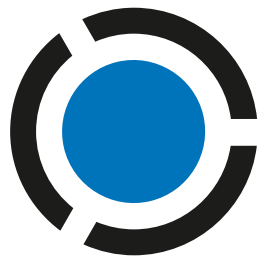




# REPORT 2010



INTERNATIONAL  
OBSERVATORY  
FOR LAWYERS



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INTERNATIONAL  
OBSERVATORY  
FOR LAWYERS

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# PREFACE

(Préface manquante)

(Préface manquante suite)

« The International Observatory for Lawyers report is informative and inspirational for all lawyers especially for lawyers in developing countries, so much is out there that need to be done. The report shows the relentless professional support of lawyers internationally in support of Human Rights, fundamental freedom and ultimately global security.

With the support of international lawyers, especially, lawyers without Borders France and Canada, during the trying period of the defending women sentenced to death by stoning in Northern Nigeria, [2002-2003] our legal team benefited from their professional guidance and ultimately legitimacy, internationally.

It is incumbent upon us, lawyers, especially those working in rural settings and beyond, to respect the law and its rule, but more to respect the community values and the judges, as well as the sense of justice as shared by societies.

In this respect, the understanding of the expanse of information becomes important. Both the print and electronic media do make difference; however, the need to be measured within context, will be desirable. The publicity around cases that clearly indicates lack of due process and at times out right infringement of fundamental Human Rights across cultures and religion, begs for a kin attention and interest by both press and lawyers.

As I understand, it is the success of the approach in these Nigerian cases that lead Lawyers Without Borders to the concept of an International Observatory for Lawyers, with a professional legal approach of all Human Rights Issues where lawyers suffer for the stand they take. This should never happen, as most countries undertook to respect Lawyer's Independence, which is becoming a matter of *Jus Cogens*, or should we say good sense? This is an occasion for me to praise this initiative carried by four other partners: the *Ordre des Avocats de Paris*, the *Conseil National des Barreaux* (France), the *Consejo General de la Abogacia Española* (Spain) and the *Consiglio Nazionale Forense* (Italy). Those organizations were acting individually to assist threatened lawyers around the world; they know have set up an effective tool for lawyers' protection. This initiative should encourage other organizations to join the Observatory.

In that respect, the level of Independence enjoyed by Lawyers is a cornerstone to measure the freedom and democracy benefitting to people and at least to the legal profession in each Country of our interconnected world.

On reading the report, I see that, sadly, lawyers' independence is threatened all over the world, from China to Colombia, from Syria to Pakistan, and that the task at hand is inexhaustible and sometimes daunting.

Nowadays, in a context of claims for freedom and democracy, lawyers are more particularly jeopardized because of their vanguard role. Indeed, they defend citizens considered as dissidents by the public order, and are therefore even more exposed to reprisals. Their peers' solidarity can guarantee their freedom of exercise and the independence of their profession, and in this struggle they can also rely on the determination of public and international authorities.

This is why I wholeheartedly support this great endeavour, and wish to stand ready to help whenever I can. My best wishes go to this action who I hope shall go on finding universal support and necessary funding. »

### **Hauwa Ibrahim**

Hauwa Ibrahim is the first Nigerian female lawyer. She won the European Parliament's Sakharov Prize in 2005 and she was the citizen of Honor of the City of Paris in 2005.

# EXECUTIVE SUMMARY

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The International Observatory for Lawyers <sup>1</sup> has a mandate to monitor the physical and moral integrity of lawyers throughout the world and the conditions in which they practise. This is its first report on lawyers under threat.

Acting directly with colleagues in danger, the Observatory provides legal assistance and moral and material support when threats made against them make such measures necessary.

## **THIS REPORT MAKES RECOMMENDATIONS INTENDED TO STRENGTHEN PROTECTION FOR LAWYERS AND THEIR POSITION AND ROLE IN THE PROTECTION OF FUNDAMENTAL RIGHTS.**

These recommendations derive from a critical analysis of first-hand information collected from national lawyers' associations, from lawyers who are themselves victims or their associates, and from international or non-governmental organisations.

On the basis of this information we have gradually built up a picture of the profession and of the threats facing lawyers around the world.

## **DURING ITS FIRST YEAR OF EXISTENCE, THE OBSERVATORY HAS BEEN ABLE TO MONITOR DIRECTLY 29 CASES OF LAWYERS FACING DIFFERENT THREATS.**

In every case the lawyer's ability to defend their client freely and independently was at risk, and in some cases, so was their physical integrity. Up to now, the Observatory has become involved in cases on all continents and in no fewer than 12 different countries. Thanks to this geographical coverage, it has been possible to identify six universal problems, all of which threaten the activities of the legal profession. These are explained in detail and analysed by reference to a sliding scale, which goes from placing administrative obstacles in the way of lawyers with responsibility for sensitive cases, to physical intimidation which, in its most extreme form, may involve the physical elimination of the lawyer concerned, an event which, unfortunately, is not unknown.

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<sup>1</sup> The International Observatory for Lawyers was founded by *Avocats Sans Frontières France* (Lawyers Without Borders France), the *Ordre des Avocats de Paris* (Paris Bar), the *Conseil National des Barreaux* (French National Bar Council), the *Consejo General de la Abogacía Española* (Spanish National Bar Council) and the *Consiglio Nazionale Forense* (Italian National Bar Council).

Following on from the determined action we have taken to protect and assist lawyers in danger on the ground, the aim of this report is to persuade states, international organisations, national lawyers' associations and professional organisations to take appropriate action. We make seven universal recommendations, which will constitute performance indicators with which to measure the rule of law in future reports. The main conclusions to be drawn from the past year are that such bodies should be more vigilant and should put in place adequate measures to guarantee lawyers' physical integrity, while enabling them to defend their clients freely and independently and to play their role fully within the framework of the rule of law.

Although the Observatory was only created very recently, it has already obtained concrete results for the lawyers whom it has supported. However, the effectiveness of the Observatory as a means of protecting all lawyers, and through them, the citizens they defend, can only grow as it becomes more widely known and recognised. It is therefore up to the professional lawyers' associations, and each lawyer, to pass on information about the Observatory and its function, and to seek its assistance whenever a colleague is in danger. The Observatory also encourages members of civil society to provide it with information about the situation of lawyers worldwide.

The State still has primary responsibility for creating a free and secure environment in which lawyers may practise their profession.

**HOWEVER,  
IN ACCORDANCE WITH ITS MANDATE,  
THE OBSERVATORY  
WILL CONTINUE TO PROTECT  
AND SUPPORT LAWYERS IN DANGER,  
THEREBY PROVIDING EVIDENCE  
OF THE PROFESSION'S SOLIDARITY  
WITH COLLEAGUES WHO PRACTISE  
IN DIFFICULT CONDITIONS,  
SOMETIMES PUTTING THEIR LIVES AT RISK.**





# FOREWORD

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The “Lawyers for Lawyers” project was set up by a number of national lawyers’ organisations: *Avocats Sans Frontières France* (Lawyers without Borders France) <sup>2</sup>, the *Ordre des Avocats de Paris* (Paris Bar) <sup>3</sup>, the *Conseil National des Barreaux* (French National Bar Council) <sup>4</sup>, the *Consejo General de la Abogacía Española* (Spanish National Bar Council) <sup>5</sup> and the *Consiglio Nazionale Forense* (Italian National Bar Council) <sup>6</sup>. Being already involved in the defence of lawyers, both individually and within the framework of joint actions, they wished to go further.

As the result of a joint analysis that revealed the ubiquity of the danger and the pressures suffered by their colleagues worldwide, the partners decided to create and support a specific organisation for the protection of lawyers around the world. In consequence, the International Observatory for Lawyers (henceforth the Observatory) was created in October 2008.

## WHY CREATE AN OBSERVATORY FOR LAWYERS?

The idea of creating an Observatory sprang from the activities pursued by its partners, which receive numerous requests from lawyers around the world seeking protection as a result of receiving threats.

Every day around the world, lawyers are threatened, imprisoned, tortured, assassinated or “disappear” against their will, due to their commitment to human rights. They are particularly exposed to reprisals, as they are perceived to be at one with their clients or with the sensitive cause that they defend.

A lawyer’s right to practise freely and independently (which is a corollary of the right to be assisted by a lawyer) is a determining factor in the effectiveness of the rule of law. It is guaranteed in several regional and international legal instruments protecting human rights.

The lawyer has a special role to play in the democratic system, as observed by the United Nations Special Rapporteur on the independence of judges and lawyers in his report for 2008, which describes the assistance of a defence lawyer as a “fundamental element of access to justice” <sup>7</sup>.

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<sup>2</sup> For further information see the website of *Avocats Sans Frontières France*: [www.observatoire-avocats.org/en/](http://www.observatoire-avocats.org/en/)

<sup>3</sup> For further information see the website of the *Ordre des Avocats de Paris*: [www.avocatparis.org](http://www.avocatparis.org)

<sup>4</sup> For further information see the website of the *Conseil National des Barreaux*: [www.cnb.avocat.fr](http://www.cnb.avocat.fr)

<sup>5</sup> For further information see the website of the *Consejo General de la Abogacía Española*: [www.cgae.es](http://www.cgae.es)

<sup>6</sup> For further information see the website of the *Consiglio Nazionale Forense*: [www.consiglionazionaleforense.it](http://www.consiglionazionaleforense.it)

<sup>7</sup> Special Rapporteur’s report on the independence of judges and lawyers, UN, A/HRC/8/4, 13 May 2008.

International and regional human rights courts all stress the principle of having free and independent defence counsel. The creation of Special Rapporteurs by the United Nations, to deal with the situation of human rights defenders<sup>8</sup> and the independence of judges and lawyers, is strong evidence of this. Similarly, the independence of defence counsel is at the centre of the preoccupations of the Council of Europe<sup>9</sup>, which has strengthened this principle through the abundant case law of the European Court of Human Rights. The European Union, driven particularly by the European Parliament, has enshrined this principle in its legislation and has made it an objective of its policy of international cooperation through the programmes of the European Commission. The African and Inter-American systems also offer possibilities for the protection of lawyers under threat, through their Charter<sup>10</sup>, Convention<sup>11</sup>, Commissions<sup>12</sup> and Courts<sup>13</sup>.

The partners decided to create an Observatory to be dedicated specifically to the protection of lawyers in order to make this principle more effective.

## WHAT ARE THE OBSERVATORY'S OBJECTIVES?

The general aim of the Observatory is to monitor the physical and moral integrity of lawyers worldwide and the conditions in which they practise.

With this aim in mind, the Observatory's primary purpose is to provide assistance for lawyers in danger. Therefore, the Observatory's action consists of providing legal assistance for lawyers facing prosecution and both moral and material support for lawyers under threat.

Secondly, the Observatory maintains a permanent inventory of the profession by collecting information from national lawyers' associations, from lawyers who are themselves victims and from their associates and from international and non-governmental organisations. A summary of this activity is given in the annual report and is used as a basis for recommendations to strengthen the protection of lawyers, and their place and role in the protection of fundamental rights.

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<sup>8</sup> The Special Rapporteur on the situation of human rights defenders operating as part of the international scheme ([www2.ohchr.org/english/issues/defenders/](http://www2.ohchr.org/english/issues/defenders/)), the Special Rapporteur on the situation of human rights defenders in Africa operating within the African scheme ([www.achpr.org/english/\\_info/index\\_hrd\\_en.html](http://www.achpr.org/english/_info/index_hrd_en.html)) and the Inter-American Human Rights Defenders Unit ([www.cidh.oas.org/DefaultE.htm](http://www.cidh.oas.org/DefaultE.htm)).

<sup>9</sup> Recommendation no. R(2000)21 of the Council of Europe Committee of Ministers to the member States on the freedom of exercise of the profession of lawyer, dated 25 October 2000, lays down a number of principles. Principle I "General principles on the freedom of exercise of the profession of lawyer" lists eight points: to respect, protect and promote the freedom of exercise of the profession of lawyer without discrimination and without improper interference from the authorities or the public.

<sup>10</sup> See the African Charter on Human and Peoples' Rights.

<sup>11</sup> See the American Convention on Human Rights.

<sup>12</sup> See the African Commission on Human and Peoples' Rights and the Inter-American Commission on Human Rights.

<sup>13</sup> See the African Court on Human and Peoples' Rights and the Inter-American Court of Human Rights.



# INTRODUCTION

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## **THIS REPORT DESCRIBES THE WORK OF THE INTERNATIONAL OBSERVATORY FOR LAWYERS FROM ITS INCEPTION UP TO THE MONTH OF JANUARY 2011, THE END OF THE PERIOD COVERED BY THIS DOCUMENT.**

During this period, the founders of the International Observatory for Lawyers – *Avocats Sans Frontières France*, the *Ordre des Avocats de Paris*, the *Conseil National des Barreaux*, the *Consejo General de la Abogacía Española* and the *Consiglio Nazionale Forense* – conducted observations of the profession and the courts, and provided legal and material assistance to lawyers in danger, etc.

One fact emerges from this first year of activity: the legal profession is very exposed in all regions world-wide. The annual report describes the situations encountered, highlights problems and makes recommendations with a view to improving the situation of lawyers.

## **WORKING METHODS**

The Observatory was given a mandate by its partners covering the whole of the legal profession worldwide.

Without prejudging any particular situation, the Observatory began by identifying cases of lawyers under threat, relying on its network of partners.

The partners prepared a methodology laying down the procedures by which the Observatory would operate. This included a method for referrals, which was devised in such a way that the organisation would be able to fulfil its mission with full regard for the ethical principles underlying its action and within the limits of the available resources.

Interested parties may refer matters to it directly. They include: lawyers who are victims of harassment or prosecution or their families, bar associations, lawyers' associations, Law Societies and all other associations of lawyers, local or international NGOs, national or international public institutions, intergovernmental organisations, etc.

Matters may be referred by e-mail, fax, telephone or ordinary post. All of these methods are secure in order to ensure that the information remains confidential.

To this end, a form is provided for lawyers under threat (or any other interested party) at the Observatory's website: [www.observatoire-avocats.org/en/contact/submission-form/](http://www.observatoire-avocats.org/en/contact/submission-form/). The form is used to report key information about the threats faced by the lawyer concerned, which enables the Observatory to evaluate their situation, in order to decide what action to take, if any, as quickly as possible.

Every case reported to the Observatory goes through the following procedure:

- The reality of the facts is checked
- The available information is cross-checked
- The situation is evaluated by the Observatory
- The matter is forwarded to the partners for their opinion
- Appropriate action is taken

The gravity of the threat is assessed by looking at the lawyer's situation, by reference to specific criteria: impediments on the lawyer exercising their profession; suspension of the lawyer's practice; attacks on the lawyer's physical or moral integrity; death threats; detention; imposition of the death sentence; etc.

In some situations the Observatory may carry out investigations on the ground. The purpose of such investigations is to assist and protect the lawyer in danger, and also to collect information from professional organisations and from lawyers themselves, in order to produce a "country" report which will be as precise as possible, and to make concrete recommendations. Experience has shown that exercises of this type also provide an opportunity to identify new cases that have received little or no media attention.

