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Agenda item 3

**Promotion and protection of all human, civil,
political, economic, social and cultural rights,
including the right to development****Protection of lawyers against undue interference in the free
and independent exercise of the legal profession****Report of the Special Rapporteur on the independence of judges and
lawyers, Diego García-Sayán***Summary*

In the present report, which is being submitted pursuant to resolution 44/8, the Special Rapporteur addresses the issue of the protection of persons who practise law, since the free exercise of the legal profession is an indispensable element of the judicial guarantees that ensure a fair trial and the protection of human rights. The Special Rapporteur describes the international and regional standards that are aimed at protecting the legal profession.

The Special Rapporteur notes with concern a global increase in practices that undermine, limit, restrict and hinder the practice of law. This is especially true for lawyers whose activities are focused on the fight against corruption, the defence of human rights or the protection of groups in vulnerable situations.

In his report, the Special Rapporteur identifies trends and patterns of interference in and attacks on the legal profession. He also describes the means used to carry out such attacks, including interference in bar associations, legislation, physical and psychological abuse of lawyers and their families, defamation in the media and in social media, arbitrary disciplinary proceedings, use of the judicial system and the police corps. The Special Rapporteur has also identified violations of professional secrecy, as well as searches of the offices of legal professionals and seizure of their property.

The Special Rapporteur stresses that persons who practise law play a fundamental role in the consolidation of the rule of law and the protection of human rights. States have a duty to guarantee that these persons can exercise their profession without undue restrictions. The Special Rapporteur concludes his report with recommendations to member States on how to protect persons practising law.



I. Introduction

1. Lawyers and the free practice of the legal profession are indispensable to the rule of law, the protection of human rights and an independent judicial system. The free practice of the legal profession helps to ensure access to justice, oversight of the State authorities and the protection of due process and judicial guarantees. States should ensure that those who practise law are able to do so free from intimidation, hindrance, harassment and interference.
2. The Special Rapporteur notes with concern a global increase in practices that undermine, limit, restrict and hinder the practice of law. Lawyers are especially vulnerable when their activities are focused on the fight against corruption, the defence of human rights, women's rights, the protection of ethnic, racial, religious or national minorities, indigenous peoples, the LGBTIQI+ community, the environment or other issues of public relevance. Restrictions on the work of lawyers have increased as a result of the measures adopted by the States in response to the coronavirus disease (COVID-19) pandemic.¹
3. The Special Rapporteur has received information indicating that, between 2010 and 2020, more than 2,500 lawyers were killed, detained or kidnapped in different regions of the world.² The information includes homicides, prosecutions and attempts to undermine the independence of the profession. The Special Rapporteur is therefore submitting this report on actions that jeopardize the free exercise of the legal profession.
4. In 2018, the Special Rapporteur submitted to the General Assembly a report on the rights of bar and professional associations of lawyers.³ Various forms of interference in the independence of the associations were analysed and a series of good practices to guarantee the independence and effectiveness of bar associations were highlighted.
5. This report provides an account of the difficulties and obstacles faced by lawyers and of the mechanisms and strategies used to undermine their work and independence. It also puts forward recommended measures to strengthen the free practice of law, which is a fundamental component of an independent system of the administration of justice.
6. The Special Rapporteur wishes to highlight the work done in the protection and consolidation of the rule of law for all persons exercising legal functions, whether or not they have the official status of lawyers. The international principles and standards on the independence of the legal profession and its free exercise, in particular the Basic Principles on the Role of Lawyers,⁴ are essential elements that should serve as a guide for those who practise law, as well as for their professional associations, and should also be upheld by State authorities.
7. The Special Rapporteur publicly circulated a questionnaire requesting input from States, civil society organizations and professional associations of lawyers. At the close of the survey,⁵ 24 responses had been received from member States, 22 from civil society organizations and 23 from bar associations, for a total of 69 responses. The Special Rapporteur is grateful for the responses and emphasizes that participation in the survey was essential in order to have information and criteria for analysis based on the broad and free participation of a range of actors.
8. The Special Rapporteur expresses his appreciation to the International Bar Association's Human Rights Institute, the Council of Bars and Law Societies of Europe, the Cyrus R. Vance Center for International Justice and the Konrad-Adenauer-Stiftung for their help in organizing regional consultations with lawyers and members of civil society between November 2021 and January 2022, in preparation for this report. These consultations were carried out in Europe, Asia, Africa, the Middle East and North Africa, Central Asia and Latin America. The Special Rapporteur also wishes to thank the Human Rights Clinic of the

¹ [A/HRC/47/35](#).

² Information provided for the preparation of this report in November 2021.

³ [A/73/365](#).

⁴ [A/CONF.144/28/Rev.1](#).

⁵ Contributions will be posted on the Special Rapporteur's web page, available at <https://www.ohchr.org/en/calls-for-input/calls-input/call-input-protection-lawyers>.

Human Rights Research and Education Centre at the University of Ottawa for the considerable support it provided in the preparation of this report.

II. International standards

A. International Covenant on Civil and Political Rights

9. Article 14 of the International Covenant on Civil and Political Rights refers to the right to equality before the courts and the right to appear before a competent, independent and impartial tribunal. The right to choose one's counsel is provided for in paragraph 3 (b) of the same article.

10. Article 14 (3) refers to the right to legal representation and establishes minimum guarantees for individuals charged with a crime, including the possibility of defending themselves in person or through legal assistance of their own choosing; to be informed, if they do not have legal assistance, of this right; and to have legal assistance assigned to them, in any case where the interests of justice so require, and without payment by them in any such case if they do not have sufficient means to pay for it.

11. Harassment of persons practising law may result in violations of the rights of clients including the right to due process (article 14 of the Covenant), to liberty and legal security (article 9 of the Covenant) and to freedom from torture or other ill-treatment (article 7 of the Covenant).

12. The Human Rights Committee⁶ has established that the availability or absence of legal assistance often determines whether or not a person can access the relevant proceedings or participate in them in a meaningful way.

13. In general comment No. 13 (1984), the Committee emphasizes that lawyers should be able to counsel and to represent their clients in accordance with their professional standards and judgment without restrictions, influences, pressures or undue interference. This interpretation supports the idea that, in order to comply with their obligations under the Covenant, States parties must refrain from interfering in judicial proceedings and also from influencing, pressuring or interfering in any way with the ability of lawyers to counsel and represent their clients.

14. The Human Rights Council, in line with international law, has established that all States must guarantee the independence of lawyers and their ability to perform their functions accordingly, by taking effective legislative, law enforcement and other appropriate measures that will enable them to carry out their professional functions without interference, harassment, threats or intimidation of any kind.⁷

B. Basic Principles on the Role of Lawyers

15. In accordance with the Basic Principles on the Role of Lawyers, States must ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference, and that they do not suffer and are not threatened with prosecution or other administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics (principle 16).

16. In accordance with principle 18, lawyers must not be identified with their clients or their clients' causes as a result of discharging their functions.

⁶ General recommendation No. 32 (2007), para. 10.

⁷ Human Rights Council resolution 35/12.

C. Declaration on Human Rights Defenders

17. The Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders), adopted by consensus by the General Assembly in 1998, is aimed at protecting all human rights defenders, including lawyers.⁸ The Declaration makes clear that States must take all necessary measures to ensure the protection of human rights defenders by the competent authorities against all forms of violence, threats, retaliation, de facto or de jure discrimination, pressure or any other arbitrary action related to the legitimate exercise of the rights established in the Declaration (article 12).

