



Lawyering in Arab Countries between the Hammer of the Executive and the Anvil of the Judiciary

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Abstract: The main argument of this article is that generally around the world lawyers are considered as specialized professionals who place the interests of their clients above their own, and strive to obtain respect for the rule of law. Consequently, any lawyer should be independent to allow him or her to give his or her clients unbiased advice or representation. Independent lawyers mean that they must be able to exercise their professional responsibilities without being influenced by the executive. However, the Arab Lawyering systems as illustrated and argued in this Article don't fully provide such protection from the executive authority. This article argues also that the independence of lawyers is not invented for the personal benefit of the lawyers themselves but is created to protect the people against abuses of power. A lawyering system based on respect for the rule of law needs strong independent and impartial lawyers. Therefore, this article provides general overview of the lawyers' guarantees according to the international standards and Regional Standards (Arab Region) and then demonstrates the Contradictory Implementation in the domestic laws. Furthermore, the independence of the Bar Associations as stipulated by the international standards are investigated in the Arab Lawyering systems.

Keywords: Lawyering, Bar Association, Lawyer, Judicial Body, Executive Authority, Disciplinary Committee, Advocates Law.

I. Introduction

Arab lawyering systems lack adequate legal professional guarantees recognized by international relevant standards, since the Arab lawyers, bar associations, access to legal services are subjected by diverse degrees to the predominance of executive and judicial authorities. Hence, this Article examines the role of Arab lawyers in upholding the rule of law with reference to applicable domestic and international standards, and scrutinizes the guarantees for the proper functioning of lawyers and access to legal service. An analysis of applicable domestic and international legal instruments, secondary sources, including NGO and UN human rights reports, scholarly articles, were also undertaken. However, this Article focuses on the lawyering systems of some Arab Countries, namely Egypt, UAE, KSA, and Qatar.¹ Selectivity of such countries was based on legal system of each country, in view of the fact that each before mentioned selected country characterizes special legal pattern in the Arab countries legal systems, since Egypt represents the French Legal System Model that could observed in its judicial body structure and legal professional as well,² and UAE is the first and most sophisticated

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¹ It should be noted that UAE, KSA, and Qatar neither signed nor ratified The International Covenant on Civil and Political Rights (ICCPR)

² The legal and judiciary system in Egypt stems from the Latin legal systems whose basic characteristics and historical roots largely derive from the French system. See, Mohammed Nour Farhat, Social history of law in modern Egypt,(Cairo, 1986), p. 347.

country in The Arab world applying federal legal system,³ KSA embodies the officially Islamized legal system,⁴ and Qatar is a symbol of Islamic-Civil legal system.⁵

II. Relevant International Law

³ The UAE is a federation of seven Emirates established in 1971. All the member Emirates, except for Dubai and Ras Al Kaimah, are part of a federal judicial system. Dubai and Ras Al Kaimah have independent judicial systems. The current legal system in the UAE is based on the Constitution of the United Arab Emirates, 1971 (as amended) (Constitution). The UAE has sovereignty in all matters assigned to it under the Constitution. The individual member Emirate has sovereignty over its own territory in all matters not in the exclusive jurisdiction of the UAE, as set out in the Constitution.

⁴ The Basic System in KSA is the most important constitutional document of the three fundamental laws inaugurated in 1992. It specifically states that the Qur'an and the Sunnah of the Prophet Muhammad are the Kingdom's constitution. Article 7 of the Basic System reaffirms Islamic Sharia (Islamic Law) as the foundation of the Kingdom, stating that the government draws its authority from the Quran and the Sunnah, and that these two sources govern all administrative regulations of the state. It emphasizes that the state's role and objective is to protect the principles of Islam and to enforce its Sharia. The document is guided by Islamic law when defining the nature, the objectives, and the responsibilities of the State, as well as in defining the relationship between the ruler and the ruled based on brotherhood, consultation, friendship and cooperation. See, The Basic System of Governance, Royal Order No. A/90, (27/8/1412H, Mar. 1, 1992), O.G. Umm al-Qura No. 3397 (2/9/1412H, Mar. 5, 1992); The Regional Law, Royal Order No. A/91 (27/8/1412H, Mar. 1, 1992), O.G. Umm al-Qura No. 3397 (2/9/1412H, Mar. 5, 1992); The Shura Council Law, Royal Order No. A/91, (27/8/1412H, Mar. 1, 1992), O.G. Umm al-Qura No. 3397 (2/9/1412H, Mar. 5, 1992).

