



Human Rights Institute

Submission of the International Bar Association's Human Rights Institute on the upcoming report on Safeguarding the Independence of Judicial Systems in the face of Contemporary Challenges to Democracy by the Special Rapporteur on the Independence of Judges and Lawyers

About the International Bar Association's Human Rights Institute (IBAHRI)

The International Bar Association ("IBA"), established in 1947, is the world's leading organisation of international legal practitioners, bar associations and law societies. The IBA influences the development of international law reform and shapes the future of the legal profession throughout the world. It has a membership of 80,000 individual lawyers and more than 190 Bar Associations and Law Societies, spanning all continents. The IBA's Human Rights Institute (IBAHRI), an autonomous and financially independent entity, works with the global legal community to promote and protect human rights and the independence of the legal profession worldwide.

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Judges

Independence of judiciary is the most essential characteristic for a free society¹. This derives from the central role that judiciary plays in promotion of the rule of law in the society and in ensuring the lawful exercise of public powers². The independence of judiciary holds a concept that extends beyond the independence of judges only by having numerous dimensions³. Conceptually, the independence of judiciary divides into “the independence as an institutionalised organ” and “independence of the individual judges”⁴. The independence of judiciary is to fulfil an imperative aspect of ensuring the survival of democracy based on the rule of law⁵. It can be only assured if judiciary would stand against executive abuse of power and ensure that the fundamental rights being exercised effectively. This requires the judiciary to have substantive, personal, collective, and internal independence⁶ apart from having the independence as a quality of the judge’s existential fabric⁷.

Examples of the active role played by judges in safeguarding democracy and upholding fundamental democratic rights

The function of the judges in a democracy is to infuse the basic values such as individual liberty, human dignity, rule of law, constitutionalism, and limited government in the country's legal and constitutional system⁸. More significantly, judges are called to ensure justice between two individuals or individuals and a state organ⁹, in which case, the role of judges is to scrutinize governmental actions to assess whether they are in conformity with the constitution and the applicable laws¹⁰. Further, courts also have both the power and the obligation to protect individuals’ rights from any unjustified encroachment by any state organ¹¹.

National courts also play a dynamic and active role in advancing rule of law and human rights at national level.¹² In the last few decades, particularly since the 1990s, national courts are increasingly becoming salient actors in the application of international law.¹³ Courts used international human rights norms and standards to guide the interpretation and application of rights at domestic level, even in cases where the country concerned does not hold a binding obligation under international law. In this respect, interestingly enough, some courts use international human rights law as a tool to *interpret* domestic law as a way

¹ Sam J. Ervin Jr., 'Separation of Powers: Judicial Independence' (1970) 35 Law & Contemp Probs 108, p. 121.

² Ronald J. Daniels & Michael Trebilcock, 'The Political Economy of Rule of Law Reform in Developing Countries' (2004) 26 Mich J Int'l L 99, p. 110.

³ Maria Dakolias & Kim Thachuk, 'Attacking Corruption in the Judiciary: A Critical Process in Judicial Reform' (2000) 18 Wis Int'l LJ 353, p. 361.

⁴ P. N. Bhagwati, 'Pressures on and Obstacles to an Independent Judiciary ' (1989) 102 Law & Just - Christian L Rev 44, p. 47.

⁵ *Ibid.*, p. 45.

⁶ Maria Dakolias & Kim Thachuk, *ibid.*

⁷ P. N. Bhagwati, *ibid.*

⁸ M. P. Jain, 'Role of the Judiciary in a Democracy' (1979) 6 JMCL 239, p. 239.

⁹ *Ibid.*

¹⁰ *Ibid.*, p. 240.

¹¹ *Ibid.*

¹² Francesca Restifo “The Dynamic Role of Courts in the Protection of International Human Rights”. Chapter 5 "A Global Handbook on National Human Rights Protection Systems", Brill 2023.

