

Mandates of the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran

REFERENCE:
AL IRN 26/2021

1 October 2021

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the independence of judges and lawyers and Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, pursuant to Human Rights Council resolutions 44/8 and 46/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning a **series of legislative efforts which appear to undermine the independence of the Bar Associations in Iran**. These measures culminate in the new bylaws for the Bar Association issued by the Judiciary on 23 June 2021 as well as a judicial directive issued on 14 November 2020, which establishes *the General Office for Supervision of Lawyers* under the auspices of the Judiciary. The bylaws and the directive would dismantle the independence of the Bar Associations and the lawyers in the Islamic Republic of Iran as well as the right to fair trial of individuals.

The issuance of this bylaw and directive is the latest of a series of a number of policies and regulations concerning the Bar Associations in Iran, which constitute interferences in the independence of the legal profession and are at odds with the Islamic Republic of Iran's obligations under international human rights law.

Concerns at interferences with the independence of the legal profession were raised in a previous communication by Special Procedures mandate holders, sent on 30 July 2015 (ref. no IRN 10/2015). We regret that your Excellency's Government did not respond to the communication. Concerns at the harassment and criminal prosecution of lawyers, in particular human rights lawyers, are regularly raised in communications by Special Procedures to your Excellency's Government.

According to information received:

The Iranian Bar Association was founded in 1915 and achieved full independence in 1953 following the adoption of the *Bar Association Independence Law*, which defines the legal framework for the organization and operation of the bar association. The *Bar Association Independence Law* provided the right to grant and revoke licenses to practice law to the Bar Association itself without any interference from the Government. The *Bar Association Independence Law* also provided all provinces in Islamic Republic of Iran with over 60 lawyers the right to form their own bar association. Currently, there are 25 regional Bar Associations based on geographic location.

The *Bar Association Independence Law* establishes that the bar association is responsible for the disciplinary proceedings of lawyers. The self-regulatory disciplinary bodies consist of the Disciplinary Committee and Disciplinary

Court of Lawyers at each Bar Association. The *Law of Bar Association Independence* stipulates that a lawyer cannot be suspended or prohibited from practicing law except by the final ruling of the Disciplinary Court of Lawyers at the Bar Association (article 17). These bodies are composed of senior lawyers selected by the board of directors. The private plaintiffs can file suites in Disciplinary Committee and the Disciplinary Court of Lawyers (articles 13, 14). Judges and prosecutors can also report disciplinary offences of lawyers to the Disciplinary Committee of the respective Bar Association. The Disciplinary Committee takes a decision on whether to commence the disciplinary proceeding at the Disciplinary Court of Lawyers. If the Disciplinary Committee decided there are not characteristics of a disciplinary offence, it will notify the provincial prosecutor. If the provincial prosecutor disagreed with this decision, the provincial prosecutor can directly request the Disciplinary Court of Lawyers to investigate (article 15). Certain decisions of the Disciplinary Court of Lawyers can be appealed in the Supreme Disciplinary Court for Judges under the auspices of the Judiciary (article 14).

Restrictions on the Election of Board of Directors

The *Bar Association Independence Law* provided that the bar association's board of directors should be elected without the involvement of the Government. Following the 1979 revolution, the Government halted the elections of the board of directors of Bar Associations for 18 years. From 1984 to 1997, a lawyer appointed by the Judiciary supervised the operation of Bar Associations.

Following the adoption of the *Law on Conditions for Obtaining the Attorney's License* in 1997, the Bar Association was allowed to resume the election of the board of directors, yet without the same independence as it had originally enjoyed. The *Law on Conditions for Obtaining the Attorney's License* introduced a new set of criteria for being admitted to Bar Associations, including commitment to the ideological framework of the Islamic Republic of Iran. The *Law on Conditions for Obtaining the Attorney's License* also subjected the elections of the board of directors to the control of the Judiciary. According to this law, the candidates for the Bar Associations' board of directors should be approved by the Supreme Disciplinary Court for Judges under the auspices of the Judiciary.

