

# **City Bar Center for Continuing Legal Education**

THE NEW YORK CITY BAR

42 West 44th Street, New York, New York 10036

## **Global Persecution of Lawyers**

Tuesday, March 21, 2017 | 6 pm – 8:15 pm

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# **Global Persecution of Lawyers**

Tuesday, March 21, 2017

## **Faculty**

**Jerome A. Cohen**

Professor, New York University School of Law

**Javier El-Hage**

Chief Legal Officer, Human Rights Foundation

**Melissa Hooper**

Director of Human Rights and Civil Society, Human Rights First

**Ochoro Ottuno**

Principal & General Counsel, LCN Capital LLC

**Nate Schenkan**

Project Director for Nations in Transit, Freedom House

**Liu Wei**

Coordinator & Co-Founder, Public Interest Collaborative for Women Lawyers in China





## **Global Persecution of Lawyers Roundtable CLE**

Tuesday, March 21, 2017

6 pm – 8:15 pm

### **Agenda**

6:00 pm – 6:10 pm: **Introduction of Moderator and Panelists for Roundtable**

6:10 pm – 6:45 pm: **UN Basic Principles on the Rights of Lawyers**

- Frame the issues of how lawyers face persecution by their own governments, including the definition and manner of persecution
- Use of Basic Principles to frame how violations prevent lawyers from fairly and appropriately representing clients

6:45 pm – 8:00 pm: **Roundtable session – Rights of Lawyers as Risk**

- Panelists will discuss international norms, how they are not met, and subsequent ways in which lawyers are persecuted in this roundtable
  - Describe the current situation of lawyers in Turkey, Uganda, Russia, China, and a country in Latin America (likely Bolivia), types of persecution they are subject to, and common techniques used to combat persecution
  - Discuss methods of advocacy

8:00 pm – 8:15 pm: **Question and comment segment**

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# **Global Persecution of Lawyers**

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## Notes on Faculty

**Prof. Jerome A. Cohen**, a professor at NYU School of Law since 1990 and Faculty Director of its U.S.-Asia Law Institute, is a leading American expert on Chinese law and government. A pioneer in the field, Prof. Cohen began studying and teaching about China's legal system in the early 1960s and from 1964 to 1979 introduced the teaching of Asian law into the curriculum of Harvard Law School, where he served as Jeremiah Smith Professor, Associate Dean and Director of East Asian Legal Studies. In addition to his responsibilities at NYU, Prof. Cohen served for several years as C.V. Starr Senior Fellow and Director of Asia Studies at the Council on Foreign Relations, where he currently is an Adjunct Senior Fellow. He retired from the partnership of Paul, Weiss, Rifkind, Wharton & Garrison LLP at the end of 2000 after twenty years of law practice focused on China. In his law practice, Prof. Cohen represented many companies and individuals in contract negotiations as well as in dispute resolution in China. Prof. Cohen has published several books on Chinese law, including *The Criminal Process in the People's Republic of China, 1949-63* (Harvard University Press, 1968), *People's China and International Law* (Princeton University Press, 1974) and *Contract Laws of the People's Republic of China*. In addition, he has published hundreds of scholarly articles on various topics as well as a book, *China Today*, co-authored with his wife, Joan Lebold Cohen, and a regular series of journalistic opinion pieces for various newspapers. Today, Prof. Cohen continues his research and writing on Asian law, specifically focusing on legal institutions, criminal justice reform, dispute resolution, human rights and the role of international law relating to China and Taiwan. Outside academia, Prof. Cohen has served in government, first as an Assistant U.S. Attorney in Washington, D.C. from 1958 to 1959 and then as a fulltime consultant to the U.S. Senate Committee on Foreign Relations in 1959. He has also testified at many congressional hearings on China. Prof. Cohen is a Phi Beta Kappa graduate of Yale College (B.A. 1951). He spent the academic year 1951-1952 as a Fulbright Scholar in France and graduated, in 1955, from Yale Law School, where he was Editor-in-Chief of the *Yale Law Journal*. He was Law Secretary to Chief Justice Earl Warren of the United States Supreme Court in the 1955 Term and Law Secretary to Justice Felix Frankfurter of the Supreme Court in the 1956 Term.

**Javier El-Hage** is an attorney admitted to practice in the State of New York. He holds Masters degrees in International Law from Columbia University School of Law, and the Universidad Complutense de Madrid. From 2006-2008, El-Hage was constitutional law professor at the Universidad Privada de Santa Cruz-Bolivia, in which period he was invited by the Bolivian Constituent Assembly to provide expert testimony on international investment law and international human rights law. Upon conclusion of his LLM at Columbia Law School ('09), and as chief legal officer of the New York-based Human Rights Foundation, El-Hage has taught legal courses and seminars as adjunct faculty at the Universidad Andina Simon Bolivar (based in Ecuador) and the Universidad Francisco Marroquín (in Guatemala). His research topics and areas of expertise include International Human Rights Law, International Criminal Law, International Democracy Law, Comparative Constitutional Law, and International Investment Law & Arbitration



**Melissa Hooper** is Director of the International Law Scholarship Project/Pillar Project, which aims to foster U.S. compliance with international human rights and humanitarian law. Her work examines U.S. human rights implementation from an international perspective, educating U.S. courts on international standards applicable in domestic cases on issues such as Guantanamo detentions, prison conditions including solitary confinement, refugee protection, and other issues where the United States may be out of line with international practice. Melissa also provides expertise on legal and civil society issues in the countries of the former Soviet Union. Since 2011 she has served as the U.S. Chair of the Human Rights Working Group of the Bilateral Presidential Commission's Human Rights Committee—now called the SEE Rule of Law Working Group—bringing together Russian and American experts to engage in joint work on prison reform, police oversight, and reform of legislation that restricts free speech and association in Russia. Her recent work focuses on Russia's laws and policies that restrict free speech and media, NGO activity, and the activities of LGBT and other minority communities. Since 2004, she has directed rule of law and human rights programs, monitored conditions, and engaged in advocacy in Russia, Azerbaijan, Ukraine, Kazakhstan, and Uzbekistan, as well as the United States. Prior to joining Human Rights First, Melissa worked for the American Bar Association Rule of Law Initiative in Moscow as Regional Director for Russia and Azerbaijan, providing support and training to local lawyers, NGOs, human rights defenders, and journalists. Prior to that she represented prisoners on death row, including many foreign nationals, in habeas petitions challenging unfairly obtained convictions and sentences in U.S. courts, including petitions based on international law claims. She has conducted habeas investigations in Latin America and throughout the United States. She has also worked extensively on issues related to prison and detention conditions, policing issues, and the effects of repression, mass violence, and mass human rights violations. Melissa received a JD from Berkeley Law. After graduation, she served as a Soros Justice Fellow, and then clerked for the Federal District Court for the Southern District of Texas.

**Ochoro E. Otunnu**, J.D. serves as Principal and General Counsel of LCN Capital LLC. Mr. Otunnu has extensive legal and private equity experience in fund formation, deal structuring, financing, corporate governance and securities law within developed and emerging markets. His complex transaction and negotiation work includes assisting in the development of the Angola Stock Exchange. Mr. Otunnu combines his deep commercial expertise with a lifelong passion and commitment to human rights and social and economic development. His pro bono legal work includes the 2004 constitutional case that ended one-party rule in Uganda, the defense of Koigi Wamwere who was imprisoned twice in Kenya for his opposition to the regimes of Jomo Kenyatta and Daniel arap Moi as well as acting as counsel to American journalist Taylor Krauss, who was detained in Uganda for covering pro-democracy demonstrations. Throughout his career, Mr. Otunnu has been extensively involved in development work. He formed and became Executive Director of Africa AIDS Initiative (AAI). Mr. Otunnu also served as Program Coordinator with Oxfam, with responsibility for humanitarian work in five countries, consulted for the United Nations Development Program (UNDP) and supported the Kofi Annan team that brokered a peace deal in Kenya following post-election violence in 2008. He also advised Rory Kennedy in the production of the HBO award-winning documentary film *Pandemic: Facing AIDS*. Mr. Otunnu serves as a Member of Advisory Board of Impact Investment Partners LLP. In 1989 he co-chaired the United Nations mission that developed the blueprint for the UN





international assistance to the non-governmental sector in Namibia, and created the group at Yale Law School that partnered with the Pan-African Parliamentarians to draft model HIV/AIDS legislation for Africa. Mr. Otunnu holds a J.D. degree from Columbia Law School; an M.A. in Philosophy, Politics, and Economics (PPE) from Oxford University; and an A.B. in Government from Dartmouth College.

**Nate Schenckan** is the Project Director for Nations in Transit, Freedom House's annual survey of democratic governance from Central Europe to Eurasia. He previously served as Senior Program Officer for Freedom House's Eurasia programs, covering Turkey and Central Asia. His recent research on Central Asia focuses on the regional economic crisis and the evolution of the Eurasian Economic Union treaty in the wake of the Ukrainian revolution. He is the creator and host of "The Central Asianist Podcast," a regular interview series with experts and journalists covering the region. Prior to joining Freedom House in 2012, he worked as a journalist in Kazakhstan and Kyrgyzstan. His reporting and analysis has been published in Foreign Affairs Online, The Atlantic Online, Eurasianet, World Politics Review, and Russian Analytical Digest. He was the lead researcher and co-author of two Freedom House special reports including *The Struggle for Turkey's Internet and Democracy in Crisis: Corruption, Media and Power in Turkey*. He holds a Masters Degree in Eurasian Studies from Columbia University's Harriman Institute.

**Liu Wei** is a public interest lawyer and one of the founders of the Public Interest Collaborative Network of Women Lawyers in China. Wei obtained her Bachelor's degree from the Northwest University's School of Politics and Law, and her Master of Law from Zhengzhou University. Wei has been working on human rights-related cases since 2007, focusing on those of equal opportunity for education and employment, peasant workers' rights, food safety, religion and land ownership. From 2009 to 2013, Wei worked with the anti-discrimination group Yirenping, and served as the Executive Director of its Zhengzhou office to coordinate programs. In May 2013, Wei and several women lawyers initiated the "Public Interest Collaborative Network for Women Lawyers in China" where she served as Chief Coordinator. The Network aims to strengthen the collaboration between women lawyers in China, covering public interest, the protection of the rights of women lawyers, and the promotion of a comprehensive legal system. To date, the Network has established five working committees, including sexual abuse, domestic violence, birth control, employment and women lawyers' rights. Through its work, the Network provided legal recommendations to the government, and helped launch policy advocacy actions - many of which were widely reported and well received by the public.



## **Basic Principles on the Role of Lawyers**

*Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990*

Whereas in the Charter of the United Nations the peoples of the world affirm, inter alia, their determination to establish conditions under which justice can be maintained, and proclaim as one of their purposes the achievement of international cooperation in promoting and encouraging respect for human rights and fundamental freedoms without distinction as to race, sex, language or religion,

Whereas the Universal Declaration of Human Rights enshrines the principles of equality before the law, the presumption of innocence, the right to a fair and public hearing by an independent and impartial tribunal, and all the guarantees necessary for the defence of everyone charged with a penal offence,

Whereas the International Covenant on Civil and Political Rights proclaims, in addition, the right to be tried without undue delay and the right to a fair and public hearing by a competent, independent and impartial tribunal established by law,

Whereas the International Covenant on Economic, Social and Cultural Rights recalls the obligation of States under the Charter to promote universal respect for, and observance of, human rights and freedoms,

Whereas the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment provides that a detained person shall be entitled to have the assistance of, and to communicate and consult with, legal counsel,

Whereas the Standard Minimum Rules for the Treatment of Prisoners recommend, in particular, that legal assistance and confidential communication with counsel should be ensured to untried prisoners,

Whereas the Safe guards guaranteeing protection of those facing the death penalty reaffirm the right of everyone suspected or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings, in accordance with article 14 of the International Covenant on Civil and Political Rights,

Whereas the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power recommends measures to be taken at the international and national levels to improve access to justice and fair treatment, restitution, compensation and assistance for victims of crime,

Whereas adequate protection of the human rights and fundamental freedoms to which all persons are entitled, be they economic, social and cultural, or civil and political, requires that all persons have effective access to legal services provided by an independent legal profession,

Whereas professional associations of lawyers have a vital role to play in upholding professional standards and ethics, protecting their members from persecution and improper

restrictions and infringements, providing legal services to all in need of them, and cooperating with governmental and other institutions in furthering the ends of justice and public interest, The Basic Principles on the Role of Lawyers, set forth below, which have been formulated to assist Member States in their task of promoting and ensuring the proper role of lawyers, should be respected and taken into account by Governments within the framework of their national legislation and practice and should be brought to the attention of lawyers as well as other persons, such as judges, prosecutors, members of the executive and the legislature, and the public in general. These principles shall also apply, as appropriate, to persons who exercise the functions of lawyers without having the formal status of lawyers.

