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Committee on the Rights of the Child
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**Special Rapporteur on the Independence of Judges and Lawyers**

**About Us**

Enhancing Children’s Lives (ECL) is a civil society organization that is focused on protecting the constitutional rights of children and advocating for the rights of juveniles. The organization was established in 2013 and it is organized to be a humanitarian unit that ignites the lives of children on a global level. Under our advocacy branch, our organization also focuses on promoting and protecting the independence of the legal profession through the support and empowerment of lawyers. Our goal is to protect lawyers from undue interferences that lawyers may face in the free and independent exercise of the legal profession. Our presiding officer is Ms. Axana Soltan, a Human-Rights Advocate, Humanitarian, and a Foreign Policy Analyst based in Washington D.C. She has received her Doctor of Lawyer (J.D.) from the University of District of Columbia School of Law.

**QUESTIONNAIRE FOR CIVIL SOCIETY AND BAR ASSOCIATIONS:**

The purpose of this submission is to provide responses to the questionnaire on the Special Rapporteur’s forthcoming report to the Human Rights Council (2022), which focuses on protection of lawyers from undue interferences lawyers may face in the free and independent exercise of the legal profession. Please find our responses to the questionnaire below:

1. Taking into consideration the guarantees for the functioning of lawyers, contained in principles 16-22 of the Basic Principles on the Role of Lawyers, please describe the constitutional, legal, administrative and policy measures adopted in your country to enable lawyers to exercise their professional activities in favour of their clients in a free and independent manner

In the United States, lawyers may exercise their professional activities in favour of their clients in a free and independent manner. There are constitutional, legal, administrative and policy measures adopted in America that enables lawyers to exercise their right in a free and independent manner. Lawyers have a judicial independence that ensures they are able to carry out their duties in a free and secure environment, where they are able to ensure access to justice and provide their clients with intelligent, impartial and objective advice. An impartial and independent judiciary is more likely to be tolerant and responsive to criticism, which means that lawyers are able to freely criticize the judiciary, without fear of retaliation, whether in the form of prosecution by the government or unfavorable judicial

decisions. An independent judiciary also acts as a check on the independence of lawyers, and vice versa. Thus, the relationship between judicial independence and the independence of lawyers is one of mutual reliance and co-dependence.

1. What entities and/or mechanisms are in place to prevent and/or punish interferences with the free and independent exercise of the legal profession? Please briefly describe them and specify whether they are independent bodies or if they belong to the administrative structure of the State.

In the United States, there are many mechanisms in place to punish interferences with the free and independent exercise of the legal profession. For example, the American Bar Association mission is to be a the national representative of the legal profession, serving the public and the profession by promoting justice, professional excellence, and respect for the law. ABA interferes when there are any issues with the free and independent exercise of the legal profession because it is committed to doing what only a national association of attorneys can do: serving our members, improving the legal profession, eliminating bias and enhancing diversity, and advancing the rule of law throughout the United States and around the world. There are independent bodies and agencies like Lawyers’ Committee for Civil Rights Under Law, which strives to secure equal justice for all through the rule of law. The Lawyers’ Committee is a nonpartisan, nonprofit organization, formed in 1963 at the request of President John F. Kennedy to enlist the private bar’s leadership and resources in combating racial discrimination and the resulting inequality of opportunity – work that continues to be vital today. The Lawyers’ Committee for Civil Rights Under Law is dedicated to supporting and advancing diversity within its workforce and board. Because our commitment to diversity and inclusion is inextricably linked to our pursuit of equal justice for all, we strive to work with a broad and diverse coalition of partner organizations.

1. Please indicate if there are any legislative, administrative, or institutional barriers that have hindered the work of lawyers and the exercise of the legal profession in your country, and describe them.

