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**Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms**

## Independence of judges and lawyers

### Note by the Secretary-General

The Secretary-General has the honour to transmit the report of the Special Rapporteur on the independence of judges and lawyers, Diego García-Sayán, submitted pursuant to Human Rights Council resolution [35/11](#).

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\* [A/74/50](#).



## Report of the Special Rapporteur on the independence of judges and lawyers

### *Summary*

In the present report, submitted pursuant to Human Rights Council resolution [35/11](#), the Special Rapporteur on the independence of judges and lawyers focuses on the essential role that the Basic Principles on the Independence of the Judiciary have played as guarantors of judicial independence, and the status of threats and challenges to the independence of judges and lawyers and the judicial system as a whole, including prosecutors, in the current global context.

In the report, the Special Rapporteur emphasizes that, after 34 years since the adoption of the Basic Principles, in 1985, more progress is needed in order to face contemporary challenges. In this regard, two subjects emerge as a clear priority: first, the threat of global and transnational corruption and its impact on society and institutions, including the judiciary as a whole, taking into account the key role that the United Nations Convention against Corruption has to play in this regard; and second, the integration into the Basic Principles of the principles established in the Bangalore Principles of Judicial Conduct, absent from the text adopted in 1985, with a special focus on the principle of integrity.

The Special Rapporteur offers some recommendations with the aim of promoting the launching of a process of analysis and debate in order to expand the Basic Principles, so that they may serve as an instrument for dealing with some of the changes that have occurred since their adoption.

## I. Introduction

1. International standards provide that it is an obligation of all governmental and State institutions to respect and observe the independence of the judiciary and to adopt all appropriate measures to ensure that judges can decide matters before them impartially and without improper influences, pressures or interference.

2. The Basic Principles on the Independence of the Judiciary provide a list of the measures that States are required to adopt to guarantee the independence of the judiciary at the national level. The standards, grouped into 20 principles, cover the following issues: institutional and personal independence (principles 1–4, 6 and 7); the principle of the natural judge (principle 5); freedom of expression and association (principles 8 and 9); qualifications, selection and training (principle 10); conditions of service (principle 11); security of tenure (principle 12) and promotion (principle 13); the assignment of cases as an internal matter (principle 14); professional secrecy (principle 15) and personal immunity (principle 16); and discipline and the right to a fair hearing, suspension and removal (principles 17–20). The set of principles, and the concepts and criteria contained therein, are of great relevance and value to the day-to-day work of the Special Rapporteur on the independence of judges and lawyers. The Basic Principles provide guidelines and guarantees applicable to the legal systems of all Member States.

3. In the present report, the Special Rapporteur focuses on the essential role that the Basic Principles have played as guarantors of judicial independence since they were adopted in 1985, and the status of threats and challenges to the independence of judges and lawyers and the judicial system as a whole, including prosecutors, in the current global context.

4. A solid set of international legal rules, standards and principles aimed at ensuring and reinforcing the independence and integrity of the justice system as a whole requires continuous attention and monitoring to identify and tackle new or re-emerging problems and challenges triggered by societal, political and economic changes. The Special Rapporteur emphasizes, however, that, despite serving as a valuable conceptual guide for defining strategies and stimulating positive developments in different countries, the Basic Principles are in urgent need of an update in order to address some of the changes that have occurred in past three decades and challenges that were not taken into account or did not even exist 34 years ago. Thus, the Basic Principles should be expanded and strengthened by drawing on some of the international standards that were established after the adoption of the Principles and taking into consideration new threats and defiance being faced by contemporary societies.

5. Throughout the current year, the Special Rapporteur has promoted meetings, gatherings and debates on the matter in various countries and with a number of judges, prosecutors and lawyers. While a number of matters, such as a lack of transparency in the decision-making process, the improper use of new technology and social media, problems with modern developments in the administration of justice, the inefficiency of judicial institutions, judicial unresponsiveness to societal needs and widespread judicial corruption, were mentioned, two notable, relevant and substantial subjects emerged as clear priorities.

6. The first priority is to address global and transnational corruption and its impact on society and institutions, including the judiciary as a whole, and the specific challenges that this entails, in particular for judges and prosecutors, bearing in mind the crucial responsibility assigned to them under the United Nations Convention

against Corruption.<sup>1</sup> The second is to integrate into the Basic Principles the principles of integrity, propriety, equality, and competence and diligence established in the Bangalore Principles of Judicial Conduct,<sup>2</sup> which are absent from the text adopted in 1985.

7. Judges and their auxiliary personnel are not the only crucial actors; prosecutors, as well, are vital, and the crucial role that prosecutors play in the administration of justice must be acknowledged. In the context of the challenges and duties being placed on society today as a result of transnational crime and corruption, judges must be independent so as to guarantee an effective response. It is essential to bear in mind that prosecutorial functions must be exercised impartially and independently of political or other kinds of interference (see resolution 17/2 of the Commission on Crime Prevention and Criminal Justice).

