

REPORT ON

Appellate Hearings on Lawyer Muhamad Mugraby

12th Appellate Panel of the Civil Court of Beirut

15 October 2003

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I. Executive Summary

This is the report of the Centre for the Independence of Judges and Lawyers (CIJL) of the International Commission of Jurists (ICJ) on the appellate hearings wherein Lebanese human rights lawyer, Dr. Muhamad Mugraby, sought to challenge two decisions of the Disciplinary Council of the Beirut Bar Association.

The first decision of the Disciplinary Council, delivered in April 2002, was that as Dr. Mugraby had allegedly slandered the judiciary and members of the Beirut Bar Association, he was suspended from practicing law for 3 years. Dr. Mugraby challenged this decision in court and continued to practice law. This led to the second decision by the Disciplinary Council on January 2003 to permanently strike his name off the members' roll and also bring a criminal action against for allegedly "*pretending to be a lawyer,*" "*practicing the profession after having been forbidden to do so,*" and "*wearing a uniform.*"

Linda Besharaty-Movaed, Legal Advisor of the CIJL monitored the proceedings that took place before the 12th Appellate Panel of the Civil Court of Beirut on 15 October 2003. This was the second hearing before the Appellate Court; the first one took place on 8 October.

The disciplinary proceedings themselves are not the subject of this report but they have been closely examined as they form the underlying basis of the appellate hearings. The ICJ/CIJL concludes that the said disciplinary proceedings, which were initiated by the past president of the Beirut Bar Association, were tainted for their heavy reliance upon unpublished by-laws that formed the basis of the decision to strike Dr. Mugraby's name off the members' roll.

The ICJ/CIJL is also critical of the roles of the Disciplinary Council and the former President of the Bar in instituting the criminal charges of, *inter alia*, "*pretending to be a lawyer*" and "*wearing a uniform*" against Dr. Mugraby which resulted in his arrest and detention in August 2003. Furthermore, the fact that Dr. Mugraby's two lawyers have been subject to disciplinary actions for appearing as counsel during the criminal proceedings undermines Dr. Mugraby's right to representation and constitutes a violation of international principles on the role of lawyers.

Regarding the appellate proceedings, the ICJ/CIJL finds that Dr. Mugraby did not receive a fair trial by an independent and impartial tribunal, due to the presence of judges on the panel who serve in a dual capacity as assistant military

prosecutors within the military justice system. This assumption by the judges of the dual roles seriously impairs their impartiality and does not give the impression that “justice is seen to be done,” in particular, as Dr. Mugraby represents clients before military tribunals.

Moreover, the appellate proceedings must be examined within the wider context of other events that have triggered Dr. Mugraby’s prosecution: 1) His nomination for the presidency of the Beirut Bar Association; 2) his public campaign denouncing corruption within the Lebanese judiciary; 3) his vocal criticism of the presence of Syrian forces in Lebanon as well as the strong influence of Syria over Lebanese political institutions, and 4) his on-going defense of victims of human rights violations, including Lebanese political detainees in Lebanon and Syria. It is the opinion of the ICJ/CIJL that, for the reasons cited above, the Government of Lebanon is engaged in a concerted effort to persecute Dr. Mugraby and that the presidency the Beirut Bar Association and its Disciplinary Council have been used as instruments in this effort.

The ICJ/CIJL reminds the Government of Lebanon of its international obligations to guarantee the right to a fair trial, the right to have counsel of one’s own choosing, and the right to freedom of expression. The ICJ/CIJL, furthermore, calls upon the Government to allow all lawyers to perform their professional functions without intimidation, hindrance, harassment or prosecution.

II. Introduction

Dr. Mugraby is currently appealing to the civil appeals court two decisions of the Disciplinary Council of the Beirut Bar Association (hereinafter “BAB”) to discipline and strike his name off the members’ roll. The first decision of the Disciplinary Council, rendered on 4 April 2002, was that pursuant to Article 99 (3) of the *Law Organising the Legal Profession*, (commonly referred to as the *Code Organising the Legal Profession* and hereinafter “COLP”), Dr. Mugraby was restricted from practicing law for 3 years.¹

The Disciplinary Council found that Dr. Mugraby had slandered the judiciary and ...”*the President and the council of the Bar Association with publications and*

¹ Article 99 of *The Law Organising the Profession of Lawyer* No. 8/70 of 11 March 1970 states as follows:

“Any practicing or trainee lawyer, who fails to comply with the duties of his profession as defined in this law, or who, in the course of the profession or outside the profession, commits an action or behaves in a manner that dishonours the profession, shall be subject to the following disciplinary sanctions: 1- A warning, 2- A blame, 3- A suspension from practice for a maximum period of three years and 4- The striking off the roll of his name.”

