

Mandate of the Special Rapporteur on the independence of judges and lawyers

Ref.: AL CHN 1/2024
(Please use this reference in your reply)

14 February 2024

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the independence of judges and lawyers, pursuant to Human Rights Council resolution 53/12.

I would like to bring to the attention of your Excellency's Government the content of provisions and amendments made to two Chinese administrative regulations: the Administrative Measures for the Practice of Law by Lawyers and the Measures on the Administration of Law Firms, which entered into force between 2016 and 2018, which are not in line with international standards related to the right to a fair trial and its guarantees, and may in their application, limit the functions of lawyers in China by restricting both their work and their freedoms.

In addition, I would like to also highlight that patterns apparent from the application of these measures since they were first implemented, as well as issues arising when lawyers are sentenced, which are also not in line with international human rights standards.

According to the information received:

The Ministry of Justice (MOJ) of the People's Republic of China adopted the *Measures on the Administration of Law Firms* and the *Administrative Measures for the Practice of Law by Lawyers* in 2008. The Ministry of Justice announced the amended *Measures on Lawyers and Law Firms* in September 2016, which entered into effect in November 2018. The Ministry of Justice amended the *Measures on the Administration of Law Firms* again in December 2018.

The Measures on Administration of Law Firms¹

Article 50 stipulates that:

“A law firm shall perform management functions in accordance with the law, educate and administer its lawyers' lawful and ethical practice, strengthen the supervision and administration of its lawyers' practice activities, and shall not indulge or connive at any of the following conduct of its lawyers:

- (1) Taking illicit means that disrupt the public order and endanger public security such as instigating, inciting and organizing a party or any other person to sit in, raise signs, put up banners, shout slogans, express support, and surround at the judicial authority or any other state authority so as to gather a crowd to make disturbances, create negative impacts and impose pressure on the relevant department.

¹ Issued by Ministry of Justice order no. 111 of 18 July 2008, amended by Order no. 125 of 30 November 2012, amended by Decree no. 133 of 6 September 2016), further amended by Decree no. 142 of 5 December 2018 of the Ministry of Justice; translation from the Beijing University Law Database.

- (2) Distorting, conducting misleading publicity and making misleading comments on a case handled by himself or herself or any other lawyer, or maliciously hyping a case.
- (3) By taking such methods as forming a group, conducting a joint signature, issuing an open letter, organizing online assembling and support or in the name of individual research and discussion, creating the pressure of public opinion, and accusing and defaming the judicial authority and judicial system.
- (4) Refusing to appear in court to participate in judicial proceedings without any justifiable reason or retiring from the court without approval in violation of court rules.
- (5) Gathering a crowd to make trouble in or assault the court, insulting, defaming, threatening, or assaulting the judicial personnel or litigation participants; denying the nature of a religious evil cult recognized by the state, or committing any other conduct that seriously disrupts the courtroom order.
- (6) Disseminating or spreading any word that endangers the fundamental political rule or basic principle as set down in the Constitution or endangers state security, inciting people's irritation against the Party and the government by using the Internet and mass media, inciting or participating in any organization endangering state security, or supporting, participating in or committing any activity endangering state security; delivering any speech that maliciously defames any other person by distorting the truth of facts and in other forms that is evidently against public order and good customs, or delivering any speech that seriously disrupts courtroom order”.

These provisions, which require a very specific supervisory role for law firms concerning the lawyers in their employment, are made even more strict through article 39, which provides that law firms may have their license revoked if they do not take the action required in the Administrative Measures. Article 64 indicates that judicial organs shall conduct daily review of the practice of law firms as well and issue warnings or recommend administrative sanctions when they discover problems with the internal management of such firms.

Finally, article 59 stipulates that a law firm shall submit a report on the practice of the law firm and the results of the examination of the practice of lawyers in the previous year to the municipal judicial administrative organ at the level of the district where it is located in the first quarter of each year. The annual inspection and appraisal methods are to be prescribed by the Ministry of Justice.

