

Egypt: The Sequestration of the Bar



Report of a Mission

10-16 March 1998

Centre for the Independence of Judges and
Lawyers
Geneva, Switzerland

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by
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Preface

The Bar Association in Egypt has been undergoing major problems since 1994. In August 1994, the Geneva-based Centre for the Independence of Judges and Lawyers (CIJL) of the International Commission of Jurists (ICJ) sent a Mission to Egypt. The Mission's report *Clash in Egypt: The Government and the Bar*, was published in English and Arabic.

The situation has significantly deteriorated since then due to various factors. During the last few months, the Council of the Egyptian Bar, which is largely controlled by Islamic lawyers, was dissolved and a caretaker Judicial Committee was appointed. In the midst of this crises, Egypt's Bar Leader, who was accepted by all groups and political parties including the Government and the Islamists, died.

In September 1997, the Arab Centre for the Independence of Judiciary and the Legal Profession (an affiliated organisation with the CIJL) organised a seminar on the role of lawyers. The seminar, which included key figures from the Egyptian Bar, concluded to ask the ICJ, through the CIJL, to conduct a mission in Egypt to look into the problems that the Bar is facing. As a result, the CIJL sent a mission to Egypt to examine problems which currently hinder the proper functioning of the Bar Association of Egypt and to report to the CIJL, in light of the latest dissolution of the Bar and the appointment of a Judicial Committee. In doing so, the Mission will be guided by the 1990 UN Basic Principles on the Role of Lawyers. The Mission was asked to report to the CIJL on its conclusions and recommendations to the government as well as the lawyers.

The Mission was composed of Neil Davidson, Q.C., (Scotland - the United Kingdom), who led the Mission and acted as its rapporteur and Pierre Sébastien, Q.C., (Montréal - Québec Canada).

As an organisation dedicated to promoting the independence of both the legal profession and the judiciary throughout the world, the

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CIJL hopes that this report will help to shed some light on the critical situation of the Egyptian Bar Association and, therefore, end the crisis.

In

Mona Rishmawi
CIJL Director
August 1998

Introduction

Following representations, the Centre for Independence of Judges and Lawyers (CIJL) decided to instruct a Mission to examine the problems that currently hinder the proper functioning of the Egyptian Bar Association. The CIJL Mission was instructed to carry out its examination guided by the UN 1990 Basic Principles on the Role of Lawyers.

The CIJL Mission took place from 10 to 16 March 1998. The chef de mission was Neil Davidson QC of the Scottish Bar. He was accompanied by Pierre Sébastien QC, former Bâtonnier of the Québec Bar. The CIJL Mission met a wide range of interlocutors from many different points of view including government, the judiciary and the legal profession. The schedule of the CIJL Mission is attached to this report as an appendix.

Throughout, the CIJL Mission was treated with courtesy and consideration for which its members were especially appreciative. The CIJL Mission was coordinated throughout by the Arab Centre for the Independence of Judges and Lawyers which ensured fairly that many different points of view were heard in respect of the situation.

This report endeavoured to analyse what the CIJL Mission was told by its various interlocutors. It does not attribute particular points of view to individuals. In particular respects where circumstances dictated certain statements are attributed to individuals but generally the intention was to avoid attribution. The CIJL Mission was instructed to form conclusions and recommendations which it has done.

The scheme of this report is to examine the political background to the sequestration of the Egyptian Bar Association (EBA), the actual sequestration of the EBA and the extension of the sequestration of the EBA to Regional Bar Associations and in particular the Cairo Bar Association. Thereafter it is examined how the sequestrations led to a need for elections. The consequences of the current position and how the current position is perceived are reported on thereafter. There is then an assessment of proposed solutions to the present situation followed by the Mission's conclusions and recommendations.

1. The Background

Many of the views expressed were to the effect that the current problems of the Egyptian Bar Association (EBA) are part of a general reaction against trade and professional associations on the part of the Egyptian Government. At present twenty four professional associations, many of which are subject to sequestration orders of the Court, are awaiting the holding of elections of members to their directing councils. An analysis frequently offered to the Mission is that the Government had become concerned by the rise of Islamists in Egyptian society which concern had been stimulated by the coming to power of an Islamist government in neighbouring Sudan. The Government in an attempt to contain Islamism, had taken steps to control the institutions of civil society. Specifically the Government had become concerned at the increasing penetration of civil institutions by the Moslem Brotherhood and its sympathisers and had effected legislation to combat the scope for such penetration. It seems to be accepted broadly that in fact there were successful efforts by the Moslem Brotherhood to gain election to and control of many trade and professional associations. While not representing the political sympathies of the majority of members of such institutions, by means of organisational skill and effort the Moslem Brotherhood had gained and retained control of many trade unions and professional associations. Against this background the Government promoted the Law of Guarantees of Democracy in Professional Associations ("Law N° 100/1993") in 1993. The principal provisions of this statute are as follows:

- For the result of the election of the head and the executive council of a professional association to be valid, half of registered members must cast their votes. If such quorum does not materialise, another election will be held within two weeks with a minimum of one-third of registered members voting. If this condition is not met, the current President and Members of the Council will retain their functions for three months during which another election will be held under the same previous conditions.

- If it is impossible to elect the President and Members of the Council, then a temporary committee shall be appointed to run the professional association. This committee will be headed by the longest-serving President of Cairo's Court of Appeal, in addition to four of the longest-serving members of this court, as well as four of the eldest members of the association in question on condition that they had not been candidates in the elections. The temporary committee will have the same powers of the professional association's Council and will function for six months during which new elections will be held.
- The elections may not be held on Fridays nor during official holidays.
- The elections shall be supervised by a judicial committee composed of the President of the Court of First Instance and four of the longest-serving members of this court. The committee shall designate the location of the election and will make final decisions on all that concerns the election process.
- For every 500 members of the association, there will be an election sub-committee, keeping in mind the members' residence and place of work.
- Voting is a professional duty. Members of the professional associations who do not cast their vote without valid excuse will be fined.
- Executive councils of professional associations are forbidden from raising funds, accepting grants or donations for purposes other than those for which the association was created. The association shall not carry out any activity that contradicts the purposes for which it was created. Any member of the professional association may petition the Administrative Court to halt any action or measure that contradicts the provisions of this Article.¹

1 See *Clash in Egypt: The Government and the Bar*, CIJL, May 1995.

The Law N° 100/1993 was amended in 1995 ("Law N° 5/1995") to increase the supervisory powers of the judicial committee to cover all organisational aspects of elections.

