Date: December 6, 2021

Tevet 2, 5782

To: Mr. Diego Garcúa-Sayan,

Special Rapporteur on the independence of judges and lawyers

Subject: **The State of Israel's Submission to the report on protection of lawyers in the free and independent exercise of the legal profession**

The State of Israel respectfully submits its contribution in relation to the above-mentioned questionnaire.

1. **Legal framework that allows the exercise of legal professional activities free and independently***.*

***Basic Law: Freedom of Occupation*** wasenacted in 1992, in order to protect the country's main human rights. This law, together with *Basic Law: Human liberty and Dignity*, marked a substantial change in the status of human rights in Israel.

According to this Basic Law, where a license is required to engage in an occupation, the right to a license shall not be denied except by virtue of a law and for reasons of state security, public policy, public order and health, safety, environment or public morals.

The *Israel Bar Association Law* 5721-1961

Section 90 to the *Israel Bar Association Law* - entitled "Professional Secret" determines that: "Things and documents exchanged between a client and an attorney and have a material connection to the professional service provided by the attorney to the client, the attorney will not disclose them in any legal proceeding, investigation or search, unless the client waives their immunity."

In addition, two (2) additional ethical rules supplement this section: "Confidentiality - A lawyer shall keep confidential anything brought to his knowledge by a client or on his behalf, while fulfilling his duties, unless the client has expressly agreed otherwise; this provision does not apply to disclosure in legal proceedings, investigation or non-confidential search under section 90 of the law".

As well as the "Duty of confidentiality in the hands of employees", according to which, "a lawyer shall inform the employees in his/her service on their duty to maintain the confidentiality of the matters that come to their knowledge during their work."

Lawyer-client confidentiality is further regulated by Section 48 to the *Evidence Ordinance*, which provides: (A) Things and documents exchanged between a lawyer and his/her client or with another person on behalf of the client and have a material connection to the professional service provided by the lawyer to the client, the lawyer is not required to provide them as evidence, unless the client waives confidentiality…".

Section 235A of the *Income Tax Ordinance* provides that "professional secret" is an exchange between a client and a lawyer that has a material connection to the professional service provided by the lawyer to the client, whether said orally or in writing, including lists made by the lawyer for his/her own use, provided that they have a material connection to the said professional service.

1. **Mechanisms to prevent and or punish interferences with the free and independent exercise of the legal profession.**

Any attorney who is threatened, blackmailed of otherwise interfered while exercising his legal duties may file a complaint with the Police, who will investigate the complaint (the relevant offences are set by the *Penal Law* 5737-1977).

Serving an indictment against an attorney - When serving an indictment against an attorney, provided that the indictment is related to the relations of the attorney or of his client with the Police, State Attorney's Office or with another investigative, or prosecution authority, that took place in the frame of fulfilling his/her duty as an attorney - such an indictment requires the approval of the Attorney General (Attorney General Guidance No. 4.1004).

1. **The role of the Israeli Bar Association**

The Israel Bar Association was established in 1961, pursuant to the *Bar Association Law* 5721-1961, as an autonomous statutory entity in order to incorporate the lawyers in Israel and to assure the standard and integrity of the legal profession. The Bureau is a corporation and is subject to audit by the State Comptroller.

Among the main reasons for the enactment of the *Israel Bar Association Law* is the recognition of the importance of the legal profession in a democratic state, in which the lawyer is required to represent and protect civil rights before the authorities and voice his/her opinion on public issues.

The duties of the Association are:

* Register, supervise and examine interns in the legal profession;
* Authorize new attorneys;
* Exercise disciplinary jurisdiction for attorneys and interns;
* Provide legal aid to those who are not entitled to it from the state by law;
* To maintain a register of foreign lawyers who provide legal services in Israel, regarding foreign law.

The association is also authorized, *inter alia, to:*

* Provide its opinion on bills in matters of courts and jurisdiction;
* Serve as an arbitrator and appoint arbitrators;
* Act in defense of the professional interests of the members of the Association;

1. **The effect of measures adopted in Israel due to the Covid-19 pandemic on the free and independent exercise of the legal profession**

Throughout the COVID-19 pandemic, which broke out in Israel in February 2020, Israeli Courts and Tribunals remained open and continued to conduct hearings; the Courts were not shut down or closed, rather they functioned pursuant to the relevant health regulations.

