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CONTENTS

CENTRE FOR THE INDEPENDENCE OF JUDGES AND LAWYERS

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THE CENTRE FOR THE INDEPENDENCE OF JUDGES AND LAWYERS (CIJL)

The Centre for the Independence of Judges and Lawyers was created by the International Commission of Jurists in 1978 to promote the independence of the judiciary and the legal profession. It is supported by contributions from lawyers' organisations and private foundations. The Danish, Netherlands, Norwegian and Swedish bar associations and the Netherlands Association of Jurists have all made contributions of $1,000 or more for the current year, which is greatly appreciated. The work of the Centre during its first two years has been supported by generous grants from the Rockefeller Brothers Fund, but its future will be dependent upon increased funding from the legal profession. A grant from the Ford Foundation has helped to meet the cost of publishing the Bulletin in english, french and spanish.

There remains a substantial deficit to be met. We hope that bar associations and other lawyers' organisations concerned with the fate of their colleagues around the world will decide to provide the financial support essential to the survival of the Centre.

Affiliation

Inquiries have been received from associations wishing to affiliate with the Centre. The affiliation of judges', lawyers' and jurists' organisations will be welcomed. Interested organisations are invited to write to the Secretary, CIJL, at the address indicated below.

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CASE REPORTS

SOUTH AFRICA

Continued Harassment of Lawyers

The banning and detention of lawyers in South Africa has been discussed on previous occasions by the CIJL. These practices are used by the South African government as a means of deterring lawyers from representing certain classes of clients, e.g., those accused of political crimes and those who express their objections to the government's apartheid policies. The continued banning and detention of lawyers makes it difficult for those opposing government policies to obtain legal counsel of their choice.

Banning orders are issued by the Minister of Justice. They are administrative orders which do not require a statement of reasons, and are issued without a hearing and with no opportunity to appeal. Those subject to the terms of a banning order may be fined or imprisoned for violating the stringent conditions of the order.

Lawyers subject to banning orders may be severely hampered in the exercise of their profession. Banning orders invariably limit freedom of movement and freedom of association. Those subject to them are prohibited from leaving the magisterial district in which they reside, attending gatherings of more than two persons, having contact with other banned persons and entering black areas. As a consequence lawyers are prevented from visiting clients who live in other magisterial districts, are unable to appear in courts outside their districts and cannot continue in their representation of clients who have been banned. Some banning orders contain provisions for house arrest during the hours of darkness. Lawyers may apply for exemptions from the terms of a banning order, but exemptions are not often granted.

Representative Cases

Rowley Arenstein has been subjected to repeated banning orders since the early 1960's. During the 1960's he worked as a lawyer in Durban and participated in the defence in a number of political trials. He was arrested in 1965 and charged with several counts under the Suppression of Communism Act (renamed the Internal Security Act in 1970). He was acquitted on all counts in December 1965, but was then re-arrested in July 1966 and tried on charges similar to those on which he had been acquitted. He was convicted and sentenced to four years imprisonment; during his imprisonment he was stricken from the lawyers' roll.

After his release from prison, he was immediately served with a new five-year banning order which contained a partial house-arrest provision. This banning order was renewed in 1975 and again in 1980. Under the terms of the banning order, Mr Arenstein is prevented from working in a law firm.

Nicholas Haysom, a legal research professor at the Centre for Applied Legal Studies in Johannesburg. While at the Centre, Mr Haysom engaged in academic research and also acted as defence counsel in a number of cases involving human rights issues. He is a former president of the National Union of South African Students.

Mr Haysom was banned in April 1982 after his release from 3 1/2 months of incommunicado detention during which time he was never charged. There is a strong suspicion that Mr Haysom's banning was due to his representation of community groups opposed to apartheid. Mr Haysom was a founder member of the Detainees Support Committee which was formed during the second half of 1981 by relatives of detainees. He was one of more than 20 prominent critics, white and black, of the government's apartheid policies arrested on 27 November 1981.

Mr Haysom had been arrested by the South African government on several occasions prior to his arrest in 1981. On two occasions he was detained without charge, first in 1976 for two weeks and then in 1980 for several days. In 1979 he was sentenced to 12 months imprisonment for refusing to give evidence against a friend who was alleged to have breached security regulations, but on appeal the sentence was reduced and suspended.

Full details of his banning order are not available, but it appears that he has been denied the right to practise his profession both as an advocate and as a professor. Mr Haysom has applied for an exception to his banning order that would permit him to appear in court as a lawyer (his banning order prohibits his appearance in court except as a witness or a defendant), and allow him to continue as a research professor, but no decision has been made by the Minister of Justice.

Priscilla Jana was served with a five-year banning order in 1979. Under the terms of the order she is restricted to the magisterial district of Johannesburg, she is prohibited from entering black areas, except Lenasia where she resides, hostels, factories and schools, she may not attend social gatherings, she may not have contact with other banned persons and she must report to the police each week. Prior to the issuance of the banning order, Ms Jana had worked with a leading defence attorney, Mr Shun Chetty, defending persons accused of political crimes. Mr Shun Chetty left South Africa in August 1979, and thereafter, Ms Jana formed her own law office which is believed to have taken over much of the work formerly done by Messr Shun Chetty & Co. She was served with the banning order two days after the law office was formed.

The banning order has made it extremely difficult for her to continue her work, since many of her clients live or are interned outside the magisterial district in which she resides, and she is unable to appear in court outside her

magisterial district. Also, many of her clients are banned persons.

The information received by the CIJL indicates that Ms Jana has suffered from harassment by the security police.

There have been additional distressing developments in South Africa during the past few months. On 20 November 1981, Griffiths Mxenge, a 46-year old lawyer, well known for his involvement in human rights cases and his defence of persons detained under the security laws, was murdered in Durban. From the available information it appears that Mr Mxenge was abducted when he left his office on the evening of 19 November. His body was found the following morning at a local sports stadium; he had been stabbed and his throat had been slashed. His family and friends suspect right-wing extremists. On 5 January 1982, the CIJL wrote to the government of South Africa requesting information about the investigation being conducted into Mr Mxenge's death. To date, no reply has been received.

In light of the continued use of incommunicado detention by the South African authorities, the CIJL feels compelled to denounce a recent amendment to the Protection Against Terrorism Act which makes it illegal for newspapers to print the names of persons detained under the security laws unless they have received government permission. This action will further insulate the security forces from public scrutiny of their actions, and legalise the Kafka-like practice of 'disappearances' at the hands of state agents.