D. Inter-American system of human rights

18. The protection of lawyers in the Inter-American system is based on the interpretation of regional human rights instruments, in particular, the provisions on the right to a fair and impartial trial, the right of access to justice, the separation of powers and respect for the rule of law.⁹

19. In this system, the obligation to respect the independence of lawyers is established in the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights¹⁰ and the commitments set out in the Inter-American Democratic Charter.¹¹

20. This obligation is interpreted and enforced by the institutions that make up the regional human rights protection system: the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, whose decisions are binding on the States Parties that have recognized its competence.

21. The American Convention on Human Rights specifies the obligations of States to ensure that any person may seek protection and justice for acts that violate his or her rights. Article 8 of the Convention establishes the right to a fair trial by an independent and impartial tribunal and further provides that every person accused of a criminal offence must have access to legal counsel.

22. The Inter-American Democratic Charter states that “the separation of powers and independence of the branches of government”¹² is one of the essential elements of democracy. It also states that respect for the rule of law on the part of all institutions and sectors of society are equally essential to democracy.¹³

E. African system of human rights

23. Article 45 of the African Charter on Human and Peoples’ Rights lists the functions of the African Commission on Human and Peoples’ Rights, which include the establishment of principles on fundamental freedoms and the interpretation of the African Charter. Article 26 of the Charter imposes a duty on States Parties to guarantee the independence of the courts.

24. In 2003, the African Commission established the Principles and Guidelines on the Rights to a Fair Trial and Legal Assistance in Africa. Although these are not binding, they

⁸ General Assembly resolution 53/144.

⁹ Inter-American Commission on Human Rights, *Guarantees for the independence of justice operators. Towards strengthening access to justice and the rule of law in the Americas*, 2013; Advisory Opinion OC-11/90 on the exceptions to the exhaustion of domestic remedies (American Convention on Human Rights, art. 46 (1) and (2) (a) and (b)), 10 August 1990, para. 41; Inter-American Court of Human Rights, *Reverón Trujillo v. Venezuela*, judgment of 30 June 2009, Series C No. 197, paras. 146–147. Inter-American Court of Human Rights, *Zambrano Vélez et al. v. Ecuador*, judgment of 4 July 2007, Series C No. 166, para. 122.

¹⁰ Organization of American States, American Convention on Human Rights, 22 November 1969.

¹¹ Organization of American States, Inter-American Commission on Human Rights, Inter-American Democratic Charter.

¹² *Ibid.*, art. 3.

¹³ *Ibid.*, art. 4.

provide guidance to States on how to protect lawyers' ability to exercise their profession without interference, respect client confidentiality, and provide legal professionals with access to the information necessary to enable them to provide effective legal assistance. As established in the principles and guidelines, lawyers also enjoy penal and civil immunity for statements made in good faith in pleadings or proceedings and have the right to expeditious and fair disciplinary hearings conducted before an impartial body in accordance with a code of professional conduct.¹⁴

25. The African Commission has used its mandate, established in article 45 of the African Charter on Human and Peoples' Rights, to condemn attacks on lawyers and has consistently criticized the persecution of lawyers. The Commission's position was made clear after Kenyan human rights lawyer Willie Kimani was attacked and killed by police in 2016.¹⁵ The Commission found that attacking lawyers created an atmosphere of fear and insecurity and that such actions were contrary to the rights established under the African Charter. It also called on the Kenyan authorities to investigate the matter and undertake reforms to ensure that the police fully respected and upheld human rights and to prevent the recurrence of similar incidents. In another case, in which activist lawyers were deported from the United Republic of Tanzania, the African Commission urged that State to take urgent corrective measures.¹⁶

F. European system of human rights

26. The right of any person arrested to be brought promptly before a judge for the purpose of deciding the lawfulness of his or her detention is set out in article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights).¹⁷ Even though there is no explicit mention of a right to legal assistance, the European Court of Human Rights found that such a right may be considered to have been violated if the exclusion of a person's lawyers is considered as arbitrary in the circumstances of a given case.¹⁸

27. The right to defend oneself in person or through legal assistance of one's own choosing is established in article 6 of the European Convention on Human Rights. The right to a fair trial under this article includes access to legal counsel of the accused's choosing from the outset, as established by the European Court of Human Rights.¹⁹ However, according to the Court, this right may be subject to certain restrictions when free legal assistance is provided and also when it is up to the courts to decide whether the interests of justice require that the lawyer appointed by them defend the accused.²⁰

28. The national authorities must take into account the wishes of the accused with regard to his or her choice of legal representation, except where there are relevant and sufficient grounds to do otherwise.²¹ In the absence of such grounds, a restriction on the free choice of counsel would amount to a violation of article 6²² of the European Convention on Human Rights.

29. Article 8 of the European Convention on Human Rights concerns the right to respect for private and family life. According to the case law of the European Court of Human Rights, the search of lawyers' offices for the purpose of finding incriminating evidence relating to

¹⁴ See <https://www.achpr.org/legalinstruments/detail?id=38>.

¹⁵ See <https://achpr.org/pressrelease/detail?id=129>.

¹⁶ See <https://www.achpr.org/pressrelease/detail?id=76>.

¹⁷ See https://echr.coe.int/Documents/Convention_ENG.pdf.

¹⁸ [A/71/348](#), para. 26. European Court of Human Rights, *Lebedev v. Russia*, judgment of 25 October 2007.

¹⁹ *Aristain Gorosabel v. Spain*, judgment of 18 January 2022.

²⁰ *Croissant v. Germany*, judgment of 25 September 1992, para. 29.

²¹ European Court of Human Rights, *Vitan v. Romania*, judgment of 25 March 2008, application No. 42084/02, para. 59.

²² European Court of Human Rights, *Dvorski v. Croatia*, judgment of 20 October 2015, application No. 25703/11, para. 76.

such lawyers' clients runs counter to article 8. Furthermore, the notion of "private life" should not be taken to exclude activities of a professional or business nature.²³

30. Recommendation No. R(2000)21 of the Committee of Ministers of the Council of Europe, for its part, stresses the need to take all necessary measures to respect, protect and promote the freedom of exercise of the profession of lawyer without discrimination and without improper interference from the authorities or the public in the light of the provisions of the European Convention on Human Rights.²⁴

31. On 30 January 2019, the Committee of Ministers of the Council of Europe tasked the European Committee on Legal Co-operation to prepare a feasibility study on the added value of a European convention on the profession of lawyer. This initiative was supported by the European Committee on Legal Co-operation.²⁵

32. According to the information received, starting in the spring of 2022, a committee of experts will be set up for the purpose of elaborating, over a two-year period, a draft legal instrument aimed at strengthening the protection of the profession of lawyer and the right to practise freely, without prejudice or restraint. The draft will be submitted in due course to the Committee of Ministers of the Council of Europe for adoption.

33. The Special Rapporteur has followed the development of various initiatives in connection with the preparation of a convention and welcomes the fact that the committee of experts will, this year, begin its work, in which the Special Rapporteur and the major organizations of lawyers in the region will participate as observers. Of the ideas that have been put forward at this preliminary stage, the Special Rapporteur notes positively the proposals that the resulting convention should be open to accession by non-member States of the Council of Europe. Such an instrument would be strengthened if its geographic scope of protection were broadened and more countries and people had access to it.

