

5 November 2019

## LAWASIA RESOLUTION ON THE ROLE OF LAWYERS AND LAW ASSOCIATIONS

### Draft Resolution

*Mindful of:*

- (a) continual physical threats to members of the legal profession who represent clients in contentious matters;*
- (b) intimidation of lawyers who speak out on matters of public interest;*
- (c) the importance of an independent legal profession in the interests of the rule of law and the administration of justice;*
- (d) the role of law associations and organisations in protecting and advancing the welfare of lawyers and the legal profession in the public interest;*

*the LAWASIA Council resolves and:*

- (1) reaffirms its commitment to the United Nations Basic Principles on the Role of Lawyers;*
- (2) reaffirms that one of the roles of law associations and law organisations, which includes bar associations and law societies, in promoting the welfare and protecting the professional integrity of lawyers, as well as upholding the administration of justice and the rule of law, is to protect and defend its members and lawyers in general against threats, intimidation, hindrance, harassment, interference, inappropriate restrictions, prosecution, administrative or other sanctions, or other violations in the performance of the lawyer's professional functions; and*
- (3) supports the Japanese Federation of Bar Associations in its call for the Basic Principles on the Role of Lawyers to be expanded to recognise:*
  - (a) that one of the roles of law associations and law organisations, which includes bar associations and law societies, in promoting the welfare and protecting the professional integrity of lawyers, as well as upholding the administration of justice and the rule of law, is to protect and defend its members and lawyers in general against threats, intimidation, hindrance, harassment, interference, inappropriate restrictions, prosecution, administrative or other sanctions, or other violations in the performance of the lawyer's professional functions; and*
  - (b) that all governments must recognise and respect the role of law associations and organisations, which includes bar associations and law societies, in protecting and defending its members and lawyers in general against threats, intimidation, hindrance, harassment, interference, inappropriate restrictions, prosecution, administrative or other sanctions, or other violations in the performance of the lawyer's professional functions.*

## Background

1. On 18 April 2019, the Japanese Federation of Bar Associations (JFBA) presented its *Opinion on Matters to be Included in the Kyoto Declaration at the 14<sup>th</sup> United Nations Congress on Crime Prevention and Criminal Justice* at the 28<sup>th</sup> Session of the UN Commission on Crime Prevention and Criminal Justice (“the Kyoto Congress”).
2. The Opinion was also submitted to the United Nations Office on Drugs and Crime in May 2019.
3. On 23 July 2019, JFBA formally sought LAWASIA’s support for the realisation of the Opinion, meaning that it seeks support for adoption of its recommendations by the Kyoto Congress.
4. The Opinion addresses a range of issues. The Draft Resolution before Council endorses two of those issues, namely, the need to reaffirm the essential role of lawyers in achieving a balance between human rights and criminal justice, and the role of bar associations in protecting and defending their members against outside interference.
5. These issues have been of concern to LAWASIA, and have been discussed by LAWASIA ExCo at length, in recent times. Circumstances which have given rise to these concerns have in recent times included:
  - (a) In February 2018, LAWASIA dispatched an observer mission to the Maldives in response to the government’s suspension of 56 lawyers who had signed a petition expressing concern about the performance of the judiciary, including apparent procedural irregularities in political trials, baseless remand trials, the delivery of criminal judgements in absentia, reliance on anonymous witnesses and disrespectful behaviour by judicial members;
  - (b) In November 2018, LAWASIA issued a *Statement of Concern Regarding the Acquittal of Asia Bibi and Violent Protests in Pakistan*, after Mr Saifal Mulook, lawyer for Asia Bibi who was acquitted of blasphemy charges by the Supreme Court of Pakistan, was forced to leave the country due to death threats and threats of violence;
  - (c) Also in November 2018, LAWASIA issued a *Statement of Concern on the Continuing Violence and Threats of Violence to Lawyers in the Philippines*, citing reports that in the preceding two years 34 legal professionals had been killed, most recently attorney Benjamin Ramos whose murder was linked to the fact that he was engaged in pro bono work for environmentalist, activists and political prisoners;
  - (d) In May 2019, LAWASIA issued a *Statement of Concern on the Harsh Sentence Issued against Iranian Human Rights lawyer Ms Nasrin Sotudeh*, after Ms Sotudeh was arrested and sentenced to 38 years imprisonment in an apparent reaction by the authorities to her peaceful work in defending women’s rights;
  - (e) In September 2019, the President of the Malaysian Bar called upon the authorities to act swiftly against anyone attempting to impede the process of justice by threatening and harassing lawyers – this followed accusations that a government MP who chose to represent a client in a criminal matter faced a moral dilemma.
6. In a paper commissioned for LAWASIA by the Anil Divan Foundation and published in 2019, Shreyas Narla wrote:

Across the globe, whether be it in emerging democracies or seasoned democratic setups, reporting on the plight of such lawyers has shown a consistent rise in the severity and scale of such violations being committed against them. Acts like intimidation, death threats, disappearances, physical violence including murder and torture, restraints on their freedom of movement or expression and alike make for obvious, upfront cases of violations. A graver,

perhaps far more harrowing form of obstruction in their work is when they are arbitrarily arrested, detained unfairly and falsely accused, prosecuted and convicted, all under the garb of statutorily backed legal process. The nature and extent of such a violation is often indeterminable and thus, difficult to resolve. It becomes even more arduous to challenge when it is the State itself initiating such processes against the lawyers.