¹³ Melissa Waters, 'Mediating Norms and Identity: The Role of Transnational Judicial Dialogue in Creating and Enforcing International Law' 93(2) Georgetown Law School (2005) 487, 509.

to re-affirm their own conclusions¹⁴ and construe vague statutes (by using international law parameters, such as non-discrimination, to read domestic laws and determine the rights applicable in concrete cases).¹⁵ In these cases, courts do not necessarily treat unratified human rights treaties as binding law, but recognise the ways in which ‘unincorporated human rights treaties can be useful to reinforce their arguments.’¹⁶ An emblematic case, for example, is represented by the 2005 *Roper v Simmons*.¹⁷

Examples of obstacles, risks, or challenges encountered by judges when fulfilling their role

As the guardians of democracy, judges should not be subject to any interference, threat, or pressure by the executive or legislative branches. Any interference that occurs in this sense, creates a threat that undermines “the substantive commitments embodied in law”¹⁸. It also prevents judges to act as a counterforce to the executive and legislative abuses of power¹⁹, whereas, instead, they are reasonably expected to decide, impartially and independently, on cases without regard to the preferences of the government, of another political party, or of anyone else²⁰. For example, “in the Pinochet’s Chile, judges who did not obey were fired, persecuted, or had their careers frozen”²¹.

Another key element is represented by personal independence of judges. Personal independence refers to the assurance that judges have secure judicial terms and salaries²². It also requires judiciary to control the case assignment, court scheduling, and judicial transfers²³. The tenure and salary protection would give individual judges generous protection from all forms of direct pressure²⁴ from any public and private parties. The judges need to be guaranteed for salaries of a reasonable lifestyle and a secured tenure against any executive or legislative action²⁵. It would also remind them that their allegiance is to the law²⁶.

Judges shall also enjoy internal independence. Internal independence protects individual judges from pressure within the judiciary itself²⁷. This pressure concerns any bureaucratic supervision/control of one judge over another except for regular appellate procedures²⁸.

¹⁴ See for example *Roper v Simmons* 543 U.S 551 (2005) (United States).

¹⁵ See for example *Hemmes v Young* [2005] 2 NZLR (New Zealand).

¹⁶ *ibid* 634.

¹⁷ *Roper v Simmons* 543 U.S 551 (2005) (United States).

¹⁸ John A. Ferejohn & Larry D. Kramer, ‘Independent Judges, Dependent Judiciary: Institutionalizing Judicial Restraint’, (2002) 77 N.Y.U. L. Rev. 962, p. 967.

¹⁹ Maria Dakolias & Kim Thachuk, *ibid.*, p. 362.

²⁰ Michael J. Perry, ‘Protecting Human Rights in a Democracy: What Role for the Courts’ (2003) 38 Wake Forest L Rev 635, p.644-645.

²¹ Maria Dakolias & Kim Thachuk, *ibid.*

²² *Ibid.*

²³ *Ibid.*

²⁴ John A. Ferejohn & Larry D. Kramer, *ibid.*, p. 976.

²⁵ Maria Dakolias & Kim Thachuk, *ibid.*, p. 398.

²⁶ Robert W. Gordon, ‘The Role of Lawyers in Producing the Rule of Law: Some Critical Reflections’ (2009) 11 Theoretical Inquiries in Law 441, p. 444.

²⁷ Joost Sillen, ‘The Concept of ‘internal Judicial Independence’ in the Case Law of the European Court of Human Rights’, (2019) 15 European Constitutional Law Review 104, p. 104.

²⁸ Owen M. Fiss, ‘The Limits of Judicial Independence’ (1993) 25 U Miami Inter-Am L Rev 57, p. 58.

On the first day of 2024, Supreme Court of Israel, with a slim majority of 8 to 7, overturned the government's law which was introduced in July 2023 to remove several checks and balances systems over the government including curtailing the Court's own powers to reject government decisions deemed to be extremely unreasonable²⁹.

In Türkiye, in November 2023, the Supreme Court of Cassation filed a criminal complaint against the judges of the Constitutional Court after the Constitutional Court had ruled on violation of right to vote and be elected in Can Atalay's first individual application³⁰. It was the first time that in Türkiye members of the top court took legal action against colleagues of another top court³¹. Although the Supreme Court of Cassation is bound by the Constitution to comply with decisions of the Constitutional Court, it has refused to comply with its ruling for long³² including the latest two decisions regarding Can Atalay.

In May 2022, the President of Kiribati suspended Judge Lambourne from the High Court and appointed a tribunal to investigate unspecified allegations of misconduct against the senior judge³³. When Lambourne's appeal was brought before the court, the government suspended the Chief Justice who was to hear the case³⁴.

