**Safeguarding the Independence of Judicial bodies in the face of contemporary challenges to Democracy**

**Submitted to:** Special Rapporteur on the independence of judges and lawyers

**Submitted by:** Maat for Peace, Development and Human Rights (holds a consultative status with the United Nations Economic and Social Council)

**Date:** January 2024

**Introduction**

Independent judicial bodies play important and influential roles in protecting and strengthening democracy, and confronting contemporary challenges that would limit democratic transformation or restrict this process. There is no more important role for the judiciary than holding governments accountable when they do not adhere to the application of the rule of law, and preventing exceeding the powers assigned to the executive authority or infringing on basic rights, as well as supporting individuals’ rights and basic freedoms[[1]](#footnote-1)

Despite the important role that independent judicial systems play in promoting and protecting democracy, these bodies usually face major challenges in many countries around the world that represent an obstacle in performing their basic role in supporting democracy, good governance, and the rights of individuals, including challenges related to political interference in The work of judicial bodies affects the credibility of their rulings and the independence of their judicial decisions, in addition to the spread of corruption and the limited financial and technical resources in some countries. However, despite these challenges, the role of the judiciary in protecting and strengthening democracy cannot be denied.

In light of the above, Maat for Peace, Development and Human Rights submits this report to the Special Rapporteur on the independence of judges and lawyers on “Safeguarding the Independence of judicial systems in the face of contemporary challenges to Democracy,” by responding to the main questions, with a special focus on the countries of the Middle East region, which are the Maat’s work and interest. Maat will focus on questions related to judges and lawyers due to adherence to the maximum number of words set by the rapporteur.

**Firstly: The judges**

**Did judges play an active role in protecting democracy and upholding basic democratic rights?**

In general, judges play a crucial role in protecting democracy, upholding the rule of law, and ensuring respect for democratic principles in different countries. Defending the application of the rule of law is one of the roles associated with protecting democracy. In Lebanon, for example, judges tried to defend the rule of law in various cases, such as the attempt to continue the investigation into the Beirut port explosion, and the determination to investigate political assassinations in Lebanon. However, these judges faced arbitrary practices in their work that contradicted the principle of separation of powers, which prompted some of them to resign, and others tried to leave Lebanon. On January 25th , 2021, three judges in Lebanon resigned from the judiciary due to political interference in the work of the judiciary. The objections of the three judges, who were women, included a refusal to undermine the rulings issued by the judicial bodies in Lebanon.[[2]](#footnote-2)

In Egypt, Egyptian judges have issued rulings on various occasions and incidents that are supposed to implement the rule of law and provide greater space for civil society, and indicate the independence of the Egyptian judiciary in adjudicating lawsuits. For example, in recent years, the investigating judge in Case No. 173 of 2011, known to the media, issued In the case of foreign financing, various rulings stipulate that there is no basis for filing a criminal case against these organizations.

As a result of these rulings, on August 22nd , the Egyptian Ministry of Justice announced the end of investigations into this case with 75 organizations. The Ministry of Justice confirmed in its statement that there is no basis for filing a criminal case, and this decision would cancel the detention orders, cancel all travel ban decisions, placement on arrival watch lists, or seizure of funds issued in these investigations. Thanks to these judicial rulings, only 10 other organizations remain in this case, and it is likely that this case will be closed completely after the investigation into these organizations is completed.

In a related context, the National Elections Authority in Egypt granted a large number of civil society organizations the right to follow the presidential elections held in December 2023, and the authority showed flexibility in cooperating with some coalitions that included international and local organizations at the same time, such as the Integrity Coalition to follow up on the Egyptian presidential elections[[3]](#footnote-3).

**Do judges face any obstacles, risks or challenges when performing this role? If so, provide examples, and highlight whether judges face particular obstacles, risks or challenges on the basis of their gender, ethnic identity or other characteristics protected by human rights law?**

Yes, judges in a number of countries in the Middle East face major and multiple challenges and obstacles that represent an obstacle to carrying out any effective efforts or roles in supporting and protecting democracy, good governance, and the rights of individuals, including challenges related to political interference in the work of judges, which affects the credibility of their rulings and the independence of their judicial decisions. In addition to widespread corruption and limited financial and technical resources, in Iran, for example, Maat noted that judges are ineffective in supporting democratic principles due to political pressures imposed on them by the executive authority.

