly unable to regulate or control the actions of illegal paramilitary groups or even its own agents working with them, the Defensoría asserted, there were no guarantees that the government would be able to control these new groups.[62] Although the proposal was strongly opposed by the Procuraduría and Defensoría, the Defense Ministry claimed to have formed forty of these

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[58] Procuraduría, *III Informe*, p. 11.

[59] Human Rights Watch, *Human Rights Watch World Report 1995* (New York: Human Rights Watch, 1994), pp. 79-84.

[60] "Defensor rechaza objeciones a ley de desapariciones," *El Espectador*, July 30, 1994.

[61] The cooperatives, called Communal Associations for Rural Vigilance (Convivir), were formed on the basis of Decree Law 356, Article 42, which allows communities to organize local defense systems. "Cooperativas," *El Tiempo*, December 14, 1994.

[62] "Fogueo a Botero por cooperativas," *El Tiempo*, December 12, 1994.

groups as of mid-1995.[63]

According to the CAJ-SC, the Colombian government has failed to resolve any of the cases involving human rights violations by state agents that have been presented to the Interamerican Commission of Human Rights.[64] Among the cases before the court involving a trade unionist is the following:

> **Isidro Caballero Delgado and María del Carmen Santana:** Caballero, a teacher and trade union member, was abducted and "disappeared" along with twenty-year-old Santana on February 7, 1989, by soldiers attached to the Santander Infantry Battalion No. 15. At the time, Caballero was working for the Teachers's Union of Santander's (SES) Regional Dialogue Committee in San Alberto, department of Cesar. Previously, Caballero had been forced to leave a teaching job because of repeated threats on his life. The failure of legal actions to find Caballero or Santana and the unwillingness of the authorities to carry out a serious and impartial investigation prompted the CAJ-SC, with the support of Human Rights Watch and the Center for Justice and International Law (CEJIL), to submit the case to the Inter-American Commission for Human Rights. In hearings before the Inter-American Court in San José, Costa Rica, in November 1994, Hernando Valencia Villa, Colombian Procurator Delegate for Human Rights, conceded that the Colombian government's actions in resolving these "disappearances" had been "deficient."[65]

A high level commission that includes a representative of national human rights groups is currently studying a proposal to reform the military tribunal system. However, even optimistic observers believe it is unlikely that reforms will allow officers charged with abuses to be tried in civilian courts.[66]

The Right to Unionize and Strike

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[63] "Botero: Habrá 500 cooperativas," *El Tiempo*, April 3, 1995.

[64] CAJ-SC, *Entre el dicho*, p. 27.

[65] Inter-American Court, Transcript of hearings before the court, November 28, 1994, pp. 563-564.

[66] HRW/Americas interview, Gustavo Gallón, CAJ-SC, April 7, 1995.

A serious threat to unions' ability to organize and strike are the public order courts implemented under emergency legislation in 1987 and made into law in 1991.[67] Conceived as a weapon in the government's fight against guerrillas and drug traffickers, public order courts operate on a vague and overly broad definition of terrorism, which, among other things, makes a crime out of "provoking or maintaining the population in a state of panic or terror with acts that put life, physical integrity or liberty at risk or endanger buildings, the media, transportation, the treatment or delivery of fluids ... using means capable of causing havoc."[68]

Administered by secret, or "faceless," judges, public order courts severely restrict due process guarantees by allowing secret witnesses, uncorroborated evidence collected by the military, prolonged pre-trial detention, and severe restrictions on the right to a defense.[69]

Public order courts have been used to hamper the formation of unions, penalize protest, and break strikes. One example was the 1993 arrest of thirteen members of the National Telecommunications Company (TELECOM), accused of having sabotaged equipment used to operate the country's telephone system. The arrests came just as TELECOM was launching a strike to protest plans to privatize the telecommunications company. Although the Colombian penal code includes a law prohibiting sabotage and damage to state property, the men were charged with terrorism, apparently in an attempt to end the strike and cripple the union. After remaining in prison for nine months, the charge of terrorism was dropped and the men were released on bail.[70]

However, TELECOM workers continue to be prosecuted for having "forced with violence or trickery workers to abandon the

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[67] Decree 2271 gave the public order courts a term of ten years, commencing July 10, 1992. For a history and critique of these courts, see Lawyers Committee for Human Rights, *Colombia: Public Order, Private Injustice*, February 1994.