⁵ Qatar has a viable dualism in its legal system different from that of the other Gulf States. This is not to suggest that dualism does not exist in the legal systems of Saudi Arabia, Kuwait, Bahrain and the United Arab Emirates (UAE). Dualism, however, in these systems is invisible rather than visible. See, Nizar Hamzeh, 'Qatar: The Duality of the Legal System', Middle Eastern Studies, Vol. 30, No.1, (Frank Cass Press, London January 1994), pp.79-90

Lawyers comprise the fundamental pillar for maintaining the rule of law in a democratic society and ensuring the efficient protection of human rights. The ninth preambular paragraph of the Basic Principles on the Role of Lawyers, which were implemented by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1990 stated that "... adequate protection of the human rights and fundamental freedoms to which all persons are entitled, be they economic, social and cultural, or civil and political, requires that all persons have effective access to legal services provided by an independent legal profession".⁶

In order to be able to carry out their professional duties effectively, lawyers must not only be granted all the due process guarantees afforded by domestic and international law, but also a just and efficient administration of justice requires that lawyers too should be allowed to work without being subjected to physical attacks, harassment, corruption, and other kinds of pressures.⁷ Although, various procedural guarantees contained in international law that allow lawyers to represent the interests of their clients in an independent and efficient manner in civil and criminal proceedings.⁸ Here, the analysis will be limited to highlighting some of the main principles contained in "the Basic Principles on the Role of Lawyers", as well as some statements made, and cases decided by, the international monitoring organs concerning the rights of lawyers.

III. Lawyer Guarantees

⁶ Basic Principles on the Role of Lawyers Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx>

⁷ Jelena Pejic & Vanessa Lesnie, "What is a Fair Trial? A Basic Guide to Legal Standards and Practice", Lawyers Committee for Human Rights, (New York, March 2000), p. 5.

⁸ See *infra* notes 9, 10, 11 and accompanying text.

3.1 International Standards

For lawyers to carry out their professional functions in an independent manner, it is necessary for States to protect them from any unlawful interference with their work. This interference can range from obstacles to communicating with their clients to threats and physical attacks.

The International Covenant on Civil and Political Rights,⁹ which provides that all persons shall be equal before the courts and tribunals, and are entitled to a fair and public hearing. Lawyers are essential to the delivery of this right.¹⁰ In explaining what these provisions mean in criminal cases, the UN Human Rights Committee issued General Comment 32 in 2007 which provides in paragraph 34 that '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'. International fair trial guarantees include the right of a defendant to free assistance from counsel of his own choosing.¹¹ The defendant must be able to communicate with counsel confidentially. Defense counsel must also receive

⁹ The International Covenant on Civil and Political Rights (ICCPR) is a multilateral treaty adopted by the United Nations General Assembly on 16 December 1966, and in force from 23 March 1976. It commits its parties to respect the civil and political rights of individuals, including the right to life, freedom of religion, freedom of speech, freedom of assembly, electoral rights and rights to due process and a fair trial. As of April 2014, the Covenant has 74 signatories and 168 parties.

¹⁰ See, The International Covenant on Civil and Political Rights, *Supra* note 9, Article 14 of ICCPR, UN General Assembly resolution 2200A (XXI)

¹¹ See, The International Covenant on Civil and Political Rights, *Supra* note 9, Article 14(3)(b) of ICCPR. Communications No 282/1988, *Smith v Jamaica*, para 10.4; Nos 226/1987 and 256/1987, *Sawyers, Mclean and Mclean v Jamaica*, para 13.6. See also UN Human Right Committee General Comment No 32, Article 14: Right to equality before courts and tribunals and to a fair trial (2007) UN Docs CCPR/C/GC/32 paras 32 and 34.

adequate and timely disclosure of the case file, and have adequate time and facilities to prepare the defense.¹²

The UN Human Rights Committee has emphasized that these provisions will 'apply to all courts and tribunals; whether ordinary or specialized', and that civilian trials before military or special courts should 'take place under conditions which genuinely afford the full guarantees stipulated under Article 14.'¹³ The UN Declaration on Human Rights Defenders also makes clear in Article 12 that: a 'state shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.'¹⁴