III. Trends and patterns of interference in the free practice of law

34. There are several patterns of interference in the exercise of the legal profession. Those who defend human rights in cases related to national security or corruption are in a particularly sensitive situation. Another issue is the arbitrary identification of the lawyer with his client.

A. Lawyers who defend human rights

35. In 2021, the Special Rapporteur sent communications to Cameroon, China, Egypt, the Russian Federation, the Philippines, Guatemala, Iran (Islamic Republic of), Lebanon, Morocco, Pakistan, Rwanda, Sri Lanka, Tajikistan, Turkey and the State of Palestine, concerning disappearances, arrests, coercive actions and threats involving lawyers and human rights defenders.²⁶

36. In February 2019, the European Parliament held a hearing on attacks on lawyers and human rights defenders. Countries in which the activities of lawyers are hindered and may result in prosecution or arrest included Azerbaijan, China, Kazakhstan and Turkey.²⁷ In 2020,

²³ European Court of Human Rights, *Niemietz v. Germany*, judgment of 16 December 1992.

²⁴ See <https://rm.coe.int/16804c392c>.

²⁵ See <https://www.ccbe.eu/actions/european-convention-on-the-profession-of-lawyer/>.

²⁶ See communications LBN 8/2021, IRN 28/2021, TJK 2/2021, EGY 8/2021, PSE 4/2021, TUR 10/2021, LKA 2/2021, RWA 1/2021, GTM 5/2021, MAR 4/2021, EGY 5/2021, IRN 16/2021, RUS 7/2021, PHL 3/2021, TUR 9/2021, IRN 12/2021, CHN 4/2021, PAK 3/2021 and CMR 1/2021. All the communications referenced in the present report are available at <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.

²⁷ See <https://www.europarl.europa.eu/committees/en/hearing-on-attacks-on-the-legal-professi/product-details/20190131CHE05821>.

several Zimbabwean lawyers were arrested and harassed because of their professional and human rights activities.²⁸

37. In 2018, four Kazakh human rights activists were sentenced to prison for their social media activities and peaceful protests. Their defence lawyers suffered political pressure from prosecutors, the State security service and judges. In protest against the accusations made against him and the violations of his procedural rights, one of the activists slashed his wrists during the hearings. The court took disciplinary action against his lawyer, allegedly for failing to prevent this desperate act.²⁹

38. In 2019, several organizations condemned the disciplinary actions of the Azerbaijan Bar Association against a human rights lawyer. The lawyer's suspension and disbarment was considered by the International Bar Association's Human Rights Institute as a sign that the Presidium of the Azerbaijan Bar Association is failing to support the development of the legal profession in relation to human rights cases in Azerbaijan.³⁰

39. Violent acts against lawyers and other human rights defenders are sometimes perpetrated by organized political and nationalist groups. The Office of the United Nations High Commissioner for Human Rights (OHCHR) has reported that, in Ukraine, organized political and nationalist groups have been involved in attacks against judges, lawyers, activists and other people considered to be "traitors" or "separatists".³¹

40. In the area of human rights advocacy, it is worth mentioning the Esperanza Protocol, an initiative led by the Center for Justice and International Law. It is the first international tool to promote an effective response to threats against human rights defenders. It addresses the threats faced by human rights defenders, journalists and others who work to uphold democracy and the full enjoyment of human rights around the world, including those of lawyers.³²

B. Cases related to national security

41. In some cases, law enforcement agencies themselves interfere with the legitimate work of lawyers. In others, human rights violations of persons practising law arise from within the judicial system. For example, the Human Rights Council found that military courts and special counter-terrorism courts have sometimes been used to silence and intimidate persons practising law.³³

42. According to a human rights organization, in Turkey, the Public Prosecution Service routinely investigates and opens cases against lawyers under the Counter-Terrorism Act (No. 3713) for activities undertaken in the discharge of their professional duties and have associated them with the alleged crimes of their clients.³⁴ Various international human rights organizations have denounced the abusive use of the Counter-Terrorism Act to persecute persons practising law.³⁵ Between 2016 and 2022, more than 1,600 lawyers were prosecuted and 615 were placed in pretrial detention. A total of 474 lawyers have been sentenced to 2,966 years of imprisonment on the grounds of membership in a "terrorist organization"

²⁸ See <https://kubatana.net/2020/08/16/law-society-of-zimbabwe-statement-on-deteriorating-human-rights-situation-in-zimbabwe/>.

²⁹ See <https://www.europarl.europa.eu/committees/en/hearing-on-attacks-on-the-legal-professi/product-details/20190131CHE05821>.

³⁰ See <https://www.ibanet.org/article/CC9DBFCB-43B6-4A4F-86ED-201D6EFAD95A>.

³¹ See the conference room paper prepared by OHCHR on the human rights situation in Ukraine, available at <https://www.ohchr.org/en/hr-bodies/hrc/regular-sessions/session40/list-reports>.

³² See <https://cejil.org/en/press-releases/the-esperanza-protocol-first-international-tool-to-respond-to-threats-against-human-rights-defenders/>.

³³ [A/HRC/44/54](#).

³⁴ See <https://hrw.org/report/2019/04/10/lawyers-trial/abusive-prosecutions-and-erosion-fair-trial-rights-turkey>.

³⁵ See <https://fidu.it/language/en/turkey-third-party-intervention-to-the-echr-in-the-case-of-saglam-against-turkey/>.

(Criminal Code, art. 314).³⁶ Pretrial detention, arrest and searches of lawyers' homes are considered to be human rights violations when they are based on mere supposition and there is no evidence to justify such measures.³⁷

43. In Myanmar, following the coup d'état that took place on February 2021, lawyers who defended the protesters were arrested and detained on grounds of national security.³⁸ Since 2014, Egyptian lawyers have suffered waves of repression amid a human rights crisis resulting from the Government's campaign against Islamists, whom they have accused of being terrorists. They have been repeatedly arrested and persecuted to force them to avoid political cases. At the peak of the crisis in November 2015, more than 200 lawyers were behind bars.³⁹

44. In Iraq, many lawyers have been reportedly intimidated, threatened or killed in the context of terrorist attacks perpetrated by insurgent groups.⁴⁰

45. In the course of the consultations held in connection with the present report, it was reported that, in the Syrian Arab Republic, violations in Government-controlled areas are often indirect, with security often cited as a basis for related acts or, in some cases, carried out by the bar association. In some areas of the country, attacks – including, in many cases, physical assaults on lawyers – are perpetrated directly by the de facto authorities.⁴¹

46. Handling the COVID-19 pandemic as a matter of national security has led to the imposition of a number of restrictions on the activities of lawyers. In many countries, the adoption of pandemic-related measures has made it more difficult for lawyers to advise their clients. This aspect of their work was not considered an essential service, and so the provision of legal services was blocked, as were visits to detention centres. Violations of the principle of confidentiality and the denial of rights normally guaranteed in the lawyer-client relationship were also found.⁴²

47. In Lebanon in 2020, a lawyer was beaten in broad daylight by members of the internal security forces, allegedly for violating the Beirut lockdown order. At the time, the officers reportedly threatened the Beirut Bar Association and its president.⁴³ In the Islamic Republic of Iran, women's rights lawyers and human rights activists who criticized the lockdown policies adopted in response to the pandemic have been illegally interrogated for defending their positions on social media.⁴⁴

C. Cases of corruption

48. Corruption has a direct impact on the operation of State institutions and therefore on the enjoyment of human rights. Independent and effective justice is the main tool used by societies to effectively investigate and punish corruption cases, which is also the purpose of the obligations set out in the United Nations Convention against Corruption.