The Observatory does everything it can to ensure that assignments are effective and to make a real impact on a given situation. Teams of lawyers are appointed to ensure the quality of the work done on the ground and the follow-up. Assignments are usually carried out by several lawyers in order to guarantee their safety.

Finally, the Observatory remains within its own specialist field, namely the protection of lawyers. Within this framework it sometimes joins forces with other organisations dedicated to the defence of human rights defenders. It mobilises national and international actors from public institutions and civil society and increases their awareness of the problems.

The more the work of the Observatory is recognised and supported by the profession and beyond, the more effective its action to protect lawyers in danger will be.



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## PURPOSE OF THE REPORT

This report focuses on situations involving lawyers in danger. This means different situations in which the physical and moral integrity of the lawyer may be threatened.

The report shows that lawyers are subject to physical assaults, both direct and indirect. We also find that the perpetrators of these assaults adopt indirect strategies, targeting both the lawyer and their environment, in order to prevent the person concerned from practising their profession freely and independently. Accordingly, the danger or threat will apply not only to the person of the lawyer, but also involve putting pressure on their associates, family or clients.

The report includes and denounces cases involving the deaths of lawyers subsequent to physical assaults, assassinations, etc. The Observatory wishes to put in place appropriate measures in order to prevent such extreme cases.

The report does not claim to give a complete picture of the situation of lawyers in danger and/or threatened around the world. The following pages report only the activities of the Observatory since it was set up. However, it has been able to gather sufficient information through its various assignments to prepare a diagnosis of the situation of lawyers around the world.

Through the 2010 annual report we wish to make known the extreme conditions in which some of our colleagues practise their profession. By focusing on some of them, this report also provides an opportunity to salute the courage of their commitment in the fight to ensure respect for human rights. Unfortunately this year again, we must deplore the loss of lawyers who have been assassinated simply for practising their profession.

(signatures des partenaires manquantes)

# THE ACTIVITIES OF THE INTERNATIONAL OBSERVATORY FOR LAWYERS

## CASES

Since it was first set up in April 2009, 29 cases of lawyers under threat in the course of their professional practice have been referred to the International Observatory for Lawyers. They have been dealt with case by case. This report provides an account of the cases handled to date.

For each case we summarise the politico-legal background, we explain the situation of the lawyer under threat and finally describe in detail the action taken by the Observatory in the defence of the person concerned.

# FIRMIN YANGAMBI: SENTENCED TO DEATH IN THE DEMOCRATIC REPUBLIC OF CONGO

Firmin Yangambi, a lawyer practising in Kisangani, DRC, was sentenced to death by the Military Court in Gombe, Kinshasa, on 3 March 2010. A delegation from the Observatory arrived in Gombe one month later as part of a mission to observe the judiciary.

## THE CASE OF FIRMIN YANGAMBI

On 27 September 2009, Firmin Yangambi, a member of the Kisangani Bar Council and President of the NGO “*Paix sur Terre*” (Peace on Earth), went with his brother, Mr Blaise Yangambi Getumbe, to a meeting with an officer from the Republican Guard, as part of an investigation into the kidnapping of two of his associates, on 26 September 2009 in Kinshasa. Firmin Yangambi and Blaise Yangambi Getumbe were then intercepted and taken to the provincial headquarters of the Intelligence Service (ANR) where they were held in secret, without access to a lawyer or their family.

The family of Firmin Yangambi and Blaise Yangambi Getumbe had no news of the detainees until the Minister of Communications and Government spokesman, Mr Mende Omalanga, at a press conference on 28 September 2009, announced the arrest of Mr Firmin Yangambi on 23 September for having “escorted a cargo of weapons in order to launch a new insurrectional movement against the DRC from Kisangani”.

On 30 September 2009, between 10 a.m. and 1.30 p.m., several officers from the military police, the ordinary police and the ANR, sent by a senior official at the Kisangani garrison, carried out a search at the home of Mr Firmin Yangambi in the presence of lawyers from the Kisangani Bar and other independent witnesses. That evening, Mr Firmin Yangambi was transferred to Kinshasa prison and Mr Blaise Yangambi Getumbe was freed.

On 2 October 2009, military personnel again visited the home of Mr Firmin Yangambi and asked his wife to hand over his passport, despite having no warrant to do so.

The Democratic Republic of Congo (DRC) adopted a new Constitution in February 2006 after a transition period that came into existence after a period of chaos and confusion following the long reign of Joseph-Désiré Mubutu, which itself followed the assassination of Patrice Lumumbu. The new Constitution expressly provides that civilians fall within the exclusive jurisdiction of the civil courts. The DRC ratified the principal international human rights instruments except, *inter alia*, the International Covenant on Civil and Political Rights (signed in 2010) and its second protocol which aims to abolish the death penalty <sup>14</sup>.

On 18 November 2009, a hearing was held at the Military Court in Kinshasa-Gombe against Firmin Yangambi, Benjamin Olangi, Eric Kikunda and Elia Lokundo.

On 6 January 2010, the prosecution asked for the death penalty and a period of 20 years’ imprisonment against the four accused.

<sup>14</sup> Nor has the DRC ratified the International Convention for the Protection of All Persons from Enforced Disappearance, the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, nor the optional protocol to the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment.

On 3 March 2010, Firmin Yangambi was found guilty and sentenced to death by the Military Court in Kinshasa-Gombe, firstly for the illegal possession of military weapons or ammunition, and secondly for attempting to organise an insurgency movement. Colonel Elia Lokundo was sentenced to life imprisonment, and Eric Kikunda and Benjamin Olangi were sentenced to 20 years' imprisonment as accomplices. The defence immediately lodged an appeal against the court's decision.

Firmin Yangambi's appeal hearing began on 10 June 2010. At the hearing on 23 July 2010, the High Military Court of Kinshasa-Gombe refused to free Firmin Yangambi or the other detainees.

The prosecution submissions were made on 14 December 2010 and the defence submissions followed on 17 December 2010.

The verdict is expected in the near future.

## THE OBSERVATORY'S INTERVENTION

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As soon as Firmin Yangambi was sentenced to death, the International Observatory for Lawyers expressed its grave concerns and drafted an alert in order to inform the media of Yangambi's situation, to raise awareness both nationally and internationally, and to challenge the national authorities.

### OBSERVATION OF THE PROCEEDINGS IN THE DEMOCRATIC REPUBLIC OF CONGO

Mr Yangambi's appeal was supposed to be heard before the High Military Court in Kinshasa-Gombe at the end of April 2010.

In view of the death sentence imposed at the first instance and the irregularities in the proceedings noted by the defence lawyers, the International Observatory for Lawyers appointed a lawyer to observe the situation jointly with the *Union Internationale des Avocats* (UIA) (International Union of Lawyers), the International Association of Young Lawyers (AIJA) and the International Federation for Human Rights (FIDH) from 27 April to 2 May 2010.

In the DRC, the delegation from the Observatory met several representatives of the military authorities, representatives of the profession, particularly the Chairman of the national Bar and the Chairman of the Kinshasa-Gombe Bar, the representative of *Avocats sans Frontières* Belgium in Kinshasa, members of the collective for the defence of Firmin Yangambi and local NGOs dedicated to the defence of human rights.

The delegation was also able to visit Mr Yangambi in the central prison in Makala where he had been held since 27 September 2009.

At the end of the mission, the Observatory reported as follows:

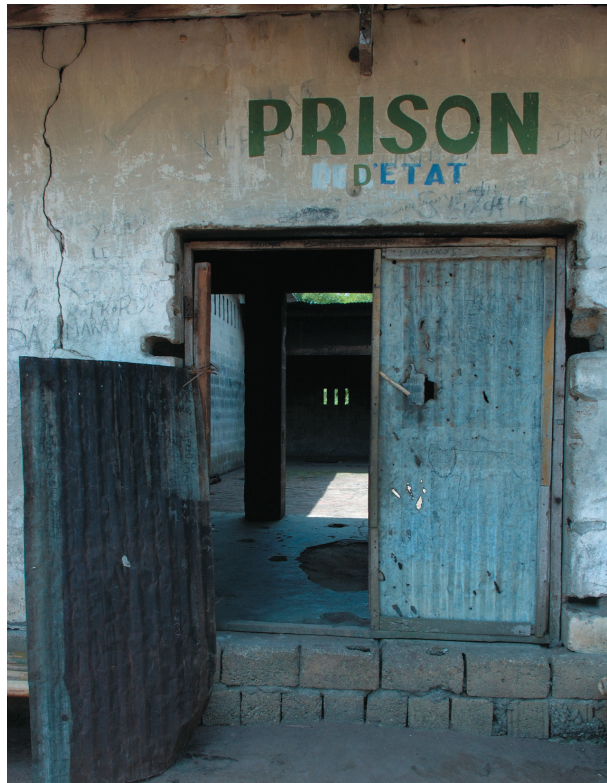
### IRREGULARITIES OBSERVED IN THE CONDUCT OF THE PROCEEDINGS

**Firmin Yangambi and Blaise Yangambi were arrested without any arrest warrant** and without being informed of the reason for their arrest. Subsequently, Firmin Yangambi was transferred to a prison in Kinshasa without his family being informed. Finally, Firmin Yangambi was questioned on several occasions without having the possibility to be assisted by a lawyer.

In addition, **the case was tried at the first instance by a military court that had no jurisdiction to deal with civilians** on the pretext that one of the co-accused was a [military] officer.

The judgment of civilians by military courts contravenes Congolese domestic law and international human rights norms. Article 156 of the Constitution of the Democratic Republic of Congo provides that “military courts shall deal with offences committed by members of the armed forces and the national police force”. Furthermore, in its Communication no. 222/98, 299/99 – Law Office of Ghazi Suleiman v. Sudan – the African Commission on Human and Peoples’ Rights considered that “military courts [should] hear and determine offences of a purely military nature committed by military staff. In carrying out this responsibility, military courts should respect the norms of a fair trial”<sup>15</sup>.

In addition, **the rights of the defence were violated**. The principle of the “equality of arms” was not respected as the military weapons and ammunition allegedly seized were not presented to the parties nor to the Court, and no witness named by Firmin Yangambi was heard by the Military Court in Kinshasa-Gombe, while those named by the judge advocate’s department were called.



“State prison” / Photo CC BY Julien Harnais

Finally, in violation of the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment, ratified by the DRC in 1996, which states that “Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings (...)”, **Firmin Yangambi described the acts of torture to which he was subjected during the interrogations**. In particular, he suffered blows and violence to the genitals.

### INHUMAN CONDITIONS OF DETENTION

The delegation from the Observatory made a first attempt to visit Firmin Yangambi at the central prison in Makala. Entry was refused on the grounds that authorisation was required from the Minister of Justice.

Finally, the Chairman of the national Bar informed the delegation that the Minister of Justice had authorised them to visit Firmin Yangambi.

The prison director received the delegation from the Observatory before the interview with Firmin Yangambi. He explained that he had introduced a surveillance system that was manned by the inmates due to a lack of personnel. The Malaka prison has 5,650 inmates including 1,827 political prisoners; it was originally intended to hold 1,250.

During the interview with the delegation from the Observatory, Firmin Yangambi described the inhuman conditions in which he was being held, and said that it was not possible to eat everyday. He also informed them that he was suffering from asthma and that there were no medicines in the prison.

On the fiftieth anniversary of the country's independence, the International Observatory for Lawyers drafted a letter to the Congolese authorities seeking a presidential pardon for Firmin Yangambi. The procedural irregularities and inhuman conditions of detention were also raised.

### THE *AMICUS CURIAE* STATEMENT

The International Observatory for Lawyers drafted a statement in its capacity as *amicus curiae*. This was signed by the Observatory's four partner organisations and was filed with the High Military Court in Kinshasa-Gombe.

The *amicus curiae* statement points out that, under the terms of the Constitution, the Court had no jurisdiction:

Article 156, paragraph 1, of the 2006 Constitution provides that military courts should deal with offences committed by members of the armed forces and the national police. The principle does not allow for any other interpretation: the jurisdiction of military courts is limited to cases involving military personnel and the police.

The fact that paragraph 3 of the same article stipulates that the conditions for the implementation of this provision will be defined in an organic or fundamental law does not mean that an earlier organic law, contrary to the Constitution, will apply; in this case, the law of 2002.

In effect:

- The organic law of 2002 is, by virtue of the hierarchy of norms, inferior to the Constitution
- It pre-dates the Constitution
- It is contrary to the Constitution

There are therefore grounds to apply Article 221 of the Constitution, which provides, as a transitional measure, that previous instruments will remain in force if they are not contrary to the Constitution. It can be inferred from this that the law of 2002 does not apply.

To sum up, the International Observatory for Lawyers asked the High Military Court in Kinshasa-Gombe to find that, strictly in accordance with the Constitution, it had no jurisdiction.

The International Observatory for Lawyers then sent its arguments to the lawyers acting for Firmin Yangambi to help them prepare their oral submissions. It particularly advised them to stress that the High Military Court of Kinshasa-Gombe lacked jurisdiction, as shown in the *amicus curiae* statement.

### **THE INTERNATIONAL OBSERVER AND THE DEFENCE COUNSEL APPOINTED FOR THE APPEAL**

As part of its monitoring of the case, the Observatory took various steps, jointly with the Union Internationale des Avocats, the Conférence Internationale des Barreaux and the International Association of Young Lawyers, in order to attend all of the appeal hearings.

On 23 July 2010, the defence lawyers officially requested the release of the accused, which was refused by the High Military Court.

The prosecution made its submissions on 14 December 2010 and the defence followed on 17 December 2010. The defence argued that the conditions of Firmin Yangambi's arrest were illegal and that it was impossible to prove that weapons had been held or that there had been a plot against the State.

On 26 September 2010, the Observatory appointed a lawyer to act as defence counsel, thereby extending the observation work that had already been done.

The verdict is expected soon.

### **MATERIAL ASSISTANCE FOR FIRMIN YANGAMBI**

Firmin Yangambi's health has deteriorated markedly due to the particularly harsh conditions of his detention. The Observatory is providing direct assistance by providing medication and bearing the cost of some of his medical examinations.

## COLOMBIAN LAWYERS, JORGE MOLANO, GERMÁN ROMERO, SOFÍA LÓPEZ AND ALEXANDER MONTAÑA THREATENED AS A RESULT OF THEIR INVOLVEMENT IN CASES IMPLICATING SENIOR MEMBERS OF THE GOVERNMENT

Jorge Molano, Germán Romero, Sofía López and Alexander Montaña have been subject to repeated threats as a result of being assumed to be at one with the causes that they defend. The International Observatory for Lawyers has made the international community aware of their cases and carried out two judicial observation missions in October 2010 and January 2011 in order to provide them with the support of the profession.

### THE CASE OF JORGE MOLANO

Jorge Eliécer Molano Rodríguez has been a human rights lawyer since 1987 and he is also a legal adviser to the *Corporación Sembrar*<sup>18</sup>, a non-governmental human rights organisation in Bogota. Jorge Molano and his family have been subject to repeated threats and intimidation since he became involved in cases implicating high-ranking officers in the Colombian Army and paramilitary officers.

In December 2009 he suffered direct threats at the time of a hearing in the “*Comunidad de Paz de San José de Apartado*” case, when he was defending the victims of a massacre perpetrated against this community.