The UN Basic Principles on the Role of Lawyers also provide that: 'in exercising their rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession'.¹⁵ Codes of professional conduct for lawyers should be established by the legal profession through its associations, or by legislation (Principle 26). Disciplinary proceedings against lawyers should be brought

¹² Communication No 1125/2002, *Quispe Roque v Peru*, para 7.3; Communication No 1128/2002, *Morais v Angola*, para 5.6. Similarly Communications No 349/1989, *Wright v Jamaica*, para 8.4; No 272/1988, *Thomas v Jamaica*, para 11.4; No 230/87, *Henry v Jamaica*, para 8.2; Nos 226/1987 and 256/1987, *Sawyers, Mclean and Mclean v Jamaica*, para 13.6. On the right to 'adequate facilities', see UN Human Rights Committee, Concluding observations, Canada, CCPR/C/CAN/CO/5 (2005), para 13.

¹³ UN Human Rights Committee, General Comment No 13 'Equality before the courts and the right to a fair and public hearing by an independent court established by law (Article 14)' 1984, para 4, available at: [www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/bb722416a295f264c12563e d0049dfbd?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/bb722416a295f264c12563e d0049dfbd?Opendocument).

¹⁴ See, Basic Principles on the Role of Lawyers, *Supra* note 6.

¹⁵ Dominic McGoldrick, *The Human Rights Committee, Its Role in the Development of the International Covenant on Civil and Political Rights* (Clarendon Press, Oxford: 1994), p. 415.

before an impartial disciplinary committee (Principle 28) and be determined in accordance with a code of professional conduct (Principle 29).¹⁶ (Hereinafter will be referred in more details)

3.2 Regional Standards (Arab Charter on Human rights)

The Arab Charter on Human rights,¹⁷ acts in accordance with the International standards embodied in the international law with the regard to the lawyers' guarantees and the right of fair trial for certain extent regardless of the other provisions which faced a considerable criticisms,¹⁸ The Arab Charter on Human rights contains numerous requirements aiming to ensure and safeguard the rights of defense, including the right of individuals arrested or detained to have prompt access to a lawyer, the Arab Charter on Human rights for example in Article 16(2) requires states parties to ensure that the accused have "the right to have adequate time and facilities for the preparation of his

¹⁶ See, Basic Principles on the Role of Lawyers, *Supra* note 6.

¹⁷ The Arab Charter on Human Rights (ACHR) was adopted by the Council of the League of Arab States on 22 May 2004, a first version of the Charter was created on 15 September 1994, but no state ratified it. The Charter was updated in 2004 and came into force in 2008 when seven of the members of the League of Arab States had ratified it. As of November 2013, the Charter has been ratified by Algeria, Bahrain, Iraq, Jordan, Kuwait, Lebanon, Libya, Palestine, Qatar, Saudi Arabia, Syria, the UAE and Yemen

¹⁸. On January 24, 2008, then UN High Commissioner for Human Rights Louise Arbour has expressed concern over several of the provisions of the Charter, Ms. Arbour said that throughout the development of the Charter, her office shared concerns with the drafters about the incompatibility of some provisions with international norms and standards. "These concerns included the approach to death penalty for children and the rights of women and non-citizens. Moreover, to the extent that it equates Zionism with racism, we reiterated that the Arab Charter is not in conformity with General Assembly Resolution 46/86, which rejects that Zionism is a form of racism and racial discrimination." See, <http://www.un.org/apps/news/story.asp?NewsID=25447#.VLROssbUdWE>

defense and to be allowed to communicate with his family”, furthermore, Articles 16(3) and (4) require the authorities to ensure and respect the right of an accused person to be defended by a lawyer (of their choice or free appointed counsel if either the accused does not defend himself or the interests of justice require it) during the course of the investigation and the trial. Also article 16 (5) states that everyone charged with a criminal offence shall enjoy “the right to examine or have his lawyer examine the prosecution witnesses and to on defense according to the conditions applied to the prosecution witnesses”.¹⁹

3.3 Domestic Laws and Contradictory Implementation²⁰

In the ordinary criminal court system in Egypt there is a gap existed between the protection of due process rights under the Egyptian law and their inconsistent implementation in practice. In theory, the right of the lawyers to attend interviews at the pre-trial stage of a case is guaranteed under the law,²¹ however, they were often not allowed to attend interrogations by the Public Prosecutor’s office. Civil society groups have repeatedly reported that indigent defendants have inadequate access to defense counsel, including at police stations upon arrest.²²

Inconsistent implementation can be seen in Article 124 of the Criminal Procedure Code, which states that the prosecutor is permitted to begin an interrogation if the lawyer

¹⁹ *Supra* note 17, Article no 16.