49. The Special Rapporteur has referred to this in several reports, most notably in his report to the General Assembly in 2017. As to the relevance and significance of the Convention, the Special Rapporteur has emphasized that⁴⁵ "as it is a key tool to address corruption, this Convention should also be seen as a fundamental international instrument for

³⁶ Contributions will be posted on the Special Rapporteur's web page, available at <https://www.ohchr.org/en/calls-for-input/calls-input/call-input-protection-lawyers>.

³⁷ European Court of Human Rights, *Tercan v. Turkey*, application No. 6158/18, judgment of 29 September 2021.

³⁸ See https://www.ecba.org/extdocserv/projects/HR/20210315_HRC_ECBA_Myanmar.pdf.

³⁹ See <http://www.aeud.org/2017/04/defendingandprotectinglawyers/#.WPna28Q-D-o.facebook>.

⁴⁰ Contributions will be posted on the Special Rapporteur's web page, available at <https://www.ohchr.org/en/calls-for-input/calls-input/call-input-protection-lawyers>.

⁴¹ Information provided by the Middle East and North Africa region for the preparation of this report. [A/HRC/47/35](#).

⁴² See communication LBN 7/2021.

⁴³ See https://ecba.org/extdocserv/projects/HR/20201204_JointstatementNasrin.pdf.

⁴⁴ [A/72/140](#), para. 29.

the protection of human rights, and it therefore warrants continued attention from the relevant competent bodies”.

50. Evidence of corruption in the judiciaries of many countries has steadily grown in recent decades, so much so that the judiciary is perceived to be the second most corrupt institution, after the police.⁴⁶ In Equatorial Guinea, Guatemala and the Bolivarian Republic of Venezuela, lawyers, judges and prosecutors fighting against corruption and organized crime have been dismissed and forced into exile for their anti-corruption efforts in the political arena.⁴⁷

51. In Slovakia, a number of lawyers have been in pretrial detention for over a year on charges that they defended members of organized crime. The bar association intervened through an *amicus curiae* and requested that the principle that one cannot be prosecuted for providing legal services be respected.⁴⁸

52. In July 2020, a lawyer known for his work in defending anti-corruption protesters was arrested in Beirut and brutally beaten by a group of people in what appeared to be a murder attempt. Similar cases have been reported with regard to a considerable number of Lebanese lawyers.⁴⁹

53. Similarly, in Guatemala or El Salvador, legal professionals are attacked and defamed for denouncing cases of corruption or abuse by the State authorities.⁵⁰

D. Association of lawyers with their clients

54. This situation most often affects professionals working on political cases involving issues such as national minorities, the environment and human rights. Lawyers and paralegals subjected to pressure and attacks have been previously associated with their clients or their clients’ interests.⁵¹

55. Lawyers in Cameroon or Ghana have criticized this type of association, which occurred even as they were assisting clients at a police station. During the reported incidents, the lawyers felt coerced and feared that the police would consider them participants in the alleged crime.⁵² The Belgian, German, Slovak, Hungarian, Italian and Romanian bar associations have reported that the association of lawyers with their clients has led to attacks in respect of the exercise of lawyers’ professional duties.⁵³ In Ukraine, lawyers directly involved in representing defendants in high-profile political cases have been murdered.⁵⁴

56. In May 2021, the Special Rapporteur sent a communication to the Russian Federation concerning the arrest and detention of the lawyer Ivan Pavlov, in connection with the legitimate exercise of his professional activities in favour of a well-known opposition leader. On 30 April 2021, Federal Security Service agents searched Mr. Pavlov’s hotel room in Moscow. Federal Security Service agents also searched his home, the office of Team 29 and Mr. Pavlov’s summer cottage in the area of St. Petersburg. During the search, Federal Security Service agents allegedly seized most of the documents related to a politically

⁴⁶ Ibid, para. 41.

⁴⁷ [A/75/172](#) and [A/HRC/44/47](#).

⁴⁸ Contributions will be posted on the Special Rapporteur’s web page, available at <https://www.ohchr.org/en/calls-for-input/calls-input/call-input-protection-lawyers>.

⁴⁹ Ibid.

⁵⁰ Information provided by the Konrad-Adenauer-Stiftung for the preparation of this report.

⁵¹ Contributions will be posted on the Special Rapporteur’s web page, available at <https://www.ohchr.org/en/calls-for-input/calls-input/call-input-protection-lawyers>.

⁵² Information provided by the International Bar Association’s Human Rights Institute in November 2020 for the preparation of this report.

⁵³ Contributions will be posted on the Special Rapporteur’s web page, available at <https://www.ohchr.org/en/calls-for-input/calls-input/call-input-protection-lawyers>.

⁵⁴ See <https://www.icj.org/wp-content/uploads/2020/05/Ukraine-Between-the-rock-and-the-anvil-Publications-Reports-Mission-report-2020-ENG.pdf>.

sensitive case Mr. Pavlov was working on, including information subject to attorney/client confidentiality.⁵⁵

IV. Means of interference

A. Interference in bar and professional associations of lawyers

57. The increasing interference of States in the organization, administration and functioning of lawyers' organizations and associations is also of particular concern to the Special Rapporteur, who previously analysed various forms of interference in the independence of lawyers' associations in 2018.⁵⁶ In that report, the Special Rapporteur highlighted legal and administrative obstacles that prevented lawyers from establishing or joining independent professional organizations, ranging from the political affiliation of their members to different forms of control exercised by the executive or judicial branch on entry into or continued practice of the legal profession, and threats of disciplinary action and intimidation directed at the members of bar associations. The Special Rapporteur reminded national authorities that they should support the establishment and work of bar associations without interfering in those processes.

58. In Zimbabwe, the amendment of the Legal Practitioners Act in July 2021 allowed the Government to increase its leverage over the Zimbabwe Bar Association through ministerial appointments and control of foreign funding.⁵⁷ In 2021, the Special Rapporteur sent a communication to the Islamic Republic of Iran regarding a series of legislative measures aimed at undermining the independence of bar associations.⁵⁸

59. In Turkey, 78 investigations and prosecution proceedings are reported to have been launched against at least 68 members of the Diyarbakir Bar Association.⁵⁹ Two former presidents of the Bar Association, Fethi Gümüs and Mehmet Emin Aktar, were sentenced to 7 years and 6 months and 6 years and 3 months in prison, respectively, under counter-terrorism legislation.⁶⁰

60. In 2020, Act No. 7249 entered into force, modifying the electoral system of the chambers of the bar and further restricting the independence of bar associations and the legal profession.⁶¹ This law was adopted following the release by the Ankara Bar Association of a press statement criticizing a statement made by the Director General of Religious Affairs containing implicit anti-LGBTQI+ hate speech, and in spite of protests by the heads of Turkish bar associations.⁶²

61. In Belarus, the new Law on the Bar and Advocacy⁶³ came into force in November 2021, authorizing the Government to intervene in the appointment of the heads of bar associations and their governing bodies.⁶⁴ At least 27 lawyers have been disbarred or suspended for speaking out against the recent wave of crackdowns in Belarus.⁶⁵ This is a

⁵⁵ See communication RUS 6/2021.

