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URGENT COMMENTS

ON THE DRAFT DECREE OF THE PRESIDENT OF THE REPUBLIC OF UZBEKISTAN ON MEASURES TO FURTHER IMPROVE THE INSTITUTION OF THE ADVOCACY AND RADICALLY INCREASE THE STATUS OF ADVOCATES

**based on an unofficial English translation of the Draft Law provided the OSCE
Project Co-ordinator in Uzbekistan**

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I. SCOPE OF REVIEW

1. The scope of these Comments focuses mainly on the proposed changes relating to the institution of advocacy but does not go into other aspects addressed in the Draft Decree and Concept, notably amendments to criminal procedure, taxation laws, or legislation on legal aid. With respect to the right to legal aid, OSCE/ODIHR would like to refer to its 2019 Comments on the Draft Law on Legal Aid. With respect to other fields of law, see Section V of this review.
2. Given the limited amount of time, it was not possible to prepare an in-depth legal review on the Draft Decree and Concept, their findings and proposals, and the ramifications that this would have in relation to relevant legislation on advocacy, criminal procedure, and other matters. Instead, a review was prepared.
3. The Comments are based on an unofficial English translation of the Draft Law, which is attached to this document as an Annex. Errors from translation may result.

4. In view of the above, ODIHR would like to make mention that this review does not prevent ODIHR from formulating additional written or oral recommendations or comments on respective legal acts or related legislation pertaining to the legal and institutional framework regulating the institution of advocacy and the status of advocates in Uzbekistan.

II. EXECUTIVE SUMMARY AND KEY RECOMMENDATIONS

5. The President, and Government, of Uzbekistan aim to completely overhaul the institution of the advocacy, in order to enhance the quality and number of advocates in the country. This is a positive step, given that the visit of the UN Special Rapporteur on independence of judges and lawyers to Uzbekistan in September 2019¹ demonstrated, among others, that advocates and the Chamber of Advocates in particular lacked independence, and that, compared to the overall population of Uzbekistan, there was a dramatic shortage of lawyers in the country.
6. A Draft Presidential Decree was prepared to improve this situation. It identifies current shortcomings with respect to the institution of advocacy and includes concrete directions and tasks aiming to facilitate access to the profession of advocate, enhancing the independence of advocates and of the Chamber of Advocates, strengthening the rights and status of advocates, and improving the quality of legal education and training. To achieve these aims, the Draft Decree determines concrete changes that shall enter into effect from 1 September 2020 and also approves a Concept on the Development of the Institution of Advocacy in Uzbekistan (Annex 1) and a Road Map to help implement the Concept (Annex 2). The implementation of the Concept will be undertaken by a Commission formed for this express purpose and working groups shall conduct critical studies and make proposals on reforming the institution of the advocacy.
7. The Draft Decree further charges the Chamber of Advocates, together with the Ministry of Justice, and the National Centre for Human Rights, to develop and introduce a new Draft Law on Advocacy and Advocacy Activity, and to prepare draft amendments to other relevant legislation, by 1 November 2020. The Ministry and the Chamber of Advocates are also held to monitor the process of preparing, approving and introduction of normative acts, inform the Commission of the monitoring results every month, and help the Commission and working groups organize a study of legislation and law enforcement practice of foreign countries in the field of advocacy. Finally, the goals and objectives of the Draft Decree will be covered widely in the media, as well as the Internet (Point 11); the different milestones in achieving these goals should benefit from equally wide media coverage, as should the various debates regarding key aspects of the reform process.