Article 2 and 4 of the *Law on Conditions for Obtaining the Attorney's License* set out that the candidates of the board of directors should satisfy, among other requirements, the following criteria: "Belief in and practical devotion to Islam and its precepts; Belief and commitment to the Islamic Republic, and primacy of an Islamic jurist (*velayet-e-faqih*), and the Constitution; Not being a member or having activity in atheist groups, misleading groups opposed to Islam as well as groups whose manifesto is based on negating divine religions; Not having the record of being an associate of the Pahlavi regime or strengthening the foundations of the former regime; Not having membership in or supporting outlawed groups opposed to the Islamic Republic of Iran; Not committing acts against dignity and honour of legal profession."

The Judiciary exerts its influence over the elections of the board of directors through the Supreme Disciplinary Court for Judges. The Supreme Disciplinary

Court for Judges reportedly disqualifies a significant number of candidates for each election of the board of directors, particularly human rights lawyers. In the most recent election for the board of directors of Central Bar Association, on 25 March 2020, the Supreme Disciplinary Court for Judges disqualified 35 out of 150 candidates for the board of directors. Among those disqualified for candidacy were former heads of the Central Bar Association and a number of prominent human rights lawyers.

Parallel state-controlled body of lawyers

In 2001, the Government created a parallel state-controlled body of lawyers under article 187 of the *Law of Third Economic, Social and Cultural Development Plan*. This body of lawyers, entitled “Legal Advisors of Judiciary”, operates in parallel to the Bar Associations under the direct supervision of the Judiciary. In September 2002, the Head of the Judiciary issued a directive for implementation of article 187 of the *Law of Third Economic, Social and Cultural Development Plan*. The directive established the “Centre for Legal Counsellors, Lawyers, and Experts of the Judiciary” within the Judiciary to supervise the admission and traineeship of the legal advisors of the Judiciary. The Centre for Legal Counsellors, Lawyers, and Experts of the Judiciary has its own examination and training. While the Bar Associations have an independent procedure for renewing licences, the Legal Advisors’ permits are renewed with the approval of the Judiciary. The Government has justified the introduction of Legal Advisors of Judiciary by the need for increasing the number of lawyers in the country. This is while there is already an arrangement for ensuring that the Government can request an increase in the number of lawyers. The 1997 *Law on Conditions for Obtaining the Attorney’s License* obliges the Bar Associations to hold the bar exam at least once a year (article 1), and stipulates that the number of new lawyers admitted to undertake traineeships in various bar associations is decided each year in a commission consisting of representatives of the Bar Associations and the Judiciary. Through this commission, the Government can request for increase in the number of lawyers.

The 2001 *Law of Third Economic, Social and Cultural Development Plan* established that the Legal Advisor of Judiciary was adopted as a five-year development plan. Despite the expiration of this law in 2006, the Judiciary admitted new trainees for legal advisors in 2017. In 17 February 2019, the Head of the Judiciary amended the former directive for implementation of article 187 of the *Law of Third Economic, Social and Cultural Development Plan*. The directive defines the framework for operation of the Centre for Legal Counsellors, Lawyers, and Experts of the Judiciary, while changing its name into “Center for Attorneys, Judicial Experts and Family advisors”. According to the directive, the head of the Center should be appointed by the Head of the Judiciary and the supervisory board of the Center consists of different judicial authorities. The directive allows the “Center for Attorneys, Judicial Experts and Family advisors” to continue to admit, train, and grant license to lawyers under direct control of the Judiciary. Considering that the *Law of Third Economic, Social and Cultural Development Plan* expired in 2006, there is no legal grounds for issuance of the directive and the continuation of activities the legal advisors of the Judiciary.