This has been evident in judges in Iran in recent years issuing prison and death sentences against political opponents and human rights defenders without fair trials, which raises concerns about the impartiality of judges and their ability to protect and support basic democratic rights. According to reports seen by Maat, Iranian judges, since the outbreak of popular protests in Iran in September 2022 against the backdrop of the killing of the young woman Mahsa Amini, have issued more than 17 death sentences without fair trials against peaceful demonstrators and opponents, including 7 people who have already been executed, as a result of their exposure to direct political pressure from the Iranian authorities.[[4]](#footnote-4)

**Is there a specific role played by the judiciary in democratic elections?**

Yes, Maat noted that the judiciary played an important role in supporting the democratic elections held in a number of countries in the Middle East. In Egypt, for example, the recent presidential elections held from December 10 to 12, 2023 were conducted under full judicial supervision. The judges were directly responsible for managing and supervising all polling stations in the Egyptian governorates, and this included tasks such as verifying the identity of the voter, issuing ballot papers, supervising the voting and counting process, and ensuring their compliance with electoral laws[[5]](#footnote-5).

In addition, the judges of the Supreme Administrative Court were competent to decide on appeals submitted by candidates or their representatives regarding any aspect of the recent presidential elections in Egypt, and this came in accordance with Article (210) of the Egyptian Constitution, which stipulates that the Supreme Administrative Court is competent to decide on Appeals against the decisions of the National Authority related to referendums, presidential and parliamentary elections and their results. Hence, it can be said that the judiciary played a crucial role in ensuring that the recent presidential elections in Egypt were conducted fairly and transparently[[6]](#footnote-6).

**Are there any policies or institutional arrangements in place to limit the role of judges in protecting democracy?**

Yes, Maat noted that there are a number of policies and constitutional and institutional arrangements in place in a number of countries in the Middle East region to limit the role of judges in protecting basic democratic principles, especially principles related to supporting the right to fair trials, civil liberties, and political participation. For example, Iran has a number of policies and constitutional and institutional arrangements that limit the role of judges in protecting and promoting democracy. This is evident in the concentration of absolute power in Iran in the hands of the country’s Supreme Leader and the unelected institutions under his control, as the Supreme Leader appoints or dismisses the heads of the country’s judiciary, which makes the judiciary lose its complete independence, and raises concerns about political influence on judicial decisions, which It may affect democratic principles such as fair trials. The Supreme Leader also appoints half of the members of Iran's Guardian Council, a body that disqualifies all presidential election candidates it deems insufficiently loyal to the religious establishment.

Hence, it can be said that the political and institutional measures in place in Iran, including the method of selecting the head of the judiciary by the Supreme Leader, which necessarily leads to political interference in the work of judges, affecting the credibility of their rulings and the independence of their judicial decisions, as well as the method of forming Council for the Maintenance of the Constitution, plays a major role in limiting the role of judges in protecting democratic principles, especially the principles of civil liberties, political participation, and fair trials. In specific facts, it emphasizes the role of institutions and policies in force in Iran in limiting the ability of judges to protect democratic principles, as the Iranian Guardian Council rejected the nominations of both Ali Larijani and former President Mahmoud Ahmadinejad in the last presidential elections in Iran that were held in June 2021, without the judges having any role in supporting their right to political participation.[[7]](#footnote-7)

**What are the methods used to protect judges in this role?**

Maat believes that there are a number of methods and measures that can be followed to protect the role that judges play in supporting democratic principles in various countries of the world. These methods and measures are:

* **Safeguarding the independence of the judiciary:** The establishment of an independent judiciary that is not subject to political influence is crucial to supporting the role of judges in protecting democratic principles, including fair trials, political participation, and individual freedoms. The independence of the judiciary can be guaranteed by explicitly stipulating the independence of the judiciary in the constitution, work to secure appropriate funding for the judiciary, and create mechanisms for selecting and disciplining judges away from political influence.
* **Providing security protection:** Providing judges with physical and digital security through the provision of security personnel and secure communication channels can address threats of violence, intimidation, or hacking, enhancing their ability to uphold democratic principles without fear of reprisal.
* **Supervising universal suffrage:** Enabling judges to supervise all stages of universal suffrage through explicit provisions in the constitution would contribute to supporting the role of the judiciary in protecting democratic principles, especially principles related to the right to political participation.