¹¹ OHCHR: Preliminary observations on the official visit to Uzbekistan (19-25 September 2019), available here: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25043&LangID=E>

8. In light of international human rights standards and good practices, ODIHR makes the following recommendations to further enhance the Draft Law:
 - A. In view of coming legislation, the Draft Decree should limit itself to outlining, in broad strokes, what needs to be changed, indicating which bodies shall be tasked with drafting further strategies and developing ways forward, and to avoid substituting primary legislation; [pars 11 - 16]
 - B. To avoid limiting the possibility of becoming an advocate to Uzbek nationals only; [pars 18]
 - C. To specify eligibility criteria, procedure and terms of appointment/election of the members of the qualification commission in the new Law on Advocacy, and not in mere rules of procedure; [par 26]
 - D. To avoid rules in the legislation on the number of assistants and interns advocates may engage; [par 31]
 - E. To set out clear rules in legislation grounds and procedure of removal of the members of conference, board as well as chairperson, indicate the majority required for removal, as well as to provide the respective officeholder with the right to be heard and; [par 40]
 - F. To include in the new Law on Advocacy clear rules on how members of disciplinary commissions are appointed, and how the commissions shall be composed (while bearing in mind the above recommendation regarding pluralism and gender equality). [par 42]

Additional Recommendations, highlighted in bold, are included in the text of the Opinion.

III. ANALYSIS AND RECOMMENDATIONS

1. International Standards

9. Generally, the right to have and to choose one's lawyer is an inherent part of every person's right to a fair trial under Article 14 par 3 (d) of the ICCPR.² This presupposes a certain freedom from interference (state or otherwise) on the side of the respective lawyer or advocate, as clearly outlined in the UN's Basic Principles on the Role of Lawyers (Principle 16).³ Additionally, the Basic Principles provide guidance on the organization of the legal profession, such as lawyers' admission to the profession, key duties and responsibilities, self-organization of lawyers, and disciplinary liability.

² UN International Covenant on Civil and Political Rights (hereinafter "the ICCPR"), adopted by the UN General Assembly by Resolution 2200A (XXI) of 16 December 1966. The Republic of Uzbekistan acceded to the ICCPR on 28 September 1995.

³ *UN 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.

10. The Basic Principles also include, in their Preamble, specific reference to professional associations of lawyers (i.e. bar associations or, as in the present case, chambers of advocates, which the Principles see as vital 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. This special role was also highlighted in the UN Special Rapporteur on the independence of judges and lawyers' 2018 Report on Bar Associations, which provides standards and recommendations relating to the composition, powers and other matters relating to bar association.⁴

2. The Proposed Changes to the Institution of Advocacy in Uzbekistan

11. The main changes proposed by the Draft Decree follow a multi-pronged process with respect to strengthening the institution of advocacy: the Draft Decree, among others, proposes certain concrete changes, to be implemented by 1 September 2020, and charges the Chamber of Advocates, along with the Ministry of Justice and the National Centre for Human Rights, with preparing a Draft Law on Advocacy and Advocacy Activity by 1 November 2020.

12. The changes imposed by the Draft Decree mainly relate to advocate registration criteria and procedures, as well as certain elements of advocates' work, specific examples of state oversight and taxation matters. The Draft Decree thus already regulates certain hand-picked matters that will also need to, eventually, be set down in primary law, meaning legislation that undergoes a proper consultative legislative process, and is eventually adopted by the *Oliy Majlis*, the Parliament of Uzbekistan. As noted in OSCE/ODIHR's recent Preliminary Assessment of the Legislative Process in the Republic of Uzbekistan, the Law on Normative Acts describes Presidential Decrees as by-laws, but these Decrees appear to have a higher standing and range in practice.⁵

13. As the current Draft Decree is thus able to regulate certain issues *before* a new Law on Advocacy and Advocacy Activity has even been drafted, it seems to be used as a substitute of a primary legislation. However, regulating some aspects of advocates' functions and registration prior to others, and before discussions on a new Law have been completed, risks creating confusion. It is, for example, possible that changes introduced by September 2020 will need to be repealed once the Law is adopted, as discussions with stakeholders and in Parliament may lead to additional insights that were not available at the time when the Draft Decree was adopted. **Thus, it is recommended that the Draft Decree should limit itself to outlining, in broad strokes, what needs to be changed,**

⁴ UN Special Rapporteur on the independence of judges and lawyers, *Report on Bar Associations*, A/73/365, of 5 September 2018.