⁵⁶ [A/73/365](#).

⁵⁷ Contributions will be posted on the Special Rapporteur's web page, available at <https://www.ohchr.org/en/calls-for-input/calls-input/call-input-protection-lawyers>.

⁵⁸ See communication IRN 26/2021.

⁵⁹ See <https://arrestedlawyers.files.wordpress.com/2021/04/ahm-yillik-rapor-30-martt-1617614102.pdf>.

⁶⁰ *Ibid.*

⁶¹ See https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/Statements/2020/EN_HRP_20201210_CCBE-Statement-on-the-situation-of-the-legal-profession-in-Turkey.pdf.

⁶² Contributions will be posted on the Special Rapporteur's web page, available at <https://www.ohchr.org/en/calls-for-input/calls-input/call-input-protection-lawyers>.

⁶³ See https://www.americanbar.org/groups/human_rights/reports/belarus--lawyers-under-threat--increasing-suppression-of-the-leg/.

⁶⁴ Information provided by the Council of Bars and Law Societies of Europe in November 2021 for the preparation of this report.

⁶⁵ See <https://www.hrw.org/news/2021/10/26/belarusian-authorities-retaliate-against-lawyers-defending-human-rights>.

direct attack on the independence of the justice system and the free exercise of the legal profession.⁶⁶

62. In Lithuania, the executive branch launched several legislative initiatives directed against the Lithuanian Bar Association. These initiatives proposed, *inter alia*, a reform of the procedure for disciplinary action against lawyers through amendments to the Law on the Bar, empowering the Ministry of Justice to influence disciplinary proceedings. A bill on the civil service sought to exclude the Bar Association from the administration of all processes governing the legal profession, including bar examinations, admission to the Bar and disciplinary proceedings.⁶⁷ In El Salvador, the legislature is considering a bill on foreign agents which, according to Salvadoran and international organizations, could be used to restrict the defence of human rights.⁶⁸

63. Civil society in the Bolivarian Republic of Venezuela has been speaking out against the instrumentalization of bar associations by State agencies. The measures that the Government has taken through the intermediary of the National Electoral Council have allegedly restricted the freedoms normally enjoyed by bar associations, in particular through the monitoring of their electoral processes, which has undermined their autonomy and internal working arrangements.⁶⁹

64. Codes of professional conduct are another of the instruments sometimes used to intimidate and persecute lawyers. The Special Rapporteur emphasizes that codes of professional conduct for lawyers should respect their fundamental rights (including freedom of expression) and should be drafted by associations of lawyers themselves, and that, where such codes are established by law, the legal profession should be duly consulted at all stages of the legislative process.⁷⁰

65. In many regions, bar associations are sometimes pressured into deleting their publications and comments on social networks.⁷¹ Such conduct is entirely contrary to the Basic Principles on the Role of Lawyers.

B. Physical and psychological abuse of lawyers and their families

66. International lawyers' associations have reported policies of harassment of the legal profession in some countries. In 2021, the Council of Bars and Law Societies of Europe identified instances of physical and psychological abuse in 38 countries around the world, including Belarus, China, Egypt, the Islamic Republic of Iran, the Philippines, and Turkey.⁷²

67. Together with the other thematic mandate holders of the Human Rights Council, the Special Rapporteur transmitted a communication to the Government of Turkey expressing concern about the detention of 48 lawyers, 7 trainee lawyers, 4 dismissed judges and 1 law graduate in September 2020 in Ankara.⁷³

68. Between 2015 and 2020, a total of 1,323 human rights defenders, several of them lawyers, were killed. Most of these killings occurred in Latin America, and environmental human rights defenders were the primary victims.⁷⁴ It has been reported that 162 lawyers were killed in Honduras between 2009 and 2021.⁷⁵

⁶⁶ [A/73/365](#).

⁶⁷ Contributions will be posted on the Special Rapporteur's web page, available at <https://www.ohchr.org/en/calls-for-input/calls-input/call-input-protection-lawyers>.

⁶⁸ Information provided by the Konrad-Adenauer-Stiftung for the preparation of this report.

⁶⁹ See <https://accesoalajusticia.org/la-toma-del-poder-en-los-colegios-de-abogados-de-venezuela-2000-2020/>.

⁷⁰ [A/64/181](#), para. 53.

⁷¹ Information provided by the Africa region for the preparation of this report.

⁷² See

https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/HUMAN_RIGHTS_LETTERS/_REPORTS_-_RAPPORTS/2021/EN_2021_OVERVIEW-CCBE-LETTERS-2021.pdf.

⁷³ See communication TUR 18/2020.

⁷⁴ [A/HRC/46/35](#).

⁷⁵ Information provided by the Vance Center for the preparation of this report.

69. In the Philippines, there have been 105 attacks on legal professionals since 2016, leaving 20 survivors and 85 dead.⁷⁶ In March 2021, the Philippine Senate adopted a resolution condemning the killing of and acts of violence against members of the legal profession and calling for necessary steps to be taken to ensure their safety and protection.⁷⁷ In the Philippines, impunity is linked to alleged anti-drug campaigns. The lack of effective measures increases the likelihood that perpetrators will not be held accountable for their actions.

70. The circumstances described above create a “culture of impunity” in which the perpetrators of such attacks are able to violate the rights of lawyers and their clients without consequence. Before being attacked, most of the lawyers targeted were publicly designated as enemies of the State and labelled as, for example, “communists” or “terrorists”. The combination of such labels with the culture of impunity previously described is one of the primary explanations for the high rate of extrajudicial killings in the Philippines.⁷⁸

71. On 7 November 2021, a bomb exploded outside the home of the parents of a certain lawyer in West Jakarta. The lawyer in question had previously investigated politicians who own mining businesses in West Papua. She is currently under criminal investigation on charges of incitement and dissemination of disinformation related to protests in the West Papua region in 2019. Since this incident, she has been living in exile in Australia.⁷⁹

72. During the consultations, it was brought to light that some lawyers had had to flee their countries owing to threats or had been coerced into dropping certain cases or lawsuits when pressure was put on members of their families living in the country. In Pakistan, the national authorities are providing police protection for a lawyer and his family, who nonetheless continue to receive serious and credible threats.⁸⁰

73. In September 2019, the Ukrainian National Bar Association reported the case of a lawyer who regularly faced threats directed at him and his family because of his work on a case involving the killing of a judge.⁸¹ In Bosnia and Herzegovina, numerous lawyers have been attacked for carrying out their professional duties. The perpetrators of these attacks have not yet been identified.⁸²

74. The Special Rapporteur is deeply concerned about the frequency with which the consultations carried out revealed situations of impunity for State agents who had attacked members of the legal profession. Such impunity extended to situations as serious as forced disappearances and extrajudicial executions.⁸³

75. In November 2021, Lawyers for Lawyers and the Council of Bars and Law Societies of Europe expressed concern about the alleged torture of an Iranian human rights lawyer.⁸⁴ The Special Rapporteur has received information about an alleged increase in the number of cases of enforced disappearance of human rights defenders in the Sindh province of Pakistan.⁸⁵

⁷⁶ See <https://defendlawyers.files.wordpress.com/2021/10/final-report-to-supreme-court-philippines-1-october-2021-1.pdf>.

