

LEAP Conference Keynote Address Talking Points

Introduction

I want to thank the organizers and Fair Trials for inviting me to be here. [USA comment. . .]

In my UN role, I investigate threats to judicial independence and report concerning patterns to the UN General Assembly and to the Human Rights Council.

- I also have the capacity to act on individual cases brought to my attention by judges, judicial organizations, or civil society through what are called communications.

I am also charged with writing two thematic reports per year, on issues related to my mandate. These often raise concerns based on trends I observe in my engagement with States, judges, judges' associations, and others.

- One pattern that causes me great concern is something that a number of you have perhaps experienced directly and it is something I have seen again and again in my recent investigations, as well as a pattern identified in the relevant literature.

This is the growing tendency of autocratization, which describes a **move away from the meaningful exercise of participatory governance and democratic societies**.

- In these autocratizing societies, political leaders work to actively undermine or debilitate the independent legal institutions that have the obligation and duty to ensure the actions of the Government are lawful.

Among these attacks are those on bar associations and lawyers, who are often responsible for providing legal aid to indigent persons.

- To best represent clients, lawyers must be free to exercise their profession without restriction, fear, or harassment. They should be able to represent

clients without regard to status or affiliation, including members of racially, ethnically, nationally, religiously or otherwise marginalized groups.

When states act to weaken the independence of the legal profession, this can undermine the capacity of justice systems to secure democratic governance, including the ability to ensure that criminal trials are adjudicated impartially and fairly.

- By shutting down fair trials, a core obligation of international law, autocratic leaders pave the way for the use of criminal justice as a tool to retaliate or suppress opposition.

Criminal Justice in Democracies Under Threat

In one of my reports, I said that democracy was at a crossroads. I believe that's true, but I think a more precise way of thinking about this is that a debate has opened, or rather reopened, regarding the fundamental definition of democracy.

- The reason for this, of course, is that foundational elements of democracy are under threat at the hands of newly emerging “strong leaders.”

I am speaking, of course, of the democratic institutions that provide critical checks and balances, that ensure that elected leaders and the state itself are held accountable to the laws, just like everyone else—most particularly independent justice systems.

- How are these strong leaders able to do this?
- The most common strategy, an insidious one, is to **obtain majority support, in part by demonizing and scapegoating vulnerable minorities.**

These leaders, whether as candidates or empowered officials, advance the dubious claim that their country's problems are caused by its most marginalized residents.

- These claims may be descriptively wrong, but they are certainly seductive, and many of these leaders retain popular support in subsequent elections.

- Often, these elections include promises by such leaders to address the very issues those leaders pointed to as concerns—frequently, the influx of migrants, the rise of LGBT rights, the increasing freedom and equality of women.

Unfortunately, many of these leaders have also taken to denigrating and blaming lawyers and the judicial system for their purported “inability” to handle the supposed root problems.

Today, I will focus on the relationship between “strong leaders” and independent justice systems, with particular attention to criminal defense.

- Please hear the scare quotes around the word “strong”, since in fact many of these leaders are acting from a position of intellectual and certainly ethical weakness.
- We have also discovered that, when faced with united opposition and clear resolve, some of these “strong leaders” will back down.

These leaders aim to constrain criminal defense in a variety of ways, including by limiting funding of defenders, involving themselves in the selection of defense attorneys, or—in the worst cases—jailing or threatening defense attorneys.

- These things happen in the context of incursions on independent justice systems through four specific mechanisms:
 - the capture of justice institutions,
 - the curbing of justice actors’ ability to play their crucial role;
 - the instrumentalization of the law against justice operators; and
 - outright attacks on justice actors.

I will walk through each of these four mechanisms in more detail.

Four Kinds of Attacks

Capturing

The first kind of attack is capture, which involves **the increase of executive or legislative control over justice systems, in effect politicizing judicial bodies.**

- The effects of capture may be especially pernicious in criminal cases in which defendants are charged with crimes relating to national security or other politically salient issues.

One common manifestation of capture is rule changes that give greater political control over how judges or members of appointment bodies such as judicial councils are appointed or replaced, or rule changes that create new judicial or judicial council vacancies.

- This can be achieved in several ways, including
 - expanding the size or number of courts,
 - removing existing judges, or
 - establishing or revising compulsory retirement ages.