8. Although the Basic Principles do not specifically refer to prosecutors, the mandate holder and his predecessors (see [A/HRC/20/19](#) and [A/62/207](#)) and the Human Rights Council (see Council resolution 29/6) have highlighted the crucial relevance of the functions of prosecutors in relation to judicial independence. Therefore, international standards on the independence of justice must guarantee that prosecutors are able to carry out their duties, not only without undue influence or interference of a political or other nature, but also without fear or favour or prejudice. This framework must be able to cope with contemporary challenges affecting prosecutors and ensure complementarity of those guarantees with existing international standards for the judiciary.

9. Through the present report, the goal of the Special Rapporteur is to promote the launching of a process of analysis and debate in order to expand the Basic Principles, so that they may serve as a valuable instrument for dealing with some of the changes that have occurred in the past three decades.

10. Challenges are being faced that were not taken fully into consideration when the Basic Principles were adopted. Of particular importance is the fact that, over the past few years, greater concern has been raised about the correlation and interaction between the independence and integrity of the judiciary and the extent of transnational corruption and crime (see [A/72/140](#)). In order to overcome that major contemporary challenge, an honest and effective judicial system is needed that is independent from political and de facto powers and capable of guaranteeing the protection of human rights and the social necessity of effective responses to the challenges. Thus, a judicial system susceptible to external influences weakens itself and not only deprives citizens of protection but also contributes to reducing civil society's confidence in its institutions.

11. In an effort to incorporate the very relevant Bangalore Principles into the Basic Principles, the Special Rapporteur pays special attention in the present report to the issue of corruption and the principle of integrity, so that the key concepts discussed can be integrated into the Basic Principles.

12. The Special Rapporteur would like to thank the Human Rights Clinic of the Human Rights Research and Education Centre of the University of Ottawa for its outstanding work in supporting the research for and the drafting of the present report.

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<sup>1</sup> Adopted by the General Assembly in its resolution 58/4, in October 2003; the Convention entered into force in December 2005.

<sup>2</sup> Adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round-Table Meeting of Chief Justices held at the Peace Palace, The Hague, on 25 and 26 November 2002.

## II. International and regional standards

13. In 1985, the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders adopted the Basic Principles (subsequently endorsed by the General Assembly in its resolutions 40/32 and 40/146) as the minimum guarantee of an independent judiciary. Since then, more than two thirds of States worldwide have enshrined judicial independence in their constitutions, while others have integrated the principle into their national legislation (A/72/140, para. 80).<sup>3</sup>

14. Rooted in article 10 of the Universal Declaration of Human Rights and article 14 of the International Covenant on Civil and Political Rights, both of which guarantee individuals' right to an independent and impartial tribunal, the Basic Principles draw on preceding international standards on judicial independence, including the 1982 New Delhi Code of Minimum Standards of Judicial Independence, of the International Association of Judicial Independence and World Peace and the International Bar Association, and the 1983 Universal Declaration on the Independence of Justice. Furthermore, in its resolution 16, the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders called upon the Committee on Crime Prevention and Control to include among its priorities the elaboration of guidelines relating to the independence of judges and the selection, professional training and status of judges and prosecutors.

15. The Basic Principles provide fundamental operational guidelines and standards for safeguarding the independence of the judiciary, which have been further strengthened by relevant United Nations bodies, such as the Human Rights Committee in its general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial (CCPR/C/GC/32, para. 19).

16. In its general comment No. 32, the Human Rights Committee established that the requirement of competence, independence and impartiality of a tribunal is an absolute right that is not subject to any exception. The Committee subsequently provided a substantial summary of that requirement:

The requirement of independence refers, in particular, to the procedure and qualifications for the appointment of judges, and guarantees relating to their security of tenure until a mandatory retirement age or the expiry of their term of office, where such exist, the conditions governing promotion, transfer, suspension and cessation of their functions, and the actual independence of the judiciary from political interference by the executive branch and legislature.

On the basis of that requirement, the Committee came to the following conclusion:

States should take specific measures guaranteeing the independence of the judiciary, protecting judges from any form of political influence in their decision-making through the constitution or adoption of laws establishing clear procedures and objective criteria for the appointment, remuneration, tenure, promotion, suspension and dismissal of the members of the judiciary and disciplinary sanctions taken against them. A situation where the functions and competencies of the judiciary and the executive are not clearly distinguishable or where the latter is able to control or direct the former is incompatible with the notion of an independent tribunal.

<sup>3</sup> See also Linda Camp Keith, "Judicial independence and human rights protection around the world", *Judicature*, vol. 85, No. 4 (January–February 2002), p. 198, and John Bridge, "Constitutional guarantees of the independence of the judiciary", *Electronic Journal of Comparative Law*, vol. 11.3 (December 2007), p. 4.

17. As identified by the Special Rapporteur in his report to the General Assembly of 2017 (A/72/140), transnational corruption and organized crime have become one of the great contemporary challenges for societies as a whole, for judicial independence and for human rights. Those threats represent a major challenge, not only for the judiciary but also for prosecutors and prosecutorial institutions. Prosecutors and their obligations therefore need to be included as an essential part of the solution. Consequently, the crucial aspects related to prosecutors laid down in the Guidelines on the Role of Prosecutors, the Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors<sup>4</sup> and the report of the United Nations Office on Drugs and Crime (UNODC) of 2014 entitled *The Status and Role of Prosecutors: A United Nations Office on Drugs and Crime and International Association of Prosecutors Guide*, among others, cannot be ignored.