⁷⁷ Philippines, Senate Resolution No. 691 of 24 March 2021. Available at https://legacy.senate.gov.ph/lis/bill_res.aspx?congress=18&q=SRN-691.

⁷⁸ [A/HRC/44/22](#).

⁷⁹ See https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/HUMAN_RIGHTS_LETTERS/Indonesia_-_Indonesie/2021/EN_HRL_20211203_Indonesia_Harassment-of-lawyer-Veronica-Koman.pdf.

⁸⁰ See communication PAK 9/2021.

⁸¹ See <https://www.icj.org/wp-content/uploads/2020/05/Ukraine-Between-the-rock-and-the-anvil-Publications-Reports-Mission-report-2020-ENG.pdf>.

⁸² See https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/HUMAN_RIGHTS_LETTERS/Bosnia_and_Herzegovina_-_Bosnie-Herzegovine/2017/EN_HRL_20170228_Bosnia_and_Herzegovina_Attacks_against_lawyers.pdf.
⁸³ [A/HRC/42/40](#) and [A/HRC/44/22](#).

⁸⁴ See <https://lawyersforlawyers.org/en/joint-letter-on-the-reported-torture-of-payam-derafshan/>.

⁸⁵ See communication PAK 3/2021.

C. Defamation in the media

76. It is common for lawyers who defend and represent persons under investigation for or accused of security offences within the framework of counter-terrorism legislation or in relation to high profile political cases to face stigmatization or defamation in the media and on social networks. The pressure caused by such actions severely limits the free exercise of the legal profession by lawyers and paralegals.

77. A high proportion of the professionals consulted reported the proliferation of smear campaigns on social networks against lawyers and paralegals involved in cases that are sensitive for persons in political power.⁸⁶ As a result of such actions, the media and the general public may misinterpret, or fail to understand, the purpose of legal defence and the duty of legal professionals, which is to represent a client; this does not imply that the lawyer approves of the client's actions or is guilty of a crime for defending that client.

78. The Inter-American Commission on Human Rights has found that the criminalization of lawyers is sometimes preceded by actions such as statements by senior officials accusing them of committing crimes or illegal activities with a view to delegitimizing their work.⁸⁷

79. The Special Rapporteur has observed that, on occasion, the media and users of social media make statements and value judgments that have the effect of increasing pressure on members of the legal profession, which is dangerous given their line of work. In the United Kingdom of Great Britain and Northern Ireland, in 2016, a campaign of harassment involving Members of Parliament and some media outlets was conducted against lawyers from the region of Ulster who had called for an investigation into acts committed by British soldiers in Northern Ireland.⁸⁸ In the Bolivarian Republic of Venezuela, the lack of independence in the criminal justice system has led to an increase in attacks against human rights defenders instigated by the Government and media outlets close to the Government; these attacks have gone unpunished.⁸⁹

80. There have been reports of defamation campaigns against independent lawyers allegedly carried out by State authorities to influence the work of lawyers in Azerbaijan,⁹⁰ China, Mexico,⁹¹ the Russian Federation and Turkey, among others.⁹² In 2019, human rights organizations and activists in Mexico called for the cessation of the defamation of the lawyer of the parents of 43 missing trainee teachers from Ayotzinapa, following statements made by the former head of the Guerrero State Attorney General's Office, in which he claimed that the lawyer had obstructed investigations into the incident and was profiteering by defending the families of the missing students.⁹³

D. Disciplinary procedures

81. The Special Rapporteur has repeatedly maintained that disciplinary proceedings against lawyers must be carried out in accordance with the procedural guarantees established

⁸⁶ Information provided by the Konrad-Adenauer-Stiftung for the preparation of this report.

⁸⁷ Criminalization of Human Rights Defenders, document No. 49/15, 31 December 2015, para. 15.

⁸⁸ Contributions will be posted on the Special Rapporteur's web page, available at <https://www.ohchr.org/en/calls-for-input/calls-input/call-input-protection-lawyers>.

⁸⁹ See

https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/HUMAN_RIGHTS_LETTER/Venezuela_-_Venezuela/2015/EN_HRL_20151105_Venezuela__attacks_on_lawyers_2_.pdf.

⁹⁰ For information on Azerbaijan provided by Human Rights Watch, see

<http://www.hrw.org/en/europecentral-asia/azerbaijan>. Specifically, see

<https://www.hrw.org/report/2010/10/26/beaten-blacklisted-and-behind-bars/vanishing-space-freedom-expression-azerbaijan>.

⁹¹ Information provided by the Vance Center for the preparation of this report.

⁹² Contributions will be posted on the Special Rapporteur's web page, available at

<https://www.ohchr.org/en/calls-for-input/calls-input/call-input-protection-lawyers>.

⁹³ See https://hchr.org.mx/onu_dh_medios/investigador-que-dudo-de-la-version-de-la-pgr-sobre-los-43-se-dice-perseguido/.

in article 14 of the Covenant, among other norms.⁹⁴ It is therefore necessary to reiterate that the power to discipline lawyers should be vested in an independent body. The principle of the “natural judge” requires that the disciplinary authority be established by law.

82. Ambiguous grounds for disciplinary action open the door to overly broad or abusive interpretations and risk undermining the independence of the legal profession. Overly general formulations may also create uncertainty and unpredictability as to the conduct requiring disciplinary action, in breach of the principle of legality.⁹⁵ Consequently, the principles of legality, foreseeability and narrow interpretation, which apply in criminal matters, also apply, *mutatis mutandis*, to disciplinary matters.⁹⁶

83. Lawyers are sometimes subject to temporary or permanent professional disqualification without due process or a final decision by the disciplinary authority that sets out all relevant legal grounds and evidence supporting the imposition of a disciplinary sanction leading to disbarment. In 2020, in the United Republic of Tanzania, a female lawyer was disbarred, allegedly as a result of statements she made in good faith in the legitimate exercise of the legal profession.⁹⁷

84. The Special Rapporteur has documented multiple cases in which disciplinary proceedings against lawyers were handled by the executive branch.⁹⁸ It is reported that, in Hungary, in 2018, a group of lawyers was disqualified from practising law when their right to freedom of professional association was restricted.⁹⁹

85. In Binding Precedent No. 5, the Supreme Court of Brazil established that it is not unconstitutional for a lawyer subject to disciplinary proceedings not to have access to legal counsel. This interpretation undermines the legal profession, since it means that lawyers may be sanctioned through administrative proceedings. In order for disciplinary proceedings to comply with international standards, the principles of due process and a fair hearing and the adversarial principle must be observed.¹⁰⁰

86. In places such as Azerbaijan,¹⁰¹ the Russian Federation,¹⁰² India,¹⁰³ Japan,¹⁰⁴ Kazakhstan,¹⁰⁵ Kenya,¹⁰⁶ Maldives¹⁰⁷ and the United Republic of Tanzania,¹⁰⁸ an increasing number of disciplinary proceedings against lawyers handling cases involving human rights or politically sensitive topics have been brought on the basis of complaints submitted by the authorities. In the Russian Federation, the labelling of a lawyer as a “foreign agent” means that the authorities may file a motion to initiate disciplinary proceedings seeking his or her disbarment, as in the aforementioned case of the lawyer of a well-known political opponent.¹⁰⁹

⁹⁴ [A/HRC/38/38](#), para. 63; [A/HRC/26/32](#) para. 90; and [A/HRC/11/41](#), para. 61.