Our colleagues from Poland and Hungary will recognize some of these methods, and more that I have not mentioned.

Another manifestation of capture is the passage of laws that give the political branches the power to select judges to hear certain, politically sensitive cases, such as those involving counterterrorism or national security.

- In Hong Kong, the Chief Executive has recently been given responsibility for designating a specific list of judges to hear national security cases. This reform could bias outcomes against criminal defendants, especially in politically salient cases.
- In 2020, when pro-democracy advocate and businessman Jimmy Lai was arrested, Hong Kong authorities prevented his chosen British lawyer from representing him.⁵

Bar associations may also be targeted by governments that are threatened by the independence of the legal system. Potential capture efforts include government

⁵ See AL CHN 1/2023

attempts to exert control over or to appoint the leadership of bar associations, to authorize other bodies to investigate bar associations, or to arbitrarily review the qualifications of members.⁶

- For example, in 2024, the Russian Federation passed a law that gave the Ministry of Justice power to request disciplinary sanctions against lawyers.⁷
- These measures make it easier for the government to target lawyers involved in sensitive or politically charged cases, including criminal defense lawyers.⁸

Legislatures and executives may also capture the legal profession in more direct ways that harm the rights of criminal defendants.

- For example, the Iranian Parliament adopted an amendment to the Code of Criminal Procedure that would allow only “approved attorneys” to intervene during the investigation stage in cases involving national security and organized crimes.
- The list of “approved attorneys” is determined by the Head of the Judiciary, who is appointed directly by the Supreme Leader.⁹
- This harms defendants in politically salient cases, whose defense lawyers may be biased towards the government.

Curbing

The second category of attacks that autocratizing governments make on independent legal systems can be referred to as curbing. Rather than usurping control of legal systems, **this strategy aims to reduce their overall power and capacity (and especially the power to check the political branches).**

⁶ Margaret Satterthwaite, *Safeguarding the independence of judicial systems in the face of contemporary challenges to democracy*, A/HRC/56/62 (2024).

⁷ Oral Statement, 57th Session of the United Nations Human Rights Council, https://www.lawyersforlawyers.org/wp-content/uploads/2024/10/Final_HRC57_IBAHRI_Oral-Statement_ID_SR_Russia-2.pdf

⁸ See communication RUS 1/2024.

⁹ Mohammad Nayyeri, “‘You Have the Right to an Attorney that We Approve of’: Right to Counsel under Iran's New Criminal Procedure Code,” *Oxford Human Rights Hub* (2015), <https://ohrh.law.ox.ac.uk/you-have-the-right-to-an-attorney-that-we-approve-of-right-to-counsel-under-irans-new-criminal-procedure-code-2/>.

The United States is experiencing this acutely.

- Within a month of Donald Trump’s inauguration, the Attorney General summarily dismissed more than a dozen prosecutors at the Department of Justice, who reportedly worked on criminal investigations into President Trump.¹¹
- The administration has also reduced the DOJ’s public-integrity section from 30 lawyers to only five.¹²
- In the months since, scores of lawyers at the Department of Justice have been forced to resign in settings where they believed they were being asked to undertake unethical actions.

Curbing efforts can also take the form of significant resource reductions or workload increases.

- This occurred, for example, in Mexico, which in 2023 significantly reduced the judiciary’s resources amid populist rhetoric about the judiciary being overpaid.

In states experiencing autocratization, independent lawyers, such as criminal defense attorneys, play a vital role in resisting repressive regimes, as we have seen in Russia¹³ and, as we heard from one of the speakers at this conference, in Greece, by zealously defending dissidents prosecuted for their political beliefs.¹⁴

- Dissidents, government opponents, and members of marginalized groups who are the focus of government repression need access to lawyers capable and willing to defend them and to fight the abuse of power.

In states not yet under pressure from a “strong leader,” under-resourced justice systems represent a risk. They result in chronic problems with the administration of

¹¹ AL USA 7/2025.

¹² Mark L. Wolf, *Why I Am Resigning*, The Atlantic (Nov. 9, 2025), <https://www.theatlantic.com/ideas/2025/11/federal-judge-resignation-trump/684845/>.