In addition, Jorge Molano is representing the families of the 11 people who disappeared in the “*Palacio de Justicia*” (Law Courts) case, relating to events that occurred on 6 and 7 November 1985, when the Colombian Law Courts were seized by the guerrilla group M-19 and subsequently recaptured by the national army. Colonel Luis Alfonso Plazas Vega was sentenced to 30 years imprisonment in June 2010, at his trial at the first instance.

Colombia, which is one of the oldest democracies in South America, has suffered from internal strife for more than fifty years. The 1991 Constitution strengthens the presidential regime while adding elements of a parliamentary system. The judiciary is independent and the prosecuting authority is autonomous, which is a specific feature of the Colombian system. Colombia has ratified the principal international and regional human rights instruments<sup>17</sup>.

As legal adviser to the *Corporación Sembrar*, Jorge Molano was granted protective measures by the Inter-American Commission on Human Rights in 2001<sup>19</sup>. On 1 March 2010, the Inter-American Commission confirmed that these measures were being applied.

<sup>17</sup> Colombia has not ratified the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, the International Convention for the Protection of All Persons from Enforced Disappearance (signed in 2007), the optional protocol to the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment, nor the Protocol to the American Convention on Human Rights to Abolish the Death Penalty.

<sup>18</sup> Sembrar Organisation, [www.corporacionsembrar.org](http://www.corporacionsembrar.org)

<sup>19</sup> Inter-American Commission on Human Rights, protective measures, 2001, [www.cidh.oas.org/medidas/2001.esp.htm](http://www.cidh.oas.org/medidas/2001.esp.htm)



Since September 2008, Jorge Molano has been protected by the Colombian State as part of the protection program set up by the Ministry of the Interior and Justice. As part of these protective measures, the Human Rights Directorate at the Ministry of the Interior and Justice has provided him with a chauffeur-driven armoured car and three bodyguards who accompany him wherever he goes in Bogota, on the recommendation of the Technical Committee of the Office for Special Protection at the Administrative Department for Security.

However, since June 2010, the date of the judgment in the “*Palacio de Justicia*” case, the risks of his being attacked have increased as a result of the public speeches and statements of the former

President of the Republic, Alvaro Uribe Vélez, and senior officers in the Colombian army, in which they have rejected the conviction of Luís Alfonso Plazas Vega and stated that there was a legal war against the Army officers, their honour and their families<sup>20</sup>.

The threats against him remain, and, as a result of certain events, he is certain that he is subject to surveillance and being spied upon at home and at his place of work. His communications are regularly intercepted and attacks against his moral integrity have been posted on several Internet sites by members of the police force.

## THE CASE OF GERMÁN ROMERO

Germán Romero has been a human rights lawyer in Bogota and a legal adviser to the *Corporación Yira Castro*, a non-governmental human rights organisation, since April 2010. For more than nine years, Germán Romero has worked for organisations dedicated to the protection and promotion of human rights, such as the *Colectivo de abogados José Alvear Restrepo*<sup>21</sup> and the *Comisión Intereclesial de Justicia y Paz*<sup>22</sup>.

Like Jorge Molano, Germán Romero mainly represents victims of human rights violations committed by senior officers in the Colombian army or by paramilitaries. He also represents the families of the 11 individuals who disappeared during the storming of the Law Courts by the Colombian army on 6 and 7 November 1985.

On 1 July 2010, Germán Romero and his brother were followed by two men on a motorbike who fired three times at the rear of the car in which they were travelling. On two occasions in the month of July, Germán Romero noticed vehicles with tinted windows parked outside his home. He has also suffered several attempted burglaries at his home.

On 27 August 2007, the Inter-American Commission on Human Rights granted protective measures for members of the **Corporación Yira Castro**<sup>23</sup>. These involved providing means of communication (mobile phones) and paying for

certain plane tickets for professional trips; a chauffeur was also provided as part of the protection programme set up by the Ministry of the Interior and Justice.

However, under the new regulations governing the protection programme<sup>24</sup> the only protective measure now available for members of the *Corporación Yira Castro* is the provision of a means of communication. Curiously, during the month of August 2010, the mobile phone granted by the Ministry of the Interior as a protective measure

<sup>20</sup> Presidency of the Republic, 3 June 2010, speech of the President of the Republic at the investiture of generals of the national police force: [http://web.presidencia.gov.co/discursos/discursos2010/junio/policia\\_03062010.html](http://web.presidencia.gov.co/discursos/discursos2010/junio/policia_03062010.html)

<sup>21</sup> José Alvear Restrepo Lawyers' Collective

<sup>22</sup> Justice and Peace Commission.

<sup>23</sup> <http://www.cidh.oas.org/medidas/2007.sp.htm>

<sup>24</sup> Decree 1740 of 19 May 2010, issued by the Ministry of the Interior and Justice.

(i.e. one of the measures provided by the Inter-American Commission on Human Rights for the *Corporación Yira Castro*) was cut on a number of occasions. Communications are distorted and it is not always possible to send messages.

On 27 July 2010, Mr Franco, Head of the Presidential Human Rights Programme, and on 4 October 2010, Mrs Riveros Dueñas, Head of the Human Rights Directorate at the Ministry of the Interior and Justice, acknowledged the gravity of Germán Romero's situation, in view of the facts he had related.

Nevertheless, no protective measure has yet been put in place.

Furthermore, the complaints filed with the *Fiscalías*<sup>25</sup> office in the city of Bogota, relating to the acts of intimidation and threats received by the members of the *Corporación Yira Castro*, have not yet produced a result and no investigation has been carried out to date. On 18 November 2009, the members of the *Corporación Yira Castro* asked that the National Human Rights Unit of the *Fiscalía General de la Nación* (prosecuting authority) be put in charge of the investigations. No investigations have been carried out and the matter has been referred back to the original *Fiscalías* office.

## THE CASE OF ALEXANDER MONTAÑA AND SOFÍA LÓPEZ

Alexander Montaña and Sofía López are human rights lawyers and legal advisers to *Corporación Justicia y Dignidad*<sup>26</sup>, a non-governmental human rights organisation in Cali.

They mainly represent victims of human rights violations in the south east of the country. They also provide legal assistance throughout the whole country, particularly drafting petitions for submission to the Inter-American Commission on Human Rights.

On 5 October 2010, Alexander Montaña and Sofía López were victims of acts of intimidation and aggression, committed by four individuals, as they were leaving their place of work. They suffered a volley of threats referring to their activities as human rights defenders, intended to intimidate, and then one individual brutally struck Alexander Montaña while still insulting him. He was ordered to take two weeks off work by his doctors as a result of the assault. On 18 November 2010, Alexander Montaña and



Photo CC BY Pensiero

Sofía López were travelling in a taxi when they were again followed by two individuals, also in a taxi, whose manner was intimidating and aggressive.

The telephone lines and mobile phones of the two lawyers are regularly intercepted illegally and communications were diverted for a time to the switchboard at the Rivera police station in Cali.

The two lawyers informed the Rapid Reaction Unit of the *Fiscalía General de la Nación* of the earlier events.

On 21 October 2010, Alexander Montaña and Sofía López asked for protective measures from the Deputy Minister of the Interior and Justice. There has still been no response to this request.

On 12 November 2010, they asked for protective measures from the Inter-American Commission on Human Rights. Their request is being processed.

<sup>25</sup> Local prosecutor's office charged with investigating criminal matters and drafting indictments.

<sup>26</sup> Justice and Dignity Organisation.

## THE OBSERVATORY'S INTERVENTION

The Observatory has drafted alerts on behalf of Jorge Molano and Germán Romero and organised two trips to observe court hearings at which the lawyers were representing the claimants.

### OBSERVATION OF THE HEARING IN THE CASE OF FRANCISCO SANTOS CALDERÓN AND OBDULIO GAVIRIA

In July 2010, Jorge Molano informed the Observatory of the threats to which he was regularly subjected and which had grown worse since the judgment handed down against Colonel Luís Alfonso Plazas Vega. The Observatory drafted an alert on his behalf which was distributed widely internationally.

Within the framework of monitoring Jorge Molano's situation, a delegation from the Observatory visited Colombia from 10 to 13 October 2010 in order to lend him the support of the profession after he had directly approached the Observatory.

The Observatory went to Bogota in order to attend the hearing scheduled for 12 October 2010, as an observer. The hearing was particularly tense due to the threats made against Jorge Molano because he was acting as lawyer for the victims, and due to the growing tendency to stigmatise lawyers acting in the defence of human rights and for the respect of the rights of the person in Colombia.

At the hearing, the charges against Francisco Santos Calderón, former Vice President of the Colombian Republic, and José Obdulio Gaviria, adviser to the former President Álvaro Uribe Vélez, were to be presented. They were accused of defamation for having described, on 19 July 2007, members of the trade unions Sintraunicol, Sintraemcali and Sintrateléfonos as "apologists for terrorism" and "members of the guerrilla forces". Jorge Molano was defending the claimants.

In Bogota, the delegation from the Observatory had a meeting with Mrs Puig-Inza, First Secretary for Human Rights, and Mr Kohler, Attaché for Development Cooperation at the French Embassy. They also met Mr Menéndez de Zubillaga, Head of the Legal Section at the Office of the High Commissioner for Human Rights in Colombia, and Mrs Quiroga, Head of the anti-impunity programme run by the same organisation, and Mrs Salazar Posada, Head of Development Cooperation with the European Union delegation.

The Observatory met Jorge Molano several times and also Germán Romero (for whom it then drafted an alert), Reinaldo Villalba, Alejandro Malambo and Sonia Pinzón at a meeting organised by the French embassy.

At the end of the mission, the Observatory reported as follows:

#### **JORGE MOLANO'S SECURITY IS NOT GUARANTEED**

Protective measures were put in place by the Colombian Ministry of the Interior and Justice in March 2009. His security was strengthened by the presence of four bodyguards assigned to protect him and the provision of two armoured vehicles.

However, these measures are not sufficient and the security of Jorge Molano, like that of the other Colombian human rights lawyers that we met, is not guaranteed. Nor is that of his family, as the Colombian government is opposed to providing them with protection.

Furthermore, Jorge Molano pointed out that he and his colleagues do not have total confidence in the bodyguards assigned to protect them.

**THE PERPETRATORS OF THE ACTS OF INTIMIDATION HAVE NOT BEEN IDENTIFIED OR PROSECUTED**

The complaints filed with the *Fiscalías* or the *Fiscalía General de la Nación* after the acts of intimidation and the threats made to human rights lawyers have not been followed up by effective investigations. The persons responsible for the acts of intimidation and aggression have not been identified or prosecuted in the great majority of cases.

**THE POSITIVE EFFECT OF PRESSURE ON THE COLOMBIAN STATE**

Pressure on the national authorities, particularly through media reporting and the presence of observers, is an effective way of raising awareness of the increased risk borne by human rights defenders, particularly when the persons involved in a trial are influential.

**OBSERVATION OF A HEARING IN THE “PALACIO DE JUSTICIA” CASE**

Jorge Molano and Germán Romero represent the families of the 11 individuals who disappeared during the events surrounding the “Palacio de Justicia” case, in which the defendants are the retired Colonels, Luis Alfonso Plazas Vega and Edilberto Sanchez Rubiano, and the retired Generals, Jesús Armando Arias Cabrales and Iván Ramírez Quintero.

From 24 to 28 January 2011 a delegation from the International Observatory for Lawyers was in Colombia at the request of Jorge Molano and Germán Romero for the hearings at which the submissions relating to the involvement of the retired General Iván Ramírez Quintero in the forced disappearance of the 11 individuals were to be heard.

In Bogota, the delegation from the Observatory met Mr Mateos, political adviser at the Spanish Embassy, Mrs Puig-Inza, First Secretary for Human Rights and Mr Kohler, Attaché for Development Cooperation at the French Embassy. They also met Mr Menéndez de Zubillaga, Head of the Legal Section at the Office of the High Commissioner for Human Rights in Colombia, and Mrs De la Espriella, his deputy; and Mr Santillán, Human Rights representative with the European Union delegation.

The delegation also met Mr Concha Cruz, Policy Coordinator for the Presidential Programme for Human Rights and International Humanitarian Law (programme under the responsibility of the Vice President of the Colombian Republic).

They also met Jorge Molano and Germán Romero several times, and Alexander Montaña and Sofía López.

At the end of the mission, the Observatory reported as follows:

**THE LAWYERS ACTING IN THE “PALACIO DE JUSTICIA” CASE ARE VULNERABLE DUE TO THE POSITIONS ADOPTED BY THE PUBLIC PROSECUTOR AND THE PROSECUTING AUTHORITY**

At the “*Palacio de Justicia*” trial, the prosecuting authority decided not to present any charges against General Iván Ramírez Quintero, Colonel Fernando Blanco Gómez or Sergeant Gustavo Arévalo, who were responsible for the Intelligence Services at the time of the events, with respect to 10 of the 11 forced disappearances recorded, but for one case only (that of the guerrilla fighter, Irma Franco).

The public prosecutor decided to seek the acquittal of all the persons accused.

These decisions put the victims' lawyers and the trial judge in a difficult position and make them very vulnerable. The prosecutor's office and the prosecuting authority have obliged them to assume responsibility for pursuing all of the allegations against the General, the Colonel and the Sergeant accused.

At the hearing on 26 January 2011, Jorge Molano accused the public prosecutor of “virtually allying himself with the crime”<sup>27</sup> at this trial by seeking the acquittal of the accuseds. He asked that an investigation be opened into the presumed irregularities in the intervention of the public prosecutor, Hernando Suárez, at the trial.

#### **FAILURE TO PROVIDE PROTECTIVE MEASURES OR INADEQUACY OF THE MEASURES PROVIDED FOR JORGE MOLANO AND GERMÁN ROMERO**

The Protection Programme, managed by the Ministry of Justice, said that Jorge Molano’s situation carried “an extraordinary level of risk”, without, however, providing any reasons for this assessment.

Otherwise, Jorge Molano informed the delegation from the Observatory of various inadequacies in the resources provided by the Protection Programme to guarantee his security. His comments were passed on by the Observatory’s representatives to the Policy Coordinator of the Presidential Programme on Human Rights and International Humanitarian Law so that the arrangements could be reviewed.

In the case of Germán Romero, the Protection Programme has still not provided him with any protective measures. The officials are in the process of assessing the current level of his risk. It is important to stress that at the time when he was most exposed in this case, when he took part at the hearings on 25 and 26 January 2011, he was not covered by the protective measures of the Colombian State.

#### **NEVERTHELESS, THE CONTEXT MAY CHANGE**

The avowed policy of the current Colombian government is one of respect for human rights and it is currently putting in place new policies to defend human rights defenders, which contrasts with the policies of the former President, Mr Uribe.

For example, during the year ended, the budget of the Protection Programme dedicated to human rights defenders was nearly doubled.

#### **THE OBSERVATORY’S INTERVENTION HAS HAD A POSITIVE IMPACT FOR JORGE MOLANO AND GERMÁN ROMERO**

The Observatory’s interventions in Colombia, i.e. the alerts issued and visits by observers, etc. had immediate repercussions in the media and in terms of institutional reactions.

The Colombian lawyers assess the work carried out by the Observatory in Colombia very positively and consider that, by drawing attention to the international support for their work, the Observatory has greatly assisted their protection.