In 2023, in Guatemala, anti-corruption independent judiciary officials including former prosecutor Virginia Laparra Rivas and former judge Miguel Ángel Gálvez faced judicial harassment and politically motivated arrest and detention³⁵. The governments' efforts continued to remove immunities of anti-corruption judges and prosecutors³⁶. Mr. Gálvez, who tried several cases related to corruption, organised crime and the internal armed conflict, has become the subject of the judicial harassment and disciplinary measures, because presiding over high-profile case known as the Military Diary Case in May 2022³⁷.

Examples of the role played by the judiciary in democratic elections

In a decision in 2017, the Kenyan Supreme Court ruled with a majority of 4 to 2 that the Independent Electoral and Boundaries Commission had not conducted the presidential elections of August 2017 in accordance with the Constitution and relative laws and that elections should be re-run³⁸. Although this landmark decision was widely welcomed as a sign of judicial independence and 'democratic maturity', it prompted a backlash from President Kenyatta and his allies³⁹ that attacked judges and labelled as criminals.

In the USA, with the upcoming presidential elections, the Republican candidate Mr Donald Trump attempts to throw out his indictment over his efforts to overturn the 2020 election

²⁹ [Israel: IBAHRI welcomes Supreme Court decision | International Bar Association \(ibanet.org\)](#)

³⁰ *Şerafettin Can Atalay (3)* [GA], Appl. No: 2023/99744, 21/12/2023. Available at [T.C. Anayasa Mahkemesi](#)

³¹ [İstanbul court judges face criminal complaint for non-compliance with top court decision - Turkish Minute](#)

³² [Turkish Court Again Defies Constitutional Court Ruling on MP's Release | Balkan Insight](#)

³³ [Kiribati: UN expert says attempts to deport High Court judge undermine judicial independence | OHCHR](#)

³⁴ *Ibid.*

³⁵ [Guatemala's Public Ministry's Continued Attacks Against Independent Judges and Prosecutors - United States Department of State](#)

³⁶ *Ibid.*

³⁷ [Guatemala: UN expert condemns targeting of prosecutor and judge | OHCHR](#)

³⁸ Nic Cheeseman, Karuti Kanyinga, Gabrielle Lynch, Mutuma Ruteere & Justin Willis, 'Kenya's 2017 elections: winner-takes-all politics as usual?' (2019) 13 *Journal of Eastern African Studies* 215, p. 228.

³⁹ *Ibid.*

results. On 16 January 2024, Federal Appeals Court said that it would reject Trump's attempt. The three-judge panel expressed scepticism with the position that he had absolute immunity from prosecution⁴⁰.

Examples of policies or institutional arrangements in place to limit the role of judges in safeguarding democracy

The role of judges can be challenged by undue interferences by the executive or legislative branches. One of the strategies that states, or authoritarian leaders, use to capture the judiciary is enable the executive or legislative branches with exclusive power to appoint supreme courts' judges⁴¹. In an ideal democracy, checks and balances system ensure accountability of the executive through Parliament, however, this system seems to lose the accountability check in many countries⁴². This makes the appointment of judges process vulnerable and open to sabotage due to high possibility of interactions with the executive⁴³. Thus, to uphold the separation of powers in a democracy, the executive or legislative branches should be given minimal roles in the appointment process⁴⁴. However, it is recently observed by the scholars that governments tend to use a court packing mechanism, which is understood as a deliberate change of the composition of a court -mostly higher courts- to secure its control over the judiciary⁴⁵. This includes expanding or reducing the size of the court or swapping the sitting judges without changing the size of the court⁴⁶ to ensure the presence of judges that are loyal to the government⁴⁷. In expanding strategy, the number of judges is increased. In emptying strategy, the number of judges is reduced, the sitting judges are forced to vacation, or sitting judges are benched. In swapping strategy, the retirement age is reduced, life tenures are removed, terms of the office are shortened, or the judges are abusively impeached, prosecuted, dismissed, or forced to resign or attacked physically and violently⁴⁸. Court packing can be in two types: politically driven court-packing which enables for quick and easy implementation of the government policies and regime change court-packing which ensures support for executive encroachment⁴⁹. It mostly appears in the process of democratic decay and recently played a role in democratic deterioration in the countries like Hungary, Poland, Türkiye, Bolivia, Ecuador, and Venezuela⁵⁰.