7. The United Nations has recognised the issue, as reflected in the 1990 *Basic Principles on the Role of Lawyers* and the 1998 *Declaration on Human Rights of Defenders*.

8. Article 16 of the *Basic Principles* states:

Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

9. Article 18 of the *Basic Principles* states:

Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.

10. Articles 24 and 25 of the *Basic Principles* currently address the role of law associations in the following terms:

24. Lawyers shall be entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity. The executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference.

25. Professional associations of lawyers shall cooperate with Governments to ensure that everyone has effective and equal access to legal services and that lawyers are able, without improper interference, to counsel and assist their clients in accordance with the law and recognized professional standards and ethics.

11. The full text of the *Basic Principles* is **attached**.

12. Other international law associations have been active in this field. For example, in 1990 the International Bar Association adopted *Standards for the Independence of the Legal Profession*, addressing not only the right of lawyers to "at all times act freely, diligently and fearlessly in accordance with the legitimate interest of the client and without any inhibition or pressure from the authorities or the public", but also the role of law associations in defending the role of lawyers and preserving the independence of the legal profession. An IBA Task Force established in 2016 reinforced the need for adequate resourcing for bar associations;

13. In 2013, the LAWASIA Council passed a *Resolution on Freedom of Assembly of Lawyers*:

Whilst LAWASIA recognises the right of governments to regulate public demonstrations in the interest of preserving law and order, that regulation must not prevent, but should recognise the right of members of the legal profession and others to engage in peaceful initiatives against any threat to the principles which underpin human rights, the rule of law or the administration of, or access to, justice.

LAWASIA's 2013 statement addressed a particular issue of concern at the time, and was not expressed in broad or generic terms. LAWASIA has not to date issued a specific statement regarding the role of law associations.

14. Article II (1)(j) of LAWASIA's *Constitution* states that one of the objects of the Association is "to uphold and advance the status of the legal profession within the Region".

15. Recommendations 1 and 2 of the JFBA *Opinion on Matters to be Included in the Kyoto Declaration at the 14<sup>th</sup> United Nations Congress on Crime Prevention and Criminal Justice* were as follows:

The Japanese Federation of Bar Associations (the “JFBA”) urges representatives of the participating countries of the 14<sup>th</sup> United Nations Congress on Crime Prevention and Criminal Justice (hereinafter referred to as the “Kyoto Congress” to be held in 2020 to include the following in the Kyoto Declaration to be adopted in Congress:

1 It shall be reaffirmed that the roles of lawyers, key players in criminal justice, are essential to the promotion of human rights, the rule of law and culture of lawfulness, and the maintenance and development of criminal justice in harmony with sustainable development, and the following objectives shall be addressed:

- (1) Make it known once again that all States, including the judiciary, should comply with the Basic Principles on the Role of Lawyers adopted at the 8<sup>th</sup> Congress (hereinafter referred to as the “Basic Principles”) as the minimum standards of criminal justice in all States.
- (2) Consider international mechanisms to ensure that basic principles are observed in each State, in consultation with international professional associations of lawyers and national bar associations.

2 The Basic Principles shall be expanded to include that one of the roles of bar associations and other professional associations of lawyers in fulfilling the roles of the lawyers set forth in the preceding paragraph is to protect and defend its members against inappropriate restrictions or violations to lawyers, and that the roles of such bar associations and other professional associations of lawyers should be protected by national law.

16. In relation to Recommendation 2, it will may be observed that whilst Article 25 of the UN *Basic Principles* provides that lawyers must be entitled to represent their clients “without improper interference” but does not go so far as to say that law associations and law organisations, which includes bar associations and law societies, should be recognised and protected by domestic law.

## ATTACHMENT

### United Nations 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

Whereas in the Charter of the United Nations the peoples of the world affirm, inter alia, their determination to establish conditions under which justice can be maintained, and proclaim as one of their purposes the achievement of international cooperation in promoting and encouraging respect for human rights and fundamental freedoms without distinction as to race, sex, language or religion,

Whereas the Universal Declaration of Human Rights enshrines the principles of equality before the law, the presumption of innocence, the right to a fair and public hearing by an independent and impartial tribunal, and all the guarantees necessary for the defence of everyone charged with a penal offence,

Whereas the International Covenant on Civil and Political Rights proclaims, in addition, the right to be tried without undue delay and the right to a fair and public hearing by a competent, independent and impartial tribunal established by law,

Whereas the International Covenant on Economic, Social and Cultural Rights recalls the obligation of States under the Charter to promote universal respect for, and observance of, human rights and freedoms,

Whereas the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment provides that a detained person shall be entitled to have the assistance of, and to communicate and consult with, legal counsel,

Whereas the Standard Minimum Rules for the Treatment of Prisoners recommend, in particular, that legal assistance and confidential communication with counsel should be ensured to untried prisoners,