Thanks to the meeting with the Policy Coordinator of the Presidential Programme for Human Rights and the International Humanitarian Law, the Protection Programme has paid more attention to Jorge Molano and Germán Romero.

#### **ADDENDUM :**

As this report goes to press, the Observatory is very concerned by Jorge Molano’s decision to give up the security plan put in place by the Colombian state, as a way of protesting against the inadequacy and unsuitability of the measures taken. The Observatory has approached the Colombian national authorities so that they may take all necessary measures to ensure that he is protected effectively.

<sup>27</sup> “Casi aliarse con el crimen”, in the words of Jorge Molano.

## CHINESE LAWYERS DEPRIVED OF THEIR PROFESSIONAL LICENCES AND DISBARRED

The Observatory was informed that the professional licences of several Chinese lawyers were not renewed in June 2009. First of all it raised awareness of the situation among international opinion and challenged the Chinese national authorities regarding the lawyers' plight by issuing an alert. It then sent a delegation to observe the situation in China in March 2010, in order to understand the mechanism by which lawyers' licences are renewed in China and to ascertain why these particular licences had been suspended.

The refusal to renew the licences is part of a pattern of general, sustained pressure on lawyers, involving threats, arbitrary arrests and forced disappearances. The lawyers who lost their licences are human rights defenders who constitute a minority<sup>28</sup>. Their situation is extremely close, in terms of the threats made, to that of other civil rights militants such as Liu Xiabo, who was awarded the Nobel Peace Prize in 2010.

The Democratic Republic of China, which was founded in 1949, is governed exclusively by the Chinese Communist Party, which controls all political activity. The judiciary is not independent and the courts and prosecuting authorities are responsible to the National Assembly. China has ratified certain international Human Rights instruments, but has not ratified inter alia, the International Covenant on Civil and Political Rights and its two protocols<sup>29</sup>.

### THE CASE OF TANG JITIAN AND LIU WEI

Tang Jitian and Liu Wei are Chinese lawyers who practise in Beijing. Their firms specialise in defending human rights. They have acted in cases involving migrants, peasants dispossessed of their land, persons infected with HIV, *Falun Gong*<sup>30</sup> practitioners and parents whose children have been intoxicated with adulterated milk.

In spring 2009, the firm in which Tang Jitian was working came under pressure intended to encourage his partners to eject him from the firm. Pressure was also put on the owner of his house to terminate Tang Jitian's lease.

At the end of May 2009, Tang Jitian's licence was not renewed. In addition he was kept under house arrest for a week in June 2009.

Liu Wei also lost her licence at the end of May 2009. The licences of the five lawyers working in her firm were also suspended. When Liu Wei asked for information about her situation from the Beijing Municipal Bureau of Justice, she was told that she had not satisfied the conditions for the renewal of her licence. She also approached the Ministry of Justice but does not seem to have received a reply.

<sup>28</sup> They are a few hundred among China's 160,000 lawyers.

<sup>29</sup> Nor has China ratified the International Convention for the Protection of All Persons from Enforced Disappearance, the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, nor the optional protocol to the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment.

<sup>30</sup> Falung Gong is a spiritual movement. Practitioners of Falun Gong have been specifically persecuted since 1999 when Falun Gong associations were classified as an "illegal organisation" under Article 300 of the Chinese Criminal Code.



On 12 April 2010, the Beijing Municipal Bureau of Justice imposed administrative penalties on Tang Jitian and Liu Wei on the ground that they “had disrupted the proper order of the Court” at a trial in which they defended a member of the Falun Gong. As a result of this measure they have been permanently deprived of their licences.

In June 2010, the two lawyers appealed to the People’s Government in Beijing. On 27 August 2010 it informed them that the initial decision of the Beijing Municipal Bureau of Justice would be maintained.

On 10 September 2010, Tang Jitian and Liu Wei requested a trial before the Administrative Court, but the request was rejected.

The two lawyers have now exhausted all possibilities of appeal.

## THE CASE OF GAO ZHISHENG

Gao Zhisheng is a Chinese lawyer and defender of civil rights (in the Weiquan movement) in Beijing. On the basis of the rights acknowledged in the Constitution, he defended victims of illegal expropriation, ecological disasters due to industrial negligence, medical errors, religious persecution and wrongful imprisonment.

Gao Zhisheng received numerous death threats over a period of several years, and was arrested on a number of occasions. After several periods of imprisonment – in 2007, for having written to members of the US Congress on the human rights situation in China, and in 2008 - he wrote a letter, which was published in 2009, about the torture and mistreatment that he had suffered. The pressure on his family and on Gao Zhisheng himself increased as a result and, on 4 February 2009, Gao Zhisheng was finally seized by state security officers and held secretly. One month later, his family, due to their feelings of insecurity, took refuge in the United States.

Gao Zhisheng resurfaced in March 2010 and was able to speak to close associates, certainly under the surveillance of the police. The following month, April 2010, he disappeared again. His brother, Gao Zhiyi, reported his disappearance to the Chinese authorities on 25 October 2010, who refused to record the fact that he was missing as a “disappearance”, on the pretext that since Gao Zhiyi had already “disappeared” and then “reappeared”, there was nothing to worry about.



Photo CC BY Louise Fantini

To date, the Chinese authorities have not provided any evidence to show that Gao Zhisheng is still alive.

## THE OBSERVATORY INTERVENTION

The Observatory first of all drafted and distributed an alert in favour of Tang Jitian and Liu Wei in order to raise awareness among international opinion and challenge the national authorities on their cases. A delegation from the Observatory went to China in March 2010.

### OBSERVATION IN CHINA

A delegation from the International Observatory for Lawyers visited China for one week, from 14 to 21 March 2010, in order to gain an understanding of the mechanism for renewing lawyers' licences in China and the reasons why licences may be suspended.

In China, the Observatory's delegation met six lawyers who had lost their licences: Tang Jitian, Liu Wei, Jian Tianyong, Li Fang Ping, Li Subin, Wen Haibo and Zhang Kai. They also met two lawyers who were still practising: Li Jinlin and Liang Xiaojun.

They were also able to interview Mrs Feng Xiumei, Secretary General of the All China Lawyers Association (ACLA) <sup>31</sup> and Mrs Lan Hong, Director of the International Section of the ACLA. They also met Wu Ge, a lawyer who has been the Chairman of the ACLA Human Rights committee since 2002.

In addition, the delegation met Mr Ladsous, the French Ambassador to China, Mr Droszewski, First Secretary, Mr Lelarge, Political Adviser, and Mr Quinio, Law Officer and Legal Adviser at the French Embassy. They also interviewed Mr Della Seta, Minister Counsellor, and Mrs Paderni, Press Officer at the Italian Embassy, and Mr Simon Sharpe, First Secretary for Political Affairs in the EU Delegation.

At the end of its mission, the Observatory reported as follows:

#### **CERTIFICATES AND LICENCES: THE SPECIFIC FEATURES OF THE CHINESE SYSTEM**

The legal profession was reintroduced in China by the national provisional regulations on the legal profession that were adopted on 26

August 1980. Lawyers were classified as "state legal workers". In 1996, the national law on lawyers redefined the profession: its members were defined as "professionals who have been granted a lawyer's licence in accordance with the law and who provide society with legal services".

Any person who wishes to join the profession must successfully complete a law course. Having passed the final examination, candidates must complete a traineeship of at least one year in a law firm <sup>32</sup>. At the end of the traineeship, candidates must pass another examination and can then apply for a professional certificate which proves that the holder is a qualified lawyer.

The certificate takes the form of a booklet which shows the person's identity, a photo and the date on which person [was authorised to] practise as a lawyer. The booklet is stamped every year, showing that the person is still licensed to practise.

Lawyers' licences are renewed in June each year; applications are channelled through the ACLA in April-May. Each firm must state the number of lawyers that make up the firm. Each lawyer has to pay RMB 2,500 (280 euros) and each firm RMB 10,000 (1,120 euros).

The Bureau of Justice is authorised to suspend licences. Renewal may be informal and automatic or the Bureau may require an application to be submitted on a [specific] form.

<sup>31</sup> ACLA is the only national association of lawyers and it covers all of the lawyers in the country.

<sup>32</sup> Since the Law of 1 June 2008.



## CHINESE LAWYERS WHO HAVE LOST THEIR LICENCES

**Lawyers who defend “sensitive” issues**, i.e. cases challenging the authorities, the municipalities, the Party or its political monopoly, **are particularly likely** to lose their licence.

During the period when licences are renewed each year, it seems that the Bureau of Justice asks each firm to confirm that its lawyers have not broken any professional rules <sup>33</sup>.

Reports must be prepared on cases classified as “sensitive” <sup>34</sup>, or which involve more than ten people, and submitted to the Ministry of Justice and the ACLA. This rule is not laid down formally in any Law, but is stipulated in a document prepared by the Law Courts for the attention of lawyers. Lawyers must therefore assess how sensitive each case is. If they do not fulfil the obligation to notify the Bureau of Justice, they may lose their licence.

The Observatory collected the names of eight lawyers who lost their licences in June 2009 and sent the list to the Secretary General of the ACLA, who said that she had not been informed of these removals. The lawyers concerned were: Tong Chaoping, Tang Jitian, Yang Huiwen, Liu Wei, Wen Hailbo, Li Jinsong, Zhang Lihui and Jiang Tianyong.

However, it is very likely that as many as 24 lawyers lost their licences in 2009 <sup>35</sup>.

Furthermore, law firms defending so-called “sensitive” cases may also have their licences suspended, as happened to the Beijing Yi Tong Law Firm and Beijing An Hui Law Firm in 2009. If the firm loses its licence, the lawyers who work for it also lose their licences and may no longer practise their profession.

However, **the licence renewal process is unpredictable**: some lawyer-human rights defenders have managed to keep their licences without any apparent difficulty, such as Li Jinlin and Liang Xiaojun, whom the Observatory met in Beijing.

These lawyers somehow manage “never to cross the red line” which is not clearly identifiable (cf. the concept of a “sensitive case” which is not defined by law).

### POSSIBILITIES FOR APPEAL ARE LIMITED WHEN A LICENCE IS SUSPENDED

According to the lawyers that we met, before a licence is suspended, the ACLA may warn the lawyer or the firm in which they practise of the risk that their licence may not be renewed. This warning may be given in a letter or a message on the ACLA digital platform, or at a personal interview with the Bureau of Justice. Lawyers who defend causes that arouse the hostility of the Chinese State are those most likely to receive this type of warning.

When a licence is not renewed, the decision becomes effective immediately and often no reason is given. A letter may sometimes be sent by the Bureau of Justice and the ACLA to the lawyer concerned, informing them that their licence has not been renewed for reasons of a general nature.

However, in most cases, the refusal is not accompanied by an official letter, which removes the possibility of lodging an appeal.

Meanwhile, lawyers may be disbarred by the Bureau of Justice without any right of appeal. To the Observatory’s knowledge, only Tang Jitian and Liu Wei have been irrevocably disbarred in China.

<sup>33</sup> Rules laid down in the Law of 1 June 2008.

<sup>34</sup> What constitutes “sensitivity” is not, however, formally explained in any official document.

<sup>35</sup> Cf “*Les avocats chinois, militants des droits civiques*” (Chinese lawyers: militants for civil rights), a short note on the pressures and threats to which they are subject, China Group of the *Ligue des droits de l’Homme* (Human Rights League) March 2010.

### **OTHER PRESSURES TO WHICH CHINESE LAWYERS ARE SUBJECT**

In June 2010, the number of lawyers whose licences were not renewed seems to be lower than the figure for June 2009.

However, Chinese lawyers who defend “sensitive” cases are subject to other subtle pressures, for example, the activities of their firms may be impeded. The firm may be refused certain documents or additional taxes may be imposed by the Bureau of Justice upon which they are very dependent.

The plan to limit the population of Beijing, which was introduced in June 2010, makes it difficult to practise in that city. It is now more difficult for lawyers to obtain the hukou, the Beijing residence permit, which prevents them from practising or completing a traineeship in the capital.

### **THE SITUATION OF CHINESE LAWYERS SHOULD BE REPORTED MORE WIDELY IN THE INTERNATIONAL MEDIA**

The Chinese lawyers we met during the Observatory’s mission all stressed the importance of publicising their situation internationally.

The Observatory made international public opinion aware of the situation of Gao Zhisheng by drafting and widely distributing an alert. It also asked the Chinese authorities to prove that he was still alive, to ensure that he would be freed and that the acts of intimidation against him would cease.

#### **ADDENDUM :**

As this report goes to press, the Observatory deplores the disappearance of Tang Jitian, which occurred on 16 February 2011, and the disappearances of his two fellow lawyers, Jiang Tianyong and Teng Biao, on 19 February <sup>36</sup>. Finally, they would be released on 5 March, 19 april and 29 april 2011 respectively.

# VIETNAMESE LAWYERS, LE THI CONG NHAN, NGUYEN VAN DAI AND LE CONG DINH, CONVICTED AND PLACED UNDER HOUSE ARREST

In 2009 and 2010, the International Observatory for Lawyers monitored the cases of three Vietnamese lawyers who had been arrested, imprisoned and convicted for practising their profession. After an initial trip to observe the situation in November 2009, the Observatory sent a delegation to attend the appeal trial of Le Cong Dinh in May 2010.

## THE CASE OF LE THI CONG NHAN AND NGUYEN VAN DAI

Le Thi Cong Nhan was a lawyer at the Hanoi Bar and is a fervent defender of human rights. She is one of the founder members of the Vietnam Progressive Party, which campaigns for democracy in Vietnam, and was its spokesperson.

In March 2007, fifteen police officers took possession of her house by force and arrested her. In May of the same year, she was sentenced to four years' imprisonment and three years' house arrest by the People's Court in Ho Chi Minh City for disseminating "propaganda against the Socialist Republic of Vietnam" in breach of Article 88 of the Vietnamese Criminal Code<sup>38</sup>. She was also disbarred for life. On appeal, her prison sentence was reduced by one year but the period of house arrest remained the same.

Le Thi Cong Nhan was released on 6 March 2010. Three days later, she was arrested again on the pretext that she had violated the terms of her house arrest.

Nguyen Van Dai was a lawyer at the Hanoi Bar. He was particularly involved in the defence of persecuted minorities, especially members of the Mennonite protestant church.

The Socialist Republic of Vietnam (Vietnam), created in 1976, is governed by the Communist Party, which controls all political activity in the country. In theory, the judiciary is independent, but the reality is somewhat different. Vietnam has ratified certain international human rights instruments but has not ratified, inter alia, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or its protocol<sup>37</sup>.

In 2006, he founded the Committee for Human Rights in Vietnam and wrote numerous articles on democracy and the freedom of the press.

On 6 March 2007, Nguyen Van Dai was arrested and remanded in custody. On 11 May 2007, having been tried alongside Le Thi Cong Nhan, he was sentenced to four years' imprisonment and

<sup>37</sup> Nor has Vietnam ratified the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, the International Convention for the Protection of All Persons from Enforced Disappearance, nor the two protocols of the International Covenant on Civil and Political Rights.