There is a widely held perception outwith Government circles that Law N° 100/1993 operates to frustrate democracy. It is said that the quorum set to establish efficacy of a vote is unrealistic particularly where the association in question has a mass membership. In most cases the specified quorum has never been reached in elections of mass membership associations.

Notwithstanding, elections in Regional Bar Associations had been held which as a result of considerable organisational effort and relatively manageable numbers of members had achieved the statutory majorities required by Law N° 100/1993.

As was noted earlier twenty four trade and professional associations are subject to sequestration orders and awaiting elections. Viewed neutrally this position has arisen as a result of applications to the Court by members of the respective associations founding on allegations of financial mismanagement or fraud. In consequence sequestrators have been appointed by the Court to manage the financial affairs of the associations. Contemporaneously with sequestration the elected councils of the various associations surrendered their positions and powers of direction leaving the associations effectively under the control of the Court appointed sequestrators. In the absence of elected council members the normal course would be for elections to be held. For various technical reasons the Judicial Committees entrusted with supervision of the elections have been unable to set the electoral process in motion.

It is as a result of this combination of sequestration orders and the provisions of Law N° 100/1993 that the present position obtains. It is in this context that the EBA has been under sequestration since Spring 1996, without a Bar Council and without any clear prospect of elections being held in the reasonable future.

The generally accepted view of events in the EBA is that as a result of determined organising the Moslem Brotherhood was able to have returned in the EBA election of 1992 a clear majority of members of the

Bar Council. These elected members were said to be either Moslem Brothers or sympathisers. As in other associations the majority of members of EBA were neither Moslem Brothers nor sympathisers but as a result of a low turnout at the polls the minority candidates had prevailed. It was not suggested that the electoral result was produced fraudulently but rather that the Moslem Brothers had recognised the opportunity presented by a large proportion of EBA members choosing not to vote combined with their own ability to run a focused campaign. Views were expressed to the effect that in addition some EBA members had been supportive of Moslem Brother candidates because they were perceived as separate from the general political infighting that had characterised EBA affairs in the period prior to the 1992 elections.

The EBA prior to 1992 had reflected a number of opposing views both of a general political nature and on a more narrow personal basis. These divergent views had led to the development of internal tensions within the EBA. It was generally perceived that these tensions had resulted in an unhelpful level of disunity, creating an opportunity for those who offered a new political direction for the EBA. In addition other trends within the EBA were at work promoting further tensions. The number of persons qualifying to be lawyers had grown substantially over the 1980s. Many newly qualified lawyers were unable to obtain positions in legal practice with resultant unemployment and underemployment of lawyers. The result has been a degree of tension or at least divergence of interest between established lawyers and large numbers of lawyers who though qualified are unable to make headway in the profession. While lawyers in Egypt have a tradition of being politicised friction between the legal profession and the Government had appeared to be growing.

External events also operated to exacerbate tension between the EBA and the Government. The death in police custody of lawyer Abdel Harith Madani following his arrest in April 1994 had led to violent confrontation between security forces and lawyers on 17 May 1994. Following a general strike by lawyers on 15 May 1994 a peaceful protest march was planned from the EBA building to the Presidential palace. This was prevented by police action involving tear gas and baton charges against the lawyers. Inevitably this confrontation was followed by a high level of friction between

lawyers and the Government. The CIJL sent a mission to Egypt in August 1994.²

Another source of tension was the extension in 1993 of the jurisdiction of military courts over civil matters. Many lawyers considered that the use of military courts to try civilians was an unwarranted interference with the civilian judicial system.

All of the above must also be viewed in the context of there having been a State of Emergency in Egypt almost constantly since 1967 with the consequent restriction of the democratic guarantees offered by the Constitution.

2 See *Clash in Egypt: The Government and the Bar*, CIJL, May 1995.

2. The Sequestration of the EBA

The sequestration of the EBA was sought at the instance of a small number of EBA members who the Mission was told did not represent mainstream opinion at the Bar. The basis for seeking sequestration was allegations of financial mismanagement in the running of EBA affairs. The process leading to sequestration started with the presentation of a Note to the General Prosecutor in 1993 setting out allegations of financial abuses in the running of the EBA. Thereafter a report was produced by the Central Authority of Accounting, a governmental supervisory body, which highlighted areas of improper conduct of the EBA's financial affairs by the Bar Council. Pursuant to these matters the Court of Summary Affairs was petitioned for sequestration of the EBA with the objective of preserving EBA funds and rectifying the alleged financial contraventions of the past. The extent of the allegations, which are disputed, are broadly that the Bar Council incurred significant expenditures that went beyond those properly permitted. Certain allegations went so far as to suggest embezzlement. The Mission was told that the Bar Council under the guidance of its then treasurer, Mokhtar Nouh, had built up a debt burden of some E£6.25 million. It was said that Mr Nouh is linked to the Moslem Brotherhood. Under his treasurership it was said that EBA funds were diverted toward his supporters, contracts were placed with contractors sympathetic to the Moslem Brotherhood at inflated prices, camps were run for his supporters, and generally the EBA was turned away from its role as an organisation with national objectives towards a narrower perspective dominated by the Moslem Brothers. Cheques to a value of some E£2 million were said to have been drawn without sufficient funds to meet their claims. The extent of the allegations was expanded from the initial petition for sequestration as a result of several notes being presented to the Court by the Sequestrators as their investigations proceeded.

There appeared a strongly-held counterview from a number of different quarters including those opposed to Islamist policy to the effect that the inevitable mistakes which arise in the running of an organisation such as the EBA had been seized on and distorted for

political reasons. This counterview also considered that the running of the EBA had in fact improved in terms of efficiency following the 1992 elections.