¹³ Gregg Wirth, LADD Project Looks at Declining Democracies and What Lawyers Can Do to Help, Thomson Reuters (Apr. 4, 2025), <https://www.thomsonreuters.com/en-us/posts/legal/ladd-project/>.

¹⁴ Patrick Strickland & Katja Lihtenvalner, *Greece releases jailed anarchist writer Tasos Theofilou*, Reuters (Jul. 7, 2017), <https://www.aljazeera.com/features/2017/7/7/greece-releases-jailed-anarchist-writer-tasos-theofilou>; Tasos Theofilou, *No Fair Trial, No Justice: How I spent five years in prison*, Fair Trials (Mar. 24, 2025), <https://www.fairtrials.org/articles/case-studies/no-fair-trial-no-justice-how-i-spent-five-years-in-prison-2/>.

justice leading to weakened trust in legal systems which “strong leaders” may in turn instrumentalize.¹⁵

- In the United Kingdom, in real terms, public funding for justice has declined by over 22% since 2010.¹⁶
- The low level of funding is unsustainable; the average age of duty solicitors is rising¹⁷ and barristers have recently gone on strike.¹⁸

As one writer recently said, “domestic systems are too weak, compromised, or underfunded to sustain systemic advocacy.”¹⁹

- **The dismantling and underfunding of independent legal systems creates the risk that lawyers and judges will not have the capacity, or the authority, to uphold the rule of law and enforce human rights, especially against the state, when things get especially bad.**

Instrumentalizing

Another type of attack on legal actors is what I call instrumentalizing. This occurs when **political actors use existing legal institutions, procedures, and laws in a formally correct way, but with an underlying political purpose, in order to exert undue influence on justice actors.**

- This includes criminalization—the instrumental use of criminal law—as well as politically-motivated disciplinary complaints and efforts to disbar defense attorneys.
- The machinery of the legal justice system is thus used to punish or intimidate judges, lawyers, or other human rights advocates who hold state

¹⁵ Suzi Ring & Alistair Gray, *Broken Justice: How Europe Let Its Courts Decay*, Reuters (Apr. 27, 2025), <https://www.ft.com/content/1db340c7-c880-4159-bed2-15b8c10ccbc5>.

¹⁶ *Funding for Justice Down 22% Since 2020 – New Bar Council*, The Bar Council (Sept. 4, 2024), <https://www.barcouncil.org.uk/resource/funding-for-justice-down-22-since-2010-new-bar-council-report.html>.

¹⁷ Olubunmi Onafuwa, *LASPO 2012: Ten Years and Beyond – A Socio-Legal Study of the Impact of Legal Aid Cuts on Service Providers in England and Wales*, 27 *Legal Ethics* 45 (2024), <https://www.tandfonline.com/doi/full/10.1080/1460728x.2024.2399921#d1e231>.

¹⁸ *Twelve High Risk Cases Halted by Barrister Strike*, BBC (Jan. 13, 2026), <https://www.bbc.com/news/articles/cje114xze29o>.

¹⁹ Jasmine D. Cameron, et al., *Attacks on U.S. Legal Profession Reflect Global Slide in Countries It Once Aided*, Just Security (Oct. 13, 2025), <https://www.justsecurity.org/122411/attacks-on-u-s-legal-profession-global-slide/>.

officials to account, or who are perceived to be associated with opposition figures or pro-democracy ideals.²⁰

It is particularly crucial to recognize the vulnerability of lawyers to prosecution for merely carrying out their duties in representing clients in order to understand how the traditional legal system can fail defendants and identify ways of improving it.

(1) In one example of this phenomenon, governments have improperly used international cooperative mechanisms to subject justice actors to domestic criminal prosecution, including those who are refugees or asylum seekers in other states.

- Imagine being a lawyer who has had an INTERPOL red notice issued against them by the government as retribution for their representation of a political dissident.
- That lawyer is labeled as a terrorist and put on police lists in INTERPOL member states.
- The lawyer may be provisionally arrested in any INTERPOL member state.
- To avoid this, they must live in the shadows, concerned that publicity could mean immediate return and certain torture or death.
- This exact situation played out for many lawyers in Türkiye who were seen as affiliated with the opposition Gülen Movement. Following the attempted coup in 2016, Türkiye's government issued hundreds of "red notice" requests and systematically cancelled the passports of suspected "dissidents"²¹ in order to pursue them using INTERPOL's database for Stolen and Lost Travel Documents.²²

²⁰ Margaret Satterthwaite, *Unchecking Power and Capturing Courts: How Autocratization Erodes Independent Judicial Systems*, 2024 Global Constitutional Seminar (2024).