**Second: Lawyers**

**Have lawyers played an active role in protecting democracy and supporting fundamental democratic rights in your country?**

Yes, lawyers have played active roles in defending basic democratic principles in a number of countries in the Middle East, especially countries where individual freedoms are subject to repression by the authorities. In Iran, for example, lawyers have defended political dissidents and civil rights activists who have been subjected to arrest and arbitrary detention at the hands of the Iranian authorities due to their exercise of their individual freedoms, including freedom of opinion, expression, assembly, and peaceful protest.

In Yemen, some lawyers, such as lawyer (A.S.), focused on the gaps in the judicial authority in areas under the control of the Houthi group. According to the lawyer’s testimony, which was reviewed by Maat, the judicial authority in Sana’a exercises political roles in favor of the Houthi group and issues rulings based on the orientations of the political authority in the Houthi areas. Despite the difficulties facing lawyers in areas controlled by active groups rather than states, some lawyers in Yemen have shown a spirit of courage and defended the rule of law as one of the pillars of democratic systems.[[8]](#footnote-8)

**Do lawyers face any risks, obstacles or challenges when carrying out the role of protecting democracy? He highlighted whether lawyers face particular obstacles, risks or challenges based on their gender, ethnic or other identity?**

Yes, lawyers in a number of countries face great and multiple risks, challenges, and obstacles that hinder their ability to play any effective roles in supporting and protecting democratic principles, especially the principles related to the exercise of individual freedoms, such as freedom of assembly, demonstration, and expression. In Iran, for example, lawyers who defend opponents have been exposed to Politicians were imprisoned, arrested, and banned from practicing their profession, and a number of them were forced to leave the country to escape prosecution.

In 2019, it was reported that prominent human rights lawyer (N.S.) was sentenced to 33 years in prison and 148 lashes because of her activities related to promoting human rights, and since the beginning of the protests that broke out in September 2022 against the backdrop of the killing of the young woman Mahsa Amini, the Iranian authorities have arrested, at least, 44 lawyers and nearly 100 others were summoned because of their work defending the protesters .[[9]](#footnote-9) In Qatar, two lawyers (H.M. and his brother A.M.) were subjected to arbitrary rulings because of their critical opinions of the electoral system of the Shura Council in the State of Qatar. On May 10, 2022, the Qatari Criminal Court issued life imprisonment sentences against lawyers registered in the Bar Association on charges related to publishing false news at home and abroad, stirring up public opinion, and harming the state’s social system.[[10]](#footnote-10)

 And gathering for the purpose of disrupting public security, which are politicized charges, as their detention was only for their rejection of the discriminatory election laws ratified by the Prince of Qatar in July 2021. Maat has seen reliable reports confirming that the trial procedures did not meet the minimum standards for a fair and just trial, which are the standards contained in The International Covenant on Civil and Political Rights, ratified by the State of Qatar [[11]](#footnote-11). Various reports also claimed that the practices against the aforementioned lawyers were due to their affiliation with the Al Murra tribe, which contradicts the prohibition contained in international human rights law related to discrimination on the basis of national origin.

**Is there a specific role that the Bar Association plays in democratic elections?**

Yes, Maat noted that the Bar Association played an important role in supporting the democratic elections that were held in a number of countries in the Middle East region, and this was evident in the process of supervision and follow-up that the unions enjoyed in the parliamentary and presidential elections that were held in recent years in a number of countries of the region to ensure the integrity and transparency of these elections.

In Tunisia, for example, more than 300 lawyers from the Tunisian Bar Association participated in monitoring the legislative elections held in Tunisia in December 2022[[12]](#footnote-12). In Iraq, the Iraqi Bar Association participated in monitoring and supervising the House of Representatives elections that were held in October 2021[[13]](#footnote-13), and more than 1,006 lawyers participated in monitoring the parliamentary elections that were held in Jordan in November 2020 . [[14]](#footnote-14)

Maat believes that the involvement of lawyers in supervising the elections can enhance the integrity and freedom of these elections.