The Administrative Measures for the Practice of Law by Lawyers²

Article 37 provides that:

“Lawyers taking on business shall lead their clients to resolve their conflicts through lawful channels and means, and must not instigate, incite, and organize parties or other persons to go to judicial organs or other relevant State organs for sit-

² Ministry of Justice Order No. 112 released July 18, 2008; Revised by Ministry of Justice Order No. 112, September 18, 2016, translation by China Law Translate.

ins, raising protest signs, unfurling banners, shouting slogans, vocalizing support, looking on, or other methods that disrupt public order and endanger public safety, gathering crowds to make a disturbance, creating an impact and pressuring relevant departments”.

At the same time, article 38 describes “improper methods to influence the lawful handling of cases”, which includes: collecting signatures, publishing open letters, organizing online gatherings or support, or, in the name of individual case discussion, creating pressure from public opinion, or attacking or disparaging judicial organs (courts and judges) and the justice system.

According to article 23, if a lawyer is dismissed by the incumbent law firm and not employed by a registered law firm for more than 6 months, his or her legal practice license will be invalidated.

Measures for Annual Inspection and Assessment by Law Firms

The 2007 amendments to the Lawyers Law created the “annual inspection”, which requires law firms to assess the performance of their lawyers annually and submit the results to the Ministry of Justice. The measures for annual inspections states that all lawyers must participate in the annual assessment held by their firms under the oversight of the judicial administrative authorities. The annual inspection period is held between March and May each year. Firms are also assessed on whether they “adhered to the Constitution and laws, carried out their legal obligations and managed themselves responsibly” (article 6).

Additional directives published by the Chinese authorities may also limit the free exercise of the legal profession.

For example,

- Article 3 of the Code of Conduct governing the Chinese legal profession stipulates that “*Lawyers shall support the leadership of the Chinese Communist Party and support the socialist rule of law as basic requirements for practice.*” The lawyer’s primary duty is thus to uphold the leadership of the communist party.
- In Xinjiang (the XUAR), on 8 July 2009, the Beijing Municipal Judicial Bureau issued a notice on its Web calling on justice bureaus, the Beijing Municipal Lawyers Association, and law firms in Beijing to “exercise caution” in representing cases related to events in the XUAR. And in the Regulation on the Disciplinary Punishment against Chinese Communist Party Officials, article 58 prohibits party members from being two-faced.³ Directives for lawyers to ‘exercise caution’ in cases related to XUAR may be interpreted to disallow claims of innocence in some cases, while the two-faced charges may be interpreted against Uyghur and other Turkic communities.

The information describes that a pattern that has emerged concerning measures taken against lawyers handling sensitive cases. In the last five years, Special procedures mandate-holders have addressed their concerns over measures taken

³ https://www.gov.cn/zhengce/202312/content_6922758.htm

against lawyers in numerous communications: JAL CHN 11/2023 on 21 July 2023; JAL CHN 5/2023 on 12 May 2023; JAL CHN 10/2022 on 1 December 2022; JAL CHN 8/2022 on 23 September 2022; JAL CHN 2/2022 on 3 February 2022; JAL CHN 4/2021 on 28 April 2021; JAL CHN 20/2020 on 4 December 2020; JAL CHN 16/2020 on 13 August 2020; JUA CHN 6/2020 on 9 March 2020; JUA CHN 9/2019 on 20 May 2019; JAL CHN 7/2018 on 6 April 2018; and JUA CHN 5/2018 on 6 March 2018. I take the opportunity to thank you for the replies received to these communications.