#### Access to lawyers and legal services

1. All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings.
2. Governments shall ensure that efficient procedures and responsive mechanisms for effective and equal access to lawyers are provided for all persons within their territory and subject to their jurisdiction, without distinction of any kind, such as discrimination based on race, colour, ethnic origin, sex, language, religion, political or other opinion, national or social origin, property, birth, economic or other status.
3. Governments shall ensure the provision of sufficient funding and other resources for legal services to the poor and, as necessary, to other disadvantaged persons. Professional associations of lawyers shall cooperate in the organization and provision of services, facilities and other resources.
4. Governments and professional associations of lawyers shall promote programmes to inform the public about their rights and duties under the law and the important role of lawyers in protecting their fundamental freedoms. Special attention should be given to assisting the poor and other disadvantaged persons so as to enable them to assert their rights and where necessary call upon the assistance of lawyers.

#### Special safeguards in criminal justice matters

5. Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence.
6. Any such persons who do not have a lawyer shall, in all cases in which the interests of justice so require, be entitled to have a lawyer of experience and competence commensurate with the nature of the offence assigned to them in order to provide effective legal assistance, without payment by them if they lack sufficient means to pay for such services.
7. Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention.
8. All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a

lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.

#### Qualifications and training

9. Governments, professional associations of lawyers and educational institutions shall ensure that lawyers have appropriate education and training and be made aware of the ideals and ethical duties of the lawyer and of human rights and fundamental freedoms recognized by national and international law.

10. Governments, professional associations of lawyers and educational institutions shall ensure that there is no discrimination against a person with respect to entry into or continued practice within the legal profession on the grounds of race, colour, sex, ethnic origin, religion, political or other opinion, national or social origin, property, birth, economic or other status, except that a requirement, that a lawyer must be a national of the country concerned, shall not be considered discriminatory.

11. In countries where there exist groups, communities or regions whose needs for legal services are not met, particularly where such groups have distinct cultures, traditions or languages or have been the victims of past discrimination, Governments, professional associations of lawyers and educational institutions should take special measures to provide opportunities for candidates from these groups to enter the legal profession and should ensure that they receive training appropriate to the needs of their groups.

#### Duties and responsibilities

12. Lawyers shall at all times maintain the honour and dignity of their profession as essential agents of the administration of justice.

13. The duties of lawyers towards their clients shall include:

(a) Advising clients as to their legal rights and obligations, and as to the working of the legal system in so far as it is relevant to the legal rights and obligations of the clients;

(b) Assisting clients in every appropriate way, and taking legal action to protect their interests;

(c) Assisting clients before courts, tribunals or administrative authorities, where appropriate.

14. Lawyers, in protecting the rights of their clients and in promoting the cause of justice, shall seek to uphold human rights and fundamental freedoms recognized by national and international law and shall at all times act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession.

15. Lawyers shall always loyally respect the interests of their clients.

#### Guarantees for the functioning of lawyers

16. Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad;

and (c) 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.

17. Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

18. Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.

19. No court or administrative authority before whom the right to counsel is recognized shall refuse to recognize the right of a lawyer to appear before it for his or her client unless that lawyer has been disqualified in accordance with national law and practice and in conformity with these principles.

20. Lawyers shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority.

21. It is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time.

22. Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential.

#### Freedom of expression and association

23. Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession.

#### Professional associations of lawyers

24. Lawyers shall be entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity. The executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference.

25. Professional associations of lawyers shall cooperate with Governments to ensure that everyone has effective and equal access to legal services and that lawyers are able, without improper interference, to counsel and assist their clients in accordance with the law and recognized professional standards and ethics.

#### Disciplinary proceedings

26. Codes of professional conduct for lawyers shall be established by the legal profession through its appropriate organs, or by legislation, in accordance with national law and custom and recognized international standards and norms.

27. Charges or complaints made against lawyers in their professional capacity shall be processed expeditiously and fairly under appropriate procedures. Lawyers shall have the right to a fair hearing, including the right to be assisted by a lawyer of their choice.

28. Disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court, and shall be subject to an independent judicial review.

29. All disciplinary proceedings shall be determined in accordance with the code of professional conduct and other recognized standards and ethics of the legal profession and in the light of these principles.



# The Protection of Lawyers in Conflict and Crisis

December 2016





# THE PROTECTION OF LAWYERS IN CONFLICT & CRISIS

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## Preface

This report was commissioned as part of the *Lawyers, Conflict & Transition* project – a three-year initiative funded by the Economic & Social Research Council.

The wider project explores the role of lawyers during conflicts, dictatorships and political transitions. Despite the centrality of the rule of law to the contemporary theory and practice of transitional justice, there is little emphasis in the relevant literature on the role of lawyers outside the courts – or indeed as ‘real people’ at work in the system.

Drawing on six key case studies (Cambodia, Chile, Israel, Palestine, Tunisia and South Africa) we set out to establish a comparative and thematic framework for lawyering at historic stages in conflicted and transitional societies. Taking a holistic approach to the role and function of law and lawyers, the project is intended as a bridgehead between transitional justice and the sociology of the legal professions.

Project staff members are based at the School of Law, Queen’s University Belfast, and the Transitional Justice Institute, Ulster University.

This project has at its core a ‘real-world’ dimension and seeks to make a difference both to theory and practice. In addition to academic outputs, we were determined to produce a body of work that will assist the societies we have researched. We were also conscious from the outset that academic fieldworkers are sometimes guilty of ‘parachuting in’ and then moving on, with little demonstrable benefit for participants. As part of our ethics policy we thus developed this series of practice-orientated reports, specifically tailored for each jurisdiction under scrutiny, as well as briefing papers for international audiences.

The individuals interviewed for the wider project (more than 120) were each invited to suggest research topics and themes that are of direct relevance to them and the organisations and networks with whom they work. The core team sifted and analysed these suggestions and commissioned two key reports per jurisdiction. In some instances the work was completed in-house; in other cases we drew on the resources and talents of our international consultants.

The reports are designed to be of immediate value to practitioners and as such we have sought to avoid complex academic terminology and language. We have made the texts available in English and relevant local languages.

The anticipated readership mirrors the diverse range of interviewees with whom we engaged:

- National and international legal professionals (including cause / struggle lawyers and state lawyers)
- Scholars interested in the role of lawyers as political and social actors (with a particular focus on transitional justice)
- Government officials
- International policymakers
- Civil society activists
- Journalists and other commentators

The entire series will be made available on our website ([www.lawyersconflictandtransition.org](http://www.lawyersconflictandtransition.org)) and will be circulated via our various networks and twitter account (@lawyers\_TJ).

We hope that you will enjoy reading this report and encourage you to disseminate it amongst your networks.

For further information about the wider project please feel free to contact us at:

[www.lawyersconflictandtransition.org/contact](http://www.lawyersconflictandtransition.org/contact)



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Kieran McEvoy PhD  
Director, *Lawyers, Conflict and Transition* Project

December 2016

## Acknowledgements & Disclaimer

This report was prepared by Jonathan Porter, in association with the *Lawyers, Conflict and Transition* project. All views expressed, and any errors, remain the responsibility of the author.

This report is made available free of charge. The views and opinions it contains are those of the author, not of the Economic & Social Research Council. You may use and copy it in whole or in part for educational purposes provided that you (i) do not alter or adapt the content; (ii) use the material on a not-for-profit basis; and (iii) acknowledge the copyright owners and source in any extract from the report.

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## Executive Summary

The independence of the legal profession is an essential element of any democratic society based on the rule of law. It is particularly important in terms of defending human rights and fundamental freedoms. Whilst the independence and safety of individual members of the legal profession may be threatened in times of peace and political stability, such risks multiply in the context of conflict and crisis. This paper is guided by three fundamental principles:

- Lawyers are particularly vulnerable to intimidation and threats to professional and personal wellbeing in jurisdictions experiencing crisis or upheaval.
- Where widespread violence and political upheaval occurs, it is more important than ever that lawyers take on the challenging work of upholding basic human rights and fundamental freedoms.
- In order to do such work, lawyers must enjoy the full protection afforded to them under the terms of international human rights law and standards on the independence of the legal profession.

To test the extent to which lawyers are adequately protected in times of crisis and conflict we firstly examine the relevant international legal framework. This includes reference to human rights law as well as international law and standards specific to the protection of members of the legal profession. The UN Basic Principles and Special Procedures, as well as other international standards and norms, clearly establish obligations to ensure that lawyers are able to: perform their functions without intimidation, harassment or interference; consult with their clients; and fulfil their professional duties without fear of sanction or intimidation.

The stipulations of the UN Special Rapporteur on the Independence of Judges and Lawyers also helps to clarify what constitutes intimidation and harassment of lawyers. Further guidance is contained within the standards of international legal collectives such as the International Bar Association. It is abundantly clear from these international statutes and norms that, besides individual rights enshrined in international human rights law, lawyers enjoy specific protections arising from their responsibility to enable and facilitate the rights of fellow-citizens. It is equally

clear that there is an obligation on states to safeguard those rights and indeed the independence of the legal profession as a whole.

In the second part of this paper we turn to the specific responsibilities of states. This is framed in terms of both the negative obligation imposed upon states to refrain from interfering with the independence of the legal profession, as well as the positive obligation to establish a domestic legislative framework that creates an environment in which the legal profession can flourish. The latter includes a responsibility to investigate and prosecute threats made against lawyers, regardless of the source. The right to a fair investigation is of course well-established in international human rights law but states also have an obligation to adhere to the supplementary and specific provisions relating to the legal profession and individual lawyers. This includes adopting all reasonable measures to guarantee the right to life, personal liberty and personal integrity of human rights defenders. Fulfilling these various obligations depends upon the state being aware of the nature and extent of intimidation faced by lawyers. It is thus suggested that particular attention must be paid to events, modes of practice and institutions that are particularly threatening for lawyers. It is also clear that, alongside the state, professional associations have a central role to play in safeguarding the legal profession and individual lawyers at times of crisis.

In the final section we review some of the most relevant international jurisprudence to clarify the type of actions and activities that constitute either undue interference by the state or a failure adequately to protect lawyers and the legal profession. Case law consistently suggests that, where a state's actions directly intimidates or harasses lawyers, or where their rights are infringed as a result of their professional activities, this constitutes interference in the legal profession. Sanctions have included demands for compensation and steps to guarantee non-recurrence. In addition to freedom of expression, the rights of lawyers to peaceful assembly and to freedom of association (including the formation of legal collectives) have each been addressed in international jurisprudence. Where states interfere directly with these rights, or where states attempt to direct or control the actions of professional legal associations, they have been found guilty of improper interference.

## Introduction

The independence of the legal profession is an essential element of any democratic society based on the rule of law and is critical for ensuring respect for human rights and fundamental freedoms.<sup>1</sup> Whilst lawyers in any jurisdiction may experience interference with their work, or indeed face threats and be subject to human rights violations, those practising in states undergoing social, political or civil upheaval or conflict are often at acute risk. Lawyers who speak out on issues of human rights violations or who bring cases against state officials or members of opposition groups are often the most targeted. State actors may also attempt to intervene in legal proceedings, meddle in lawyers' associations or politicize the professional actions of lawyers; whilst state or non-state actors may threaten individual lawyers with physical violence or carry out kidnappings or executions. Where lawyers are publicly associated with the defense or prosecution of alleged terrorists, well-known criminals, members of organized crime groups or drug traffickers, the risk of threat or attack is heightened.

