Comments on the new amendments of the Sudan's Advocacy Act 1983 (2014 amendments)

By Ahmed Bannaga

Advocacy as a profession in Sudan is a cornerstone in the development of law and order. It is not a secret that Sudan legal system needs comprehensive development coupled with socio-legal studies in the field to understand the society needs and expectations. Advocates must be in the heart of this development if not the operators of the studies and development.

This paper analyses the new 2014 amendments of the 1983 Advocacy Act. It has touched many necessary issues for the development of the profession as well as unsuccessful changes. Meanwhile ignoring old articles that need rabid enhancements[1].

The legislators did not repel the Act as it is still relevant to the practice, therefore, the paper will discuss the amendments in numeric order pointing the significance of the changes. It concludes with a clear illustration to the successful and unsuccessful changes. The amendments added, repelled and changed twenty articles out of seventy-two in the Act, which means almost 30% of the Act have been updated. This reflects the changes in thinking and solving many practical issues faced the advocacy profession in the last three decades.

For the purpose of this article, the Amendments translation have been translated by the *author* since no official translation has been issued by the Ministry of Justice yet. The amendments discussed in this paper are underlined to distinguish the change from the previous text.

Article 3: Interpretation:

The amendments in this article changed the wordings of many names for clarifications.

Following the confusion occurred by the word "Advocates Association" and (the Bar Association) to the extent that many, even advocates, believe that there is a distinction between the two words. Practitioners were calling the advocates institution as "the Bar" while the Act specified the name as "Advocates Association". The amendment solved this issue and changed the word form "Advocates Association" to "Bar" making the full name "the Sudanese Bar Association"

The second amendment in the article is new change regarding the authority that deals with complaints against advocates. It was "the Advocates Complaints Board" before the amendment and changed to "the Complaints Committee". There are no changes in the committee/board authority or its scrutiny in the Act as will be discussed in article 54.

The third significant amendment is changing the controlling body of the Bar name from the "Central Association Committee" to "The Council", which is more forward and clear in the meaning. This approach is clearing the ambiguity around the Central Committee. It refers to the only administrative tasks of the Committee in which

[1] For a comprehensive examination, the discussion will be referring to the actual practice of advocacy in the country.

neglecting the great role of representing and defending the right of the Bar and its members. The word “Council” transcends the meaning in better approach as it reflects the actual role of the institution with all its mandates.

Article 4: Establishment and constitution of the Committee (Advocates Admission Committee):

(1) For the achievement of the objects of this Act, there shall be established a committee, to be known as the, "Advocates Admission Committee", to have competence to grant licenses, for practicing advocacy, and discharge the duties and exercise the powers conferred thereupon, under the provisions of this Act.

(2) The Committee shall be constituted as follows:-

a. President -of the Advocates Chairman
b. A Supreme Court judge, to be appointed by the Chief Justice
c. An Appeal Court judge, to be appointed by the Chief Justice
d. A General Legal Counsel, to be appointed by the Minister of Justice
e. Three advocates, to be appointed by the Council, one of them from the Council members and the other two from the General Assembly

(3) The Committee shall have a secretary, to be selected by the Chair thereof, to assume, under his supervision, all the administrative and clerical business, including writing the minutes of sittings, and executing the decisions passed by the Committee.

(4) The seat of the Committee shall be at the headquarter building of the Judiciary, and may, by the decision of the Chairman thereof, convene at any other place.

(5) The Committee shall make internal regulations, for organizing the procedure of business thereof.”

In the amendment. a significant change applied. Instead of a *Senior Legal Counsellor,* the legislator preferred a higher ranked position at the Ministry of Justice favouring *the General Counsel* as a suitable rank among the Ministry counsellors. The nomination, of course, will be made by the Minister of Justice. This projects that the legislators have given the Ministry of Justice better representation in the Committee, which is the *General Counsellor.* A rank that requires more than twenty years[2] matching the Judiciary representatives members experience at the Committee.

In addition to the requirement of the Ministry of Justice representative, the legislators added more members from the Bar to allow advocates to control the Bar. Previously the constitution of the committee was influenced by the Judiciary and the Ministry of Justice. Only two members were allowed! The chairman and an advocate with special experience nominated by the General Assembly of the Bar, the other three members were a selection between Judiciary and the Ministry. This made the Committee formation includes two judges, one counsellor from the Ministry of Justice and two advocates including the chairman, which made the Committee heavily influenced by the presence of the other two main institutions (Judiciary & Ministry of Justice). The Committee mandate is controlling the conditions of advocacy licensing, the Bar must have the sole right to control it. This is a significant change, which enables advocates to have more control on the rules of the admission of advocates especially that no requirements needed for the newly added three advocates members.

[2] Art: (15-a) Ministry of Justice Organization Act 1983.

Two members will be nominated by the General Assembly and one from the Council regardless of any experience conditions[3].