K E N Y A

Arrest and Detention of John M. Khaminwa

John M. Khaminwa, a prominent and well-respected attorney in Kenya, was arrested on 3 June 1982 by officers of the Central Investigation Department. Mr Khaminwa is a member of the Kenya Law Society and an advocate of the High Court of Kenya, the High Court of Uganda and the High Court of Tanzania. He is being held pursuant to the provisions of the Preservation of Public Security Regulations, and although he remains in custody, he has not been charged and no explanation has been given for his arrest. The information received by the CIJL indicates that he is being held incommunicado, and there have been allegations that he has been tortured.

The CIJL has received information about Mr Khaminwa from several reliable sources, all of whom state that Mr Khaminwa has never affiliated himself with any political organisation. Mr Khaminwa is considered to be an excellent lawyer, with a strong commitment to the rule of law, who, because of this commitment, was willing to handle cases which others were unwilling to undertake. There is a widespread belief that Mr Khaminwa's arrest was motivated by his representation of persons who were critical of the government and persons who had private claims against various government officials. Mr Khaminwa has also represented the wives of several government officials during their divorce actions.

Upon learning of Mr Khaminwa's arrest the CIJL wrote to the government of Kenya asking for information about the circumstances leading to his arrest and asking when the government would place charges against him. No reply to this inquiry has been received.

Mr Khaminwa commenced his legal studies at the University College of Dar-es-Salaam and received a Bachelor of Law degree

from the University of London. He holds a Masters degree in international law from New York University.

Before entering private practice, Mr Khaminwa worked for the government of Kenya and the East African Community (now dissolved). During his service with the Kenya government he acted as State Counsel in the State Law Office in Nairobi, Deputy Registrar of the High Court of Kenya and Resident Magistrate. With respect to the East African Community, he initially served as Principal Assistant Counsel and then served as Deputy Counsel. He handled civil and commercial work for the various departments and corporations of the East African Community. During his tenure there he gained a reputation as an able and skilful advocate.

Mr Khaminwa entered the private practice of law in 1973, and during that year received favourable publicity for his forceful and courageous defence of a client. He argued that evidence obtained from his client was inadmissible because it had been obtained while his client was being held in detention in violation of the Kenya Constitution. The detention had been ordered by the late President of Kenya, Jomo Kenyatta.

At the time of his arrest, Mr Khaminwa was involved in two cases which had received widespread publicity. He was representing George Anyona who had been arrested shortly after he publically advocated the formation of a second political party in Kenya. Mr Khaminwa attempted to obtain Mr Anyona's release by filing a writ of habeas corpus, but was unsuccessful. Mr Anyona continues to be detained without charge under the Preservation of Public Security Regulations. The other case involved a German businessman with a civil claim against the Attorney-General of Kenya, Joseph Kamere. Mr Kamere had impounded an automobile and equipment owned by the German businessman and Mr Khaminwa obtained a court order directing Mr Kamere to return the automobile and the equipment. Mr Kamere was the object of adverse publicity as a result of facts brought to light during the course of the lawsuit.

The arrest of John Khaminwa is a serious threat to the independence of the legal profession in Kenya. On 20 July 1982 the Standard, one of Kenya's leading newspapers, ran an editorial decrying the use of detention without trial and focussing on the fear such a procedure generates. The editorial referred to the arrest and detention of John Khaminwa and the author made the following statement:

> *"And although not many people dare say it, there is some concern in the legal profession that the executive arm of government has become oversensitive about lawyers who express what is (sic) perceived to be disagreeable views in the eyes of the powers that be.*
>
> *This is a most damaging development to the cause of the rule of law. ..."*

Another person has made an observation about the shortsightedness of the government in considering Mr Khaminwa a threat, stating that the country's stability can only be enhanced when lawyers are able to convince members of the political opposition to look to the courts for the redress of their grievances.

Certainly the Rule of Law is not furthered when lawyers who have represented unpopular clients or causes are arrested and detained without charge or trial.

B R A Z I L

Continued Attacks against Lawyers

In Bulletin No. 8 the CIJL reported on the formation and goals of the National Association of Lawyers for Agricultural Workers in Brazil, ANATAG (its Spanish acronym). The article also contained a discussion of the pervasive harassment of lawyers working with the rural poor, including the assassinations of Agenor Martins de Carvalho and Father José de Patrocinio, and the attempted assassination of Vanderly Caixe, the Secretary-General of ANATAG.

The intimidation and violence against members of ANATAG has continued. On 18 July 1982, Gabriel Sales Pimento, aged 27, was murdered. He was a founder member of ANATAG, and represented the organisation in the State of Para, in the north-eastern part of Brazil; Para is one of the poorest states in Brazil. Immediately prior to his death, Pimenta had prevented the eviction of 164 families. In March of this year, the Centre was advised of the renewal of threats against Vanderly Caixe. Mr Caixe's home had been broken into and his automobile had been set on fire on two occasions.

The CIJL has written to the government of Brazil requesting a thorough investigation of Mr Pimenta's death, requesting adequate protection for lawyers working with ANATAG, and requesting that the government bring to justice those responsible for these acts of terrorism.

There have been some positive developments within the past few months. The Brazilian government has established a special ministry to deal with land reform issues and is attempting to change the past trend of intensified land concentration. It is to be hoped that the new government policies will reduce the violence previously directed at small land owners, rural workers and their legal representatives.

THE CENTRAL AFRICAN REPUBLIC

Arrest of Judges Threatens the Independence of the Judiciary

The independence of the judiciary in the Central African Republic has been seriously threatened by the arrest and detention of Marc Passet, M'Baikoum (other names not available) and Jerome Zilo, three members of the Public Procurator's Office in Bangui. They were arrested in mid-March and were held in incommunicado detention in a military camp until their release in July. No charges were ever placed against the three.

Their arrests appear to have been prompted by actions taken in their professional capacity. M'Baikoum and Zilo, in their capacity as examining magistrates, determined that a number of detainees (prévenus) should be released from pretrial custody (détention provisoire). Passet approved the recommendations of M'Baikoum and Zilo. The three apparently made their decisions after reviewing the cases of the detainees and determining that there was either insufficient or no evidence to justify further detention.

Background

The present military government came into power in September 1981 after a military coup. Army Chief of Staff André Kalingba became head of state. Immediately after the coup, the Constitution and the activities of all political parties were suspended. According to information received by the CIJL, on the night of 3-4 March 1982 there was an unsuccessful attempt to overthrow the military government. The government placed responsibility on the Mouvement de Libération du Peuple Centrafricain (MLPC) (Central African People's Liberation Movement). The MLPC is and prior to the September 1981 coup had been the major opposition party.

The MLPC denies involvement in the coup and asserts that the military government is using the coup as a means of suppressing the MLPC.