⁴⁰ [Judges skeptical of Trump's presidential immunity arguments in election interference case | Donald Trump | The Guardian](#)

⁴¹ P. N. Bhagwati, *ibid.*, p. 47.

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ Rishi Gulati, 'Judicial Independence at International Courts and Tribunals: Lessons drawn from the Experiences of the International Court of Justice and the Appellate Body of the World Trade Organisation', (January 2020) KFG Working Paper Series No. 41, Berlin Potsdam Research Group "The International Rule of Law – Rise or Decline?", p.13.

⁴⁵ Benjamin Garcia Holgado & Raúl Sánchez Urribarri, 'Court-packing and democratic decay: A necessary relationship?' (2023) 12 Global Constitutionalism 350, p. 351.

⁴⁶ David Kosař & Katarína Šipulová, 'Comparative Court-packing' (2023) 21 International Journal of Constitutional Law 80, p. 82.

⁴⁷ *Ibid.*, p. 83.

⁴⁸ *Ibid.*, p. 89-90.

⁴⁹ Benjamin Garcia Holgado & Raúl Sánchez Urribarri, *Ibid.*

⁵⁰ *Ibid.*

In Hungary, in 2010, when the right-wing party Fidesz took power, it began passing several constitutional amendments that weakened the judiciary and other institutions designed to check its political power. The Hungarian Constitutional Court was deprived of jurisdiction over laws dealing with fiscal and other important matters with new constitutional amendments⁵¹. Also, President Orbán's 2012 reform reduced the mandatory retirement age of Hungarian judges from 70 to 62 which allowed the government to free 274 judicial positions, mostly at higher courts⁵².

In Türkiye, the number of Constitutional Court judges is reduced from 17 to 15 with Act no. 6771 (2017)⁵³. The number was previously increased from 11 to 17 in 2010 constitutional amendments⁵⁴. Among those judges, 3 of them are elected by the parliament while 12 would be appointed by the president who is also the head of ruling party⁵⁵. Thus, the appointment of most judges is in the power of the executive⁵⁶.

In Poland, in 2015, the major party Law and Justice (PiS) has directly targeted the judiciary after being elected to government⁵⁷. The government lowered retirement age of the Polish Supreme Court (SN) judges from 70 to 65 which had an effect of sending a significant number of SN judges into retirement⁵⁸ especially when the Supreme Court and Constitutional Court of Poland gained a reputation of being independent actors. Along with these changes, the government also remerged the offices of the attorney general and the minister of justice who received additional powers of discretion⁵⁹.

In Belarus, the judiciary is under the excessive control of the executive, as shown in the procedures for the appointment, tenure, and removal of judges that violate the principle of the independence of judges⁶⁰.

In Russia, in 2020, Putin signed the Decree No. 445 which granted him grant the authority to nominate the chairperson and deputy chairperson and justices of the Constitutional Court, Supreme Court, and other federal courts of the Russian Federation. The authority of the president also extends to the appointments of the prosecutor general and his deputies⁶¹.

⁵¹ David Landau, 'A Dynamic Theory of Judicial Role' (2014) 55 BC L Rev 1501, p. 1508.

⁵² David Kosař & Katarína Šipulová, *ibid.*, p. 96.

⁵³ Art. 146 of the Turkish Constitution. Available at [CONSTITUTION OF THE REPUBLIC OF TURKEY \(anayasa.gov.tr\)](https://www.anayasa.gov.tr)

⁵⁴ Gábor Halmai, 'Unconstitutional Constitutional Amendments: Constitutional Courts as Guardians of the Constitution?' (2012) 2 Constellations, p. 17.

⁵⁵ Art. 146 of the Turkish Constitution. Available at [CONSTITUTION OF THE REPUBLIC OF TURKEY \(anayasa.gov.tr\)](https://www.anayasa.gov.tr)

⁵⁶ Gábor Halmai, *ibid.*, p. 18.

⁵⁷ Claudia-Y. Matthes, 'Safeguarding Democracy and the Rule of Law by Civil Society Actors? The Case of Poland' in Astrid Lorenz and Lisa H. Anders (eds) *Illiberal Trends and Anti-EU Politics in East Central Europe* (Palgrave Macmillan, 2021), p. 263.