<sup>38</sup> Article 88: Propaganda against the State of the Socialist Republic of Vietnam: 1. Any person who commits any of the acts described below in order to oppose the State of the Socialist Republic of Vietnam shall be liable to a term of imprisonment ranging from three to twelve years: Spreading false information denigrating public entities; Conducting a psychological war and spreading information invented in order to create confusion among the people; Producing, holding and/or distributing documents or cultural items containing information that may be used to oppose the State of the Socialist Republic of Vietnam. 2. In the most serious cases, the offence shall be punished by a period ranging from ten to twenty years' imprisonment.

four years' house arrest on the same charges as his fellow accused. He was also disbarred.

On 27 November 2007, on appeal, only the period of house arrest was reduced by one year. After hearing the Appeal Court's decision, Nguyen

Van Dai appealed to the Supreme Court. His wife received a reply and he has no further possibility of appeal at this time.

Nguyen Van Dai is still being held in Nan Ha prison.

## THE CASE OF LE CONG DINH

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Le Cong Dinh is an eminent Vietnamese lawyer and was the Deputy Chairman of the Ho Chi Minh City Bar Association. He called for human rights to be respected on several occasions and for the introduction of democracy in Vietnam.

In November 2007, he represented Nguyen Van Dai and Le Thi Cong Nhan at the hearing at which their sentences were due to be reconsidered by the Court of Appeal. At the hearing, Le Cong Dinh and other lawyers argued that Article 88 of the Vietnamese Criminal Code, under which the two accused had been charged, was anti-constitutional and infringed the international human rights conventions that Vietnam had ratified, such as the International Covenant on Civil and Political Rights, and that it should, in consequence, be revised.

In September 2008, he also represented Nguyen Hoang Hai, a blogger known as "Dieu Cay", who had written critical articles and campaigned for human rights to be respected in Vietnam.

Le Cong Dinh also openly criticised bauxite mining in the country's central highlands.

On 13 June 2009, Le Cong Dinh was arrested at his offices in Ho Chi Minh City and he has been held in the prison in that city ever since. His arrest received a lot of media attention.

On his arrest, he was charged with:

- "propaganda against the government" pursuant to Article 88 of the Vietnamese Criminal Code;
- "plotting to overthrow the people's government", which is a capital offence under Article 79 of the Vietnamese Criminal Code <sup>39</sup>.

After his arrest at his offices he was disbarred from the Ho Chi Minh City Bar, on 1 July 2009; the Ministry of Justice also withdrew his professional licence.



Photo CC BY Chrysaora

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<sup>39</sup> Article 79: Insurrectional movement: Any person who creates an insurrectional organisation or takes part in such organisation, with a view to overthrowing the government, will be punished as follows: 1. Any person who organises an insurrectional movement, or promotes or takes part in such a movement actively, or thereby causes serious consequences, will be sentenced to a term of imprisonment ranging from 12 to 20 years, to life imprisonment or death; 2. The accomplices of such persons will be sentenced to a term of imprisonment ranging from 5 to 15 years.

Le Cong Dinh's trial took place on 20 and 21 January 2010. Foreign observers were able to attend, sitting in a room that was separate from the courtroom, in which the hearing was shown. The Court of Ho Chi Minh City sentenced Le Cong Dinh to five years' imprisonment and three years' house arrest for:

- "connivance with foreign subversive elements in publishing documents presenting a biased image of the government's socio-economic policies";
- "propaganda against the communist State";
- having "pursued activities intended to overthrow the people's government".

His co-accuseds, Nguyen Tien Trung, a blogger, Tran Huynh Duy Thuc and Le Thang Long, human rights activists, were sentenced to between five and 16 years' imprisonment. Le Cong Dinh, Tran Huynh Duy Thuc and Le Thang Long lodged appeals against the verdicts.

At the appeal trial, on 11 May 2010, Le Cong Dinh's sentence was not reduced, nor was that of Tran Huynh Duy Thuc. However, Thang Long's sentence was reduced from five to three and a half years.

Le Cong Dinh is still held in Ho Chi Minh City prison.

## THE OBSERVATORY INTERVENTION

The International Observatory for Lawyers reacted immediately after the arrest of Le Cong Dinh in June 2009. It raised awareness of the case among international public opinion and challenged the Vietnamese authorities. The Observatory continued its activities after Le Cong Dinh's removal from the Ho Chi Minh City Bar and organised a visit to Vietnam in November 2009. Subsequently, the Observatory went to Ho Chi Minh City when Le Cong Dinh's appeal was heard in May 2010.

## VISIT TO VIETNAM IN SUPPORT OF NGUYEN VAN DAI AND LE THI CONG NHAN

A delegation from the Observatory visited Vietnam from 22 to 29 November 2009 in order to provide support for the lawyers held on account of their human rights activities, and to help them regain their liberty and the right to practise their profession without hindrance. The Observatory concentrated on Le Cong Dinh, Nguyen Van Dai and Le Thi Cong Nhan.

In Vietnam, the delegation travelled to Hanoi and Ho Chi Minh City. In Hanoi, they met Mrs Miscot, First Secretary at the French Embassy, and Mr Bardoul, Head of the "Action" section of the European Union Delegation. The delegation also interviewed the Chairman of the Vietnam Law Association and the Director of the Maison du Droit (Franco-Vietnamese centre for co-operation on legal matters).

The delegation was not able to visit Le Cong Dinh, Nguyen Van Dai or Le Thi Cong Nhan in prison, but was able to meet their respective families. The delegation was, therefore, able to give them moral support.

At the end of its assignment, the Observatory reported as follows:

### **THE CASE OF NGUYEN VAN DAI AND LE THI CONG NHAN: A POLITICAL TRIAL VIOLATING FUNDAMENTAL PRINCIPLES**

Nguyen Van Dai and Thi Cong Nhan were found guilty of spreading “propaganda against the Socialist Republic of Vietnam”, on the basis of Article 4 of the Constitution.

The Court thereby asserted that as the Communist party is the sole party of the Vietnamese revolution, other parties and political activities violate the law and are illegal simply by existing. Therefore, the activities of Nguyen Van Dai and Le Thi Cong Nhan, advocating democracy and a multi-party state, constituted, in the eyes of the Court, a serious breach of the Constitution and laws of the Socialist Republic of Vietnam.

The Court also condemned the erroneous information allegedly sent by Nguyen Van Dai to foreign media on the state of democracy and human rights in Vietnam. In the same vein, the Court found fault with Le Thi Cong Nhan for having given courses on democracy to students. Apparently, this information gave a poor image of the country and falsified its history.

The Court imposed a sentence that was all the heavier in that they considered that the two lawyers had derived an advantage from their democratic rights and freedoms in order to produce, collate and distribute documents in order to defame the People’s government and oppose the Socialist Republic of Vietnam.

At the trial, the lawyers of Nguyen Van Dai and Le Thi Cong Nhan were not able to express themselves freely: their microphones were switched off at several points during their submissions. The file of one of the lawyers of Nguyen Van Dai was confiscated by police outside the courtroom. In addition, the lawyers were explicitly forbidden from quoting from international agreements at the hearings.

The judges followed the recommendations of the prosecuting authority and did not reply to the argument put forward by the defence, particularly regarding the proceedings and the irregularities.

At the appeal trial, several witnesses whose statements had been used to convict the accused at the first instance, were not allowed to enter the courtroom in spite of Le Cong Dinh having requested their presence in due form.

### **HARSH CONDITIONS OF DETENTION**

The delegation from the Observatory was able to talk to members of the detainees’ families when these individuals visited Nguyen Van Dai and Le Thi Cong Nhan in prison, in November 2009. The two lawyers were not being held in the same prison. Nguyen Van Dai was in the prison at Nan Ha, 73 kilometres from Hanoi, while Le Thi Cong Nhan was in a prison in the province of Thang Hoa, near the border with Laos, 250 kilometres from Hanoi.

**Both were suffering from a lack of space, food and medicine.** The conditions of their incarceration seemed to be particularly harsh: about sixty prisoners were held in a common cell in which each person has 70 cm<sup>2</sup> of personal space.

Neither of them seemed to be able to eat every day and neither of the prisons seemed to have any medicines. The conditions of their detention seemed to be getting worse. Nguyen Van Dai had suffered from hepatitis B and Le Thi Cong Nhan’s health had seriously deteriorated in prison: her eyesight had got worse and she did not seem to have received any treatment from the prison system for a problem with her knee.

In addition, **both lawyers said that they were watched all the time** in prison. When they received visits, a guard was always present and took notes of all their conversations with the visitors.

### **PRESSURE ON THE DEFENCE TEAM AND THOSE CLOSE TO THE IMPRISONED LAWYERS**

It seems to be common practice to confiscate the files of lawyers whose clients are human rights defenders. Because of these hindrances, clients prefer to instruct not one lawyer but several – four in the case of Nguyen Van Dai and three in the case of Le Thi Cong Nhan – so as to be sure that at least one of the lawyers will be present at the hearings.

Dam Van Hien, an 86-year-old lawyer, has been prevented from practising since he defended Nguyen Van Dai. His clients are prevented from meeting him by a permanent police presence. Le Cong Dinh was also arrested after representing Nguyen Van Dai and Le Thi Cong Nhan. In addition, one of the lawyers of Le Thi Cong Nhan is currently in prison.

The families of the convicted lawyers are constantly followed by uniformed police officers. Their telephone lines are tapped nearly all the time. They are not able to attend the trial in the courtroom but are obliged to follow it in another room in the court building, to which some journalists and foreign diplomats are also allowed access.

#### **ADDENDUM :**

As this report goes to press, the Observatory is delighted about the release of Nguyen Van Dai at the end of his sentence on 6 March 2011, but deplores the fact that he will be under house arrest for a period of three years, like his fellow lawyer, Le Thi Cong Nhan.

### **THE MISSION TO OBSERVE LE CONG DINH'S APPEAL TRIAL**

A delegation from the Observatory went to Ho Chi Minh City again, from 9 to 12 May 2010, for the appeal trial of Le Cong Dinh. The Observatory undertook this mission in order to affirm and show its support for Le Cong Dinh and his family at the time of the appeal trial, and to raise the awareness of the local authorities and the international community in Vietnam.

The Observatory had drafted a fresh alert, on 19 January 2010, challenging the national and international authorities regarding the situation of Le Cong Dinh on the day before his trial. On 2 February 2010, after the trial and the conviction of the Vietnamese lawyer to 5 years' imprisonment, the Observatory sent a new alert to the national and international authorities calling on them to act for the release of Le Cong Dinh and to ensure that lawyers in Vietnam be guaranteed the right to practise their profession freely and independently.

In Ho Chi Minh City, the Observatory's delegation met the family of Le Cong Dinh, one of the lawyers of Le Thi Cong Nhan and Mr Nguyen Dang Trung, Chairman of the Ho Chi Minh City Bar.

The Observatory also met Mr Boivineau, the French Consul General, and Mrs Genet, a journalist from AFP (*Agence France Presse*).



At the end of the mission, the Observatory reported as follows:

### **AN APPEAL TRIAL IN CAMERA, WITHOUT ANY REGARD FOR THE RIGHTS OF THE DEFENCE**

Along with all the other international observers, the Observatory's delegation was excluded from Le Cong Dinh's appeal trial. The courtroom was empty. Two family members for each accused were authorised to be present, but were required to sit in a separate room, and Le Cong Dinh's wife was advised of the authorisation to attend the trial only the day before the hearing.

Le Cong Dinh chose to defend himself, apparently in order to avoid endangering any colleagues who might have been instructed to defend him. Le Cong Dinh repeated his confessions, which he had already made at the first trial.

### **THE FIVE-YEAR PRISON TERM AND FOUR-YEAR PERIOD OF HOUSE ARREST WERE CONFIRMED**

At the trial, the Ho Chi Minh City Court of Appeal confirmed Le Cong Dinh's conviction, after 30 minutes of deliberations. The Court considered that Le Cong Dinh had not "presented any new elements" that would have justified a reduction in the sentence, according to Nguyen Minh Tam, the lawyer of Le Thang Long.

### **THE NEED TO INCREASE THE AWARENESS OF INTERNATIONAL PUBLIC OPINION AND TO CHALLENGE THE NATIONAL AUTHORITIES ON THE FATE OF LE CONG DINH**

The Observatory drafted a statement in favour of Le Cong Dinh which they sent to the French embassy and the European Union delegation in Vietnam, asking them to use all their resources to obtain the release of Le Cong Dinh.

The Observatory also wrote a letter to all the Bar chairmen in France asking them to write to the diplomatic representations in Vietnam, asking them to do everything in their power to obtain the release of Le Cong Dinh.

The Observatory then wrote to the French embassy and the European Union delegation in Vietnam three times, asking them to use their influence with the Vietnamese authorities to obtain authorisations to visit Le Cong Dinh in prison. At the time of writing, no support has been received.



# MARIANA IVELASHVILI AND OTHER GEORGIAN LAWYERS PERSECUTED IN THE COURSE OF THEIR ACTIVITIES

Having been informed of the difficulties encountered for several months by lawyers in Georgia, the International Observatory sent a delegation to visit the country from 22 to 26 November 2010. The purpose of the mission was to produce a general report on the difficulties encountered by lawyers in Georgia and to report on specific cases of lawyers whose rights had been seriously violated. The report was widely distributed internationally.

## THE CASE OF MARIANA IVELASHVILI

Mariana Ivelashvili is a 23-year old Georgian lawyer who practises in Tbilisi. She has been a member of the *Georgian Bar Association* <sup>40</sup> since 2007.

She was arrested in April 2008 on the grounds that she had received money (GEL 300, equivalent to EUR 170) from clients without having provided adequate services in exchange.

In order to protest against the accusations made against her, she went on hunger strike for 16 days after her arrest. At this time the *Ombudsman* <sup>41</sup> visited her twice in prison.

On 5 June 2009, she was sentenced, at the first instance, to seven years in prison for aggravated fraud, by the Court in Gori. On 25 February 2010, the Tbilisi Court of Appeal sentenced her to five years and nine months in prison. The Supreme Court of Georgia, in a decision rendered on 15 June 2010, found that the appeal was inadmissible.

Georgia became independent in 1991, after being one of the republics of the Soviet Union for seven decades. The Constitution was adopted in 1995. Georgia has ratified all the international and regional human rights instruments except for the International Convention for the Protection of All Persons from Enforced Disappearance.

Mariana Ivelashvili was held in Rustavi prison from May 2009 to May 2010. She was then transferred to women's prison no. 9 in Tbilisi where she is still detained.

<sup>40</sup> The only bar association in Georgia. Its headquarters are in Tbilisi and it has 3,300 members.

<sup>41</sup> The office of the Public Defender (*Ombudsman*) was created by an organic law. This individual monitors the protection of human rights and freedoms in Georgia. Their function is to report violations and to work to restore rights and freedoms when they are abused. They may receive individual complaints from victims. They send recommendations to the authorities responsible for the violations and may propose reforms. Their purpose is to publicise information, usually in the form of annual reports.

## THE OBSERVATORY INTERVENTION

On 3 September 2010, the *Ordre des Avocats de Paris* received a letter from the Chairman of the Georgian Bar Association, which had been sent to several European Bar Associations, which it forwarded to the International Observatory for Lawyers. This letter described the serious problems which the Georgian legal profession had been experiencing for several months and referred to several cases of lawyers in difficulty.

