



Human Rights
Institute

Joint Submission to the United Nations Universal Periodic Review

LAWYERS FOR LAWYERS & THE INTERNATIONAL BAR ASSOCIATION

People's Democratic Republic of Algeria

41st session of the Working Group on the UPR

Human Rights Council

November 2022

Presented by:

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A. Introduction

1. Lawyers for Lawyers ("L4L") and the International Bar Association's Human Rights Institute submit this report on the state of human rights in the People's Democratic Republic of Algeria ("Algeria"), particularly focusing on the legal profession, with recommendations for the 41st session of the Universal Periodic Review ("UPR") Working Group in the United Nations Human Rights Council ("HRC") in November 2022.
2. L4L is an independent and non-political foundation which seeks to promote the proper functioning of the rule of law by pursuing freedom and independence of the legal profession. L4L supports lawyers worldwide who face reprisals, improper interferences, or unreasonable restrictions in the execution of their profession. L4L was granted the Special Consultative status with the United Nations Economic and Social Council in July 2013.
3. 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.

B. Executive summary

4. This submission highlights L4L's and IBAHRI's key concerns regarding compliance of Algeria with its international human rights obligations to guarantee the right to independent counsel as set out in the United Nations Basic Principles on the Role of Lawyers ("Basic Principles")ⁱ and other international rights instruments,ⁱⁱ focusing on the harassment and criminal prosecution of lawyers, disciplinary measures against lawyers and violations of the right to freedom of expression of lawyers.

C. Normative and institutional framework

5. The adequate protection of human rights and fundamental freedoms requires that every citizen has effective access to justice and legal assistance. Legal assistance can only be provided effectively in a judicial system where lawyers, along with judges and prosecutors, can carry out their professional duties independently of the government and free from political pressure. This is recognised in, *inter alia*, the Charter of the United Nations, the Universal Declaration of Human Rights, and the International Covenant on Civil and Political Rights ("ICCPR"). In particular, the protection and the independence of justice actors is a key component to ensure the well-functioning of justice systems and to combat impunity. This is a precondition to the right to a fair trial, protected by Article 14 of the ICCPR.

6. In addition, intimidation and reprisals against legal counsel constitute a further violation of article 14(3)(b) of the ICCPR, as also recognised by the UN Working Group on Arbitrary detention.ⁱⁱⁱ
7. The Declaration on Human Rights Defenders guarantees the right to provide professionally qualified legal assistance in defence of human rights, and the right to the lawful exercise of occupation or profession.^{iv}
8. Furthermore, on 22 June 2017 the HRC passed a resolution condemning “*the [worldwide] increasingly frequent attacks on the independence of [lawyers], in particular threats, intimidation and interference in the discharge of their professional functions.*” The HRC expressed its deep concern “*about the significant number of attacks against lawyers and instances of arbitrary or unlawful interference with or restrictions to the free practice of their profession*” and called upon States “*to ensure that any attacks or interference of any sort against lawyers are promptly, thoroughly and impartially investigated and that perpetrators are held accountable.*”^v
9. In order to fulfil its task of promoting and ensuring the proper role of lawyers, Algeria must respect the Basic Principles within the framework of its national legislation and practice. The Basic Principles provide a concise description of international standards relating to key aspects of the right to independent counsel. Adherence to the Basic Principles is considered a fundamental pre-condition to ensure that all persons have effective access to independent legal assistance.^{vi}
10. During the third cycle in 2017, Algeria received^{vii} and supported^{viii} recommendations concerning, among others, the effective exercise of freedom of expression, assembly and association so as not to hamper the legitimate work of NGOs and human rights defenders,^{ix} avoid and prevent judicial pressure on human rights defenders,^x and create and maintain a safe and enabling environment suitable for civil society and human rights defenders.^{xi}
11. However, reports gathered by L4L and the IBAHRI, including information received from various lawyers in Algeria, demonstrate that Algeria does not uphold the necessary guarantees for the proper functioning of the legal profession as set out in the Basic Principles. Consequently, lawyers encounter serious difficulties in carrying out their professional duties independently. This also undermines the proper functioning of the judicial system, including the right to fair trial and effective access to justice.