²⁰ Under this item only Egyptian laws will be highlighted since the other countries (selected cases as Qatar, KSA, and UAE) their lawyering laws mainly unfold the basic law profession rules and don’t introduce rules concerning the course of carrying out the lawyer’s work.

²¹ See Article 124 of the Criminal Procedure Code, amended by Law No 145 of 2006 and Law No 74 of 2007.

²² See, Human Rights Committee, Comments on Egypt, U.N. Doc. CCPR/C/79/Add.23 (1993), para 10.

is not there in 'exceptional circumstances'.²³ In practice, what may amount to 'exceptional circumstances' is susceptible to subjective interpretation by individual prosecutors. In addition, in misdemeanor cases, which are not punishable by compulsory detention, the investigator is not obliged to inform the lawyer of the accused before launching the investigation, and therefore, the questioning can take place in the lawyer's absence. Rephrasing this law; providing published guidance as to how the right to access to counsel should be interpreted so as to conform to applicable human rights standards; and/or ensuring that interviews that took place improperly without counsel are not admissible as evidence, would all be helpful steps to improve the position of criminal defendants in this regard.²⁴ A further challenge for defense counsel in criminal cases is their restricted access to clients more broadly. Although Article 53 of the Advocates Law states that a lawyer who is 'authorized by the Prosecution' can visit a detained person at a prison, and 'may visit such person at any time and meet him or her in private in decent surroundings inside the prison', however in practice in many cases the access is restricted.²⁵

²³ See, *Supra* note 21, Article 124(1) Criminal Procedure Code (Law No 145 of 2006) 'With respect to felonies and misdemeanors punishable by mandatory imprisonment, the investigator may not interrogate the accused or confront him with other accused persons or witnesses except after inviting his lawyer to attend the investigation, with the exception of the case of in-flagrante-delicto and cases of urgency resulting from the fear of losing evidence, in the manner established by the investigator in the minutes of the investigation. The accused must declare the name of his lawyer in writing in the court's register or to the prison's officer, or to notify the investigator thereof.'

²⁴ The Court of Cassation ruled that the investigator's determination of the existence of a case of urgency is subject to the review of the court that hears the merits of the case and, therefore, the investigator is required to demonstrate the elements of urgency and the reasons behind it (judgment rendered on 15 February 1976). However, it is not clear whether the result of any such review would affect the admissibility of the interview as evidence.

²⁵ See, *Supra* note 21.

IV. Independent Bar Association

4.1 International Standards

A bar association is a professional body of lawyers. Some bar associations are responsible for regulating entry and practicing requirements for the legal profession in their jurisdiction, and make membership mandatory on this basis. Other jurisdictions also have legal professional organizations dedicated to serving particular members' interests based on voluntary participation. In many cases, a single bar association will serve all four essential roles of bar associations: education, regulation, lobbying for the legal profession, and the promotion of justice and human rights.

The principal legal instrument regulating bar associations at the international level is the UN Basic Principles on the Role of Lawyers (as mentioned above). These Principles grant lawyers the right to join self-governing professional associations whose executive body is elected by its members and exercises its functions without external interference. Both the Council of Europe²⁶ and the African Union²⁷ have issued further guidelines in this area. The International Bar Association has also developed its own non-binding 'Principles on Independent Bar Associations', which add detail to these provisions.²⁸ More generally, lawyers' freedom of association is guaranteed under Article 22 of the International Covenant on Civil and Political Rights.²⁹

²⁶ Council of Europe, Committee of Ministers, Recommendation No 21 (2000).

²⁷ Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa', available at: www.afrimap.org/english/images/treaty/ACHPR_Principles&Guidelines_FairTrial.pdf.

²⁸ The IBA Principles are persuasive, but not binding legal authority. Moreover, these particular principles have been formally adopted by the IBA to date.

²⁹ See, the International Covenant on Civil and Political Rights, *supra* note 9.

