

Mandates of the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the independence of judges and lawyers and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, pursuant to Human Rights Council resolutions 44/8 and 43/4.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning several **attacks on lawyers and the independence of the legal profession, which take the form of arbitrary arrests, physical attacks, intimidation and harassment**. The information received also concerns the **alleged political interference with the independence of the judiciary**.

According to the information received:

Mr. Wassef Harakeh

Mr. Wassef Harakeh is a lawyer registered with the Beirut Bar Association. He is known for his work defending participants of anti-corruption protests.

In July 2020, Mr. Harakeh was reportedly intercepted in Beirut and severely beaten by a group of individuals in what appeared to be an assassination attempt. Mr. Harakeh managed to escape from the attackers and filed a complaint with the police.

The alleged perpetrators were identified and arrested. Following their arrest, the judge assigned to the case ordered the release of the individuals. Reportedly, the judge acted under political pressure because the individuals worked as security agents for a sitting minister of the government.

Mr. Afram Halabi

Mr. Afram Halabi is a lawyer registered with the Beirut Bar Association. In November 2020, Mr. Halabi was beaten in broad daylight by members of the Internal Security Forces (ISF), allegedly for violating Beirut's lockdown order.

Mr. Halabi filed a complaint against the members of the ISF involved in the attack. However, it is reported that the public prosecutor closed the case after only one hearing without providing a concrete motivation. The prosecutor allegedly acted under political pressure to dismiss Mr. Halabi's complaint against the ISF.

Mr. Jimmy Hadchiti

Mr. Jimmy Hadchiti is a lawyer registered with the Beirut Bar Association. In January 2021, he was assaulted in broad daylight by a police officer while in the presence of his wife and children.

Following the assault, Mr. Hadchiti was arrested and brought to the police station for questioning. While in custody, Mr. Hadchiti was physically assaulted once more by the same police officer who conducted the arrest.

Subsequently, Mr. Hadchiti was charged with assaulting the police officer and called to appear before the Military Court. It is reported that the charges were fabricated to intimidate Mr. Hadchiti.

Mr. Elsherif Sleiman

Mr. Elsherif Sleiman is an anti-corruption activist and lawyer registered with the Beirut Bar Association. In February 2021, Mr. Sleiman was summoned to appear before the public prosecutor for questioning after posting a publication criticizing Lebanese government authorities on his Facebook page.

The Beirut Bar Association objected to the summons, recalling that the law organizing the profession of lawyers in Lebanon (Law No. 8/70) requires the Council of the Bar to give prior authorization before criminal proceedings are installed against a lawyer. However, the magistrate in charge of the case reportedly ignored the request of the Beirut Bar Association and summoned Mr. Sleiman to an examination hearing.

Alleged interference in the independence of the judiciary

According to the information received, the executive branch of power is exercising broad control over the Supreme Judicial Council (SJC) and over its decisions concerning the appointment and assignment of judges in Lebanon. The SJC – which is the highest judicial authority in the country - is comprised of ten members, eight of which are currently appointed by the executive branch. The power assigned to the executive branch to appoint SJC members has allegedly allowed for improper political influence and interference over all aspects of the Lebanese judiciary, including over the selection and career of judges.

Furthermore, members of the legislative and executive branches have reportedly intervened in multiple judicial proceedings concerning matters of national relevance. In particular, government authorities have allegedly intervened in several ongoing legal matters concerning the Beirut Port explosion of 4 August 2020.

Mass protests broke out in Beirut following the Beirut Port explosion in 4 August 2020, and several thousand people took to the streets to demonstrate against the government's response to the crisis. Law enforcement agencies reportedly used excessive force against demonstrators by firing live ammunition, metal projectiles and kinetic impact projectiles, and by deploying excessive amounts of tear gas. Several victims filed criminal complaints

against law enforcement agents. However, the courts dismissed all of these complaints allegedly because of pressure from high-profile political figures.

On 8 April 2021, the Minister of Economy reportedly sent a letter to the judge in charge of the Beirut Port explosion investigation expressly asking the judge to exclude “terrorist acts” from among the possible causes for the explosion.

On 29 June 2021, the Minister of Transport and Public Works announced during a press conference that he had sent a letter to the Minister of Justice asking the Minister to intervene with a judge in Beirut and ask the judge to reconsider a prior decision made on the Beirut Port explosion case.

On 2 July 2021, the judge in charge of the Beirut Port explosion investigation asked the Parliamentary Assembly to lift the parliamentary immunity of four Ministers of Parliament (MPs), to allow the MPs to be charged and prosecuted for voluntary manslaughter. The Parliamentary Assembly has yet to make a final decision concerning the request. However, it is reported that the parliamentary majority - composed of the political parties of the four accused MPs - have submitted a petition requesting that the MPs are prosecuted before a court composed exclusively of parliamentarians.

Without prejudging the accuracy of the information received, we would like to express our concerns at the alleged failure of the executive branch to respect and observe the principles of judicial independence and the separation of powers, according to which the executive, the legislature and the judiciary constitute three separate and independent branches of Government. In particular, we would like to express our concern at the executive branch’s alleged control over the selection and appointment of members of the judiciary in Lebanon. Such conduct constitutes a direct threat to the independence and impartiality of the judiciary, exposing judges and magistrates to various forms of pressure, threats and interference that may adversely affect their capacity to decide matters before them impartially, on the basis of facts and in accordance with the law.