D. Respecting the rights of lawyers

a. Harassment and criminal prosecution of lawyers

12. In accordance with Principle 16(a) of the Basic Principles, governments must ensure that lawyers “are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference”.

13. The targeting of Algerian lawyers comes against the backdrop of a near-total closure of public space for peaceful protests following mass arrests, increased use of unlawful force and obstruction of protesters.^{xii} The 2019 Algerian protests known as the Hirk began on 22 February 2019, twelve days after President Abdelaziz Bouteflika announced his candidacy for a fifth presidential term.^{xiii}
14. L4L and the IBAHRI are concerned about attempts to harass and disrupt the work of lawyers in Algeria who work on cases concerning human rights and who defend Hirk detainees.
15. L4L and the IBAHRI have identified cases in which lawyers are hindered in the execution of their professional functions by threats, intimidation and harassment. According to the information received, lawyers' professional activities are being hindered since they are not always able to gain access to their clients when they are in police custody and in some instances they need to wait lengthy periods before receiving their case files in courts. Moreover, lawyers have also indicated that their work is being disrupted by not knowing when exactly their clients will be presented to court.
16. Moreover, L4L and IBAHRI have documented the case of the criminal prosecution of a lawyer from the Collective for the Defence of Hirk Detainees^{xiv}, who was arrested on 26 May 2021 and is currently in detention at risk of a life sentence on charges of alleged "participation in a terrorist organisation" (Articles 87bis 2 and 87bis 3 of the Penal Code) and for "spreading false news that may undermine security and public order" (Article 196bis as amended in April 2020). As part of his work, he defended peaceful activists and demonstrators and participated in online debates and discussions on human rights and political developments in Algeria. The prosecution appears to be linked to his work as human rights lawyer, his defence of Hirk activists and the exercise of his right to freedom of expression.^{xv}
17. L4L and the IBAHRI have previously raised alarm about the case and stated that the arrest and prosecution of the human rights lawyer defending Hirk detainees on baseless terrorism-related charges is a significant escalation and signals willingness from the authorities to directly undermine the rule of law and access to justice. The prosecution is largely interpreted as a political warning aimed at lawyers.^{xvi}

b. Disciplinary measures against lawyers

18. According to Principle 16 (c) of the Basic Principles, governments shall ensure 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 ethics".
19. Moreover, Principle 27 of the Basic Principles lays down that charges or complaints made against lawyers in their professional capacity shall be processed expeditiously and fairly under appropriate procedures.

20. L4L and IBAHRI observe an increase in instances where lawyers are subject to disciplinary measures on improper grounds. For instance, certain lawyers have been temporarily suspended from practicing law without any explanation or justification. L4L and IBAHRI have strong reasons to believe that in some cases their suspension is related to their engagement in the Collective for the Defence of Hirak Detainees and to their defense of Hirak detainees.^{xvii}
21. Prior to their suspension, the lawyers had been warned by the President of the Tlemcen Bar Association about speaking publicly about the prosecutions of Hirak detainees and threatened with reprisals if they ran for office in the local bar elections, which they did.^{xviii} One lawyer in particular seems to have been suspended after expressing opinions about Hirak detainees on Facebook.

