

Submission to the Special Rapporteur on the Independence of Judges and Lawyers Regarding the Protection of Lawyers from Undue Interferences

The Syrian Initiative to Combat Sexual and Gender-based Violence (Initiative) is a locally driven project supported by and hosted at American University Washington College of Law. It aims to challenge the misconceptions and societal stigma that silence people who have experienced sexual and gender-based violence (SGBV) and exacerbate their suffering. It envisions a Syrian society in which people affected by SGBV are supported and able to speak out without fear of reprisal. To this end, the Initiative has built a coalition of SGBV service providers, Syrian and international legal experts, lawyers and civil society activists working towards enhancing access to justice for people affected by SGBV. This report was prepared by the Initiative's Strategic Litigation Team, a group of Syrian lawyers and human rights activists who engage with domestic and international human rights mechanisms to keep the harm suffered by the affected people in the consciousness of the international community, and raise awareness of legal issues that have emerged during the conflict.

The Initiative is pleased to submit this report on the protection of lawyers from undue interference in the free and independent exercise of their profession to the Special Rapporteur on the Independence of Judges and Lawyers. The Initiative's Strategic Litigation Team studied local legal provisions, particularly the Syrian Constitution, Law No. 30 of 2010 regulating the Legal Profession, Penal and Penal Procedure Codes, Law of Evidence, and Law No. 22 of 2012 on the Counterterrorism Court. It also reviewed case law of the Syrian Cassation Court, regulations and statements of different ministries, news articles, and reports of human rights organizations. Translation of all sources was performed by bilingual legal experts and supported by native English-speaking attorneys at the Initiative. This report focuses only on the legal provisions and does not include data or statistics on current investigations or prosecutions of lawyers in Syria.

Syria has been engulfed in conflict for over a decade and some parts of the territory are no longer under government control. This has resulted in pluralistic legal landscapes and the emergence of ad hoc judicial institutions. This report focuses on provisions of Syrian law officially promulgated by the State, as applied in areas where the government retains territorial control.

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Answers to the Questionnaire for Civil Society and Bar Associations

- 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.**

Judicial independence is the most fundamental principle that enables lawyers to exercise their professional duties freely, as it ensures the proper functioning of the judiciary and legal profession, preventing the other branches from encroaching upon their work. The 2012 Constitution of the Syrian Arab Republic, however, does not guarantee the independence of the judiciary from the other government branches. Article 132 of the Constitution subjects the judiciary to the supervision of the Supreme Judicial Council, which is the highest judicial body and headed by the President of Syria (currently Bashar Al-Assad).¹ Thus, the President is the highest authority of the judicial branch. This institutional design facilitates encroachments upon the judiciary, including the legal profession, by the other government branches and affects all measures related to the protection of lawyers from government interference.²

¹ Article 132 of the Constitution of the Syrian Arab Republic, July 7, 2014 (Constitution), <http://parliament.gov.sy/arabic/index.php?node=5518&cat=460&> (“The judicial authority is independent, and the President of the Republic guarantees this independence with the assistance of the Supreme Judicial Council.” Despite this limited judicial independence, the Constitution recognizes the rule of law as the guiding principle of government activities (Article 50 of the Constitution). While the Constitution does not include provisions on the work of lawyers, it is noteworthy that it includes minimum fair trial guarantees for defendants in criminal procedures, including the right to legal representation (Article 51(3) of the Constitution).

² For more information on the challenges facing lawyers as a result of the lack of judicial independence, see *infra* Question 3.

Law No. 30 of 2010 regulating the Legal Profession establishes the rules applicable to the Syrian Bar Association and all lawyers admitted to the bar.³ Law No. 30 does not contain any provision explicitly protecting lawyers from government interference. Law No. 30 coupled with the Syrian Criminal Code only recognize lawyers' immunity from being investigated and prosecuted for exercising their profession in ongoing judicial procedures as well as outside of the courtroom; however, the law includes several exceptions that weaken the immunity (see Annex 1).

2. 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.

The Syrian Bar Association, a centralized institution with local offices in each province of the country, is responsible for protecting lawyers from undue interference with their work.⁴ While formally not part of the State's administrative structure, the Bar Association requires the approval, and is subject to the interference, of numerous institutions of the executive branch (see Annex 1). Notably, the Bar Association is mandated to coordinate with the regional branches of the ruling Ba'ath Party,⁵ which factually subordinates the Bar Association to the executive. As a result, the Bar Association lacks the necessary authority and independence from the executive branch to effectively prevent the State from interfering with the lawyers' work or punish the interfering parties.

Other mechanisms that could prevent or punish interference with the lawyers' free exercise of the legal profession do not exist.

³ Law No. 30 regulating the Legal Profession, July 11, 2010 (Law No. 30), <http://www.parliament.gov.sy/arabic/index.php?node=55116&nid=4511&First=0&Last=2&CurrentPage=0&mid=&refBack>. Law No. 30 replaced Law No. 39 of 1981, which was the first legislation regulating the legal profession and Bar Association. In the early 1980s, the Syrian government launched a military operation against the Muslim Brotherhood for its opposition to the Ba'ath Party in Hama Province, persecuting and killing any alleged member of this organization. Lawyers across the country protested this operation, which led the government to adopt Law No. 39 with the aim of reducing the Bar Association's influence and subjecting it to the supervision of the executive, particularly the ruling Ba'ath Party (Ibrahim Hussein, *The Syrian Bar Association is in the Hands of the Executioner*, SYRIA TV (Nov. 28, 2019), <https://www.syria.tv/0-نقابة-المحامين-السوريين-في-قبضة-الجلاد>). More information on the Syrian Bar Association is provided under Question 2.

⁴ Article 4(6) of Law No. 30.