One principle fundamental to all these instruments is independence. Although the executive bodies of bar associations 'shall co-operate with Governments', they also 'shall exercise their functions without external interference' this is according to UN Principles 24 and 25. This means that, while it is set up by legislation and must cooperate with authorities in fulfilling its functions, the bar must not be subject to undue interference from the government or any other source. The UN Human Rights Committee has reiterated that bar associations must be allowed to work freely without being obliged to obtain a clearance from the executive.³⁰

As other individuals with public responsibilities, lawyers must conduct themselves according to ethical standards. These codes shall include clear norms of behavior and the possibility for lawyers to be held accountable in cases of misconduct. Thus, Principle 29 of the UN Basic Principles provides that "All disciplinary proceedings shall be determined in accordance with the code of professional conduct and other recognized standards and ethics of the legal profession and in the light of these principles". These codes shall be preferably drafted by associations of lawyers or, in case they are established by law, with the input from these associations. In this respect, the UN Basic Principles state that "Codes of professional conduct for lawyers shall be established by the legal profession through its appropriate organs, or by legislation, in accordance with national law and custom and recognized inter- national standards and norms".³¹

The UN Basic Principles also contain certain basic requirements to be followed in disciplinary proceedings against lawyers so that they conform to international law. These requirements of due process establish that lawyers can only be sanctioned pursuant to a procedure that respects a number of guarantees. Firstly, complaints against lawyers in

³⁰See *infra* note 70 and accompanying text.

³¹ See, Basic Principles on the Role of Lawyers, *supra* note 6, principle 26.

their professional capacity “shall be processed expeditiously and fairly under appropriate procedures”.³² Furthermore, lawyers shall have “the right to a fair hearing, including the right to be assisted by a lawyer of their choice”.³³ As to the characteristics of the body in charge of the proceedings and subsequent appeals, the Basic Principles establish that “lawyers shall be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court, and shall be subject to an independent judicial review”.³⁴

4.2 Domestic Laws and the independence of Bar Associations

Historically, the Egyptian legal profession has played an important role in advancing law reform and fighting against government abuses. In the 1930s and 1940s, Egypt’s lawyers were among the most highly educated in the Arab world, however in the last 50 years, a decline in the quality of legal education and training, and more recently, political in-fighting have seriously undermined the proper functioning and prestige of the Egyptian legal profession.³⁵ With regard to the independence of the Egyptian bar association, the Advocates Law in Egypt (Law No 17 of 1983) provides for the independence of Egypt’s legal profession. Under this law the practice of law is a profession that is exercised independently. It is carried out by lawyers alone independently, subject only to their conscience and the provisions of the law,³⁶ and the role of the Bar is ‘to care for the interests of its members and instill the spirit of cooperation

³² *Ibid*, Principle 27.

³³ *Ibid*.

³⁴ *Ibid*, Principle 28.

³⁵ Donald M Reid, ‘The National Bar Association and Egyptian Politics, 1912–1954’, *The International Journal of African Historical Studies*, Vol. 7, No. 4 (1974), pp. 608-646

³⁶ Article no. 1 of Egyptian Advocates Law (No 17 of 1983).

between them as well as ensuring the independence thereof in performing their mission'.³⁷ Moreover, some activities (for example ministerial and religious positions) cannot be pursued together with the practice of law.³⁸ Even the text of the oath to be taken before becoming practicing lawyer includes a reference to independence.³⁹ Also there is a right to accept or reject appointment as counsel on the basis of the lawyer's convictions only.⁴⁰

Despite this proud history and the guarantee of Bar independence provided by law, the Egyptian Government interference in the Bar's affairs has taken place previously, including through the dissolution of the elected Bar Council by the executive. This measure was resorted to on at least four occasions (under President Gamal Abdel Nasser in 1954, and under President Anwar Sadat in 1971, 1981 and 1982), as a means to dismiss bar councils that had publicly criticized government policies.⁴¹ Such explicit interference has not occurred since then. Nonetheless, members of the most recent Bar Council were often identified based on their political allegiance.⁴²

With respect to the disciplinary process, Article 99 of the Advocates Law allows the Egyptian Bar Association to issue a warning or caution, or else to temporarily suspend a lawyer from practice while a disciplinary process is ongoing. The Bar can also itself conduct an investigation where allegations of ethical misconduct are not of such gravity

³⁷ *Ibid*, Article no. 121.

³⁸ *Ibid*, Article no. 14.

³⁹ *Ibid* Article no. 16.

⁴⁰ *Ibid* Article no. 48 .