The protection of lawyers and the legal profession at large has been recognized by the international legal community as a critical issue and is manifest in the creation of the UN Special Rapporteur on the Independence of Judges and Lawyers. Regional human rights bodies have also created similar obligations upon states in recognition of the pervasive threat to the independence of the legal profession.<sup>2</sup> According to the UN Special Rapporteur, the prohibition on interference with the legal profession is routinely breached, occurring most frequently when lawyers defend clients in politically sensitive cases, including those that deal with corruption, organized crime, terrorism or drug trafficking.<sup>3</sup> The Special Rapporteur has further stated that the "majority of the national situations brought to (the Special Rapporteur's) attention" involved threats to lawyers as a result of representing sensitive cases and being inappropriately

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<sup>1</sup> UN Doc E/CN.4/Sub.2/1993/25, Report on the independence of the judiciary and the protection of practising lawyers, para 1.

<sup>2</sup> For example, the Inter-American Commission has created a Rapporteurship on Human Rights Defenders and the African Commission has created a similar Special Rapporteur on Human Rights Defenders.

<sup>3</sup> UNGA, Report of the Special Rapporteur on the independence of judges and lawyers, UN Doc A/64/181, 28 July 2009, para.64.

identified with their clients.<sup>4</sup> In particular, the Special Rapporteur notes that the risk of harassment is heightened when the media and others publicly associate individual lawyers with particular clients and causes.<sup>5</sup> Such dangers are not confined to defense lawyers. For example, the Special Rapporteur has also noted that a state prosecutor's position is one of the most dangerous jobs in a country because he or she is responsible for deciding whether or not to prosecute high profile suspects, making them vulnerable to serious threats to their life.<sup>6</sup>

While states have an obligation to protect the lives of all individuals within their jurisdiction or control, they have particular responsibilities with respect to lawyers and members of the legal profession such as judges, prosecutors and paralegals. International law clearly stipulates both negative and positive state obligations to maintain the independence of the legal profession and to protect lawyers from persecution and threats to their rights, including arbitrary detention, disappearance and attack. The safeguarding of an independent legal profession underpins the ability of lawyers to carry out their duties without fear of harassment or interference. Where states experience emergencies or crises, that independence is vitally important to ensure that fundamental rights and freedoms are upheld. Derogation from procedural rights makes the involvement of effective counsel essential. In such instances the role and responsibilities of lawyers are enhanced and individual lawyers on high-profile cases may become acutely vulnerable to threats to their safety. Where there are threats to the lives of lawyers, the state has an obligation to ensure that they are protected.

This paper outlines firstly the international legal framework establishing the requirement to protect lawyers and the legal profession. It then explores the specific responsibilities of states to give effect to those rights and obligations. Finally, it reviews some of the relevant international jurisprudence in order to clarify the type of actions and activities that constitute either undue interference by a state, or failure adequately to protect lawyers and the legal profession.

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<sup>4</sup> UNGA, Report of the Special Rapporteur on the Independence of Judges and Lawyers, UN Doc E/CN.4/2004/60, 31 December 2003, para 49.

<sup>5</sup> UNGA, Report of the Special Rapporteur on the Independence of Judges and Lawyers on her mission to Tunisia, UN Doc A/HRC/29/26/Add.3, 26 May 2015, para 61. Available at <http://www.refworld.org/docid/558410d84.html>

<sup>6</sup> *Ibid.* para. 64.



## I. International Legal Framework

Lawyers enjoy the protection of both general international human rights law as well as international law and standards specific to the protection of the legal profession. International law clearly requires the protection of lawyers in all states, and such protection becomes particularly important in states that experience conflict or crisis. There is significant treaty law and international standards that include important state obligations to ensure the independence of the legal profession and to guarantee the protection of individual lawyers.

### International Human Rights Law

As individual rights holders, lawyers are entitled to the myriad rights and protections enshrined in international and regional<sup>7</sup> human rights treaties. These include provisions on the right to life<sup>8</sup>, liberty and the security of person,<sup>9</sup> prohibition of torture or other cruel, inhuman or degrading treatment or punishment (other ill-treatment)<sup>10</sup>, and equality before the law.<sup>11</sup> International and regional human rights courts have also read the duty to investigate into the right to life and the prohibition of torture and other ill-treatment<sup>12</sup> as well as a duty to prevent and protect individuals from threats to their lives. Indeed, courts have found that there is a principle of due diligence to prevent and punish acts of violence, even where they are committed by non-state actors.<sup>13</sup> Where there is

<sup>7</sup> See, European Convention on Human Rights, Articles 2, 3, 5 and 6; American Convention on Human Rights Articles 4, 5, 7 and 8; African Charter on Human and People's Rights Articles 3, 4, 5 and 6.

<sup>8</sup> ICCPR, Article 6.

<sup>9</sup> ICCPR, Article 9.

<sup>10</sup> ICCPR, Article 7.

<sup>11</sup> ICCPR, Article 14.

<sup>12</sup> ICCPR, Art 2. See also, Human Rights Committee, General Comment No.31, 'The Nature of the General Legal Obligation Imposed on State Parties to the Covenant,' paras 15 and 18. See also, ECtHR, *Assenov et al. v. Bulgaria*, Judgement, App no. 90/1997/874/1086, 28 October 1998, where a violation of the prohibition of torture was found, not because torture occurred, but because the state failure to carry out an effective investigation into the allegations. See also, Human Rights Committee (HRC), *Casafranca v. Peru*, Comm No. 981/2001, 19 Sept 2003; HRC, *Zelaya Blanco v. Nicaragua*, Comm no. 328/1988, 20 July 1994; IACtHR, *Velasquez-Rodriguez v. Honduras*, Judgment, 29 July 1988

<sup>13</sup> ECtHR, *Osman v. UK*, App no. 87/1997/871/1083, 28 October 1998; IACtHR, *Campo Algodonero v. Mexico*, Judgment, 19 Jan 2009; ACHPR, *Mouvement Burkinabe des Droits de l'homme et des Peuples v. Burkina Faso*, Comm No. 204/97, 2006.

sufficient evidence, this responsibility necessitates the duty to prosecute and punish the persons allegedly responsible for the violation.<sup>14</sup> These obligations apply to lawyers and paralegals, as they would to all other individuals within a state's jurisdiction or control.

In addition to these generic rights to which lawyers are entitled, international human rights law acknowledges the specific and important role of lawyers, and therefore contains provisions protecting lawyers and the legal profession. Indeed, many of the rights guaranteed to individuals within a state's jurisdiction or control necessitate the specific protection of lawyers, in order to ensure that those rights can be fully realized. Otherwise, there is a risk that individuals enjoy rights in theory but cannot find lawyers to instruct in order to protect those rights in court. Several of the international human rights treaties and widely recognized non-binding instruments contain provisions on the right to legal representation.<sup>15</sup> While these provisions do not explicitly articulate the obligation to protect lawyers, their substance would be hollow without the ability of lawyers to represent clients independently and free from interference or harassment from the state or other third parties. Although these instruments lack specific declarations on the protection and safety of lawyers, their provisions guarantee the functioning of the rule of law by commitment to effective counsel.<sup>16</sup>

As noted above, the provisions obligating the protection of lawyers become critical in times of crisis or conflict, particularly where the state declares an emergency and derogates from core provisions of the International Convention on Civil and Political Rights and related international and regional treaties (although notably states cannot derogate from, *inter alia*, the right to life and the prohibition on torture or other ill-treatment).<sup>17</sup> Additionally, international human rights bodies have held that any trial leading to the imposition of the death penalty during a state of emergency must conform to all of the fair trial rights guaranteed in the

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<sup>14</sup> See, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, III (4).

<sup>15</sup> ICCPR, Article 14(3)(d); See also, ECHR Article 6; ACHR, Article 8; ACHPR, Article 6

<sup>16</sup> Martin Flaherty, 'Human Rights Violations Against Defense Lawyers: The Case of Northern Ireland,' *Harvard Human Rights Journal*, 7 (1994), pp87-124, p90.

<sup>17</sup> ICCPR, Article 4.

ICCPR.<sup>18</sup> In crises that threaten the life of the nation and where states derogate from other obligations, the role of a lawyer and the independence of the legal profession are critical to protect against arbitrary deprivations of life, and from torture or other ill-treatment. Lawyers are essential to upholding fair trial rights, which, although technically derogable, cannot be derogated from so far as to “circumvent the protection of non-derogable rights.”<sup>19</sup> International treaty law thus suggests a state responsibility to protect lawyers, particularly during times of crises, so as to ensure the respect of human rights and fundamental freedoms of society at large.

### UN Principles

In addition to the implications from treaty law, there are important international standards and norms that set out more explicitly the obligation of states to respect the independence of the legal profession and to actively protect lawyers. The UN Basic Principles on the Role of Lawyers (UN Basic Principles) suggest that the independence of the legal profession is a fundamental pillar for maintaining the rule of law in a democratic society. In the preamble, the UN Basic Principles state that “...adequate protection of the human rights and fundamental freedoms to which all persons are entitled...requires that all persons have effective access to legal services provided by an independent legal profession.”<sup>20</sup>

The UN Principles set out specific obligations for governments to ensure that lawyers are able to: perform their functions without intimidation, harassment or interference; consult with their clients; and fulfil their professional duties without fear of threat or sanction.<sup>21</sup> They also explicitly state that states cannot restrict the freedom of movement of lawyers to be able to meet with clients.<sup>22</sup> In line with the prohibition on interference, the Principles provide that states must also grant

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<sup>18</sup> UN Human Rights Committee, General Comment 29. U.N. Doc. CCPR/C/21/Rev.1/Add.11 (2001).

<sup>19</sup> *Ibid.*

<sup>20</sup> UN Basic Principles on the Role of Lawyers, Ninth Paragraph in Preamble.

<sup>21</sup> Basic Principles, Principle 16.

<sup>22</sup> Basic Principles, Principle 16; *See also*, Special Rapporteur, *supra* at 3, para 63.

immunity from civil and criminal proceedings when fulfilling their functions in good faith, including in written or oral proceedings or in appearances in court.<sup>23</sup>

The dangers of the media or others inappropriately associating lawyers with the crimes or causes of their clients is explicitly prohibited under the obligation of non-interference.<sup>24</sup> The UN Special Rapporteur on the Independence of Judges and Lawyers has further underlined that the identification of lawyers with their clients is a form of intimidation and harassment of lawyers and therefore interference with the legal profession at large.<sup>25</sup> Instead it is suggested that, where there is evidence of lawyers being inappropriately identified with their clients' causes, the state should refer the complaints to the appropriate disciplinary body of the legal profession.<sup>26</sup> The prohibition on implicating lawyers by dint of association with particular clients and causes is particularly crucial in emergency situations and crises, where due process rights necessitate the involvement of lawyers in complex and politically sensitive cases.

The Basic Principles also identify interference with professional legal associations as tantamount to interference in the activities of the legal profession as a whole. Principle 24 states that lawyers "shall be entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity." Indeed the preamble to the Principles highlights the importance of these professional associations in "upholding professional standards and ethics, protecting their members from persecution and improper restrictions and infringements, providing legal services to all in need of them, and cooperating with governmental and other institutions in furthering the ends of justice and public interest."<sup>27</sup> The UN Office of the High Commissioner for Human Rights further recognizes "the importance of the role of non-governmental organizations, bar associations and professional associations of judges in the defence of the principles of the independence of

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<sup>23</sup> Basic Principles, Principle 20; IBA Standards, para 11.

<sup>24</sup> Basic Principles, Principle 18.

<sup>25</sup> UNGA, Report of the Special Rapporteur on the Independence of Judges and Lawyers, UN Doc A/64/181, 28 July 2009, para.66.

<sup>26</sup> UNGA, Report of the Special Rapporteur on the Independence of Judges and Lawyers, Report on the mission to Peru, E/CN.4/1998/39/Add.1, para 145.