It is worth mentioning that the Committee seat is within the Judiciary premises in Khartoum the Capital. It is interesting that the influence of the Bar was not enough to exclude the Judiciary and the Ministry of Justice from the Committee. Advocacy is practiced before the independence of the Country 1956 and yet the Committee includes two judges and its seat at the Judiciary HQ while the Bar/ Advocates have no presence in the Ministry of Justice admissions nor the Judiciary selection committees. This treatment sends a wrong message regarding the Bar independence, in fact, it confirms that the Bar is immature to manage itself or issue the rules of admissions or approve its members. Nevertheless, the new amendment is a positive step towards the independence of the Bar and great move for independent future.

Article 6: Conditions of license:

(1) No license, for practicing advocacy, shall be granted, save to the person, who satisfies the following conditions that he shall: -

a. be Sudanese;
b. be of twenty years of age, at least, upon presenting the application;
c. be of good conduct and reputation, and not have been convicted, for an offence inconsistent with honor, or honesty, unless he has been granted comprehensive pardon;
d. have obtained a degree in law, from a recognized university, and has passed the examination prescribed by any law in force, for the organization of the legal profession, unless it has been decided to exempt him from examination, in accordance with such law;
e. have completed the training period, as set forth in section 15, unless he has been exempted, under section 16;
f. have completed the national service unless have been released or exempt thereof, by the law[4];
g. have not been expelled or ended from a job, he was occupying, for a reason pertained to honour, or honesty[5].

(2) Notwithstanding the provisions of paragraph (a), of sub-section (1), the Council may grant the alien advocate an advocacy license according to reciprocity principle between Sudan and the State related, and he shall not have the right to participate in the General Assembly or the Social Security Fund[6] ."

Following the development of the high education in Sudan in the last three decades[7], the graduation age lies between nineteen and twenty one. Therefore, the legislators reduced the age of admission to twenty instead

---

[3] Before the amendment the advocates had two members; the chairman, which was the President of the Bar; and an advocate nominated by the Central Committee (now called the Council after the amendment) with at least fifteen years of experience. The new amendment added three advocates in addition in addition to the Chairman, which makes the presence of advocates in four members with voting rights, without any experience requirement as long as the three members are legally nominated by the Council and the General Assembly.

[4] The wording in the original text "أن يكون قد أدى الخدمة الوطنية مالم يكن قد أعفي منها أو أستثني بموجب القانون"

[5] The wording in the original text "الا يكون قد تم فصله أو إنتهت خدمته من وظيفة كان يشغلها لاسباب تمس الشرف أو الامانة"

[6] **The wording in the original text** "بالرغم من أحكام الفقرة (أ) من البند (1) يجوز للجنة أن تمنح المحامي الاجنبي رخصة إشتغال بالمحاماة في السودان وفقا لمبدأ المعاملة بالمثل بين السودان والدولة التي ينتمي إليها ، على ألا يكون له الحق في الاشتراك في أعمال الجمعية العمومية أو صندوق الضمان الاجتماعي".

[7] In 1994 the school qualification for university entry has been reduced from 12 years to 11 years instead.

of twenty one. The second amendment in the condition focuses in the convection of the applicant rather than the punishment applied, which is more comprehensive approach as a condition. Previously the article stated that the applicant *"…not have been punished with imprisonment…"*, the amendment states *"…not have been convicted…"* this draw the line that not only imprisonment as punishment will disqualify the applicant, but the convection, which is the more valid assessment.

Moreover, the legislators added two additional conditions; the first is the National Service[8] which is a law passed in 1992. The law compels all citizens to serve the nation for limited period between one to two years depending on their education level and health condition. The second condition discusses the career history, which vital to the profession. It makes the reason of expulsion from a job, one of the reasons to deny the application if the reason was related to honour, or honesty.

A great change in the Act passed regarding the foreign advocates licencing which converts the Act from anti-foreigner to foreigner friendly with the fair condition of reciprocity. Previously only licenced foreign advocates, before passing the Act in 1983, were allowed to practice and for two years only. The old tendency alienated the foreign advocates making it very difficult for non-Sudanese to practice advocacy in Sudan. In fact, even foreign lawyers with license, before passing the Amendments, had been allowed two years licence only in which they could not renew it.

However, the amendment allowed the foreign advocate to practice, but is not allowed to participate in the General Assembly of the Bar nor being protected under the Social Security Fund regime. This confirmed that foreign advocate will not be treated as national advocate as their license is restricted to practicing advocacy only and not benefit from the Bar management or concessions.

This significant tendency may elevate Sudanese advocates to be international following the reciprocity principle. Currently Sudanese advocates are practicing in many countries especially in the Arabian Gulf states. The adoption of this path is positive and may assist the profession by opening other jurisdiction for Sudan's lawyers to practice as much as opining the profession to international competition locally.