Prior to the attempted coup of 3-4 March, the government had arrested several members of the MLPC. In early January 1982, 15 members, including students and teachers, were arrested after attending a political meeting. They were held until the end of February, when they were released without being charged. Their release coincided with the return from exile of Ange Patasse, the leader of MLPC.

Despite the MLPC's denial of involvement in the March attempted coup, the government banned the party on 4 March 1982, and many MLPC members were arrested. Although many of the detainees have been charged with complicity in a plot to endanger the security of the state, it appears that the basis for the charge is their membership in the MLPC and that there is no direct evidence of their involvement in the attempted coup.

Arrest of Messrs Passet, M'Baikoum and Zilo

M'Baikoum and Zilo apparently were acting as juges d'instruction (examining magistrates), and were responsible for investigating the cases of the MPLC detainees and determining whether the detainees should be prosecuted or released. (This process is referred to in French as the "instruction".) M'Baikoum and Zilo did not have final authority to release the detainees, but had to communicate their conclusions to Passet, who could either approve or disapprove the release of the detainees.

Apparently, M'Baikoum and Zilo decided upon ordonnaces de non-lieu, i.e., that the available evidence against the MLPC detainees did not justify their prosecution. This decision was approved by Passet. It is not clear whether the MLPC

detainees released by the three were the MLPC detainees released at the end of February 1982, prior to the attempted coup or MLPC members arrested after the coup attempt. In either case the information available to the CIJL suggests that the three magistrates were arrested on the basis of their decisions, reached after the judicial investigation of several cases.

In addition to Passet, M'Baikoum and Zilo, the President of the Court of Appeal, Etienne Yani Bada, and another member of the Public Procurator's Office named Samba were arrested. The reasons for these arrests are not known; Judge Yani Bada has since been released.

These arrests represent not only a threat to the independence of the judiciary, but are also derogations of the rights guaranteed by Article 9 of the International Covenant on Civil and Political Rights, to which the Central African Republic is a signatory. This article prohibits arbitrary arrest and detention and states that anyone who is arrested is to be informed, at the time of arrest, of the reasons for his arrest and that all those detained on criminal charges are to be brought promptly before a judge or other officer. In addition, the arrest of those acting in a judicial capacity for decisions taken in the performance of their duties undermines the right to a fair and public hearing by a competent, independent and impartial tribunal guaranteed by Article 14.

Article 9 provides for compensation for those who have been the victims of unlawful arrest or detention. Given the circumstances of their arrests it would appear that Messrs M'Baikoum, Zilo and Passet are entitled to compensation from the Central African Republic.

E G Y P T

Interference with the Independence of the Bar Continues

As reported in Bulletin No. 8, the Council of the Ordre of Advocates was dissolved on 22 July 1981. When the parliament ordered the Council's dissolution, it directed the Minister of Justice to appoint a new Council whose function was to draft new governing rules for the Council. These rules were to be submitted to the parliament for its approval, and within 60 days of approval, elections to the Council would be held. The CIJL denounced this action as a direct attack on the independence of the Egyptian legal profession.

The Council appointed by the Minister completed its task, and the proposed rules have been submitted to the parliament. However, discussion concerning them has been postponed until October 1982. Upon submission of the proposed rules, the Council was dissolved, and a second Council was appointed by the Minister. This new Council has seven members; four are members of the government party, two are former high court judges and the seventh is the President of the High Court.

Both the proposed rules and the Law of Shame (discussed in Bulletin No. 8) contain provisions which make it impossible for fair elections to take place. The proposed rules contain a provision which states that no one can be elected to the Council for more than one term, a provision which would effectively prevent any member of the dissolved Council from sitting on a newly elected Council. The new rules also deny the right to vote to anyone who has practised for less than eight years. Under the Law of Shame, the "Socialist General Prosecutor" has the right to remove any candidate from the ballot. (*)

(*) The amendments to the Penal Code constituting the Law of Shame are based on the codes enacted under Mussolini in the 1930's.

The government has not set a date for the election.

Throughout the past year, Egyptian lawyers have protested against the initial dissolution of the Council and have refused to recognise the legitimacy of the appointed Councils. The lawyers have insisted that the old Bar Council be restored and that elections be held immediately in accordance with the rules governing the Council prior to the dissolution.

The actions of the Egyptian government violate several of the principles enunciated in the Draft Principles on the Independence of the Legal Profession which are published in this issue of the Bulletin, including the right to freedom of association, freedom of belief, freedom of opinion and the right to an independent and self-governing bar association. These rights are essential to the maintenance of an independent profession, and the actions of the Egyptian government can only be viewed as an attempt to subjugate the Council.

A R G E N T I N A

Detained Lawyer is Released

The case report on Argentina in Bulletin No. 9 commented on the decrease in the number of detained lawyers, but noted that the problem continued and gave a list of representative cases. The article also noted that some of the released lawyers had only "conditional liberty", i.e., they were confined to a specific city and were subject to constant police surveillance. The CIJL has received news that one of the imprisoned lawyers, Mario J. ZARECEANSKY, has been released from prison although he continues to be held at the disposal of the executive and enjoys only "conditional liberty".

Mr Zareceansky filed a writ of habeas corpus, which was granted by the Federal Chamber of Appeals for La Plata. The case is now on appeal to the Supreme Court of Justice. Mr Zareceansky has tried on several occasions to exercise his right of option, i.e., his right to choose exile rather than detention, but each request has been denied by the Argentine authorities.

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ANNUAL MEETING OF THE CANADIAN BAR ASSOCIATION

The Canadian Bar Association held its annual meeting in Toronto from 29 August to 4 September 1982. During the meeting, the Association passed a resolution urging the government of Canada to request the Iranian authorities to restore the independence of the legal profession in Iran and to release immediately all Iranian lawyers improperly or arbitrarily imprisoned. The full text of the resolution is printed at the end of this article.

The theme of the conference was the Rule of Law, and Mr Niall MacDermot, Secretary-General of the International Commission of Jurists, was invited to participate in the closing panel discussion on this theme.

At the opening session of the Conference, the President of the Canadian Bar Association, Mr Paul D.K. Fraser Q.C., devoted his Presidential Address to an exposition of the meaning of the Rule of Law today. His comments on the role of lawyers, in particular the obligations lawyers have to their society, and the correlation between the fulfillment of these obligations and the right of lawyers to demand independence would make an excellent introduction to the Draft Principles on the Independence of the Legal Profession which are reproduced in this Bulletin. The drafters of the Principles also believed that the strongest argument favouring the independence of the legal profession is the importance of that independence to the advancement of human rights through the Rule of Law. Excerpts from Mr Fraser's speech are set out below.