*memoirs that all aimed at derogating and doubting the integrity of the Judiciary and the credibility of the Council of the Bar Association.”*² These disciplinary charges followed a criminal slander lawsuit filed by a former head of the BAB against Dr. Mugraby on 17 November 2001 on some of the same grounds as the disciplinary proceedings, (i.e., slander of the president and council of the BAB). The criminal slander case is currently pending and Dr. Mugraby filed appeals to challenge the decision of the Disciplinary Council.

Meanwhile, Dr. Mugraby continued to represent clients and the BAB continued to accept his annual Bar fees and the registration of his power of attorney at the Bar. However, the BAB Disciplinary Council decided unanimously on 17 January 2003, “...to strike Dr. Muhamad Mugraby off the register of lawyers as of the date of this decision according to the provisions of article 99 of the COLP, the bylaws, the ethics and the traditions of the profession...in absentia...”³ Dr. Mugraby challenged the legality of this decision and continued to practice law. Please see p. 7 for further discussion of the appellate hearings to challenge the disciplinary decisions.

This led to the second criminal lawsuit filed against him by the former President of the BAB on 21 July 2003, charging him with “*pretend[ing] to be a lawyer*” and “*practicing the profession after having been forbidden to do so*” in violation of Articles 110 and 111 of the COLP and the by-laws. He was, furthermore, charged with “*wearing a uniform*” and “*pretending to be a lawyer*” in violation of Articles 391 and 393 of the Penal Code. On the basis of the criminal charges, Dr. Mugraby was arrested on 8 August 2003 and detained for three weeks. Please see page 5 for further discussion of Dr. Mugraby’s arrest and detention.

III. Disciplinary Decisions of the Disciplinary Council of the BAB that are the subject of the current appeal

Despite the fact that the disciplinary proceedings themselves are not the subject of this report, they have nevertheless been closely examined as they form the underlying basis of the appellate hearings.

In its 17 January 2003 decision, the Disciplinary Council found, *inter alia*, that Dr. Mugraby:

- Brought a lawsuit against the Bar Association without first obtaining permission from the President of the Bar Association according to Art. 94 of the bylaws

² See attached Annex A, the Decision of the Disciplinary Council of the BAB, 4 April 2002.

³ See attached Annex B, Decision No.2 of the Disciplinary Council of the BAB, 17 January 2003.

- Refused to receive notification of measures pursuant to Art. 80 of the by-laws
- Refused to be summoned to the office of the Bar Association and did not apologize for non-appearance
- Did not answer an investigator's questions and therefore breached Art. 107 of the by-laws
- Did not act in conformity with the dignity of the profession pursuant to Art. 99 and Art. 80 of the COLP
- Did not show the "required level [of respect]" in his dealings with the president of the Bar Association and the Bar

In the opinion of the ICJ/CIJL, the decision of the Disciplinary Council to strike Dr. Mugraby's name off the members' roll is defective in several respects, one of the most salient of which is its apparent heavy reliance upon unpublished by-laws to discipline and disbar lawyers. Although the COLP is a public document that has been voted on by Parliament and duly published in the Official Gazette, the by-laws do not have the force of law. Furthermore, the creation of the said by-laws generates much criticism as they are allegedly subject to frequent amendments and are not published or updated in an official gazette, in any other official text, or readily made available to lawyers, who, like Dr. Mugraby, may be disciplined based upon such by-laws of which they have no knowledge.⁴

Thus, for example, Dr. Mugraby has been accused of violating Art. 94 of the by-laws. This provision reportedly requires that in order to bring a lawsuit against the BAB, prior permission from the President of the BAB must be obtained. However, it is nowhere indicated in the COLP that such permission is required. Indeed, Art. 94 of the COLP states that, "*A lawyer shall not accept a mandate in a case against a colleague nor initiate personal proceedings against a colleague before obtaining the authorization of the President of the Bar.*" It thus appears that the past President of the BAB, Mr. Raymond Chedid, and the Council of the Bar used unpublished by-laws to expand upon the definition of Art. 94 of the COLP to prosecute Dr. Mugraby.