⁹⁵ [A/75/172](#), para. 17.

⁹⁶ Inter-American Court of Human Rights, *López Lone et al. v. Honduras*, judgment of 5 October 2015, para. 257.

⁹⁷ See communication TZA 5/2020.

⁹⁸ [A/HRC/23/43/Add.3](#), [E/CN.4/2006/52/Add.3](#) and [A/73/365](#).

⁹⁹ Information provided by the Council of Bars and Law Societies of Europe for the preparation of this report.

¹⁰⁰ Contributions will be posted on the Special Rapporteur’s web page, available at <https://www.ohchr.org/en/calls-for-input/calls-input/call-input-protection-lawyers>.

¹⁰¹ See https://ehrac.org.uk/wp-content/uploads/2021/03/EHRAC-Azerbaijani_Resource_guide_01-2.pdf. See also <https://www.ohchr.org/en/calls-for-input/calls-input/call-input-protection-lawyers>.

¹⁰² See <https://www.hrw.org/news/2021/09/27/russia-three-human-rights-groups-penalized>.

¹⁰³ Contributions will be posted on the Special Rapporteur’s web page, available at <https://www.ohchr.org/en/calls-for-input/calls-input/call-input-protection-lawyers>.

¹⁰⁴ *Ibid.*

¹⁰⁵ *Ibid.*

¹⁰⁶ *Ibid.*

¹⁰⁷ See <https://www.icj.org/maldives-authorities-must-end-assault-on-the-legal-profession/>.

¹⁰⁸ See communication TZA 2/2021.

¹⁰⁹ See <https://lawyersforlawyers.org/en/russian-federation-authorities-must-cease-harassment-of-lawyer-ivan-pavlov/>.

87. Lawyers in countries such as Belarus¹¹⁰ and Turkey¹¹¹ have highlighted the fact that some groups of lawyers are not granted a licence to practise because they are associated with certain activities, such as the defence of human rights, the fight against corruption or the defence of minorities. This constitutes an attack on the free exercise of the legal profession and is a disguised sanction.¹¹²

88. The decision not to grant professional licences to lawyers associated with certain issues endangers future generations of lawyers interested in defending human rights and fundamental freedoms.¹¹³ In 2021, the Qualification Commission for Legal Practice in Belarus revoked the licences of five lawyers, allegedly for providing legal services to opposition leaders and peaceful protesters.¹¹⁴

89. Disciplinary measures are a powerful weapon in the hands of Governments, allowing them to interfere with the professional activities of lawyers, in particular those handling cases brought against the State or representing causes or clients that may make them unpopular.¹¹⁵ The establishment of an independent system for the consideration of disciplinary proceedings for alleged violations of the rules of professional ethics constitutes an important factor in the independence of the legal profession.¹¹⁶

E. Use of the judicial system and the police

90. Between 2020 and 2021, the Special Rapporteur received allegations of the use of coercion, detention, harassment and other practices against lawyers in connection with the lawyers' legitimate performance of their professional duties in countries such as Belarus, Cabo Verde, the Russian Federation, the Philippines, Haiti, Kuwait, Pakistan, Romania, the United Republic of Tanzania and Zimbabwe.¹¹⁷

91. In the Philippines, the Government has been repeatedly criticized for its harassment of lawyers and the impunity with which it treated the killing of dozens of lawyers during the pandemic. Most of these attacks have apparently been perpetrated by members of the President's counter-insurgency task force, or else by national security agencies and State security forces.¹¹⁸

92. In Cabo Verde, in March 2021, the lawyer Mr. Pinto Monteiro was arrested for reasons linked to the performance of his legitimate professional duties as defence counsel for a diplomat of the Bolivarian Republic of Venezuela.¹¹⁹ In Romania, Mr. Robert Roşu was sentenced to 5 years' imprisonment in connection with the legitimate performance of his duties.¹²⁰

93. There have been reports of the continued criminalization in Belarus of lawyers and journalists, many of whom are charged with economic crimes or have had their right to freedom of expression restricted, for providing legal assistance to protesters, civil society activists or journalists in the aftermath of the August 2020 elections.¹²¹

94. Attacks on lawyers and on the independence of the legal profession have been reported in the United Republic of Tanzania. The lawyers Jebra Kambole, Edson Kilatu and

¹¹⁰ Contributions will be posted on the Special Rapporteur's web page, available at <https://www.ohchr.org/en/calls-for-input/calls-input/call-input-protection-lawyers>.

¹¹¹ *Ibid.*

¹¹² [A/75/172](#).

¹¹³ See <https://www.omct.org/en/resources/reports/control-over-lawyers-threatens-human-rights>.

¹¹⁴ See communication BLR 5/2021.

¹¹⁵ [A/73/365](#), para. 71.

¹¹⁶ [A/71/348](#), paras. 94–95; and [A/64/181](#), paras. 55–58.

¹¹⁷ See communications RUS 6/2021, ROU 1/2021, KWT 1/2021, RUS 9/2020, HTI 3/2020, TZA 5/2020, PAK 9/2021, CPV 1/2021, BLR 9/2020, ZWE 4/2020; see also [A/HRC/47/35](#).

¹¹⁸ [A/HRC/47/35](#), para. 34.

¹¹⁹ See communication CPV 1/2021.

¹²⁰ See communication ROU 1/2021.

¹²¹ See communication BLR 4/2021.

Tito Elia Magoti were disbarred and arrested for defending opposition political leaders, defending human rights and criticizing the country's justice system, respectively.¹²²

F. Professional secrecy, searches and seizures

95. The Special Rapporteur has received information on the intervention of public authorities in the free exercise of the legal profession through searches of lawyers' offices and the interception of client-attorney communications for later use at trial.¹²³

96. In Belgium, there have been reports of the illegal seizure, during searches of lawyers' offices, of documentation that was irrelevant to the purpose of search, for subsequent use in relation to other matters.¹²⁴ In Croatia, there are no exceptions in law to respect for professional secrecy, but in some cases lawyers are obliged to disclose information to the Anti-Money-Laundering Authority if there is a suspicion that money-laundering has occurred.¹²⁵ In 2020, the Romanian Bar Association reported its concern that lawyers' rights to professional secrecy had been violated by their being summoned to hearings as witnesses in cases against their clients and through abusive searches of their professional premises, from which documents are taken regardless of whether they relate to the investigation.¹²⁶

97. According to the report of the Council of Bars and Law Societies of Europe, in France, it was revealed in June 2020 that the Financial Prosecutor's Office had studied the detailed telephone records of several law firms, even the telephone records of the Minister of Justice, with a view to identifying alleged informants within the judiciary who might have provided information to two individuals, both of whom were lawyers and also involved in a case under investigation.¹²⁷ In France, the Criminal Division of the Court of Cassation has ruled that correspondence between a lawyer and his or her client may be seized in the context of searches, provided that they do not concern the exercise of the right of defence.¹²⁸

98. In the context of emergency measures enacted to address the COVID-19 pandemic, some States violated lawyer-client privilege. This occurred in various prisons where conversations were tapped, preventing lawyers from freely performing their duties.¹²⁹

99. The sort of actions described above violates the principle of confidentiality that should prevail between a lawyer and his or her client and the standards of due process. The principle of confidentiality is intended to protect verbal and written communications between lawyers and between lawyers and their clients.