c. Freedom of expression of lawyers

22. Lawyers, like any other individual, have the right to freedom of expression. In particular, they 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.^{xix}
23. The freedom of expression that lawyers enjoy in connection to their professional functions should not only be guaranteed in light of the rights of the lawyer, but also in protection of the rights of their clients.
24. Since the eruption of Hirak protests, Algeria has limited the freedom of expression of citizens, including lawyers and human rights defenders, through a set of legislative reforms. In February 2022, it was reported that “the authorities are holding at least 280 activists, many of them associated with Hirak, who are facing or convicted on the basis of vague charges”.^{xx}
25. On 8 June 2021, Algeria adopted Ordinance No. 21-08, which introduced amendments to the Penal Code and consequently broadened the already vague definition of terrorism in article 87bis, allowing the criminalization of peaceful dissent.
26. On the same day, Ordinance No. 21-09 was adopted by Algeria, which raises significant alarm as it has the potential to be used to criminalize the work of lawyers and wider human rights work. The ordinance provides for up to 15 years imprisonment for individuals who share information deemed “classified” – defined in an overly broad manner, allowing for subjective and abusive interpretation – and 3 to 5 years imprisonment for individuals who share information about ongoing judicial investigations or prosecutions. This Ordinance has effectively created a basis to prosecute anyone releasing information that authorities themselves deem to be an “offence” or “undermining” their interests, and would forbid anyone from sending information about a current investigation, including to a UN mechanism.
27. On 27 December 2021, several UN experts and Special Rapporteurs expressed concern about the adoption of laws related to the field of security and combating terrorism that were recently approved in Algeria, especially the amendments to the Penal Code. The UN experts and Special

Rapporteurs fear that the adoption and implementation of these laws, could lead to serious violations of human rights and fundamental freedoms, including the right to freedom of expression.^{xxi}

28. Moreover, on 11 May 2021, Spokesperson for the UN High Commissioner for Human Rights Rupert Colville stated that the Office of the High Commissioner for Human Rights is “increasingly concerned about the situation in Algeria where the rights to freedom of opinion and expression, peaceful assembly and participation in public affairs continue to be under attack”.^{xxii}
29. Various Algerian lawyers have shared with L4L and IBAHRI that their right to freedom of expression has been heavily restricted in the recent years, most notably since the Hirak protests erupted in the country in 2019 and as a result of the recent legislative reforms. Lawyers no longer feel comfortable with sharing information or freely talking and discussing about their work in support of Hirak detainees or in relation to human rights and the rule of law in general out of fear of criminal prosecution.
30. Furthermore, lawyers have also shared that they refrain from speaking out on social media because of the ongoing smear campaigns against lawyers who post about their work or support for Hirak Detainees, human rights or the rule of law.^{xxiii}

E. Recommendations to the government of Algeria

- **Take immediate measures to ensure sufficient safeguards are in place, both in law and in practice, to guarantee the full independence and safety of lawyers and their effective protection against any form of retaliation in connection with their professional activity;**
- **Refrain from any actions that may constitute harassment, persecution, or undue interference in the work of lawyers, including their criminal prosecution on improper grounds such as the expression of critical views or the nature of the cases that the lawyer is involved in;**
- **Take immediate measures to guarantee the effective protection of the right of freedom of expression of lawyers as set out in article 23 of the Basic Principles on the Role of Lawyers, in particular their right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights, without suffering professional restrictions by reason of their lawful action;**
- **Rescind Ordinances 21-08 and 21-09, which further criminalize the work of lawyers and human rights defenders, with immediate effect.**