We also would like to express our concern at the different forms of attacks and intimidation that lawyers appear to face in Lebanon as a result of the legitimate exercise of their profession. If confirmed, the events described above would amount to a serious breach of a number of international standards relating to the free and independent exercise of the legal profession.

According to these standards, States must put in place all appropriate measures to ensure that lawyers (i) are able to perform all of their professional functions without intimidation, hindrance, harassment, or improper interference, and (ii) are not subject to, or threatened with, prosecution or any administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics. In particular, these standards recognize that lawyers are entitled to freedom of opinion and expression on an equal basis with others, and that this freedom includes the right to express their opinions on matters concerning the law, the administration of justice and the promotion and protection of human rights.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these

allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information as to the legal and factual basis for the arrest of Mr. Elsherif Sleiman, and explain how his arrest is compatible with international standards relating to the right to freedom of expression and the free and independent exercise of the legal profession.
3. Please provide detailed information on the legislative and other measures adopted by the State to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment, or improper interference and to prevent that they are subject to, or be threatened with, prosecution or administrative, economic or other sanctions as a result of their identification with their clients or their clients' causes as a result of discharging their functions.
4. In the individual cases mentioned above, please indicate if any investigation or other measures has been conducted into the violence faced by the lawyers and how the perpetrators were brought to justice. If no such investigations have been conducted, please explain why, and indicate how this is compatible with international human rights law.
5. Please provide detailed information on the measures adopted by the State to guarantee the independence of the judiciary and to ensure that all State authorities, including the executive branch of power, respect and observe the independence of the judiciary.
6. Please provide detailed information on the composition and functioning of the Superior Judicial Council and explain to what extent it can be regarded as an independent judicial body.
7. Please provide detailed information on the measures the State intends to adopt to ensure the independence of the judiciary when handling matters concerning the Beirut Port explosion of 4 August 2020.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the

investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please accept, Excellency, the assurances of our highest consideration.

Diego García-Sayán
Special Rapporteur on the independence of judges and lawyers

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, the independence of the judiciary is prescribed, inter alia, in the International Covenant on Civil and Political Rights (ICCPR), ratified by Lebanon on 3 November 1972.

Article 14 of the ICCPR provides that “everyone is entitled to a fair and public hearing by an independent and impartial tribunal established by law”. Your country’s adherence to this treaty means that it must, inter alia, adopt all appropriate measures to guarantee the independence of the judiciary and protect judges from any form of political influence in their decision-making.

In its General Comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, the Human Rights Committee noted that the requirement of independence refers, in particular, to the procedure for the appointment of judges; the guarantees relating to their security of tenure; the conditions governing promotion, transfer, suspension and cessation of their functions; and the actual independence of the judiciary from political interference by the executive branch and the legislature. A situation where the functions and competencies of the judiciary and the executive are not clearly distinguishable, or where the latter is able to control or direct the former, is incompatible with the notion of an independent tribunal (para. 19).

We further recall that article 19 of the ICCPR enshrines the right to freedom of opinion and expression. According to international law, freedom of expression can only be subject to narrow limitations pursuant to standards of legality, necessity and legitimacy. Restrictions must meet the standards of *legality*, meaning that they are publicly provided by a law which meets standards of clarity and precision, and are interpreted by independent judicial authorities; *necessity and proportionality*, meaning that they are the least intrusive measure necessary to achieve the legitimate interest at hand, and do not imperil the essence of the right; and *legitimacy*, meaning that they must be in pursuit of an enumerated legitimate interest, namely the protection of rights or reputations of others, national security or public order, or public health or morals. As stated by the Human Rights Committee, restrictions to freedom of expression must “never be invoked as a justification for the muzzling of any advocacy of multiparty democracy, democratic tenets and human rights. Nor, under any circumstance, can an attack on a person, because of the exercise of his or her freedom of opinion or expression, including such forms of attack as arbitrary arrest, torture, threats to life and killing be compatible with article 19. Journalists are frequently subject to such threats, intimidation and attacks because of their activities. So too are persons who engage in gathering and analysis of information on the human rights situation and who publish human rights-related reports, including judges and lawyers” (CCPR/C/GC/34 para. 23).

The principle of the independence of the judiciary has also been enshrined in a large number of United Nations legal instruments, including the UN Basic Principles on the Independence of the Judiciary (hereinafter, the principles). The Principles provide, inter alia, that it is the duty of all governmental and other institutions to respect and observe the independence of the judiciary (principle 1); that judges shall decide matters before them impartially (...) without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from

any quarter or for any reason (principle 2); and that there shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision (principle 4).

I would also like to refer your Excellency's Government to the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana (Cuba) from 27 August to 7 September 1990.

The Basic Principles provide that governments must take all appropriate measures to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference, and to prevent that lawyers be threatened with prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics (principle 16). Where the security of lawyers is threatened as a result of discharging their functions, the Basic Principles provide that they must be adequately safeguarded by the authorities (principle 17). Furthermore, lawyers shall not be identified with their clients or their client's causes as a result of their professional functions (principle 18).

In relation to the right to freedom of expression, the Basic Principles on the Role of Lawyers provide that like other citizen, lawyers "are entitled to freedom of expression, belief, association and assembly", and have in particular "the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights". They also have the right "to join or form local, national or international organisations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization". In exercising these rights, lawyer "shall always conduct themselves in accordance with the law and the recognised standards and ethics of the legal profession" (principle 23).