"There is really, then, no consensus on the dimension of the doctrine of "The Rule of Law". Without going so far as to say that it has become a slogan, a good case can be made for assuming that it can be most things to most people. My own perception is that most Canadian lawyers use the phrase in its broadest sense. In other words, when we speak of the Rule of Law we are referring in a shorthand way to those bundles of rights and obligations known in other contexts as "fundamental freedoms" or "human rights". ...

I say this for a number of reasons. The first is that we, as lawyers, must give a relatively consistent account of what we mean by the Rule of Law. The second reason is a little more difficult to expound, but it has to do with a certain presumption in arrogating to ourselves (as the preserve of Law and Lawyers) the whole field of fundamental freedoms. As individuals we would surely agree that it is inappropriate for lawyers to claim that we have a monopoly of wisdom in devising and embellishing the rules and customs of society. We are not, by the nature of our calling, in any way, prohibited from professing what we conceive to be good and right, and we indeed have a special responsibility to do so in particular cases. But let us not give the impression that we alone have the key to justice and social harmony. The theme is, after all, "The Rule of Law" and not "The Rule of Lawyers".

...

It is, of course, the duty of all citizens to interest themselves, to a greater or lesser extent, in important developments in economic or social affairs and to promote economic development and social justice. It is scarcely the exclusive preserve of the lawyer.

Let us remember that while a government of law may be the supreme manifestation of civilisation, the true measure of any civilisation is the regard that it has for the unenforceable.

Today the law is no longer the concern primarily of those with property or interests in economic enterprise; it has become much more the concern of the poor and the dispossessed. The lawyer is still and will likely always be resented as a middleman - the apparently mandatory filter that stands in the way of what the client perceives to be the justice of his situation.

Without using this occasion to impose my views upon this most distinguished gathering, but in order to explain what I said earlier about bringing a more precise dimension to the phrase, "The Rule of Law", it seems to me there are two general aspects of the rule: first, people should be governed by the law and obey it; and, second, the law should be such that people will be able to be guided by it. Each of these aspects is dependent on the other and obviously we must have both if the rule of law is to flourish.

No society may be said to have the Rule of Law unless its citizens are able to find out what the Law is, otherwise, how are they able to act on it? In order that there be respect for the law, the system that creates and administers it must, in my view, observe at least six particular and fundamental requirements:

First: *Laws should be prospective and not retroactive. Those who are to be governed by the law must know that the rules will not be changed after the fact.*

Second: *Laws should be open and clear. Those who are to be governed by the law must be able to understand it.*

Third: *Laws should be relatively stable - for if the law is in a constant state of flux, people will be tempted to abandon efforts to be guided by it.*

Fourth: *Principles of natural justice must be adhered to in order to promote respect for the process of the law.*

Fifth: *Courts and legal services must be accessible.*

Sixth: *The independence of the judiciary must be guaranteed. If the Courts are not free to apply the law, the task of finding out what law will be applied becomes impossible.*

It is part of the Bar's traditional duty to help ensure that these fundamental requirements are met. The extent to which we are committed to do so and successful in doing so, will determine whether we can legitimately add a seventh requirement of an independent legal profession.

...

It seems to me that in Canada in 1982, the purpose of the lawyer has to be allied to the national purpose if the Rule of Law is to succeed. The practice of law is in a real sense, part of the process of self-government. The independence of the Bar is one of the realities that ultimately protects our citizens from the enormous power of the state. Certainly, it is one of the first privileges to have been withdrawn by all self-respecting despots. It helps to ensure that in this country the government fears the people - the people do not fear the government.

But a multitude of sins have been committed in the name of an independent and self-governing legal profession. We should ultimately have, it seems to me, only the independence we deserve.

...

Within the proper limits of our discipline, we as practising lawyers put into operation the complicated machinery of human

society in order that justice will be done between man and man. As a matter of pure fact, today, the profession practises more competently and is more concerned about its competence and its quality of service than ever before.

With this understanding of our true professional responsibility we have earned the right to claim that independence of this profession is, indeed, a necessary and valuable attribute to the constitutional recognition of peace, order and good government as the basis for "The Rule of Law" in Canada today.

* * *

Text of Resolution Passed by the Canadian Bar Association on 2 September 1982

IRANIAN LAWYERS

WHEREAS the Canadian Bar Association is disturbed by reports received from the International Commission of Jurists and the Joint Committee of the International Bar Association and l'Union Internationale des Avocats on the independence of the legal profession, and of unfair treatment of Iranian lawyers by authorities of that country;

WHEREAS these reports indicate that:

a) lawyers who accept cases opposing the state are held in arbitrary detention, tortured and sometimes executed;

b) Iranian authorities have taken over the offices of the Teheran Bar Association and arrested the Association President and a large number of members; and

c) the independence of jurists in Iran has been put in serious jeopardy;

BE IT RESOLVED THAT the Canadian Bar Association urges the government of Canada to request of the Iranian authorities the restoration of the independence of the legal profession in Iran and the immediate release of all Iranian lawyers improperly or arbitrarily imprisoned.

ANNUAL MEETING OF THE AMERICAN SOCIETY OF INTERNATIONAL LAW

The American Society of International Law held its annual meeting in April 1982. As part of the programme the Society organised a workshop which included a panel discussion on the independence of judges and lawyers. The panelists were Judge Frank Newman, Professor Robert Goldman, Mr Jerome Shestack and Mr Juan Méndez, Director of the Washington Office of the Americas Watch Committee. Working papers were prepared by Mr Méndez, Professor Goldman and Daniel O'Donnell, former Secretary to the Centre for the Independence of Judges and Lawyers; the working papers were: Méndez, "Some Patterns of Violation of the Independence of Judges and Lawyers"; Goldman, "International Legal Standards Applicable to the Independence of Judges and Lawyers"; O'Donnell, "The Independence of Judges and Lawyers: U.N. Standard-Setting and the Siracusa Draft Principles on the Independence of the Judiciary".

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A R T I C L E

The following text is an excerpt from an article written by Christian Panier on the independence of the legal profession in Belgium. Mr Panier briefly traces the history of the legal profession and its relationship with the government, noting that throughout the 19th century lawyers were considered to be a part of the executive arm of the government, except for those practising before the Court of Cassation, and that they were governed by executive decree. Although lawyers achieved greater independence after Belgium became independent, lawyers continued to be governed by executive decree, despite the fact that the jurisdiction of the various courts was controlled by legislation.

In 1967 Belgium enacted a series of laws which completely revamped its court system, and also removed the legal profession from the control of the executive, substituting statutory provisions for executive decrees. The 1967 act gave a great deal of power to the regional bar associations and placed supervisory power in the hands of the judiciary.