There are a pressing issue in sub-article (1-d) that has not been touched by the new amendment. The second part of the article requires all applicants to set for an examination arranged by the *Organization of the Legal Profession*. This examination is controversial[9], it is a compulsory to all law graduates in order to be qualified for the legal profession. In Sudan, as may other jurisdictions, there are four main legal professions; Advocacy, Judiciary, Prosecution, and State Legal Advisor. After passing the examination, the applicant will be able to start the path he chooses in the legal field. Although, less than 10% of the applicants pass the examination[10], the applicant will be subjected to further tests and interviews, which is frustrating and creates doubts around the first examination purposes. If the applicant is required to pass this examination, there shall be no further written examination to join any of the four professions. The professions bodies then tend to have more assessments such as interviews, presentation skills, background check …etc. But only the Bar do not subject trainees to additional written examination.

---

[8] The National Service Act 1992

[9] It is becoming clearly that the essence behind the examination is a gate keeper process rather than assurance for skills and quality.

[10] In 2012 the law colleges graduates reached 3644 graduates, source: *Ministry of Higher Education & Scientific Research*

Moreover, the examination is required after the graduation, which explains the limited number of successful applicants. In law colleges there are no practical training while the examination is designed from practical cases. Many fails due to their absence of experience, if the examination takes place after the training period, stated by article (15), it would be better for the applicants and valid assessment to the training period and the skills gained.

Better approach is suggested by this paper, for the benefit of the legal profession in general, is no applicant shall be qualified for admission into the Judiciary or Prosecution or Ministry of Justice unless he is a practicing advocate for a number of years, which shall be decided by the institution he is applying for. This unifies the channel of requirement and allows the institutions to add any additional requirements based on the experience needed and the opportunities offered by the Judiciary or the Prosecution or The Ministry of Justice. Having parallel processing of law graduates by each institution will only delay the progress of applicants and creates unneeded additional administrative burden. *The Organization of the Legal Profession* as well can have better step and include the law colleges into the organization to have an agreed and unified law colleges admission rules and may be pre-test to all applicants to select the best students before they be admitted at the colleges[11]. Another approach can be applied as well, by having an independent law training institution following the English model of the "College of Law". At this stage applicant will be assessed vocationally allowing them deep skills development.

Article 7: Application for Licencing and Interview of Applicants:

(1) The Advocates Admission Committee shall hold a periodical meeting, every month, to examine licensing applications, interview applicants and ascertain that' they are qualified for the advocacy profession, in accordance with the provisions of this Act, and they may advance the date of the meetings thereof, where necessity requires the same.

(2) In case of ascertainment, by the Committee, of satisfaction of the conditions provided for in section 6(1), they shall require the applicant for licensing to pay the fee prescribed in Schedule II, hereto, and after payment of the fee, they shall issue the license, in accordance with form (A) of Schedule I, hereto.

(3) Where the applicant does not satisfy the conditions, the Committee shall reject the application by a decision, wherein they set, forth the grounds of rejection, and the applicant shall be notified of such decision, by a registered letter, and also he shall, where possible, be verbally notified on the same day. A person, whose application has been rejected by the Committee, may request the Committee, within two weeks of his notification of the rejection decision, to review the decision, and the decision passed on the review application, shall be final.

(4) Subject to the provisions of the Judiciary Act, 1986, where the licensing application has been presented by a judge who is removed from the Judiciary, or a legal officer, dismissed from service, for any of the reasons, the Committee may adjourn considering such application, for a maximum period of three years, commencing as from the date of removal, or dismissal from service, and in this case, the Committee shall issue a grounded decision, wherein they shall specify the period of adjournment and the applicant shall

[11] This step is similar to the American system which is organized by The Law School Admission Council (LSAC) as all applicants internationally must be assessed before admitting to law school.

be notified of the decision by a registered letter. He may, after lapse of such period, present a new application, for determination, and shall also be entitled to apply for review of his decision once only, within two weeks of his receipt of the rejection decision, or the same being sent thereto, and the decision of the Committee, which is issued on the review, shall be final.

(5) The Committee may request from the employer of the applicant, a copy of the service file to consider the reason of expulsion or removal, before rendering a decision on the licensing request12."

In the first section, the amendment increased the periodical meetings from once every three months to once a month. This can be understood following the increase of the law graduates in the country, and therefore, the applicants for the licence[13]

The second section of the amendment is linked to the amendment in article (6), which allows the Committee to request the applicant file at any body he worked in before and review the reasons for his cession or end of service.

Article 8: Terms of License:

(1) The term of the license shall be one year, which terminates by the end of the thirty first of December of the year in which it has been issued, and shall be renewable annually, after payment of the fees prescribed therefore in the Schedule, hereto.

(2) The Council may extend the term expiry date of the license to any prescribed date14."