On 20 March 2020, the Israeli Judicial Authority notified the public that: "The Judicial Authority continues to function and to provide essential services to the public in all Courts and Tribunals in the State, and ensures that essential services will continue to be provided to fulfil the right of access to justice. Provided the circumstances and the need to protect public health and the health of judges and employees, the Authority will function in a limited format, whilst adhering to Ministry of Health Guidelines."[[1]](#footnote-1)

On 21 March 2020, the President of the Supreme Court, Chief Justice Esther Hayut, announced: "[…] Courts and Tribunals are continuing to function throughout the country as an essential service, and to address the needs of the public.

The Courts and Tribunals were not shut down or closed, owing to awareness and commitment to the importance of the right of access to justice, not only in times of stability, but rather also, and especially with regards to, certain issues – in the current unprecedented days. This is, of course, under the limitations and constraints derived from the situation, pursuant to Ministry of Health Guidelines, and according to the matters listed in the regulations regarding the special emergency situation".[[2]](#footnote-2)

Use of digital means during the Covid-19 pandemic - During the first month after the outbreak of the pandemic, the Courts conducted certain proceedings through digital means, in cooperation with the Israeli Prisons Service and after consultation with the Public Defender's Office. Since March 22, 2020, proceedings regarding detention in the Central and Southern District Courts, as well as the Supreme Court, were conducted via video conferences. Note that those held in detention for the purpose of investigation (often very short detention periods) were physically brought to the Court to extend their detention, in order for the judge to meet them personally. The use of technology in Courts was since broadened and anchored in legislation and regulations. The technological means were found effective; following the cancellation of the health regulations, several prisoners expressed requests to continue participating in their trials via video conferences.

In the initial weeks of the COVID-19 pandemic in Israel, due to the limited format by which the Courts functioned, the Court Administration published a message detailing the proceedings that would continue to be conducted.[[3]](#footnote-3) The list included proceedings found to be urgent by the Emergency Regulations or by the Court Administrator; the list was made available in both public records and on the website of the Judicial Authority.

1. Israeli Judicial Authority Court Administration, Spokesperson's Message (Hebrew), <https://www.gov.il/he/departments/news/spokemenmessage20032020>. [↑](#footnote-ref-1)
2. See: The Israeli Judicial Authority, Spokesperson's Message (Hebrew), <https://www.gov.il/he/departments/news/spokemenmessage21032020>. [↑](#footnote-ref-2)
3. The Israeli Judicial Authority Court Administration, Message to the Public Regarding the Proceedings to be Heard During the Coronavirus Situation (Hebrew) <https://www.gov.il/BlobFolder/news/spokemanmessage24032020/he/%D7%94%D7%95%D7%93%D7%A2%D7%AA%20%D7%9E%D7%A0%D7%94%D7%9C%20%D7%91%D7%AA%D7%99%20%D7%94%D7%9E%D7%A9%D7%A4%D7%98%20%D7%9E%D7%99%D7%95%D7%9D%2024.3.2020.pdf>; the Israeli Judicial Authority, Urgent Proceedings in Courts During The Coronavirus Situation (Hebrew), <https://www.gov.il/BlobFolder/generalpage/the_judicial_authority_courts_2932020/he/%D7%94%D7%94%D7%9C%D7%99%D7%9B%D7%99%D7%9D%20%D7%94%D7%93%D7%97%D7%95%D7%A4%D7%99%D7%9D%20%D7%94%D7%A0%D7%93%D7%95%D7%A0%D7%99%D7%9D%20%D7%91%D7%91%D7%AA%D7%99%20%D7%94%D7%9E%D7%A9%D7%A4%D7%98%20%D7%91%D7%9E%D7%A6%D7%91%20%D7%94%D7%97%D7%99%D7%A8%D7%95%D7%9D.pdf>. [↑](#footnote-ref-3)