There are legislative, administrative, and institutional barriers that have hindered the work of lawyers and the exercise of the legal profession in the United States. There are especially institutional barriers that have hindered the creation of a fully equitable and inclusive workplace for lawyers. Diversity, equity and inclusion are fundamental to success of lawyers and unfortunately that are institutional barriers in this arena. There are inadequate treatment of culture and bias in the legal profession and, specifically, in legal education and in the code of ethics for lawyers. There needs to be greater acknowledgement of implicit bias as well as the introduction of the concept of "cultural humility" into legal education and into the Rules of Professional Conduct that govern lawyers. Cultural humility emphasizes self-reflection and treats each person as an expert on his or her own cultural experience. It builds on models of cross-cultural communication already in existence and can help lawyers respect the cultural backgrounds of their clients, communicate with them more successfully, and tell their stories to decision-makers and negotiation partners with greater fidelity to the client's lived experience

1. Please describe the role of the national bar association(s) in protecting lawyers and the free exercise of the legal profession. Is the bar association de jure and de facto independent from the State?

The national bar association has a role in protecting lawyers and the free exercise of the legal profession. The Preamble to the Basic Principles and the IBA Standards highlight that professional associations of lawyers have a ‘vital role to play in protecting their members from persecution and improper restrictions and infringements’. This was reaffirmed by the Human Rights Council.201 Principle 25 of the Basic Principles further provides that those associations ‘shall cooperate with Governments to ensure that [...] lawyers are able, without improper interference, to counsel and assist their clients in accordance with the law and recognized professional standards and ethics’. Paragraph 18 of the IBA Standards and Article 4 of CoE Recommendation No R(2000)21 provide that lawyers’ associations shall ‘defend the role of lawyers in society’ and ‘promote the welfare of members of the profession and assist them or their families if circumstances so require’. Competences of bar associations range from direct regulation of the legal profession to no regulatory power and strictly representative functions.202 Between these two extremes, a wide variety of models exist. Roughly one in every five countries has a bar association that holds some or all regulatory power over the legal profession. While lawyer’s protection is a common priority across all bar associations, it is a fortiori so when the bar holds regulatory functions. In that case a bar association serves as direct guarantor of the independence of the legal profession through the supervision or monitoring of admission to the legal industry, adoption of ethical standards and application of disciplinary processes for the legal profession.

1. Please provide detailed information on the number of lawyers that have been subject to criminal, administrative or disciplinary proceedings in the last five years for alleged violations of standards of professional conduct. How many of them were found guilty? How many of them were ultimately disbarred?

In the United States, there is not a precise count on number of lawyers that have been subject to criminal, administrative or disciplinary proceedings in the last five years for alleged violations of standards of professional conduct. Some jurisdictions dismiss up to ninety percent of all complaints. Most are dismissed because the conduct alleged does not violate the rules of professional conduct. The Commission has gathered much information about these dismissed complaints. It convinces us that many of them do state legitimate grounds for client dissatisfaction. The disciplinary system does not address these tens of thousands of complaints annually. The public is left with no practical remedy. While some states have created fee arbitration and other programs, additional avenues should be created in all states to resolve these complaints. When accumulating how many of them were found guilty or how many were disbarred is difficult. The disciplinary process also does nothing to improve the inadequate legal or office management skills that cause many of these complaints. Many state bar associations have mandatory continuing legal education, substance abuse counseling, and other programs. However, these programs usually are not coordinated with the disciplinary process. Lawyers with substandard skills often need more help than these programs can provide. The judiciary and profession should create new programs and coordinate all such programs with the disciplinary system.

1. Please provide information on any case where lawyers in your country have been subject to intimidation, hindrance, harassment or improper interference, whether from State authorities or non-State actors, for action taken in accordance with their recognized professional duties. Please also describe the measures that State authorities have taken to investigate and bring perpetrators to justice.