As it was, the Court pronounced its order for sequestration of the EBA on 28 January 1996. Three Sequestrators were appointed from within the membership of the EBA being the then chairman of the EBA Mr Khawaja, the chairman of the Ghiza Bar Association Mr El-Mahdi and Dr Salim El-Awah said to be linked to the Moslem Brotherhood. The order was challenged but was sustained on appeal. Beginning on 9 April 1996 the sequestration order was enforced.

The manner of enforcement of the sequestration order was the attendance of a bailiff accompanied by a substantial force of policemen. The bailiff turned EBA offices over to the Sequestrators. As a matter of legal technicality the sequestration order is effective only as regards the assets of EBA. Accordingly it might have been expected that the activities of the EBA might have continued under the direction and supervision of the Bar Council save for decisions relating specifically to financial affairs. There was a general unanimity of view that sequestration should have only these limited consequences. It is also clear and accepted by all involved that the Sequestrators in the carrying out of their duties engage in decision-making and policy-making far beyond what the supervision of financial affairs would normally involve. The reason given for this extension of responsibility into the general management of EBA is the absence of the elected Bar Council. Contradictory explanations are given for the absence of the elected Bar Council. Those Sequestrators to whom the Mission spoke were of the view that the Bar Council being primarily interested in controlling the finances of the EBA chose to abandon their duties with the loss of financial control to the Sequestrators. In the absence of the Bar Council the Sequestrators felt obliged to take over the running of the non-financial activities of EBA. The contrary explanation was to the effect that the employment of the police force in enforcing the sequestration order made it clear to the Bar Council that sequestration was not limited to financial matters. This was reinforced it was said as a result of security personnel having detained certain Bar Council members and explained to them that they were not expected to continue in office. Given that the Bar Council did not comprise solely of Islamists and their sympathisers but also persons of different views and beliefs it would be

surprising if it were correct that all Bar Council members would abandon the EBA for solely selfish motives. This is particularly so as Mr Khawaja the Bâtonnier was appointed as one of the Sequestrators.

The two Sequestrators with whom the Mission met, Mr El-Mahdi and Mr Ghatwari (who had replaced Dr Salim Al Hawa in November 1996) were quite specific in stating their responsibilities included decision-making in the disciplinary procedures of the Bar, education and the discussions over legislative developments. In respect of disciplinary matters the Sequestrators' perceived role is to revise decisions of regional bar associations and suggest disposal for example by way of warning or by reference to the Court of Discipline. In this way the Sequestrators made judgments on complaints involving lawyers at a relatively serious level. On educational matters the Sequestrators endeavoured to run courses with the assistance of judges, prominent lawyers and professors of law and arranged the provision of law books at reduced prices. As regards legislative developments the Sequestrators had on occasion been invited by Parliament to participate in discussions and had responded by providing a list of lawyers representing regional bar associations who did participate. Further, lawyers who were also members of Parliament discussed draft laws with the Sequestrators.

The justification offered for the expanded role of the Sequestrators was that in addition to the absence of a Bar Council there was a sense in which all EBA activities fell within the general responsibility to manage the EBA's funds prudentially. This justification was offered in response to a challenge that the Sequestrators' jurisdiction in the governance of the EBA might appear exorbitant.

As matters presently stand investigation of the EBA's finances proceeds at the instance of the Sequestrators and with the involvement of the Central Authority of Accounting and the Department of Illicit Profits of the Ministry of Justice. No charge has been preferred as yet. A date for the completion of investigations has not been set nor does an early date seem in prospect.

There is an argument to the effect that the sequestration of the EBA is unconstitutional to the extent that Article 56 of the Constitution of Egypt guarantees a right of establishment to trade unions and profes-

sional associations on a democratic basis. The argument is developed on the basis that the direction of the EBA must be through elected officers and hence court-appointed sequestrators are barred from directing the EBA's affairs. This argument has not been presented to the Constitutional Court nor to the Court of Cassation.

A variation of this argument was to the effect that the EBA should properly be characterised as a public body and as such could not competently be sequestered.

Certain lawyers made unfavourable comparisons between the present situation of the EBA and a situation that arose in the early 1980s. Then President Sadat promulgated Law N° 125/1981 which broadly sought the dissolution of the Bar Council and its substitution with a new council nominated by Government. This law had been attacked as unconstitutional. The attack on the law was ultimately successful before the Constitutional Court. However the reinstatement of the Bar Council took over two years to effect.

The Mission inquired of certain representatives of the Government and the judiciary how the sequestration of the EBA could be consonant with the provisions of the UN 1990 Basic Principles on the Role of Lawyers which Egypt accepted. In general the response was an acceptance of the principle followed by a denial of responsibility on the part of the Government or the Court. The basis of this denial is that as the sequestration had been obtained at the instance of certain EBA members the conflict between the principle and the present situation of the Bar may be characterised as an internal matter for the Bar wherein intervention by Government or the Judiciary is inappropriate both legally and constitutionally.

One particular impression was left with the Mission arising out of the Sequestration of the EBA. It is the reasoning whereby certain EBA members had pursued sequestration of the EBA as an appropriate avenue for their concerns at alleged financial abuses. If fraud were suspected, it might have been thought merely sufficient to place the issue in the hands of the police and prosecuting authorities rather than seeking sequestration. Sequestration inevitably affects the whole EBA whereas prosecution would presumably have targeted only individuals suspected of fraud, leaving the EBA otherwise functioning.

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A remedy that effectively adversely affects all EBA members because allegations against only certain EBA Council members appears both unfortunate and disproportionate.

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3. The Extension of Sequestration to Regional Bar Associations

Following on the sequestration order of the EBA various regional bar associations ("RBAs") were sequestered over the following two years. The method by which these sequestrations were effected was by an extension of the EBA sequestration order. This extension was not by the Court nor as a result of separate applications for sequestration. The theory applied appears to have been that as the RBAs are subordinate to the EBA then the sequestration of the EBA is effective against the RBAs without further order of the Court notwithstanding their separate legal personalities, the separation of their finances from those of the EBA and the separate elected officers of the RBAs.

