



HUMAN RIGHTS HOUSE
FOUNDATION

Human Rights Council Resolution on the independence of judges and lawyers

35th session of the United Nations Human Rights Council

“States should respect and protect lawyers who promote and defend
human rights defenders.”

Mónica Pinto

Special Rapporteur on the independence of judges and lawyers

Protection of human rights lawyers

Lawyers face threats and violence solely due to their human rights work

The daily reality for some lawyers in the region is a harsh one, in which they face retaliation for their work. They are harassed, threatened, and intimidated, risk disbarment through abusive use of disciplinary procedures, and they are imprisoned – or worse they are physically attacked and murdered. The principle of confidentiality in lawyers’ communication with clients is violated, and they are denied free access to their clients and to documents.

The violation of existing guarantees for lawyers adds to the need for further protection for human rights lawyers. As reported by participants in the consultation, **in recent years, pressure has intensified on lawyers working on human rights or representing politically motivated and sensitive cases.** These lawyers risk exclusion from professional associations of lawyers, and this leaves them without the basic guarantees they need to perform their human rights work. Guarantees and immunities for lawyers enshrined in national and international law must be implemented and respected, while human rights guarantees must extend to all who work within human rights, including human rights lawyers.

Strengthen international standards to protect human rights lawyers

For a strong and principled Human Rights Council resolution

Language elements for strong and principled international standards on the protection of human rights lawyers, inspired from consensually adopted resolutions A/HRC/RES/22/6 and A/HRC/RES/31/32 on human rights defenders, resolution A/HRC/RES/29/6 on the independence of judges and lawyers, as well as the report A/71/348 of the Special Rapporteur:

- *Calls upon* all States to guarantee the independence of lawyers who promote and defend human rights, provide assistance to human rights defenders, journalists and activists, and their ability to perform their functions accordingly, including 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;

- *Inspired from A/HRC/RES/29/6, OP 1*
- *“Who promote and defend human rights” from A/71/348*
- *Calls upon* all States to combat impunity by promptly investigating and pursuing accountability for all attacks and threats by State and non-State actors against lawyers, including those promoting and defending human rights, their family members, associates and other legal representatives, and by condemning publically all cases of violence, discrimination, intimidation and reprisals against them;
 - *Inspired from A/HRC/RES/31/32, OP 1*
- *Urges* all States to acknowledge publicly the vital and important role played by lawyers in upholding the rule of law and promoting and protecting human rights, in particular access to justice, the right to an effective remedy and the right to due process of law and a fair trial, by respecting the independence of their organizations and by avoiding the stigmatization of their work;
 - *Inspired from UNSR report A/71/348, para 99*
 - *Further inspired from A/HRC/RES/22/6, OP 5*
- *Calls upon* all States to respect and protect the status of lawyers who promote and defend human rights as human rights defenders;
 - *Inspired from UNSR report A/71/348, para 101*
- *Urges* all State institutions, including the judiciary and professional associations, to fully respect and protect the right of lawyers to freedom of opinion and expression, including with regard to activities not undertaken in the context of the representation of clients;
 - *Inspired from UNSR report A/71/348, para 108*
 - *“Professional associations” from A/HRC/RES/32/32, OP 4*
- *Condemns* all acts of violence, intimidation or reprisal, from any quarter and for any reason, against lawyers, including those promoting and defending human rights, and reminds States of their duty to uphold the integrity of lawyers and to protect them, as well as their family members, associates and other legal representatives, against all forms of violence, threat, retaliation, intimidation and harassment resulting from the discharging of their functions, and to condemn such acts and bring perpetrators to justice;
 - *Inspired from A/HRC/RES/29/6, OP 8*
- *Strongly calls upon* all States:
 - (a) To refrain from, and ensure adequate protection from, any act of intimidation or reprisals against those lawyers who cooperate, have cooperated or seek to cooperate with international institutions, international legal mechanisms and remedies, including their family members, associates and other legal representatives;
 - (b) To fulfil the duty to end impunity for any such acts of intimidation or reprisals by bringing the perpetrators to justice and by providing an effective remedy for their victims;
 - *Inspired from A/HRC/RES/22/6, OP 14*

Human rights lawyers are at risk

Threats on lawyers documented in Special Rapporteur's report to General Assembly

In her report to the General Assembly,¹ then United Nations Special Rapporteur on the independence of judges and lawyers, Mónica Pinto, elaborated on international standards and additional protections for the independence of lawyers.