²¹The Arrested Lawyers' Initiative, "Open Letter to Jurgen Stock", <https://www.rednoticelawjournal.com/wp-content/uploads/sites/780/2023/06/TALI-Open-Letter-Jurgen-Stock-Interpol-SLTD.pdf>; Ali Yildiz Legal, "Preventive Request Filed to Block Abuse of Interpol System by Turkey", <https://aliyildizlegal.com/2025/07/23/preventive-request-filed-to-block-abuse-of-interpol-system-by-turkey/>.

²² Disclose NGO, "Interpol: Turkish Journalists and Political Activists Flagged As "Terrorists" By The Organisation". *Disclose NGO*, 28 January 2026, <https://disclose.ngo/en/article/interpol-turkish-journalists-and-political-activists-flagged-as-terrorists-by-the-organisation>.

(2) In order to take advantage of these mechanisms, governments also seek to categorize legal advocates and their associations as criminal or terrorist organizations.

- Belarus has designated the Belarus Association of Human Rights Lawyers—a group organized by lawyers exiled for their support of clients facing politically motivated cases or denouncement of human rights abuses—as a terrorist organization.²³
- Belarusian lawyer Maksim Znak was detained and sentenced on politically motivated charges after a closed-door trial following his representation of opposition candidates.
- Held for more than two years incommunicado, Maksim Znak was released after being pardoned on December 13, 2025.

These strategies contribute to repression against both legal advocates and the clients they serve, often including human rights activists or refugees and asylum seekers.

Weaponizing

The fourth and final strategy presents in even more drastic situations in which the government employs patently unlawful and abusive methods to curb the work of justice actors. This is **the weaponization of populist sentiment and the public distrust of lawyers—especially defense attorneys—that too easily transforms into online and physical assaults.**

This kind of attack often starts with denigration and verbal attacks by high-level government officials and carries over into unlawful acts such as arbitrary detention, torture, enforced disappearance, and even assassination.

The online and physical attacks can be from state actors but more often are carried out by non-state supporters of autocratic leaders.

- These attacks result when state actors smear and vilify lawyers and judges in public.

²³ *UN experts urge Belarus to stop interfering*, Available at: <https://www.ohchr.org/en/press-releases/2025/11/un-experts-urge-belarus-stop-interfering-legal-profession> (Accessed: 22 January 2026).

- This can have a chilling effect, since it becomes risky to carry out their duties without fear for one’s own, or one’s family’s physical safety or freedom.
- For this reason, international norms make clear that states are obligated to provide the protection necessary to keep judges and their families safe, and to take action to end attacks against lawyers.²⁶

First, some examples of government disparagement

- Some governments disparage lawyers who represent politically sensitive clients or bring human rights cases. Bar Associations in the UK have called attention to government officials labeling immigration and other human rights lawyers as “lefty” or “abetting criminal gangs,” with a number of lawyers reporting death threats after the widespread publication of these comments.
- Recognizing the important role of human rights defenders in strengthening democracy, **the Inter-American Court of Human Rights recently imposed on States a “special duty of protection” to defenders**, including a reinforced obligation to prevent attacks or intimidation against them, mitigate existing risks, and adopt and provide adequate and effective protection measures in such risk situations.²⁷
- In the United States, in 2025, Donald Trump issued a number of executive orders that appear aimed at exacting retribution on law firms with links to lawyers and prosecutors whose actions the President does not like.
 - One of the memos states that “the immigration bar, and powerful Big Law pro bono practices, frequently coach clients to conceal their past or lie about their circumstances when asserting their asylum claims, all in an attempt to circumvent immigration policies enacted to protect our national security

²⁶ Satterthwaite, Margaret L., et al. “Unchecking Power and Capturing Courts: How Autocratization Erodes Independent Judicial Systems.” *SSRN Electronic Journal*, 2024, <https://doi.org/10.2139/ssrn.5063561>.