⁴¹See, Baher Alashhab, 'Clash in Egypt : the government and the bar : report of a mission', Centre for the Independence of Judges and Lawyers, (Geneva, Switzerland 1995), pp. 45-59.

⁴² See, *Ibid*, on 28 January 1996, a court order decreed the 'sequestration' of the Egyptian Bar Association due to alleged financial irregularities by its then-board members. The Bar was taken over by court-appointed sequestrations and no elections were held for over five years.

as to warrant disciplinary measures.⁴³ However, there is no first instance disciplinary process within the Egyptian Bar. Instead, an independent committee, which is not run by the Bar, decides whether a violation has occurred. This committee is composed of the Chief Justice of the Cairo Court of Appeals (the 'Court') or his deputy; two 'counselors' or legal consultants from this same court to be appointed by the Court's general assembly each year; and two members of the Board of the Bar; one to be chosen by the lawyer against whom the action is brought and the other to be chosen by the Board.⁴⁴ Ideally the Bar should handle the disciplinary process, but only when confidence in the institution has been restored. Otherwise, the process can be used as a bargaining tool for elections.

The UAE is a Federation established in 1971 between seven Emirates namely Abu Dhabi, Ajman, Dubai, Fujairah, Ras Al Khaima, Sharjah and Umm Al Quwain,⁴⁵ Emirates were given the constitutional right to opt for joining the Federal judicial system or to maintain their own independent system.⁴⁶ However, the legal profession (Lawyering) in UAE is subjected to the Federal Law No. 23 Issued on 16/12/1991.⁴⁷ The legal profession in UAE law is a "liberal profession" which provides a public service, and is participated with the judicial authority to fulfill the mission of justice, and to assert "the sovereignty

⁴³ *Supra* note 36, Article no. 99.

⁴⁴ A lawyer facing disciplinary action is entitled to be defended by another lawyer; disciplinary sessions are confidential, and decisions may not be published (Article 89 Advocates Law No 17 of 1983). The potential penalties, upon a finding that a violation has occurred, range from a warning to permanent disbarment. Decisions are subject to appeal before the branch and central councils of the Bar.

⁴⁵ *Supra* note 3.

⁴⁶ Except for Dubai and Ras Al Khaima who maintain their own judicial systems, the other Emirates have joined the Federal system.

⁴⁷ 'UAE: Federal Law No. 23 of 1991 Regarding the Regulation of the Legal Profession', Arab Law Quarterly Vol. 8, No. 3 (1993), pp. 247-257 available at: <http://www.jstor.org/stable/3381588>

of the law and guaranteeing the right to defend rights and freedoms”,⁴⁸ and lawyers are those who practice the legal profession in view of providing judicial and legal assistance to whomever so requires, the lawyers enjoy the rights and guarantees in order to carry out their professional functions in an independent manner.⁴⁹

Lawyers according UAE law enjoy sufficient immunity, since The lawyer must not be subject to investigation , and the office must not be searched for reasons related to the profession unless with the knowledge of the Public Prosecution and The office of the lawyer or the items available and necessary for the practice of the profession must not be seized.⁵⁰ However, acquiring lawyers’ license is subjected principally to the judicial and the executive authorities since a Lawyers admission committee is established in the Ministry of Justice , Islamic Affairs and Endowments by a Ministerial Decision, the admission committee consists of undersecretary of the ministry of Justice (as a President), and seven members as follows; Assistant of the Undersecretary of ministry of Justice , a judges of the Federal Supreme Court, a judge of the Court of Appeal, a member of the Public Prosecution of the degree of prosecution president at least, director of Lawyers , experts and Translators (as a member and rapporteur), A practicing lawyer upon the nomination of the party to which he is affiliated, and A legal expert selected by the Minister of Justice.⁵¹ The admission committee is entitled also to conduct the first instance disciplinary process after the notification of claim by the Public Prosecution,⁵² the Lawyers Admission Committee, should such committee deem that the breach is simple,

⁴⁸ *Ibid*, Article no. 1.

⁴⁹ *Ibid*, Article no. 2.

⁵⁰ *Ibid*, Article no. 36.

⁵¹ *Ibid*, Article no. 15.

