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INTERNATIONAL COMMISSION OF JURISTS' SUBMISSION TO THE UNIVERSAL PERIODIC REVIEW OF AZERBAIJAN

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SUBMISSION OF THE INTERNATIONAL COMMISSION OF JURISTS TO THE UNIVERSAL PERIODIC REVIEW OF AZERBAIJAN

Introduction:

1. The International Commission of Jurists (ICJ) welcomes the opportunity to contribute to the Human Rights Council's (HRC) Universal Periodic Review (UPR) of Azerbaijan.

2. These observations are based on the ICJ's report "*Defenceless defenders: Systemic problems in the legal profession of Azerbaijan*", published in September 2016 following a research mission to the country.[1] The report analyses Azerbaijan's legislation governing the legal profession, the situation of lawyers in practice, in particular, in relation to the lack independence of the legal profession, as well as the role that the Bar Association plays in attacks on lawyers. The ICJ appends its report to this submission and hopes that its findings and recommendations will assist the UPR WG and the HRC in their UPR of Azerbaijan.

Harassment of lawyers

3. In Azerbaijan, the legal profession lacks independence; individual lawyers often face harassment for exercising their functions, including through criminal prosecutions, disciplinary action, and other administrative measures. Disbarments of lawyers who work to protect human rights, along with criminal prosecutions, searches and measures such as freezing of assets of such lawyers, are part of a wider picture of harassment of human rights defenders, including not only lawyers, but also journalists, NGO workers and others.

4. Independent lawyers, especially those representing clients in "sensitive" cases, may face disciplinary action. Disciplinary procedures are often not carried out on the basis of objective criteria, and lack predictability and transparency. As detailed in the ICJ report mentioned above, the organization found that disciplinary as well as criminal proceedings are used against lawyers in ways that amount to harassment of, or reprisals against, lawyers for the proper exercise of their professional duties, and are premised on the identification of lawyers with the causes of their clients, contrary to international standards on the independence of lawyers.[2] In addition, it appears that in some cases lawyers are subjected to sanctions as a result of exercise of their freedom of expression, contrary to article 19, ICCPR.

5. The ICJ report raises concern regarding the lack of clear criteria in law, practice or guidance, for the imposition of the most severe disciplinary penalty against lawyers, namely, their disbarment. The absence of such criteria leads to problems in practice, opening the way for the application of uneven, arbitrary or discriminatory standards in the award of the qualification necessary to become a lawyer,[3] and for arbitrary attacks against lawyers through disciplinary proceedings. Even where clear procedures are in place, compliance with them is typically poor. For example, although it is welcome that the rights of lawyers in disciplinary hearings are enshrined in the Charter on the Disciplinary Commission,[4] in practice, these rights are often disregarded, contrary to both Azeri law, and to international human rights law.[5]

6. The ICJ report analyses a series of cases of harassment of lawyers; its conclusions are that the proceedings before the Disciplinary Commission and Presidium of the

Collegium in practice consistently do not meet international standards on the right to a fair hearing.[6] For example, there is evidence of disregard for the equality of arms principle in such proceedings. Particularly worrying are reports that lawyers are disbarred without being notified about the hearing that may culminate in their disbarment, and that they are not afforded access to relevant documents in the possession of the Collegium. Another common problem is that lawyers are often not provided with the decision in their case, inhibiting their ability to appeal against such decision to the courts. Moreover, an appeal to the courts in these cases does not appear to be an effective remedy against arbitrary decisions. Furthermore, procedural weaknesses in disciplinary processes raise concern about the rights of the lawyer concerned to a fair hearing,[7] and of sanctions in violation of the lawyer's human rights, including the rights to freedom of expression,[8] freedom of association[9] and respect for private life.[10]

7. The ICJ also found that the end result of the work of the Bar Association's Qualification Commission following the adoption of the law on Advocates and Advocates Activity in 1999 is a dramatic shortage of lawyers in the country. The qualification process to become a practising lawyer itself suffers from a lack of objective criteria for the evaluation of candidates, and its application is mired in arbitrariness. Rules and guidelines both for the members of the Qualification Commission and candidates seeking to join the profession are key in ensuring a level of objectivity and fairness of the system of qualification.

Access to justice

8. The availability or absence of legal assistance often determines whether or not a person can access the relevant proceedings or participate in them in a meaningful way.[11] Therefore, the shortage of lawyers described above may impede access to justice in Azerbaijan and undermine the exercise of the right to a lawyer under Articles 14 of the ICCPR, in particular the right to defend oneself through legal assistance of one's own choosing,[12] as well as 2.3. of the ICCPR, which, in this context, entitles the individual concerned to enjoy the right to an effective judicial remedy.

9. Furthermore, the harassment of lawyers described above may too lead to violations of the rights of their clients guaranteed under international human rights law, including among others, the rights to fair trial,[13] the right to liberty,[14] and freedom from torture or other ill-treatment.[15]

Lack of Independence of the Bar Association

10. In its report the ICJ concluded that, despite a detailed legal framework, the Bar Association suffers from serious institutional weaknesses and does not operate as an independent self-governing institution. Constituent bodies of the Bar Association are under the direct influence of its leadership, and appear to have insufficient leeway to carry out their functions in an independent manner. There are serious failings in regard to transparency, accountability to its members, and democratic participation of lawyers in the governance of the Bar Association. The Bar Association has failed to hold a Conference of lawyers in several years. This calls into question the legitimacy of some of its governing bodies such as the President and the Presidium, which have not been re-elected within the time period provided by law, and currently hold offices outside the periods proscribed by law.[16] While the ICJ welcomes the reports of new elections of the President of the Bar Association to be held in December 2017, the problem persists.