²⁷ Satterthwaite, Margaret L., et al. “Unchecking Power and Capturing Courts: How Autocratization Erodes Independent Judicial Systems.” *SSRN Electronic Journal*, 2024, <https://doi.org/10.2139/ssrn.5063561>.

and deceive the immigration authorities and courts into granting them undeserved relief.”

- Another order states that “[m]any firms take actions that threaten public safety and national security, limit constitutional freedoms, degrade the quality of American elections, or undermine bedrock American principles,” and maintains that firms regularly conduct these activities through their “powerful pro bono practices.”

- On to Harassment and Threats

- Lawyers in Lebanon, Pakistan, and Venezuela have encountered similar threats and harassment—either directly from government personnel or in circumstances where the government has allegedly provided inadequate security measures to protect against non-State actors.
- Governments have reportedly made use of surveillance software against lawyers and tapped communication networks in order to access information regarding clients perceived to be enemies of the regime, or to keep tabs on the lawyers who represent them.
- Such surveillance should be of particular concern to the legal profession due to its implications for lawyer-client confidentiality.²⁸

- Arbitrary Detention, Torture, Enforced Disappearance, Physical Attack and Assassination

The most egregious forms of attack on justice actors are all too common. Judges, prosecutors, and lawyers have been assaulted, tortured, and killed in circumstances that have been inadequately investigated. Such cases have occurred on numerous occasions in Türkiye.²⁹

- ***Imagine This:*** Example: Diala Ayesh (Palestinian Human Rights Lawyer)

²⁸ Satterthwaite, Margaret L., et al. “Unchecking Power and Capturing Courts: How Autocratization Erodes Independent Judicial Systems.” *SSRN Electronic Journal*, 2024, <https://doi.org/10.2139/ssrn.5063561>.

²⁹ Satterthwaite, Margaret L., et al. “Unchecking Power and Capturing Courts: How Autocratization Erodes Independent Judicial Systems.” *SSRN Electronic Journal*, 2024, <https://doi.org/10.2139/ssrn.5063561>.

- You are a Palestinian Human Rights Lawyer. On 25 January 2024, you are given a four-month administrative detention order by the Israeli military’s Central Command for the occupied West Bank.
- This order was imposed without charge or trial, and you were not brought before a court.
- Imagine that the detention order is subsequently renewed several times over.
- While in detention, you endure assault, threats and verbal abuse.
- Although you are released from administrative detention after a year, you find upon release that your fellow lawyers have been deeply affected by your treatment and are fearful that the same will happen to them.³⁰

How to Fight

According to international human rights standards, lawyers must be free to carry out their professional duties without political interference and must be protected as they carry out their professional activities.³¹

- **The Basic Principles on the Role of Lawyers explains that “Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference.”**

In the face of attacks on the independence of the justice systems, and failures to safeguard fundamental rights such as the right to counsel, the work of legal professionals can play a vital role maintaining the rule of law.

One way that legal professionals can contribute to this is by connecting with larger movements to protect democratic institutions.

³⁰ Satterthwaite, Margaret , and Mary Lawlor. *Mandates of the Special Rapporteur on the Independence of Judges and Lawyers and the Special Rapporteur on the Situation of Human Rights Defenders Ref.: AL ISR 21/2025*. 25 Sept. 2025, spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=30355.

³¹ AL USA 7/2025.

- Legal professionals should consider themselves as more than courtroom advocates. They must be willing to undertake new tasks, form enduring alliances with clients, and operate in forums other than courts.³²
 - For example, in the United States, lawyers are mobilizing to push back against repression. Project 2025 *for* Democracy was established with the aim of crafting policies to strengthen the ethical role of lawyers and preemptively protect bar independence.³³
 - In Poland and Hungary, judges and lawyers have mobilized and taken to the streets to protest encroachments into the independence of justice systems.³⁴
 - Solidarity between lawyers can alert organizations like INTERPOL of a common consensus that their systems are too often misused, triggering discussions of measures to be taken to remedy the situation.
 - Even if such efforts do not result in immediate reforms, collective action can strengthen resilience and “galvanize public consciousness and professional solidarity,” even in the face of suppression.³⁵

Another way lawyers can challenge autocratization is by **humanizing Criminal Justice**. Such humanization helps dispel the polarization that autocrats weaponize by building trust between justice actors and marginalized communities.