⁵ Article 4 of Law No. 30.

3. 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.

Given the lack of independence of the judiciary and legal profession from the executive, Syrian lawyers face numerous barriers in exercising their profession freely and independently from encroachment of the State.

Legal Barriers:

Syrian law includes provisions that explicitly prevent the lawyers from exercising their profession independently of State interference. For instance, Article 73 of Law No. 30 requires lawyers to obtain permission from the Ministry of Interior to represent foreign companies, institutions, or other entities, regardless of the power of attorney that the foreign entity has issued to the lawyers.⁶ This provision unduly restricts lawyers' dealings with international clients.

In ordinary criminal cases, the Syrian law stipulates contradictory rules on the lawyers' right to interact with clients in detention. Article 72 of the Penal Procedure Code guarantees lawyers the right to communicate freely and independently of third-party monitoring with detained clients.⁷ Article 74 of Law No. 30 however states that lawyers may visit detainees only if they 1) have permission from the head of the local Bar Association or his representative, and 2) have a written request from the detainees or the detainees' relatives or are legally in charge of the detainees' defense.⁸ If the lawyers visit detained clients without fulfilling these conditions, they may incur disciplinary sanctions. As a result of this contradiction between the Penal Procedure Code and Law No. 30, lawyers risk sanctions for exercising their profession as the Bar Association or Ba'ath Party, respectively, may decide to apply Article 74 of Law No. 30 if the lawyers do not obtain permission prior to visiting their detained clients, and the Bar Association wants to prevent the lawyers from interacting with the detained clients.

In addition, Syrian law establishes procedural rules that indirectly undermine the lawyers' free exercise of their profession, particularly in the context of terrorism-related offenses or other offenses against state security. Until 2012, these offenses were subject to the exceptional jurisdiction of the Supreme State Security Court (SSSC), which was established by Legislative Decree No. 47 of 1968 (Decree No. 47) to enforce Syria's state

⁶ Article 73 of Law No. 30.

⁷ Article 72 of Law 112 of 1950, March 13, 1950 (Penal Procedure Code), <http://www.parliament.gov.sy/arabic/index.php?node=201&nid=11810&ref=tree&#:~:text=1%2D%20تختص%20النيابة%20العمامة%20باقامة%20في%20الاحوال%20المبينة%20في%20القانون>.

⁸ Article 74 of Law No. 30.

of emergency declaration of 1963.⁹ In 2012, Syria abolished the state of emergency and SSSC in an attempt to satisfy the demands of the 2011 uprising, replacing the SSSC with the Counterterrorism Court, created under Law No. 22 of 2012.¹⁰ These modifications were however, mere cosmetic changes, as the SSSC and Counterterrorism Court essentially share the same procedures with the same disastrous impact on the rights of the accused and their lawyers. Both Decree No. 47 and Law No. 22 state that the SSSC and Counterterrorism Court are not bound by any procedural rules stipulated in other laws at any stage of the procedures.¹¹ While Decree No. 47 and Law No. 22 formally retain the right of defense, the absence of procedural rules and guarantees effectively prevents lawyers from defending the accused. For instance, lawyers are prohibited from speaking to their clients or reviewing their clients' files before the trial.¹² During the hearings, they are denied the opportunity to intervene orally and may only make written submissions.¹³ Thus, the role of lawyers remains marginal in cases against state security.

Administrative and Institutional Barriers:

Lawyers may face challenges in their admission to and registration with the Bar. Article 100 of Law No. 30 grants the Minister of Justice the right to appeal a lawyer's admission to the Bar within 30 days of the notification of the registration decision.¹⁴ This enables the government to prevent lawyers that it does not view favorably, from exercising their profession. Further, lawyers may be disbarred if they do not reside in the area of their local Bar Association branch as Article 12 of Law No. 30 requires a lawyer to have effective and permanent residency at the place where they are registered with the Bar.¹⁵ Law No. 30 also allows for disbarment of lawyers for a variety of other reasons.¹⁶ While lawyers can appeal the disbarment decisions within 30 days,¹⁷ these provisions offer limited protection for lawyers who oppose the Bar Association or Ba'ath Party's policies.

⁹ *Far From Justice: Syria's Supreme State Security Court*, HUMAN RIGHTS WATCH (Feb. 24, 2009), <https://www.hrw.org/report/2009/02/24/far-justice/syrias-supreme-state-security-court>.

¹⁰ Law No. 22 of 2012 Establishing a Court for Terrorism Cases Based in Damascus, July 26, 2012 (Law No. 22), <http://www.parliament.gov.sy/arabic/index.php?node=201&nid=4304&ref=tree&>.

¹¹ Article 7(a) of Decree No. 47; Article 7 of Law No. 22 of 2012.

¹² Maëlla Ducassoux, *Enforcing Human Rights in Counter-Terrorism Laws in Syria*, ARAB REFORM INITIATIVE (Jan. 31, 2018) http://www.syrianlegalforum.net/publications/view/13#_ftnref12; *Special Report on Counter-Terrorism Law No. 19 and the Counter-Terrorism Court in Syria: Counter-Terrorism Court: a Tool for War Crimes*, VIOLATIONS DOCUMENTATION CENTER IN SYRIA - VDC 18 (April 2015), <https://syriaaccountability.org/wp-content/uploads/Counter-Terrorism-Court-in-Syria-a-Tool-for-War-Crimes.pdf>.

¹³ Ducassoux, *supra* note 9.

¹⁴ Article 100 of Law No. 30.

¹⁵ Article 12 of Law No. 30.

¹⁶ Article 23 of Law No. 30 (disbarment for discontinued practice); Article 100(2) of Law No. 30 (disbarment for disciplinary sanctions); Article 100(3) of Law No. 30 (disbarment "for any other reason").