⁵⁸ European Parliamentary Research Service, Briefing on 'ECJ case law on judicial independence' (October 2023). Available at [Recent ECJ case-law on judicial independence \(europa.eu\)](https://www.eprs.europa.eu)

⁵⁹ Claudia-Y. Matthes, *ibid.*

⁶⁰ [Belarus: Establishing independent judicial system should top the agenda for future reforms, says UN expert | OHCHR](https://www.ohchr.org/en/press-releases/2023/04/belarus-establishing-independent-judicial-system-should-top-the-agenda-for-future-reforms-says-un-expert)

⁶¹ [Russian Federation: Newly Adopted Constitutional Amendments Change Jurisdiction of Constitutional Court and Procedure for Appointing Judges | Library of Congress \(loc.gov\)](https://www.loc.gov/congressional-affairs/2020/07/russian-federation-newly-adopted-constitutional-amendments-change-jurisdiction-of-constitutional-court-and-procedure-for-appointing-judges/)

Lawyers

Lawyers are the agents who communicate the rules through advice to private clients or government to enable them to structure their transactions in compliance with the legal and constitutional limitations⁶². Due to “their status, special skills, and training, lawyers have the opportunity and indeed the obligation to help attain the nation's political imperative of consolidating democracy”⁶³. The lawyers also play another role in the society by promoting and providing public access to the law, the courts, and other government institutions particularly for the poor, for racial or political minorities⁶⁴. The lawyers have a profession whose members are not dependent on government⁶⁵. That maintains independence from government interference, as well as holds a force to preserve government under law⁶⁶. If there is an abuse of authority, it is more readily challenged by the lawyers⁶⁷. Thus, lawyers should be able to “work independently and without fear and to freely communicate with their clients”⁶⁸.

Examples of lawyers’ active role in safeguarding democracy and upholding fundamental democratic rights

In Poland, after the government made several attacks on the judiciary after 2015 elections, several Polish lawyers started “actively defending judicial personnel⁶⁹ against accusations made by politicians in Polish and European courts and they submitted complaints to the relevant bodies of the UN”⁷⁰. The human rights lawyers especially used the tool of strategic litigation and exercised pro bono legal support during this process⁷¹.

In Hong Kong, in 2021, 47 leading pro-democracy figures including lawyers were charged on violating a national security law that China imposed on the city the year before. All sentenced to life imprisonment for taking part in a primary vote designed to maximize the pro-democracy camp’s chances of winning legislative elections. The hearings was intentionally dragged on for two days in which the defendants had been deprived of sleep, meals and, at times, access to a lawyer⁷².

⁶² Robert W. Gordon, *ibid.*, p. 448.

⁶³ Bruce A. Green, 'The Lawyer's Role in a Contemporary Democracy - Foreword' (2009) 77 Fordham L Rev 1229, p. 1230.

⁶⁴ *Ibid.*, p. 1232.

⁶⁵ Leslie C. Levin, "'This Is Not Normal': The Role of Lawyer Organizations in Protecting Constitutional Norms and Values' (2022) 69 Wash U J L & Pol'y 173, p. 176.

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

⁶⁸ International Commission of Jurists, ‘International Principles On The Independence And Accountability Of Judges, Lawyers And Prosecutors A Practitioners’ Guide’ (2004), p. 69.

Available at [*icj_independence_of_judiciary_guide_2004.pdf](#)

⁶⁹ The Justice Defence Committee (KOS), “A country that punishes. Pressure and repression of Polish judges and prosecutors” (2019). Available at [Raport-KOS_eng.pdf \(citizensobservatory.pl\)](#)

⁷⁰ Claudia-Y. Matthes, *ibid.*, p. 271.

⁷¹ *Ibid.*

⁷² [Hong Kong bail hearings in national security case sound alarm for city's courts - The Washington Post](#)

In Russia, since the invasion of Ukraine, many persons have been arrested, including lawyers; however, despite the risks, some continued to protest against the war and Putin's administration. In April 2023, a group of Russian lawyers filed a complaint to the country's highest court to declare the censorship law banning criticism against Russian armed forces unconstitutional. Violetta Fitsner, one of the lawyers of the complaint, stated that "such restrictions cannot exist in a democratic society."⁷³

The role of defence lawyers' role in death penalty cases are extremely important in terms of ensuring the accused enjoys their rights especially through providing adequate legal assistance and representation to the defendant. The inadequate defence increases the risk of facing the death penalty, particularly if they have been coerced into confession by means of torture or ill-treatment⁷⁴. In Belarus, torture and ill-treatment is highly used method for self-incrimination of the accused in the absence of lawyers⁷⁵. Following the situation of death penalty cases in Belarus also notes that defendants were only visited once during pre-trial investigation, meetings were extremely short, were not held in private, the accused was questioned without the presence of the lawyer, or the accused did not have any legal assistance from a lawyer during the trial⁷⁶.