Previously the term of the licence was strictly for the period of one year and subject to annual renewal. This created delay in the process of renewal and heavy renewal requests during the first three months of the year bearing in mind that many experienced advocates need the renewal to renew their notarizations authority granted by the Judiciary.

The amendment has given the Council the liberty to extend the period of the licence to any time they "prescribe", which may be an advantage to advocates and foreign advocates to have their licence term last more than one year. Despite the fact that this might not be applicable, particularly to the Bar funding resources as the main source of fund is the annual subscriptions. Nevertheless, the wording can be supportive to selective cases as the Council sees fit.

Article: 9: Enrollment on the Advocates Roll, signature thereof and Oath:

The amendment was a linguistic update to the wording of the oaths from **"**I swear by Almighty Allah, to perform my business honestly and honorably, preserve the work of truth and justice, and the secret of the advocacy profession, and respects the laws and traditions thereof" **to** "I swear by Almighty Allah, to perform my business honestly and honorably, preserve the work of truth and justice, and the secret of the advocacy profession, and commit to the provisions of laws thereof, and the code of advocacy profession's ethics".

---

[12] The wording in the original text "يجوز للجنة أن تطلب من الجهة التي كان يعمل بها مقدم الطلب ، صورة من ملف خدمته للنظر في أسباب فصله أو عزله قبل البت في طلب الترخيص"

[13] Supra

[14] The wording in the original text "يجوز للمجلس تمديد مدة الرخصة الى أي أجل يحدده"

The practical influence in the wording is clear giving the oath rather compressive approach.

Article 20: Remuneration of Trainee Advocates:

The trainer advocate pays the trainee advocate a monthly remuneration throughout the training period."

The amendment passed in favour of the *Trainer Advocate* not the *Trainee Advocate*. The previous article was more detailed favouring the *Trainee Advocate,* which was declaring guidance to the remuneration of the Trainee. This amendment allows the Trainer to deicide the monthly allowance in his own discretion. The practice shows that the Trainee may be in a vulnerable situation, and therefore, the law should have protected the vulnerable party as previously stated, not the Trainer, which was the main purpose of the article. Obviously, there were claims from both parties regarding the remuneration in the last 30 years and the legislators favoured, this time, the *Trainer Advocate.* It was expected that the amendments could have added more rules favouring the *Trainee Advocates* to protect the weak party or at least keep the old wording.

Article 26: Duties of Advocates & Judicial Aid:

(1) An advocate shall have an office, wherein he practices advocacy business, and he shall notify, the Committee, of the address of his office, and of any change in such address, in order to enter a note thereof, before his name enrolled onto the Advocates Register, or else his being notified, with respect to application of the provisions of this Act, shall be proper, in the place of his residence, set out onto the Advocates Register.

(2) No advocate shall advertise about himself, in newspapers, or in any other way, however he may place, outside his office, a sign, or a small plate, setting out his name, profession and legal qualifications. He may, where he changes his address, place a sign, or plate setting forth the address of his new office.

(3) The advocate may practice the profession individually or with partner or more or by legally registered partnership15

The Advocacy Tax

26. (A-1) With respect to the provision of the Income Tax Law 1986, the advocate's tax obtains by stamps to be placed on all pleadings, complaints, and authentication, written legal consultancy in Sudan and all bylaws prepared by the advocate for companies, partnerships, and international and local contracts.[16]

(a-2) the stamps categories stated in article (a-1) will be prescribed by the agreement with the Bar and the Taxation Chamber[17]."

Despite the fact the 1983 Act did not forbid or limit the practice in partnerships, there was a prejudice stand in the Bar to forbid partnerships since the practice began decades ago in solo advocates offices. After the amendment it is a clear permission to practice in legal registered partnerships. Hence, international and local

---

[15] The wording in the original text "يجوز للمحامي ممارسة المهنة منفردا أو مع شريك أو أكثر أو أو عن طريق شراكات مسجلة قانونا"

[16] The wording in the original text "مع مراعاة أحكام قانون ضريبة الدخل لسنة 1986 تحصل ضريبة المحامي بموجب دمغات توضع على كل المذكرات التي تقدم للمحاكم والشكاوي والتوثيقات والاستشارات القانونية المكتوبة للعمل داخل السودان واللوائح التي يعدها المحامي للشركات والشراكات والعقود الدولية و المحلية"

[17] The wording in the original text "تحدد فئات الدمغات المذكورة في البند (1) حسبما يتم الاتفاق عليه بين النقابة وديوان الضرائب"

law firms can now be able to apply for licence, which was not possible previously, this is consistent with article (6-4-2) which allows foreign advocates to practice in Sudan. This great victory is a development to the profession and enables advocates to interact internationally.

In the second part of the amendment the legislators added new sub article with the title "the Advocacy Tax". This is newly introduced into the Act as the tax for all practitioners[18] in all fields in the country are organized by the Income Tax Law 1986. The new addition made the collection of the tax through prepaid stamps to be issued by the Taxation Chamber after an agreement with the Bar.