The initiative for the extension of the sequestration appears to have come from the Sequestrators. The Sequestrators sought the assistance of the Ministry of Justice in bringing about the extension of the order. The Mission was provided with a copy of a ruling by the Assistant Minister of Justice dated 22 August 1996 warranting the extension of the sequestration to the RBAs. Many lawyers considered this ruling as going beyond the administrative prerogatives of the Ministry and as being without legal basis given the Assistant Minister's role as a part of the Executive. The Mission was told that Mr Khawaja had opposed the extension of the order to the RBAs prior to the ruling from the Assistant Minister of Justice.

The effect of the extension of the sequestration to the RBAs has led to control not only of the RBAs' financial affairs but also to the removal of those elected to the 22 RBA Councils. The elected officers have been replaced by appointees notwithstanding the absence of any accusations of financial malpractice directed against the elected officers. Further it does not appear to have been contended that the RBAs had been subject to takeover by some unrepresentative Islamist minority.

It is not clear who appoints those now responsible for the direction of the RBAs. It was suggested that appointment was made by "the security apparatus" although formally it is the Sequestrators who appoint. RBA members complain that there is a rapid turnover of these appointees who appear to have a number of their own internal conflicts. RBA members complain that this position leaves the RBAs without any sensible direction and makes a mockery of their standing.

The Mission was informed that after the issue of the ruling by the Assistant Minister of Justice one of the Sequestrators, Dr Salim El-Awah, resigned in protest, to be replaced by Mr Ghatwari. Another Sequestrator, Mr Khawaja, the much respected former EBA Bâtonnier, died shortly after ministerial ruling, to be replaced by Mr Sabri Moubada.

The current position regarding the RBAs generally is that their affairs are carried out by administrative directives emanating from a combination of the Sequestrators of EBA and committees appointed to each particular RBA. The councils of RBAs have lost their role and are unable to carry out any work on behalf of RBAs. Elections have not been called in those RBAs where the term of the Council has expired.

It was quite clear to the Mission that there is a very high level of resentment at the extension of the sequestration to the RBAs. There is a profoundly felt sense of injustice at the application of the extreme sanction of sequestration to RBAs which had been functioning in a lawful and moderate manner and against which no accusations had been leveled in the past. As certain RBA Councils were elected in conformity with the high voter turnouts required by the Law N° 100/1993 the removal of those councils was seen as especially unfair.

The RBAs' objective position is that they find themselves deprived of their elected councils and suspended as effective representative organisations as a result of allegations of financial mismanagement directed against certain members of the Council of the EBA from whom the RBAs are distant.

4. The Sequestration of the Cairo Bar Association

Notwithstanding the extension of the sequestration of the EBA to RBAs from mid-1996, the extension of the order to the Cairo Bar Association (CBA) did not take place until October 1997. CBA is the RBA with the largest membership in Egypt and is generally perceived as the most important RBA. The delay in applying sequestration to the CBA was thought by certain CBA members to be in part a reflection of the strength of the CBA. As with other RBAs specific proceedings were not directed against the CBA Council nor was it considered to be under the influence of Islamists. The current position is that the CBA Council having been removed, a number of substitute councils of appointees have been in charge since November 1997.

The events leading up to the extension of sequestration to the CBA require description. There had been pre-existing friction between the Government and the CBA as a result of the death in custody of lawyer Abdel Harith Madani. The CBA had been to the fore in organising the strike held in protest at Mr Madani's death. After the sequestration of the EBA, the CBA had been actively demanding that new elections be held for the EBA Council.

A General Assembly of EBA lawyers had been convened for mid 1997 at the EBA headquarters in Cairo to oppose sequestration of the EBA. The Sequestrators responded by placing notices in the press warning lawyers not to attend the General Assembly. Several lawyers spoke about steps that were taken to prevent EBA members from reaching the General Assembly. Some prominent lawyers were interviewed by the security forces and advised not to promote attendance at the General Assembly. General statements were made to the effect that attendance at the General Assembly might lead to confrontation and detentions. Active measures were taken to upset transport arrangements of lawyers planning to travel to Cairo. Bus and van rentals were canceled for security reasons by the authorities. Some lawyers

traveling to Cairo were turned back. Many regional lawyers who had planned to attend the General Assembly decided against attendance as a result of widespread warnings of the likelihood of confrontation and detention at the Assembly.

Nonetheless thousands of lawyers attended at the EBA headquarters. On arrival they discovered the building to be surrounded and occupied by the police and security personnel. It turned out the Sequestrators had given over the headquarters to the control of the police the day before the General Assembly. The building was barricaded and lawyers were denied access. The lawyers decided to leave the EBA headquarters and instead convene at the CBA headquarters nearby. This building was in turn surrounded by security personnel but the lawyers were able to gain access albeit not without difficulty. About 2,700 lawyers convened the General Assembly at the CBA building and elected a Temporary Committee with the intention that it would take over the running of the EBA's non-financial matters.

The general view among lawyers was that the sequestration of the CBA was as a reaction to this prominent role it had taken in the organising of the General Assembly. The Sequestrators interviewed defended the sequestration of the CBA as falling within the competence of the EBA order and explained the delay in enforcement as resulting from challenges to the Court as to the efficacy of the EBA order as against the CBA. It was common ground that the Sequestrators had invited certain CBA Council members to sit on the CBA sequestration committee but that those members including the Bâtonnier of the CBA, Mr Abdel Aziz Mohammed, had refused the invitation.

The perception of certain CBA lawyers was that those persons ultimately chosen to sit on the CBA sequestration committee were not persons of quality and that their appointment was deliberately provocative. One committee had been appointed but shortly thereafter the appointment was canceled and another committee had been appointed.

There is little optimism in the CBA that the difficulties of the CBA will be remedied save as a part of a general settlement of the position of the Bar in general. Former CBA officers see the present situation as

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contrary to the national interest and understand their view to be shared
by some in official circles. Their perception is that without encourage-
ment at the most senior level of Government the position may simply
be allowed to drift for years.

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5. Election of the EBA Council

As has already been discussed the EBA was sequestered in early 1996 and contemporaneously the EBA Council was removed. In the absence of an elected Council the solution must be the holding of elections as soon as possible. As elections have not been held, by default the Sequestrators presently direct the EBA's affairs.