Whereas the Safeguards guaranteeing protection of those facing the death penalty reaffirm the right of everyone suspected or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings, in accordance with article 14 of the International Covenant on Civil and Political Rights,

Whereas the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power recommends measures to be taken at the international and national levels to improve access to justice and fair treatment, restitution, compensation and assistance for victims of crime,

Whereas 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,

Whereas professional associations of lawyers have a vital role to play in upholding professional standards and ethics, protecting their members from persecution and improper restrictions and infringements, providing legal services to all in need of them, and cooperating with governmental and other institutions in furthering the ends of justice and public interest,

The Basic Principles on the Role of Lawyers, set forth below, which have been formulated to assist Member States in their task of promoting and ensuring the proper role of lawyers,

should be respected and taken into account by Governments within the framework of their national legislation and practice and should be brought to the attention of lawyers as well as other persons, such as judges, prosecutors, members of the executive and the legislature, and the public in general. These principles shall also apply, as appropriate, to persons who exercise the functions of lawyers without having the formal status of lawyers.

### **Access to lawyers and legal services**

1. All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings.
2. Governments shall ensure that efficient procedures and responsive mechanisms for effective and equal access to lawyers are provided for all persons within their territory and subject to their jurisdiction, without distinction of any kind, such as discrimination based on race, colour, ethnic origin, sex, language, religion, political or other opinion, national or social origin, property, birth, economic or other status.
3. Governments shall ensure the provision of sufficient funding and other resources for legal services to the poor and, as necessary, to other disadvantaged persons. Professional associations of lawyers shall cooperate in the organization and provision of services, facilities and other resources.
4. Governments and professional associations of lawyers shall promote programmes to inform the public about their rights and duties under the law and the important role of lawyers in protecting their fundamental freedoms. Special attention should be given to assisting the poor and other disadvantaged persons so as to enable them to assert their rights and where necessary call upon the assistance of lawyers.

### **Special safeguards in criminal justice matters**

5. Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence.
6. Any such persons who do not have a lawyer shall, in all cases in which the interests of justice so require, be entitled to have a lawyer of experience and competence commensurate with the nature of the offence assigned to them in order to provide effective legal assistance, without payment by them if they lack sufficient means to pay for such services.
7. Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty- eight hours from the time of arrest or detention.
8. All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.

### **Qualifications and training**

9. Governments, professional associations of lawyers and educational institutions shall ensure that lawyers have appropriate education and training and be made aware of the ideals and ethical duties of the lawyer and of human rights and fundamental freedoms recognized by national and international law.
10. Governments, professional associations of lawyers and educational institutions shall ensure that there is no discrimination against a person with respect to entry into or continued practice within the legal profession on the grounds of race, colour, sex, ethnic origin, religion, political or other opinion, national or social origin, property, birth, economic or other status, except that a requirement, that a lawyer must be a national of the country concerned, shall not be considered discriminatory.
11. In countries where there exist groups, communities or regions whose needs for legal services are not met, particularly where such groups have distinct cultures, traditions or languages or have been the victims of past discrimination, Governments, professional

associations of lawyers and educational institutions should take special measures to provide opportunities for candidates from these groups to enter the legal profession and should ensure that they receive training appropriate to the needs of their groups.

### **Duties and responsibilities**

12. Lawyers shall at all times maintain the honour and dignity of their profession as essential agents of the administration of justice.
13. The duties of lawyers towards their clients shall include:
  - (a) Advising clients as to their legal rights and obligations, and as to the working of the legal system in so far as it is relevant to the legal rights and obligations of the clients;
  - (b) Assisting clients in every appropriate way, and taking legal action to protect their interests;
  - (c) Assisting clients before courts, tribunals or administrative authorities, where appropriate.
14. Lawyers, in protecting the rights of their clients and in promoting the cause of justice, shall seek to uphold human rights and fundamental freedoms recognized by national and international law and shall at all times act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession.
15. Lawyers shall always loyally respect the interests of their clients. Guarantees for the functioning of lawyers
16. Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.
17. Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.
18. Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.
19. No court or administrative authority before whom the right to counsel is recognized shall refuse to recognize the right of a lawyer to appear before it for his or her client unless that lawyer has been disqualified in accordance with national law and practice and in conformity with these principles.
20. Lawyers shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority.
21. It is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time.
22. Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential.

### **Freedom of expression and association**

23. Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession.

### **Professional associations of lawyers**

24. Lawyers shall be entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity.

The executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference.

25. Professional associations of lawyers shall cooperate with Governments to ensure that everyone has effective and equal access to legal services and that lawyers are able, without improper interference, to counsel and assist their clients in accordance with the law and recognized professional standards and ethics.

#### **Disciplinary proceedings**

26. 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 international standards and norms.
27. Charges or complaints made against lawyers in their professional capacity shall be processed expeditiously and fairly under appropriate procedures. Lawyers shall have the right to a fair hearing, including the right to be assisted by a lawyer of their choice.
28. Disciplinary proceedings against 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.
29. 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.