¹⁷ Articles 23, 100(2), and 100(3) of Law No. 30.

Since the beginning of the armed conflict in 2011, the State and Bar Association have adopted several administrative measures restricting the work of lawyers. These measures include requiring a state security approval for certain powers of attorney,¹⁸ subjecting lawyers entering the court area in Damascus to physical searches,¹⁹ and classifying lawyers' offices as commercial offices to potentially raise higher taxes from lawyers.²⁰ For more details on these measures, see Annex 1.

4. 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?

As described in the answer to Question 2, the Syrian Bar Association is responsible for protecting lawyers and the free exercise of the legal profession. The Bar Association however, is neither de jure or de facto independent from the State. From a legal perspective, many operations of the Bar Association, such as decisions and dissolution, depend on the approval of the executive, particularly the Ba'ath Party and Ministry of Justice (see Question 2).

In most situations, the lack of the Bar Association's de jure independence from the State effectively strips the Bar Association of any authority to prevent interference by the State with the free exercise of the legal profession. This is exemplified by the requirement to obtain state security approval for certain powers of attorney and the recent classification of lawyers' offices as commercial businesses by the Minister of Finance (see Question 3). In both cases, the executive took measures against lawyers, but the Bar Association could not stop these interferences. Additionally, the Ba'ath Party frequently interferes in elections of members to the Bar Association's General Assembly or Council by providing the local Bar Association branches with a list of "permissible" (Ba'ath-affiliated) candidates. On rare occasions, lawyers have succeeded in stopping this election interference. In 2019, the Damascene Ba'ath Party rejected the candidacy of an independent lawyer for the Council of the local Bar Association under the pretext that he had previously run for the Council.

¹⁸ *The Ministry of Justice in the Regime's Government Imposes a Security Approval for the Extraction of Legal Agencies for the Absent and Missing*, CAESAR FAMILIES ASSOCIATION (Sept. 28, 2021) <https://www.caesarfamilies.org/ar/وزارة-العدل-في-حكومة-النظام-تفرض-موافق>; *Lawyers' Powers of Attorney Are Rejected in Syria... Transaction Trackers Benefit*, ENAB BALADI (March 2, 2018), <https://www.enabbaladi.net/archives/210372#ixzz7DQVupuqb>.

¹⁹ *A Decision to Search Syrian Lawyers and Judges after the Bombing of the Justice Palace*, ENAB BALADI (Mar. 22, 2017) <https://www.enabbaladi.net/archives/138524#ixzz7DQCDhw3i>; *A Decision by the Syrian Bar Association in Lattakia Insults Colleagues*, ZAMAN AL WASL (May 14, 2017) <https://www.zamanalwsl.net/news/article/78722>.

²⁰ Muhammad Manar Hamijo, *The Lawyers' Bar Association to 'Al-Watan': An Illogical and Unreasonable Decision for Us, and Our Profession Is Intellectual and Not Commercial... 'Finance' Decides tha Lawyers' Offices Must Be Converted into Commercial Ones...75% of Lawyers Have Poor Income and Some of Them Have Their Offices in Their Homes*, AL-WATAN (Oct. 27, 2021), <https://alwatan.sy/archives/278655>.

The lawyer challenged the decision before the Court of Appeal and won on the ground that the Ba'ath Party's decision violated the lawyer's constitutional right to participate in economic, social, and cultural life (Article 49 of the Constitution).²¹ In other instances, such as the decision to search all lawyers entering the court area of Damascus (see Question 3), the Bar Association itself actively takes steps that are detrimental to the legal profession but beneficial to the Ba'ath Party.

- 5. 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?**

- 6. 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.**

This report joins the answers to questions 5 and 6 as they are closely related in the Syrian context. Since the ascent to power of the Ba'ath Party in 1963, lawyers who opposed - or were perceived as opposing - the State's policies were prosecuted for their actual or alleged activism against the State. For instance, the prominent Syrian lawyer Haitham Al-Maleh, born 1931, has publicly criticized the lack of judicial independence, prolonged state of emergency, and human rights violations of the Syrian government since the 1950s.²² As a result of his activism, he was imprisoned several times until he fled Syria in 2011. Similarly, the lawyer Anwar Al-Bunni, who dedicated his career to defending political prisoners, was arrested in 2006 after calling for democratic reforms.²³ While in detention, he was subject to torture, as he recounted in an interview with Amnesty International after his release in 2011.²⁴

²¹ *The Bar Association Prevents a Lawyer from Running for Office Because He Violated the Decision of the Ba'ath Party and the Judiciary is Interfering*, SYRIAN SNACK (Sept. 25, 2019), <https://snacksyrian.com/انقابة-المحاميين-تمنع-محامي-من-الترشح-لا/>. A similar incident occurred in Latakia in the same year. In the election of members to the Council of the local Bar Association, an independent candidate managed to replace one of the candidates imposed by the local Ba'ath Party branch (*The Ba'ath Party List Was Hacked in the Latakia Lawyers' Elections*, SYRIAN SNACK (Sept. 26, 2019), <https://snacksyrian.com/اختراق-قائمة-حزب-البعث-في-انتخابات-مح/>).

²² *Haitham al-Maleh*, MALCOLM H. KERR CARNEGIE MIDDLE EAST CENTER (last visited on Dec. 2, 2021), <https://carnegie-mec.org/syriaincrisis/?fa=48368&lang=en>.

²³ *Anwar Al-Bunni*, LAWYERS FOR LAWYERS (last visited on Dec. 2, 2021), <https://lawyersforlawyers.org/en/lawyers/anwar-al-bunni/>.