⁵ OSCE/ODIHR *Preliminary Assessment of the Legislative Process in The Republic of Uzbekistan* of 19 December 2019, par 50.

indicating which bodies shall be tasked with drafting further strategies and developing ways forward. Similar considerations apply to point 3 of the Draft Decree, which also appears to regulate specific matters (in particular certain rights of advocates appearing before courts), but without specifying any date or whether such changes shall be imposed immediately, or by amending relevant legislation.

14. Given the extensive overhaul that is planned, legislative changes to the current Law on Advocacy and to other pieces of legislation will be necessary but may not be the only means of implementing change. In any event, the process of finding solutions to the problems identified in the Draft Decree should be an open and consultative process, that should include a proper assessment of the existing legislation, as well as an in-depth fact and evidence-based regulatory impact assessment process.
15. The process needs to be more comprehensive and pluralist, in order to achieve a positive outcome that will not require extensive re-drafting and amendments to legislation in the coming years. It is also noted that Point 10 of the Draft Decree establishes that the heads of various public bodies, as well as the Cabinet of Ministers and the working groups are responsible for the timely, full and high-quality implementation of these tasks. While concrete deadlines and milestones are helpful and involvement of relevant stakeholders should also be encouraged, to ensure positive and effective results, timeframe of implementation should be carefully elaborated on the basis of consultative process and should allow for necessary modification and adjustment for.
16. In sum, the process of introducing changes to the work and rights of advocates, as well as to the nature and powers of the Chamber of Advocates, should be streamlined and consolidated, with the Draft Decree only identifying the problems and making quite general suggestions, which should then flow into a participatory debate on what needs to be changed and when, resulting in strategies and legal amendments.

3. Status of Advocates

17. The status of advocates is, to a certain extent, outlined in the Law on Advocacy,⁶ even if this Law at times raises more questions than it provides answers. Generally, the profession of advocates appears to be quite extensively regulated.
18. Only citizens of Uzbekistan may be attorneys (Article 3 of the Law), a restriction which does not appear to have been addressed in the Draft Decree or the Concept. Section 2.3 of the Draft Concept merely allows foreign advocates

⁶ The Law of the Republic of Uzbekistan on Advocacy, <https://lex.uz/docs/4528029>

to pursue matters pertaining to “issues of the law of this foreign state on the basis of the principle of reciprocity”, if they are registered in a special registry, and only with the mandatory participation of an advocate of Uzbekistan. While it is welcome to allow foreign advocates to practice, the reasons for such restrictions are not clear. While it is legitimate to ensure that practicing advocate is well familiar with the national legislation, restricting right to practice only to the citizens is not justified. In case if a lawyer meets all relevant criteria established for an advocate and can successfully represent clients, then citizenship of such a law should be relevant. **It is therefore recommended to revisit this provision, and ensure that a new Law on Advocacy does not contain such restriction.**

19. Attorneys may not exercise law if they are “in a state of conviction not completed or not cancelled” (Article 3 par 2 of the Law) – this seems to indicate that an advocate may not exercise his/her profession in cases of pending criminal cases, against him/her. **This would appear to be somewhat restrictive and it is recommended to revise this in the new Law.**
20. It is welcome that the Draft Concept (Section 2.3) aims to remove the current limitations on other paid activities of advocates (with the exception of specific activities listed in Article 3 par 2 of the Law). The current provision shall be replaced with a norm prohibiting an advocate from carrying out activities that “affect his independence”. While this approach is preferable, it may be useful to supplement such provision by specifying certain activities that may pose a conflict of interests for the advocate, and any past, current and future cases that he/she is working on.

4. Licensing and Registration

4.1 Licensing

21. Currently, licenses for advocates are issued by the relevant territorial bodies under the Ministry of Justice⁷ (Article 3¹ of the Law). The nature of these bodies is not entirely clear – in some cases, such as these, they fulfill administrative tasks, but the Ministry of Justice, on its website, specifies that they are “bodies of law enforcement”.⁸
22. Generally, the Draft Decree and the Concept aim to reduce the current strong state influence in matters relating to advocates and their work. Thus, the Draft Decree states, under point 1 that the control and management powers of the Ministry of Justice shall be abolished, and that the legislative regulation of advocacy, including access to the profession, shall be transferred completely to the Chamber of Advocates. The Draft Concept, under Section 2.2, also states that the licensing of advocacy activities by the Ministry of Justice shall be

⁷ These are the Ministry of Justice of the Republic of Karakalpakstan, and justice departments of regions and Tashkent city.