**Are there any policies or institutional arrangements in place to limit the role of lawyers or the bar in protecting democracy?**

Yes, Maat noted that there are a number of policies and institutional arrangements in place in a number of countries in the Middle East region to limit the role of lawyers and bar associations in protecting basic democratic principles, especially the principles related to supporting the right to fair trials and civil liberties. These policies and institutional arrangements aim is to control the legal profession and prevent it from becoming a source of opposition or issues for human rights defenders. In Iran, the Iranian authorities seek to fully control the Bar Association in order to limit its activities in support of freedoms and democratic principles. This was evident in the Iranian Parliament’s approval of a number of plans and draft laws that aim to fully control the Bar Association and undermine the limited independence that the Bar Association enjoyed, limiting their ability to defend their members or criticize government policies, as well as imposing unjustified restrictions on the work of lawyers and preventing them from representing clients in politically sensitive cases, especially those related to human rights or national security. In a specific example, on June 27th, 2023, the Iranian Parliament approved a draft law that enables the head of the judiciary and state security agencies, including the Ministry of Intelligence of the Revolutionary Guard, to investigate and audit the work of the Iranian Bar Association, and to review the legal qualifications of lawyers belonging to the Bar Association, which will enable them to pick and choose lawyers who are allowed to officially work in the country [[15]](#footnote-15).

1. The need for independent judges and a free press in a democracy, unodc, link: <https://bit.ly/41S9a64> [↑](#footnote-ref-1)
2. Lebanon Judges Resign To Protest Political Interference, Channels Television , <https://www.channelstv.com/2021/11/25/lebanon-judges-resign-to-protest-political-interference/> [↑](#footnote-ref-2)
3. Nazaha coalition launched to monitor 2024 Egyptian presidential elections, <https://english.ahram.org.eg/News/512749.aspx> [↑](#footnote-ref-3)
4. Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, 24 August 2023,link: <https://bit.ly/46Gh7MR> [↑](#footnote-ref-4)
5. Judges overseeing Egypt’s 2024 presidential elections arrived at polling stations for Sunday vote: NEA, Ahram Online , 9 Dec 2023, link: <https://bit.ly/4aOYGIL> [↑](#footnote-ref-5)
6. With the start of receiving appeals.. When will the results of the Egyptian presidential elections 2024 appear?, Al-Masry Al-Youm, December 14, 2023, link: <https://bit.ly/3TUP2P6> [↑](#footnote-ref-6)
7. Larijani asks for an explanation for preventing him from running in the Iranian presidential elections, Asharq Al-Awsat, June 12, 2021, link: <http://tinyurl.com/yc77s8fn> [↑](#footnote-ref-7)
8. Yemen model’s lawyer intimidated as Houthis dismiss ‘soft’ investigator, Arab News, <https://www.arabnews.com/node/1851236/middle-east> [↑](#footnote-ref-8)
9. Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, Previous reference. [↑](#footnote-ref-9)
10. On the Sidelines of the 50th Session of the Human Rights Council, Maat Discusses the Human Rights Situation in Qatar [↑](#footnote-ref-10)
11. International Covenant on Civil and Political Rights, Qatar , <http://tinyurl.com/57k3urz2> <https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV/IV-4.en.pdf> [↑](#footnote-ref-11)
12. Tunisian Bar Association: 300 lawyers are monitoring the upcoming legislative elections, Youm7, October 25, 2022, link: <https://bit.ly/47w5Bni> [↑](#footnote-ref-12)
13. Iraqi Bar Association report on monitoring the 2021 House of Representatives elections (special voting) by the specialized teams formed in the Iraqi Bar Association, Iraqi Bar Association, October 8, 2021, link: <https://bit.ly/3vCKNNI> [↑](#footnote-ref-13)
14. Urgent/The Bar Association monitors the parliamentary elections, Nabd, October 21, 2021, link: <https://bit.ly/41VJNAy> [↑](#footnote-ref-14)
15. Iran: State’s “Investigation” of Bar Association Aims to Crush Dissent, Center for Human Rights in Iran, JUNE 28, 2023, link: <https://bit.ly/3TZTcVJ> [↑](#footnote-ref-15)