In the United States, there are many cases where lawyers have been subject to intimidation, hindrance, harassment or improper interference. For example, the lawyers anonymously shared their experiences of such harassment at work as part of *Legal Week’s* job satisfaction survey of about 250 lawyers. In total, 55 examples of sexual harassment at law firms were given. Several lawyers said they had heard stories of – or had been subject to – inappropriate behaviour by both male and female lawyers, often more senior than them, at work events. Others spoke of lewd comments made by colleagues and even clients that frequently went unchallenged. One female lawyer who qualified in the last six to 10 years said: “A senior lawyer took an attractive female junior lawyer to meet a client after work. The senior lawyer got a bit drunk and said to the client about the female junior lawyer: ‘Would you f\*\*\* her? I would, wouldn’t you?’ Fortunately the incident was reported and the senior lawyer left the firm… but probably only because he was underperforming.”

Despite the challenges, there were no the measures that State authorities have taken to investigate and bring perpetrators to justice.

1. What activities does your organization carry out to promote the independence of the legal profession? Do you co-ordinate with other organizations with similar functions in other countries or regions? Are you part of a network for this purpose? Please give examples.

Enhancing Children’s Lives Organization (ECLO) conducts activities to promote the independence of the legal profession. Our organization co-ordinate with other organizations with similar functions in other countries or regions. We are inspired with the work of Lawyers4lawyer, which promotes and protect the independence of the legal profession through the support and empowerment of lawyers who face reprisals, interferences and restrictions because of their work. In doing so, they refer to internationally recognized human rights laws and standards, including the UN Basic Principles on the Role of Lawyers. Similarly, our goal is to strive for a world where lawyers can practice law independently to effectively fulfil their role in upholding the rule of law and the protection of human rights. Likewise, lawyers should be able to do their job without improper interference or any fear of reprisal. Always and everywhere. Also, when that does not suit the government, the bar association or the establishment. We are striving to promote and protect the independence of lawyers.

1. To what extent has, the legislation and/or measures adopted in your country because of the Covid-19 pandemic, affected the exercise of the independence of the legal profession or security of lawyers. Please explain.

COVID-19 has changed the way lawyers work—perhaps permanently—but it didn’t affect everyone equally, according to the 2021 ABA Profile of the Legal Profession. The ABA released its annual snapshot of the legal profession last month. The profile explores trends in 11 subject areas — including demographics, law schools, the judiciary, technology, and the pandemic. The report is based on a survey of more than 4,000 ABA members last fall and a follow-up survey of nearly 1,400 senior lawyers in March. COVID’s impact on the profession. While a majority of all lawyers (51%) felt it was hard to separate work and home during the pandemic, women (63%) and lawyers of color (62%) were more likely to struggle in this regard. Almost half of lawyers felt disengaged from their employer during the pandemic and overwhelmed by all they had to do. Again, this was especially true for women and lawyers of color.

The pandemic also had a significant impact on senior attorneys (62 and older): One-third (33%) said the pandemic changed their retirement plans. Of those lawyers, 53% said COVID-19 delayed their retirement and the other 47% said it hastened their retirement.

1. Please describe the measures and policies you would suggest to better protect and guarantee the free exercise of the legal profession.

To better protect and guarantee the free exercise of the legal profession, we recommend focusing on transparency. Transparency is a fundamental characteristic of modern democracies. It helps ensure the citizens’ control of and participation in public matters. In practice, transparency should include the ability of citizens to request access to public information and the state’s duty to generate information and make it broadly accessible to citizens. Empowering citizens to hold States accountable to these obligations is another crucial pillar of transparency. Transparency is particularly important in judicial institutions because it promotes accountability, combats corruption, and helps eliminate arbitrariness. In this way it facilitates greater judicial independence and enhances public confidence. The open operation of justice systems creates an increased flow of information from the judiciary to society, enabling the public to learn about its performance and rulings. A policy of transparency and access to public information fundamentally enhances the level of trust and the legitimacy of judges and others operating in the justice system by providing information that enables society to understand its operation, challenges, and limitations. Transparency fundamentally reassures society that justice is served.

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