<sup>27</sup> Basic Principles, Preamble.

lawyers.”<sup>28</sup> States therefore must allow not only the free assembly of associations for the upholding of standards, but must also permit associations to carry out activities to protect lawyers from harassment, threats and other improper interference of individual lawyers. The UN Special Rapporteur on the independence on judges and lawyers specifically stresses that states should allow professional organizations to take any necessary actions in cases of arrests and detention of lawyers.<sup>29</sup>

The international standards for the protection of lawyers are further delineated in the UN Declaration on Human Rights Defenders. For example, it asserts a right to participate in activities against human rights violations, and a right to be protected by the state from threats or harassment as a result of those activities.<sup>30</sup> The UN Office of the High Commissioner for Human Rights has thus summarised that “a just and efficient administration of justice requires that lawyers...should be allowed to work without being subjected to physical attacks, harassment, corruption, and other kinds of intimidation.”<sup>31</sup> The High Commissioner has also called upon states to “respect and uphold the independence of judges and lawyers and, to that end, to take effective legislative, law enforcement and other appropriate measures that will enable them to carry out their professional duties without harassment or intimidation of any kind.”<sup>32</sup> This requirement has been echoed on several occasions by the UN Human Rights Council.<sup>33</sup>

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<sup>28</sup> OHCHR, Independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers, Commission on Human Rights resolution 2002/43, UN Doc E/2002/23- E/CN.4/2002/200 p.2.

<sup>29</sup> Special Rapporteur, *supra* at 3, para 69.

<sup>30</sup> UN Declaration on Human Rights Defenders, UN Doc A/RES/53/144, Article 12

<sup>31</sup> UN Office of the High Commissioner for Human Rights, ‘Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers, Geneva, 2003, p.151.

<sup>32</sup> UN Office of the High Commissioner for Human Rights, Commission on Human Rights Resolution 2004/33: Independence and impartiality of the judiciary, jurors and assessors of the independence of lawyers, UN Doc E/CN.4/RES/2004/33.

<sup>33</sup> See, UN Human Rights Council, Independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers, UN Doc A/HRC/RES/23/6, 19 June 2013. Available at <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2014/03/UN-Human-Rights-Council-independence-of-the-judiciary-resolution-A-HRC-RES-23-6-2013-eng.pdf>;

See *also*,

Independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers.

UN Doc A/HRC/29/L.11, 30 June 2015).

### Other International Standards

A raft of additional international standards and norms add weight to the UN Basic Principles and Special Procedures. The ICJ Geneva Declaration on Upholding the Rule of Law and the Role of Judges and Lawyers in Times of Crisis declares that:

“All branches of government must take all necessary measures to ensure the protection by the competent authorities of lawyers against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of their professional functions...The authorities must desist from and protect against all such adverse actions.”<sup>34</sup>

The ICJ argues that the ability for lawyers to be free to carry out their professional duties without political interference must be protected in law and in practice from attacks, harassment and persecution, particularly when they act in defense of human rights.<sup>35</sup> It also states that these protections are of particular importance during states of emergency and conflict situations. Specifically,

“Where a state of siege or martial law is declared to deal with the exceptional situation, the following basic safeguard should be strictly observed: [...] The independence of the judiciary and of the legal profession should be fully respected. The right and duty of lawyers to act in the defence of, and to have access to, political and other prisoners, and their immunity for action taken within the law in defence of their client, should be fully recognised and respected.”<sup>36</sup>

Further standards have been developed by the international community urging states to consider their responsibilities to respect and protect the legal profession. For example, the International Commission of Jurists’ (ICJ) Geneva Declaration on

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<sup>34</sup> International Commission of Jurists, Legal Commentary to the ICJ Geneva Declaration: Upholding the Rule of Law and the Role of Judges & Lawyers in Times of Crisis, May 31, 2011 Principle 7.

<sup>35</sup> *Ibid.* p.114.

<sup>36</sup> ICJ Declaration on Human Rights in an Undemocratic World, ‘The Rule of Law under Military Regimes,’ 1977, Paragraph 8. Available at <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2013/07/ICJ-Review-18-1977-eng.pdf>

Upholding the Rule of Law and the Role of Judges and Lawyers in Times of Crisis outlines core principles that include the responsibility of states to protect lawyers and judges.

Official statements by international organizations and professional associations of lawyers have also helped to detail the list of actions that are classified as improper interference. For example, the International Bar Association has developed the Standards for the Independence of the Legal Profession. These Standards insist that "an equitable system of administration of justice which guarantees the independence of lawyers in the discharge of their professional duties without any improper restrictions, pressures or interference, direct or indirect is imperative for the establishment and maintenance of the rule of law."<sup>37</sup> Specific guidelines include reference to the need for states to refrain from publishing inflammatory rhetoric against lawyers representing high profile suspects<sup>38</sup> and the importance of immediately informing lawyers' associations upon the arrest of a lawyer. In such instances it is suggested that the appropriate representative association should be: supplied with the reason and legal basis for the arrest of a lawyer; given details of the place of detention; and assured of the right of access to the detained or arrested suspect.<sup>39</sup> Again, the central role of lawyers' associations in holding states accountable for their treatment of lawyers in times of crisis is a key tenet of the broader protection and enforcement architecture.<sup>40</sup>

It is clear from these various international standards and norms that there is an obligation on states to protect lawyers and the legal profession. In addition to lawyers constituting individual rights holders of any given state and therefore possessing general protections of human rights law, they have specific additional

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<sup>37</sup> International Bar Association, Standards for the Independence of the Legal Profession, 1990, Preamble.

<sup>38</sup> See, IBA, 'Sri Lanka: IBAHRI recommends protections for a justice system, legal profession and media in peril, 26 May 2009, Available at <http://www.ibanet.org/Article/Detail.aspx?ArticleUid=7df2962f-7769-4faf-8e16-6371b408c174>

<sup>39</sup> IBA Standards, para 20.

<sup>40</sup> See, for example, IBA, 'IBAHRI condemned recent violence and threats made against Zimbabwean lawyers by police and other officials,' 22 March 2007; Lawyers Without Borders, 'Colombia: Failure to fulfill duties in response to attacks on lawyers, 25 May 2014; IBA, 'IBA's grave concern at threats of several members of legal profession in Haiti,' 20 April 2004.



protections. As discussed above, lawyers are essential to the realization and enjoyment of several basic human rights. The obligation to protect lawyers is particularly salient during times of crises or emergencies where, although states may derogate from certain fundamental freedoms in human rights treaties, certain non-derogable rights implicate the activities of a protected and independent legal profession.

## II. State Responsibilities

Under the international legal standards and norms outlined above, there is a clear responsibility for states to refrain from interfering with the independence of the legal profession. Particularly in states that experience emergencies and crises, the independence of the legal profession becomes critical to ensure the effective rule of law. Not all state interaction is prohibited. Indeed, close interaction between government and the legal profession is important in order to deliver quality legal services to the community and to promote public confidence in the rule of law.<sup>41</sup> Indeed criticism of the legal profession and of lawyers is an important element of maintaining accountability.

The level of permissible interaction and influence is nonetheless sometimes difficult to measure, not least because public criticism can potentially lead to threats against individual members of the legal profession. Additionally, although states must have disciplinary measures to safeguard against legal malpractice and to ensure accountability, such measures can potentially be used to threaten or intimidate lawyers. Although international legal instruments clearly prohibit interference in the legal profession, the specific activities that amount to prohibited 'interference' are not always clearly identified. Since not all state interaction with the legal profession is prohibited it can be difficult to determine which actions constitute interference and which are acceptable. Furthermore, it is important to note that *interaction* with the state should not be misinterpreted as

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<sup>41</sup> D. Pimentel, 'Reframing the Independence v. Accountability Debate: Defining Judicial Structure in Light of Judges' Courage and Integrity,' *Cleveland State Law Review*, 57(1), 2009, p.15.



a responsibility of the state to not *interfere*. Ensuring the protection of lawyers engages both a negative obligation not to interfere as well as a positive obligation to establish a domestic legislative framework that creates an environment where the legal profession can flourish. Specifically, states have a positive obligation to investigate threats made to lawyers' lives and to prosecute harmful actions carried out on lawyers, regardless of the source of the threat or attack. As discussed in the next section, there is a growing body of case law, soft law, and statements from international organizations that detail a myriad of activities that can be categorized as interference and are thus prohibited.

### III. International Jurisprudence

The activities amounting to interference in the legal profession are several and diverse, and there is clear precedent to suggest that states must abstain from such actions. The international case law that exists on the harassment of lawyers clarifies specific activities that are considered interference by the state. For example, where a state's actions directly intimidate or harass lawyers, or where their rights are infringed as a result of their professional activities, there is consistent case law suggesting that such activities constitute interference. For example, in *Hammel v Madagascar*, the UN Human Rights Committee found that the detention and deportation of a foreign lawyer as a result of his professional activities with opposition groups to be improper interference with the legal profession.<sup>42</sup> The Committee also found that the decision to detain and expel the applicant was linked to the fact that he had represented persons before the Human Rights Committee, which the Committee judged to be "incompatible with the spirit" of the ICCPR and its Protocol.<sup>43</sup> Madagascar was obligated to remedy the violation and to take steps to guarantee non-repetition.<sup>44</sup> Further, in *Ramon B. Martinez Portorreal v Dominican Republic*, the Human Rights Committee found that the author, a practicing lawyer and leader of a human rights association, was

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<sup>42</sup> UN Human Rights Committee, *Eric Hammel v. Madagascar*, Communication No. 155/1983, UN Doc CCPR/C/OP/2, 1990.

<sup>43</sup> *Ibid.* para 19.3.

<sup>44</sup> *Ibid.* para 21.

arbitrarily arrested and subjected to inhuman and degrading treatment as a result of his professional activities.<sup>45</sup> The Committee drew attention to the Dominican Republic's failure to investigate in good faith the violations of the Covenant<sup>46</sup> and ordered the state party to provide compensation as remedy and to guarantee non-repetition.<sup>47</sup> The African Commission on Human and Peoples' Rights has also found that fair trial rights were violated where two defense teams were "harassed into quitting the defence of the accused persons."<sup>48</sup>

Where states interfere with the professional activities of lawyers, international human rights bodies have found such action to violate the obligation of non-interference. In a landmark case on legal professional privilege, the European Court of Justice recognized the confidentiality of written communications between lawyer and client.<sup>49</sup> In *Morice v France*, the European Court of Human Rights cited the UN Basic Principles as relevant international standards and emphasized the importance of ensuring the freedom of expression of lawyers, suggesting that lawyers making critical statements in the public are to be protected under freedom of expression provisions in the European Convention.<sup>50</sup> The Court further held that only under exceptional circumstances may a restriction on this freedom of lawyers, even by way of a lenient penalty, be accepted as necessary in a democratic society.<sup>51</sup> The same Court has found elsewhere that while lawyers may be subject to certain restrictions on their professional conduct, they must enjoy exclusive rights and privileges, including a "certain latitude regarding arguments used in court."<sup>52</sup>

<sup>45</sup> UN HRC, *Ramon B. Martinez Portorreal v. Dominican Republic*, Communication No. 188/1984, U.N. Doc. Supp. No. 40 (A/43/40) at 207 (1988).

<sup>46</sup> *Ibid.*

<sup>47</sup> *Ibid.* para 12.

<sup>48</sup> ACHPR, *International Pen, Constitutional Rights Project, Interights (on behalf of Ken Saro-Wiwa Jr. And Civil Liberties Organisation) v. Nigeria*, Communications Nos. 137/94, 139/94, 154/96 and 161/97, decision adopted on 31 October 1998, para. 101.

<sup>49</sup> ECJ, May 18<sup>th</sup>, 1982, *AM & S Europe v. Commission*, Case 155/79 [1982] ECR 1575.

<sup>50</sup> ECtHR, *Morice v France*, (Application No. 29369/10), 23 April 2015.

<sup>51</sup> *Ibid.* para 135.

<sup>52</sup> ECtHR, *Steur v. Netherlands*, Application No. 39657/98, 28 January 2004; *See also*, ECtHR, *Kyprianou v. Cyprus* (Grand Chamber); ECtHR *Foglia v. Switzerland*, *Kabanov v. Russia*; ECtHR, *Gouveia Gomes Fernandes and Freitas e Costa v. Portugal*; ECtHR, *Mor v. France* and ECtHR, *Ümit Bilgiç v. Turkey*.