In terms of Law N° 100/1993 as amended by Law N° 5/1995 the supervision of elections is the responsibility of a Judicial Committee headed by the President of the Court of First Instance. The Judicial Committee has powers to supervise the necessary elections but requires as a preliminary the Register of Members and a list of the General Assembly of the EBA. This requirement is seen as a logical necessity rather than as a statutorily provided one. In any event the Judicial Committee has not been provided with the Register. The perception of the Judicial Committee is that it is for the Sequestrators to produce the Register. The Sequestrators agree that this falls within their responsibility.

Chancellor Mafouz Shouman, the head of the Judicial Committee is concerned at the time being taken for the presentation of the Register of Members to his Committee. He has written on a number of occasions requesting the Register be provided but without result. Chancellor Shouman did not perceive he has authority to order the production of the Register by the Sequestrators but may only encourage them to speed up delivery. The other routes he saw were for EBA members to apply to the Court granting the sequestration in order that the Sequestrators be ordained to produce the Register with all speed. Alternatively EBA members might seek replacement of the Sequestrators.

The Sequestrators interviewed explained the delay in production of the Register. Although the Register is computerised the Sequestrators cast a number of doubts over the integrity of the data in the Register. They stated they required to ascertain the identity of deceased mem-

bers, of overseas members and of members who should be expunged from the Register for reason of being in jail or having been recently released from jail. A problem was perceived in so far as many lawyers had lost their positions with the privatisation of public sector legal departments and might no longer be entitled to vote. Another perceived problem is that many lawyers may not be properly in practice and are holding non-legal employment disentitling them thereby to a vote. The problems were described as being somewhat intractable although the Sequestrators interviewed accepted the need for elections as soon as possible. The wide responsibilities the Sequestrators have taken over in respect of the running of the EBA do not appear to permit them to accord their major priority to the verification and production of the Register.

The Sequestrators have requests for information outstanding with the Minister of Justice, the Minister of the Interior and the Minister of Public Ventures. These requests cover lists of lawyers in jail, those who had been incarcerated within the last three years, those who are resident overseas and those who were employed in public sector departments now privatised. The Sequestrators consider these data are necessary before they can complete and verify the Register of Members. Although the requests have been communicated to the respective Ministries responses have not been received and the Sequestrators have no sense as to when they may anticipate responses.

The position regarding verification of the Register is unclear. The Mission was also told by Mr Ghatwari one of the Sequestrators, that the Register had in fact been prepared and had been sent to the RBAs in February 1998 for revision and ratification. According to him the RBAs had not responded. No mention of such lists was made by RBA representatives. It was not explained how on one hand the Register could not be completed without information from the Ministries and on the other how the RBAs could be sent a copy for revision. It may be that the copy for the RBAs is of a draft nature only. The Sequestrators were however entirely clear that the nature of their concerns as to the integrity of the Register could only be resolved with information from the various Ministries.

A further problem was advanced in respect of holding elections in addition to those arising out of the Register. Mr Ghatwari stated that

amendment is required to the statute, "The law of the Legal Profession". This statute allocates six positions on the Bar Council to lawyers employed in the public sector. In 1993 when this allocation was provided for the public sector employed in excess of 80,000 lawyers whereas at present only 3,000 are so employed. The concern is over the over-representation public sector lawyers would be accorded in the Council. Although the Sequestrators regard amendment as necessary, no process is underway to bring it about.

The Mission was left with the strong impression that as the need for elections arose after the enforcement of the sequestration order in April 1996 the delay in holding elections is unreasonable. Whatever difficulties may have arisen in respect of verification of the Register the proper priority has not been given to expediting this matter. Given the fundamental importance of democratic elections to the EBA and the RBAs the delay to date has no sound excuse. The extent of public sector representation is primarily a matter for the EBA to deal with by promoting legislative amendment if thought necessary.

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6. Consequences of the Current Position

The most obvious consequence of the current position is that the EBA is without any Bâtonnier or Bar Council. This remarkable state of affairs has endured for two years. Surprisingly elections do not even now appear to be in prospect.

The proper functions of a bar association are either being neglected or are being carried out by Court-appointed officials. The normal role that a bar association has in contributing to the administration of justice is accordingly in suspension. The Egyptian legal profession is hampered in so far as disciplinary matters, grading of lawyers and contributing to the supervision of legislation are concerned. These are matters that go beyond the legal profession in their impact. In a real way they have an adverse impact on the administration of justice.

Another consequence of the current position is the absence of Egyptian participation in international legal organisations. The EBA is excluded from the Arab Lawyers Union because the Union has a principle that only bar associations with freely elected representatives may participate. The Bâtonnier of the EBA is *ex officio* the president of the Arab Lawyers Union as a reflection of the importance accorded to Egypt's position in the Arab world. The result is that the Union is now without a president to its considerable concern. The International Bar Association had intended holding its conference in Egypt but had chosen another venue as a result of the sequestration of the EBA.

Within the Egyptian legal profession the Mission detected a high level of resentment at the present situation from many different quarters. The resentment is not directed at the Moslem Brotherhood or Islamists, notwithstanding that their dominance of the Bar Council was a precipitating factor in the sequestration of the EBA. Rather it is widely perceived that it was the Government which motivated sympathetic lawyers to seek the sequestration of the EBA; it was the police and the security forces that obliged the Bar Council to abandon their responsibilities; and that the present position of paralysis of the EBA continues

with the Government's approval. This perception appears to have created a lack of confidence in the Government's willingness to deal fairly with the legal profession. Certain lawyers expressed regret that the judiciary was in their view being placed in an invidious position to the extent it was being employed as the tool of Government interests in creating and maintaining the paralysis of the EBA and the RBAs.

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7. Perceptions of the Current Position

No one to whom the Mission spoke expressed a view that the current position is satisfactory. The stated views on the position may be divided into three, viz., the views of the Government, the judiciary and the lawyers.