- ⁱ The UN Basic Principles provide a concise description of international norms relating to the key aspects of the right to independent counsel. The Basic Principles were unanimously adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in Havana, Cuba on September 7 1990. Subsequently, the UN General Assembly “welcomed” the Basic Principles in their ‘Human rights in the administration of justice’ resolution, which was adopted without a vote on December 18 1990 in both the session of the Third Committee and the plenary session of the General Assembly. Source: <https://www.ohchr.org/en/professionalinterest/pages/roleoflawyers.aspx>.
- ⁱⁱ Examples include Article 14 of the International Covenant on Civil and Political Rights (ICCPR), Article 7 of the African Charter on Human and Peoples' Rights (ACHPR) and Principle 3 of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.
- ⁱⁱⁱ Working Group on Arbitrary Detention, Opinion No. 17/2019, A/HRC/WGAD/2019/17, para 88.
- ^{iv} UNGA, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* (8 March 1999), A/RES/53/144, Articles 3(c) and 11.
- ^v UN Human Rights Council, Independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers, A/HRC/RES/35/12, 22 June 2017. Source: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/35/L.20.
- ^{vi} During its 29th session (from 15 June – 3 July 2015), the Human Rights Council adopted without a vote a resolution on the independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers. While recalling the Basic Principles and condemning the increasingly frequent attacks on the independence of lawyers, in particular threats, intimidation and interference in the discharge of their professional functions, the Human Rights Council reminded all States of their duty “to uphold the integrity of [lawyers] and to protect them, as well as their families and professional associates, against all forms of violence, threat, retaliation, intimidation and harassment resulting from the discharging of their functions, and to condemn such acts and bring the perpetrators to justice”. See UN Human Rights Council, Independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers, A/HRC/RES/29/6. Source: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/29/L.11.
- ^{vii} Report of the Working Group on the Universal Periodic Review of Algeria, A/HRC/36/13, 19 July 2017, p. 10 -22.
- ^{viii} Report of the Working Group on the Universal Periodic Review of Algeria, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, A/HRC/36/13/Add.1, 19 September 2017, p. 2 - 4.
- ^{ix} Recommendation 129.98: Guarantee the effective exercise of freedom of expression, assembly and association, by reforming its legislation, notably so as not to hamper the legitimate work of NGOs and human rights defenders (Luxemburg).
- ^x Recommendation 129.104: Avoid and prevent judicial pressure on human rights defenders, journalists and other activists, taking into account international standards in this respect (Republic of Moldova).
- ^{xi} Recommendation 129.118: Create and maintain a safe and enabling environment suitable for civil society and human rights defenders (Republic of Korea).
- ^{xii} Lawyers for Lawyers, ‘Targeting of Algerian lawyers constitutes new escalation in the unrelenting criminalisation of fundamental freedoms’, 9 July 2021, available at: <https://lawyersforlawyers.org/en/targeting-of-algerian-lawyers-constitutes-new-escalation-in-the-unrelenting-criminalisation-of-fundamental-freedoms/>.
- ^{xiii} For more information about Hirak: Human Rights Watch, ‘Algeria: 3 Years On, Repression on Protest Tightens’, 21 February 2022, available at: <https://www.hrw.org/news/2022/02/21/algeria-3-years-repression-protest-tightens>
- ^{xiv} The Collective for the Defence of Hirak Detainees was formed in July 2019 after the first wave of arrests of peaceful Hirak protesters and voluntarily defends those arbitrarily prosecuted.
- ^{xv} Lawyers for Lawyers, ‘Joint letter on the ongoing pre-trial detention of Abderraouf Arslane’, 9 November 2021, available at: <https://lawyersforlawyers.org/joint-letter-on-the-ongoing-pre-trial-detention-of-abderraouf-arlane/>
- ^{xvi} Lawyers for Lawyers, ‘Targeting of Algerian lawyers constitutes new escalation in the unrelenting criminalisation of fundamental freedoms’, 9 July 2021, available at: <https://lawyersforlawyers.org/en/targeting-of-algerian-lawyers-constitutes-new-escalation-in-the-unrelenting-criminalisation-of-fundamental-freedoms/>.
- ^{xvii} Ibid.
- ^{xviii} Ibid.
- ^{xix} UN Basic Principles on the Role of Lawyers, Principle 23.
- ^{xx} Human Rights Watch, ‘Algeria: 3 Years On, Repression on Protest Tightens’, 21 February 2022, available at: <https://www.hrw.org/news/2022/02/21/algeria-3-years-repression-protest-tightens>
- ^{xxi} Joint communication from several UN experts and Special Rapporteurs, reference number: OL DZA 12/2021, 27 December 2021, available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=26905>
- ^{xxii} OHCHR, ‘Press briefing notes on Algeria’, 11 May 2021, available at: <https://www.ohchr.org/en/2021/05/press-briefing-notes-algeria?LangID=E&NewsID=27078>
- ^{xxiii} Lawyers for Lawyers, ‘Targeting of Algerian lawyers constitutes new escalation in the unrelenting criminalisation of fundamental freedoms’, 9 July 2021, available at: <https://lawyersforlawyers.org/en/targeting-of-algerian-lawyers-constitutes-new-escalation-in-the-unrelenting-criminalisation-of-fundamental-freedoms/>.