Article 48 of Code of Criminal Procedure

Article 48 of the Code of Criminal Procedure, adopted in 2015, restricted the right to be represented by a lawyer of one's own choice during the investigative phase of certain crimes. According to this article, individuals accused of acts deemed to be crimes against national security as well as certain organized crimes, including political and press crimes, crimes punishable by the death sentence and life imprisonment, should select their lawyers during the investigative phase from a list pre-approved by the Head of the Judiciary. In October 2018, the Head of the Judiciary introduced 63 lawyers in the list for the city of Tehran out of the around 25,000 members of the Central Bar Association.

Establishment of the General Office for Supervision of Lawyers

In October 2020, the Judiciary announced the establishment of a new judicial body entitled "General Office for Supervision of Lawyers". Prior to this, on 27 September 2020, the Judiciary's Deputy for Legal and Parliamentary Affairs stated "some lawyers are not acting in line with the revolution. The judiciary is not willing to confront the bar association, but we will undoubtedly take action against this type of lawyers".

On 14 November 2020, the Judiciary's Deputy issued a directive to the heads of Justice Departments in all provinces on duties and discretions of the General Office for Supervision of Lawyers.

The directive mandates the General Office for Supervision of Lawyers to monitor and report the transgressions by lawyers to the Supreme Disciplinary Court for Judges under the auspices of the Judiciary. Article 4 (C) of the directive states: "If the continued employment of lawyers is not in the interest [of the public] due to doubts about their competence, or disciplinary violations or criminal conviction, pursuant to article 18 of the Law of Bar Association Independence, the matter is reported to the Bar Association's Disciplinary Court. If the application is denied, the Supreme Disciplinary Court for Judges can be petitioned to investigate". Article 18 of the *Bar Association Independence Law*, referred in this article, only allows for the commencement of disbarment procedure by the Minister of Justice if a lawyer is charged with a disciplinary offence. In contravention of this provision, the new directive authorizes the judicial authorities to file a complaint against a lawyer in the Supreme Disciplinary Court for Judges without the lawyer being charged for a disciplinary violation. Furthermore, the directive holds the undefined term of "doubt in the competency of a lawyer" as a ground for requesting for revoking a lawyer's license.

The new directive also expands the scope of disciplinary violations and authorizes the Judiciary to investigate the private affairs of lawyers. Article 4 (D) of the directive mandates the General Office for Supervision of Lawyers to monitor and report "the observance of professional and Islamic norms and behaviour by lawyers and legal trainees, such as the observance of the Islamic hijab by female lawyers in judicial buildings and on social media as well as any violations or doubts as to practical commitment to Islam, the state of the Islamic Republic, the Constitution and the Supreme Leader". Accordingly,

female lawyers can face disciplinary action if they do not observe the Islamic hijab on social media. The directive also gives power to the Judiciary to request disciplinary actions against lawyers if “there are any violations or doubts as to the practical commitment of a lawyer to Islam, the state of the Islamic Republic, the Constitution and the Supreme Leader”.

The new directive also intensifies monitoring of the activities of Bar Associations’ board of directors. Article 4 (B) of the directive allows the General Office for Supervision of Lawyers to report the “lack of competencies” of the board of directors to the Supreme Disciplinary Court for Judges to disqualify the elected board members.

According to media reports, the Bar Associations Union has expressed its objection to the directive in a letter to the Head of the Judiciary on 14 November 2020, requesting the directive to be stopped.

The current status of the directive and the General Office for Supervision of Lawyers is not clear at the time of writing this letter.

Attempts to limit the self-regulatory power of Bar Associations

The current bylaws of the *Bar Association’s Independence Law* was adopted in 1955. Article 22 of the *Bar Association’s Independence Law* stipulates that the drafting of bylaws is the prerogative of the Bar Associations. According to this law, following the proposal from the Bar Associations, the bylaw will take effect after approval of the Minister of Justice. Despite the explicit stipulation of the law, the Judiciary has on several occasions attempted to introduce new bylaws. In June 2009, the Head of the Judiciary adopted a revision to the bylaw of the Bar Association’s Independence Law, which gave the Judiciary the decisive role to approve lawyers’ licensing applications and renewals. According to reports, following the strong objections from the Bar Associations, the then Head of the Judiciary suspended the enforcement of the proposed bylaw.