11. The ICJ report details how the Bar Association's lack of independence has affected the ability of lawyers to discharge their proper role in the protection of human rights, including the right to a fair trial of their clients.[17] For example, the Bar Association has so far failed to strive to protect its members from harassment, in particular from abusive disciplinary proceedings. To the contrary, because of its lack of independence, it has functioned, in practice, as an instrument of the executive to repress the independence of lawyers, rather than to defend it.

Concerning international human rights instruments and mechanisms

12. In the last UPR cycle, Azerbaijan accepted the recommendations to become a party to the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights; the Third Protocol to the Convention on the Rights of the Child; and to the International Convention for the Protection of All Persons from Enforced Disappearance..

13. However, to date, Azerbaijan has not lived up to these commitments undertaken under the last UPR cycle.

Recommendations:

14. The ICJ calls upon the Working Group and the HRC to recommend to the authorities of Azerbaijan the following:

On Harassment of lawyers

15. The independence and role of lawyers must be respected by all institutions of the State: executive, legislative and judicial, and by all public authorities. No executive or judicial authority should initiate or threaten lawyers with criminal, administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

16. The role and duty of lawyers to represent their clients must be respected; lawyers should never be identified with their clients or their clients' causes merely as a result of the discharge of their duties in representing their clients, including those whose views are in opposition to those of the government.

17. Governmental authorities, in co-operation and consultation with the Bar Association and with lawyers themselves, should take steps to ensure that lawyers are protected from intimidation, hindrance, harassment or other improper interference in their work.

On access to justice

18. The Bar Association should strive to ensure, through promotion of the profession and the qualification process for lawyers, that there is a sufficient number of advocates providing legal advice in all regions in Azerbaijan to uphold the principle of access to justice and the right to an effective remedy for violations of human rights, and to ensure that defendants in criminal cases enjoy the right to independent legal advice and an effective defence, in accordance with their right to a fair trial.

On independence of the bar association

19. **The Bar Association should reconsider the role it plays in the governance of the legal profession. It should initiate, through a consultative process, an internal reform based on the principles of independence of the profession, high standards of legal practice, the protection of lawyers from threats, harassment and hindrance in their work, and the democratic participation of its members. This process should involve its members, and other relevant national and international actors, including experts, academics, members of the judiciary and the Ministry of Justice, as well as other justice professionals, along with national and international civil society actors engaged with human rights matters and the administration of justice, and intergovernmental organisations.**

20. **Elections to all the elected positions within the Bar Association should be held in a timely manner in accordance with the Law on the Bar Association and Advocates Activity; no official position should be occupied after the expiry of the term of office prescribed by law; independent candidates, including those who defend clients in "sensitive" cases, should be allowed to run for elected positions of the Bar Association.**

21. **The requirements of the law regarding holding sessions of the bodies of the Bar Association, in particular the General Meeting and Conference, should be strictly adhered to, so as not to undermine the legitimacy of the bodies of self-governance of the Bar Association.**

22. **The Bar Association and its relevant constituent bodies should adopt all rules and procedures necessary for the governance of the profession, in accordance with the law, including regulations on the qualification procedure. These rules and procedures should be in line with international law and standards on the role of lawyers.**

On international human rights instruments and mechanisms

23. **To become a party to the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights; the Third Protocol to the Convention on the Rights of the Child; and to International Convention for the Protection of All Persons from Enforced Disappearance.**

ENDNOTES

[1] This submission is largely based on the ICJ report "*Defenceless defenders: Systemic problems in the legal profession of Azerbaijan*" (hereinafter "ICJ report"). Whenever reference is not provided in this submission, sources and citations can be found in the report at https://www.icj.org/azerbaijan-the-independence-and-role-of-lawyers-must-be-respected-icj-report-says/. The said report is annexed to this submission.
[2] ICJ Report, page 30 and following. See, UN Basic Principles on the Role of Lawyers, Principle 18
[3] See, *Law On Advocates and Advocates' Activity*, of 28 December 1999, No. 783-IQ, articles 8 and 13(IX).
[4] See, *Charter on the Disciplinary Commission*.
[5] See, ICJ Report, Chapter II at page 21 and following.
[6] Notably, in ICJ Report, Chapter III, those of Intigam Aliyev, Gurban Mamedov, Alaif Ghasanov, Namizad Safarov, Hidayat Suleymanov, Latifa Aliyeva, Osman Kazimov, Khalid Baghirov, Muzaffar Bakhishov, Elchin Namazov, Shafiga Naghiyeva and Yalkin Imanov. See, *Law On Advocates and Advocates' Activity*, *op. cit.*, article 22.
[7] Article 14 ICCPR
[8] Article 19 ICCPR

[9] Article 22 ICCPR.
[10] Article 17 ICCPR.
[11] General Comment 32, para. 10.
[12] Article 14.3(d) ICCPR
[13] Article 14 ICCPR
[14] Article 9 ICCPR.
[15] Article 1 and 16 CAT, Article 7 ICCPR
[16] See, ICJ Report, Chapter I, at p. 10 for more detailed findings.
[17] Article 14 ICCPR