⁵² *Ibid*, Article no. 46.

and after hearing the statements of both parties, it may inflict upon him the sanction of warning or suspension for a period not exceeding one month.⁵³

With respect to KSA, as indicated above its legal system is based on Sharia (Islamic law) derived from the Quran and the Sunnah (Traditions of the Islamic prophet).⁵⁴ Hence, The Sharia court system constitutes the basic judiciary of Saudi Arabia and its judges and lawyers form part of the Islamic Scholars (Ulmaa).⁵⁵ Likewise, "law practice" (Lawyering) means representation of third parties before courts and rendering consultancy services based on the principles of Sharia and the rule of law.⁵⁶ Thus, according to Saudi law whoever practices this is a lawyer.⁵⁷

Ministry of justice plays a role of a lawyer bar association in view of the fact that it is responsible for regulating entry and practicing requirements for the legal profession in KSA. In that regard, the "Lawyers Registration and Admission Committee" is consisted of three members, a deputy of the Ministry of Justice to be appointed by the Minister of Justice, as Chairman, A representative of the Board of Grievances (a Judicial Body) whose rank is not less than the rank of a Chief of a Court of class A, to be appointed by the Chairman of the Board of Grievances, and A lawyer who has been practicing law for a minimum period of five years, to be appointed by the Minister of Justice.⁵⁸ Furthermore, the ministry of Justice prepares a general list of the names of practicing

⁵³ *Ibid*, Article no. 48.

⁵⁴ See, *Supra* note 4 and accompanying text.

⁵⁵ See, Esposito, John L., "Islam and politics", Syracuse University Press, (1998), p. 111.

⁵⁶ The Code of Law Practice, Royal Decree No. (M/ 38), adopted on 15-October 2001, Umm al-Qura No. (3867)

⁵⁷ *Ibid*, Article no. 1.

⁵⁸ *Ibid*, Article no. 5.

lawyers and another list of non-practicing lawyers,⁵⁹ as of the time of registration.⁶⁰ Following the registration on the list, a license to practice law is granted pursuant to a resolution by the Minister of Justice.⁶¹ With regard to disciplinary process, minister of justice is entitled to set up one or more committees to consider the imposition of the sanctions provided in the relevant regulations,⁶² this committee is called “the Disciplinary Board”, and it is consisted of a judge and two experts, one of whom is to be selected from the class of lawyers who have been practicing the profession for a minimum period of ten years. The Minister of Justice also appoints one of the board members to act as Chairman.⁶³

Qatar, the origins of its legal system are to be found in both ancient and classical sources. First, it is founded on Islamic Law and jurisprudence, and second it has adopted many principles of the Napoleonic Civil Code since the Egyptian jurisprudence and

⁵⁹ Ministry of justice transfers the name of a lawyer who ceases to practice the profession for a period exceeding one year from the list of practicing lawyers to the list of non-practicing lawyers subject to the restrictions included in the implementing regulations of Cod of Law practice. See, *Ibid*, Article no. 2.

⁶⁰ *Ibid*.

⁶¹ *Ibid*, Article no. 7.

⁶² With regard to applicable sanctions the cod of law practice states that “First: The name of a lawyer shall be struck from the list and his license revoked in case a hadd (Quranic prescribed punishment) or any other punishment in connection with a crime that impugns integrity has been entered against him. Second: Without prejudice to a claim for compensation by any aggrieved party or to any other claim, any lawyer who violates the provisions of this Code or its implementing regulations, or commits a breach of his professional duties or any act as may be incompatible with the professional standards shall be subject to one of the following sanctions: Warning, reprimand, suspension of practice for a period not exceeding three years, or striking his name off the list and revoking his license. *Ibid*, Article no. 29.

⁶³ *Ibid*, Article no. 31.

procedure have had profound influence on the legal and judicial system of Qatar.⁶⁴ Qatari law defines the Legal Profession (lawyering) as a free profession aims to achieve justice, contributes with the judiciary to establishing its rules, and assists litigants to defend their rights and freedom.⁶⁵ Analogous to UAE and KSA, Qatar ministry of justice plays a role of a lawyer bar association,⁶⁶ since it is responsible for regulating admission and practicing necessities for the legal profession. Accordingly, the lawyers' admission committee is established by a decree of Council of Ministers, and the Committee establishes the internal regulations to govern the functions, the admission committee is consisted of the minister of justice as a chairman, the director of the department of the legal advice and contracts at the ministry of justice as a vice chairman, and seven members; Director of Department of State Litigation, Two judges from the court of appeal to be nominated by the Supreme Judicial Council, Attorney general in the public prosecution to be nominated by Public Prosecutor, Three lawyers to be elected by the Minister of justice.⁶⁷ Regarding the disciplinary process, department of Legal Advice and Contracts at the Ministry of justice investigates lawyers' violations, upon the request of the Committee, or upon the request of one of the judges as to what the lawyer commits before the court, or upon the request of the concerned parties.⁶⁸ The Department of Legal Advice and Contracts files the Disciplinary Claim and represent the disciplinary prosecution before the Council. A disciplinary Board chaired by a judge of the Court of Appeal and consisting of two judges selected by the President of the Court of Cassation, one of the jurists at the Ministry, and a lawyer enrolled in the roll of lawyers admitted by