⁸ See the website of the Ministry of Justice at <https://www.minjust.uz/en/about/history/>.

abolished, completely transferring to the Chamber of Advocates' control over access to the profession. In its introductory part, the Draft Decree also mentioned "state control over admission to the profession of an advocate" as one of the negative factors hindering "creating of a modern, efficiently and qualitatively functioning judicial system".

23. Given that the UN Special Rapporteur has often expressed concerns regarding situations where the entry into or continued practice within the legal profession is controlled by the executive (with the legal profession playing no, or only a limited role), these changes are positive.⁹ When regulating such matters, the legislator nevertheless needs to ensure that the relevant legislation is transparent and objective, with safeguards in place to see to it that entry into the profession is granted solely based on the respective candidates' knowledge, training and technical competence.¹⁰
24. In this regard, it should be noted that the issuing of the licenses by the Ministry of Justice is based on a prior decision of competent local qualification commissions formed under the territorial departments of the Chamber of Advocates (Article 13 of the Law). These commissions are founded by joint decision of the Chamber of Advocate and the justice bodies and among a number of "attorneys who have credibility among colleagues, as well as experienced professionals in the field of law". The Law does not specify exactly how many members such commissions shall have. The terms "attorneys who have credibility among colleagues" and "experienced professionals in the field of law" are also quite vague, and do not clarify how such credibility is assessed, or how many years of experience are required.
25. In any event, the powers and procedures of the commissions are determined by the Ministry of Justice, in consultation with the Chamber of Advocates; this formulation already implies that the Ministry has a decisive role to play here, as it determines the rules, and merely needs to consult with the Chamber of Advocates (but not necessarily accept what the Chamber proposes). The same considerations apply with respect to the establishment and composition of the High Qualification Commission, an appeals and oversight body with respect to the work and decisions of the qualification commissions, which is composed by joint decision of the Ministry of Justice and the Chamber of Advocates, based on the same criteria as those set out above for the qualification commissions.
26. The Draft Decrees and Concept's intention to abolish the role of the Ministry is therefore welcome, as this would give wider powers to the Chamber of Advocates and strengthen self-government. Nevertheless, when amending the Law, care should be taken to enhance transparency with respect to the process of composing the qualification commissions, complete with concrete eligibility criteria, and clear provisions on how, and for how long the respective members are elected or appointed (as well as when and how they should be removed). **It**

⁹ UN Special Rapporteur, *Report on Bar Associations, op cit.* footnote 4, par 60.

¹⁰ UN Special Rapporteur, *Report on Bar Associations, op cit.* footnote 4, par 54.

is recommended to specify eligibility criteria, procedure and terms of appointment/election of the members of the qualification commission in the new Law on Advocacy, and not in mere rules of procedure, while actual procedure of assessing candidates who want to become advocates may indeed be set out in a by-law or instruction drafted by the Chamber of Advocates, as long as the criteria for eligibility to become an advocate are also set out in the Law.

27. Currently, these criteria are set out in Article 3¹ of the Law, and it is positive that the Draft Decree and Concept (Section 2.2) plan to abolish the requirement of two years of prior work experience, as this may allow younger candidates to apply for an advocate's license as well. However, it should be borne in mind that this means that in order to become an advocate, anybody with a law degree will become eligible as long as he/she has completed a three-months' internship with a law firm. While it is assumed that the additional requirement of passing a special qualification exam is retained (although the Draft Decree and Concept do not mention this), three months would appear to be a very short time. **It may be advisable to rethink this approach, and to consider extending the required time period for the internship.**