To be honest, this was the same collection method applied in the last decade, which was agreed and organized by separate instrument between the Bar and the Chamber.

Looking at the taxes processing and collection of the other profession such in the medical and engineering fields, this article is more suitable than the annual auditing of advocates accounts or the fix rate depending on the years of experience, it serves the Chamber and Advocates as all pleadings and formal requests headed by the advocates offices will be taxed in advance through the tax stamps.

Article 42: Costs due to advocates:

(1) Without prejudice to the provisions of section 34, an advocate shall be entitled to advocates costs, for his performance of such business, as may have been assigned thereto. He may also be reimbursed such, as he may have spent, to the benefit of his client.

(2) There shall not be binding, upon the two parties, every agreement concluded between an advocate and his client, unless such agreement is :-

a. Written and shown therein the date of such agreement;
b. Signed by both parties;
c. Shown therein, all the services, or business required, to be performed by the advocate;
d. Shown therein, the total amount required to be paid, by the client, to the advocate, for such services;
e. The advocate shall be entitled to be paid the amount required, from his client, forthwith signature of the agreement, unless expressly provided otherwise, by the agreement;
f. the amount required, to be paid to the advocate, shall be inclusive of all the services rendered, and also the expenses, fees and costs which are payable for the conduct and completion of the work, for which the agreement has been concluded, unless such services, fees or expenses, if any, have been excepted expressly from the agreement;
g. (i) the Committee, upon a complaint from those who appointed the advocate, may amend any agreement concluded by the advocate, with his client, concerning such costs, as may be payable thereto, where the Committee are convinced, that such costs are costly, exaggerated, or not compatible with the size, type and nature of such legal services under such agreement.19

[18] Practitioners in Act 1986 refer to all freelance practitioners such as Doctors, Advocates, and Engineers...etc.

[19] The wording in the original text "يجوزللجنة بناء على شكوى تقدم ممن وكل المحامي أن تعدل أي إتفاق أبرمه مع موكله بشأن الاتعاب التي تدفع له إذا رأت أن تلك الاتعاب كانت باهظة أو لا تتناسب مع حجم ونوع وطبيعة الخمات القانونية موضوع الاتفاق "،

h. (ii) Where the advocate receives all, or part of the costs agreed upon, in writing, under this sub-section, or verbally, under sub-section (3), the Committee may, upon complaint, to be presented by the client, within twelve months, of the date of the last amount which has been paid, to the advocate, to issue on order thereto, to restitute, all or part of the costs he received, where such costs are costly, exaggerated, or not compatible with the size, type and nature of such legal services he performed, or may perform, under the such agreement[20].

i. (iii) the order of restitution of costs, issued by the Committee, shall be deemed as a judgment of fine against the advocate, and be executed in pursuance of the provisions of the Criminal Procedure Act, 1991, and the Committee shall have the power of the issue of execution orders, under this Act;

j. receipt of costs which are costly, exaggerated or non-compatible with the size, type or nature of the legal services, shall be deemed such work, as may be in contravention of the honor of the profession, or conduct, as may degrade the estimation thereof, and the Committee may, upon consultation of the Committee, order the advocate to be referred to a board of accountability.

(3) In case of non-existence of a written agreement, between the advocate and his client, the advocate shall be entitled, against his client, after completion of the required work, to such fair and reasonable costs, as may not be less than the costs of a similar work, and the advocate shall present, to his client, a detailed list of costs, wherever he requests the same there from.

(4) Where there has branched, from the agreed work, such other business, as may not have been foreseeable, at the time of the agreement, the advocate may claim costs there for, after performance of the same,

(5) Where an advocate completes the suit, by reconciliation or arbitration, or for any other ground, as he has been authorized by his client, he shall be entitled to his full costs, unless agreed otherwise, in writing.

(6) Where the advocate steps aside of the agency, for a lawful cause, and notifies his client of the same, in an appropriate time, or the advocate dies, before completing the work he has been authorized to do, or the client dies and his successors are not of opinion, that the advocate is to continue the work, the advocate, or his successors, shall be entitled, against the client, or the successors thereof, as the case may be, to the costs of a similar work, for such effort, as has actually been exerted, subject to such, as may be provided for by the contract concluded between the two parties, and the provisions of this Act."

The previous text gave the Minister of Justice[21] the right to receive complaints from the general public and amend any advocacy fees after consulting the Committee. The amendment repelled this right and stated that only the Committee is allowed to receive and review complaints and fees agreement. The previous text was very confusing by giving the Minister this right while it is a purely advocates issue to handle, which confirmed the general tendency of treating the Bar as immature institution that needs custodianship by governmental bodies.