The theme of this year’s conference “invites us to look beyond procedures and institutions” to “explore how justice systems can truly serve people — by recognizing dignity, needs, and voices, especially of those most marginalized.”

- To develop justice systems more centered on truly serving people, countries and legal professionals must be flexible about adopting innovative models of legal services.
- **Holistic Defense** represents one such innovative model.

³² Marc Galanter, *Why the Haves Come Out Ahead*, 9 Law & Society Review 95, 151 (1974).

³³ Scott Cummings, *Stopping Autocratic Legalism in America – Before It Is Too Late*, Verfassungsblog (Mar. 26, 2025), <https://verfassungsblog.de/stopping-autocratic-legalism-in-america-before-it-is-too-late/>.

³⁴ *Poland: Judges and lawyers from across Europe protest judicial takeover in Warsaw*, Amnesty International (Jan. 9, 2020), <https://www.amnesty.org/en/latest/news/2020/01/poland-judges-and-lawyers-from-across-europe-protest-judicial-takeover-in-warsaw/>.

³⁵ Jasmine D. Cameron, et al., *Attacks on U.S. Legal Profession Reflect Global Slide in Countries It Once Aided*, Just Security (Oct. 13, 2025), <https://www.justsecurity.org/122411/attacks-on-u-s-legal-profession-global-slide/>.

- It is based on the philosophy that a person’s criminal defense attorney has the responsibility to not only provide criminal representation, but to help address the antecedent circumstances that led the defendant into contact with the criminal justice system.
 - In the United States, the Bronx Defenders have pioneered this type of work.³⁶
 - In Belgium, Casa Legal has incorporated social professionals into its practice and provides legal services not only in criminal law, but in immigration law, family law and youth law.³⁷
- When communities perceive legal justice systems as working for them, this can act as an inoculation against otherwise-powerful demands by these strong leaders to usurp the legal system in the name of “the people.”
 - Legal empowerment strategies utilize community justice workers—sometimes called community paralegals, justice defenders, grassroots legal advocates or barefoot lawyers—as a force multiplier to reach underserved populations.
 - Once trained, justice workers raise awareness of rights, laws and policies; help people navigate legal and administrative processes in pursuit of remedies; and support communities’ engagement in law and policy reform.
 - For example, in Sierra Leone and India, community justice workers and lawyers work together in police stations and prisons to assist individuals both at the time of arrest and during incarceration.
 - In the United States, “jailhouse lawyers,” incarcerated individuals who generally have no formal legal training prior to their incarceration, spend their prison time learning legal skills and substantive law to advocate for themselves and the rights of their peers.

³⁶ James M. Anderson et al, *The Effects of Holistic Defense on Criminal Justice Outcomes*, 132 HARV. L. REV. 820 (2019), https://scholarship.law.upenn.edu/faculty_scholarship/2024/.

³⁷ *Services aux Professionnels*, CASA LEGAL, <https://casalegal.be/services-aux-professionnels/> (last visited on Jan. 20, 2026).

- Programs like the Jailhouse Lawyers Initiative help advance the humanization of the criminal system by placing legal knowledge in the hands of system-impacted individuals and fostering a community whereby they can pass on their knowledge to incarcerated individuals.³⁸
- JLI also encourages people to work to implement criminal justice reform and humanize it by shaping the system to respond to societal needs.
 - By protecting the rights of the most marginalized, community justice workers resist attempts to demonize, scapegoat, and persecute marginalized communities.

I want to recommend that as lawyers, we can recognize and embrace the role and contributions of community justice workers.

- Because of our leadership roles in our legal systems, lawyers are ideally placed to help to expand the legal ecosystem, and especially to assure lawyers that community justice workers are not intended to replace them but to partner with them and amplify their reach.
- As we know, the right to counsel and the right to legal aid are enshrined in human rights law, and for good reason: when the full weight of the State is brought to bear, an individual deserves an independent, competent and ethical lawyer.
- Let us demonstrate—by Humanizing Criminal Justice—that we stand for fairness, for equality and for access to justice. Let us make clear that we will not stand by as our legal systems are attacked and instrumentalized to shut down dissent or make power unaccountable. [THANK YOU]

³⁸ Jailhouse Lawyers Initiative, <https://jailhouselawyers.org/about/>.