4.2 Registration and Work of Advocates

28. The Draft Decree and Concept (Section 2.3) plan to introduce a procedure for registering advocates' formations and legal consultancy services on the basis of a sort of one-stop-shop system, based on which registration, re-registration and liquidation of advocate formations and legal consultancy services are done through public service centers. Although the details of the procedure are not available, the proposed approach, as a matter of principle, appears positive and practical. The Draft Decree, in its point 2, as well as the Draft Concept (Section 2.3) state that applications for registration of advocates and legal consultancy services shall be considered within two days. The relevant stakeholders should review whether such a short time period is sufficient to provide a proper consideration of such applications.
29. In its most recent Concluding Observations on Uzbekistan,¹¹ the UN Human Rights Committee noted with concern a requirement that all lawyers had to be re-certified every three years, and that this was being used for political purposes. The reasons for such practice are not clear, and would also appear to be quite burdensome for advocates. **While this requirement is not mentioned in the Law or in the Draft Decree or Concept, it is recommended to address the issue specifically in order to avoid the practice of repeated registration in future.**

¹¹ UN Human Rights Committee, *Concluding Observations on the Fifth Periodic Review Report of Uzbekistan*, CCPR/C/UZB/CO/5, adopted on 2 April 2020, pars 38-39.

30. The Draft Decree and Concept do not mention many other specific changes to the system of registering advocacy structures (currently bureaus, advocacy firms and boards of attorneys), and it would be advisable to consider whether all elements of these structures need to be set out in such a detail in a law. Moreover, certain aspects of the relevant provisions (currently Articles 4-4³ of the Law) are somewhat limiting, such as the obligation for an advocate to only carry out activities in one advocacy structure (Article 4), and the very specific rules and deadlines regarding termination of a law firm (Article 4²). Also, it is not clear why subdivisions of advocacy structures would need to be announced in advance, at the moment of registration. These strict and detailed rules should be assessed for their usefulness, and ideally substantially revised, or deleted. The same may apply to Article 5 of the Law on the types of advocacy activities – given that this provision also contains a catch-all rule at the end, it may not even be necessary.
31. Additionally, the Law specifies that advocates with at least three years of work experience may have one assistant and one intern (Article 6), who should be citizens of Uzbekistan and may only engage in specific acts set out in the Law. The procedures for organizing their activities are determined by the Ministry of Justice in agreement with the Chamber of Advocates. It does not seem justified and practical to regulate or limit the number of assistants and interns that an advocate may have, nor to specify which citizenship they should have or to disallow assistants or interns for advocates with less work experience. Such things should not be regulated and should be left to the advocate himself/herself. The tasks of assistants and interns should also be determined by the individual advocate, on a case by case basis. This has not been mentioned specifically in the Draft Decree or the Concept but would greatly facilitate the daily work of an institution that these two documents aim to strengthen. Similar considerations apply with respect to contracts between advocates and their clients, the content listed in detail in Article 9¹ of the Law and deserves revision. **In light of the above it is therefore recommended to, avoid such a detailed regulations in the legislation, which limits number of assistants and interns advocates may engage.**
32. It is welcome, however, that the Draft Decree and Concept (Section 2.3) eliminate some aspects of what an advocate's request to public and other authorities, enterprises, institutions and organizations needs to look like, such as, e.g. the need to attach an advocate's order/warrant to the request under Article 7¹ (it is not quite clear what kind of order this is referring to, but presumably it is some sort of proof that they are entitled to deal with a particular case). **It would, however, be preferable to reconsider Article 7¹ in its entirety and assess whether the form of an advocate's request indeed needs to be regulated in such detail, and whether it would not be more practical to leave this out of the new Law on Advocacy.** This relates in particular to parts of the provision that seem to suggest that requests may be denied if they did not adhere to the form set out therein, and that provide

specific deadlines within which the request must be responded to (these should also be left to the advocate).