In March 2020, a new bylaw was proposed by the Judiciary. Prior to this, on 19 February 2020, the Judiciary requested the Bar Associations to submit their proposals for a new bylaw to replace the existing bylaw of the Bar Associations. In a letter of 4 March 2020, later published by media outlets, the Bar Associations responded that they did not consider it necessary to make any amendments to the current bylaw of the Bar Associations. Despite the explicit objection to a new bylaw, on 18 March 2020, the Judiciary submitted a draft bylaw to the Bar Associations for their review prior to adoption by the Judiciary. The Bar Associations considered the proposal in violation of article 22 of the *Bar Association’s Independence Law*. After the draft bylaw was made public, over 12,000 lawyers and 180 former judges signed a letter protesting the draft. The Central Bar Association of Iran also released a public statement on the proposed bylaw and requested the Head of the Judiciary to halt the bylaw to protect the rule of law. The International Bar Association called upon the Government of the Islamic Republic of Iran to observe international law and revoke the bill immediately to preserve the Iranian Bar Association’s independence.

Under the draft bylaw, the legal department of the Judiciary would form a ten-member council called “Lawyers’ Coordination Supreme Council”, with only two members from the Bar Associations. The draft bylaw would give discretion to the Lawyers’ Coordination Supreme Council to determine the Bar Associations’ policies. The draft bylaw also sets out in article 5 that for granting license to applicants, the Bar Associations should make inquiries from the intelligence department of the Judiciary. According to article 165 of the draft bylaw, interviews of lawyers with media can result in a fourth-degree disciplinary punishment, if it is against “the law or Shari’a or the dignity and honour of the legal profession” or if a lawyer “intentionally comments against the state or institutions of Islamic Republic of Iran.”

In response to objections of the Bar Associations to the draft bylaw, the Judiciary’s deputy chief for legal and parliamentary affairs stated on 4 May 2017 that some lawyers are resorting to “media hype”. He also rejected the argument that proposing the bylaws for the Bar Associations is not judicial discretion. He referred to the general judicial policies that the Supreme Leader of Islamic Republic of Iran announced in 2002, stating that according to these policies, the Judiciary is mandated to adopt regulations for all legal professions in compliance with Islamic principles. The Judiciary’s deputy chief for legal and parliamentary affairs concluded that “the Supreme Leader’s policies about the Judiciary is above all laws”.

Following the reactions from the Bar Associations, on 17 May 2020, the Head of the Judiciary ordered the Judiciary’s deputy for legal and parliamentary affairs to suspend the enforcement of the directive. After this announcement, the Head of the Judiciary issued a directive on 19 May 2020 titled “Honouring and Promoting the Status of lawyers, Transparency of Lawyers’ Monetary Contracts and Creation of a System for Proposals from Lawyers”. The directive mandated the Judiciary’s deputy for legal and parliamentary affairs to propose the bylaw for the Bar Association after consulting with the bar associations. Despite the initial position of the Bar Associations that the current bylaws do not require revision, the Bar Associations agreed to propose amendments only regarding the outdated articles of the current bylaws.

Following a meeting between the Judiciary and the directors of the Bar Associations in June 2020, a working group consisting of directors of seven Bar Associations was established to propose suggestions for amending the 1955 bylaw, to be then fully approved by the Judiciary. The working group submitted its suggestion to the directors of Bar Associations and the Judiciary in December 2020. Despite the calls by the body of lawyers to the Bar Associations to publish the proposed amendments for public scrutiny, the proposal remained confidential until 11 January 2021. The Judiciary returned its 69 comments on the proposed amendments to the Bar Associations on 5 January 2021, while the text of the proposed amendments was yet not public. The Bar Associations released the final draft of proposed amendments in March 2021. The Bar Associations were criticized by lawyers for lack of consultation and transparency over the process of preparing the proposed amendments.

