

CALL FOR ACTION IN SUPPORT OF UN BASIC PRINCIPLES ON THE ROLE OF LAWYERS
Presented by the Japan Federation of Bar Associations, International Association of Lawyers and
International Bar Association

We, the undersigned lawyers' organisations, respectfully urge the participating countries of the Fourteenth United Nations Congress on Crime Prevention and Criminal Justice to fully recognize, uphold and protect the vital role that lawyers and the legal profession play in upholding the rule of law, promoting and protecting human rights, in accordance with the UN Basic Principles on the Role of Lawyers, adopted at the 8th Crime Congress in 1990 (hereinafter referred to as the "Basic Principles").

The independence of lawyers and the legal profession are undeniably indispensable elements in the realization of Sustainable Development Goal 16 of the 2030 Agenda of Sustainable Development, in which Member States committed, *inter alia*, to provide equal access to justice for all and to build effective, accountable and inclusive institutions at all levels. The role of independent lawyers and legal profession as a fundamental pillar of the Rule of Law and of the promotion and protection of human rights was again emphasized by the UN Human Rights Council in its resolution A/HRC/44/L.7 adopted in July 2020.

We therefore note with great concern the increasing frequency, globally, of attacks and interferences both on the independence of the legal profession, and against lawyers individually, including threats, intimidation, retaliation, harassment and interference in the discharge of lawyers' professional functions. Lawyers are exposed to arbitrary sanctions, including arrest, prosecution or deprivation of licence to practice law, and/or to situations in which governments fail to safeguard lawyers adequately where their security is threatened as a result of engaging in their profession.

Following the 30th Anniversary of the adoption of the Basic Principles, **we want to reaffirm** the relevance and the universality of these Principles, which provide "the most comprehensive international normative framework aimed at safeguarding the right of access to legal assistance and the independent functioning of the legal profession¹".

We therefore call on States to:

1. **Adopt** effective and creative mechanisms to respond to new realities and threats against lawyers and the legal profession, and, in law and in practice, to fully comply with, codify, and implement the Basic Principles, as well other national and international norms and standards relating to the independence and functions of lawyers². All ongoing and/or future initiatives aimed at adopting specific binding instruments in line with these Principles, such as the Council of Europe's efforts on the drafting of a Convention on the profession of lawyer, should be actively supported.
2. **Ensure** prompt, practical and effective access to independent legal representation, without discrimination, for all persons within their territory, from the early stages of, and throughout, the criminal proceedings. Any limitations to the access to legal representation must be consistent with international human rights law.
3. **Ensure** to all lawyers in the exercise of their profession, guarantees of protection from any kind of interference by state and non-state actors, as provided in Principles 16 and 17. States should be proactive in providing additional protection and safeguards to lawyers practising their profession who might be specifically targeted by various state and non-state actors when, for example, representing unpopular or anti-government citizens/causes; when allegations of threats to national security are invoked; or when the rule of law is undermined. Lawyers must themselves be guaranteed at all times the right to representation, a fair trial and attendant due process.
4. **Ensure** that the principle of the independence of the legal profession and the corresponding principles of non-identification of lawyers with their clients and/or causes (Principle 18) and lawyers' civil and penal immunity for relevant statements made in good faith in written or oral pleadings (Principle 20), are never derogated from.
5. **Ensure** fair, objective, non-discriminatory and transparent admission proceedings to the legal profession and conditions for obtaining a license to practice as a lawyer, adapted to ensure that the legal profession represents

¹ Report of the Special Rapporteur on the independence of judges and lawyers, June 2017, A/HRC/35/31, para 17.

² Among them, the Universal Declaration of Human Rights (1948); the International Covenant on Civil and Political Rights, 1966; Human Rights Committee General Comment No. 32 Article 14: Right to equality before courts and tribunals and to a fair trial, 2007; the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, adopted by the UN General Assembly in December, 2012; and resolutions and decisions of the UN Human Rights Council, the Commission on Human Rights and the General Assembly on the independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers.

the population it serves, as a prerequisite of the fundamental principles of equal access to justice and non-discrimination based on gender, race, religion, national origin, sexual orientation, political opinions, disability and/or membership in a certain social group (Principles 10 and 11). In particular, States and bar associations should take special measures to fight gender-based discrimination and ensure equal opportunity for women, especially from vulnerable groups, in the legal profession.

6. **Ensure** that guarantees for lawyers that allow them to function effectively in their profession, including the lawyer's right to adequate opportunity, time and facilities to meet and communicate freely and in full confidentiality with his/her clients, including in the case of detained clients; the lawyers' right to a reasonable fee for his/her work; and the lawyer's ability to travel and consult freely with his/her client, are never curtailed by any domestic laws and provisions, except in exceptional circumstances. In those exceptional circumstances, restrictions are only permissible through legal processes and mechanisms, when and to the extent necessary to protect the interest of justice, as well as proportional to the achievement of the legitimate aim pursued, and with the necessary safeguards to ensure the right to defence and due process in a practical and effective manner. These conditions apply to any legislation purporting to protect national or international security interests, and/or purporting to fight terrorism, extremism, drug trafficking, corruption, money laundering or transnational organized crime. Special measures should be ensured to protect the lawyer-client privilege as being integral to the preservation of due process and a fair trial.
7. **Recognize and promote** the right of lawyers to form independent and self-governing professional associations of lawyers accessible to all members of the profession, as guardians of the core values of the legal profession and ensure protection of this independence, including through domestic legislation. To that end, States must respect, protect and promote the vital role of professional associations of lawyers in upholding and guaranteeing professional standards and ethics; handling and/or monitoring disciplinary proceedings against their members consistent with due process guarantees; and protecting individual lawyers from persecution, attacks and improper restrictions (Preamble, Principles 24 to 29). States, together with bar associations, must also eliminate obstacles to collaboration and mutual assistance between lawyers from different jurisdictions, thereby promoting sharing of knowledge and best practices.
8. **Promote and support**, in cooperation with professional associations of lawyers, appropriate forms of education of the public, also based on new technologies when relevant, regarding access to justice and the role of lawyers to provide effective and equal access to legal services, including legal aid (Principle 25).
9. **Provide**, in cooperation with bar associations and professional associations of lawyers, appropriate legal training to future lawyers and equal access to opportunities for continuing legal education to all lawyers, including on professional ethics and human rights, encouraging the study of relevant topics such as data protection, new technologies, artificial intelligence, as well as other topics that could affect rights and obligations and the legal profession, generally (Principle 9).
10. **Ensure** the right of lawyers and professional associations of lawyers to participate in a timely and meaningful way in the legislative process as it relates to the legal profession and access to justice, and respect and protect lawyers' rights to freedom of opinion and expression, including via social media, in their role as critics of the administration of justice (Principle 23). Lawyers and professional associations of lawyers must be free to challenge authorities who do not respect the rule of law, including with respect to access to, and administration of, justice and regarding the protection of human rights.
11. **Ensure** application and implementation of guarantees mentioned above, in accordance with international standards, not only to all lawyers but also to those exercising lawyers' functions in a professional manner, including before international and regional courts and bodies, as necessary and relevant for them to exercise their function effectively (Preamble).

Finally, we request that the 14th UN Crime Congress recommend to the Commission on Crime Prevention and Criminal Justice and the General Assembly that it develop technical guidance for monitoring the independence of the legal profession at national, regional and international levels. We further call on States to monitor the independence of the legal profession accordingly, and identify actual and potential threats and challenges, in consultation with relevant stakeholders, including independent national and international organizations of lawyers.