V. Conclusions

100. **All persons exercising legal functions, whether or not they have the official status of lawyer, are fundamental to the protection and consolidation of the rule of law.**

101. **The international principles and standards on the independence of the legal profession and its free exercise, in particular the Basic Principles on the Role of Lawyers, are essential elements that should serve as a guide for those who practise law,**

¹²² See communication TZA 2/2021.

¹²³ Contributions will be posted on the Special Rapporteur's web page, available at <https://www.ohchr.org/en/calls-for-input/calls-input/call-input-protection-lawyers>. See also <https://rm.coe.int/cdcj-2020-8e-add1-feasibility-study-profession-of-lawyer/1680a1c757>.

¹²⁴ See https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/ROL/RoL_Position_papers/EN_RoL_20210326_CCBE-contribution-for-the-RoL-Report-2021.pdf.

¹²⁵ Ibid.

¹²⁶ Ibid.

¹²⁷ Ibid.

¹²⁸ See <https://www.legifrance.gouv.fr/juri/id/JURITEXT000042619502>.

¹²⁹ See <https://www.icj.org/wp-content/uploads/2020/06/CIS-Justice-and-coronavirus-Advocacy-Analysis-brief-ENG-2020.pdf>, para. 21.

as well as for their professional associations, and should also be upheld by State authorities.

102. States have a duty to ensure that persons who practise law can exercise their profession without undue restrictions. They must therefore take the necessary steps to ensure that such persons can perform their professional duties without any kind of interference, harassment, threats or intimidation.

103. In many countries, the free and independent exercise of the legal profession is guaranteed by law. However, this duty to guarantee is often not adequately fulfilled. To ensure full compliance with the obligations set out in the Basic Principles on the Role of Lawyers and in domestic legislation, it is essential to establish effective institutional and legal guarantees of judicial independence, which is indispensable.

104. Members of the legal profession may be attacked or intimidated by a variety of actors, including State bodies and institutions, organized criminal groups and, in certain circumstances, lawyers' associations themselves.

105. In some countries, under the pretext of maintaining national security or combating terrorism, corruption or the pandemic, the authorities have restricted the exercise of the legal profession. These restrictions are especially harsh when space for civil society protest and participation is also limited. The treatment of persons who promote accountability and transparency or who work in the field of human rights is often among the most concerning.

106. Attacks on groups of lawyers defending certain causes have increased considerably in many countries in recent times. Legal practitioners whose work touches on topics such as the exercise of freedom of expression or political rights, the defence of human rights, the environment, women's rights, ethnic minorities or the rights of the LGBTIQ+ community are the targets of threats and attacks, even attempts on their lives.

107. Legal initiatives aimed at limiting the free exercise of the legal and paralegal professions are now commonplace in many regions of the world. Such intervention may even take the form of interference by the executive branch in the work of the decision-making bodies of the legal profession, or may be achieved through the adoption of legislation.

108. When members of the legal profession are threatened or attacked, timely and adequate investigations are not always carried out, investigative measures are sometimes delayed, and the opportunity to gather the evidence needed to prosecute and punish those responsible is missed.

109. Cases of the surveillance, harassment, public lynching, stigmatization, criminalization and co-optation of, and threats and attacks against, certain groups of lawyers require a more consistent and effective response from States.

110. In some countries, disbarment has been used as a form of repression by the authorities against lawyers who defend human rights cases or members of the political opposition or protesters and lawyers who advocate essential principles of the rule of law and human rights.

111. Such arbitrary disbarments not only undermine the rule of law in general, but also violate the human rights of the disbarred lawyers and the fundamental principles that safeguard the independence of the judiciary and the legal profession.

VI. Recommendations

112. States should take all necessary measures to ensure the free exercise of the legal profession, in all circumstances, so that lawyers may exercise their legitimate professional rights and duties without fear of reprisals and free from all restrictions, including judicial harassment.

113. Part of States' duty to guarantee is to protect the physical and psychological integrity and safety of lawyers and their families. This entails taking effective measures to observe, in law and practice, the Basic Principles on the Role of Lawyers and other standards related to the independence and duties of lawyers.

114. States should design and carry out measures to prevent the identification of lawyers with their clients or the causes they defend.

115. States should pay special attention to cases and disputes in which legal professionals are exposed to high-profile situations because of the sensitivity of the legal cases they represent. The impact of attacks on lawyers representing sensitive issues hinders and undermines their general capacity to perform their professional duties.

116. States should review, amend or refrain from adopting legislation that may interfere with the independence of lawyers and the free exercise of their profession, particularly counter-terrorism, security, drug control or pandemic-related legislation.

117. Disciplinary bodies responsible for prosecuting and adjudicating cases of alleged breaches of professional duties must be independent from the government authorities, in particular the executive branch, including ministries of justice and other institutions. The composition of such disciplinary and monitoring bodies should include legal professionals. Where disciplinary bodies are directly connected to or dependent on the executive branch of government, or include a significant number of representatives of that branch, the legal norms underpinning them should be reviewed to ensure that they are truly independent.

118. Bar associations should be independent and self-governing professional associations, set up to promote and protect the independence and the integrity of lawyers and to safeguard their professional interests. Their status and important functions should be recognized and supported by States, which should refrain from interfering in their work and functioning.¹³⁰

119. Admission to the legal profession should be regulated by law and admission processes should be clear, transparent and objective.

120. States should refrain from interfering in admission processes and bar associations should be directly and independently responsible for such processes and the granting of licences to practise.¹³¹

121. States should carry out communication policies to inform and convince the public of the importance of respect for human rights, the rule of law, the separation of powers and the need for lawyers to be able to practise their profession independently and without undue interference.

122. The Special Rapporteur urges national authorities to immediately put in place the necessary measures to bring an end to threats against and the harassment and mistreatment of persons practising law in general. In particular, they should ensure that law enforcement officials who may be involved in such abuses are investigated and held accountable.

123. The Special Rapporteur urges public prosecutors to closely monitor situations and cases in which lawyers might be criminalized for performing their duties. When such circumstances arise, appropriate orders should be issued to prevent public prosecutors from maliciously prosecuting members of the legal profession who criticize State officials and institutions in the exercise of their independence and freedom of expression.

124. Starting this year, within the framework of the Council of Europe, a committee of experts will begin preparing a draft international legal instrument aimed at strengthening the protection of the legal profession and the right to practise law freely without prejudice or hindrance. The Special Rapporteur recommends that the

¹³⁰ A/71/348.

¹³¹ Ibid.

committee of experts seriously consider making the resulting draft a binding instrument that is open to accession by non-member States of the Council of Europe. The Special Rapporteur welcomes the fact that he has been invited to participate, albeit without the right to vote, in the work of this committee of experts.

125. It is essential that persons who practise and/or are called upon to practise law have access to continuous and adequate training in international and regional standards related to judicial independence, human rights and the fight against corruption.

126. The recommendations made by the Special Rapporteur in his 2018 report to the General Assembly on bars and lawyers' associations¹³² and those raised in 2016 by his predecessor, Monica Pinto, in her report to the General Assembly on the role of lawyers¹³³ remain relevant. This shows that only limited progress made in the protection of the free exercise of the legal profession since those reports were issued.

¹³² [A/73/365](#).

¹³³ [A/71/348](#).