33. Finally, it is noticed that all types of advocacy structures listed in the Law are currently non-profit organizations. Furthermore, section 2.3 of the draft concept provides that advocacy activities should be non-profit activities. It is not clear what the reasons for excluding for-profit orientated work of advocates are. **Thus, it is recommended the definition be revisited.**

5. The Chamber of Advocates

34. Overall, it is welcome that the Draft Decree and Concept aim to strengthen the self-governing powers of the Chamber of Advocates, also by abolishing the power of justice bodies to monitor compliance with constituent documents and legal provisions (point 2 d) of the Draft Decree and Section 2.3 of the Draft Concept), which is currently set out in Article 17 of the Law. This follows numerous recommendations made by the UN Human Rights Committee, including the most recent ones,¹² and preliminary recommendations made by the UN Special Rapporteur on the independence of judges and lawyers in September 2019.¹³
35. The Chamber of Advocates is a non-profit organization based on the mandatory membership of all advocates in Uzbekistan, which is funded by entrance and membership fees and by other means not prohibited by law (Article 12¹ of the Law). **In this context, it is essential that funding sources, besides being legal, also do not in any way compromise the independence of the Chamber of Advocates, which should be specified in any new Law on Advocacy.**¹⁴ This applies in particular to state funding; while it may be a positive that the Draft Decree and Concept (Section 3.4) envisages to provide the Chamber of Advocates with premises free of charge, such support should not extend to monetary funds or high-value non-monetary support. This should be borne in mind when addressing sources of funding and formulating provisions on the transparency of financial and economic activities under Section 2.1 of the Draft Concept, and when addressing Section 3.4, which proposes to enhance financial support to the advocacy, including through subsidies, grants, and “social orders free of charge”.
36. At the same time, it is important to remember that additional tasks assigned to the Chamber of Advocates should be accompanied with appropriate financial and human resources. This should be discussed with the Chamber of Advocates

¹² UN Human Rights Committee, *Concluding Observations on the Fifth Periodic Review Report of Uzbekistan*, CCPR/C/UZB/CO/5, adopted on 2 April 2020, pars 38-39. See also *Concluding Observations on the Fourth Periodic Review Report of Uzbekistan*, CCPR/C/UZB/CO/4, adopted on 17 August 2015, par 21.

¹³ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25043&LangID=E>

¹⁴ See, in this context, UN Special Rapporteur, *Report on Bar Associations*, op cit footnote no. 4, par 27.

with a view to finding an adequate solution that will not negatively impact the Chamber's independence.

37. The Chamber of Advocates has, as its "supreme body", a conference, as well as a board, which functions as an executive body that carries out the management of affairs, and a chairperson (Article 12³ of the Law). It is positive that the Draft Concept (Section 2.1) increases the frequency of conference meetings from at least once every five years to once every two years and allows for extraordinary convocations in certain cases (which should be specified clearly in relevant legislation), which will no doubt enhance the relevance and usefulness of this body.
38. Similarly, the Draft Decree, in its introduction, addresses organizational and legal foundations of the activities of the governing bodies of advocacy, list of main directions and tasks for further reform in particular with a view to improve their independence. Given that under the current version of Article 12³ of the Law, both the appointment and the removal of the chairperson of the Chamber of Advocates are initiated by proposal of the Ministry of Justice, these changes are both necessary and welcome.
39. The Draft Decree (introduction) also notes that the formation and activities of the governing bodies of the Chamber of Advocates do not meet the principles of democracy, equality, proportionality, collegiality, openness and accountability. The Draft Concept (Section 2.1) promises to introduce the free election of such bodies directly by advocates, with no outside interference, and foresees the nomination of chairpersons based on their development and reform programmes.
40. Section 2.2 of the Draft Concept mentions the possibility of advocates to hold their governing bodies accountable, including the option of recalling them in cases of wrongdoing. However, to meet such principles transparency and accountability, the future Law on Advocacy should set out the manner in which members of the conference and board, but also the chairperson are appointed with greater clarity, to ensure transparency with respect to the eligibility of advocates for such positions, nomination and appointment or election processes, and cases and procedures for removal of advocates from such positions. **Therefore, it is recommended, to spell out in the respective legislation grounds and procedure of removal, as well as to provide the respective officeholder with the right to be heard, and indicate the majority required for removal.**
41. Overall, the above appointment mechanisms should also ensure that advocates from various fields of law, geographical positions and ethnicities are represented in the conference and board; equal representation of men and women should also be sought in this process.

