

that fuelled public outrage, including that: Dutroux had been released in 1992 after serving only three years of a 13-year sentence for the rape of several other young girls; the police had in fact been present at Dutroux's house while the girls were being held there; the police failed to act even though they had been informed in 1993 that Dutroux had been building cells in his home allegedly to hold girls before sending them overseas; on 16 October 1996, the Court of Cassation ruled that the investigating magistrate who had found the two girls alive, Connerotte, should be removed from the case for violating his duty under Belgian law to remain strictly neutral; and, the decision to remove Connerotte was based upon the fact that he had attended a fund-raising dinner for the parents of the victims, thereby calling into question his neutrality. The report notes that under Belgian law the investigating magistrate is entrusted with the task of preparing a file in support of both the defence and the prosecution.

As a result of the Dutroux case, a number of proposals for reform of the judicial system were made, including one related to the procedure by which investigating magistrates and prosecutors are appointed. The report notes that judges have been appointed by the King and the legislature in the belief that such political appointments would lead to a judiciary representative of society. This assertion has been counter-argued, however, on the basis that the process has led to a judiciary dependent upon the political parties and, as a consequence, given rise to a lack of confidence in the ability of the judiciary to apply the rule of law in an independent and impartial manner.

In addition to proposed reforms dealing with the process for the appointment of Justices of the Peace, Judges of the Police Tribunal, and the Tribunals of First Instance, the report refers to efforts made to address issues such as the disciplining of judges and the supervision of the judiciary. The report notes that concerns were expressed to the SR that some of the proposals, if implemented, could undermine the independence of the judiciary. Given that the reform process was still under debate at the time of the mission, the SR considered it premature to reach any final conclusions but the report expressed concern that insufficient attention was being given to international standards for ensuring judicial independence. Referring to the UN Basic Principles on the Independence of the Judiciary, the report notes a number of points, including that the Principles stipulate, *inter alia*: the method of judicial selection shall safeguard against judicial appointments for improper motives; when a charge or complaint is made, the judge shall have the right to a fair hearing and the examination of the matter at its initial stage shall be kept confidential, unless otherwise requested by the judge; and self-discipline should be the norm.

The commentary on the Parliamentary Commission of Inquiry (the Dutroux Commission) notes that: the Commission was set up, in part, to inquire into deficiencies in the justice system and whether there was any political involvement or pressure exerted; several magistrates were invited to appear before the Commission; the hearing was made public and televised; several Magis-

trates complained that the way in which the Commission conducted its inquiry made it appear that they, the Magistrates, were on indictment; several Magistrates felt humiliated; and some Magistrates felt that it was staged to appease public resentment of the judiciary. The SR stated that he had not had the opportunity to study the findings of the Commission but nevertheless expressed reservations on the appropriateness of a parliamentary commission to look into issues related to the judiciary, bearing in mind the doctrine of separation of powers and the need for the proceedings to be made public, particularly through the electronic media.

The section of the report dealing with the removal of Connerotte recalls that the grounds for removal were based on a number of considerations, including that: the impartiality of judges is a fundamental rule of the judiciary and guarantees to persons on trial the impartial application of law by judges; the essential condition for impartiality is total independence vis-à-vis the parties so as to avoid any suspicion of partiality in the investigation of facts, whether for the prosecution or the defence; an examining magistrate who has been entertained by one of the parties at the latter's expense, and who has accepted gifts from or shown sympathy towards that party, may consequently not continue to investigate the case without raising doubts in the minds of others, particularly the defendants, about the magistrate's ability to perform the functions of the office objectively and impartially.

The report states that following discussion during the mission and taking into account all available information, the decision to remove Connerotte was consistent with the highest traditions of the independence and, in particular, impartiality of the judiciary. The SR found no evidence that there were any ulterior motives for this decision and, despite immense public pressure to decide otherwise, the Court had faithfully applied the rule of law and maintained the principles of the profession.

The report underlines several points, including that: the public emotional outburst resulting in the unprecedented street demonstration was understandable under the circumstances; the same public should have been advised of the important principle of an independent justice system, which the Court of Cassation upheld in its decision; the public should have been further advised that the right to an independent and impartial justice system is the right of all consumers of justice and not the right or privilege of the judges and lawyers; the rule of law dictates that there are times when courts have to make unpopular decisions which may not find favour with the public; there will be anarchy if judicial decisions are tailored to meet the demands of street demonstrations; and the allegations against the Court of Cassation amidst public emotion were not justified.

In light of the ongoing nature of the process of reform in Belgium, the SR did not include specific recommendations in the report. The report does conclude however, with the following observations: there is a crisis of public confidence in the administration of justice in Belgium;