As Dr. Mugraby is the subject of disciplinary proceedings filed by the BAB Council and its past President, and as he has also has filed several lawsuits against them, the Council's requirement that Dr. Mugraby must obtain prior consent from the President, before being able to bring an action against the BAB or its members creates a clear conflict of interest wherein the President of the BAB becomes both the judge and the defendant in the case against him. This incongruous situation is exacerbated by the fact that as the by-laws do not have the force of law and as they are not published or made known in any other way, a lawyer seeking to challenge the Council and its President or defend himself in disciplinary proceedings has no prior knowledge that he needs to obtain the said

⁴ It appears that 1972 was the last time that the by-laws were published.

permission. It is therefore alarming that a lawyer's name should be struck off the members' roll for allegedly not abiding by such by-laws.

Moreover, the ICJ/CIJL is concerned that the composition of the Disciplinary Council may not have been in accordance with Art. 96 of the COLP in that rather than having one Council decide disciplinary matters pertaining to lawyers, Mr. Chedid created *three* different Disciplinary Councils.⁵ Mr. Chedid informed the ICJ/CIJL in a meeting that a decision was taken that the President of the BAB could create as many Disciplinary Councils as he deemed necessary, however, this is not provided for in the COLP.

IV. Arrest and Detention of Dr. Mugraby in August 2003

Dr. Mugraby was arrested on 8 August after a four-hour interrogation at a special unit of the detective squad to which he had been ordered to report by two police officers. This unit is under the command of the General Prosecutor of the Court of Cassation in Beirut, Mr. Adnan Addoum. Dr. Mugraby was charged with "*pretend[ing] to be a lawyer*" and "*practicing the profession after having been forbidden to do so*" in violation of Articles 110 and 111 of the COLP and the by-laws. He was, furthermore, charged with "*wearing a uniform*" and "*pretending to be a lawyer*" in violation of Articles 391 and 393 of the Penal Code.

Dr. Mugraby, who is 65 years old, was placed under preventive detention the same day and held at Roumieh Prison in Beirut for three weeks before being released, after he had brought several challenges to his detention. Article 107 of the Code of Criminal Procedure defines the criteria under which a judge may order a preventive arrest, "*This arrest should be the final recourse for the preservation of witnesses, evidence, integrity of the case, as well as for the defendant's own protection.*"

As it does not appear that Dr. Mugraby presented a risk pursuant to any of the Article 107 criteria, the ICJ/CIJL considers that his detention was arbitrary and against the law and in violation of Article 9.1 of the International Covenant on Civil and Political Rights to which Lebanon is a State party.⁶ The Human Rights

⁵ Art. 96 of the COLP states that,

"The Disciplinary Council shall be chaired by the President of the Bar or by his delegate, and shall include two members chosen by the President among the members of the Council for a period of one year; one of the two members may be a lawyer who has been registered on the roll for at least ten years. The members of the disciplinary court as well as the lawyer appearing before it and his legal counsel shall all wear the lawyers' gown."

⁶ Article 9(1) of the International Covenant on Civil and Political Rights states:

"Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his

Committee, the expert body charged with monitoring the implementation of the International Covenant on Civil and Political Rights, has defined arbitrary detention not only as a detention that is “against the law,” but also when elements of inappropriateness, injustice, and lack of predictability are present.⁷

Furthermore, Dr. Mugraby’s arrest and detention violated the UN Principles on the Role of Lawyers. Principle 16 states,

*Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; ... (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.*⁸

The investigative judge subsequently decided that there were no grounds for prosecution based upon Articles 110 and 111 of the COLP and the by-laws. However, he ruled that the case would proceed on the other charges, e.g., “wearing a uniform” and “pretending to be a lawyer” in violation of Articles 391 and 393 of the Penal Code. The public prosecutor and Dr. Mugraby both appealed and on 22 October, the Appellate Court reinstated the charges under Articles 111, 391 and 393 but not under Article 110. Dr. Mugraby has prepared an appeal to the Court of Cassation against the decision.

