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Dear members of the Human Rights Committee,

The International Commission of Jurists (ICJ) presents to the members of the Human Rights Committee on the occasion of the examination during its 118<sup>th</sup> Session (17 Oct 2016 - 04 Nov 2016) of Azerbaijan's fourth periodic report on its compliance with the ICCPR, the ICJ report "*Defenceless defenders: Systemic problems in the legal profession of Azerbaijan*" published in September 2016. This report analyses Azerbaijan legislation governing the legal profession as well as the situation of lawyers in practice, in particular, in relation to the independence of the legal profession and with reference to individual cases.

The findings of the report raise issues under articles 2(3), 7, 9, 14, 17, 19 of the ICCPR.

***Harassment of lawyers (Articles 2(3), 7, 9, 14, 17, 19)***

In Azerbaijan, lawyers face harassment through a number of means, including 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.

Such harassment of lawyers may lead to violations of the rights of their clients guaranteed under the Covenant, including among others the rights to fair trial (Article 14), the right to liberty (Article 9), and freedom from torture or other ill-treatment (Article 7). Furthermore, procedural weaknesses in disciplinary processes raise issues of the rights of the lawyer concerned to a fair hearing (Article 14) and of sanctions in violation of the lawyer's human rights, including their rights to freedom of expression (Article 19 ICCPR), freedom of association (Article 22) and respect for private life (Article 17 ICCPR).

The ICJ report found that disciplinary procedures for lawyers in Azerbaijan suffer from a lack of objective criteria, predictability and transparency. The report also raises concerns regarding the lack of clear criteria in law, practice or guidance, for the imposition of the most severe disciplinary penalty, disbarment. These gaps in standards lead to problems in practice, opening the way for uneven, arbitrary or discriminatory standards in qualification, and for arbitrary victimization of lawyers through disciplinary proceedings.

Even where clear standards 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, in practice, these rights are often disregarded, contrary to both Azeri law, and to international human rights law.

The ICJ report analyses a series of cases of harassment of lawyers which indicate that proceedings before the Disciplinary Commission and Presidium of the Collegium do not meet international standards on the right to a fair hearing consistently in practice. Particularly worrying are reports that lawyers are disbarred without being notified about the hearing and that they are not afforded access to relevant documents in the possession of the Collegium. There is also evidence of disregard for the equality of arms principle. Another common problem is that lawyers are often not provided with the decision in their case, inhibiting appeal

to the courts. Moreover, an appeal to the courts in these cases does not appear to be an effective check against arbitrary decisions.

The report found that disciplinary as well as criminal proceedings are used against lawyers in ways which amount to harassment or reprisals for the proper exercise of lawyers' professional duties, and to identification with the causes of their clients, contrary to international standards on the independence of lawyers. 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.

In its report, the ICJ made the following recommendations:

- The independence and role of lawyers must be respected by all institutions of government: 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.
- 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 as a result of representing clients whose political positions are opposed to those of the government.
- The executive authorities of the government, 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.

#### ***Access to justice (Article 2(3), 14 ICCPR)***

Everyone has a right to defend him or herself in person or through legal assistance of their own choosing (Article 14.3(d) ICCPR). 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.<sup>1</sup> The ICJ 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 advocates in the country. The qualification process itself suffers from a lack of objective criteria for evaluation of candidates and arbitrariness in its application. Rules and guidelines both for the members of the Qualification Commission and candidates seeking to join the profession are key in ensuring a greater level of objectivity and fairness of the system of qualification. The shortage of lawyers may impede access to justice in Azerbaijan and undermine exercise of the right to a lawyer under Articles 14 as well as 2.3. of the ICCPR. The ICJ among other things recommended in its report that:

- 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.

#### ***Independence of the Bar Association (Article 14 ICCPR)***

The report 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. The report found that the Bar Association's lack of independence has restricted lawyers in discharging their proper role in the protection of human rights, including the right to a fair trial (Article 14 ECHR). Constituent bodies of the Bar Association are under direct influence of its leadership and appear to have insufficient leeway to carry out their functions in

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<sup>1</sup> General Comment 32, para. 10.

an independent manner. There are serious failings in regard to transparency, accountability before its members, and democratic participation of lawyers in the governance of the Bar Association. The Bar Association has not striven to protect lawyers from harassment, in particular from abusive disciplinary proceedings, and has functioned, in practice, to repress the independence of lawyers rather than to defend it.

In this regard the ICJ recommended that:

- 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, national and international civil society actors engaged with matters of human rights and administration of justice, and intergovernmental organisations.
- Elections to all the elected positions within the Bar Association should be held in a timely manner in accordance with the Law on Advokatura and Advocates Activity; No official position should be occupied after the expiry of the term of office prescribed by law.
- 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 these bodies.
- 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.

The ICJ appends its report to this letter and hopes that its findings will assist the Committee in its assessment of the compliance of Azerbaijan with the ICCPR.

Yours sincerely



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