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# The principle of independence of lawyers: UN and IBA reference instruments

Basic Principles on the Role of Lawyers  
and the IBA Standards for the Independence  
of the Legal Profession



Human Rights  
Institute

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# Introduction

Adopted in 1990, the Basic Principles on the Role of Lawyers and the IBA Standards for the Independence of the Legal Profession constitute landmark instruments recognising the principle of independence of the legal profession as an essential component of a democratic society and the rule of law, and a necessary prerequisite for the effective enforcement of human rights. By shedding light on the role of the legal profession in the protection of fair trial rights, and consequently all human rights, the two instruments operated a major refocus in international human rights law.

Both instruments, adopted respectively by the community of states<sup>1</sup> and the legal profession,<sup>2</sup> converge in their objectives and content and, as such, seal a common understanding of the role and missions of each as well as collaboration between them.

On the one hand, the instruments firmly establish the principle of the independence of lawyers and lawyers' role in 'upholding human rights and fundamental freedoms' and ensuring access to justice for all. In support, in 1993, the state community clearly reaffirmed that '[t]he administration of justice, including law enforcement and prosecutorial agencies and, *especially, an independent judiciary and legal profession in full conformity with applicable standards contained in international human rights instruments*, are essential to the full and non-discriminatory realization of human rights and indispensable to the processes of democracy and sustainable development'.<sup>3</sup>

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- 1 The Basic Principles on the Role of Lawyers were unanimously adopted by United Nations Member States gathered at the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders. The Principles were subsequently welcomed by the UN General Assembly in 1990.
  - 2 The IBA adopted the Standards for the Independence of the Legal Profession, reiterating and complementing the core content of the Basic Principles.
  - 3 Vienna Declaration and Programme of Action, para 27 [emphasis added].

On the other, they spell out the corresponding protection the profession should benefit from in return as well as states' duties and the role of bar associations in ensuring that lawyers are able to perform 'all of their professional functions without intimidation, hindrance, harassment or improper interference'. The special protection lawyers should benefit from materialises through key guarantees and privileges. These include the self-regulation of the legal profession recognised as independent, the principle of non-identification of lawyers with their clients, a system of immunities for oral expression during trials and the privilege of confidentiality in the lawyer–client communication that aims at securing the lawyers' core functions of providing independent and effective legal assistance and legal representation. Absolutely key in practice for lawyers' functioning, these guarantees are not all legally absolute, that is, non-derogable. However, international and regional mechanisms have recognised a high threshold of protection and strict conditions for derogation.

Thirty years since their adoption, the Basic Principles and the IBA Standards are considered to be the baseline standards for the independence of lawyers and have been referred to as such by states, lawyers and courts worldwide, as well as UN human rights mechanisms, especially the UN Special Rapporteur on the independence of judges and lawyers. They constitute reference instruments guiding and informing the work of all lawyers and bar associations, and corresponding state obligations.

A handwritten signature in black ink, appearing to read 'H Bernardes N', with a stylized flourish at the end.

**Horacio Bernardes Neto**

President, International Bar Association (2019–2020)

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# 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.

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# IBA Standards for the Independence of the Legal Profession

**(Adopted 1990)**

## **WHEREAS:**

The independence of the legal profession constitutes an essential guarantee for the promotion and protection of human rights and is necessary for effective and adequate access to legal services:

An equitable system of administration of justice which guarantees the independence of lawyers in the discharge of their professional duties without any improper restrictions, pressures or interference, direct or indirect is imperative for the establishment and maintenance of the rule of law.

It is essential to establish conditions in which all persons shall have effective and prompt access to legal services provided by an independent lawyer of their choice to protect and establish their legal, economic, social, cultural, civil and political rights.

Professional associations of lawyers have a vital role to uphold professional standards and ethics, to protect their members from improper restrictions and infringements, to provide legal services to all in need of them, and to co-operate with governmental and other institutions in furthering the ends of justice.

**NOW THEREFORE** the following standards are established by the International Bar Association to assist in the task of promoting and ensuring the proper role of lawyers which should be taken into account and respected by Governments within the framework of their national legislation and practice and should be brought to the attention of lawyers, judges, members of the executive and the legislature and the public in general.

## **Entry into the legal profession and legal education**

1. Every person having the necessary qualifications in law shall be entitled to become a lawyer and to continue in practice without discrimination.
2. Legal education shall be open to all persons with requisite qualifications and no one shall be denied such opportunity by reason of race, colour, sex, religion, political or other opinion, national or social origin, property, birth, status or physical disability.
3. Legal education shall be designed to promote knowledge and understanding of the role and the skills required in practising as a lawyer, including awareness of the legal and ethical duties of a lawyer and of the human rights and fundamental freedoms recognised within the given jurisdiction and by international law.
4. Programmes of legal education shall have regard to the social responsibilities of the lawyer, including co-operation in providing legal services to the needy and the promotion and defence of legal rights of whatever nature whether economic, social, cultural, civil and political and specially rights of such nature in the process of development.

## **Education of the public concerning the law**

5. It shall be a responsibility of the legal profession and state organs to educate the members of the public about the principles of the rule of law, the importance of the independence of the judiciary and of the legal profession and to inform them about their rights and duties and the relevant and available remedies.