Examples of risks, obstacles, or challenges faced by lawyers when fulfilling this role

Lawyers, as legal actors, possibly face a lack recognition by the official bodies including even courts⁷⁷. There is a tendency in the governments to identify lawyers with their clients' causes, in clear breach of the UN Basic Principles on the Role of Lawyers. Especially in politically motivated cases, lawyers representing the accused can easily be subjected to the accusations themselves⁷⁸. Those cases also prevent lawyers to communicate effectively and privately with their clients.

In Iran, Mohammad Moghimi, a lawyer who represented a young woman Iranian cartoonist, Atena Farghadani, was charged with "illegitimate sexual relationship short of adultery". The charges were brought since he shook his client's hand as they met in prison⁷⁹. Under Islamic law a man and a woman who are not married or have not a blood relationship should not touch each other⁸⁰.

In Belarus, in 2021, Alexander Pylchenko, the lawyer who was speaking out during protests following 2020 elections, was disbarred by the Ministry of Justice's Qualification Commission. As of October 2023, six lawyers were detained for simply for performing their professional duties and are facing long terms in prison, including torture, ill-treatment, and incommunicado

⁷³ [Russian Lawyers Ask Court to Ease Crackdown on Dissent - The New York Times \(nytimes.com\)](https://www.nytimes.com/2023/04/18/world/europe/russia-lawyers-protest.html)

⁷⁴ 'Part II: The role of lawyers in capital punishment cases', (2022) Background Paper 2022, "*The Death Penalty in the OSCE Area, Special Focus: the role of lawyers in capital punishment cases*", p. 14. Available at: [527082_1.pdf \(osce.org\)](https://www.osce.org/files/documents/5/2/527082_1.pdf)

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*, p. 15.

⁷⁷ International Commission of Jurists, *ibid.*, p. 64.

⁷⁸ International Commission of Jurists, *ibid.*, p. 65.

⁷⁹ [Female cartoonist could have 12 year prison term extended for shaking her lawyer's hand | The Independent | The Independent](https://www.theindependent.com/2023/04/18/female-cartoonist-could-have-12-year-prison-term-extended-for-shaking-her-lawyer-s-hand/)

⁸⁰ Iran Human Rights Documentation Centre, Report on 'Practicing Law in Iran: Risks and Challenges' (2018). Available at [Practicing Law in Iran: Risks and Challenges - Iran Human Rights Documentation Center \(iranhrdc.org\)](https://www.iranhrdc.org/)

detention: Maksim Znak, Aliaksandr Danilevich, Vital Brahinets, Anastasiya Lazarenka, Yulia Yurhilevich, and Aliaksei Barodka⁸¹. Lawyers have been disbarred and faced disciplinary sanctions by their own Bar Association on groundless accusations of ‘discrediting the legal profession’, ‘misconduct incompatible with the lawyer’s title’ or ‘disseminating extremist materials’, without cause and without having the chance to defend themselves⁸². From 2020 to August 2023, more than 130 lawyers in Belarus were reported to be disqualified and disbarred⁸³.

In the Philippines, since 2016, there has been an increase in attacks against lawyers⁸⁴. Between July 2016 and March 2021 under President Duterte’s administration, at least 61 lawyers, judges and prosecutors were killed⁸⁵, including 4 cases in which policemen were perpetrators⁸⁶. Lawyers were reported to be attacked and killed simply because of their work⁸⁷. Many lawyers were harassed and intimidated as well as become subject to death threats, surveillance, labelling, and other forms of attacks⁸⁸. Despite these attacks, the climate of impunity has increasingly made the lawyers and judges remain as targets⁸⁹.

Capital punishment defence lawyers, who practice in retentionist countries, face extreme pressure while working since they have their clients’ lives at stake all the time. Capital defence lawyers in most countries receive little to no support for investigation, transportation, or expert assistance⁹⁰. Besides, the legal training doesn’t reliably prepare defence lawyers for the emotional impact of their work⁹¹. Also, generally, strong public support for the death penalty, outright threat from the government, or a lack of respect for lawyers who represent people on death row creates additional psychological pressure on the work of lawyers⁹². Lawyers have been arrested, interrogated, attacked and disbarred for their work on behalf of capital defendants⁹³.