Parts II - IV of the article summarise the major provisions of the law as they relate to the role of the lawyer and some of the specific provisions touching upon the independence of the legal profession. Mr Panier examines such topics as the role of the lawyer vis-à-vis the conseiller juridique, as well as the citizen's right to represent himself, the ability of lawyers to practice their profession, in particular, their ability to exercise their professional judgment on behalf of their client without any outside influences, the protections afforded to clients in cases of dishonesty, malpractice or mere displeasure with a lawyer's services, the rules governing access to the profession and access to the professional associations (Ordres) and the structure of the profession, including the powers and prerogatives of the national and regional associations.

The regional bar associations control admission to the bar and disciplinary action to be taken against lawyers. As part of his examination of the independence of the legal profession, Mr Panier details the problems existing in the procedures established by law to be used by these local associations in carrying out their functions. He refers to the power of the regional associations to refuse admission to an applicant without a statement of the reasons and without a right of appeal being afforded to the applicant. However, the refusal of one bar association to admit an applicant does not disqualify the person from applying and being accepted by another association. Mr Panier also considers the problems existing in the disciplinary procedures. These procedures are similar to the those utilized by the medical profession which were found by the European Court of Human Rights to be in contravention of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The procedures do not provide for consideration of the entire dispute, i.e., both the factual and legal issues, by a public tribunal.

Anyone wanting the complete text of the article may write to the Centre.

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AN EXAMINATION OF THE INDEPENDENCE OF THE LEGAL PROFESSION IN BELGIUM

by Christian Panier *

The Issue

There are two aspects of the issue of the independence of the legal profession that must be stressed from the outset. Given the role of the lawyer in the social and political context of western democracies, the individual lawyer must enjoy

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* The author is a Lecturer at the Catholic University of Louvain and is a member of the Bar of Namur.

authentic freedom vis-à-vis the government in the broad sense of established political power, whether legislative, executive or judicial. Also in the framework of a market economy the independence of the individual lawyer must be ensured with regard to economic power. Independence must be considered as much from the standpoint of the relationship of the profession to the public authorities as from its relationship with "private powers" in other words, with individuals, or "clients".

Independence must also be regarded from the standpoint of the profession as a whole, i.e., the collective - the bar. By and large, the best guarantee of individual independence vis-à-vis political and socio-economic powers is the independence of the bar itself, so that the professional organisation is its members' bulwark against interference incompatible with the lawyers' representation of his client. But this should not be construed as implying that the independence of the individual will be met in full in this manner. Once organised, the profession must then devote itself not only to preserving its collective independence from the powers that be, but also to implementing concrete, particularly economic, measures to promote the independence of each of its members. The professional organisation must also be truly democratic, with everyone having an equal vote in practice as well as in theory; internal "policing" procedures must guarantee respect for individual rights (something which should not be very difficult for a profession devoted, in principle, to such an objective) and minority positions must be accorded their rightful place and an opportunity to be heard.

Reasons for Professional Associations

In Belgium, as in virtually all western democracies, lawyers' associations, like those of the other "liberal professions," are formed in response to a two-fold need. First, a very wide sphere of autonomy is required, to ensure intellectual freedom in the performance of a service felt to

involve basic values, in this case fundamental rights or freedoms, which despite its authentically public nature, is essentially a relationship of trust in which the client expects a knowledge of the law from the lawyer. Second, there is a need to put a substantial distance between the practitioner and the government, even, or especially, in a social and economic system where the state plays a role in financing the service through the social security system.

Because of its official recognition and the nature of its functions the Ordre * is viewed as being more concerned with public rights than with private rights, as an institution and, in principle, this prevents the Ordre being deemed a corporate organisation whose sole or chief aim is to defend the material interests of the profession and its members. The defence of these interests is undertaken by organisations resembling trade unions, which do exist in some liberal professions and which are separate and distinct from the Ordre. In Belgium there is a Union of Belgian Lawyers (Union des Avocats Belges), which is separate from the Ordre and which represents the profession in "union" matters.

Independence from the Political Powers

In its present form the Ordre satisfies the concern for the independence of the profession vis-à-vis the political powers. There is now a legal framework which defines the purpose and basic requirements of the profession, as well as enumerating the fundamental guarantees of its independence. The Ordre operates under a very decentralised form of self-government. Each local bar is empowered to decide its own composition, its ethical rules, as long as they are in accordance with the law, its internal regulations, as well as its probationary period, the amount of dues, and the sanctions to be used in disciplining members. Members of the bar are not,

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* Editors Note: The term Ordre refers to the national or local bar association.

in disciplinary matters relating to the exercise of their profession, subject to the jurisdiction of the courts before which they are daily called upon to defend their clients.

The supervisory powers over the Ordre are vested solely in the judiciary. The Court of Cassation may set aside ethical standards contrary to law. A judge of the Court of Appeals as well as a delegate from the Public Prosecutor's Office may hear appeals in disciplinary cases; their final decisions on the merits may then be subjected to a test of legality by the Court of Cassation. Thus independence with regard to political power is ensured.

Independence vis-à-vis the Social and Economic Powers

Guarantees of independence with regard to social and economic powers are more problematic. They are contained in the ethical rules of each bar or, more rarely, those of the national Ordre. Hence, they are generally left to the judgment of each practictioner, who is free to negotiate the kind of relations he wishes to maintain with clients or third parties. While it is up to the authorities of the profession to normalise these relations by administering penalties where necessary, it must be said that this has not been their chief concern until now.

Protecting the Client

Clients' rights are safeguarded only indirectly by the professional structure of the Ordre. When the Ordre penalises a member for malpractice in his relations with a client, its purpose is to uphold the morality of the profession as a social body and to improve or protect its image, not to vindicate the client's rights or to preserve public order ("ordre public") which is the business of the civil and criminal courts.

Thus the Ordre is not a guarantor of justice for the client. While it may sometimes offer arbitration to the "consumer", it does so within a framework that is unequal, because internal to the profession itself.

The Barrister and the Professional Associations

We have already noted the protection that membership in a recognised, autonomous, independent professional association represents for the individual barrister.

But conflicts may arise between a member of the profession and his official representatives, either because the bar refuses a candidate access to the profession (it has been seen that this may be done without a statement of reasons and without the possibility of appeal), or because disciplinary measures, from temporary suspension from practice to disbarment, which the lawyer deems unjust are taken against him. The question arises whether the Belgian disciplinary system is truly protective of the rights and freedoms of the lawyer (the same holds for other practitioners of liberal professions who belong to an Ordre), especially where the secret disciplinary procedure is held before peers rather than independent judges, and in the case of refusal to admit the applicant to the bar, without appeal. In other cases where the right to appeal exists, it is before a body whose majory consists of the appellant's peers. The question arises whether this is in accordance with the European Convention for the Protection of Human Rights and Fundamental Freedoms, particularly Article 6, which provides that in the case of a dispute involving civil rights or a criminal action, everyone is "entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law".