6. Disciplinary Proceedings

42. The Draft Decree also announces reforming the system of disciplinary control of advocates as one of its main directions and tasks, which is positive. The Draft Concept expands on this issue by stating, in its Section 2.4, that separate disciplinary committees shall be created by the advocacy, as permanent bodies. **It is also recommended, as in case with the qualification commissions, that the new Law on Advocacy clearly states how members of such commissions are appointed, and how the commissions shall be composed (while bearing in mind the above recommendation regarding pluralism and gender equality).**
43. Given the serious repercussions that disciplinary proceedings may have, it is important that these bodies are independent and impartial,¹⁵ a requirement which is recognized in Section 2.4 of the Draft Concept. Members of disciplinary commissions should recuse themselves, or be recused in cases involving advocates whom they are related to or with whom they have other forms of relationships that may compromise their impartiality or independence (e.g. if they are colleagues, or involved in the same court case).
44. Disciplinary proceedings are initiated by decision of the respective qualification commission, based on, among others, an infringement identified by a territorial department of the Chamber of Advocates or a justice body. In line with the intention to remove the influence of the Ministry of Justice and its bodies from all matters pertaining to the institution of advocacy, it is assumed that the initiation of disciplinary proceedings upon the notice of an infringement by a justice body will also be removed from the Law. In any event, since the Draft Decree (point 2 d)) and Section 2.3 of the Draft Concept also aim to abolish the power of justice bodies to monitor compliance with constituent documents and legal provisions, justice bodies would presumably no longer be aware of such infractions to begin with.
45. While the Draft Decree and Concept speak of reforming disciplinary proceedings in general, and of strengthening the role of advocates in criminal and other legal proceedings, they do not mention enhancing advocates' right to be heard in disciplinary proceedings. Article 14 provides the advocate with the right to take measures to reconcile with individuals who filed a disciplinary complaint, but does not provide him/her with any kind of fair trial rights, including the right to be heard, or the right to legal representation of his/her choice.¹⁶ **It would be advisable to also include this in any new provisions on disciplinary proceedings in the new Law.**

¹⁵ *UN 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, par 28.

¹⁶ See *UN 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, par 27.

46. It is positive that the Draft Concept notes that special types of violations shall be elaborated, and that a list of disciplinary sanctions corresponding to the gravity of the violation will be created, along with a list of circumstances that preclude the initiation of disciplinary proceedings and the prosecution of an advocate (Section 2.4). These provisions should be part of the new Law on Advocacy. It is important that such provisions are drafted clearly, so that advocates will be aware of which types of violations will lead to which sanctions. The above will be a great improvement to the current Article 14 of the Law, which merely speaks of violations, but does not specify them, and only contains three types of sanctions – warnings, suspension of an advocate’s license for up to six months, and termination of an advocate’s license.
47. While the suspension or termination of an advocate’s license will also lead to the suspension of his/her status as an advocate under Articles 13¹ and 16 of the Law, this status will also be suspended in cases where the advocate engages in educational courses or training, or where he/she goes on maternity leave. **As nowadays, it is entirely possible to go on educational or maternity leave and still conduct some work as an advocate, it would be preferable if these reasons for suspending an advocate would be reworded, so that suspension of an advocate’s status will only take place if the advocate himself/herself requests it.**