During his detention, the court asked the Council of the BAB, on four separate occasions, to provide an opinion on whether Dr. Mugraby should be released. On each occasion, the Council responded in writing that it was opposed to Dr. Mugraby’s release. The last letter from the said Council opposing Dr. Mugraby’s release was dated 19 August 2003 and was signed by the former BAB President, Mr. Chedid. These letters point to the important role that Mr. Chedid and the Council of the BAB played in supporting Dr. Mugraby’s prosecution, arrest and detention.

The ICJ/CIJL addressed an intervention on 15 August 2003 to the Lebanese Government calling for Dr. Mugraby’s immediate release from detention and exhorting the Government to respect its international treaty obligations as well as

liberty except on such grounds and in accordance with such procedures as are established by law.”

⁷ *Albert Womah Mukong v. Cameroon*, 21 July 1994, UN Doc. CCPR/C/51/D/58/1991, p.12.

⁸ Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana in 1990, and welcomed by the General Assembly in Resolution 45/121 of Dec. 14, 1990. G.A. Res. 45/121, 45th Session.

the UN Principles on the Role of Lawyers.⁹ The Government has not responded to this communication, however, Mr. Chedid sent a letter of reply which did not adequately address the ICJ/CIJL's concerns.

A request by the ICJ/CIJL's for a meeting on 15 October with the General Prosecutor, Mr. Adnan Addoum, was turned down.

V. Description of the Appellate Proceedings to Challenge the Decisions by the Disciplinary Council

According to Art. 108 of the COLP, decisions of the Disciplinary Council of the BAB can be appealed to the Court of appeal. This article, in relevant part, states that:

The lawyer as well as the prosecution department of the Court of appeal are entitled to appeal any decision of the Disciplinary CouncilThe appeal of the decisions of the Disciplinary Council shall be submitted to the Court of appeal which shall hear it "in camera" after having been joined by two members of the Council of the Bar chosen by said Council among those members who did not examine the case in first instance. The appellant shall be entitled to one lawyer only.

The 12th Appellate Panel of the Civil Court of Beirut was composed of three judges: Judge Abu-Nacif who is the President of the 12th Appellate Panel, Judge Ahmed Owaidat and Judge Nassib Elya. There was some debate as to whether the ICJ/CIJL observer should be allowed to monitor the "in camera" proceedings, however, as Dr. Mugraby explained that he waived the confidentiality requirement, Judge Abu-Nacif allowed the observer to remain.

(1) Evaluation of the Fairness of the Proceedings

Several irregularities were noted which compromise the right to a fair trial by an independent and impartial tribunal. In particular, Principle 28 of the UN Principles on the Role of Lawyers requires that,

Disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court, and shall be subject to an independent judicial review.

For the reasons cited below, the ICJ/CIJL believes that Dr. Mugraby was denied the right to an independent judicial review and that as his lawyers have been suspended from practicing law for two months for having represented him, his right to representation has also been severely jeopardized.

⁹ See attached Annex C, ICJ/CIJL intervention, 15 August 2003.

(2) The right to be tried by an independent and impartial tribunal

(a) Judges on panel who are seconded as military prosecutors

Article 20 of the Constitution of Lebanon calls for the independence of the judiciary.¹⁰ The right to a fair trial by an independent and impartial tribunal is so basic that the UN Human Rights Committee has stated that it “*is an absolute right that may suffer no exception.*”¹¹ Furthermore, the right to a fair trial before an independent and impartial tribunal requires that “*justice must not only be done, it must also be seen to be done.*”¹²

The principle of impartiality, which includes actual impartiality and the appearance of impartiality, requires that each of the decision-makers be unbiased and that they do not have preconceived opinions about the case. In this regard, Principle 2 of the UN Principles on the Independence of the Judiciary states that,

*“The judiciary shall decide matters before it **impartially**, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressure, threats or interferences, direct or indirect, from any quarter or for any reason.”*¹³

Moreover, the independence of the judiciary requires that the officials responsible for the administration of justice be completely separate from those responsible for prosecutions. In this regard, Guideline 10 of the United Nations Guidelines on the Role of Prosecutors states that, “*The office of the prosecutors shall be strictly separated from judicial functions.*”¹⁴

¹⁰ Article 20 states that, “The judges are independent in the exercise of their duties.”