⁶⁴ See *supra* notes 2, 5 and accompanying text.

⁶⁵ Qatari code of law practice no. 23 of 2006, Article no. 1.

⁶⁶ See *Supra* notes 50, 57 and accompanying text

⁶⁷ *Ibid*, Articles no. 10, 11, 12, and 18.

⁶⁸ *Ibid*, Article no. 66.

the Court of Cassation, who is not member of the Committee and selected by its chairman, are responsible for disciplining lawyers.⁶⁹

Hence, it should be noted that domestic laws and regulations in these cases are not sympathetic with principle of the bar association independence. For Egypt it is recommended to update, simplify and codify the provisions that govern layers and the bar, including the bylaws that are conflicted with the advocates law. Additionally, as it is mandated by the international laws, any disciplinary proceedings against lawyers who are accused of having failed to conduct themselves in accordance with the recognized standards and ethics of their profession must be truly independent of the Executive and guarantee due process in the course of the proceedings, however in Egypt, UAE, KSA, and Qatar the first instance disciplinary process is conducted by extraneous or inappropriate committees.

The other significant matter is that acquiring the lawyer permission in UAE, KSA, and Qatar from the ministry of justice, which means lawyers are deprived from shaping and joining self-governing professional associations so they cannot represent their interests and protect their professional integrity. Moreover, the executive bodies of these professional associations are not elected by their members and cannot exercise their functions without external interference, which is contradicted with one of the keys to ensuring the independence of lawyers is to allow them to work freely without being obliged to obtain clearance or permission from the executive to carry out their work. This view was confirmed by the Human Rights Committee with regard to Belarus when it noted with concern “the adoption of the Presidential Decree on the Activities of Lawyers and Notaries of 3 May 1997, which gives competence to the Ministry of Justice for licensing lawyers and obliges them, in order to be able to practice, to be members of a centralized Collegium controlled by the Ministry, thus undermining the independence of

⁶⁹ *Ibid*, Article no. 67.

lawyers". Stressing that "the independence of the judiciary and the legal profession is essential for a sound administration of justice and for the maintenance of democracy and the rule of law", the Committee urged the State party "to take all appropriate measures, including review of the Constitution and the laws, in order to ensure that judges and lawyers are independent of any political or other external pressure".⁷⁰

V. Conclusion

As emphasized throughout this article, lawyers are a professional group that plays a crucial role in the administration of justice and in the prevention of impunity for human rights violations. They are consequently also essential for the preservation of a democratic society and the maintenance of a just rule of law.

It is therefore indispensable that States assume their international legal duties derived from the various sources of international law. Based on that, Arab countries must permit lawyers to carry out their professional responsibilities independently and impartially without undue interference from the Executive, Legislature, or even the judicial bodies.

States' duty to secure the independence of lawyers is not necessarily fulfilled by passively allowing them to go about their business as it was elucidated above according to domestic laws and regulations in the Arab countries, through having a legal obligation to ensure lawyers independence, States may have to take positive actions to protect lawyers against violence, intimidation, hindrance, harassment or other improper interference so as to enable them to perform all their professional functions effectively.

⁷⁰ Human Rights Committee, Report of the Human Rights Committee Volume I, 150, U.N. GAOR, 53rd Sess., Supp. 40, U.N. Doc. A/53/40 (15 September 1998).

In situations where lawyers are either unwilling or unable fully to assume their responsibilities against corruption and serious human rights violations, the rule of law cannot be maintained and human rights cannot be enforced. It is not only individuals who will suffer in such a situation: it is the entire free and democratic constitutional order of the State concerned that will ultimately be in jeopardy.

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