### THE OBSERVATION MISSION

The Observatory sent a delegation to Tbilisi from 22 to 26 November 2010, charged with preparing a general report on the situation of lawyers in Georgia. The delegation met Mr Khatiashvili, Chairman of the Georgian Bar Association, and members of the Bar.

The delegation also met Mrs Csargo, Technical Co-operation Attachée and Humanitarian Correspondent at the French Embassy; Mrs Pastrana, Human Rights Project Manager, and Mrs Khulordava, Rule of law and Good Governance Project Manager at the European Union delegation; and Mrs Buechler and Mr Capi, Human Rights Advisors at the Council of Europe.

They also met Mrs Benashvili, Deputy Head of the Justice Department at the Public Defender's Office.

The delegation also met members of the Save the Life association, which was set up by the families of victims of police violence; Mrs Natsvlishvili and Mr Legashvili, Coordinators at the Human Rights Center (HRIDC) and representatives of the organisations Former Political Prisoners for Human Rights, the Center for the Protection of Constitutional Rights and Article 42. They also met Mr Hutter, Analyst and Program Manager and Mrs Khatiskatsi, Program Director at Transparency International, and Mrs Nemsadze of the International Humanitarian Law Program of the International Committee of the Red Cross.

At the end of its mission, the Observatory reported as follows:

#### **GEORGIAN LAWYERS FACE MAJOR DIFFICULTIES IN THEIR DAILY PRACTICE**

**The rules governing lawyers' access to their clients in prison are very restrictive** and have got worse recently. By virtue of Decree no. 4 of 10 June 2010, when lawyers visit prisons, they may only see one of their clients. If the lawyer wishes to meet a second client at the same place of detention, they must exit the prison and go through the same entry formalities, which means having to wait again for several hours.

This change in the ease with which lawyers may enter prisons has grave consequences for the rights of the defence:

- It seriously limits the possibilities for lawyers to meet their clients and discuss the defence strategy, which constitutes a violation of the accused's right to have the time necessary to prepare their defence.
- It creates grave difficulties with respect to the rights of appeal. Since 1 October 2010, lawyers are no longer authorised to lodge appeals in the name of their clients. The appeal is considered to be the exclusive right of the accused, who must imperatively sign the appeal document which will have been drafted by the lawyer.

The situations in prison no. 8 in Tbilisi, and in the prisons in Zugdidi, Batumi, Rustavi and Ksani are particularly worrying.

This matter was referred to the Public Defender or Ombudsman by the Georgian Bar Association on 2 June 2010. The Public Defender then wrote to the Ministry for Prisons explaining the difficulties encountered by lawyers wishing to access their clients. The Public Defender also visited prison no. 8 on 20 October 2010. In the course of this visit, the Public Defender's representatives saw the reality of the lawyers' difficulties in organising meetings with their clients.

The Prisons Ministry replied to the Public Defender that this procedure had been put in place for material and technical reasons and that the prisons did not have sufficient interview rooms for lawyers. The criminal lawyers who spoke to the Observatory's delegation disputed this argument: they said that the interview rooms are never full.

The Georgian Bar Association also referred this matter directly to the Ministry for Prisons, but it does not seem to have received a reply yet. Nothing indicates that the situation will change in either the short or the medium term.

Another cause of complaint is that, according to the opinions gathered, **lawyer-client confidentiality is not respected**. Guards regularly enter the places in which lawyer-client interviews are held and, generally speaking, remain within earshot. The lawyers met complained that **lawyers' notes and the documents relating to cases are not treated as confidential**. The prison authorities read the documents relating to the defence when they enter or leave the prison. Furthermore, certain documents have been intercepted and retained by the prison authorities. The Georgian Bar Association informed the Prisons Ministry of the non-confidentiality of documents on 17 May 2010 and the Public Defender on 2 June 2010.

The lawyers and NGOs also mentioned the **pressures put upon detainees who wish to appeal to the European Court of Human Rights**. They are subject to very strong pressures by the prison authorities, which regularly resort to physical violence. The prison authorities are aware of these appeals as they read the defence documents of the lawyers and their clients. It seems that no action has been taken officially to bring an end to this practice.

Finally, **other abuses prevent lawyers from practising their profession**. Georgian laws meet international standards regarding prisoners' access to medical treatment. However, in reality, **the medical treatment available in prison is very limited** and does not meet prisoners' real needs. Many applications to the European Court of Human Rights relate to the question of access to medical treatment in prison.

Similarly, in theory, lawyers have the right to see a client's medical file, with the client's agreement. However, in reality, **the prison authorities obstruct lawyers accessing such information**, citing a lack of technical resources (they claim, in particular, that it is impossible to make photocopies). The prisoners themselves find it difficult to obtain their own medical files.

Finally, when entering a prison, **lawyers are searched**. Women lawyers are subject to particularly thorough and degrading searches. The Minister of Prisons and the Public Defender have been informed of these inappropriate searches by the Georgian Bar Association.

**THE INSTITUTIONAL  
MARGINALISATION OF LAWYERS**

**In the Georgian judicial system, the public prosecutor plays a dominant role.** The prosecutor intervenes regularly in the lawyer-client relationship, and will encourage the client to change lawyers if they are not satisfied. The prosecutor will usually encourage defendants to instruct lawyers who are known to favour negotiations. It seems that this “encouragement” borders on threats, as prosecutors do not hesitate to predict guilty verdicts, and even long prison sentences, when clients do not choose conciliatory defence counsel.

In theory, Georgian law grants lawyers many rights. However, in practice, these rights are not respected and the prosecutor’s influence is not counterbalanced by that of the judge who, almost always, follows the prosecutor’s line.

The prosecutor’s power is strengthened further by the fact that prosecutors have many resources and receive regular, in-depth training, which only serves to increase the imbalance between the two sides.

In addition, prosecutors regularly prevent defence lawyers from having access to the client’s file, without any good reason. This practice causes difficulties for the lawyer in dealings with their client, who may well think that the lawyer is not competent.

Lawyers who complain about these practices on the part of prosecutors are even more penalised in their practice.

**The importance of the prosecutor’s role is strengthened by the almost systematic use of guilty pleas.** The possibility of pleading guilty<sup>42</sup> was introduced when criminal proceedings were reformed after the elections in 2004. The aim was to fight corruption and to make the Georgian system faster and more efficient.

In 2010, it seems that the introduction of the guilty plea has had numerous perverse effects. For example, as soon as a person is arrested, the prosecutor will put pressure on them and their family to negotiate and then plead guilty. Even if the person concerned has not committed the acts of which they are accused, there will always be a tendency for the defendant to plead guilty in order to avoid an uncertain trial, which will almost certainly be unfair, and lead to a long prison sentence. “Good lawyers” are lawyers who negotiate with the prosecutor.

Furthermore, the great majority of guilty pleas lead to the defendant paying a fine. The sums collected from this source go directly into the coffers of the State.

The use of the guilty plea has clearly been diverted from its principal objective and its main effect has been to deprive lawyers of their role as defence counsel in criminal matters.

<sup>42</sup> When an accused chooses to plead guilty, they are required to appear in court and admit to the facts of which they are accused. Defendants agree to this arrangement in the hope of getting a lighter sentence.

## LAWYERS UNDER PRESSURE: THE CASE OF MARIANA IVELASHVILI

Mariana Ivelashvili was prosecuted in the criminal courts, like other lawyers who have undertaken to defend clients whose cases were deemed to be sensitive.

Several abuses have been identified in this case:

Firstly, **it has been shown that the testimonies of the witnesses and victims were inconsistent and untruthful**: Mariana Ivelashvili was accused and convicted of aggravated fraud on the basis two witness statements. Two people in two different cases stated that they had given money to Ms Ivelashvili in 2008, and that she did not provide an adequate service in return.

In these cases, **the law was violated by the prosecution and the courts**. The fact that the client is not happy with the result achieved by their lawyer shows that the lawyer has performed their function well. Mariana Ivelashvili's conviction therefore appears to be groundless and to violate general legal principles.

Furthermore in a telephone conversation with the Observatory, **Mariana Ivelashvili affirmed that she had been insulted** by the prosecutor **at the hearing at the first instance**. The prosecutor argued that she had gone on hunger strike not in order to protest against her arrest, but because she wished to lose weight.

Briefly, disputes that should have been dealt with as a disciplinary matter led to a very severe sentence. The charges laid against her seem to be linked to her political commitment; she considers herself to be a political prisoner and wishes to seek asylum as soon as she is released from prison.

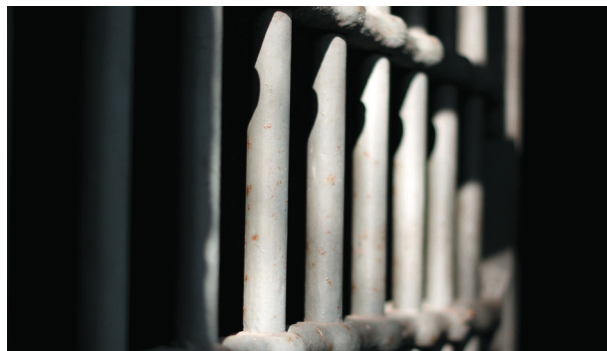


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## THE REQUEST FOR A PARDON SENT TO THE PRESIDENT OF GEORGIA

On 22 December 2010, the International Observatory for Lawyers wrote to the President of Georgia requesting a pardon for Mariana Ivelashvili.

The Observatory's motive was humanitarian. Mariana Ivelashvili suffers from cholestasis and fever. This disease can have very serious consequences and can be life-threatening. Patients require thorough examinations and treatment must be dispensed in a specialist institution. The treatment available to her in prison at this time is clearly inadequate.

She had already suffered from pneumonia when she was detained in Rustavi prison in 2009-2010. Her state of health improved solely thanks to medication sent to her by the Georgian Bar Association.

At the present time, Mariana Ivelashvili has not been granted a presidential pardon. This does not mean that the request has been rejected, but that it is still being processed. In January 2011, Mariana Ivelashvili confirmed to the prison authorities that she supported the request for a pardon, made in her name, by signing an official document to that effect, which she had hitherto refused to do.

### **THE OBSERVATORY'S REPORT TO THE SPECIAL RAPPORTEUR ON THE INDEPENDENCE OF JUDGES AND LAWYERS**

On 23 December 2010, the International Observatory for Lawyers sent a report to the Special Rapporteur on the Independence of Judges and Lawyers about the situation of Mariana Ivelashvili. The Observatory has been informed that the report was received and it has sent the additional information requested.

### **THE LETTER FROM THE CHAIRMAN OF THE GEORGIAN BAR ASSOCIATION**

On 28 January 2011, Mr Khatiashvili, Chairman of the Georgian Bar Association, wrote to the International Observatory for Lawyers informing them that since the Observatory's report received wide distribution last December, the situation of lawyers in Georgia has changed somewhat. Particularly, lawyers are no longer required to wait hours at prison no. 8 in order to meet their clients in detention.

#### **ADDENDUM :**

At the time of going to press, the Observatory has drafted an alert in favour of Georgian lawyers in general and Mariana Ivelashvili in particular <sup>43</sup>, dated 25 March 2011. On the same day, the Observatory wrote to the President of the Republic of Georgia again, requesting him to pardon Mariana Ivelashvili.

# DRIFA OULD LAHOUCINE INDICTED FOR PRACTISING HER PROFESSION IN ALGERIA

On 3 May 2010, Drifa Ould Lahoucine was formally accused of “human trafficking” by the Indictment Division of the Annaba Court of Appeal. The Observatory’s immediate response was to draft an alert that could be used to raise public awareness of her case and challenge the national authorities. A delegation from the Observatory later went to Algeria to observe the situation.

## THE CASE OF DRIFA OULD LAHOUCINE

Drifa Ould Lahoucine is an Algerian lawyer and she has been a member of the Annaba Bar since 1998.

In April 2008, Drifa Ould Lahoucine initiated criminal proceedings against one of the Chief Clerks of the Annaba Court on behalf of one of her clients. The Annaba Criminal Court sentenced him to four years’ imprisonment for influence peddling. After serving part of his sentence, the clerk was released in July 2009.

Shortly afterwards, Drifa Ould Lahoucine was accused of having given instructions for the kidnapping of an infant from St. Teresa’s Hospital because she was unable to have a child of her own. On 7 December 2009, she was charged by the examining magistrate in Annaba.

In March 2010, Drifa Ould Lahoucine was the subject of disciplinary proceedings which led to her being suspended temporarily from professional practice. On 22 March 2010, she was committed for trial before the Criminal Court; this was confirmed by the Indictment Division of the Annaba Court of Appeal on 3 May 2010. This body charged Mrs Drifa Ould Lahoucine with the crime of “human trafficking” on 27 November 2009, and with “attempting to impede the identification of a child”.

Algeria adopted its Constitution in 1989 and was then plunged into civil war during the 1990s. Under the Constitution, the three branches of government [executive, legislature and judiciary] are separate, and in theory, the Algerian judiciary is independent. Algeria has ratified most of the international instruments on human rights, with the exception of the International Convention for the Protection of All Persons from Enforced Disappearance (signed in 2007), and the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity<sup>44</sup>.

The charge against Drifa Ould Lahoucine is that she gave orders for a newborn infant to be handed over to her illegally, together with the family record book (*livret de famille*) so that his name could then be recorded at the registry office, in return for the sum of AD 200,000 (approximately EUR 2,095). It is alleged that she ultimately refused to take the child after learning that he had been kidnapped.

<sup>44</sup> Nor has Algeria ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty or the Optional Protocol to the International Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment.



On 4 May 2010, Drifa Ould Lahoucine lodged an appeal against the decision of the Indictment Division and she is now awaiting the decision of the Supreme Court. Her case file was sent to the Supreme Court on 7 June 2010 and her statement of appeal was filed on 24 August 2010.

The Supreme Court hearing has been set for 17 February 2011.

At the present time, she is not allowed to practise as a lawyer.

## THE OBSERVATORY'S WORK

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The International Observatory for Lawyers' first step, when it took up Drifa Ould Lahoucine's case, was to draft and issue an alert on her behalf. Later a delegation went out to Algeria to demonstrate the international legal community's interest in her case.

### OBSERVATION MISSION IN ALGERIA

On 16 and 17 October 2010, a delegation from the Observatory went to Algiers in order to support Drifa Ould Lahoucine and to prepare the case for her defence.

While there, the Observatory's delegation met Drifa Ould Lahoucine and Mr Ait Larbi, her counsel. They also spoke to Mrs Sadat, Mr Bellabas and Mr Khendek, general secretaries of the opposition political party, the *Rassemblement pour la Culture et la Démocratie* (RCD) (Union for Culture and Democracy).

At the end of the mission, the Observatory reported as follows:

**IT SEEMS THAT DRIFA OULD LAHOUCINE IS BEING PROSECUTED IN RETALIATION FOR PROCEEDINGS BROUGHT AGAINST THE CHIEF CLERK OF THE ANNABA COURT**

Drifa Ould Lahoucine was accused of organising the kidnapping of an infant after having initiated criminal proceedings against the Chief Clerk of the Annaba Court.