On 23 June 2021, the Head of the Judiciary adopted new bylaws for the Bar Association. Despite the explicit position of the Bar Associations that any

change should be confined to amending the 1955 bylaws, the bylaws adopted by the Judiciary annuls the 1955 bylaws. The adopted bylaws disregard the proposed amendments by the Bar Associations' directors and contains provisions which violate the *Law of Bar Association Independence*. Article 158 of the adopted bylaw states a court's decision to suspend or prohibit a lawyer from practicing law is ground for not extending a lawyer's license. This is in contravention of article 17 of the *Law of Bar Association Independence*, which stipulates that suspension or prohibition from practicing law is the prerogative of Bar Association. The adopted bylaw expands through the introduction of several provisions (articles, 14, 16, 48, 52, 158, 159 and 161) the power of the Judiciary to interfere with the internal affairs of the Bar Associations, the election of Bar Associations' directors, and granting and revoking license to practice law.

Following a special session on 2 July 2021, the general council of the Bar Associations Union announced in a statement that a number of provisions of the new bylaws interferes with the independence of Bar Associations and is in violation of the right to defense in a fair trial. The Bar Associations Union stated that the bylaws adopted by the Judiciary contravenes the prerogative of Bar Associations in adopting its own bylaws as stipulated in Article 22 of the *Bar Association's Independence Law*, hence it is not enforceable.

The Judiciary's Deputy for Legal and Parliamentary Affairs stated on 3 July 2021 that the new bylaws are binding.

Before explaining our concerns on the abovementioned laws and regulations, we wish to remind your Excellency's Government that the independence of lawyers and the judiciary is a fundamental precondition for the right to a fair trial, as guaranteed under Article 14 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Iran on 24 June 1975. Access to a lawyer forms an integral part of this right, as expressed under Article 14, para. 3 (b) and (d). In light of these standards, as elaborated in the annex to this letter, we are concerned that the abovementioned laws and regulations in their content and the process by which they have been adopted, are inconsistent with the obligations of Islamic Republic of Iran under international human rights norms and standards.

While not all kinds of external intervention jeopardize the independence of bar associations, we consider that in the present case the restrictions on the election of the bar associations' board of directors, including the criteria set out in the *Law on Conditions for Obtaining the Attorney's License*, the vetting power of the Judiciary over the election of the board of directors, the establishments of a state-controlled parallel body of lawyers, the alleged attempts of the Judiciary to introduce new regulations for the bar associations including the bylaws adopted by the Head of Judiciary on 23 June 2021, and the establishment of the *General Office for Supervision of Lawyers* may in itself be regarded as a violation of the independence of the bar association.

We are concerned that certain criteria listed in the *Law on Conditions for Obtaining the Attorney's License* for board of directors as well as the vetting power of the Judiciary allows the Government to control the executive body of Bar Associations. The Bar Associations should be able to operate as independent professional associations. The Judiciary's decisive role in the election of the board of

directors weakens the functioning of the Bar Associations in protecting the rights of its members.

With regard to the bylaws and regulations for the Bar Associations, the Basic Principles on the Role of Lawyers provide that codes of professional conduct for lawyers should be established by the legal profession or by legislation, in accordance with national law and custom and recognized international standards and norms (principle 26). We are deeply concerned that the adopted bylaws by the Judiciary and the establishment of the General Office for Supervision of Lawyer, as highlighted above, fall short of international standards relating to the independence of the Bar Associations. We are concerned that these regulations undermine the independence of the legal profession by giving broad powers to the Judiciary with regards to the internal affairs of Bar Associations, including in granting and revoking license for practicing law, vetting candidates for board of directors, and disciplinary proceedings. We are concerned that the directive and the bylaws expand the scope of code of conduct and disciplinary offences established by national law and authorizes the Judiciary to investigate the private affairs of lawyers.