[68] New Code of Penal Procedures [*Human Rights Watch/Americas translation*].

[69] CAJ-SC, *Entre el Dicho*, pp. 31-32.

[70] CAJ-SC, "Violaciones a los derechos fundamentales de los procesados por delitos adelantados ante la jurisdicción de orden público, hoy justicia regional: informe preliminar," October 1993, pp. 35-38.

workplace or by the same means perturb or impede the free exercise of the activity of anyone."[71] This law has been used to criminalize legal strikes.[72]

Other problem areas include the weakness of the government's apparatus for inspecting violations of labor laws.[73] Labor reforms included in Law 50, implemented in 1991, eliminated job stability and sharply reduced benefits, making it more difficult to form unions since workers fear being fired for joining a union and have little recourse to fight wrongful dismissal.[74]

CASE 2

Such was the case with the Garment Workers Union (SINALTRADIHITEXCO) when it attempted to form locals at two Tejicóndor factories in Medellín and Barbosa, department of Antioquia, on January 22, 1995. On the day SINALTRADIHITEXCO submitted its list of members, Tejicóndor began firing union leaders and workers who had joined the union. Even though the Labor Ministry has found the firings to be illegal, Law 50 prevents workers with fewer than ten-years' experience as of 1991 from winning rehire through the courts. Instead, they can only hope for a small severance payment. Even that may take years to gain because of bureaucratic delays in the Labor Ministry.[75]

Colombia was criticized in 1993 by the International Labor Organization (ILO) for violating its obligation to protect union independence by intervention in the organization and functioning of unions, including the supervision of the internal management and meetings of unions by government officials; the presence of officials at assemblies convened to vote on a strike call; the suspension of union officers who dissolve their unions; the prohibition of strikes in a wide range of public services which are not necessarily essential; various restrictions on the right

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[71] Article 290 of the Penal Code.

[72] Currently, several members of the Bank Workers Union and unions associated with the Kapitol company are being prosecuted under this law. CAJ-SC-CUT, "Derechos Humanos y Movimiento Sindical," December 1994, p. 8.

[73] HRW/Americas interview, Jorge Giraldo, ENS, April 18, 1995.

[74] HRW/Americas interview, SINALTRADIHITEXCO leaders, Medellín, April 18, 1995.

[75] Ibid.

to strike and the power of the Minister of Labor and the President to intervene in disputes through compulsory arbitration; and the power to dismiss trade union officers involved in an unlawful strike.[76]

In 1993, the Labor Ministry declared forty-four strikes illegal.[77] A national teachers strike begun on May 8, 1995, was declared illegal a week later on the grounds that it created "serious harm to a large number of students in the country as well as the country as a whole given the nature of the tasks teachers carry out and the repercussions the strike has in the social conglomerate."[78]

A 1994 Constitutional Court decision expanded the power of the executive to stop strikes, allowing that office to declare any strike illegal if a work stoppage was deemed to "put the national economy at risk." The decision was criticized by dissenting members of the court as an "attack on the fundamental right to protest... This confers on the Government the power to limit a right guaranteed to workers, that of the strike."[79]

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[76] State Department, *Country Reports*, p. 359.

[77] CUT-CAJ-SC, "Derechos Humanos," p. 13.

[78] "... graves perjuicios a un gran número de educandos en el pais y a la comunidad en general, por la naturaleza misma de las funciones que cumplen y por las repercusiones que tiene el mismo en el conglomerado social." The strike was subsequently settled. "Gobierno declara ilegal paro de maestros," *El Tiempo*, May 13, 1995.

[79] "Ni Gobierno ni Congreso pueden prohibir una huelga," *El Espectador*, December 15, 1994.