²⁴ *Id.*

With the beginning of the armed conflict, the State has increased its misuse of judicial proceedings against lawyers, raided their offices, and arrested, tortured, and killed them. It has also disbarred hundreds of lawyers to prevent them from representing political opponents and challenging the legality of the State's actions. These tactics forced lawyers to show support of the government, severely undermining their ability to exercise their profession freely and independently.²⁵ The following paragraphs exemplify the pattern of violations committed against lawyers by the State, focusing on the last five years.

Arrests, Disappearances, Torture, and Killings of Lawyers by the State or Unknown Actors on Government-Controlled Territory

Since the beginning of the armed conflict, the State has arrested, detained, disappeared, tortured, and killed hundreds of lawyers who support the political opposition.²⁶ While many of these crimes took place in the early stages of the conflict, they still occur today as exemplified below. They have also resulted in a shortage of practicing lawyers and division between lawyers supporting the government and those opposing it, which lasts until today.

In July 2018, the lawyer Nedal Mustafa Amoud from the Damascus countryside was arrested at a checkpoint of the Syrian armed forces in Adra city.²⁷ Nearly two years later, his wife learned that he had died under torture in a State-run detention facility.²⁸

In July 2019, the lawyer Faisal Hijazi from the Damascus countryside was kidnapped by an unknown armed group on the road between Damascus and the Swayda Province.²⁹ The kidnappers demanded a ransom of SYP 30 million, equalling USD 60,000 at that time, to be paid within five days.³⁰

In May 2021, the State released over 400 government employees, judges, lawyers, and journalists detained earlier this year as part of a crackdown on alleged dissidents identified on social media.³¹ These people were arrested for "liking" Facebook posts that complained

²⁵ Hafez Karkoot, *Homs Clock... A Beacon of Revolution*, GERON (Apr. 18, 2018), <https://www.geiroon.net/2018/04/18/ساعة-حمص-منارة-ثورة/>.

²⁶ Hafez Karkoot, *Syria's Lawyers in their Day: On the Path to Freedom and Justice*, GERON (Apr. 23, 2018), <https://www.geiroon.net/2018/04/23/محامو-سورية-في-يومهم-على-طريق-الحرية-وا/> (listing names of lawyers who have been arrested and disappeared or have died under torture or in airstrikes).

²⁷ *The Death of Lawyer Nedal Mustafa Amoud Forcibly Disappeared by the Syrian Regime*, SYRIAN NETWORK FOR HUMAN RIGHTS, <https://sn4hr.org/blog/2020/07/21/55270/> (last visited on Dec. 6, 2021).

²⁸ *Id.*

²⁹ *30 Million Pounds Ransom for the Release of a Lawyer Kidnapped on the Damascus-Suwayda Road*, DAMASCUS V (July 23, 2019), <https://damascusv.com/archives/7387>.

³⁰ *Id.*

³¹ Suleiman Al-Khalidi, *Syria Releases Hundreds of Detainees from Social Media Opposition Ahead of Elections*, REUTERS (May 11, 2021), <https://mobile.reuters.com/article/amp/idARAKBN2CS2I5>.

about the dire economic conditions in Syria and the government's handling of corruption cases.³² They were not opponents of the government, and human rights organizations believe that with their arrest and subsequent release, the government tried to create the impression that it tolerates political opponents.³³ This could have been an attempt to make the presidential elections at the end of May 2021 seem more credible.

Most recently, an armed militia reportedly affiliated with the Syrian intelligence service arrested the lawyer Zaher Thabet in the Swayda Province and sent a video of him being tortured to his family, demanding a ransom in exchange for the lawyer's release.³⁴ Lawyers and state security officers wishing to remain anonymous have also reported to the Initiative that the intelligence services are now arresting lawyers because they have clients who are wanted by the State.

Disbarment:

Since late 2013, the Syrian Bar Association has routinely disbarred lawyers, primarily for their affiliation with the political opposition.³⁵ In some cases, the Bar Association accuses the concerned lawyers of crimes; in other cases, the lawyers fail to pay their bar membership fees due to displacement or other conflict-related events, resulting in their disbarment. In November 2014, when Syria lost territorial control over the city of Idlib, several disbarment decisions were found at the local office of the Bar Association.³⁶ These revealed that the disbarment was based on information from the Central Bar Association, Ba'ath Party, and security service, and the primary reasons for the disbarment were the lawyers' disappearance, actions against the state, and affiliation with the political opposition.³⁷

In 2018, the Bar Association of Idlib Province disbarred over 425 out of 950 registered lawyers, on the pretext that 100 of them left the country and 200 failed to pay the membership fees.³⁸ The Bar Association did not communicate the reasons for disbarring the other over 125 lawyers.

³² *Id.*

³³ *Id.*

³⁴ *Hollywood Kidnappings in As-Suwayda, and the People are Mobilizing*, ORIENT (Oct. 10, 2021), https://orient-news.net/ar/news_show/193254.

³⁵ *The Syrian Bar Association and the Decisions to Write off Members*, FREE SYRIAN LAWYERS (June 27, 2015), <https://freesyrianlawyers.com/index.php/ar/مقالات/item/210-%EF%BB%BF-نقابة-المحامين-السوريين-و-قرارات-شطب-الأعضاء>.

³⁶ *The Syrian Bar Association and the Decisions to Write off Members*, *supra* note 40.

³⁷ *Id.*

³⁸ *After Daraa, the Bar Association Has Expelled More Than Half of Idlib's Lawyers*, ENAB BALADI (Aug. 28, 2018), <https://www.enabbaladi.net/archives/248730#ixzz7DQ9ZSqvK>.

In March 2019, the Bar Association of Daraa Province disbarred 250 out of 700 registered lawyers for opposing the Syrian government, failing to pay membership fees, or failing to communicate with the Bar Association.³⁹ The Bar Association had already disbarred many lawyers in 2018 when the Syrian government regained control over Daraa.