Similar to the special freedom of expression granted to lawyers, it has been established that the freedom to associate and to collectively form bar associations should not be subject to interference by states. The rights of lawyers to peaceful assemble, to freedom of association, and to freedom of expression have each been addressed in international jurisprudence.<sup>53</sup> Where states interfere directly with these rights of individual lawyers, or where states attempt to direct or control the actions of professional legal associations, they have been found in violation of improper interference of those respective rights. The Human Rights Committee has concluded that states must ensure that the "criteria for access to and the conditions of membership in the Bar do not compromise the independence of lawyers."<sup>54</sup> In multiple situations, the Committee has criticized states that require that bar associations be overseen by, or become members of state-controlled ministries or associations.<sup>55</sup>

As noted above, in addition to the basic requirement to investigate threats on any individual's life,<sup>56</sup> there are supplementary and specific provisions and responsibilities when threats are directed at the legal profession and individual lawyers.<sup>57</sup> The UN Special Rapporteur on the Independence of Judges and Lawyers has interpreted this principle as meaning that, in the event of harassment or threats to the lives of lawyers, impartial and independent investigations must be made promptly.<sup>58</sup> International case law confirms the obligation to conduct an investigation. In *Jiminez Vaca v Colombia*, a legal advisor to several trade unions and 'peasants' organizations' was threatened with death, with an attempt to kill him. There was no investigation into the death threats nor of the attempted

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<sup>53</sup> See, ECtHR, *Ezelin v. France*, Judgment of 26 April 1991, Series A, No. 202; ACtHPR, *Civil Liberties Organisation v. Nigeria* (in respect of the Nigerian Bar Association), Communication No. 101/93, decision adopted during the 17th Ordinary session, March 1995; ECtHR, *Schöpfer v. Switzerland*, judgment of 20 May 1998, Reports 1998-III

<sup>54</sup> HRC, *Concluding Observations of the Human Rights Committee on Azerbaijan*, UN doc CCPR/CO/73/AZE, para. 14.

<sup>55</sup> See, HRC, *Concluding Observations of the Human Rights Committee on Belarus*, CCPR/C/79/Add.86, para. 14; HRC, *Concluding observations of the Human Rights Committee on the Libyan Arab Jamahiriya*, CCPR/C/79/ Add.101, para. 14.

<sup>56</sup> See, ECtHR, *Osman v. UK*, Application No. 23452/94; ECtHR, *Ergi v. Turkey*, Application No. 23818/94; HRC, *Giri v. Nepal* Comm 1761/2008

<sup>57</sup> As noted in Section 1, these are clearly delineated in the UN Basic Principles on the Role of Lawyers.

<sup>58</sup> Special Rapporteur, *supra* at 3, para 69.

murder. The UN Human Rights Committee found a violation of the right to life since the state had not investigated the attempted murder.<sup>59</sup> Governments have also a clear responsibility to ensure thorough, independent and effective investigations and authorities are specifically obligated to take steps to expedite investigations into threats and attacks on lawyers.<sup>60</sup>

It is furthermore clear that states have a responsibility to adopt other proactive measures in situations of emergency and crisis where lawyers are at a heightened risk of danger. In *Valle Jaramillo v. Colombia*, the Inter-American Court of Human Rights held that states have the obligation to adopt all reasonable measures to guarantee the rights to life, personal liberty and personal integrity of those defenders who denounce human rights violations and who are in a situation of vulnerability, citing the case of armed conflict in Colombia.<sup>61</sup> However, "this obligation is conditional upon the State being aware of a real and immediate danger to the said human rights defenders and upon the existence of a reasonable possibility of preventing or avoiding this danger."<sup>62</sup>

Past experience dictates that states should focus particular attention on events or institutions where lawyers may be more vulnerable to threat or attack. For example, in the case of Northern Ireland, many threats against defense lawyers were alleged to have been made during the interrogation of detainees in holding centres.<sup>63</sup> Detainees deal in the first instance with lawyers, who advise them on issues including avoiding self-incrimination, protection against ill-treatment, and investigate for exculpatory evidence.<sup>64</sup> Thus, independent monitoring of detention centres would help to determine the accuracy of the allegations and also be a preventative measure against threats and subsequent harassment. Indeed,

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<sup>59</sup> UN Human Rights Committee, *Jimenez Vaca v Colombia*, Communication No 859/1999: Colombia. UN Doc CCPR/C/74/D/859/1999, 15 April 2002. Available at <http://www.unhcr.ch/tbs/doc.nsf/0/b8708c80eebeec9ec1256c1b004c520f?Opendocument>

<sup>60</sup> IBA, Sri Lanka, *supra* at 42.

<sup>61</sup> IACTHR, *Valle Jaramillo et al. v Colombia*, Series C No. 192, Judgement 27 November 2008, para 90-91. Available at [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_192\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_192_ing.pdf)

<sup>62</sup> *Ibid.*

<sup>63</sup> Flaherty, *supra* at 17, p.120.

<sup>64</sup> *Ibid.* p.97.

monitoring of detention facilities has been recognized by international human rights bodies as essential in the prevention of torture and ill-treatment and has established bodies to carry out such monitoring.<sup>65</sup>

As discussed above, states also have an obligation to allow the independent association of the legal profession through the creation of bar associations. Bar associations have a critical role to play in the protection of lawyers in emergencies and crises. The Council of Europe has required that in cases such as: arrests or detention of lawyers; decisions to take proceedings calling into question the integrity of lawyers in order to defend their interests; or searches of lawyers or their property, professional organisations must take appropriate action to defend their members.<sup>66</sup>

The IBA Standards further stipulate that lawyers' associations should be informed immediately of the reason and legal basis for the arrest or detention of any lawyer and the association should have access to any lawyers who have been detained or arrested.<sup>67</sup> Thus, in addition to the state's responsibilities to ensure the protection of lawyers, professional associations have an equally important responsibility to safeguard the legal profession and act on behalf of individual lawyers in crisis. As representatives of a unified legal profession in a given jurisdiction, bar associations have an integral role in speaking out against attacks on the independence of the legal profession. However, often as a result of state interference or fear of state retribution, bar associations sometimes choose to refrain from taking stances or vocalizing criticism in periods of social and political upheaval. Indeed, where bar associations have chosen not to be involved in the protection of lawyers in their jurisdiction, they have been harshly criticized for their silence and inaction.<sup>68</sup>

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<sup>65</sup> The Optional Protocol to the Convention against Torture (OPCAT) established the Sub-Committee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), which has for its mandate the responsibility to monitor conditions in detention and treatment of persons deprived of their liberty through country visits. With 25 experts, it is the largest human rights treaty body of the UN. Likewise, the Council of Europe established the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), which visits places of detention to monitor treatment of prisoners deprived of liberty in Europe.

<sup>66</sup> Council of Europe, Recommendation No. R(2001) 21 of the Committee of Ministers to member States on the freedom of exercise of the profession of lawyer, 25 October 2000, Principle V.

<sup>67</sup> IBA Standards, para. 20.

<sup>68</sup> See, Flaherty, *supra* at 17.

## Conclusion

Lawyers often find themselves vulnerable to attacks and threats of violence in jurisdictions experiencing crisis or upheaval. Where mass violations of human rights or widespread violence occurs, lawyers must take on sensitive work to uphold basic human rights and fundamental freedoms of society at large. During emergencies, as during times of peace, the state has a clear responsibility to ensure the protection of individual lawyers whilst simultaneously maintaining the independence of the legal profession at large. International law is clear that, in addition to the rights that lawyers hold as persons before the law, they also hold specific protections by virtue of their occupation and responsibility to enable the rights of others. States have a clear responsibility to not interfere in any way in the professional activities of the legal profession, including bar associations or law societies.

Lawyers should never be inappropriately identified by the media or others with the causes or crimes of their clients. Further, in order to enable them to do their job properly, states should take a proactive role in investigating and prosecuting threats, attacks or violence directed towards individual lawyers, regardless of the source. Where there are violations of the independence of lawyers in a given state, there may be recourse to the relevant special procedures through the UN Special Rapporteur. In addition to annual reports and country visits, individuals may submit complaints to the Special Rapporteur regarding alleged violations. The special procedures are important mechanisms to ensure that the independence of the legal profession is maintained and that individual lawyers are protected. Lawyers play a vital role in upholding the rule of law in societies experiencing conflict or crisis, and as such they are entitled, both as individuals and professionals, to the full protection afforded to them under the terms of international and domestic law.

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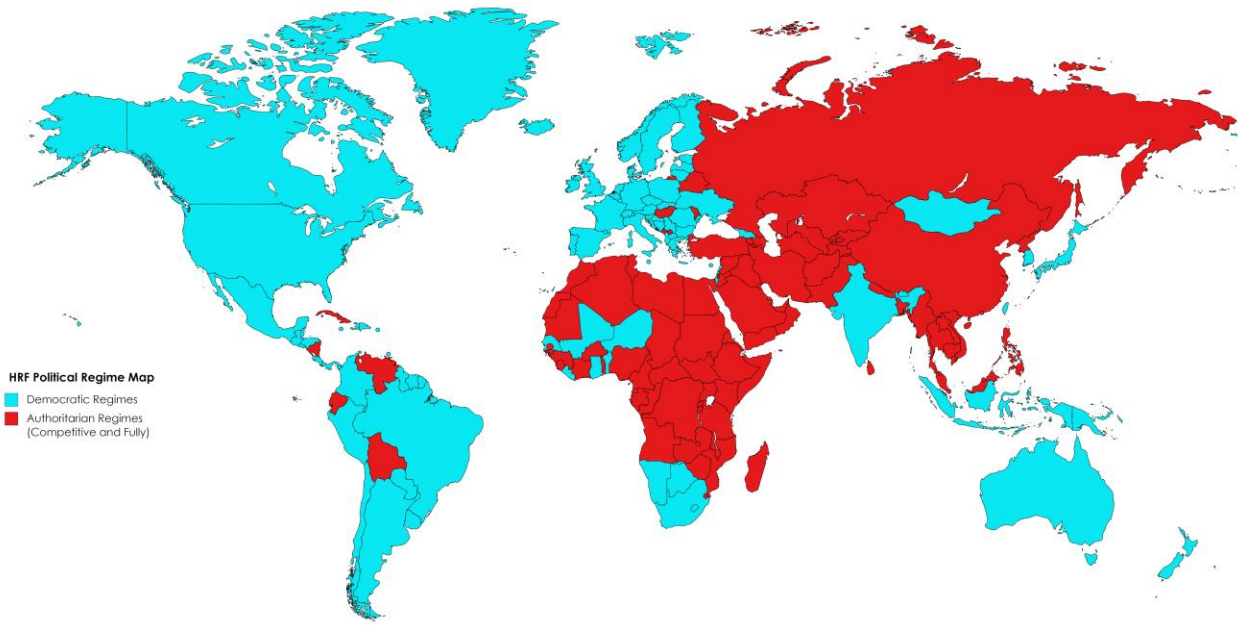
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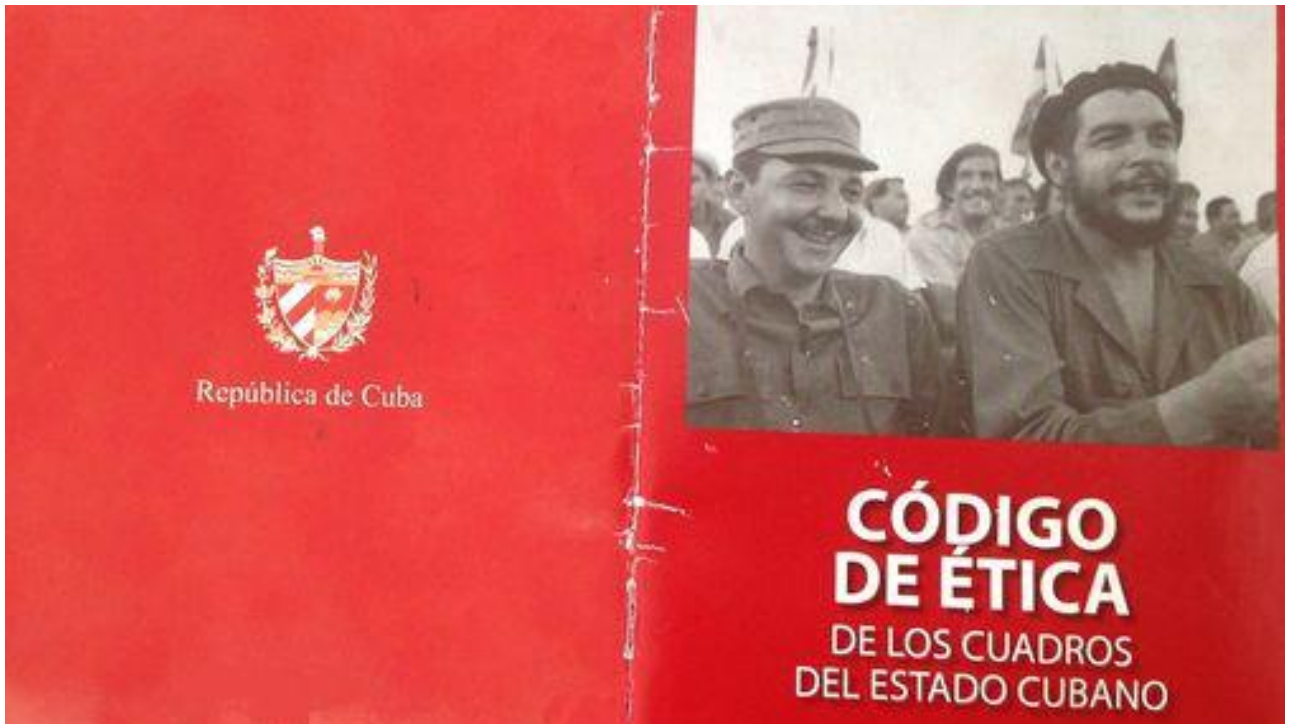
European Convention on Human Rights of 1953 Articles 2, 3, 5 and 6.