In Hong Kong pro-democracy trials, the trial of Jimmy Lai had to be rescheduled in December 2022. It has faced delays, including the Hong Kong government’s attempts to prevent Lai’s

⁸¹ [Belarus: Suppression of independent lawyers has intensified. Is there a Solution? - Lawyers for Lawyers](#)

⁸² [Belarus: Suppression of independent lawyers has intensified. Is there a Solution? - Lawyers for Lawyers](#)

⁸³ [Belarus: Suppression of independent lawyers has intensified. Is there a Solution? - Lawyers for Lawyers](#)

⁸⁴ <https://www.icj.org/wp-content/uploads/2019/09/Philippines-attacks-against-lawyers-escalating-advocacy-2019-ENG.pdf>

⁸⁵ [Philippines: Surge in killings of lawyers and judges shows justice system "in deadly danger" - Amnesty International](#)

⁸⁶ [Lawyers killed: 61 under Duterte, 49 from Marcos to Aquino \(rappler.com\)](#)

⁸⁷ [Lawyers killed: 61 under Duterte, 49 from Marcos to Aquino \(rappler.com\)](#)

⁸⁸ <https://www.icj.org/wp-content/uploads/2019/09/Philippines-attacks-against-lawyers-escalating-advocacy-2019-ENG.pdf>

⁸⁹ [Philippines: Surge in killings of lawyers and judges shows justice system "in deadly danger" - Amnesty International](#)

⁹⁰ Sandra Babcock, ‘Part I: Introductory Essay’, (2022) Background Paper 2022, “*The Death Penalty in the OSCE Area, Special Focus: the role of lawyers in capital punishment cases*”, p. 8. Available at: [527082_1.pdf \(osce.org\)](#)

⁹¹ <https://cdn.penalreform.org/wp-content/uploads/2014/04/fighting-for-clients-v3-web.pdf>

⁹² *Ibid.*

⁹³ *Ibid.*

British lawyer Tim Owen from representing him⁹⁴. Eventually, Mr. Owen's current work was withheld the extension by the Hong Kong immigration authorities without disclosing a reason⁹⁵.

Example of policies or institutional arrangements in place to limit the role of bar associations in safeguarding democracy

Lawyers enjoy freedom of association, as any individuals. Bar Associations are to be created for safeguarding the professional interests of lawyers and protecting and strengthening the independence of the legal profession⁹⁶. Freedom of association of lawyers can be violated by establishing a State-controlled association or requiring an authorisation from the executive branch as requisites to work⁹⁷.

In Belarus, the licence and practice of the lawyers have become subject to the competence of Ministry of Justice firstly by the adoption of the Presidential Decree on the Activities of Lawyers and Notaries of 3 May 1997⁹⁸. This decree also obliges the lawyers to be the members of a centralized Collegium controlled by the Ministry, which limits the independent role of lawyers⁹⁹. Then, in 2021, with amendments of the Law on the Bar and Legal Advocacy, all lawyers applying for licenses are now required to be approved in advance by the Ministry of Justice¹⁰⁰. The tight control of the Ministry of Justice over Bar Associations increased with recent amendments to the Law on the Bar and Advocate Activity. The amendments prohibit individual lawyers and private legal firms from representing people charged with certain criminal and administrative offences¹⁰¹.

⁹⁴ [Trial of Hong Kong tycoon Jimmy Lai delayed after British lawyer denied visa extension | Hong Kong | The Guardian](#)

⁹⁵ [Hong Kong court delays trial of pro-democracy tycoon \(france24.com\)](#)

⁹⁶ International Commission of Jurists, *ibid.*, p. 68.

⁹⁷ *Ibid.*

⁹⁸ *Ibid.*

⁹⁹ *Ibid.*

¹⁰⁰ [Belarus: Suppression of independent lawyers has intensified. Is there a Solution? - Lawyers for Lawyers](#)

¹⁰¹ [Belarus should ensure the independence of the judiciary and the legal profession \(UN Statement\) | International Commission of Jurists \(icj.org\)](#)