Human Rights House Foundation (HRRHF) organised a consultation for civil society to give input to the Special Rapporteur on 11 and 12 June 2016, hosted by the Human Rights House Belgrade. The Special Rapporteur references these consultations in her report and addresses many of the issues raised.² Human Rights Houses also published a report on the growing intimidation and persecution of human rights lawyers, and made the case for strengthening the protection they receive in Azerbaijan, Belarus, Moldova, Russia, and Ukraine.³



Guarantees against disbarment as a sanction

In the report, the Special Rapporteur writes that “state authorities too often use their control over the licensing of lawyers to prevent certain persons from entering the legal profession, or to exclude lawyers they deem to be problematic,” and that “these lawyers are often those who take human rights cases or other sensitive cases such as police abuse, corruption, or terrorism-related cases.”

The Special Rapporteur asserts that such “licensing systems managed by State institutions are against international standards on the independence of the legal profession,” and that “situations where the State, in particular the executive branch, controls all or part of a bar association, or its governing body... are clearly incompatible with the principle of the independence of the legal profession.”

The report recommends that bar associations should “foster democratic standards and enforce them internally,” that “the requirements of democracy should be observed within bar associations and should be applied in their external activities,” and that “bar associations should establish independent and impartial bodies in charge of disciplinary proceedings.”

During the consultations in Belgrade, the Special Rapporteur asserted that Eastern Europe, the Caucasus, and Central Asia is “one of the regions in the world that has the highest fear of disbarment of lawyers.” This is particularly the case in Azerbaijan, Belarus, and Russia.

¹ Report of the Special Rapporteur on the independence of judges and lawyers to the United Nations General Assembly, 22 August 2016 (A/71/348), available at <http://humanrightshouse.org/Articles/21963.html>.

² “Lawyers and civil society give input to Special Rapporteur,” 11 June 2016, available at <http://humanrightshouse.org/Articles/21680.html>.

³ “Launch: Human Rights Lawyers at Risk,” 23 September 2015, available at <http://humanrightshouse.org/Articles/21175.html>.

Protection as human rights defenders

The Special Rapporteur states that “when lawyers provide professional services aimed at promoting the human rights and fundamental freedoms of their clients, they qualify as human rights defenders,” and that States should “acknowledge, respect and protect the status of lawyers who promote and defend human rights defenders.”

Representation at international bodies and freedom from travel bans

The Special Rapporteur writes: “In some countries, travel bans – sometimes followed by detentions – make it practically impossible for lawyers to carry out their work.”

She further asserts that “since States are bound by their international human rights obligations, the right of lawyers to communicate with their clients also includes instances where they may represent clients before international and regional human rights courts and bodies. Even if they are not members of their national bar association, lawyers engaging in such representation should be awarded the same guarantees and protection due to lawyers litigating in local tribunals.”

Freedom of expression and association

The Special Rapporteur writes that “all State institutions, including the judiciary, should respect and protect the right of lawyers to freedom of opinion and expression... should not identify lawyers with their clients or their clients’ causes... [and take] measures aimed at preventing the occurrence of such identification.”

She further calls on “international associations of lawyers, together with international non-governmental organizations” to “build networks to act in coordination and solidarity to defend and protect lawyers from attacks.”

Non-discrimination and admission to the legal profession

The Special Rapporteur writes that “only a legal profession that is representative of the composition of society will be in a position to ensure legal services that answer the needs of all sectors of society.” She calls on States and bar associations to “ensure that anyone can enter the legal profession without discrimination,” and for admission procedures to be “clear, transparent, and objective.”

Human rights education

The Special Rapporteur made clear her support for human rights education during the consultations in Belgrade, and her report reflects this: “States and bar associations should ensure that the quality of the legal education and training of lawyers is appropriate, and that lawyers have access to opportunities for continuing legal education, including in international and regional human rights law.”

She continues: “Quality legal education and training for lawyers are essential so that they may be properly equipped to represent their clients independently, adequately, effectively and in full compliance with their ethical duties.”

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