**The accusation is based solely on the statements of a single individual** and is uncorroborated by any evidence. This person claims that Drifa Ould Lahoucine contacted him in order to help her find an infant. According to him, when Drifa Ould Lahoucine noticed that the child was ill, she decided to return him to one of the go-betweens.

The credence given to the statements of this person, who has a criminal record in Algeria, contrasts with the lack of credence given to the testimony of Drifa Ould Lahoucine, despite the fact that her reputation is beyond reproach and she has never been the subject of legal proceedings.

Moreover, the person who testified has explained that he was asked to make false statements to the detriment of Drifa Ould Lahoucine. These statements have been passed on to the





Annaba Search and Investigation Squad. They prove the existence of collusion between the clerk and Drifa Ould Lahoucine's co-accused.

Furthermore, Drifa Ould Lahoucine cannot legitimately be charged with any constituent element of the specified offences. No valid grounds have been given for a committal on a charge of human trafficking. At no time has the examining magistrate considered the circumstances in which the child left the maternity ward and was placed in the care of two people who had agreed to receive this infant in return for money.

It therefore seems that **the case has been investigated solely with a view to establishing guilt**, without taking account of the arguments put forward by Drifa Ould Lahoucine in her defence.

### **THE ABSENCE OF SUPPORT FROM THE ANNABA BAR AND THE NEED TO RELOCATE THE CASE IN ORDER TO HOLD A FAIR TRIAL**

Various interviewees confirmed that Drifa Ould Lahoucine's colleagues at the Annaba Bar had failed to support her. This lack of support could allow the judges to prosecute her case with complete impunity.

In view of Drifa Ould Lahoucine's profession and the proceedings that were conducted successfully against the corrupt clerk who worked at the Annaba Court, the case needs to be heard in a different area in order to give the defendant a fair trial.

### **THE LETTER SENT TO THE MINISTER OF JUSTICE**

On 25 October 2010, the Observatory wrote to the Algerian Minister of Justice, with copies to the President of the Supreme Court, the Chief Public Prosecutor to the Supreme Court and the Presiding Judge of the Annaba Court.

The Observatory wrote again on 9 February 2011 in advance of the Supreme Court hearing on 17 February 2011.

#### **ADDENDUM :**

As this report goes to press, the Observatory reports that Drifa Ould Lahoucine's appeal to the Supreme Court was rejected on 17 February 2011. The Court considered that the Indictment Division's decision was in accordance with the applicable procedural rules, and that the description of the facts was not open to criticism. Mrs Ould Lahoucine's case will soon be heard by the Criminal Court.

## OTHER CASES MONITORED BY THE OBSERVATORY

The International Observatory for Lawyers has also taken action on behalf of other lawyers under threat because of their professional practice, mainly by preparing information for their defence.

The Observatory has drafted alerts on behalf of Iranian, Tunisian, Syrian, Rwandan, Tanzanian and Pakistani lawyers threatened because of their professional practice, [falsely] convicted or even, in the most serious case, murdered.

The Observatory has distributed these alerts widely, sending them to international organisations, national authorities and their diplomatic representations in Europe, diplomatic representations in the country concerned, European parliamentarians (French, Spanish, Italian), professional bodies and associations of lawyers, and non-governmental organisations (NGOs).

### IRANIAN LAWYERS ARBITRARILY DETAINED BECAUSE OF THEIR PROFESSIONAL ACTIVITIES

The Observatory has expressed its profound indignation regarding the nine-year prison sentence and ten-year ban from practising his profession imposed on Mohammad Seifzadeh by Section 15 of the Tehran Revolutionary Court on 30 October 2010 <sup>45</sup>.

The Observatory has also launched an appeal for the immediate and unconditional release of Nasrin Sotoudeh and Houtan Kian in September and October 2010 <sup>46</sup> respectively.

The Observatory also took action following the arbitrary arrest of Sara Sabaghian, Maryam Kianersi and Maryam Karbasi at the Imam Khomeini international airport in Tehran in December 2010 <sup>47</sup>.

### TUNISIAN LAWYERS ARRESTED AND ILL-TREATED THROUGHOUT THE COUNTRY

The Observatory has expressed its grave concern regarding the situation of the Tunisian lawyers who were arrested and ill-treated in Tunis and throughout the country in January 2011 <sup>48</sup>.

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<sup>45</sup> [www.observatoire-avocats.org/en/2010/12/15/mohammad-seifzadeh-iran-2/](http://www.observatoire-avocats.org/en/2010/12/15/mohammad-seifzadeh-iran-2/)

<sup>46</sup> [www.observatoire-avocats.org/en/2010/09/10/ms-nasrin-sotoudeh-iran/](http://www.observatoire-avocats.org/en/2010/09/10/ms-nasrin-sotoudeh-iran/)  
and [www.observatoire-avocats.org/en/2010/10/14/mr-javid-houtan-kian-iran/](http://www.observatoire-avocats.org/en/2010/10/14/mr-javid-houtan-kian-iran/)

<sup>47</sup> [www.observatoire-avocats.org/en/2010/12/01/lawyers-arbitrarily-arrested-and-detained-iran/](http://www.observatoire-avocats.org/en/2010/12/01/lawyers-arbitrarily-arrested-and-detained-iran/)

<sup>48</sup> [www.observatoire-avocats.org/en/2011/01/05/6105/](http://www.observatoire-avocats.org/en/2011/01/05/6105/)

## SYRIAN LAWYERS DISBARRED FOR LIFE FOR PRACTISING THEIR PROFESSION

The Observatory has expressed its profound indignation regarding the decisions rendered by the Second Criminal Court in Damascus on 23 June 2010 against Mohammad al-Hassani and by the Second Military Criminal Court of Damascus on 4 July 2010 against Haytham al-Maleh. Both were sentenced to 3 years' imprisonment <sup>49</sup>.

### ADDENDUM :

As this report goes to press, the Observatory is delighted about the release of Mr Haytham al-Maleh on 8 March 2011, one day after President Bashar al-Assad declared an amnesty for several categories of prisoners, particularly those aged over 70.

## LAWYERS ARBITRARILY ARRESTED AND DETAINED IN RWANDA

The Observatory launched an appeal for the immediate and unconditional release of Peter Erlinder, an American lawyer arrested in Kigali on 28 May 2010. Later, the Observatory was delighted when it learnt of his release but remained deeply concerned that proceedings were still being brought against him and that he was released purely on humanitarian grounds <sup>50</sup>.

## JWANI MWAIKUSA, ICTR LAWYER ASSASSINATED IN TANZANIA

The Observatory deeply regretted and condemned the assassination of the Tanzanian lawyer Jwani Mwaikusa in Dar-es-Salaam on 14 July 2010 <sup>51</sup>.

## ANIS SAADI, PAKISTANI LAWYER FORCED INTO EXILE

Since March 2009 the Observatory has been taking action on behalf of Anis Saadi, a Pakistani lawyer who was subject to intimidation and death threats after representing several people from minority groups and/or accused of blasphemy in Pakistan <sup>52</sup>.

The Observatory later wrote to the UK Border Agency supporting Mr Saadi's application for asylum, so that he could obtain refugee status in the United Kingdom. This was granted in September 2009.

<sup>49</sup> [www.observatoire-avocats.org/en/2010/07/09/mohannad-al-hassani-and-haytham-al-maleh/](http://www.observatoire-avocats.org/en/2010/07/09/mohannad-al-hassani-and-haytham-al-maleh/)

<sup>50</sup> [www.observatoire-avocats.org/en/2010/06/01/peter-erlinder-rwanda/](http://www.observatoire-avocats.org/en/2010/06/01/peter-erlinder-rwanda/)

<sup>51</sup> [www.observatoire-avocats.org/en/2010/08/04/mr-jwani-mwaikusa-rwanda/](http://www.observatoire-avocats.org/en/2010/08/04/mr-jwani-mwaikusa-rwanda/)

<sup>52</sup> [www.observatoire-avocats.org/en/2009/06/30/me-anis-saadi-pakistan/](http://www.observatoire-avocats.org/en/2009/06/30/me-anis-saadi-pakistan/)

# ANALYSIS OF THE SITUATION OF LAWYERS AND RECOMMENDATIONS

The cases monitored by the Observatory show repeated violations of principle no. 18 of the Basic Principles on the Role of Lawyers<sup>53</sup>, which states that:

*“Lawyers shall not be identified with their clients or their clients’ causes as a result of discharging their functions”.*

Lawyers and the legal profession are the subject of serious attacks which have an impact on the whole profession and on the individual lawyer personally.

This finding is still true today, and is regularly denounced by the UN, as noted by a Human Rights Council Resolution of 12 October 2009, which emphasises its “concern” about the “more and more frequent attacks on the independence of judges and lawyers”. Attacks on the conditions in which lawyers practise often appear to be the first step towards more drastic action causing lawyers physical or moral harm. This state of affairs was also denounced by the Special Rapporteur for the independence of judges and lawyers in their report of May 2008: “lawyers are often subject to pressure, intimidation, and restrictions, frequently in the form of detentions, attacks, disappearances, etc.”<sup>54</sup>.

## ANALYSIS OF THE SITUATION

Having reviewed its activities during its first year of operation, the Observatory has analysed the situation of lawyers in danger throughout the world and formulated recommendations to improve the situation of their profession.

Before presenting its conclusions, the Observatory would like to highlight a new source of threats against lawyers and the legal profession: the internationalisation of threats, acts of intimidation, and even assassinations.

The setting up of an international criminal justice system has rightly been welcomed because of the progress it will bring in the fields of law and justice. However, in the course of the year ended, a number of lawyers were threatened or assassinated in situations directly linked to their work with the international criminal courts.

The politicisation of judicial proceedings used to be an essentially national phenomenon. Unfortunately, this problem is now spreading to the international criminal courts, which weakens the position of lawyers appearing before them.

Alongside these new threats, the traditional threats found by the Observatory in the course of its work still exist. These may involve interference in the lawyer’s exercise of their functions through improper administrative practice, confusing the lawyer with the cause they are defending, the use of indirect pressures, endangering the lawyer through direct pressures or threats, abuse of process, or failure to provide proper conditions of detention. These are the main factors that have emerged from missions in Algeria, Colombia, China, Georgia, the Democratic Republic of Congo and Vietnam and also from the many other cases reported and monitored by the Observatory.

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<sup>53</sup> Basic Principles on the Role of Lawyers, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana (Cuba), 27 August – 7 September 1990.

<sup>54</sup> *Op.cit.*

All these attacks on the rights of lawyers or their physical or moral integrity directly infringe the Basic Principles on the Role of Lawyers including:

**PRINCIPLE NO.10.** Governments, professional associations of lawyers, and educational institutions shall ensure that there is no discrimination against a person with respect to entry into or continued practice within the legal profession on the grounds of race, colour, sex, ethnic origin, religion, political or other opinion, national or social origin, property, birth, economic or other status, except that a requirement, that a lawyer must be a national of the country concerned, shall not be considered discriminatory.

**PRINCIPLE NO.14.** Lawyers, in protecting the rights of their clients and in promoting the cause of justice, shall seek to uphold human rights and fundamental freedoms recognised by national and international law and shall at all times act freely and diligently in accordance with the law and recognised standards and ethics of the legal profession.

**PRINCIPLE NO.16.** Governments shall ensure that lawyers a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; b) are able to travel and to consult with their clients freely, both within their own country and abroad; and c) shall not suffer, or be threatened with prosecution or administrative, economic or other sanctions for any action taken in accordance with recognised professional duties, standards and ethics.

**PRINCIPLE NO.17.** Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

**PRINCIPLE NO.18.** Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.

**PRINCIPLE NO.20.** Lawyers shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority.

**PRINCIPLE NO.21.** It is the duty of the competent authorities to ensure lawyers' access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide efficient legal assistance to their clients. Such access should be provided at the earliest appropriate time.

**PRINCIPLE NO.22.** Governments shall recognise and respect that all communications and consultations between lawyers and their clients, within their professional relationship are confidential.

**PRINCIPLE NO.23.** 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 organisations, and attend their meetings, without suffering professional restrictions by reason of their lawful action, or their membership in a lawful organisation. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognised standards and ethics of the legal profession.

**PRINCIPLE NO.27.** Charges or complaints made against lawyers in their professional capacity shall be processed expeditiously and fairly under appropriate procedures. Lawyers shall have the right to a fair hearing, including the right to be assisted by a lawyer of their choice.

**PRINCIPLE NO.28.** Disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court, and shall be subject to an independent judicial review.

**PRINCIPLE NO.29.** All disciplinary proceedings shall be determined in accordance with the code of professional conduct and other recognised standards and ethics of the legal profession and in the light of these principles.

It is the Observatory's duty to inform as many people as possible of the difficulties or threats with which lawyers are faced, by reference to the situations that it has observed directly on the ground. The reader will notice that while some specifically local problems do exist, these threats are, regrettably, still widespread on every continent.

## **ISSUE NO. 1:**

### **HINDRANCES TO THE EXERCISE OF THE PROFESSION RESULTING FROM IMPROPER ADMINISTRATIVE PRACTICES**

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In States where legal practice is subject to the issuing of a licence or administrative permit, it is not uncommon to find that administrative procedures have been misused on a large scale in order to cause lawyers to be sidelined if the political power considers that they are defending troublesome cases.

This is particularly so in China, where the Observatory has monitored cases of lawyers who are no longer able to practise because their licences have not been renewed, although the grounds for non-renewal remain vague, even non-existent. Some Chinese lawyers have even had their licences revoked, which means that they are permanently deprived of the right to exercise their profession.

As a result, lawyers cannot choose freely the cases they defend. Indeed, by allowing the implied threat of a retrospective sanction to hang over them, the supervisory authorities exercise a form of indirect censorship by using this intimidatory practice to send a warning to the whole profession. As a result, some perfectly legitimate and lawful legal battles disappear from the national agenda, leaving victims with no defence.

### ISSUE NO. 2: THE IDENTIFICATION OF LAWYERS WITH THE CAUSES THEY DEFEND

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This phenomenon exists on every continent and in all political regimes. The causes defended cover a broad spectrum and are not confined to the political sphere.

The grounds for prosecuting certain lawyers include the defence of sensitive economic issues: the case of Le Cong Dinh, who openly criticised bauxite mining in a region of Vietnam, is one example. Lawyers have also been prosecuted as a result of their involvement in sensitive social and/or cultural issues (for example, the Iranian cases<sup>55</sup> or the case of Anis Saadi in Pakistan<sup>56</sup>).

Another noteworthy case that can only be condemned is the assassination of Jwani Mwaikusa, a Tanzanian lawyer at the ICTR who was assassinated in Dar-es-Salaam, after blocking the transfer of defendants at the ICTR to Rwanda, because of “the lack of a fair trial”.

It is here that the internationalisation of the threats, as explained earlier, is most apparent. Lawyers working with international criminal courts certainly do not escape political tensions and pressures. The American lawyer, Peter Erlinder, was arrested in Kigali, Rwanda, when he went to that country to represent a client at the International Criminal Tribunal for Rwanda (ICTR). Despite the denials of the Rwandan authorities, it seems clear that his arrest and detention are closely linked with his mission at the ICTR to defend people accused of genocide.