¹¹ *Gonzalez del Rio v. Peru* /263/1987), 28 October 1992, Report of the HRC, vol. II, (A/48/40), 1993, 20.

¹² European Court of Human Rights, *Delcourt v. Belgium*, 17 January 1970, 11 Ser.A 17, para. 31.

¹³ Basic Principles on the Independence of the Judiciary, adopted by Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan 1985, endorsed by General Assembly Resolution 40/32 of 29 November 1985 and Resolution 40/146 of 13 December 1985. See G.A. Res. 40/32, UN GAOR, 40th Sess., Supp. No. 53, at 204, UN Doc. A/40/53 (1985); Res. 40/146, UN GAOR, 40th Sess., Supp. No. 53, at 254, UN Doc. A/40/53 (1985).

¹⁴ The UN Guidelines on the Role of Prosecutors were adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

¹⁵ CCPR/C/79/Add.78, p. 3.

In view of the above, the ICJ/CIJL has misgivings relating to the independence and impartiality of the appellate tribunal as two of the three judges on the panel, Judge Ahmed Owaitat and Judge Nassib Elya, are seconded by the judiciary to the military as assistant military prosecutors.

The ICJ/CIJL is concerned that these two judges may not be impartial and unbiased, particularly as Dr. Mugraby represents clients before military tribunals wherein the judges serve as assistant military prosecutors. Furthermore, the assumption by the judges of the dual roles of judge and military prosecutor undermines the principle of the separation between the office of the prosecutor and the judge. Thus, the lack of actual and perceived impartiality of the two judges has a negative impact on the independence of the tribunal. The ICJ/CIJL is therefore of the opinion that the composition of the tribunal violated Dr. Mugraby's right to be tried by an independent and impartial tribunal pursuant to the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

The UN Human Rights Committee has also voiced its reservations regarding the independence and impartiality of the judiciary in Lebanon. In its concluding observations on Lebanon in 1997, the Committee stated as follows:

*"...the Committee expresses concern about the independence and impartiality of the State party's judiciary, and notes that the delegation itself conceded that the procedures governing the appointment of judges...were far from satisfactory...The Committee therefore recommends that the State party review, as a matter of urgency, the procedures governing the appointment of members of the judiciary, with a full view to ensuring their full independence."*¹⁵

(b) Presence of BAB Council Members on Panel

Pursuant to Article 108 of the COLP cited above, "The Court of appeal [shall be] joined by "two members of the Council of the Bar chosen by said Council among those members who did not examine the case in first instance." The ICJ/CIJL was satisfied that, further to Dr. Mugraby's motion, the Court accepted the recusal of the BAB Council members due to the fact that these persons are respondents in the instant lawsuits thus creating a conflict of interest.

(3) Right to Representation

Dr. Mugraby was represented by two lawyers from his law firm, Mr. Muhamed Fakih and Mr. Jihad Abu-Nader, in the aforementioned criminal proceedings, (the proceedings resulted in Dr. Mugraby's detention based upon alleged

violations of Article 110 and 111 of the COLP and the by-laws and Articles 391 and 393 of the Penal Code). In accordance with the by-laws, the two lawyers filed an appearance for Dr. Mugraby on 9 August and requested authorization on 25 August from Mr. Chedid to represent Dr. Mugraby, (as pointed out previously, such permission is not required under the COLP).

Despite the fact that Mr. Fakhri and Mr. Abu-Nader were granted permission to represent Dr. Mugraby on 27 August, the Disciplinary Council decided to initiate disciplinary proceedings against them. Both lawyers were suspended on 31 October from practicing law for two months.