These communications and reports demonstrate the pattern in which China has used the legal provisions discussed in this letter to revoke or suspend the practising license of many human rights lawyers since 2017. Since 2016, administrative measures have criminalised lawyers “using the Internet or media to express dissatisfaction with the Party or the government”, joining “sit-ins, holding banners, shouting slogans, expressing solidarity” and other acts in exercise of their rights to free speech and peaceful assembly. As discussed in the many communications referred to above, China has implemented these laws to charge lawyers handling sensitive cases with national security crimes under China’s Criminal Law, in particular for “subversion of State power” or “inciting subversion” (article 105), charges that carry lengthy prison sentences.

Use of Residential Surveillance at a Designated Location (RSDL) before formal arrest

Prior to formal arrest, lawyers are often held under “Residential Surveillance at a Designated Location” (RSDL), a mechanism defined in article 75 of the 2018-revised Criminal Procedure Law. Further, as colleagues have previously observed (UA CHN 6/2020), China’s Criminal Procedure Law, including articles 39 and 85, also “provides for explicit exemptions and restrictions to [legal provisions guaranteeing due process] for national security crimes, such as notification of family members of arrest within 24 hours, or access to a lawyer within 48 hours”.

RSDL, in conjunction with above-mentioned restrictions to due process, authorises the police to hold an individual in custody for up to six months in any location or building chosen by the police – with the explicit exclusion of detention facilities – without any obligation to disclose such location to family members, with limited or no access to legal counsel, and with very limited possibilities for judicial review. Lawyers held under RSDL are interrogated and often at risk of being tortured to extract confessions.

Practice of designation of “government-appointed lawyers” during proceedings

Once an individual has been arrested and indicted, lawyers the individual or their family have appointed are impeded from accessing court documents and representing the victim. Instead, government-appointed lawyers are assigned to such cases. The identities of these lawyers are not disclosed to families, and they often refuse to communicate with relatives. Government-appointed lawyers often fail to present a substantive defense, relying instead on allegations forwarded by the authorities. This practice violates the right to a lawyer of one’s choosing, negates equality of arms, and leads to the imposition of longer sentences. Detained lawyers are often convicted during closed-door trials, without notification to families nor

disclosure of court verdicts, often for prolonged periods.

Deprivation of political rights in sentences of lawyers

Lawyers are often subjected to the “deprivation of political rights,” a supplementary punishment described under article 34 of the Criminal Law of the People’s Republic of China. Section 7 of article 54 of the Criminal Law states as follows: “Deprivation of political rights refers to deprivation of the following rights: (1) the right to vote and to stand for election; (2) the rights of freedom of speech, of the press, of assembly, of association, of procession and of demonstration; (3) the right to hold a position in a State organ; and (4) the right to hold a leading position in any State-owned company, enterprise, institution or people’s organization”.

Pressure on families of lawyers

Released lawyers increasingly face disbarment, while their relatives, including underage children, also experience deleterious consequences resulting from the detention and sentences placed on their family members. These consequences include eviction, the obligation to move numerous times under duress, constant threats and repeated cuts to their gas and electricity supply; and pressure on schools to not allow the children of these families to register, leading to a violation of the right to education of lawyers’ children.

De facto travel bans

In practice, this supplementary punishment has also translated into a travel ban. Individuals are unable to receive information about the bans or to access meaningful and fair appeals to their imposition. In addition, article 12 of the Entry and Exit Administration Law allows the Government to ban those who “may endanger national security or interests” to be banned from existing the country.

Without prejudging the accuracy of this information, I would like to express my concern that the Administrative Measures reinforced by the sanctioning effect of the annual inspection process, may in practice restrict lawyers from exercising their professional duties in defending the rights of clients, as they limit some of the methods lawyers may use, especially public activities aiming at objecting to the treatment of their clients, in the legitimate exercise of their profession. These limits may also be a deterrent to lawyers considering taking on certain sensitive cases, in particular those related to human rights defenders or individuals whose cases are deemed to relate to national security. The imposition of a requirement that law firms assess the work of lawyers in this respect contributes to these restrictions.

