

Defending the Defenders: Legal Threats Against Lawyers Protecting Journalists

Preliminary Findings

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As ‘lawfare’ against journalists escalates in intensity and complexity, lawyers play a critical role in safeguarding free and independent media. As a result, they are themselves becoming the targets of a wide range of attacks that seek to undermine these efforts. In particular, governments around the world are threatening, arresting and prosecuting lawyers to deter them from representing journalists or human rights defenders.

Despite this, the persecution of lawyers on account of their representation of journalists has not been an area of extensive study. To fill this gap, the American Bar Association’s Center for Human Rights, Media Defence and the Thomson Reuters Foundation have partnered to conduct a first-of-its-kind review of individual cases of harassment or persecution of lawyers defending journalists.

This research relied upon publicly available information from reputable databases and websites of international organizations, bar associations, civil society organizations, and online news publications. To the extent possible, this information was corroborated with the lawyer involved, or civil society organizations working closely with them.

The research identified over 40 cases of lawyers targeted for defending journalists, consulting with journalists or otherwise defending media freedoms. While the research surveyed the last ten years, most of these attacks happened in the last five years, across 10 countries: Guatemala, Turkey, Azerbaijan, Russia, Zimbabwe, Kyrgyzstan, Ethiopia, Belarus, China, and Hong Kong. Lawyers representing journalists are often simultaneously defending human rights activists and opposition figures, which further contributes to and compounds the risk that such lawyers take.

However, these figures are likely not representative of the persecution lawyers face globally. Information on this topic is scarce, with some cases subject to confidentiality orders or never reaching the legal system or being publicly available. When the government is involved in persecuting lawyers, harassment and threats often go unreported by lawyers to protect themselves, their families and their clients from further retaliation.

¹ These are preliminary findings only. Final case studies and full analysis are still underway. The purpose of this preliminary report is to highlight trends that have already been identified and to invite additional comment and feedback from impacted lawyers and media freedom experts.

For questions regarding the methodology and research, please reach out to the American Bar Association’s Center for Human Rights, Justice Defenders Program, at justicedefenders@americanbar.org.

Key Threats Identified

Across the cases analysed, a wide range of threats to lawyers representing journalists were identified. These can be grouped as follows:

Threat one: Disabling lawyers through criminal and other suits. Criminal suits were frequently brought immediately or shortly after a lawyer took on the representation of a journalist. In addition to the negative impact on a lawyer's reputation, these criminal suits could be accompanied by years-long detention, fines, and suspension of law licenses, disincentivising lawyers' professional activity in this field.

Prominent examples included the use of anti-state, anti-terror, bribery and corruption laws, as well as false news laws to dissuade lawyers from representing journalists. While these types of legislation may be enacted to protect national security or public order, they often contain overly broad language that can be abused for the purpose of suppressing freedom of expression.

These lawsuits were also often characterized by due process violations, including lack of access to evidence for lawyers to defend themselves, arbitrary detention or extended pre-trial detention.

Threat two: Interference with lawyers' ability to represent their clients. Governments have targeted lawyers' ability to represent their clients through seizure of lawyers' property, including case files, review of such materials, prevention of private meetings with clients, disqualification as counsel, and/or contempt charges.

Lawyers representing journalists had their property, including case files and digital data, seized during police searches. This included the seizing of case files, in likely violation of expectations of attorney-client privilege, as well as use of the seized information to the prosecution's advantage. Some lawyers were also not allowed to meet or communicate in private with their clients in detention and forced to turn in case notes from what should have been private conversations with clients. Various instances were identified where lawyers were arrested, denied bail, and remained in police custody for an extended period when representing their clients, such as while requesting a copy of a search warrant when a client was experiencing an unlawful search.

Akin to cases where lawyers are disbarred or suspended, in some cases lawyers representing journalists were specifically disqualified from a particular case, preventing the journalist or other client from having adequate counsel, or the lawyer from being able to offer it.

With the proliferation of technology, the analysis identified several cases where cyberattacks were used against lawyers to obtain confidential information on client case files and where spyware was weaponized to read text messages, listen in on calls, collect passwords, track locations, and harvest information from their devices.



Threat three: Targeting lawyers' ability to practice their profession. In many of the identified cases, governments targeted lawyers' ability to practice their profession through arbitrary disbarment, arbitrary suspension of license to practice law, misuse of bar disciplinary proceedings, or rewriting bar association ethical rules to limit lawyers' ability to engage with the media or in other forms of speech. These mechanisms impeded lawyers' ability to practice their profession and, in some cases, threatened their means of livelihood.

Arbitrary disbarment was used as a tool for limiting lawyers' ability to practice law and defend clients, including journalists, and often hinged on pretextual justifications. Bar association disciplinary proceedings, which typically apply lower evidentiary burdens and standards for finding fault than civil or criminal proceedings, were wielded offensively against lawyers and even non-permanent removal from bar associations in the form of law license suspensions had a deleterious effect on lawyers' abilities to defend their journalist clients or continue their legal practice. In other instances, bar associations used their ethical rules and guidelines to restrict lawyers' abilities to practice or speak to reporters. These discipline cases typically proceed behind closed doors, making them underreported and hard to track.

Governments are further expanding the ways in which they silence journalists and their lawyers, going as far as to label lawyers as "foreign agents," subjecting them to additional scrutiny and restrictions, while diminishing their professional reputation. Foreign agents laws are proliferating and increasingly require registered individuals to submit regular financial reports and lists of income and spending, as well as prominently display a lengthy disclaimer on all articles, social media posts and other publications, or else face criminal charges. This increases the risk of charges being brought against certain lawyers representing journalists and can have an obvious chilling effect. Concerns over the protection of attorney client privilege where such laws have imposed new and arbitrary disclosure requirements on NGOs, including those providing legal services, have been raised in several countries where they have been adopted.

Threat four: Threatened killing, physical harm, forced flight or exile, and other similar persecution. In some jurisdictions, lawyers faced threats to their lives, safety, and freedom due to their representation of journalists. The research has identified several instances of lawyers being physically assaulted due to their work, receiving death threats, surviving assassination attempts, or being harassed and intimidated – often without an investigation or subsequent prosecution of the alleged offenders being carried out by the relevant enforcement and prosecution offices. In some of these cases, the lawyers ultimately fled their home countries, while, in others, restrictions on travel and free communication prevent lawyers from escaping persecution.

Looking Ahead

From surveillance and disbarment to arbitrary detention and lawsuits, lawyers across the world are exposed to significant risks when representing journalists. These repressive tactics hamper the safety and livelihood of lawyers and could leave journalists with impaired or no legal representation when the law is being weaponized against them. As such, this harassment is not just a threat to lawyers but to the rule of law and to independent journalism, both bastions of democracy. There is a pressing need to continue this research to capture the full extent and impact of harassment and persecution of lawyers representing journalists. If any lawyers would be willing to share their experiences, please contact the ABA Center for Human Rights Justice Defenders Program at justicedefenders@americanbar.org.



Tunisian lawyers walking near courthouse.
REUTERS/Zoubeir Souissi