Furthermore, it is concerning that the directive and the bylaws have introduced new channels for initiating disciplinary proceedings against lawyers which is beyond the discretion of Judiciary as stipulated in *Bar Association Independence Law*. It is worrying that such provisions can be used for the removal of lawyers who represent political dissidents or lawyers deemed to be ‘problematic’ for whatever reason. Furthermore, the criteria established in the abovementioned directive to revoke the license of lawyers and the bylaw’s rules on disciplinary punishment constitutes an undue infringement of articles 17 and 19 of ICCPR, guaranteeing the right to privacy and the right to freedom of expression. The criteria are overbroad and based on objectives not considered legitimate for the restrictions of the right to privacy and freedom of expression. The introduction of such directives and bylaws in contravention of domestic law on Independence of Bar Association would have an adverse impact on rule of law.

We also reiterate grave concern over article 48 of the Code of Criminal Procedure. Restricting the access to a counsel to the lawyers approved by the Head of the Judiciary in preliminary stages of charges related to national security is inconsistent with the obligations of the Islamic Republic of Iran under human rights law.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter, which cites international human rights instruments and standards relevant to these allegations.

In a spirit of co-operation and dialogue, and in line with the mandate entrusted to us by the Human Rights Council and in light of the above, we would welcome any comment or additional information your Excellency’s Government may have about the above-mentioned information. We also welcome any clarifications on measures taken to ensure the compliance of the above-mentioned legislations and regulations with the obligations of the Islamic Republic of Iran under the human rights standards referenced above.

We urge your Excellency's Government to consider reviewing the aforementioned legislations and regulations so as to bring them in line with existing human rights standards relating to the independence of the legal profession.

In particular, we would recommend to:

1. Revoke aforementioned bylaws adopted on 23 June 2021 and ensure that the review of any legislation or bylaw for legal professions be carried out in accordance with existing laws relating to the independence of Bar Associations and the rule of law and in compliance with international human rights standards.
2. Reconsider the establishment of General Office for Supervision of Lawyers and ensure that disciplinary proceedings against lawyers are handled by the independent and impartial disciplinary bodies established by the legal profession as stated in national law on independence of Bar Associations.
3. *Law on Conditions for Obtaining the Attorney's License* be amended in order to avoid any interference with the self-regulation of the legal profession, including its prerogative to hold elections of Bar Associations' directors. And review, in consultation with the legal profession, the criteria for the admission to the Bar and Board of Directors, with a view to developing fair, objective and clearly formulated criteria for the assessment of candidates. Such a review should ensure that all candidates with adequate education and experience may access to the qualification examination and the election of board of directors, regardless of their personal beliefs.
4. Repeal article 48 of the Code of Criminal Procedure adopted in 2015 and ensure access to lawyer of one's choice at all stages of criminal proceedings regardless of allegations against the defendant.

We also recommend that your Excellency's Government adopt all appropriate measures to protect the independence of the legal profession, and to ensure that lawyers are in a position to discharge their professional functions without intervention or interference of any sort.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of our highest consideration.

Diego García-Sayán
Special Rapporteur on the independence of judges and lawyers

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable.

Article 14 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Iran on 24 June 1975, guarantees the right to fair trial. Access to a lawyer forms an integral part of this right, as expressed under Article 14, para. 3 (b) and (d), which lists, among the procedural guarantees available to persons charged with a criminal offence, the right to communicate with a lawyer of their choice, the right to have adequate time and facilities for the preparation of their defense and the right to defend themselves in person or through legal assistance of their own choosing.

In its General Comment No. 32 (2007), the Human Rights Committee states that the requirements of independent and impartial tribunals are not satisfied in situations where lawyers are threatened, where there are restrictions to the right to a lawyer of one's own choosing, and where there are serious restrictions or denial of the right to communicate with a lawyer. The Human Rights Committee considered that the right to communicate with a counsel of one's own choosing is an important element of the guarantee of a fair trial and an application of the principle of equality of arms. The right to communicate with counsel requires that the accused is granted prompt access to counsel. Counsel should be able to meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications. Furthermore, lawyers should be able to advise and to represent persons charged with a criminal offence in accordance with generally recognized professional ethics without restrictions, influence, pressure or undue interference from any quarter (CCPR/C/GC/32, paras. 32 and 34).