In a decision involving three Belgian physicians, the European Court of Human Rights at Strasbourg stated on 23 June 1981 that, contrary to the past and present teaching of the

Belgian courts, including the Court of Cassation, jurisdictions called upon to decide on disciplinary measures which could jeopardise a civil right, in this case the right to exercise an occupation, must comply with Article 6 of the Convention, particularly the right to a public hearing. (1) **

Thus convicted, Belgium, whose statutes and case law are, in the opinion of the European Court of Human Rights, contrary to the European Convention on Human Rights, should revise its legislation so that its courts, tribunals and disciplinary bodies comply with the provisions of Article 6 of the Convention.

Regrettably, it must be noted that only recently, in two judgments on 21 January 1982, in full awareness of the decision taken only a few months previously at Strasbourg, the Belgian Court of Cassation upheld its traditional principles that the values at stake in disciplinary procedures are not considered to be civil rights or prosecutions for criminal offences and, therefore, the bodies called upon to hear such cases are not answerable to the requirement for public hearings contained in Article 6 of the European Convention on Human Rights.

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(1) Cases of Doctors Le Compte, Van Leuven and De Meyere.

** Editors Note: Disciplinary measures are imposed initially by the regional medical associations. A right of appeal exists, first to the Appeals Council of the Ordre and then to the Belgian Court of Cassation. The European Court of Human Rights found that the proceedings before the Appeals Council, which are held in private and cannot be opened to the public, violate the requirement of Article 6 (1) of the Convention that there be a public hearing in cases involving a determination of a person's civil rights. The jurisdiction of the Court of Cassation in these matters is limited to reviewing questions of law, and therefore, the public nature of the proceedings before this court could not be relied upon by the Belgian government to establish compliance with the Convention.

Without attempting to predict the future direction of Belgian case law (or that of the European Court of Human Rights, theoretically free to reverse its position at any time), it must be stressed that the present form of the system of Ordres does have shortcomings. The question is whether it is conceptually ill-designed, or whether, as an essential safeguard of fundamental values and freedoms, it should be preserved, whilst being modified and diverted of its last remnants of the "Ancien Régime". These diminish its credibility in the eyes of the public and also affect its perceived legitimacy among members of the bar.

Nevertheless, as it is currently organised, the Ordre offers practitioners, as well as their clients and society at large authentic guarantees of independence for the legal profession, and in particular for defence counsel.

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D O C U M E N T

DRAFT PRINCIPLES
ON
THE INDEPENDENCE OF THE LEGAL PROFESSION

A Committee of Experts organised by the International Association of Penal Law and the International Commission of Jurists and hosted by the International Institute of Higher Studies in Criminal Sciences met at Noto, Sicily, on 10-14 May 1982 to formulate draft principles on the Independence of the Legal Profession. The participants included lawyers from the following organisations, who attended in their personal capacities:

African Bar Association
All Asia Bar Association
Amnesty International
Andean Commission of Jurists
Centre for the Independence of Judges and Lawyers
Inter African Union of Lawyers
International Association of Democratic Lawyers
International Association of Penal law
International Association of Young Lawyers
International Commission of Jurists
International Union of Lawyers
Japan Federation of Bar Associations
LAWASIA Standing Committee on Human Rights
Supreme Court Bar Association of India
United Nations Secretariat, Crime Prevention and Criminal Justice Branch
United Nations Secretariat, Division of Human Rights

The main purpose of the meeting was to seek to exchange information and formulate principles which might be of assistance to Dr L.M. Singhvi, Special Rapporteur on the Study on the Independence and Impartiality of the Judiciary, Jurors and Assessors and the Independence of Lawyers of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities. Dr Singhvi was present at the meeting, and included the Draft Principles as an annex to his progress report (E/CN.4/-Sub.2/1982/23) distributed to the Sub-Commission at its August 1982 meeting.

These draft principles are to be seen as a first draft and comments upon them will be welcomed by the sponsoring organisations. Their aim is to formulate principles guaranteeing the existence and proper functioning of an independent legal profession as an essential condition for the respect and protection of human rights under the rule of law.

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DRAFT PRINCIPLES
ON THE INDEPENDENCE OF THE LEGAL PROFESSION

Definitions

1. In these principles the term 'legal profession' refers to the persons qualified and authorised to practice before the courts and to advise and represent their clients in legal matters. The term 'lawyer' refers to a practicing member of the legal profession. The term 'bar association' refers to the recognised professional association to which lawyers within a given jurisdiction belong.

Scope

2. These principles seek to state the nature of the independence of the legal profession, the reasons for it, its importance for society, the responsibilities which it entails, the ways in which it can and should be ensured and protected, and the standards and discipline needed in order to maintain it.

General principles

3. A fair and equitable system of administration of justice and the effective protection of human rights and fundamental freedoms depend as much on the independence of lawyers as on the independence and impartiality of the judiciary. The independence of lawyers and of the judiciary mutually complement and support each other as integral parts of the same system of justice.

4. Adequate protection of the human rights and fundamental freedoms to which all persons are entitled, economic, social and cultural, as well as civil and political, requires that all persons have effective access to legal services provided by an independent legal profession.

5. To enable the legal profession effectively to perform its proper role in the defence of these rights, lawyers must be able to counsel and represent their clients in accordance with their established professional

standards and judgment without any restrictions, influences, pressures, threats or undue interference from any quarter.

6. Bar association and other professional associations of lawyers have a vital role and responsibility to strive to protect their members and uphold and defend their independence against improper restrictions or infringements such as are frequently to be found.

7. The legal profession must serve more than a limited section of society; otherwise it cannot be considered as fulfilling the role of an independent profession. Bar associations have a responsibility to cooperate in making available the services of lawyers to all those in need of them, especially in deprived sectors of the community.

Legal education and entry into the legal profession

8. Access to legal education and entry into the legal profession shall be determined:

- with full respect for the right of everyone to an education permitting the full development of his potential,
- with full respect for the right of everyone to earn his living by work freely chosen or accepted,
- with due regard for the candidate's integrity, ability and commitment to uphold the ideals of the profession, and
- with a view to assuring the necessary legal services to all sectors of society.

9. No-one shall be denied a legal education or entry into the legal profession by reason of race, colour, sex, religion, political belief or opinion, national or social origin, property, birth or marital status, or for having been convicted of an offence for exercising his civil or political rights.

