



Joint Submission to the United Nations Universal Periodic Review

LAWYERS FOR LAWYERS & LAWYERS' RIGHTS WATCH CANADA

Republic of Indonesia

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Human Rights Council

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**Presented by:**

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## A. Introduction

1. Lawyers for Lawyers (“L4L”) and Lawyers’ Rights Watch Canada (“LRWC”) submit this report on the state of human rights in the Republic of Indonesia (“Indonesia”), especially in respect of the legal profession, with recommendations for the 41<sup>st</sup> session of the Universal Periodic Review (“UPR”) Working Group of the UN Human Rights Council (“HRC”) in October/November 2022.
2. L4L is an independent and non-political foundation based in The Netherlands, which was established in 1986 and is merely funded by lawyers’ donations. L4L promotes the proper functioning of the rule of law through the free and independent exercise of the legal profession around the world. L4L has been in special consultative status with ECOSOC since 2013.
3. LRWC, established in 2000, is an independent volunteer-run Canadian organization of lawyers and others who promote international human rights law and standards for the protection of the independence and security of lawyers and human rights defenders around the world. LRWC has been in special consultative status with ECOSOC since 2005.

## B. Executive Summary

4. This submission highlights L4L’s and LRWC’s key concerns regarding Indonesia’s compliance with its international human rights obligations to guarantee everyone the right to independent counsel of their own choosing as set out in the International Covenant on Civil and Political Rights (“ICCPR”),<sup>i</sup> the UN Basic Principles on the Role of Lawyers<sup>ii</sup> (“Basic Principles”) and other international human rights instruments. This submission focuses on access to legal services, effective guarantees for the functioning of lawyers and lawyers’ freedom of expression about matters concerning the law, the administration of justice and the protection of human rights. Non-compliance with the ICCPR and the Basic Principles undermines the proper functioning of the judicial system and the right to a fair trial in particular.

## C. Normative and Institutional Framework of the State

5. The adequate protection of human rights and fundamental freedoms requires that everyone has effective access to justice and legal assistance. Legal assistance can be provided effectively only in a judicial system where lawyers, along with judges and prosecutors, are free to carry out their professional duties independently of the government and without political pressure. This follows inter alia from the Charter of the United Nations, the Universal Declaration of Human Rights, and the ICCPR, to which Indonesia acceded in 2006.
6. On 22 June 2017, the HRC passed a resolution condemning in general *“the 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”*.<sup>iii</sup>
7. In its task of promoting and ensuring the proper role of lawyers, the Government of Indonesia should 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 precondition to fulfilling the requirement that all persons have effective access to independent legal assistance.<sup>iv</sup> The laws governing the legal profession in Indonesia contain principles safeguarding the performance, in full independence, of the role of lawyers.<sup>v</sup>

8. During the UPR in 2017, Indonesia received<sup>vi</sup> and accepted<sup>vii</sup> recommendations concerning the need to ensure the protection of human rights defenders,<sup>viii</sup> to adopt legislative measures to prevent and combat intimidation, repression or violence against human rights defenders, to continue to strengthen national and regional efforts to promote and protect human rights defenders and to facilitate the work of human rights defenders throughout the country.<sup>ix</sup>
9. However, reports gathered by L4L and LRWC, including information received from lawyers in Indonesia, demonstrate that Indonesia does not always uphold the necessary guarantees for the proper functioning of the legal profession as set out in the Basic Principles. Lawyers encounter difficulties in carrying out their professional duties. Intimidation, harassment, or violence against lawyers who defend human rights and/or politically sensitive cases are still commonplace. Such attacks on the legal profession undermine the proper functioning of the judicial system, including the right to fair trial and effective access to justice.