International Covenant on Civil and Political Rights of 1966 Articles 2, 4, 6, 7, 9 and 14.



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Foreign nationals can only obtain the services of attorneys from “International Law Firm Inc.” (in Spanish, *Bufete Internacional S.A.*),<sup>47</sup> a corporation subordinate to the Ministry of Justice.<sup>48</sup> The fees for these services must be paid in Cuban convertible pesos (CUC).<sup>49</sup>

Likewise, the Ministry of Justice regulates,<sup>50</sup> inspects, oversees, and controls the activity of the ONBC and its members.<sup>51</sup> However, this effort is not aimed at securing the integrity, diligence, independence, and work ethic of attorneys in defending their clients; instead, it deceptively legitimizes the arbitrary decisions made by the Cuban executive. Specifically, the ONBC’s Code of Ethics provides that attorneys, in the exercise of the profession, must “consciously assume and contribute—within their duties—to defend, preserve and be faithful to the principles comprised in the nation, the Revolution and Socialism,” and this should be done “imbued with the righteous, noble and humane ideas of Socialism and inspired by the example set by the Commander in Chief Fidel Castro Ruz.”<sup>52</sup>

Cuban attorneys face many conflicts of interest preventing them from performing their duties with integrity and independence, as their activities must be legally restrained to Marxist doctrine and must be “inspired” by the supreme leader of the country’s single party, Fidel Castro, who—under the Constitution and the law—ultimately interprets and decides what those doctrines are and how they apply to each case.

Furthermore, attorneys, like all other Cubans, are financially reliant on the State, so that any decision that could challenge the ONBC’s provisions—which is subordinate to the party’s rule—would mean serious complications for their meager source of income, as they could be left unable to practice their profession legally.





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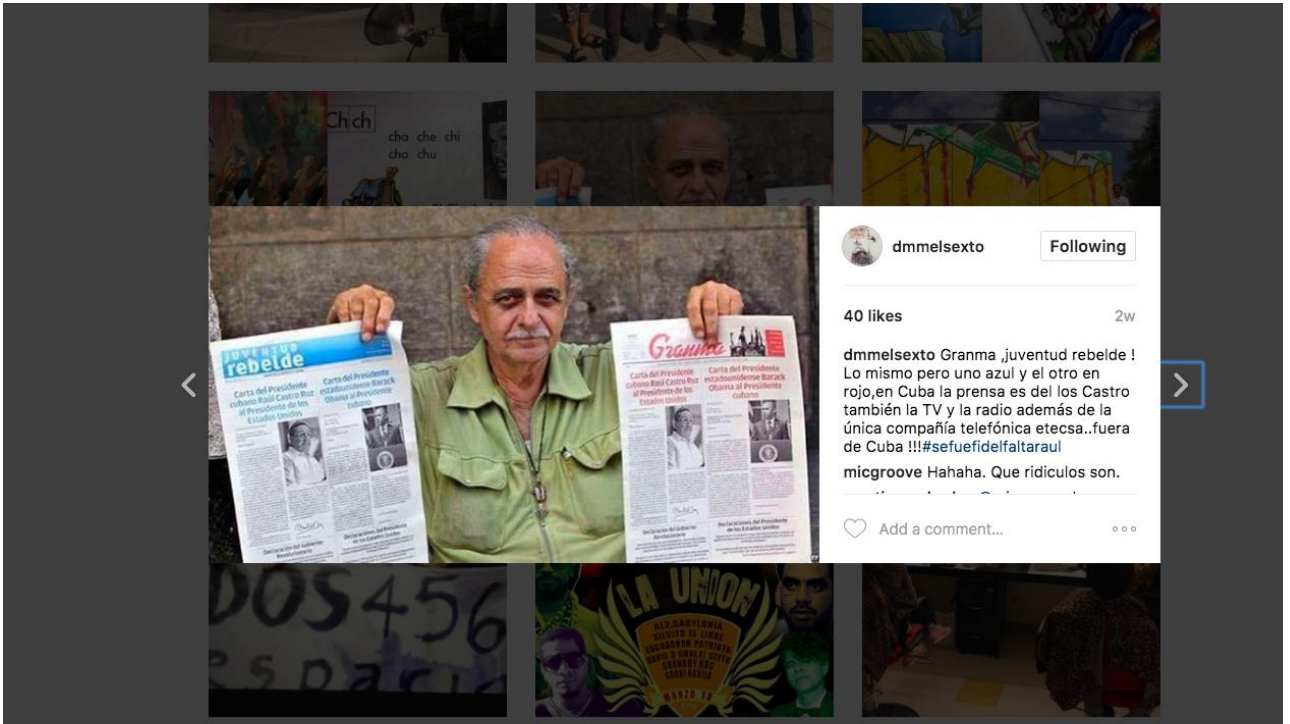
**Ileana Ravelo Jerlehagen** · 5:53 Así es Danilo, NO SE LO CREEN....Están despertado de un letargo y pesadilla  
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**Jorge Aucar** · 5:50 Eso es, exacto lo que ahí que hacer... todo tenemos que regresar a Cuba y luchar por la libertad.  
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micgroove Hahaha. Que ridiculos son.

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**A favor de los derechos humanos**

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# Laritzta Diversent: 'Quieren inhabilitarme como bogada y paralizar el trabajo de CUBALEX'

C | La Habana | 24 de Septiembre de 2016 - 19:34 CEST. | 21

Etiquetado en Cubalex Laritzta Diversent Represión



En la mañana del viernes, la sede del independiente Centro de Información Legal (CUBALEX) fue objeto de un violento operativo ejecutado por fuerzas represivas del régimen, donde se ocuparon equipos y dispositivos electrónicos, documentación, obligaron a desnudarse a varias de las activistas de la organización, y resultaron arrestados el abogado independiente Julio Alfredo Ferrer Tamayo y activista Dayán Alfredo Pérez Noriega.

En declaraciones a DIARIO DE CUBA, la directora del Centro, Laritzta Diversent, relató que "la orde de registro presentada por la fiscal al frente del operativo, Beatriz Peña de La Hoz, indicaba buscar objetos de procedencia ilícita".

"Apelando a mis derechos constitucionales, de acogerme a la inviolabilidad de domicilio, exigí que tenía que especificarse el objeto en la resolución del registro de entrada, como indica la ley de procedimiento penal. Que no abriría ninguna puerta de la propiedad hasta que no se cumplieran los requisitos legales para proceder con la orden de registro. Dijeron que regresarian con un cerrajero".

Horas más tarde las fuerzas del operativo, que incluyó a inspectores de la Oficina de la Administración Tributaria (ONAT) y representantes del ministerio de Justicia (MINJUS), regresaro y violentaron el portón de acceso vehicular de la sede.

"Ante la puerta de la casa les insistí en que si habían arreglado la orden de registro y dijeron que ello no necesitaban arreglar nada, a lo que respondí que entonces tendrían que romper también esta puerta; tardaron casi dos horas para forzar la cerradura", continuó.

El registro arbitrario e ilegal, como advirtió la abogada independiente, comenzó por las oficinas, requisando cada documento, los ordenadores —"del Centro y privados"—, impresoras, teléfonos personales de cada activista, dinero, y toda la documentación privada —"casi tres bolsas"— que incluyen la planificación estratégica de CUBALEX, y más de 120 expedientes de ciudadanos que

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## HRF to UN: Inquire into Arbitrary Detentions in Cuba; "El Sexto" should be released

December 15, 2016

NEW YORK — This Monday, Human Rights Foundation (HRF) submitted an individual complaint to the United Nations Working Group on Arbitrary Detention (WGAD), requesting that they initiate proceedings to investigate the arbitrary arrest and ongoing detention of Danilo Maldonado Machado, also known as El Sexto. The prominent Cuban artist and activist was beaten and taken from his home in Havana on November 26, the day after Fidel Castro's passing.



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February 9, 2017

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March 15, 2017



Cuba: Female Activists Beaten, Stripped Naked By State Agents  
March 14, 2017



INDIVIDUAL COMPLAINT

Request for allegation letter on the case of Danilo Maldonado Machado "El Sexto"

To the attention of: UN Working Group on Arbitrary Detention

New York, December 12, 2016



OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS PALAU DE LA VIOLETA, 1201 GENEVA 14, SWITZERLAND

REF: 2017/CERD/C...

13 de marzo de 2017

Estimados Sres. Carlos El-Hage y Celia Rok,

Tengo el agrado de dirigirme a ustedes en relación a su comunicación sobre la detención del señor Danilo Maldonado Machado en Cuba, remitida al Grupo de Trabajo a fines de ser considerada mediante su procedimiento regular.

El 10 de marzo de 2017 el Gobierno de Cuba trató su respuesta a nuestra comunicación sobre el caso, la cual se acompaña a esta carta para sus comentarios.

A fines de considerar esta comunicación durante su sesión No. 78, el Grupo de Trabajo agradecerá recibir sus comentarios y observaciones sobre la respuesta gubernamental a la brevedad posible, a más tardar el 27 de marzo de 2017, mediante correo electrónico (gral@ohchr.org) o fax (+41 22 917 90 06).

Por favor tener nota de que cualquier información que suministrare al Grupo de Trabajo permanecerá en confidencialidad durante esta etapa del proceso y será tratado con la mayor discreción.

Gracias de nuevo por su cooperación con el Grupo de Trabajo.

Saludos cordiales, Lucía Vierstra Secretaria

Grupo de Trabajo sobre la Detención Arbitraria

Address: Human Rights Foundation 350 Fifth Avenue, Suite 4202, New York, NY, 10118



Nota No. 102/2017

La Misión Permanente de Cuba ante la Oficina de las Naciones Unidas en Ginebra y los Organismos Internacionales con sede en Suiza, saluda



Es falso que se le haya prohibido tener contactos con su abogado. Ni Maldonado ni ninguno de sus familiares contrató los servicios de un letrado para su defensa, a pesar de las garantías para el ejercicio de ese derecho en el país.

Los abogados pueden visitar y/o entrevistar a sus clientes cada vez que lo estimen pertinente, con la debida privacidad y previa coordinación con la dirección del establecimiento o centro penitenciario y demás lugares de internamiento y la presentación del contrato de servicio jurídico correspondiente. En los órganos de instrucción tienen a su disposición una oficina con computadora y teléfono, para que puedan revisar las acciones de instrucción que obran en los expedientes de fase preparatoria.

También son falsas las alegaciones de que haya sido enviado a una celda de confinamiento solitario, que no haya recibido visitas o que haya permanecido desnudo y sin comida.

Mientras estuvo detenido recibió 8 visitas familiares y 2 conyugales de su pareja. Además, realizó llamadas telefónicas periódicamente. Su alimentación estuvo garantizada, como ocurre con todas las personas privadas de libertad en el país.