The Government view broadly put is that the current position is regrettable but it has nothing to do with the Government. It is a matter that is internal to the legal profession and it is therefore for either the lawyers or the Court to resolve. Indeed it was stressed that it would be undesirable for the Government to involve itself in the situation. Such involvement would require the Government to intervene in the affairs of the EBA which would be an inappropriate action creating a possibly unfortunate precedent. Alternatively involvement would require the Government to intervene in the Court's control of the sequestration proceedings which would be unconstitutional.

The views expressed by those members of the judiciary interviewed by the Mission were broadly to the effect that whereas the Courts would of course decide all challenges to the competency of the sequestration, its continuation and matters relevant to the elections, the real solution to the problem must lie with the lawyers themselves. The Courts do not have jurisdiction to intervene in these matters on their own initiative. Such challenges as have been made to the sequestration have been dealt with. No challenge relevant to the matter had come before either the Constitutional Court or the Court of Cassation. The Judicial Committee created to supervise the EBA elections does not have any standing in the sequestration proceedings nor power to ordain the Sequestrators for example to produce a verified Register within a time limit. Government intervention is seen as undesirable as jeopardising the independence of the legal profession.

The perspective of the lawyers interviewed by the Mission was broadly that the Government appears content with the present position. Paralysis of the EBA and the RBAs has quieted a substantial,

democratically -elected organisation that acted independently of the Government's wishes and which often opposed Government actions and policies. Thus, though the problem is indeed one for the legal profession to resolve, it is perceived that Government influence acts as an obstacle to resolution. Put another way the perception is that were the Government to be sincerely motivated to have the sequestration lifted and elections held, matters would move much more rapidly to a conclusion.

By way of comment, the Mission was surprised at the apparent complacency of the Government to the effective suspension of the EBA and the RBAs as democratic organisations. This is particularly surprising given the role of Bar associations in the administration of justice. The terms of Article 24 of the UN 1990 Basic Principles on the Role of Lawyers provides:

Lawyers shall be entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training and to protect their professional integrity. The executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference."

The fact that in Egypt this basic principle is presently not being met is plain. The role of the Sequestrators and particularly the manner in which their role has expanded to the effective running of the EBA and the RBAs, however it may have been justified by circumstance, is clear external interference contrary to Article 24.

8. Proposed Solutions

Proposed solutions to the current impasse were suggested to the Mission along four general routes. These may be characterised as (i) unity of lawyers; (ii) legal challenge; (iii) elections; and (iv) political agreement.

(i) Unity of Lawyers

The underlying theme of this proposal is that if lawyers organise themselves effectively then they will be in a position to combat the sequestration and bring about elections. It was perceived that the election of an Islamist majority to the Bar Council was as a result of general disunity at the time. It seemed to the Mission that at present there is already a high degree of unity among lawyers in their opposition to the current situation. Translating unity of view into unity of action is of course a different matter. The holding of the General Assembly in 1997 provoked confrontation rather than resolution. In this context unity perhaps seems more a virtue than a prescription in the sense that only concrete action will turn around the present position.

(ii) Legal Challenge

The use of legal challenge would be to bring an end to the sequestration on the grounds of incompetence of its application to the EBA both pursuant to Article 56 of the Constitution and the general law. There have been a number of legal challenges thus far without success. No one considered legal challenge was likely to bring an early end to the current impasse if for no other reason than it would not result in elections being held. While EBA members will continue to promote legal challenges to the sequestration and the delay in holding elections there was little confidence that this route would be fruitful.

(iii) Elections

A number of opinions were expressed as to the desirability of elections as the main way forward out of the difficulties. This seems self-evidently to be the best solution. The Mission was persuaded however by the Sequestrators that the perceived difficulties in the situation and in particular the production of a verified Register are such that elections will not be held in early course.

(iv) Political Agreement

The hope behind this proposal is that representatives of all the interested parties such as the Government and lawyers representing the various points of view might work out the basis of some settlement of the problem. Some arrangement such as the formation of a "caretaker" committee of lawyers to run the EBA until elections were held was suggested. It seemed to the Mission that no catalyst for such an agreement presents itself. Given the Government's unwillingness to directly involve itself in the issue, this route seems unlikely to assist. Such informal approaches as have already occurred have produced no progress.

9. Conclusions

The Mission was directed to provide conclusions derived from its examination of the problems currently hindering the proper functioning of the Egyptian Bar Association. The Mission concluded as follows:

- (i) The present position whereby the Egyptian Bar Association and the Regional Bar Associations are without elected councils is correctly regarded as unacceptable by all concerned.
- (ii) The continuing delay in holding elections is unacceptable.
- (iii) The holding of elections in the near future should be a matter of high priority for all concerned.
- (iv) The management of the whole affairs of the EBA and the RBAs by Court-appointed sequestrators and their delegates is an unwarranted external interference in the self-governing professional associations of Egyptian lawyers.
- (v) The present position of the Court-appointed sequestrators in the management of the whole affairs of the EBA and the RBAs constitutes an infringement of Article 24 of the UN 1990 Basic Principles on the Role of Lawyers.
- (vi) The role of the Court-appointed sequestrators in disciplinary proceedings of the legal profession constitutes an infringement of Article 25 of the UN 1990 Basic Principles on the Role of Lawyers.
- (vii) The many and various circumstances that have brought about the present situation should not be allowed to prevent Egypt playing its full role in the international legal community.

10. Recommendations

In the light of its conclusions the Mission was directed to provide recommendations. The Mission recommends as follows:

- (i) The Mission gained an impression that the interplay of many issues in the present situation has created the appearance of considerable complexity. Frequently expressions of concern about the present position of the legal profession led on to analysis of many perceived hurdles that required to be overcome before any progress could be made. While recognising that the situation is far from simple nonetheless it seems to the Mission that urgency requires to be injected in order that the paralysis of the Egyptian Bar Association be ended. There must in the Mission's opinion be considerable virtue in the parties empowered to bring about the elections accepting some time limit within which elections are held.

It is recommended that the concerned parties accept that elections be held to the Bar Council of the Egyptian Bar Association prior to 1 October 1998.