Restrictions on the Lawyers' Movement:

In August 2021, the government-affiliated news agency Al-Watan reported that the Bar Association prepared a draft decision to allow lawyers to travel abroad or stay abroad without being disbarred, provided that they report themselves to the Bar Association and pay a “departure fee” in foreign currency.⁴⁰ Other news agencies assume that this fee helps the Syrian government support the economy with hard currency.⁴¹ The economy has collapsed due to the prolonged conflict, and the inflation rate is soaring in the country.⁴²

Intimidation:

In May 2017, when the Damascus Bar Association issued a decision to search all lawyers and judges entering the Palace of Justice (see question 3), several lawyers reported that they experienced provocations and were called “ISIS sleeper cells” by court employees.⁴³

In September 2019, the lawyer Ahed Qoja was arrested for alleged contempt of the judiciary because she posted on Facebook that justice was “blind” in a particular case.⁴⁴ While she was released the next day, the Public Prosecutor of Damascus countryside said that he would proceed with the charge.⁴⁵

It is important to note that these violations have occurred in a climate of complete impunity. The Initiative is not aware of any investigation, let alone prosecution, of government officials, members of government-affiliated armed groups, or heads of Bar Associations who have interfered with the legal profession.

³⁹ *Syria: The Bar Association Disbarred 170 Lawyers in Daraa*, SYRIANS FOR TRUTH AND JUSTICE (Nov. 4, 2019), <https://stj-sy.org/en/syria-the-bar-association-disbarred-170-lawyers-in-daraa/>.

⁴⁰ Muhammad Manar Hamijo, *Syrian Women Are Sweeping the World of Law... The Head of the Bar Association for “Al-Watan”: A draft Resolution Allowing Expatriate Lawyers to Return to the Bar after Paying Specific Fees*, AL-WATAN (Aug. 23, 2021), <https://alwatan.sy/archives/270280>.

⁴¹ *The Regime is Studying a Project to Impose an “Exit Tax” on Lawyers Outside of Syria*, THE LEVANT (Aug. 23, 2021), <https://thelevantnews.com/2021/08/ال-النظام-يدرس-مشروع-ع-فرض-ضريبة-مغادرة-ع-ل/>.

⁴² Barrett Alexander & Ahlam, *Syria’s Economic Collapse and its Impact on the Most Vulnerable*, CSIS (Feb. 18, 2021), <https://www.csis.org/analysis/syrias-economic-collapse-and-its-impact-most-vulnerable>.

⁴³ *A Decision by Syrian Bar Association in Lattakia Insults Colleagues*, *supra* note 18.

⁴⁴ *Syria: The Arrest of a Lawyer for a Cyber Crime for One Day Angers the Lawyers!*, SNACK SYRIA (Sept. 15, 2019), <https://snacksyrian.com/سور-يا-توقيف-محامية-بجر-يمة-ال-كتر-ون-ية-ل/>.

⁴⁵ *Id.*

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

The Initiative works to strengthen the legal profession in Syria through building their capacity and drafting a code of conduct for lawyers working in areas controlled by the Syrian government and non-state actors. As for the capacity building efforts, the Initiative conducts academic online courses on Public International Law and Principles of Legal Documentation of Crimes in Arabic. These trainings aim to strengthen the lawyers' academic legal knowledge and equip them with practical skills to advance the rights of marginalized people. Further, the Initiative has created the Strategic Litigation Team, a group of Syrian lawyers that have received training on the theoretical foundations of different UN human rights mechanisms and best practices in engaging with them. The Strategic Litigation Team has recently drafted a code of conduct to guide Syrian lawyers in advancing the rights of their clients while preserving confidentiality of information. The Initiative will release the code of conduct soon and promote its use among lawyers operating in different areas of the country.

The Initiative does not have any collaborations on strengthening the independence of the legal profession with entities in other countries.

8. 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.

In March 2020, the government banned citizens from traveling between provinces.⁴⁶ This restriction did not account for the fact that lawyers represent clients in different areas of the country and need to travel. Since the courts did not suspend their activities, the travel ban had a negative impact on the lawyers' ability to freely exercise their profession.

In August 2020, the Bar Association published the names of fifteen lawyers who died due to COVID-19⁴⁷ and requested a judicial holiday of one month to mitigate the spread of the virus.⁴⁸ The head of the Bar Association said that this holiday was necessary because the

⁴⁶ *The Council of Ministers: A Curfew Between Governorates Will Start From Six in the Evening Next Tuesday until April 16... And the Adoption of a Mechanism to Regulate the Payment of Salaries and Wages*, SANA (March 29, 2020), <https://www.sana.sy/?p=1129881>.

⁴⁷ *The Bar Association Holds the Regime Responsible for the Death of 15 Lawyers due to "Corona"*, SYRIA TV (Aug. 8, 2020), <https://www.syria.tv/نقابة-المحامين-تحفل-النظام-مسؤولية-وفاة-15-محامياً-بجوروننا>.

⁴⁸ *The Bar Association Threatens the Ministry of Justice in the Regime's Government with an Escalation*, SYRIA TV (Aug. 19, 2020), <https://www.syria.tv/نقابة-المحامين-تتوعد-وزارة-العدل-في-حكومة-النظام-بالتصعيد>; Lawyers

courts were “hotbeds” of the virus due to overcrowding and lack of precautionary measures.⁴⁹ The Ministry of Justice however rejected the judicial holiday, as it would delay the adjudication of the over 125,000 pending cases, not including cases pending before the terrorism courts.⁵⁰ The Ministry ordered the judiciary to continue all hearings and other activities, forcing the lawyers to go to the courts.⁵¹

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

The following recommendations are neither exhaustive nor the main tool to enhance respect for the rule of law in Syria and bring justice to citizens, but they are an important step towards greater independence in the legal profession.