10. In order to ensure equal access for all sectors of the society and, where relevant, to eliminate the effects of past discrimination, special measures appropriate to the circumstances may be adopted to promote the training and entry into the legal profession of women, or persons belong-

ing to national, ethnic, or racial minorities, or economically or socially disadvantaged groups.

11. In countries where there exist communities or regions whose needs for legal services are not met, particularly where such communities have distinct cultures, legal norms or languages, special measures should be taken to ensure that candidates for the legal profession from these communities or regions are encouraged and receive training appropriate to the needs of their communities.

12. Legal education shall be designed to promote, in addition to technical competence, awareness of the ideals and ethical duties of the legal profession, and of human rights and fundamental freedoms recognised by national and international law. The right of every person to legal assistance in the protection of his rights should be emphasized in all legal education.

13. It should be recognised that some practical experience as a part of legal education and continuing education are vital factors to ensure, maintain and enhance the level of professional competence required to render legal services. The necessary measures should be taken to this end.

14. Legal education, including programmes of continuing education, should seek to strengthen legal skills, increase ethical awareness, awaken social concern and train lawyers to promote and defend effectively the rights of disadvantaged sectors of society and the public interest.

Education of the public concerning the law

15. Lawyers have a responsibility to assist in programmes to educate and inform the public about their legal rights and duties and the relevant remedies.

16. To increase the public's awareness of the principles of the rule of law and the importance of the independence of the judiciary and of the legal profession is an important means of ensuring that this independence is respected. Appropriate educational programmes should be undertaken to attain this objective.

17. The duties of a lawyer towards his client include:
- advising the client as to his legal rights and obligations;
- taking legal action to protect him and his interests; and, where required,
- representing him before courts, tribunals or administrative authorities.

In doing so the lawyer shall at all times act diligently and fearlessly within the law in accordance with the wishes of his client and subject to the established standards and ethics of the legal profession.

18. As every person and group of persons is entitled to call upon the assistance of a lawyer to defend his or its interests or cause within the law, and as it is the duty of the lawyer to do so to the best of this ability, the lawyer is not in consequence to be identified by the authorities or the public with his client or his client's cause, however popular or unpopular it may be.

19. No lawyer shall suffer or be threatened with penal, civil, administrative, economic or other sanctions by reason of his having advised or represented any client or client's cause.

20. It is the duty of a lawyer to show proper respect towards the judiciary. However, this shall not prevent the lawyer raising proper objections, such as an objection to the participation or continued participation of a judge in a particular case, or to the judge's conduct of a trial or hearing.

21. If proceedings are taken against a lawyer for failing to show proper respect towards a court, no sanction against him shall be imposed by a judge who participated in the proceedings which gave rise to the charge against the lawyer.

22. Save in respect of such proceedings and of disciplinary proceedings (see below), a lawyer shall enjoy complete civil and penal immunity for

statements made in written or oral pleadings or in his professional appearances before a court, tribunal or other legal or administrative authority.

23. In relation to a person in custody the independence of lawyers is of particular significance in order to ensure that he receives full and adequate representation. Safeguards are required to avoid any possible suggestion of collusion, arrangement, or dependence between the lawyer who acts for him and the authorities. In particular:

(a) A person taken into custody shall have a free and unfettered right to select a lawyer of his choice to act for him.

(b) When a lawyer is engaged by the family or by some other interested person to represent a person in custody, that lawyer shall be entitled to have access to the person in custody to ascertain whether he wishes him to act or wishes some other lawyer to do so.

(c) To meet cases where the person in custody has no lawyer it is the responsibility of the bar association to arrange with the authorities a system that enables him to be provided with a lawyer, or a choice of lawyers, in such a way that the choice or appointment of the lawyer is not influenced by the police, the prosecution or a court.

(d) A lawyer shall have such access to a client in custody as the lawyer considers necessary in accordance with his client's needs, and shall have the right to meet and correspond with his client with full respect for the confidentiality of their communications.

(e) When a person in custody wishes to terminate or dispense with the services of a lawyer, the lawyer shall be entitled to communicate personally with him in order to satisfy himself that this decision has been taken freely by his client.

24. Lawyers shall have all such other facilities and privileges as are needed to fulfil their professional responsibilities effectively, including:

- absolute confidentiality of the lawyer-client relationship by virtue of which a lawyer may not in any circumstances disclose or be required to disclose information received professionally from a client, or his communications with a client, without the client's authority; this protection extends to the lawyer's files and documents.

- the ability to travel freely both within their own country and abroad for professional reasons. Any restrictions on such travel imposed on the general public should be relaxed to enable a lawyer to discharge his professional duties effectively.
- the right to seek, receive and, subject to the rules of his profession, to impart information and ideas relating to his professional work, without restriction either orally or in writing, and regardless of frontiers.

25. Lawyers perform a vital social function in representing and articulating rights and grievances in society and they shall enjoy the same freedom of association, freedom of belief and freedom of opinion and expression as other persons. In particular, they shall have the right to take part in public discussion of matters concerning the law and the administration of justice with no legal restrictions other than those applicable to other persons, and the right to join or form freely and without interference local, national or international organisations, and they shall suffer no professional restrictions by reason of their beliefs or their membership in a lawful organization.

26. Lawyers have a responsibility to study existing and proposed legislation, to examine the working of the system of administration of justice and to evaluate proposals for reform. They should also propose and recommend well considered law reforms in the public interest and should undertake programmes to inform the public about such matters. Through their professional associations they should be consulted about proposed legislation.

27. A lawyer shall be entitled to take a full and active part in the political, social and cultural life of his country whether through membership of a political party, legislative body, or non-governmental organization. Any such party, body or organisation shall respect fully, and not seek to restrict, the independence of the lawyer when acting in his professional capacity.

28. Any rules or regulations governing the fees or remuneration of lawyers shall be designed to ensure that legal services are made available to the public on reasonable terms, and that, in order to ensure their

independence, practicing lawyers are able to earn adequate remuneration ensuring them a reasonable level of security, having regard to prevailing economic conditions. Such fees or remuneration may, however, be waived by a lawyer.

Social responsibility of lawyers

29. It is a necessary corollary of the concept of an independent legal profession that its members will seek to make their services available to all sectors of society, and to promote the cause of justice by protecting the human rights, economic, social and cultural, as well as civil and political, of individuals and groups.

30. The provision of legal services for the poor and disadvantaged goes beyond legal representation before the courts, and includes educating and counselling them as to their rights, and the ways to assert and secure them. One means of achieving this is for lawyers to cooperate with organisations working in deprived communities, informing them about relevant laws and procedures by which the members of these communities can assert their rights and, where necessary, call upon the assistance of lawyers.

31. It is the responsibility of governments, having regard to available resources, to provide sufficient funding for legal service programmes. To the extent that governments do not finance such programmes, bar associations and other lawyers' organisations should themselves seek to promote and provide them as far as they can.