[20] The wording in the original text " (3) يجوز للجنة بناء على إذا تسلم المحامي كل أو بعض الاتعاب المتفق عليها كتابة بموجب هذا البند أو شفاهة بموجب البند شكوى تقدم من الموكل خلال إثني عشر شهرا من تاريخ أخر مبلغ تم دفعه للمحامي، أن تصدر أمرا له بأن يرد كل أو بعض الاتعاب التي تقاضاها إن كانت تلك الاتعاب قد دفعت نظير عمل لم يقم به المحامي أو كانت باهظة أو لا تتناسب مع حجم ونوع وطبيعة الخدمات القانونية التي أداها أو التي سيؤديها لموكله بموجب ذلك الاتفاق."

[21] The Minister of Justice in Sudan is the Public Attorney, which is appointed by the President and a member of the Cabinet

In fact, the fees complaints are more relevant to the Council of the Bar rather than the Committee[22] or the Ministry of Justice. The new amendment is a good step forward by revoking the Minister right to accept or review fees complaints, but it is preferable to have the sub- committee instituted by the Council to handle this issue. In other words, the Committee is the relevant body to admit advocates, and therefore, it should be the authorized body to review the advocate practice.

However, the paper finds the amendments positive. But need more refurbishment by issuing a fee protection system that handle the advocates rights and complaints to have a balanced application.

Article 46: Immunity of an advocate with respect to whatever he does in a sitting:

(1) Notwithstanding the provisions of any other law in force, where there occurs, from an advocate, during his appearance before the court, to discharge his duty, or by reason thereof, contravention of order, or any such matter, as may require his being responsible disciplinarily, or criminally, the court shall forthwith adjourn the sitting, and the president of the sitting shall write a record of what has happened, and refer the same to the Chairman of the Committee.

(2) Where the Chairman of the Committee deems that there is what requires investigation, he /she shall refer the matter to the Complaints Committee who shall conduct the investigations, within three days, of the date of receipt thereby, of the record referred to in sub-section (1), then the board shall submit the result of their investigation to the Chairman of the Committee.

(3) The Chairman of the Committee may, after perusal of the investigation, order taking criminal proceedings, where what has occurred from the advocate is an offence punishable, under the Criminal Act, or any other law, or commit the advocate, to the board of accountability provided for in section 53, where what has occurred there from, is a mere breach of duty and order, or else he shall order filing the papers.

(4) The president of the sitting, or one of the members thereof, wherein the incident has occurred, shall not be a member of the criminal court or the accountability council.

(5) A Judge, or a prosecutor attorney, or a police officer, or a policeman, may not expel an advocate from the court room, or an office of the persecution attorney, or a police office, or order to expel any advocate in processing of legal procedures before a court or persecution attorney or police precinct23"

The amendment included linguistic changes that did not change the procedures. It includes an addition to the Article by creating sub-article (5) where the wording is supporting to the profession "a *Judge, or a prosecutor attorney, or a police officer, or a policeman, may not expel an advocate from the court room, or an office of the persecution attorney, or a police office, or order to expel any advocate in processing of legal procedures before a court or persecution attorney or police precinct"*[24]. This new addition to the law comes from the practice in the last three decades where public prosecutors and judges and even police officers are free to expel advocates for many reasons whether justified or not. This behaviour degrades and disrespects the profession of advocacy.

---

[22] Please read the constitution of the Committee in article (4-1).

[23] The wording in the original text "لا يجوز لاي قاضـي أو وكيل نيابة أو ضـابط شـرطة أو شـرطي أن يطرد من قاعة المحكمة أو مكتب وكالة النيابة أو مكتب الشرطة أو يأمر بطرد أي محام يباشر إجراءات قانونية أمام محكمة أو وكالة نيابة أو قسم شرطة"

[24] Article (46-5)

However, the Act did not support this article with penalty to strengthen the wording, which was important, considering that the article is directed to authorize personnel such as a police officer or public prosecutor.[25]

Article 48: Investigation as to an advocate:

(1) Save cases of red-handedness, or such offences, as may affect State security, the permission of the Council shall be issued, before arresting, or summoning the advocate, to appear, in any investigation. Where the offence attributed, to the advocate, relates to his work, the President of Bar, or whoever he may deputize of advocates, shall attend the interrogation, or investigation; provided that the provisions of the Criminal Procedure Act, 1991 shall be followed, subject to the provisions of this section.

(2) In all cases, the advocate shall be treated, with such treatment, as may be compatible with the honor of his profession, to perform the duties of justice."

All practitioners' in the legal field have a protection from prosecution due to their engagement in disputes, which may create grievances among disputants and result in vexatious claims. This immunity, of course, included the judges, public prosecutors, advocates, and police.