<sup>55</sup> [www.observatoire-avocats.org/en/2010/09/10/ms-nasrin-sotoudeh-iran/](http://www.observatoire-avocats.org/en/2010/09/10/ms-nasrin-sotoudeh-iran/)  
and [www.observatoire-avocats.org/en/2010/10/14/mr-javid-houtan-kian-iran/](http://www.observatoire-avocats.org/en/2010/10/14/mr-javid-houtan-kian-iran/)

<sup>56</sup> [www.observatoire-avocats.org/en/2009/06/30/me-anis-saadi-pakistan/](http://www.observatoire-avocats.org/en/2009/06/30/me-anis-saadi-pakistan/)



## ISSUE NO. 3:

### THE USE OF INDIRECT PRESSURES

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Indirect pressures on lawyers are exerted by government agencies (the police, the gendarmerie and the security services) which, without directly targeting the physical and moral integrity of the individual lawyer, make it so difficult for them to practise their profession that they may be driven to abandon the case.

In this case, the intended aim is not to cause the lawyer physical harm, but to impose new constraints on their professional activities and thereby to subject them to intense psychological pressure.

Sometimes the government currently in power uses the security and intelligence services to interfere with normal procedures in order to undermine a lawyer's position. This technique was used, for example, against Alexander Montaña and Sofía López in Colombia, whose telephone conversations were tapped or diverted to the switchboard of a local police station.

Otherwise, the methods used can sometimes bring pressure to bear on the environment of the lawyer concerned. The Chinese authorities choose this tactic to deal with lawyers defending so-called "sensitive" causes. Accordingly, prior to the suspension of Tang Jitian's licence, his house was placed under surveillance. All the partners working with Tang Jitian and Liu Wei were approached in order to split them from their practice. In certain cases, the authorities do not hesitate to intimidate the owners of the homes of lawyers who are defending so-called "sensitive" cases in order to deprive them of the material conditions necessary in which to practise their profession.

Pressure can sometimes be exerted on lawyers' clients to deprive the lawyers of income. In Tunisia, for example, Radhia Nasraoui was subject to campaigns to destroy her credibility in an attempt to make her clients desert her, and her financial position eventually became very difficult.

The families of the lawyers involved also suffer pressure, and sometimes have to agree to significant sacrifices (exile or separation, placing under security, moving away, compliance with specific safety instructions), which must be mentioned here as they increase the pressure on the lawyers themselves. For example, the Observatory received a request from a lawyer who wished to send his family to a temporary place of safety and who needed assistance with the costs of the move.

### **ISSUE NO. 4: ENDANGERING THE LAWYER THROUGH DIRECT PRESSURE OR THREATS**

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The most serious pressures faced by lawyers are threats of physical violence. These range from intimidation to murder.

Sometimes the intimidation intensifies gradually. A first warning will consist of direct verbal threats or intimidating anonymous telephone calls. Alba Cruz in Mexico, and Jorge Molano and Germán Romero in Colombia regularly receive such threats. Germán Romero has even been burgled. Some lawyers suffer direct physical violence which can sometimes lead to serious injuries. Unfortunately, such incidents are well known and widespread, including in Europe (as in Armenia or Georgia for example), yet the national judicial authorities are unable or unwilling to act on behalf of the lawyers concerned. Lawyers have also been physically assaulted by police forces, which are rarely, if ever, prosecuted by the State.

The ultimate level of violence used against lawyers is their physical elimination. Jwani Mwaikusa paid with his life for his involvement in the defence of a Rwandan politician on trial at the International Criminal Tribunal for Rwanda. It is impossible not to see this act as a warning to other lawyers involved in international trials.

## ISSUE NO. 5:

### THE ABUSE OF PROCESS

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Judging by at least two representative cases monitored by the Observatory, it would seem that national authorities sometimes abuse the judicial process. By adopting this tactic, they ensure that proceedings against the lawyer concerned are actually commenced; they then maintain total control of the proceedings so that the matter is dealt with by a court judgment, which is, in fact, a farce.

This was the case in the Democratic Republic of Congo, and in Syria, where lawyers were tried before military courts rather than the ordinary civilian courts.

We have cited technical arguments relating to the various proceedings targeting lawyers in the earlier sections of this report. At this stage, we merely wish to reiterate the fact that lawyers who defend sensitive cases can themselves become defendants of a special kind, subject to special proceedings.

Incidentally, lawyers are all the more at risk because, as we have seen, the courts are controlled by the government and seem to be mere tools in the elimination of the lawyers who appear before them. The trial of Firmin Yangambi is a perfect example: he was sentenced to death and the national public authorities are doing everything in their power to hinder his defence or render it impossible.

### ISSUE NO. 6:

### FAILURE TO PROVIDE PROPER CONDITIONS OF DETENTION

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The systematic ill-treatment of lawyers at the time of their arrest and, what is more, the extremely harsh conditions in which they are sometimes held, appear to be essential elements of a deliberate policy by certain States that wish to deter the whole profession from taking up certain cases, or fighting similar battles.

We note that lawyers sometimes undergo very violent interrogations after their arrest. This is true of certain Iranian lawyers and of Gao Zhisheng, who has publicly condemned the torture and ill-treatment he suffered in detention in China. Lawyers are subsequently detained in conditions which generally cause deterioration in their health and medical situation, as is the case of Firmin Yangambi, Nasrin Sotoudeh and Mariana Ivelashvili.

The pressure exerted on lawyers is twofold. Firstly, the lawyer concerned suffers physically, sometimes seriously, so that they become weaker and may even abandon their defence. There is a real fear that sometimes the object of the exercise is the very disappearance of the lawyer themselves. Secondly, by adopting these tactics, the national authorities ensure that this treatment will have a deterrent effect on the whole profession.

## RECOMMENDATIONS

In the light of the cases monitored and handled during the first year of its existence, the Observatory has been able to identify and formulate seven recommendations to be put to States, international bodies, bar and other lawyers' associations.

### **RECOMMENDATION NO. 1:**

#### **STATES MUST NOT HINDER THE FREE AND INDEPENDENT EXERCISE OF THE LEGAL PROFESSION**

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While it is the responsibility of the State to determine how the profession is organised, it must take care not to use its powers for political ends nor hinder the free and independent exercise of the profession.

In States where the exercise of the profession is subject to a prior administrative authorisation (licensing or other system), experience shows that public authorities use the issue of such permits as a way of indirectly controlling the activities of lawyers.

The State must ensure that the procedure for issuing licences is never under any circumstances used against a lawyer because of the cases they defend. Equally, whenever political control is exercised or an arbitrary penalty imposed because of the cases defended by the lawyer, this is an abuse of rights.

**THE OBSERVATORY RECOMMENDS THAT STATES RESPECT THEIR OBLIGATIONS AND THE INTERNATIONAL STANDARDS FOR THE PROPER ADMINISTRATION OF JUSTICE, WITH PARTICULAR REFERENCE TO THE BASIC PRINCIPLES ON THE ROLE OF LAWYERS.**

**RECOMMENDATION NO. 2:**

**STATES MUST CREATE A TRANSPARENT LEGAL  
AND REGULATORY FRAMEWORK SUPPORTING THE FREE  
AND INDEPENDENT EXERCISE OF THE PROFESSION**

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Lawyers defend their clients in accordance with the laws and regulations of the State in which they exercise their profession. This legal framework must be transparent and must comply with the requirements of the rule of law.

In certain cases, lawyers involved in the defence of certain cases are punished for their involvement by being charged with ordinary criminal offences.

**THE OBSERVATORY RECOMMENDS THAT STATES  
REVIEW THEIR STATUTORY PROVISIONS,  
ESPECIALLY CIVIL AND CRIMINAL PROVISIONS  
USED TO HINDER THE WORK OF LAWYERS.**

**RECOMMENDATION NO. 3:**  
**STATES MUST HAVE POLICIES**  
**FOR THE ACTIVE PROTECTION OF LAWYERS**

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Institutions and public authorities are not solely responsible for the intimidation, pressures, and various forms of attack that lawyers are subject to. However, it is for States to ensure the safety of lawyers and their families.

This obligation requires positive action to prevent all hindrances, whether they originate from the State or from a third party.

When the protective measures are enacted into national or international law, the State must deploy all the resources necessary to ensure the effectiveness of such measures.

**THE INTERNATIONAL OBSERVATORY FOR LAWYERS**  
**RECOMMENDS THAT STATES CONDUCT AN ACTIVE POLICY**  
**CAPABLE OF PROVIDING LAWYERS WITH THE SECURITY CONDITIONS**  
**NECESSARY FOR THE EXERCISE OF THEIR PROFESSION.**  
**THEY HAVE A DUTY TO TAKE ALL NECESSARY STEPS**  
**TO GUARANTEE THE FREE AND INDEPENDENT EXERCISE**  
**OF THE PROFESSION OF LAWYER.**

### **RECOMMENDATION NO. 4:**

### **STATES MUST GUARANTEE THE RIGHT OF FREE MOVEMENT AND THE RIGHT OF ASYLUM TO LAWYERS UNDER THREAT**

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A lawyer under threat goes into exile under duress and only as a last resort. It may, however, be a temporary solution when the situation dictates. In order for exile to become a practical reality, host States must offer their full cooperation.

**THE OBSERVATORY RECOMMENDS THAT STATES  
ADOPT RELEVANT PROVISIONS ALLOWING  
FREE MOVEMENT AND ASYLUM  
TO THREATENED LAWYERS COMING TO THEIR TERRITORY.  
IN ANY EVENT, STATES WILL TAKE PARTICULAR CARE  
TO AVOID TAKING ANY STEPS TO SEND THREATENED LAWYERS  
BACK TO THE COUNTRY WHERE THE THREATS WERE MADE.  
FINALLY, THEY MUST FACILITATE THE TEMPORARY OR PERMANENT INTEGRATION  
OF EXILED LAWYERS TO ENABLE THEM TO CONTINUE  
TO PRACTISE THEIR PROFESSION.**



**RECOMMENDATION NO. 5:**

**INTERNATIONAL BODIES MUST USE THEIR AUTHORITY  
TO CHALLENGE STATES WHICH INTERFERE  
WITH THE FREE AND INDEPENDENT EXERCISE  
OF THE PROFESSION**

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International bodies at both regional and global level have a major role to play in the protection of lawyers. They must use their prerogatives with regard to the protection of human rights in order to ensure that the principle of the independence and free exercise of the profession of lawyer is respected.

As part of their mission to protect human rights, they must investigate cases where lawyers are threatened and impose any necessary penalties if they have the powers to do so.

They must also use their authority to discuss with States both specific cases of lawyers under threat and the overall situation of lawyers in a given country.

**THE OBSERVATORY RECOMMENDS THAT INTERNATIONAL BODIES  
USE THEIR POWER TO INVESTIGATE,  
CHALLENGE AND PUNISH STATES  
RESPONSIBLE FOR THREATS AGAINST LAWYERS.**

**RECOMMENDATION NO. 6:**  
**INTERNATIONAL BODIES MUST TAKE ACTION  
WITH A VIEW TO THE ADOPTION AND EFFECTIVE  
IMPLEMENTATION OF A BINDING FRAMEWORK  
FOR THE PROTECTION OF LAWYERS**

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International bodies have adopted instruments for the protection of the legal profession such as the Basic Principles on the Role of Lawyers and have introduced mechanisms such as the Special Rapporteurs.

In the global and regional contexts, these provisions are not binding and depend on the goodwill of States. It is important to have as an objective the formulation, adoption and implementation of a binding document.

**THE OBSERVATORY INVITES INTERNATIONAL INSTITUTIONS  
TO PUSH FOR AND FACILITATE  
THE ADOPTION OF A BINDING DOCUMENT.**

**RECOMMENDATION NO. 7:****LAWYERS' ASSOCIATIONS MUST STRENGTHEN THEIR ROLE  
IN THE PROTECTION OF LAWYERS  
AND THE ORGANISATIONS REPRESENTING THEM**

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Lawyers' associations are the first to be affected by measures restricting the activities of the profession. They regularly receive questions and act on behalf of lawyers under threat. International instruments, particularly the Basic Principles on the Role of Lawyers, emphasise the important role played by bar and other lawyers' associations. In the experience of the Observatory, lawyers' associations have been able to respond quickly when approached in connection with lawyers under threat.

Lawyers' associations must multiply their efforts to coordinate and mobilise their human and financial resources to support the free and independent exercise of the profession. They must also support the creation of bar associations in those countries where no such association yet exists.

**THE OBSERVATORY RECOMMENDS THAT LAWYERS' ASSOCIATIONS  
COMBINE THEIR EFFORTS,  
PARTICULARLY BY ACTIVELY SUPPORTING THE WORK OF THE OBSERVATORY  
IN ORDER TO ENHANCE THE ASSISTANCE  
GIVEN TO LAWYERS UNDER THREAT.  
SIMILARLY, LAWYERS' ASSOCIATIONS SHOULD ALSO SUPPORT  
BAR ASSOCIATIONS IN DIFFICULTY,  
AND HELP TO SET UP PROFESSIONAL BAR ASSOCIATIONS  
WHERE THEY DO NOT EXIST.**

# CONCLUSION

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The Observatory's work does not stop with the production of a mission report by the lawyers sent to countries of concern, but continues in the long term through the contacts that the Observatory lawyers maintain with the colleagues they meet there. This aspect of our mission is essential, enabling us to be sure that conditions for the lawyers under threat improve, or at least do not deteriorate, after the delegation has left.

Although only recently established, the Observatory has already had the opportunity to demonstrate its usefulness. This can be seen from the improved conditions of Firmin Yangambi's detention in the DRC, for example. The testimonies of Jorge Molano and Germán Romero, who believe that by drawing attention to the international support for their work the Observatory has greatly assisted their protection, are encouraging.

The effectiveness of the Observatory as a means of protection available to all lawyers will be greater once it is better known and recognised. It is therefore up to professional associations and individual lawyers to spread information about the Observatory's work or to contact it when a colleague is in danger.

Finally, the Observatory provides legal support for lawyers under threat through the action it takes after the completion of a mission. At the end of the trip to Georgia, for example, the Observatory sent a communication to the Special Rapporteur on the independence of judges and lawyers about a lawyer imprisoned in particularly harsh conditions who is suffering from a serious illness and whom they had managed to interview during the mission. The Observatory will play its role as lawyers' champion to the full when it has more dealings with bodies charged with the protection of lawyers at the international level. This is why the Observatory relies on interprofessional solidarity and the personal commitment of each lawyer, and encourages members of the profession, as well as members of civil society, to send it whatever information they may have about the situation of lawyers worldwide.

**PRIMARY RESPONSIBILITY FOR THE PROTECTION  
OF LAWYERS' RIGHTS LIES WITH GOVERNMENTS.  
NEVERTHELESS, ON THE BASIS OF ITS MANDATE,  
THE OBSERVATORY WILL CONTINUE ITS WORK  
IN SUPPORT OF LAWYERS IN DANGER,  
THEREBY EXPRESSING THE SOLIDARITY  
OF THE PROFESSION WITH COLLEAGUES  
PRACTISING IN DIFFICULT CONDITIONS,  
SOMETIMES AT THE RISK OF THEIR LIVES.**







## LAWYERS FOR LAWYERS

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