- (ii) Whereas, the issue of over-representation of public sector lawyers on the Bar Council resulting from changes within the profession and the provisions of the Law on the Legal Profession is correctly identified as an issue, nonetheless it should not be permitted to delay the holding of elections. Over-representation of one sector of the legal profession until statutory amendment may be effected is of considerably less moment than the absence of all representation of all lawyers in an elected Bar Council.

It is recommended that elections proceed speedily as the priority even if the issue of over-representation of public sector lawyers has not been resolved.

- (iii) In order that elections to the Egyptian Bar Association and the Regional Bar Associations may proceed as quickly as possible, it is legitimate that the respective Ministries give every assistance to the Sequestrators to enable a sufficient Register of Members to be produced. While accepting the undesirability of Government intervention in the running of the EBA and the RBAs, the Sequestrators have identified how various Ministries are causing delay by their failure to provide information. The respective Ministries have it within their power to facilitate the verification of the Register of Members by the provision of information. Action by the Ministries in this context could not be characterised as illegitimate intervention in the affairs of the EBA and the RBAs.

It is recommended that the respective Ministries accord a high priority to the provision of information necessary to the completion of the Register of Members.

- (iv) To the extent the Sequestrators recognise the need for elections as soon as possible but are faced with difficulty in completing the Register of Members, it must be right that they accord the completion of the Register their highest priority. The many and various responsibilities assumed by the Sequestrators impose a substantial strain on their capacities. Leaving aside all questions of the competency of the sequestration, the sooner the Sequestrators' remit can be restricted to the temporary management of the financial affairs of the EBA, the sooner the issues arising therefrom may be determined.

It is recommended that the Sequestrators give the highest priority to the provision of the Register of Members to the Judicial Committee.

- (v) In a number of areas connected to the sequestration of the EBA and the RBAs the Mission encountered varying impressions of the factual position. It is unhelpful that clear information on the position as it has developed is not always available. In the interests of transparency and fairness, clear and precise

information concerning the progress of the sequestration and the elections should be in the public domain. Egyptian lawyers must be entitled to up-to-date information in respect of the manner in which their professional associations are being managed in the absence of elected councils.

It is recommended that the Sequestrators regularly issue public statements concerning the progress of the sequestration.

It is further recommended that the Judicial Committee regularly issues public statements concerning progress towards the holding of elections.

- (vi) The consequence of elections being held is that pursuant to Law N° 100/1993 for a valid result to be obtained it is necessary that at least one-half of registered members cast their votes. The Mission understands that the present method whereby the vote is taken is by holding an assembly whereby votes are cast in person on the day of the vote. This procedure would appear to create an obstacle to not only the meeting of the statutorily required minimum vote but also more generally to a high level of participation in elections. It is not clear to the Mission why this procedure need continue to be employed in the future.

Modernisation of voting procedures may be undertaken by the Judicial Committee in its current supervisory role over elections. It would appear sensible and prudent for the Judicial Committee to consult widely with lawyers in bringing about such modernisation. The Temporary Committee elected by the General Assembly would appear to represent a useful body for consultation.

It is recommended that the method of casting votes be modernised to encourage participation in elections whether by postal voting, locally cast votes or by extending the period for voting.

- (vii) A theme frequently referred to by the Mission's interlocutors is that the imposition of sequestrators on a body such as the

Egyptian Bar Association is incompetent both constitutionally and at general law. The only means whereby this issue may be settled definitively is if the Constitutional Court determines the issue. While determination of the issue should not be permitted in any way to delay elections, it nonetheless is of considerable importance to the standing of the Egyptian Bar Association. The extent to which the UN 1990 Basic Principles on the Role of Lawyers are infringed by the appointment of sequestrators reinforces the importance of the issue being resolved.

It is recommended that the issue of the competence of sequestration of the Egyptian Bar Association be debated in the Constitutional Court. In the event that the sequestration was competent it is further recommended that Law N° 100/1993 be reviewed in the context of the need to preserve the freedom of lawyers' professional associations free from external interference.

11. LIST OF INTERVIEWEES

CIJL Mission to Egypt

10 - 16 March 1998

- 11 March 1998
- Professor Atef Al-Banna
Cairo University
 - Abdel Aziz Mohammed
former President Cairo Bar Association
 - Professor Mohammed Asfour
and members of the Temporary Committee
of the Egyptian Bar Association
- 12 March 1998
- Mr Ghatwari
Sequestrator of EBA
 - Professor Dr Fathi Sorour
Speaker of Egyptian Parliament
 - Ambassador Naela Jabr
Deputy Minister of Foreign Affairs and Human Rights
 - Professor Nabil el Hilaly
People's Party
 - Gasser Abdel Razik
CHRLA
- 13 March 1998
- Regional Bar Meetings**
- (i) Salah el Quafas
Chairman of Gharheyya Governate B.A.
 - (ii) Ali Shadaam
Secretary-General of el Monafaiyah Governate B.A.
 - (iii) Ahmed Rabeea el Ghazaly
Treasurer of Ghiza B.A.
 - (iv) Al-Amin Abu Keresha
Chairman of Suhag Branch B.A.

- (v) Mr Aswan
Secretary-General, Temporary Committee of EBA

14 March 1998 **Court of Cassation**

- Mohammed Abdel Aziz
Vice President - Court of Cassation
Chancellor Mohammed Ahid
- **Arab Lawyers' Union**
 - (i) Farouk Abu Eissa
Secretary-General, Arab Lawyers' Union
 - (ii) Dr Galal Ragab
 - (iii) Sabir Ammar
- Nasser Amin
ACIJLP - Director
- Mohammed Moneib
EOHR - Secretary General
- Mohammed Kamel Abdel Aziz
Senior Lawyer
- Moukhtar Nouh
former Treasurer EBA; former MP

15 March 1998

- Chancellor Mahfous Shuman
Head Justice South Cairo Court
Chairman Judiciary Committee per Law N° 100/1993
- Mohammed Hassan El-Mahdi and
Mr Ghatwari - EBA Sequestrators
- Awad el Morr,
Chief Justice of Higher Constitutional Court
- Negad Boran
Group for Democratic Development-Director

12. Government Response

On 12 June 1998, the Centre for the independence of Judges and Lawyers (CIJL) transmitted to the Government of Egypt two copies of the Mission report on a confidential basis. The CIJL indicated that we welcome the comments of the Government of Egypt on the issues raised. The CIJL added that if it was able to receive the response before 15 July 1998, we will include it in the published version of the report.

