

Endangered Lawyers need International Protection

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The unduly harsh sentence against the prominent Iranian human rights lawyer, Nasrin Sotoudeh, shocked the global community of lawyers early this year. It has been reported that her representation of dissenting activists, including women prosecuted for removing their mandatory headscarf, resulted in 38 years' imprisonment and 148 lashes by the Islamic Revolutionary Court in Tehran.¹ Major international organisations of lawyers immediately responded with strong statements of concern against such oppression of lawyers and their duties.²

Unfortunately, attacks on lawyers for carrying out their professional duties are nothing new and still pervasive. LAWASIA, an association of lawyers that advocates for the interests and concerns of the Asia Pacific legal profession, has published numerous statements since 2015 in support of endangered lawyers in China, Turkey, Pakistan, the Philippines

and the Maldives.³ More generally, the Council of Bars and Law Societies of Europe (CCBE) reported that it has had to intervene in support of almost 800 cases where lawyers were subject to threats and violence, acts of reprisal, hindrance, intimidation, harassment, prosecution, torture and murder for merely carrying out their professional duties.⁴

Those interferences against lawyers came not only from government authorities, but also from social groups such as religious or ethnic extremists, powerful political figures, adversarial parties (including business powers) and even the media. Lawyers are in danger wherever governments target them or fail, whether intentionally or not, to take measures to protect the professional activities of lawyers.

Are there any international rules to address those situations or to hold such aggressive or negligent governments to

account? Are the rules, if any, binding on states as part of International Human Rights Law (IHRL)? The answers are not simple. The IHRL does not distinguish lawyers from other individuals. Roles of lawyers are, however, implied in order to guarantee individuals' rights to access justice and to a fair hearing.⁵ Thus, human rights documents have correctly pointed out that "the administration of justice --- especially, an independent judiciary and legal profession in full conformity with applicable standards contained in international human rights instruments, are essential to the full and non-discriminatory realization of human rights and indispensable to the processes of democracy and sustainable development."^{6,7}

With this understanding, the United Nation Congress on Crime Prevention and Criminal Justice (the UN Congress), held every five years, adopted the Basic Principles on Role of Lawyers (the Basic

Principles) at the 8th UN Congress in 1990.⁷ The Basic Principles consist of 29 principles, including, Principle 16, which provides that governments shall ensure lawyers:

- are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; and
- shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

The Basic Principles, on the surface, provide international guidelines for protecting lawyers and their professional activities. So why do lawyers around the world suffer from interferences and attacks? Why do governments often fail to acknowledge these international rules? I would suggest that there are several flaws in the rules.

First and foremost, the Basic Principles, as a resolution of the UN Congress, are by no means a binding instrument of international law. There have been no successful initiatives or keen interest from states to incorporate rules of the Basic Principles into a binding treaty. Thus, it still continues to be a “soft law” incorporated on a voluntary basis. Secondly, the Basic Principles were provided without any monitoring or implementing systems. The UN Congress, or the UN Commission on Crime Prevention and Criminal Justice which succeeded the legislative function of the UN Congress in the early 1990s, continues to fail to discuss such systems. Thirdly, the Basic Principles themselves do not include a suitable provision on the institutional protection of lawyers. Instead, that is within the ambit of independent bar associations or law societies (Bars) to function as a safeguarding body of their members.

I would like to discuss the last point further. Clearly, in order to protect lawyers, it is crucial to recognise the role of

independent Bars and to empower them to protect their members. The 7th UN Congress in 1985 had once resolved on that point that it is:

“[a]ware that bar associations and other professional associations of lawyers have a vital role and responsibility to strive to protect and defend their members against improper restrictions or infringement, as well as to uphold their professional ethics.”⁸

Nevertheless, the Basic Principles adopted thereafter limit the role of Bars to protecting lawyers’ “professional integrity” by cooperating “with Governments” (Principles 24 and 25). They were silent on the Bars’ role to protect and defend their members against improper restrictions or infringement.

Although the Basic Principles have the aforementioned flaws, they have been relied upon by several UN human rights bodies. Committees of human rights conventions have referred to the Basic Principles from time to time when addressing situations of state parties. A recent example involves China and the Committee against Torture (CAT) of the body that monitors the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The CAT, expressing its concerns about “the unprecedented detention and interrogation of, reportedly, more than 200 lawyers and activists since 9 July 2015,” recommended that the Chinese government “stop sanctioning lawyers for actions taken in accordance with recognized professional duties.”⁹

Also, there exists a monitoring mechanism in the form of a *Special Rapporteur on the Independence of Judges and Lawyers*, at the UN Human Rights Council, originally established in 1994. The successive Special Rapporteurs have produced annual reports on the independence of lawyers since 1995. In her recent activities, the Special Rapporteur, Ms. Mónica Pinto, reported

that, among communications she sent to states and one entity from August 2015 to February 2016, “a dozen communications contained allegations of violations of the rights and independence of lawyers, which included killings, attacks, threats, intimidation, harassment and detention, as well as undue restrictions on their work.”¹⁰

Another recent publication on Bar associations was a report in 2018 by the Special Rapporteur, Mr. Diego Garcia-Sayan. In his report, he said: “it is the duty of all State authorities to respect the role of bar associations in protecting their members, so as to ensure that they are able to carry out their professional activities without any intimidation, hindrance, harassment or improper interference.”¹¹ That recommendation might urge the Basic Principles to be more comprehensive by including a clear role of Bars to protect lawyers and impose duties on governments to respect and maintain the role of Bars.

The final question is how lawyers and the global community could respond to situations where lawyers are in danger as a result of their professional activities.

First, there are many collective initiatives among national, regional and international associations of lawyers. An example is *The Day of the Endangered Lawyer*, held annually on 24 January, which highlights the plight of endangered lawyers all over the world and focusses on a specific country every year.¹²

Secondly, the Council of Europe is drafting a European convention on the profession of lawyer.¹³ The proposed convention intends to impose binding obligations on state parties in relation to prior recommendations on the legal profession,¹⁴ to establish an early-warning mechanism to respond to immediate threats to lawyers’ safety and independence, and to open the future convention to non-member states. If successful, the proposed convention would provide a binding international text to protect lawyers.