32. Lawyers engaged in legal service programmes and organisations, which are financed wholly or in part from public funds, shall enjoy full guarantees of their professional independence, in particular by:

- the direction of such programmes or organisations being entrusted to an independent board composed mainly or entirely of members of the profession, with full control over its policies, budget and staff;
- recognition that, in serving the cause of justice, the lawyer's primary duty is towards his client, whom he must advise and represent in conformity with his professional conscience and judgment; and

- the lawyers' remuneration being determined by a scale of fees agreed between the government authorities and the bar association.

The Bar Association

33. There shall be established in each jurisdiction an independent and self-governing association of lawyers, recognised in law, (hereinafter called 'the bar association'). Legislation governing the legal profession shall ensure that, in order to enjoy the right of audience before the courts, all lawyers shall be members of the bar association.

34. The council or other executive body of the bar association shall be freely elected by all the members without interference of any kind by any other body or person. The association shall be so organised as to facilitate the full participation of its members and enable them to contribute to the fulfillment of its functions.

35. The functions of a bar association in ensuring the independence of the legal profession include:-

(a) to promote and uphold the cause of justice, without fear or favour;
(b) to maintain the honour, dignity, integrity, competence, ethics, standards of conduct and discipline of the profession;
(c) to defend the role of lawyers in society and preserve the independence of the profession;
(d) to protect and defend the dignity and independence of the judiciary;
(e) to promote the free and equal access of the public to the system of justice, including the provision of legal aid and advice;
(f) to promote the right of everyone to a fair and public hearing before a competent, independent and impartial tribunal and in accordance with proper procedures in all matters;
(g) to promote and support law reform, and to comment upon and promote public discussion on existing and proposed legislation;
(h) to promote a high standard of legal education as a prerequisite for entry into the profession,
(i) to ensure that there is free access to the profession for all persons having the requisite professional competence and good character, without discrimination of any kind, and to give assistance to new entrants into the profession;

(j) to promote the interests of the profession;

(k) to promote the welfare of members of the profession and render assistance to a member of his family in appropriate cases;

(l) to affiliate with and participate in the activities of international organisations of lawyers.

36. The establishment of the bar association shall be without prejudice to the freedom of association of lawyers, and their right to form or join in addition other professional associations of lawyers and jurists.

37. Where a person involved in litigation wishes to engage a lawyer from another country having a similar legal system, the bar association should cooperate in assisting the foreign lawyer to obtain the necessary right of audience.

38. In view of the importance of the independence of lawyers to their clients and to the public, and in order to enable the bar association to fulfil its function of preserving the independence of lawyers, the bar association shall be informed immediately of the reason and legal basis for

- the arrest or detention of any lawyer,
- any search of his person or property,
- any seizure of documents in his possession,
- any decision to take proceedings affecting or calling into question the integrity of a lawyer.

In such cases the bar association shall be entitled to make representations to the responsible authorities.

Disciplinary proceedings

39. The bar association shall freely establish and enforce in accordance with the law a code of professional conduct for lawyers.

40. Save in respect of proceedings for failure to show proper respect for a court, the bar association shall have exclusive competence to initiate and conduct disciplinary proceedings against lawyers. Neither the public prosecutor nor any other representative of the executive shall participate in such proceedings. Although no court or public authority shall itself

take disciplinary proceedings against a lawyer, it may report a case to the bar association with a view to its initiating disciplinary proceedings.

41. Disciplinary proceedings shall be conducted in the first instance by a disciplinary committee established by the bar association.

42. Rulings adverse to a lawyer may be appealed by him to an appropriate appellate body, which may be a court or an appeal tribunal composed of lawyers only, or of lawyers and judges in equal number or with a majority of lawyers.

43. Disciplinary proceedings shall be conducted with full observance of the requirements of fair and proper procedures, in particular

(a) the right to be informed promptly of the charge and of the nature of the evidence against him,

(b) the right to challenge the impartiality of the tribunal or members thereof,

(c) the right to adequate time for the preparation of the defence,

(d) the right to defend himself in person or by a lawyer of his choice,

(e) the right to be present throughout the hearing,

(f) the right to question adverse witnesses and to call witnesses for his defence,

(g) the right to an expeditious hearing and determination of the charge,

(h) the right to a public hearing on appeal, if the appellant so desires.

44. The principle of proportionality shall be respected in determining sanctions for disciplinary offences.

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RECENT ICJ PUBLICATIONS

Human Rights in Islam

Report of a seminar in Kuwait, Geneva, 1982, 95 pp.
Available in english (ISBN 92 9037 014 9) and french (ISBN 92 9037 015 7),
Swiss Francs 10, plus postage.

The purpose of this seminar was to provide a forum for distinguished moslem lawyers and scholars from Indonesia to Senegal to discuss subjects of critical importance to them. It was organised jointly with the University of Kuwait and the Union of Arab Lawyers. The Conclusions and Recommendations cover such subjects as economic rights, the right to work, trade union rights, education, rights of minorities, freedom of opinion, thought, expression and assembly, legal protection of human rights and women's rights and status. Also included are the opening addresses, a key-note speech by Mr. A.K. Brohi and a summary of the working papers.

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Development, Human Rights and the Rule of Law

Report of a Conference held in The Hague, 27 April–1 May 1981, convened by the ICJ.
Published by Pergamon Press, Oxford (ISBN 008 028951 7), 244 pp.
Available in english. Swiss Francs 15 or US$ 7.50.

Increasing awareness that development policies which ignore the need for greater social justice will ultimately fail was the key-note of the discussions at this conference. It brought together economists, political scientists, and other development experts together with members of the International Commission of Jurists and its national sections. Included in the report are the opening address by Shridath Ramphal, Secretary-General of the Commonwealth and member of the Brandt Commission, a basic working paper by Philip Alston reviewing the whole field, shorter working papers by leading development experts, and a summary of the discussions and conclusions, which focussed on the emerging concept of the right to development.

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Ethnic Conflict and Violence in Sri Lanka

Report of a mission to Sri Lanka in July-August 1981 by Professor Virginia A. Leary
of the State University of New York at Buffalo.
Geneva, December 1981, 88 pp. (ISBN 92 9037 011 9).
Available in english, Swiss Francs 7 or US$ 3.50, plus postage.

After a careful survey of the background, causes and nature of ethnic conflict and violence and an examination of the legal and administrative measures adopted by the government, Prof. Leary formulates her findings and recommendations. Among her conclusions are that police behaviour has been discriminatory towards the minority Tamils and that the recently promulgated Terrorist Act violates Sri Lanka's international obligations.

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