The application of these Measures provides the Chinese authorities with the power to deny, temporarily or indefinitely, the right to practice to lawyers without reasonable and effective avenues for appeal. Without employment, a lawyer’s license to practice can be invalidated indefinitely after six months without any process for the lawyer to object to or appeal this suspension. The annual inspection system may provide the opportunity to threaten and punish lawyers and law firms that are handling sensitive cases.

It is my assessment that these provisions allow for undue interference with the freedom of lawyers and law firms to exercise their legal profession, and thus may

open the door to systematic violations of the right to a fair trial and equality before the law by restricting lawyers from fulfilling their legal duties to their clients and creating a chilling environment for the handling of certain kinds of cases.

Further, I recall that the free exercise of the legal profession contributes to ensuring access to justice, oversight of state power, protection of due process and judicial guarantees. According to international standards, States must guarantee that those who practice law can do so free from intimidation, obstacles, harassment, or interference.

The implementation of these provisions may also have an impact on the right to a fair trial for clients in specific cases. In addition to guaranteeing access to counsel, international standards on the right to a fair trial also provide that accused persons must have adequate time and facilities for the preparation of their defense and must be able to communicate with counsel of their choice. Clients, especially human rights defenders and those accused of crimes under national security legislation, may be deprived of independent legal representation if lawyers face consequences for representing them.

Additionally, authorities may delay announcing the results of annual inspections, or suspend or even ban lawyers from participating in the annual inspection. The implementation of these measures thus risks leaving lawyers without a livelihood. Through the annual inspection, the authorities may also preclude them from taking on cases, meaning that lawyers and law firms concerned may experience great financial and social pressure. Further, lawyers who have in the past taken on sensitive cases that have brought unwanted attention to their firms during annual reviews may experience challenges in finding law firms willing to employ them.

The measures also contain restrictions on lawyers' rights to freedom of religion, expression, peaceful assembly, and association. In relation to these freedoms, international standards provide that like other citizens, lawyers are entitled to freedom of expression, belief, association and assembly⁴, and have 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. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession.

As it relates to the pattern that had reportedly emerged from the implementation of these measures, I would like to highlight the free exercise of the legal profession contributes to ensuring access to justice, oversight of state power, protection of due process and judicial guarantees. China's pattern of implementation of its laws on the legal profession is also not in line with the Basic Principles on the Role of Lawyers. Principle 16 states that lawyers: "shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics⁵." In particular, I would like to make the following points:

⁴ 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, principles 23-25.

⁵ 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, principle 16.

- Concerns about RSDL as a form of enforced disappearance, have been the subject of several previous communications sent to your Excellency's Government; on 20 August 2019 (CHN 15/2019), 19 July 2019 (CHN 14/2019), 24 August 2018 (OL CHN 15/2018), 6 April 2018 (CHN 7/2018), 6 March 2018 (CHN 5/2018), 24 January 2018 (CHN 2/2018), 22 March 2017 (CHN 3/2017), 28 December 2016 (CHN 15/2016) and 29 October 2015 (CHN 10/2015).
- The practice of imposing RSDL without judicial oversight, without formal charges, in conditions amounting to incommunicado detention or solitary confinement, contravenes article 9 of the UDHR and the right of every person not to be arbitrarily deprived of liberty and to challenge the lawfulness of detention before a court and without delay. Without access to legal counsel or their families, those placed under RSDL are at increased risk of all forms of cruel and inhuman treatment, including torture. In some circumstances, secret incommunicado detention can itself amount to torture or other forms of ill-treatment.
- I recall here that the United Nations Declaration on the Protection of All Persons from Enforced Disappearances⁶, which reflects customary international law, recognises the right to be held in an officially recognised place of detention, in conformity with national law, and to be brought before a judicial authority promptly after detention in order to challenge the legality of the detention.
- Article 11 of UDHR, which reflects customary international law, states that "Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence". These guarantees of the rights to a fair trial are violated by the pattern of practice that China is using in relation to detention and trial of lawyers. Norms concerning the free exercise of the legal profession are violated by China's established practice of detention and trial of lawyers for their legal work.
- As discussed above, the UDHR protects the right to freedom of opinion and expression (article 19), the right to freedom of peaceful assembly and association (article 20), the right to take part in government and the right of equal access to public service (article 21), as well as the right to free choice of employment and the right to form trade unions (article 23). According to article 29 of the UDHR, any limitations to these rights should be "determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society".
- The application of the supplementary punishment of "deprivation of political rights" is not in line with international human rights standards. As other mandates have underscored, human rights law forbids the "deprivation" of political rights, and allows for limits on such rights only in exceptional and