Legal Amendments:

Recommended Constitutional Amendments:

- Modify Article 132 of the Constitution, which currently subjects the judiciary to the supervision of the Supreme Judicial Council overseen by the President, to ensure judicial independence.
- Amend the Constitution to guarantee the lawyers’ right to exercise their profession freely, independently from any government interference.

Recommended Amendments of Law No. 30:

- Ensure the Bar Association’s independence from any political party, including the Ba’ath Party,⁵² and any institution or official of the executive branch, including the Ministry of Justice, Ministry of Interior, and Council of Ministers.⁵³

Bar Association: The Minister is not the End... And Syria is Moving Forward with the Political Solution, SNACK SYRIA (Aug. 17, 2020), <https://snacksyrian.com/نقيب-المحامين-الوزير-ليس-النهاية-وسور/>.

⁴⁹ *The Bar Association Threatens the Ministry of Justice in the Regime’s Government with an Escalation*, *supra* note 53.

⁵⁰ *Id.*

⁵¹ *The Syrian Ministry of Justice Refuses to Grant Lawyers a Judicial Holiday*, ENAB BALADI (Sept. 8, 2020), <https://www.enabbaladi.net/archives/406828#ixzz7DQUfc1XD>.

⁵² In particular, Article 4 of Law No. 30 on the Bar Association’s obligation to cooperate with the Ba’ath Party should be repealed.

⁵³ For instance, the following provisions should be modified: Article 7 on the Minister of Justice’ right to inspect the Bar Association; Article 34 on the Bar Association’s obligation to obtain the Minister of Justice’ approval for certain decisions; Article 37 on the requirement to invite representatives of the Ba’ath Party and Minister of Justice to the meetings of the Bar Association; Article 100 on the Minister of Justice’ right to appeal a lawyer’s registration with the Bar Association; Articles 102-103 on the Minister of Justice’ right to appeal the decisions of the Bar Association; Article 108 on the Council of Ministers’ right to dissolve the Bar Association;

- Reflect the practice of law as an intellectual profession that seeks to contribute to justice in accordance with the rule of law.⁵⁴
- Strengthen the lawyers' immunity and refrain from subjecting them to criminal or other investigations for exercising their profession, including defending a person accused of a crime.⁵⁵
- Allow lawyers to freely choose to represent any natural and legal person and visit detained clients.⁵⁶
- Include an explicit guarantee of the attorney-client privilege.
- Prohibit former intelligence, police, and armed forces officers from joining the Bar Association without an independent and thorough background check of their human rights record, as many of these officers have been involved in crimes during the conflict.
- Prohibit arresting lawyers before there is a final ruling on the crime they have committed.

Policy Measures:

Recommendations for the State:

- Annul all disbarment decisions issued since the beginning of the Syrian uprising in 2011.
- Refrain from prosecuting and otherwise harming lawyers for their political opinions or their work, particularly the defense of detainees, regardless of the reason for the detainees' arrest.
- Allow Syrian lawyers living abroad or in Syrian territories outside of the government's control to maintain their bar registration.
- Include courses on international law, particularly international human rights and humanitarian law, legal research and writing, and legal ethics in the curricula of Syrian law faculties.

Recommendations for the Bar Association:

- Draft a code of conduct that codifies the professional rules and traditions of lawyers practicing in Syria, so that these norms are unified in one document. Any lawyers admitted to the bar in Syria should be obliged to adhere to this code of conduct, and violations should result in disciplinary or judicial sanctions.

⁵⁴ This requires, for example, a modification of Article 1 of Law No. 30 that currently puts lawyers in a position of merely assisting the judiciary, which is subordinated to the President, in achieving justice.

⁵⁵ This includes repealing Article 78(3) of Law No. 30 on allowing the lawyers' to be searched and the lawyers to be arrested in cases of crimes against state security; and Article 8 of Law No. 22 of 2012 on obliging lawyers of reporting crimes against state security.

⁵⁶ This includes repealing Article 73 of Law No. 30 on subjecting the lawyers' representation of a foreign entity to the approval of the Minister of Interior; and Article 74 of Law No. 30 on requiring lawyers to obtain permission from the Bar Association to visit detainees.

- Develop and offer professional development courses for lawyers to remain updated about legal and policy changes at the national and international levels.

prosecutor initiates an investigation, and the head of the local Bar Association may delegate someone to represent the Bar Association in the investigation.

In judicial procedures, the lawyers' immunity and freedom to represent their clients is further limited by the fact that the court may strike any phrase from the record it deems outside of the right of defense based on its own discretion or a request of the prosecutor.⁵ The court may also interrupt the lawyers during the pleading and ask them to stop whenever the court considers the case to be clear and does not deem it necessary to continue with the defense.⁶

If lawyers commit a criminal offense not related to disrupting the order of the hearing, the lawyers do not enjoy any immunity and are subject to the general rules stipulated in Articles 168 and 170 of the Penal Procedure Code.⁷ Article 78 of Law No. 30 adds that lawyers may only be arrested, questioned, or subjected to an investigation if they commit a crime other than a flagrante delict, and the local Bar Association Council is informed.⁸

Immunity Outside of the Courtroom:

While Syrian law does not explicitly guarantee an attorney-client privilege, lawyers are obliged to keep any information they have received from their clients or in connection with representing their clients, confidential.⁹ This confidentiality obligation is confirmed in Article 65 of the Law of Evidence, stating that lawyers and attorneys may not disclose any information even after the end of their service or loss of their capacity.¹⁰ The Penal Code includes a similar provision in its Article 565, punishing the undue disclosure of information with imprisonment of maximum one year and a fine.¹¹