This right has also been proclaimed in a large number of United Nations legal instruments, including the Basic Principles on the Role of Lawyers, which represent

the most comprehensive international normative framework aimed at safeguarding the right of access to legal assistance and the independent functioning of the legal profession. In order for legal assistance to be effective, it has to be carried out independently. That is recognized in the preamble to the Basic Principles, which states that the adequate protection of the human rights and fundamental freedoms requires that “all persons have effective access to legal services provided by an independent legal profession”.

The Basic Principles recognize that lawyers, like other citizens, have the right to freedom of association and assembly (principle 23), which includes the right to form and join self-governing professional associations to represent their interests (principle 24). They also recognize the vital role that bar associations play in facilitating access to a lawyer and legal services (principles 3 and 4), promoting the continuing education and training of lawyers (principle 9), regulating non-discriminatory access to, or continued practice within, the legal profession (principle 10), protecting their members from persecution and improper restrictions and infringements (principle 25), adopting and enforcing codes of professional conduct (principle 26) and handling disciplinary proceedings against their members (principles 28 and 29).

With regard to the power of the Judiciary to disqualify the candidates for the election of board of directors, we remind your Excellency’s Government of principle 24 of the Basic Principles which states, “the executive body of the professional association shall be elected by its members and shall exercise its functions without external interference.” Principle 17 of the Standards for the Independence of the Legal Profession, adopted by the International Bar Association also provides that such executive bodies should be “freely elected by all the members without interference of any kind by any other body or person”. The Special Rapporteur on the independence of judges and lawyers has warned about the attempts to install individuals close to the Government as the executive body of Bar Associations and emphasized that the central role in the establishment, work and appointment of executive bodies of the legal profession needs to remain with the lawyers. (A/73/365, para. 38 and A/64/181, para. 27).

The Basic Principles provide that codes of professional conduct for lawyers should be established by the legal profession or by legislation, in accordance with national law and custom and recognized international standards and norms (principle 26).

The Special Rapporteur on the independence of judges and lawyers has stressed that bar associations have a crucial role to play in a democratic society to enable the free and independent exercise of the legal profession and to ensure access to justice and the protection of human rights, in particular due process and fair trial guarantees. They protect individual members of the legal profession, particularly in situations where they are not able to adequately defend themselves; elaborate and implement requirements and procedures to gain access to the legal profession; develop codes of professional conduct; and handle disciplinary proceedings against lawyers. Professional associations of lawyers also cooperate with State institutions in providing legal aid services to poor and disadvantaged persons and legal education and training to lawyers throughout their careers (A/73/365). The Special Rapporteur on the independence of judges and lawyers considers the establishment of an independent system for the consideration of disciplinary proceedings for alleged

violations of the rules of professional ethics to constitute an important factor in the independence of the legal profession (A/73/365, para. 66).

We also recall under Article 17 of ICCPR, everyone has the right to be protected against “arbitrary or unlawful interference with his privacy, family, home or correspondence”. Further, article 19 of the ICCPR, guarantees that everyone shall have the right to hold opinions without interference, and the right to freedom of expression, which includes freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of one’s choice. As interpreted by the Human Rights Committee in General Comment No. 34 (CCPR/C/GC/34), such information and ideas include, inter alia, political discourse, commentary on one’s own and on public affairs, cultural and artistic expression, and discussion of human rights (Paragraph 11) as well as expression of criticism or dissent.

As highlighted by the Special Rapporteur on the independence of judges and lawyers, “the best guarantee of independence is a self-governing body, understood as an organization independent from the State or other national institutions” (A/73/365, para. 26). In practice, that means that the bar association should be able to set its own rules and regulations, make its own decisions free from external influence, represent its members’ interests and be able to sustain itself. That entails the profession’s right to set up bodies to oversee compliance with such regulations, through the power to admit, discipline and disbar.