⁶ <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-protection-all-persons-enforced-disappearance>

narrow circumstances. These standards⁷ make clear that lawyers, like other citizens, are entitled to freedoms of expression, peaceful assembly, and association, and have 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. Expression of political opinion is plainly in line with recognized professional duties, and it should not be punished by criminal sanctions.

- Travel bans impinge on freedom of movement guaranteed by article 13 of the UDHR, paragraph 1 of which provides that “Everyone has the right to freedom of movement and residence within the borders of each state”, and paragraph 2 of which provides that “Everyone has the right to leave any country, including his own, and to return to his country”.
- The UDHR protects the right to an adequate standard of living, which includes housing and the right to security in the event of unemployment. The UDHR also specifically protects the ability of children to obtain special care in article 25, as well as the right to education protected in article 26. None of these rights should be infringed on the basis of the exercise of the legal profession.

Final observations

I would like to echo the call that UN experts have made on China to repeal article 105 of the Criminal Law, and any legal provisions allowing for the use of RSDL. In 2015, the UN Committee Against Torture called on China to repeal restrictions to the right to counsel and to family notification on national security grounds.

I recommend review and reconsideration of these laws and administrative regulations to ensure that they are in compliance with relevant international human rights standards. I take this opportunity to provide the following benchmarks, against which such review could be undertaken:

1. Any laws and administrative measures should allow lawyers:
 - a. to perform all of their professional functions without intimidation, hindrance, harassment or improper interference;
 - b. to travel and to consult with their clients freely both within their own country and abroad;
 - c. to not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics;
 - d. to be adequately safeguarded by the authorities while they exercise their duties;

⁷ 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, principle 23.

- e. to enjoy their freedom of expression, belief, association and assembly, and 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;
 - f. to have assurances that they shall not be identified with their clients or their clients' causes as a result of discharging their functions.
2. Mechanisms for effective and equal access to lawyers must be provided for all persons within Chinese territory and to all individuals subject to Chinese jurisdiction, without distinction of any kind, including by providing services in languages preferred by the client. Further, individuals charged with crimes should have prompt and private access to a lawyer of their choosing.
 3. Law firms should not be deputized with the role of assessing the conduct of lawyers under criminal law, nor should they be the sole guarantors of lawyers' ability to practice law. Measures implementing such duties should be repealed.
 4. Lawyers must be able to retain their license to practice regardless of their employment status and this right may only be terminated by an impartial disciplinary committee on the basis of recognized standards and ethics of the legal profession. Lawyers must have the right to obtain judicial review of any termination decision. Termination decisions should not be made on the basis of secret evidence, to evidence obtained as a result of torture or other forms of coercion.

In addition, I recommend that the authorities undertake a review of the pattern I have described in this letter. I further recommend that the authorities take all necessary measures to ensure that this pattern is corrected and take measures to extend remedies to those who have already experienced harm as a result of the implementation of these regulations.

I stand ready to engage in dialogue with Your Excellency's government on this very important matter.

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 my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I 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 assessment of the Administrative Measures for the Practice of Law by Lawyers and the Measures on the Administration of Law Firm.
2. Please explain how these Measures and the practices described in the pattern above are compatible with international human rights law, with standards concerning the independent exercise of the legal profession,

and the relevant customary international law norms that are articulated in the UDHR.