7. Suspension and Termination of License

48. Under Article 15 of the current Law, the decision to suspend an advocate’s license may be taken either by the competent justice body in case of pending criminal procedures against the advocate, or by an administrative court in cases where, based on a complaint by the justice body, the advocate did not comply decisions of the justice body or the competent department of the Chamber of Advocates, or where the advocate violated laws, professional ethics, advocate secrets or his/her oath. The decision of the justice body may be appealed in court.
49. According to the Article 16 of the Law, depending on the circumstances, decisions on terminating an advocate’s license may also be taken by the competent justice body or by an administrative court, in cases such as a failure to pay the licensing fee, take an oath, create an advocacy structure or resume activities after suspension, or in case of a criminal conviction, loss of citizenship or death. Administrative court proceedings are initiated by application of the Ministry of Justice, which in turn is based on a conclusion of the Higher Qualification Committee. Grounds for terminating an advocate’s license include, among others, advocates’ dereliction of duties, submitting falsified information during the licensing process, the failure to eliminate circumstances leading to the suspension of the license, or committing single or

systematic gross violations of legislation of the Chamber of Advocates, professional ethics, advocate secrets or of the oath. The termination decision taken by the justice body may be appealed to court.

50. The Draft Concept (Section 2.1) grants the Chamber of Advocates exclusive competences and authority over the suspension and termination of advocates' licenses. This would mean that the Chamber of Advocates, rather than the justice body, would suspend or terminate an advocate's license, and that court proceedings to that effect would take place based on the complaint of the territorial department of the Chamber of Advocates only. This is a very welcome step to enhance the independence and self-governing nature of the Chamber of Advocates. **At the same time, given the repercussions of such measures, it would be advisable to also allow the respective advocate to appeal against court decisions on suspension or termination of his/her license.**

8. Other Aspects of the Draft Decree and Concept

51. The Draft Decree, in its introduction, notes that the procedural status of an advocate in criminal proceedings and trials does not meet international standards, and that there is an imbalance in the procedural rights of the prosecution and defense parties. The Draft Decree thus proposes to strengthen the rights and procedural status of advocates in criminal procedure. The Draft Concept (Introduction and Section 2.5) goes into more detail by mentioning reforms of *habeas corpus* rules, access to qualified advocacy (via an automated procedure), mandatory participation of an advocate in all criminal cases (which may, however, prove quite burdensome for both court, advocates and clients), violation of the right to defense and the refusal of defense counsel, keeping defense counsel informed at all stages of the procedure and rights to appeal. These proposals sound positive, even though their effectiveness will depend on how new provisions are formulated. A proper and in-depth assessment of the current Code, and/or a review of a new draft Criminal Procedure Code prepared in response to the Draft Decree and the findings on which it is based could be helpful here.
52. The same applies to other issues raised in the Draft Decree and Concept, including the manner of appointing advocates at the expense of the state, the status and activities of consulting lawyers, registration fees, access to courthouses and other state buildings for advocates and their electronic equipment, allocation of rooms for advocates in courts and law enforcement buildings, the Chamber of Advocates' rights to protect the rights and interests of advocates in court, and education and professional development of advocates. Generally, the desire to improve such matters is welcome. As it is not clear which provisions and which legislation regulates these matters at the moment (in particular whether this is primary law or presidential decrees), it

was however not possible to provide any satisfactory assessment of such matters within the short time given.

53. Point 3 of the Draft Decree's intention to introduce the requirement that candidates for judges should have a minimum of two years' prior work experience as a lawyer is a constructive proposal, if it remains one of many different examples of prior work experience; requiring all potential judge candidates to have work experience as a lawyer would be too limiting.
54. Other problems mentioned in the Draft Decree, e.g. the use of more modern information and computer technologies in the activities of advocacy, can hardly be resolved by legislation, and should be left to the Chamber of Advocates and individual advocates.
55. It is positive that the Draft Decree (Point 1) foresees the "legislative consolidation" of additional rights of the Chamber of Advocates, such as participation in legislative activities and in meetings of the plenum of the Supreme Court, as well as the right to submit questions to the Constitutional Court and membership in the Higher Judicial Council. The effectiveness of such "consolidation" will depend on how the respective provisions are formulated, and it may be helpful to review these once completed as well.
56. **Finally, all relevant legislation should, insofar as the Uzbek language foresees masculine and feminine words, be drafted in a gender-neutral manner, among others by using neutral forms of certain terms (e.g. chairperson).** Ideally, such wording could also be introduced to the Draft Decree and Concept prior to their adoption.