#### **D. No Effective Guarantees for the Functioning of Lawyers**

##### *j) Difficulties with access to clients*

10. The Basic Principles provide that governments “*shall ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention*”<sup>x</sup>
11. L4L and LRWC have been informed by lawyers from Indonesia that they often experience difficulties obtaining access to their clients in detention. Law enforcement officials at times block lawyers from legal access to their clients not only at detention centres, but also at police stations, for instance, by stating that “it is not the visiting hour” despite the lawyers’ right to promptly visit and freely consult with their clients. Furthermore, it is reported that lawyers are usually permitted to meet their clients only one to three days after being arrested, and when they meet the time they are allowed to consult with their clients is very limited.
12. COVID-19 exacerbated this problem. At the beginning of the pandemic, detention centres were closed, and lawyers were unable to meet with their clients. In this situation, detained persons’ access to independent counsel was blocked, and their lawyers became seriously concerned about their clients’ safety and security.

##### *ii) Lack of respect for lawyer-client confidentiality*

13. The Basic Principles provide that “*all arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality.*” Also, “*governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential.*”<sup>xi</sup> These principles emphasize that consultations between lawyers and their clients may be within sight, but not within the hearing of law enforcement officials. Furthermore, the UN Human Rights Committee stated in its General Comment No. 32 on Article 14 of the ICCPR that “*the right to communicate with counsel requires that the accused is granted prompt access to counsel. Counsel should be able to meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications,*”<sup>xii</sup> Article 19(2) of the Indonesian Law No. 18/2003 on Lawyers (“Law No. 18/2003”) confirms the right to keep communications and consultations between lawyers and their clients confidential, and legal privilege is described in Articles 43 and 170 of the Indonesian Criminal Procedural Law.

14. According to our information, the layout of a typical detention centre makes it practically impossible to comply with the applicable laws that protect the confidentiality of a conversation between lawyer and client, because of a lack of private consultation rooms. Lawyers and their clients usually meet in one big hall where multiple people meet at the same time.
15. Even if a private consultation room is available, the fundamental right to lawyer-client confidentiality is often violated by Indonesian law enforcement officials. When detained clients are meeting with their lawyer, law enforcement officials are often in the room where the conversation takes place.
16. Moreover, L4L and LRWC have been advised that sometimes Indonesian lawyers are not allowed to visit their clients in person but are permitted to consult their clients only through the police or through messages passed through the police. This problem has also occurred during online conversations between lawyers and their clients during the COVID-19 pandemic. During these online meetings, law enforcement officials are often in the same room as the client, where they can follow the details of the conversation. Consequently, clients cannot talk freely with their lawyers and their right to full confidentiality between them has not been guaranteed.

*iii) Harassment and intimidation of lawyers*

17. Article 16 of the Basic Principles states that governments must “ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference (...) and 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”<sup>xiii</sup>. Indonesian law contains a similar guarantee that lawyers shall be enabled to perform their duties without hindrance. Article 14 of Law No. 18/2003 states the following: “An Advocate shall be free and independent to voice opinions or make statements in pursuing a case in which he is involved before the court while continuing to adhere to the professional code of ethics and the provisions of the laws and regulations in effect.”
18. Lawyers in Indonesia who defend human rights or politically sensitive cases are regularly subjected to threats, intimidation, improper interference, attempts to pressure them. They experience such attacks in various ways, including intimidating anonymous phone calls, threats and bullying on social media, attacks at their offices, and intentional damage to their cars, all in connection with their performance in good faith of professional duties. Whenever they report these attacks to the Indonesian authorities, many lawyers are not granted adequate protection, because law enforcement officials often do not seriously consider their case and, at times, criticize the lawyer.
19. Lawyers are also subjected to threats, intimidation and physical attacks by members of law enforcement agencies or investigative bodies. This is illustrated by the following case:

***LBH APIK Jakarta - Indonesian Legal Aid Association for Women***

*APIK (Asosiasi LBH APIK Indonesia/Indonesian Legal Aid Association for Women) is a leading legal aid organization with 18 offices throughout Indonesia. LBH APIK Jakarta focuses on women’s rights, the elimination of discrimination and violence against women and children, support for victims of sexual violence across Indonesia, and legal reform and policy change. In 2020, LBH APIK Jakarta received several unannounced visits to their office by four police officers without search warrants. LBH APIK Jakarta was also visited by military officials and paramilitary men (preman) when LBH APIK Jakarta was handling a legal case of alleged violence against domestic workers who work in the house of a Member of the Indonesian Parliament.*

20. Impunity for threats and attacks on lawyers by Indonesian law enforcement officials creates an extremely high risk of a “chilling effect” on the legal profession, potentially preventing other Indonesian lawyers from handling legal cases. L4L reported the same chilling effect in its UPR submission of 2016, noting that Indonesian authorities have failed to carry out prompt, thorough, independent, impartial, and transparent investigations into threats and attacks. Impunity for threats and attacks potentially leads lawyers to avoid certain kinds of cases or to fear risks to them or their families because of their work. L4L and LRWC emphasise that the risk of a chilling effect increases the longer the impunity for intimidation and attacks on Indonesian lawyers remains the status quo.
21. Article 18 of the Basic Principles states that “*Lawyers shall not be identified with their clients or their clients’ causes as a result of discharging their functions.*” Indonesian laws contain a similar provision in Article 18(2) of Law No. 18/2003: “*An Advocate may not be treated as being identical to a client he is defending by the authorities and/or the public at large.*”
22. However, lawyers in Indonesia who defend human rights cases are often subject to harassment and intimidation based on their clients’ causes. Whenever Indonesian lawyers are acting in their professional capacity, their independence should be respected and protected by the authorities. Lawyers may never be identified with their clients or their clients’ causes as a result of discharging their professional functions.

#### **E. Freedom of Expression and Assembly of Lawyers**

23. The Basic Principles provide that “*lawyers like other citizens are entitled to freedom of expression, belief, association and assembly*”. In particular, lawyers have the right to take part in public discussion of matters concerning the law, the administration of justice, the promotion and protection of human rights, and to join or form local, national or international organizations and attend their meetings. Lawyers must not be subjected to professional restrictions by reason of their lawful actions or their membership in a lawful organization.<sup>xiv</sup>
24. The UN Special Rapporteur on the situation of human rights defenders, Ms Mary Lawlor, condemned the misuse of criminal laws to harass human rights defenders who have spoken out against alleged corruption, collusion and nepotism.<sup>xv</sup>
25. The case of Mr. Haris Azhar provides an example of such harassment.

##### ***Haris Azhar***

*Mr. Haris Azhar works as a lawyer and human rights defender for Lokataru Law and Human Rights office. He also has his own law firm, Haris Azhar and partners. On 20 August 2021, Mr. Azhar published a YouTube video in which he discusses a report published by nine NGOs, addressing the human rights situation in Papua by referring to a concealed objective of an ongoing Indonesian military operation in the areas, supposedly set up to restore security and peace in Papua. It is alleged in the video that this operation was meant to protect an economic objective, i.e., the State’s gold mining businesses. Allegedly in connection to this video, in August and September 2021, a cease and desist order was issued against Mr. Azhar. Moreover, Mr. Azhar has been accused of criminal defamation under Article 310 (1) of the Penal Code, and of incitement under the Indonesian Electronic Transactions Act (UU ITE). Mr. Azhar was interviewed by the police for several hours on 21 March 2022. If found guilty on the above charges, Mr. Azhar faces a maximum penalty of four years imprisonment.*

26. Another case of an Indonesian lawyer who has been subjected to severe threats, including death threats, as well as judicial harassment in connection to her critical remarks, is the case of human rights lawyer Ms. Veronica Koman.