Cuba rechaza categóricamente las alegaciones de tratos crueles, inhumanos o degradantes.

La Revolución Cubana, de profundo contenido humanista y ético puso fin a esa política de Estado que tuvo su máxima expresión durante la tiranía de Fulgencio Batista hasta 1959. En su conducta, las autoridades cubanas ponen en práctica actuaciones con pleno respeto a la integridad física y moral de los individuos.

La legislación cubana prohíbe terminantemente someter a las personas privadas de libertad a cualquier clase de vejámenes, castigos corporales, tratos crueles e inhumanos o degradantes así como emplear, contra estas, medios ilícitos de coerción, o cualquier tipo de medida que pueda causar sufrimientos físicos o psíquicos, o que atenten contra la dignidad humana.

## Cuba and the Rule of Law

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INTERNATIONAL COMMISSION OF JURISTS  
GENEVA  
1962

# LOS DERECHOS FUNDAMENTALES Y EL ORDEN JURÍDICO E INSTITUCIONAL DE CUBA

RICARDO MANUEL ROJAS



Fundación  
Friedrich A. von Hayek



THE CASE OF OSWALDO PAYÁ

LEGAL REPORT  
New York, July 22, 2015



## Absence of Separation of Public Powers in Venezuela



## INCONSTITUCIONALIDAD DE LA DENUNCIA DE LA CONVENCIÓN AMERICANA SOBRE DERECHOS HUMANOS POR VENEZUELA

CARLOS AYALA CORAO<sup>1</sup>  
Profesor de Derecho Constitucional  
cayala@cjlegal.net

*SUMARIO: Introducción. I. La violación de la jerarquía y supremacía de la constitución (artículo 23, 333 y 339). 1. La violación del bloque de la constitucionalidad. 2. La violación de la supremacía constitucional. A. La violación expresa del artículo 339 de la Constitución. II. La violación del derecho de petición internacional consagrado en el artículo 31 de la Constitución. III. La violación del principio de la progresividad de los derechos humanos consagrado en el artículo 19 de la Constitución. IV. Conclusión y acciones.*

### INTRODUCCIÓN

Mediante la nota oficial diplomática identificada con el número 000125 emanada del Ministro del Poder Popular para las Relaciones Exteriores de la República Bolivariana de Venezuela, Nicolás Maduro Moros, de fecha 6 de septiembre de 2012 adoptada por órdenes e instrucciones directas del Presidente de la República Bolivariana de Venezuela, Hugo Chávez Frías, fue presentada el 10 de septiembre de 2012 ante la Secretaría General de la Organización de Estados Americanos ("OEA"), la denuncia de la Convención Americana sobre Derechos Humanos ("CADH").

De conformidad con la CADH, los Estados partes podrán denunciar este instrumento, mediante un preaviso de un año, notificando al Secretario General de la OEA, quien debe informar a las otras partes<sup>2</sup>; pero, en todo caso, la denuncia de CADH se someterá a la jurisdicción del Estado denunciado.

CRIME, POLITICS

## Columbia Law School Graduate Kidnapped In Venezuela

By DAVID LAT

Aug 31, 2016 at 12:17 PM

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On Monday, [Yon Goicoechea](#), a Venezuelan lawyer and political leader, was kidnapped in Caracas. We learned of this news through friends of Goicoechea from his time at Columbia Law School, where he earned an LLM degree in 2013.

Here's a report from [Cato at Liberty](#):



Yon Goicoechea (by Jkarteaga via Wikimedia)

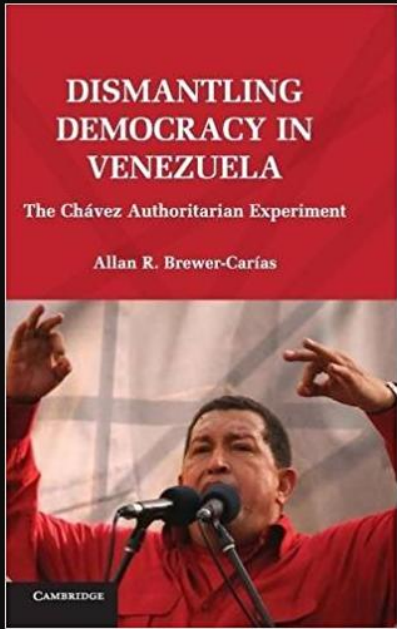
“Members of what was surely the Venezuelan regime's secret police yesterday kidnapped opposition leader and 2008 Milton Friedman Prize winner Yon Goicoechea from his car after he left his home.

Diosdado Cabello, the second most powerful person in the regime, publicly announced that the government had arrested Yon on the bogus claim that he was carrying explosives. In the video broadcast on national television, Cabello referred to the \$500,000 Friedman Prize award that Yon received as evidence that Yon was some sort of foreign-employed agent bent on terrorism. "That man was trained by

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Human Rights Foundation

**Report on the State of the Independence of  
the Judiciary in Venezuela**

Legal Report

New York  
September 26, 2012





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BOLIVIA

# Cámara de Diputados pide 10 años de cárcel para Gualberto Cusi

La comisión de Justicia Plural, de la Cámara de Diputados, lo acusa de resoluciones contrarias a la Constitución y las leyes, incumplimiento de deberes y prevaricato



## LO MAS



**BOLIVIA**  
Intempestivo viaje de Evo a Cuba por tema de salud

## BOLIVIA

Bolivia reclama a Francia por videojuego que lo presenta como país narco



**BOLIVIA**  
Bolivia pide ayuda a Brasil para levantar bloqueo



Opinion

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EDITORIAL

## The Worst Boyfriend in Bolivia



By THE EDITORIAL BOARD  
MAY 25, 2016

If [Bolivia's](#) widening political scandal were to be turned into a soap opera, a fitting title would be "Heartless Ex-Boyfriend." The protagonists: a Machiavellian statesman and a former paramour. The plot: She threatens to expose him as a monster, but he is determined to stay in power indefinitely, even if he has to jail, silence and discredit her and his critics.

For several months, Bolivians have been glued to the real-life drama starring President [Evo Morales](#) and his former girlfriend, Gabriela Zapata. In [late February](#), Mr. Morales lost a referendum vote that could have allowed him to run for a fourth term. Voters had become outraged by allegations that Ms. Zapata made a windfall from Chinese companies who hired her to secure state contracts worth hundreds of millions of dollars.

The first major plot twist came days after the vote. Having initially rejected any insinuation of influence peddling, Mr. Morales's government arrested Ms. Zapata and charged her with exactly that. Ms. Zapata soon decided she wasn't taking the fall alone.

In a series of jailhouse interviews, she cast herself as the sacrificial lamb of a government that had a lot to hide. For starters, she contradicted Mr. Morales's claim that a baby the two produced had died in infancy. The child, [Ms. Zapata](#) contended, is very much alive. "I am not going to remain silent," she told the





### Anulan título de abogado de León y su m...

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Eduardo León, exabogado de Gabriela Zapata, ayer, cuando iniciaba una huelga de hambre en las celdas judiciales en la ciudad de La Paz. | Wilson Aguilar

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# Ecuador's president wins libel lawsuit against newspaper

By the CNN Wire Staff  
 July 20, 2011 11:36 p.m. EDT



Ecuador's President Rafael Correa speaking to the press following the results of his judicial reform referendum on May 7.

### STORY HIGHLIGHTS

- **NEW:** The column's author says Correa misunderstood his meaning
- El Universo says the judge's ruling violates free speech rights
- "We have defended the right to honor," Correa's attorney says
- A judge rules that \$40 million

**Quito, Ecuador (CNN)** -- A judge in Ecuador ruled Wednesday that the directors and former opinion editor of El Universo newspaper must each serve three years in prison for an opinion article about President Rafael Correa, state media reported.

The judge also ruled that the accused must pay \$30 million, and the newspaper must pay \$10 million, to Correa, the state-run El Ciudadano government information website reported.

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## Ecuador court upholds \$40m Rafael Correa libel victory

16 February 2012 | Latin America & Caribbean

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Ecuador's highest court has upheld the verdict against El Universo newspaper for libelling President Rafael Correa.



The original ruling last year sentenced

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## **THE INTERNATIONAL OBSERVATORY FOR LAWYERS IN DANGER**

### **ONE purpose: Support threatened Lawyers all over the world.**

Launched on December 2015, the Observatory's goal is to defend threatened or obstructed lawyers and to denounce any infringement of the rights of the defence and the right to due process. Through close monitoring and thanks to all available means, the Observatory will endeavor to identify practicing lawyers who are victims of threats, pressure, torture or any other kind of abuse.

### **THREE main axis of action: Monitor, Assist and Train.**

The line of action of the Observatory is threefold:

- "Monitoring and advocacy" (alert letters, various notices and publications, group actions)
- "Emergency assistance" (support missions and material emergency assistance)
- "Training" (dissemination of teaching material and provision of training courses).

### **An open and inclusive structure.**

The Observatory aims to be a structure that allows any organization dedicated to the defense of the defense to share its expertise and resources to ensure the best possible support to lawyers in danger.

The statutes of the Observatory provide for several categories of members. "Founding Members" make the highest financial contribution and have wide decision-making powers. Besides, the Observatory intends to welcome any Bar Association or National Council that may be interested in participating in the project as "active member"; any association, union and international conference of lawyers as "associate member" and finally any local authority or any other structure wishing to support the Observatory by contributing its resources and skills to it as "partners".

### **The vocation of the International Observatory for Lawyers in Danger.**

The vocation of the Observatory is to position itself intelligently within the landscape of mechanisms which exist to protect lawyers – and human rights defenders in general – and supplement the existing frameworks while working in close collaboration with the established networks.

## Membership Application

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### Organization:

Bar association – National Council – Lawyers association – Lawyers union - NGO – other:  
.....

Name of the organization:

Name and capacity of the legal representative:

Address of the organization:

Number of adherents of your organization:

Web site of your organization:

Actions in the field of the defense of the defense or the protection of lawyers / defenders of human rights:

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### Membership demand :

As (choose a category) :

- Active member (annual subscription fee mandatory<sup>1</sup> and right to vote at the General Assembly)
  - Associate member (no subscription fee, presence at the General Assembly, but consultative vote only)
  - Partner (no subscription fee, presence at the General Assembly, but consultative vote only)
- 

### Contact information :

Identity and function of the contact from your organization :

Address :

Tel :

Email :

Langage :

---

<sup>1</sup> - 10.000 euros for the Bar associations of more than 10.000 lawyers  
- 5.000 euros for the Bar associations counting between 5000 and 10.000 lawyers  
- 2.500 euros for the Bar associations counting between 2500 and 5000 lawyers  
- 1.500 euros for the Bar associations counting between 1000 and 2000 lawyers  
- 1.000 euros for the Bar associations counting between 500 and 1000 lawyers  
- 500 euros for the Bar associations counting less than 500 lawyers

## STATUTS

### OBSERVATOIRE INTERNATIONAL DES AVOCATS EN DANGER

#### Préambule :

Les signataires des présents statuts ont décidé de créer ensemble la présente association régie par la loi du 1<sup>er</sup> juillet 1901, les textes en vigueur l'ayant complétée ou modifiée, et les présents statuts afin de servir de cadre à la protection de la défense en danger partout dans le monde et la dénonciation de situations attentatoires aux droits de la défense et à l'avocat.

#### ARTICLE 1 : NOM ET LOGO

L'association aura pour nom l'Observatoire International des Avocats en Danger (ci-après dénommé l'«Observatoire») et pour acronyme OIAD.

#### ARTICLE 2 : SIEGE

Le siège est fixé à Paris. Il peut être transféré en tout autre endroit par simple décision du bureau.

#### ARTICLE 3 : DUREE

L'association est constituée pour une durée illimitée.

#### Article 4 : OBJET

4.1. L'Observatoire a pour objet d'assister les avocats menacés et de dénoncer les situations attentatoires aux droits de la défense. A cet effet, l'Observatoire recensera par une veille attentive et par tout moyen les avocats victimes de menaces, pressions, tortures ou toute autre atteinte.