On 15 July 1998, the Permanent Mission of the Arab Republic of Egypt before the United Nations transmitted the response of the Government of Egypt concerning the issues raised in the report. The response included three parts:

- a. A description of the problems of the Egyptian Bar Association (in English);
- b. An explanation of the current dispute within the Egyptian Bar Association (in Arabic); and
- c. Three newspaper clippings related to this issue.

Below is the verbatim description of the problems of the Egyptian Bar Association as was transmitted by the Government and a translation from Arabic of what the Government has transmitted on the current dispute within the Egyptian Bar Association. The newspaper clippings are not included.

a. The Problems of the Egyptian Bar Association:

The current problems of the Egyptian Bar Association (EBA) are perceived by the government as an internal matter within the association, the resolving of which would be the responsibility of the lawyers themselves in parallel with the court proceedings.

Government intervention in this matters i.e. the affairs of the EBA, would create a precedent that contradicts with the government's

approach of enabling the EBA to operate freely with no outside influences. In addition to the above mentioned, an intervention by government in the court's control over the sequestration proceedings would be unconstitutional and, therefore, illegal.

It is worth noting that the situation the EBA is currently facing, was created from within, i.e. upon findings by its own members of the alleged financial mismanagement and fraud, an application was submitted to the court for the latter to take the required legal action, which it did by appointing sequestrates to manage the financial affairs of the EBA until the matter is resolved. The implementation of the EBA sequestration order extends sequestration to all regional bar associations.

Hence it is inappropriate to characterise the current problems of the EBA as a result of a general trend by the government against trade and professional associations especially in light of the fact that all professional associations are independent in accordance to our legislations (sic) and have complete control over its members and activities. In fact, to emphasise the independence of the associations in question, the constitutional court issued numerous rulings in this regard e.g. the 1983 ruling of reappointing the elected members of the association council to administer the EBA. On the other hand, if members of any association submitted an application to the court supported by evidence of mismanagement of financial affairs in their association, the court has an obligation to take the appropriate legal actions.

Furthermore, laws such as the law of guarantee of democracy in professional associations (Law no. 100/1993) and its amendment (Law no.5/1995) were promoted to ensure that the activities and practices of such associations are more transparent and realising higher levels of participation.

According to Law no. 100/1993 as well as its amendments by Law no. 5/1995 the supervision and the date of the elections is the responsibility of a judicial committee headed by the president of the court for south Cairo region. The judicial committee requires as a preliminary the register of members and a list of the participants of the general assembly of the EBA, before hand, which is the responsibility of the EBA council or the sequestrates.

Allegations concerning the situation of the EBA clearly contradicts with actual government's initiatives during the past few years, it is a fact that the government has introduced numerous measures to promote and develop the activities of all associations and civil participation. Such an approach by the government for example is evident in the current government's efforts to introduce a new law regarding activities of the NGOs.

Other initiatives such as the introduction of curricula (sic) in the education system aiming at increasing the level of awareness with regard to gender equality, respect for human rights, tolerance and democracy, are all indicators of the importance the government is giving to the concept of respect for the basic civil and political rights of its citizens.

On its part, the Egyptian officials spared no effort in having a constructive dialogue with the ICJ delegation during its visit, in addition to providing the delegation with all available information and facilitating its meeting.

The present situation regarding the EBA is one of disunity between its members, on going problems as well as new ones arising, hinders bringing about the elections.

b. The current dispute within the Egyptian Bar Association*

Some lawyers, members of the bar associations, took the initiative of bringing a law suit requesting the sequestration of the bar association to put an end to the violations committed by a number of its council members, which contradict the law.

During 1996, lawyer Mohammed Sabri Moubada succeeded in obtaining a judicial decision to impose sequestration on the bar

* *Translation from Arabic.*

association and the appointment of late lawyer Ahmed Khawaga as a sequestrator.

Some former council members announced their rejection to the decision to impose sequestration and formed a temporary committee to administer the affairs of the bar headed by lawyer Mohammed Asfour. They also brought legal actions for lack of recognition of the appointed sequestrator.

During April 1997, lawyer Mohammed Sabri Moubada obtained a judicial decision to appoint a sequestrator to succeed late lawyer Ahmed Khawaga as the conflicts between him and other leading members of the bar increased because of conflicting administrative decisions and the decrease of the role of the bar in fulfilling its role in the area of servicing the totality of lawyers.

It should be noted that some former council members (lawyers Samih Ashour and Raga'i Attiyeh) moved in the direction of the call for elections of a new bar council as a way to settle the current crisis in the Bar.

Centre for the Independence of Judges and Lawyers

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PARAM CUMARASWAMY Chairman, Standing Committee on Human Rights,
International Bar Association; past President, Malaysia
Bar Council

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Member, UN Working Group on Disappearances (Peru)

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ABDERAHMAN YOUSOUFI Deputy Secretary-General, Arab Lawyers Union (Morocco)
Vice President, Arab Organization for Human Rights

Director

Mona A. Rishmawi

The Bar Association in Egypt has been undergoing major problems since 1994. In August 1994, the Geneva-based Centre for the Independence of Judges and Lawyers (CIJL) of the International Commission of Jurists (ICJ) sent a Mission to Egypt to examine the issues related to the death in detention of lawyer Abdel Harith Madani. The situation has significantly deteriorated since then due to various factors. During the last few months, the Council of the Egyptian Bar, which is largely controlled by Islamic lawyers, was dissolved and a caretaker Judicial Committee was appointed. In the midst of this crises, Egypt's Bar Leader, who was accepted by all groups and political parties including the Government and the Islamists, died. These events required the CIJL to send again a mission to Egypt in March 1998 to examine problems which currently hinder the proper functioning of the Bar Association of Egypt and to report to the CIJL. In doing so, the Mission was guided by the 1990 UN Basic Principles on the Role of Lawyers.

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