## **Rights and duties of lawyers**

6. Subject to the established rules, standards and ethics of the profession the lawyer in discharging his or her duties shall 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.

7. The lawyer is not to be identified by the authorities or the public with the client or the client's cause, however popular or unpopular it may be.
8. No lawyer shall suffer or be threatened with penal, civil, administrative, economic or other sanctions or harassment by reason of his or her having legitimately advised or represented any client or client's cause.
9. No court or administrative authority shall refuse to recognise the right of a lawyer qualified in that jurisdiction to appear before it for his client.
10. A lawyer shall have the right to raise an objection for good cause to the participation or continued participation of a judge in a particular case, or to the conduct of a trial or hearing.
11. Save as provided in these principles, a lawyer shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in his or her professional appearances before a court, tribunal or other legal or administrative authority.
12. The independence of lawyers in dealing with persons deprived of their liberty shall be guaranteed so as to ensure that they have free, fair and confidential legal assistance, including the lawyer's right of access to such persons. Safeguards shall be built to avoid any possible suggestion of collusion, arrangement or dependence between the lawyer who acts for them and the authorities.
13. Lawyers shall have all such other facilities and privileges as are necessary to fulfil their professional responsibilities effectively, including:
  - a) confidentiality of the lawyer-client relationship, including protection of the lawyer's files and documents from seizure or inspection and protection from interception of the lawyer's electronic communications;
  - b) the right to travel and to consult with their clients freely both within their own country and abroad;

- c) the right freely to seek, to receive and, subject to the rules of their profession, to impart information and ideas relating to their professional work.
14. Lawyers shall not by reason of exercising their profession be denied freedom of belief, expression, association and assembly; and in particular they shall have the right to:
- a) take part in public discussion of matters concerning the law and the administration of justice;
  - b) join or form freely local, national and international organisations;
  - c) propose and recommend well considered law reforms in the public interest and inform the public about such matters.

### **Legal service for the poor**

15. It is a necessary corollary of the concept of an independent bar that its members shall make their services available to all sectors of society so that no one may be denied justice.
16. Lawyers engaged in legal service programmes and organisations, which are financed wholly or in part from public funds, shall enjoy full guarantees of their professional independence in particular by:
- a) the direction of such programmes or organisations being entrusted to an independent board with control over its policies, budget and staff;
  - b) recognition that, in serving the cause of justice, the lawyer's primary duty is towards the client, who must be advised and represented in conformity with professional conscience and judgement.

### **Lawyers' Associations**

17. There shall be established in each jurisdiction one or more independent self-governing associations of lawyers recognised in law, whose council or other executive body shall be freely elected by all the members without interference of any kind by



any other body or person. This shall be without prejudice to their right to form or join in addition other professional associations of lawyers and jurists.

### **Functions of the Lawyers' Associations**

18. The functions of the appropriate lawyers' association in ensuring the independence of the legal profession shall be inter alia:
  - a) to promote and uphold the cause of justice, without fear or favour;
  - b) to maintain the honour, dignity, integrity, competence, ethics, standards of conduct and discipline of the profession; and to protect the intellectual and economic independence of the lawyer from his or her client;
  - c) to defend the role of lawyers in society and preserve the independence of the profession;
  - d) to protect and defend the dignity and independence of the judiciary;
  - e) to promote free and equal access of the public to the system of justice, including the provision of legal aid and advice;
  - f) to promote the right of everyone to a prompt, fair and public hearing before a competent, independent and impartial tribunal and in accordance with proper and fair procedures in all matters;
  - g) to promote and support law reform, and to comment upon and promote public discussion on the substance, interpretation and application of existing and proposed legislation;
  - h) to promote a high standard of legal education as a prerequisite for entry into the profession and the continuing education of lawyers and to educate the public regarding the role of a Lawyers' Association;
  - i) to ensure that there is free access to the profession for all persons having the requisite professional competence, without discrimination of any kind, and to give assistance to new entrants into the profession;
  - j) to promote the welfare of members of the profession and the rendering of assistance

- to members of their families in appropriate cases;
- k) to affiliate with and participate in the activities of international organisations of lawyers.
19. Where a person involved in litigation wishes to engage a lawyer from another country to act with a local lawyer, the appropriate association of lawyers shall co-operate in assisting a foreign lawyer to obtain the necessary right of audience provided that he or she has the qualifications and fulfils the conditions required to obtain that right.
20. To enable the lawyers' association to fulfil its function of preserving the independence of lawyers it shall be informed immediately of the reason and legal basis for the arrest or detention and place of detention of any lawyer; and the lawyers' association shall have access to the lawyer arrested or detained.

### **Disciplinary proceedings**

21. Lawyers' associations shall adopt and enforce a code of professional conduct of lawyers.
22. There shall be established rules for the commencement and conduct of disciplinary proceedings that incorporate the rules of natural justice.
23. The appropriate lawyers' association will be responsible for or be entitled to participate in the conduct of disciplinary proceedings.
24. Disciplinary proceedings shall be conducted in the first instance before a disciplinary committee of the appropriate lawyers' association. The lawyer shall have the right to appeal from the disciplinary committee to an appropriate and independent appellate body.

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