Thus, Dr. Mugraby did not benefit from any representation at the time of the appellate proceedings in violation of Article 378 of the Lebanese Code of Civil Procedure which states that, "*Representation by counsel is obligatory in all cases with a value over \$200.*"

Furthermore, the fact that Dr. Mugraby's lawyers were disciplined for having represented him in criminal proceedings is an outright attack on lawyers who are discharging their professional duties. As such, the disciplinary measures violate the right of lawyers to be "*...able to perform all of their professional functions without intimidation, hindrance, harassment, or improper interference...*" pursuant to Principle 16 of the United Nations Basic Principles on the Role of Lawyers. Disciplining Dr. Mugraby's lawyers also constitutes a violation of Principle 18 of the aforementioned UN Principles which states that, "*Lawyers shall not be identified with their clients' causes as a result of discharging their functions.*"

Moreover, international standards, such as the Article 14(3)(d) of the International Covenant on Civil and Political Rights and Principle 1 of the UN Basic Principles on the Role of Lawyers provide that everyone accused of a criminal offence has the right to have the assistance of counsel of his or her own choosing. This action further sends a chilling message to any lawyer who, in the future, contemplates representing Dr. Mugraby. Indeed, the ICJ/CIJL has been informed that no other lawyer in Beirut or Tripoli who has been approached by Dr. Mugraby will agree to represent him for fear of similar prosecution.

In an intervention addressed to the Lebanese Government on 7 October 2003, the ICJ/CIJL urged that the disciplinary proceedings against Dr. Mugraby's lawyers be withdrawn and that they undergo no further prosecution for the discharge of their professional duties.¹⁶ To date, the ICJ/CIJL has not received a response to this communication.

The ICJ/CIJL concludes that the attacks on Dr. Mugraby's lawyers constitute a violation of their right to discharge their professional duties. These attacks are,

¹⁶ See attached Annex D, ICJ/CIJL intervention, 7 October 2003.

furthermore, in violation of Dr. Mugraby's right to be represented by counsel of his own choosing.

Mr. Chedid informed the ICJ/CIJL that he would appoint a lawyer to represent Dr. Mugraby, however, as indicated above, international standards require that the lawyer be of Dr. Mugraby's choosing.

4) The Conduct of the Trial

The ICJ/CIJL is concerned that the court stenographer did not have the technological means to keep an official record of the proceedings. Rather, the court clerk jotted down in long hand the judge's summaries of statements made by the parties. The procedure as presently followed could be said to deprive a higher court of review, such as the Court of Cassation, of any accurate record of the proceedings.

The ICJ/CIJL is also worried that the principle of equality of arms may not have been respected as Dr. Mugraby was not provided with all documents relating to his case. Some of the documents were those relating to the appointment of the disciplinary council and a prejudicial letter sent by Mr. Chedid to the President of the Higher Judicial Council.

The hearings have been adjourned to **17 December 2003**.

VI. Background information on Dr. Mugraby

Dr. Mugraby, a leading Lebanese human rights activist, was born to a Sunni Muslim family in Beirut on 5 December 1938. He is a graduate of the Lebanese University School of Law and Columbia University Law School.

(1) Human Rights Defense

In the 1990's, Dr. Mugraby defended before military tribunals Lebanese political prisoners who were imprisoned in Lebanon and in Syria. He has continued to criticize the strong Syrian presence in Lebanon and its control over political institutions. The *U.S. Department of State Country Report on Human Rights Practices in Lebanon* states that:

"Strong Syrian influence over local politics and decision makers made officials unwilling to press for further progress on fulfilling Taif agreements, including Syrian withdrawal. Since the Taif Accord was signed, no government has requested formally the withdrawal of Syrian

*forces. The Government's relationship with Syria did not reflect the will of most of the country's citizens."*¹⁷

In 1999, Dr. Mugraby began campaigning for integrity in Lebanon's judiciary and held press conferences where he made a number of specific allegations of corruption against high-ranking judicial officers who had links to important political figures.

Determined to put an end to Dr. Mugraby's criticism of the Government and his campaign against judicial corruption, the Government and some members of the BAB, most notably its past president, have been engaged in an all-out campaign to prosecute this lawyer. This is, in fact, public knowledge. According to the *U.S. Department of State Country Report*,

*"In 2001, the State Prosecutor's Office requested that the Bar Association lift the immunity of lawyer Muhammad Mugraby to permit Mugraby's persecution for criticizing the country's judicial system at a press conference. The Bar Association complied with the request; at year's end, Mugraby's challenge of the decision remained pending."*¹⁸

Furthermore, Dr. Mugraby's has also attracted the attention of the Government for his representation of more than sixty persons who were forcefully dispossessed after SOLIDERE, a real estate development company controlled by Prime Minister Rafic Hariri, was granted ownership of their homes and shops in the old city of Beirut.