4.2. Dans le cadre de son objet, l'Observatoire peut intervenir au soutien d'avocats menacés, notamment par :

- la rédaction d'alertes ;
- la publication de rapports, de recommandations, d'articles ou de tout autre document ;
- la mobilisation de l'opinion publique

- la mise en place de missions de soutien, d'enquête, de défense et d'observation sur le terrain ;
- l'attribution d'une aide matérielle directe.

4.3. L'Observatoire a également pour objet de dispenser des formations aux avocats par :

- la réalisation et diffusion de ressources pédagogiques et juridiques ;
- la formation de formateurs et formations d'avocats à la défense de la défense

## ARTICLE 5 : MOYENS D'ACTION

Pour contribuer à la réalisation de son objet, l'Observatoire peut notamment :

- Organiser des manifestations, congrès ou conférences ;
- Diffuser les informations récoltées auprès notamment de ses membres et partenaires ainsi que de l'opinion publique, par tout support approprié : site internet, publications diverses, contributions aux sites des membres, presse ;
- Organiser des manifestations en liaison notamment avec ses membres et partenaires ;
- Mobiliser les ressources de ses membres et partenaires ;
- Publier sur des bulletins, revues, newsletter ou tout autre support ses rapports, recommandations et communications.

## ARTICLE 6 : MEMBRES

5.1. Les membres sont toutes les personnes, physiques ou morales, qui participent à l'association.

Il existe plusieurs catégories de membres :

- Les **membres fondateurs** (« **membres fondateurs** ») qui participent à la constitution de l'association. Les membres fondateurs ont droit de vote lors des assemblées générales.

**actifs** (« **membres actifs** ») sont les barreaux et les conseils nationaux qui adhèrent aux présents statuts et qui s'acquittent d'une cotisation et d'un droit d'entrée. Les membres actifs ont droit de vote lors des assemblées générales. Ils peuvent être conviés aux réunions du bureau.

- **Les membres associés** (« **membres associés** ») sont les associations, syndicats et conférences internationales d'avocats qui adhèrent aux présents statuts.
- Les **partenaires** (« **partenaires** ») sont les représentants de collectivités et de structures partenaires qui soutiennent l'Observatoire et participent à certaines activités. La qualité de partenaire est attribuée par le bureau et portée à la connaissance de tous les membres. Les partenaires sont invités à assister à toutes les assemblées générales mais n'ont pas de droit de vote et sont dispensés de cotisation et de droit d'entrée.

## ARTICLE 7 : ADHESION

7.1. L'adhésion est ouverte à toutes les organisations professionnelles d'avocats partageant les objectifs et valeurs de l'Observatoire (barreaux, conseils nationaux, associations, syndicats, conférences).

7.2. Toute organisation qui souscrit à l'objectif général de défense de la défense et qui souhaite adhérer à l'Observatoire doit adresser une demande écrite à la présidence accompagnée d'une présentation des modalités de son implication dans la défense de la défense. En tout état de cause, le bureau se réserve le droit de refuser ou d'annuler toute admission selon les conditions fixées dans le règlement intérieur.

7.3. Les demandes d'adhésion sont examinées par le bureau qui fixera chaque année les différents montants de cotisation ainsi que le ou les montants du droit d'entrée. Ces dernières figureront dans le règlement intérieur, de même que les modalités de paiement.

7.4. L'Observatoire pourra conclure des accords de partenariat avec d'autres organisations de défense des droits de l'homme en général, et de la défense en particulier.

## ARTICLE 8 : RESPONSABILITÉ

Aucun membre de l'association n'est personnellement responsable des engagements contractés par elle. Réciproquement, l'association n'est pas responsable d'engagements pris par un de ses membres qui n'aurait pas été expressément mandaté par le bureau.

## ARTICLE 9 : PERTE DE LA QUALITE DE MEMBRE

La qualité de membre se perd par :



- La démission par notification par lettre simple de sa décision auprès du bureau ;
- La radiation prononcée par le bureau en cas de manquement grave aux présents statuts et/ou au règlement intérieur ou tout motif grave précisé dans le règlement intérieur ;
- Le non-paiement de la cotisation selon les modalités établies dans le règlement intérieur.

## ARTICLE 10 : BUREAU ET PRESIDENCE

10.1. L'association est administrée par un bureau. Le bureau est chargé de mettre en œuvre la stratégie de l'Observatoire. Il exerce également le suivi permanent de la gestion, de la gouvernance et de toutes les questions concernant l'Observatoire. Ces tâches peuvent être déléguées, par décision du bureau, à un ou plusieurs membres.

10.2. Chaque organisation désigne nommément un représentant, pouvant lui-même désigner un délégué, qui représentera son organisation lors des réunions du bureau. Cette désignation sera portée à la connaissance du président par lettre simple.

10.3. Le bureau peut comprendre jusqu'à 6 membres, parmi lesquels un représentant de chacun des 4 membres fondateurs ainsi que deux représentants élus par le collège des membres actifs pour un mandat de 2 ans. Les décisions sont prises à la majorité simple des voix des membres présents ou représentés. Aucun membre ne peut disposer de plus de deux pouvoirs de représentation.

10.4. La présidence est assurée pour un an à tour de rôle par chacun des représentants des membres fondateurs. La présidence est chargée d'élaborer une feuille de route qui guide la rédaction de la stratégie annuelle. Le bureau est également composé de trois vice-présidents d'un secrétaire général et d'un trésorier.

10.5. Le bureau se réunit au moins trois fois par an physiquement ou par tout moyen de télécommunication, et peut être convoqué par le président ou à la demande des deux tiers de ses membres (demande adressée par courrier recommandé ou par courriel à la présidence).

10.6. Un compte-rendu de chaque réunion du bureau est établi par le secrétaire général et transmis aux membres du Bureau. Ce compte-rendu est considéré comme adopté par le Bureau en l'absence de demande de modification de la part de ses membres dans un délai de 15 jours après transmission par le secrétaire général. Ce compte-rendu engage les organisations pour la suite des actions de l'Observatoire.

10.7. Le président représente l'association dans tous les actes de la vie civile. Les membres du Bureau peuvent également représenter publiquement l'Observatoire, sur autorisation expresse du Bureau.



10.8. Le bureau se réserve

la possibilité de créer un comité de pilotage, lorsque de nouveaux membres auront été admis. Les pouvoirs de ce comité et sa composition seront alors déterminés par le bureau. Le bureau et/ou le comité de pilotage pourront également créer des groupes de travail et comités ad hoc selon que de besoin.

10.9. Les membres du bureau ne peuvent recevoir aucune rétribution à raison des fonctions qui leur sont confiées. Ils peuvent en revanche être remboursés des frais occasionnés pour l'exercice de leurs missions sur présentation des justificatifs.

10.10. Les différents montants de cotisation ainsi que le ou les montants du droit d'entrée sont fixés annuellement par le bureau. Ils figurent dans le règlement intérieur, de même que les modalités de paiement. Les membres et partenaires sont encouragés à faire des contributions volontaires.

10.11. Le budget annuel est suivi par le trésorier du bureau. Il soumet des rapports semestriels aux autres membres du bureau.

10.12. Chaque année, le bureau soumet un rapport financier et un budget prévisionnel à l'assemblée générale. Par ailleurs, un état des dépenses engagées et des sommes disponibles est effectué lors de chaque réunion.

## **ARTICLE 11 : PRESIDENCE D'HONNEUR**

Le bureau désigne un président d'honneur. Le premier président d'honneur est Monsieur Robert Badinter.

Le bureau peut choisir de désigner un co-président d'honneur pour un mandat d'un an afin d'apporter son soutien à un avocat engagé dans une région du monde où l'exercice de la défense l'expose à des menaces. La première co-présidente d'honneur est Madame Fatimata Mbaye, avocate du barreau de Mauritanie.

## **ARTICLE 12 : ASSEMBLÉE GÉNÉRALE**

12.1. L'assemblée générale comprend tous les membres de l'association ayant acquitté leur cotisation de l'année en cours, ainsi que les membres fondateurs et les partenaires. Chaque membre fondateur et membre actif dispose d'une voix. Les membres associés et partenaires n'ont qu'une voix consultative.

12.2. L'assemblée générale se réunira chaque année sur convocation du bureau. Quinze jours au moins avant la date fixée par le bureau, les membres seront convoqués et recevront l'ordre du jour fixé par le bureau. Pour toutes les assemblées, les convocations seront envoyées par

preuve d'un accusé de réception (lettre recommandée ou remise en mains propres, courriel, télécopie).

12.3. Tout membre a le droit de se faire représenter par un autre membre en remettant à ce dernier un mandat écrit. Chaque membre présent ne peut disposer que de deux (2) mandats au plus.

12.4. Les membres émargent à leur entrée en séance la feuille de présence, en leur nom personnel ou en qualité de mandataire.

12.5. Le président assisté des membres du bureau présidera l'assemblée générale. Le secrétariat est assuré par le secrétaire ou par une autre personne choisie par l'assemblée.

12.6. L'assemblée générale est l'organe souverain de l'association.

Elle est seule compétente pour statuer sur les comptes de l'association, approuver le rapport moral et le rapport financier.

Elle statue par ailleurs sur toutes les questions qui lui sont soumises par le bureau.

Le président donne lecture du rapport moral. Le trésorier donne lecture du rapport financier. Ces rapports doivent être approuvés par l'assemblée générale.

12.7. L'assemblée ne peut valablement délibérer qu'à condition que la moitié des membres ayant le droit de vote soit présente ou représentée. Si, lors de la première convocation, l'assemblée n'a pas réuni ce quorum, une seconde assemblée peut être convoquée, et délibère valablement quel que soit le nombre de ses membres présents ou représentés.

Les décisions de l'assemblée générale sont prises à la majorité simple des voix dont disposent comme titulaire ou comme mandataire les membres présents.

12.7 Il est tenu procès-verbal des séances. Les procès-verbaux sont signés par le président et le secrétaire général.

## **ARTICLE 13 : RESSOURCES**

13.1. Les ressources de l'Observatoire sont constituées :

- Des droits d'entrées et des cotisations de ses membres ;
- Des subventions qu'il reçoit des Etats, des établissements publics, des collectivités locales ou de tout autre organisme ou institution national ou international ;
- Des dons des particuliers ou des personnes morales de droit privé ;

- Les sommes perçues en contrepartie des prestations fournies par l'association.
- De toutes autres ressources autorisées par la loi.

#### **ARTICLE 14 : REGLEMENT INTERIEUR**

Un règlement intérieur est établi par le bureau. Il fixe les divers points non prévus par les statuts qui ont trait au fonctionnement interne de l'association, entre autres :

- a) le montant des droits d'entrée et de la cotisation.
- b) la méthode de recherche et suivi des cas.
- c) les termes de référence des groupes de travail et comités de l'Observatoire.
- d) la coordination de la communication interne et externe.
- e) la coordination des aspects logistiques.
- f) les motifs de radiation ou d'exclusion ainsi que les règles procédurales s'y rapportant.

#### **ARTICLE 15 - COMPTABILITE**

Il est tenu une comptabilité des recettes, dépenses et charges de l'association, permettant de connaître à tout moment sa situation active et passive.

L'exercice social court du 1er janvier au 31 décembre de chaque année. Le premier exercice commencera à courir à la date de signature des présents statuts et se terminera le 31 décembre 2016.

#### **ARTICLE 16 : MODIFICATION DES STATUTS**

L'assemblée générale, sur proposition du bureau, peut modifier les statuts à la majorité des trois quarts des membres présents ou représentés.

L'ordre du jour de la réunion doit expressément prévoir la modification des statuts. Les propositions de modification doivent être adressées aux membres en annexe de la convocation à la réunion de l'assemblée générale, au moins 15 jours avant la date de l'assemblée générale.

#### **ARTICLE 17 : DISSOLUTION**

L'assemblée générale, convoquée à cette fin, peut prononcer la dissolution de l'Observatoire à la majorité des deux tiers des membres présents ou représentés.

Elle nomme, pour assurer

les opérations de liquidation, un ou plusieurs liquidateurs.

L'assemblée générale statue sur la dévolution du patrimoine de l'association sans pouvoir attribuer aux membres de l'association autre que leur apport avec droit de reprise

Il désigne le ou les organismes sans but lucratif qui recouvrent le boni de liquidation, s'il y a lieu, après paiement de toutes dettes et de toutes charges de l'association et des frais de liquidation.