This amendment is significant and solving many interpretation issues that had arisen during the validity of the previous wording, which states "*Save cases of red-handedness, or such offences, as may affect State security, the Central Committee of the Association shall be notified of the same, before arresting, or summoning the advocate, to appear, in any investigation*." Following the practice in the last three decades, it depends on the complainer influence and the significance of the wrong doing or criminal act under investigation when the dedicative in charge follow article 48. Meaning that the prosecutor attorney or the detective sometimes wait until the "Central Committee" respond and sometimes just notifies the "Central Committee" and proceed with the arrest warrant, or ignore the whole process and move forward with the arrest warrant or investigation depending on the wording of the article which states that only notice is required. It is true that the wording was vague, but this loophole had been used by the law enforcements and the prosecutors to move on with all investigation stages regardless of the response of the "Central Committee".

The new wording "Save cases of red-handedness, or such offences, as may affect State security, the permission of the Council shall be issued, before arresting, or summoning the advocate, to appear, in any investigation." It is clear that the legislators has silenced all voices regarding this issue by giving the Council the sole authority to give the permission to process with any investigation against the advocates.

However, it is a valid argument that the lack of punishment or consequences for disrespecting this article is a particle obstacle as well as in article (46-5) above discussed.

[25] It is not a secret that advocates in their practice may disagree with opinion of the Police or the Judge and sometimes the argument may not be favored by the authority he is consisting, which result to expulsion from the office or the court room. The article, therefore, should have made it clear to the consequences of this unfair behavior or act of the authority. Reading and understanding the true purpose of this new addition to the Act, a punishment and procedural guideline must be attached to the article to make it applicable against those who violate it. However, the addition is very successful and may be in future the Act will include more forward approach that serves the profession.

An opposing opinion to this article comes also from the wording, since no time limit or details are given to organize the immunity. The wording should have stated a period of time where the Council shall respond as the Bar should not protect any wrong doing from procession, sitting the example for others to follow.

Article 53: Sanctions:

(1) The regulations shall prescribe the sanctions applicable to the advocate[26]

(2) In all cases, the advocate shall be bound to restitute whatever he may have taken, without truthful justification, unless the proprietor of the right relinquishes the same."

The new amendment shifted the sanctions against the advocates to the scrutiny of the Council only[27]. It is great that the Act is referring this authority to the Council of the Bar as a sign of independence. In the other hand, the amendment is not successful as the matter of sanctions is very significant and should have been clearer as it was in the previous text. Whether for the advocates or the complainers, sanctions must be clear in the law and not subject to change by internal regulations or bylaws. This may create ambiguity and lack of trust between both, the complainers and advocates.[28]

Article 54: The Complaints Committee:

(1) The Committee shall constitute a Sub-Committee, of persons of high experience, to be known as the, " Advocates Complaints Committee ", in the constitution of which, due regard shall be had to represent the Judiciary, the Ministry of Justice and advocates, and shall be entrusted with considering all the complaints, relating to the performance, business and authentications of advocates.
(2) The Complaints Committee shall examine each complaint, and determine the same, as to such manner, as may be set out in this Act, unless they deem that the complaint does not deserve consideration, for strong and fair grounds.
(3) The Complaints Committee may authorize, the Bar President Agents in the states, to examine any complaint and investigate it, and issue recommendation to the Committee[29]."

The new addition was changing the title of the body reviewing and accepting complaints from "the Advocates Complaints Board" to "the Complaints Committee" with the same previous wording regarding the mandates and power vested in the Board. The only addition was in sub-article (54-3) where the Act allowed the Complaints Committee to authorize "the Bar President Agents" in other states to review, investigate and issue recommendations to the Complaints Committee regarding complaints in the states level. This new addition is supportive to the issue in hand and will enable the Committee to practice its mandate in a more comprehensive approach, especially that the *Agent* authority is limited in making recommendations *only* to the Complaints Committee.

Article 55 & 56: Functions of the Complaints Committee & Board of Discipline:

---

[26] The wording in the original text "تحدد اللوائح الجزاءات التي توقع على المحامي"

[27] Article 72 states that the Council is the only authority allowed to issue regulations and sanctions

[28] Changing the sanction by the regulations or bylaws is not a successful approach and may result to bias claims against the Bar.

[29] The wording in the original text "يجوز للجنة تفويض وكلاء نقيب المحامين بالولايات لفحص أي والتحري فيها والتوصية بشأنها لدى اللجنة"

The amendments are linguistics in the original script and no change in meaning in English[30].

Article 58: Summonses of the Advocate:

(1) An advocate shall be summoned for the charge against him, in writing, and as to such amount, as may enable to be acquainted with the nature thereof, and the date, at which he is required to appear, before the board of accountability.

(2) The summon letter shall have reached the advocate, a week, at least, before the fixed sitting."

Due to the mail development in the country, the registered letter or local mail service is no longer available. Therefore, the amendment states "in writing" to open all means of communication available in the country.

The second part of the amendment reduces the period of the summon validity to one week instead of two weeks in the previous text, which is compatible with the development in communication and transport since 1983.