(2) Nomination for the Presidency of the Bar

Dr. Mugraby's nomination for Presidency of the Bar has exacerbated his problems with the Government. In fact, it is widely believed that his nomination for presidency of the Bar triggered his detention in August 2003.

In June 2003, Dr. Mugraby was nominated by a large number of members of the BAB to succeed Mr. Chedid as President in the elections that took place in November 2003. This nomination was rejected by Mr. Chedid and the Council of the Bar on the grounds that Dr. Mugraby's name was allegedly struck off the

¹⁷ *U.S. Department of State Country Report on Human Rights Practices in Lebanon, 2002*, p. 1. The 1989 Taif Accord is a peace settlement to end the civil war.

¹⁸ *Ibid.* p. 4.

members' roll. Dr. Mugraby appealed the decision to refuse his nomination but the Appellate Court presided upon by Judge Abu-Nacif rejected the appeal.

To date, the majority of BAB presidents have been Maronite Christians who are not from Beirut. A small minority was elected from non-Maronite Christian faiths, but never from among Muslims. Dr. Mugraby, a strong secularist who believes in the separation of church and state, would have been the first Beirut Muslim president to have been nominated.

(3) Persecution of family members and colleagues

As part of a concerted effort to harass Dr. Mugraby, members of his family and close associates have been threatened and prosecuted as well. When Dr. Mugraby was in detention, a former member of the Council of the BAB, Mr. Hamadeh contacted Dr. Mugraby's wife on behalf of Mr. Chedid and threatened her that Dr. Mugraby would remain in jail for three years unless he abandoned his human rights activities and agreed to apologize to Mr. Chedid.

Ziad Mugraby, Dr. Mugraby's son, who is an information technology expert and internet service provider, was charged with hosting a gay site on his internet service. He was tried and convicted by the military court, but his prison sentence of two years was commuted to a fine of two hundred dollars. Subsequently, he was charged again by a civil prosecutor and tried before a regular criminal judge. He argued that he did not have knowledge of the thousands of domain names that he registers as part of his job and that the gay site in question had nothing to do with his service. He was thereafter exonerated.

Moreover, Kamal el-Batal, the director of the human rights group Multi-initiative on Rights: Search, Assist, Defend (MIRSAD) was convicted in March 2002, together with Dr. Mugraby's son, by the military court for "*tarnishing the reputation of the police vice squad*" a criminal offence that carries a term of 6 months to three years imprisonment. Mr. Batal appealed against the verdict and was acquitted of all charges.¹⁹

VII. Conclusion

In the appellate proceedings observed by the ICJ/CIJL, it was noted that the tribunal was not impartial and independent as two of the judges also undertake roles as assistant military prosecutors within the military justice system. The assumption of both roles by the appellate court judges causes grave concern as to the actual or perceived impartiality of the tribunal.

¹⁹ See also, Amnesty International Report 2002, Lebanon, pp. 155 -156.

Furthermore, the ICJ/CIJL finds that Dr. Mugraby's right to have counsel of his own choosing was violated as his lawyers themselves have been suspended for having represented him in a criminal action. These lawyers therefore could not represent Dr. Mugraby in the appellate hearings. The suspension of Dr. Mugraby's lawyers also serves to send a chilling message to other lawyers who may be involved in human rights work or in denouncing judicial corruption.

Moreover, the ICJ/CIJL is also worried that the principle of equality of arms may not have been respected in the appellate proceedings as Dr. Mugraby was not provided with all documents relating to his case.

The ICJ/CIJL concludes that the prosecution of Dr. Mugraby and the harassment of his lawyers, family members, and colleagues is politically motivated and influenced by various factors such as: his public campaign denouncing judicial corruption; his vocal criticism of the presence of Syrian forces in Lebanon and the strong influence that Syria exerts over Lebanese political institutions; his ongoing defense of victims of human rights violations, and his nomination for the presidency of the Beirut Bar Association.

The ICJ/CIJL urges the Government of Lebanon to respect its international obligations to guarantee the right to a fair trial, the right to have counsel of one's own choosing, and the right to freedom of expression. The ICJ/CIJL exhorts the Government to allow all lawyers to perform their professional functions without intimidation, hindrance, harassment or prosecution.