

LAWYERS' RIGHTS WATCH CANADA

Promoting human rights by protecting those who defend them

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To Whom It May Concern:

I am writing on behalf of Lawyers Rights Watch Canada (LRWC) in relation to the sentencing of Lynne Stewart scheduled for July 15, 2005. The purpose of this correspondence is to express LRWC's alarm and concern regarding the conviction of Lynne Stewart and its possible chilling effect on the independence of United States' attorneys and their consequent inability to effectively represent clients charged with acts of terrorism.

LRWC is a committee of Canadian lawyers involved in promoting human rights and the rule of law by providing support internationally to human rights defenders in danger. Through its active engagement in providing support and acting on behalf of advocates in danger LRWC implements and enforces international standards designed to protect the independence and security of human rights defenders around the world.

It is the view of LRWC that the existing laws and legal procedures under which Lynne Stewart was convicted appeared to have been used as a tool to intimidate and punish an advocate for vigorously representing an unpopular client. Such actions against Lynne Stewart or any other attorney would be in violation of international standards set up by United Nations and by the Organization of American States. (Organization of American States Treaty Series No.36).

The Special Administrative Measures (SAMs) enacted in 1996 and later amended in 2001, allowing the government to exercise an unprecedented right to videotape and audiotape client's communications with his or her lawyer in certain situations, violate Article 16 of the Basic Principles on the Role of Lawyers, welcomed by the UN General Assembly in 1990. U.N. Doc. A/CONF. 144/28/Rev.1 at 118 (1990). 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;”

The public interest in suppressing terrorism (the purpose of SAMs) must be appropriately balanced with the public interest in maintaining the substantive right to be represented by

maintaining the independence of lawyers and their right to privileged communications with their clients. The importance to the integrity of the legal system of safeguarding attorneys' independence cannot be overstated. As observed in *Lawyers and Ethics*:

“We can appreciate the fundamental importance of an independent bar only by contrasting the treatment of lawyers in Western democracies and in repressive regimes. In the regimes of Stalin, Hitler, the Greek Colonels, and the Chinese Cultural revolutionaries, among others, vigorous and independent lawyers who have acted for clients whose views or conduct the government has deplored or feared have been harassed, ill-treated, prevented from practising their profession and in some instances even murdered, either by or with the complicity of the government. The cunning revolutionary in Shakespeare's King Henry VI who said, “First, let us kill all the lawyers” knew that totalitarianism could not survive a strong and independent bar.”¹

The attorney's ability to communicate candidly with his or her client is the foundation of any effective defense. By being subjected to SAMs, Stewart was prevented from performing her professional duties to her client “without intimidation, harassment, or improper interference” in violation of Article 16 of the Basic Principles on the Role of Lawyers and the provisions of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms adopted by the UN General Assembly 8 March 1999, A/RES/53/144.

It is our understanding that Lynne Stewart was convicted of conspiring and providing support for terrorism because she was present when certain letters were written by her clients and two of his confederates and because she released a statement saying that her client was “withdrawing his support for a ceasefire that currently exists in Egypt”. While this may have been a violation of the SAMs under which her client was not to have outside contact with the world (also debatable because she was the one disseminating the information), her conviction on a charge of aiding terrorism cannot be legally explained as there was never a terrorist act which followed from her actions nor was there any specific act of support for her client's cause that falls under the definition of aiding terrorism. It is our view that this irrational verdict reached out of ever present fear of terrorism and based on recently implemented regulations which itself violates international instruments aimed at safeguarding human rights, serves as a threat to all American attorneys having to act on behalf of clients charged with acts of terrorism.

Article 8 of the Organization of American States Treaty Series No. 36, to which United States is a party, sets out a number of minimum guarantees to ensure fair trial standards as well as the rights of an accused to prepare an effective defense. For example, under Article 8, an accused has the right to an attorney, adequate time and means for preparation of his defense, and the right not to be compelled to be a witness against

¹ G. MacKenzie, *Lawyers and Ethics: Professional Responsibility and Discipline* (Toronto: Carswells, 1993) at 26-27.

himself or to plead guilty. Under the conditions imposed by SAMs Lynne Stewart and her client could not have had 'adequate means' to prepare a defense due to the constant surveillance and because no protected communications could occur as the government could use anything that was said in the trial against her client. Such conditions violate accepted standards protecting advocacy rights.

The U.S. government is obliged by law including the UN Basic Principles on the Role of Lawyers, to ensure that attorneys;

“(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.” (Principle 16(c))

Lynne Stewart's conviction has all the appearances of an unprecedented violation of the U.S. and international independence safeguards necessary to effective advocacy. Her conviction has sent a chilling message to attorneys and the public that people charged with terrorism-related charges will be denied proper representation and denied the right to make full answer and defense.

We respectfully request that LRWC be advised of any action taken and of further developments on the case.

Thank you very much for your time and consideration.

Sincerely,

Una Radoja,
Gail Davidson,