3. Please provide information on any measures taken by Your Excellency's Government to ensure that lawyers may exercise their legal profession in accordance with the Basic Principles on the Role of Lawyers.

I would appreciate receiving a response within 60 days. Past 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, I 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.

I may publicly express my concerns in the near future as, in my view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. I also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that I have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

Margaret Satterthwaite
Special Rapporteur on the independence of judges and lawyers

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, I would like to draw the attention of your Excellency's Government to the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), signed by China on 5 October 1998. While China has yet to ratify the ICCPR, as a signatory to the ICCPR, China has an obligation to refrain from any acts which would defeat the object and purpose of the Covenant prior to its entry into force (article 18 of the 1969 Vienna Convention on the Law of Treaties). Much of the content of the UDHR, including its provisions concerning the right to a fair trial, has passed into binding customary law.

The right to a fair trial is protected in both instruments mentioned above. Article 10 of the Universal Declaration on Human Rights guarantees everyone the "right to a fair and public hearing by an independent and impartial tribunal", while article 14 of the ICCPR stipulates that: "everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law". Access to counsel is an integral part of a fair trial. The Human Rights Committee⁸ has stated that "the availability or absence of legal assistance often determines whether or not a person can access the relevant proceedings or participate in them in a meaningful way". The Committee has further indicated that "lawyers should be able to advise and to represent persons charged with a criminal offence in accordance with generally recognised professional ethics without restrictions, influence, pressure or undue interference from any quarter".

In addition, I would like to also refer to the Basic Principles on the Role of Lawyers⁹ and their requirement 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 guarantee that lawyers are not threatened with prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

I would like to refer to articles 19, 20 and 21 of the UDHR, which guarantee the rights to freedom of opinion and expression; freedom of thought, conscience and religion; and freedom of peaceful assembly and association. These rights are further expressed in all global and regional human rights treaties on civil and political rights, confirmed in declarations and resolutions, and are considered reflective of customary international law. The ICCPR also guarantees these rights in articles 18, 19 and 21. The conditions for permissible restrictions of these rights are reflected in the UDHR, the ICCPR, and in numerous regional and global human rights treaties, which require that any such restrictions must meet the tests of legality, necessity, and proportionality.

First, any restriction of the rights to freedom of opinion and expression; freedom of thought, conscience and religion; and freedom of peaceful assembly and

⁸ Human Rights Committee General Comment No. 32, paragraphs 10 and 34.

⁹ 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, principle 16.

association must pursue a legitimate objective. Article 29 of the UDHR, for example, limits those objectives strictly, explaining that restrictions must be “solely for the purpose of” the specified objectives of “respect for the rights and freedoms of others and to meet just requirements of morality, public order and general welfare in a democratic society”. Secondly, as expressed in article 29 of the UDHR, as well as in global and regional human rights treaties, any restriction must be “determined by law”. The Human Rights Committee has explained that laws must be “formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly and it must be made accessible to the public.” Third, restrictions must be necessary and proportionate. Article 30 of the UDHR, for example, prohibits the use of overbroad restrictions which would destroy the essence of the right itself. This has been interpreted as an expression of the principle of proportionality. That requirement further entails that the measure must be the least intrusive measure necessary amongst those options that might achieve their protective function in order to protect a specified legitimate objective. Lastly, States have the burden of proof to demonstrate that any restriction is compatible with the requirements under customary international law.

The Basic Principles¹⁰ include a specific provision on the exercise of fundamental freedoms, stating that like other citizens, lawyers “are entitled to freedom of expression, belief, association and assembly”, and have 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. Lawyers are also free “to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization”. These guarantees are crucial to the profession of the lawyer since they enable practitioners to engage in free debate and exchange about the subject of their profession.

¹⁰ 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, principle 23.