Article 62: Decision of the Board of Accountability:

Repeating the same change in article 68 as it states "in writing" instead of "registered letter"

Article 63: Appeal against the decision of board of accountability:

(1) An advocate or the Complainer may appeal, against the decision of the board of accountability, before the Committee, within fifteen days, of the date of pronouncement of the decision, where the same is in his presence. Where the decision is in default, he may appeal against it, within fifteen days, of the expiry of the date of review, or the date of his being notified of the decision passed, on the application for review, as the case may be.

(2) The Committee may reject the appeal and confirm the decision of the board of accountability, or accept the appeal, and pass such judgment, as they may deem appropriate.

(3) The decision passed by the Committee, on the appeal, shall be final. (4) Notwithstanding the provisions of sub-section (3):-

a. The Committee may, upon the application of the advocate, review the decision passed thereby confirming the decision passed by the board of accountability, revoking the advocate's license and striking his name off the Advocates Register, where the advocate presents thereto new evidence of such a nature, as may prove his innocence, and may, as well, do the same, for the same reasons, in case of passing the decision by the board of accountability, and it's becoming final without being, appealed against;

b. The advocate, against whom a disciplinary decision has been passed, revoking his license and striking his / her name off the Advocates Register, may present, to the Chairman of the

[30] Arabic language distinguishes the verbs used ~~to~~ for feminine names from masculine names. The change in the phrase "Discipline Board" to "Complaints Committee" must be followed by other changes in the language. The first name is masculine and the second is a feminine name in Arabic, the verb end (pronoun) has to be changed accordingly. This does not change the meaning in English.

Committee, after the expiry of three years at least, of the date of passing the decision, an application to grant him license, and the Chairman shall refer the application, to the. Council, to submit the same, to the General Assembly, to pass a decision of such recommendation, as they may deem fit, with respect of the same. Where they recommend acceptance thereof, the Council shall submit the same, accompanied by the recommendations of the General Assembly, to the Committee, for consideration. Thereof. Where the Committee deems that the reasons, for which the license has been revoked, have disappeared, or the period which has elapsed is sufficient to reform the advocate's position, they may grant him a license, and order re-enrollment of his name, on the Advocates Register. Where the Committee rejects the application, the advocate may renew the same, after the expiry of one year at least, of the date of the rejection decision, and there shall be followed, with respect to the new application, the procedure provided for in this paragraph, and the application shall not be renewed more than once."

The amendment gives "the Complainer" the opportunity to proceed with an appeal to the Committee if he finds the decision against his favour. This was not possible previously as the right of appeal was only granted to the advocate in question. The amendment sends the right message to the general public that the Bar is a self-monitoring institution.

To sum up, these amendments, in general, are supportive to the advocacy profession and are generated from the practical difficulties facing the development of the profession in the last three decades. The constitution of the Advocates Admission Committee –the Committee[31], the enhancement of the licensing requirements[32], the friendly approach to foreign advocates and international law firms and the ability of advocates to practice in partnerships,[33] the advocacy tax,[34] the semi-independent approach of the Bar from the Ministry of Justice[35] the enhancement in the Complaints Committee authorities and procedures[36] the update on the respect of the advocate[37], the strengthens of the advocates immunity, and the summons period and procedures[38], the development in the self-monitoring through the Complaints Committee and the right of appeal before the Committee[39], are all successful amendments. However, it is a great approach, they should have been issued earlier, maybe, in the nineties. But the delay is understood as the influence of the other institutions, explained above, creates layers of discussions and approvals.

There are also unsuccessful amendments. Article 6 states the conditions of the licence, in this article the amendments ignored the unnecessary procedures regarding the examinations, which should have been reviewed[40]. In article 20 where the *Trainee Advocates* remunerations guidelines were replaced with open wording allowing the *Trainer Advocate* to decide the remuneration at his / her own discretion. Another

[31] Art:4
[32] Art:6
[33] Art 6-2, 7-1 , 7-4, 8-2 &26
[34] Art: 26
[35] Art: 42 the amendment revoked the authority of the Minister to review or accept complaints against advocates fees. Please read article 42 amendments above.
[36] Art: 46 & 54
[37] Art: 46-5
[38] Art: 48 &58
[39] Art: 63-1
[40] Please read art: 6 amendments comments above with a footnote.

shortcoming is the lack of punishment regarding the violation of the Act in articles 46 and 48. It is worth mentioning that the opposing opinion regarding the updates in article 48 is significant, as the immunity of advocates must be controlled and not to become another layer of mere delay.

However, this movement is very late but a great step forward. It reflects a positive approach for an independent Bar rather than the previous influence of the Judiciary and Ministry of Justice. Although the Committee includes members of both institutions, but the significant increase in the members of the Council and the General Assembly giving the power to the advocates. It would be a reasonable approach to see, in future, the Bar representative becoming members of the Judiciary and Ministry of Justice internal admission committees to make the balance in all legal professions.