⁵ Article 140 of the Law No. 1 of 2016 on Civil Procedure, Jan. 3, 2016 (Civil Procedure Code), <http://www.parliament.gov.sy/arabic/index.php?node=5556&cat=15810&#:~:text=%D8%A7%D9%84%D9%82%D8%A7%D9%86%D9%88%D9%86%201%20%D9%84%D8%B9%D8%A7%D9%85%202016%20%D9%82%D8%A7%D9%86%D9%88%D9%86%20%D8%A3%D8%B5%D9%88%D9%84%20%D8%A7%D9%84%D9%85%D8%AD%D8%A7%D9%83%D9%85%D8%A7%D8%AA&text=%D9%88%D8%B9%D9%84%D9%89%20%D9%85%D8%A7%20%D8%A3%D9%82%D8%B1%D9%87%20%D9%85%D8%AC%D9%84%D8%B3%20%D8%A7%D9%84%D8%B4%D8%B9%D8%A8,07%2D12%2D2015%20%D9%85%D9%8A%D9%84%D8%A7%D8%AF%D9%8A.&text=%E2%80%8C%D8%A3.,%D8%A7%D9%84%D8%A5%D8%AC%D8%B1%D8%A7%D8%A1%D8%A7%D8%AA%20%D9%82%D8%A8%D9%84%20%D8%AA%D8%A7%D8%B1%D9%8A%D8%AE%20%D8%A7%D9%84%D8%B9%D9%85%D9%84%20%D8%A8%D9%87%D8%A7>

⁶ Article 71(2) of Law 112 of 1950, March 13, 1950 (Penal Procedure Code), <http://www.parliament.gov.sy/arabic/index.php?node=201&nid=11810&ref=tree&#:~:text=1%2D%20%D9%84%D8%A7%D8%AF%D9%8A.&text=%E2%80%8C%D8%A3.,%D8%A7%D9%84%D8%A5%D8%AC%D8%B1%D8%A7%D8%A1%D8%A7%D8%AA%20%D9%82%D8%A8%D9%84%20%D8%AA%D8%A7%D8%B1%D9%8A%D8%AE%20%D8%A7%D9%84%D8%B9%D9%85%D9%84%20%D8%A8%D9%87%D8%A7>

⁷ Articles 168 and 170 of the Penal Procedure Code.

⁸ Article 78(2) of Law No. 30.

⁹ Article 22 of Law No. 30 (stating that lawyers have to swear an oath and promise to keep the secret of the legal profession when being admitted to the bar).

¹⁰ Article 65 of the Law of Evidence of 2014, http://parliament.gov.sy/laws/Law/1947/essential_09.htm.

¹¹ Article 565 of the Penal Code.

The Syrian law recognizes three exceptions to the lawyers' professional secrecy obligation. First, if lawyers - just as any other citizen - have knowledge of a felony or misdemeanor through the information received from clients or other sources, they are obliged to report it to the competent authorities.¹² This obligation is emphasized in the context of felonies against state security as Article 388 of the Penal Code criminalizes citizens who know of such a felony and fail to report to the competent authorities.¹³ Second, if the client as the owner of the information gives the lawyer permission to disclose it, the lawyer may do so except in cases where the law prohibits the lawyer's disclosure even with the owner's permission.¹⁴ Lastly, the lawyer may disclose information if it is necessary to solve a dispute with the client before a court or bar association council.

The lawyer's office space may not be raided, and any data that includes information of clients, cases, or lawyers, including correspondence with colleagues, may not be seized.¹⁵ Searches and seizures are however permissible in cases of crimes against state security,¹⁶ which is a concerning exception to the lawyers' immunity considering the government's extensive history of maliciously accusing lawyers and political opponents of committing crimes against state security.

Lastly, Law No. 30 protects lawyers from assaults, stating that an assault on a lawyer is subject to the provisions applicable to an assault on a judge stipulated in Articles 371 to 372 of the Penal Code.¹⁷ "Assault" includes acts that cause or may cause physical harm, as well as acts of slander and humiliation. The penalty for a physical assault of a judge and lawyer, respectively, is imprisonment of one to three years; the penalty for a verbal assault is imprisonment of six months to two years.¹⁸

2. 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.

¹² Article 65 of the Law of Evidence (stating the exception of the professional secrecy obligation specifically for lawyers); Article 26 of the Penal Procedure Code; Syrian Court of Cassation, Decision 1707, Volume 2366, 11/04/1981. This obligation to report crimes does not apply to lawyers who defend the person accused of the crime in question.

¹³ Article 388 of the Penal Code.

¹⁴ Article 22 of Law No. 30.

¹⁵ Article 78 subsection G of Law No. 30. Raids and seizure of documents are only permissible if the lawyer is suspected of having committed a crime or the object of a crime, such as a falsified document, is in the lawyer's office.

¹⁶ Article 78(3) of Law No. 30.

¹⁷ Article 78 of Law No. 30.

¹⁸ Article 371(2) and Article 373(3) of the Penal Code.