**Veronica Koman**

*Ms. Veronica Koman represented Papuan students whose student dormitory in Surabaya was raided by police in August 2019 after claims that a Papuan individual had thrown an Indonesian flag into the sewer. Police personnel allegedly confiscated properties, injured and humiliated students, and took 43 students of Papuan origin into custody. Ms. Koman spread information about the treatment of the Papuan students via social media. In response, she was accused of causing unrest in Papua, leading to four criminal charges against her, including “incitement for public unrest and spreading hoaxes” under the UU ITE. Moreover, Ms. Koman has received multiple death and rape threats.<sup>xvi</sup>*

27. The above examples demonstrate that Indonesian lawyers are unlawfully restricted in 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, particularly when it concerns alleged State violence against civilians. Consequently, lawyers suffer professional restrictions and criminal prosecution, and, at times, are forced to suspend or halt their legitimate activities.

**F. Recommendations to the Government of Indonesia:**

- **Take immediate measures to ensure that sufficient safeguards are in place, both in law and in practice, to guarantee the full independence and safety of lawyers, including effective protection against any form of retaliation in connection with their professional activity;**
- **Immediately take effective measures necessary to ensure that crimes, harassment, infringements and other violations against lawyers are promptly, independently, impartially, thoroughly, and effectively investigated and publicly condemned at all levels, and that the perpetrators of unlawful acts are prosecuted;**
- **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 in which the lawyer is involved;**
- **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, 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;**
- **Continue to implement in legislation as well as in practice recommendations 139.24, 139.64, 139.65, 139.66, 139.76, 139.107 as accepted by the Indonesian government during the UPR cycle of 2017.**

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- <sup>i</sup> UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, Article 14, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.
- <sup>ii</sup> 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 on December 18, 1990.
- <sup>iii</sup> 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, [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/35/L.20](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/35/L.20).
- <sup>iv</sup> UN Human Rights Council, Independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers, A/HRC/RES/29/6, [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/29/L.11](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/29/L.11).
- <sup>v</sup> Indonesian Law No. 18/2003 on Lawyers (Undang-Undang Nomor 18 Tahun 2003)
- <sup>vi</sup> Report of the Working Group on the Universal Periodic Review of Indonesia, A/HRC/36/7 14 July 2017, p. 10-23.
- <sup>vii</sup> Report of the Working Group on the Universal Periodic Review of Indonesia. Addendum. Views on conclusions, and / or recommendations, voluntary commitments and replies presented by the State under review, A/HRC/36/7/Add.1, 19 September 2017, p. 3.
- <sup>viii</sup> Article 9.3 of the UN Declaration on Human Rights Defenders reads: '[...] everyone has the right, individually and in association with others, inter alia: (c) To offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms'. We therefore understand human rights defenders to include lawyers. The recommendations on human rights defenders are also applicable to lawyers.
- <sup>ix</sup> Recommendation 139.24 Adopt legislative measures to prevent and combat intimidation, repression or violence against human rights defenders, journalists and civil society organizations (Mexico); 139.64 Continue to strengthen national and regional efforts to promote and protect human rights defenders (Ecuador); 139.65 Facilitate the work of human rights defenders and journalists throughout the country (France); 139.66 Step up efforts to ensure protection of journalists and human rights defenders (Iraq);
- <sup>x</sup> Principle 7 of the Basic Principles.
- <sup>xi</sup> UN Basic Principles on the Roles of Lawyers, Principle 8 and Principle 22
- <sup>xii</sup> CCPR/C/CG/32. UN Human Rights Committee. 23 August 2007.
- <sup>xiii</sup> UN Basic Principles on the Roles of Lawyers, Principle 16(a)(c)
- <sup>xiv</sup> UN Basic Principles on the Roles of Lawyers, Principle 23.
- <sup>xv</sup> <https://www.ohchr.org/en/press-releases/2021/11/indonesia-stop-judicial-harassment-human-rights-defenders-un-expert>.
- <sup>xvi</sup> <https://lawyersforlawyers.org/letter-on-behalf-of-veronica-koman/>.