The following provisions exemplify the lack of independence of the Bar Association from the State:

- Article 1 of Law No. 30 requires the legal profession to cooperate with the judiciary to achieve justice and defend the rights of their clients.¹⁹ This opens the door to State interference with the Bar Association's and lawyers' work, as the judiciary is subject to the President's ultimate supervision.
- According to Article 4 of Law No. 30, the Bar Association is mandated to coordinate "with the competent regional office of the Arab Socialist Ba'ath Party,"²⁰ the ruling political party of President Bashar Al-Assad, when pursuing its tasks and objectives. The regional offices of the Bar Association therefore coordinate with the respective regional offices of the Ba'ath Party to fulfil their missions.
- The Ministry of Justice has the exclusive right to monitor and inspect the Bar Association according to provisions established in the Judicial Authority Law.²¹ Lawyers as members of the Bar Association therefore may not monitor the work of the Bar Association.
- For ordinary meetings of its General Assembly, the Bar Association is required to invite representatives of the regional Ba'ath Party and Minister of Justice at least three days prior to the meetings; otherwise the meeting is not legal.²² For extraordinary meetings of the General Assembly, the Bar Association needs prior permission from the regional Ba'ath Party office.²³
- Decisions on financial and related issues of the Bar Association's General Assembly, the legislative body, are only valid if they are ratified by the Minister of Justice.²⁴ The Minister of Justice can also appeal decisions of the Bar Association's Council, the executive body, that are related to the admission and debarment of lawyers for disciplinary causes²⁵; disciplinary cases if the defendant lawyer submits a written request²⁶; and the annulment of decisions adopted by the Bar Association's General Assembly.²⁷
- The Presidency of the Council of Ministers, which is the Prime Minister, has the right to dissolve any branch of the Bar Association if the branch deviates from the Bar Association's tasks and objectives stipulated in Article 4 of Law No. 30.²⁸ The Prime Minister will then appoint a temporary Bar Association until the new one is formed.²⁹ The decision to dissolve is final and cannot be appealed.

¹⁹ Article 1 of Law No. 30.

²⁰ Article 4 of Law No. 30. The Bar Association's political affiliation contradicts the right to freedom of association and union established in Article 45 of the Constitution.

²¹ Article 7 of Law No. 30; *see also* Articles 11-24 of Decree 98 of 1961, Nov. 15, 1961 (Judicial Authority Law).

²² Article 37(1) of Law No. 30.

²³ Article 37(2) of Law No. 30.

²⁴ Article 34 of Law No. 30.

²⁵ Article 100(2) of Law No. 30.

²⁶ Article 102(2) of Law No. 30.

²⁷ Article 103(2) of Law No. 30.

²⁸ Article 107 of Law No. 30.

²⁹ Article 108 of Law No. 30.

3. 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.

The following paragraphs provide a detailed explanation of the administrative and institutional barriers mentioned in the submission.

Since the beginning of the armed conflict in 2011, the State and Bar Association have adopted several administrative measures restricting the work of lawyers. For instance, the Minister of Justice' Circular No. 30 of 2012 (last updated on September 10, 2021) requires lawyers to obtain approval from the state security service if they wish to obtain power of attorney to act on behalf of an absent or missing person.³⁰ Similarly, powers of attorney for real estate transactions need to be approved by the security service before lawyers can use them.³¹ This makes it virtually impossible for lawyers to represent clients who belong to - or are perceived as belonging to - the political opposition or who have fled the government-held areas of Syria.

In March 2017, the Damascus Bar Association issued a decision to search all lawyers and judges entering the Palace of Justice, the court area of Damascus, and informed the Ministry of Justice of this decision.³² This decision came only days after an explosion shook the court area. During the physical searches, lawyers who were considered less loyal to the government were reportedly insulted and discriminated against.³³ Lawyers from the countryside of Latakia, such as Kurdish and Turkmen lawyers, were most vulnerable to these abuses.³⁴

On October 27, 2021, the Ministry of Finance issued a decision classifying all lawyers' offices as commercial offices.³⁵ This decision violates Article 1 of Law No. 30 that considers the legal

³⁰ *The Ministry of Justice in the Regime's Government Imposes a Security Approval for the Extraction of Legal Agencies for the Absent and Missing*, CAESAR FAMILIES ASSOCIATION (Sept. 28, 2021) <https://www.caesarfamilies.org/ar/وزارة-العدل-في-حكومة-النظام-تقرض-موافق/>; Circular No. 30 is on the file with the Syrian Initiative.

³¹ *Lawyers' Powers of Attorney Are Rejected in Syria... Transaction Trackers Benefit*, ENAB BALADI (March 2, 2018), <https://www.enabbaladi.net/archives/210372#ixzz7DQVupuqb>.

³² *A Decision to Search Syrian Lawyers and Judges after the Bombing of the Justice Palace*, ENAB BALADI (Mar. 22, 2017) <https://www.enabbaladi.net/archives/138524#ixzz7DQCDhw3i>; *A Decision by the Syrian Bar Association in Lattakia Insults Colleagues*, ZAMAN AL WASL (May 14, 2017) <https://www.zamanalwsl.net/news/article/78722>.

³³ *A Decision by Syrian Bar Association in Lattakia Insults Colleagues*, *supra* note 32.

³⁴ *Id.*

³⁵ Muhammad Manar Hamijo, *The Lawyers' Bar Association to 'Al-Watan': An Illogical and Unreasonable Decision for Us, and Our Profession Is Intellectual and Not Commercial... 'Finance' Decides tha Lawyers' Offices Must Be Converted into Commercial Ones...75% of Lawyers Have Poor Income and Some of Them Have Their Offices in Their Homes*, AL-WATAN (Oct. 27, 2021), <https://alwatan.sy/archives/278655>.

profession an intellectual activity, not a commercial one.³⁶ While the purpose of this decision is unknown, it may be a means to raise taxes for lawyers as commercial property is taxed higher. According to the head of the Bar Association, some lawyers have their offices in commercial areas but most work in residential buildings, including from their own homes.³⁷ The Bar Association criticized the decision as it modifies the property classification without the consent of the property owner. The Bar Association is in ongoing negotiations with the Ministry of Finance, but so far the outcome is not known.

³⁶ Article 1 of Law No. 30.

³⁷ Hamijo, *supra* note 35.