## A. International standards

18. The Special Rapporteur firmly believes that the need to expand and strengthen the Basic Principles by drawing on other international standards and approaches must be considered in order to prevent skewed interpretations that may affect the independence of the judiciary in the complex panorama of a strengthened global corruption that is undermining public and private institutions, including corporations.

19. Within this approach, two issues stand out as priorities: (a) the inclusion in the Basic Principles of the principle of judicial integrity acknowledged in the Bangalore Principles; and (b) the contemporary challenges faced by society and its institutions, including the judicial system, as a result of organized crime and transnational corruption. With regard to the latter, it is essential to bear in mind that, considering what is set forth in the provisions of the Convention against Corruption, judges and prosecutors play a crucial role in facing the threats resulting from those challenges.

### **Bangalore Principles of Judicial Conduct**

20. The first mandate holder, Dato' Param Cumaraswamy, submitted the Bangalore Principles of Judicial Conduct to the Commission on Human Rights at its fifty-ninth session (see E/CN.4/2003/65, annex). The Bangalore Principles outline the values of independence, impartiality, integrity, propriety, equality, and competence and diligence as necessary to ethical judicial conduct. In the Bangalore Principles, the role of the Basic Principles in promoting a judiciary that is independent from the other branches of the State is directly recognized. In addition, the Bangalore Principles include the aim to further develop judicial independence by addressing the conditions needed to promote the ethical conduct of members of the judiciary.

21. In its resolution 2006/23, on strengthening basic principles of judicial conduct, the Economic and Social Council noted the complementary nature of the Bangalore Principles to the Basic Principles and requested UNODC to develop a commentary on the Bangalore Principles.

22. The *Commentary on the Bangalore Principles of Judicial Conduct*, issued in 2007 by UNODC with the assistance of the Judicial Group on Strengthening Judicial Integrity,<sup>5</sup> provides guidelines for the accurate interpretation of each of the six values listed in the Bangalore Principles. The Judicial Group adopted measures for the effective implementation of the Bangalore Principles in January 2010, in which both the responsibilities of the judiciary and the responsibilities of the State in that regard are broken down.

<sup>4</sup> Adopted by the International Association of Prosecutors on 23 April 1999.

<sup>5</sup> See [www.judicialintegritygroup.org/jig-group](http://www.judicialintegritygroup.org/jig-group).

23. The Bangalore Principles should be considered part of the Basic Principles and, accordingly, should be incorporated into them. In her report to the General Assembly, the former mandate holder, Gabriela Knaul, concluded that the Basic Principles, together with the Bangalore Principles, remained absolutely essential to the promotion and protection of the independence of judges, lawyers and prosecutors throughout the world (A/70/263, para. 105).

### **United Nations Convention against Corruption**

24. On several occasions, the Special Rapporteur has emphasized the vital importance of the United Nations Convention against Corruption and addressed the challenge that gross corruption represents to societies, the rule of law and the independence of the judicial system.

25. In his report of 2017 to the General Assembly, the Special Rapporteur emphasized that corruption and organized crime are undermining the rule of law and the capacity of States to promote systems of governance accountable to and compliant with human rights standards. Corruption also undermines the ability of the judiciary to guarantee the protection of human rights and directly or indirectly impedes the discharge of the professional functions of judges, prosecutors, lawyers and other legal professionals. Corruption also has a devastating effect on the entire judicial system, as it diminishes the confidence of citizens in the administration of justice (A/72/140, para. 21).

26. The Special Rapporteur also emphasized that the Convention is the only universal instrument against corruption and one of the international treaties with the most States parties (ibid., para. 27). In the Convention, the judiciary is identified as an institution critical to preventing and combating corruption. In particular, article 11 provides that each State party should take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary, without prejudice to judicial independence. Such measures may be introduced and applied within the prosecution service in States where that institution does not form part of the judiciary but enjoys independence similar to that of the judicial service (ibid., para. 28).

27. The preamble to the Convention reflects the awareness of the international community regarding the seriousness of problems and threats posed by corruption to the stability and security of societies, undermining the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development and the rule of law. In addition, States parties considered it appropriate to highlight the links between corruption and other forms of crime, in particular organized crime. Similarly, the transnational dimension of the phenomenon is reflected through the States parties' conviction that corruption is no longer a local matter but a transnational phenomenon that affects all societies and economies, making international cooperation to prevent and control it essential (resolution 58/4, annex, fourth preambular para.).

28. In the Convention, States parties are called upon to adopt preventive measures in their legislative systems, institutions and practices, including international cooperation (ibid., chapter II). The criminalization of the most common forms of corruption in both the public and private sectors<sup>6</sup> is also promoted.

29. The normative framework for effective international cooperation, especially investigative and judicial, is of vital importance for dealing effectively with

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<sup>6</sup> Antonio Argandoña, "The United Nations Convention against Corruption and its impact on international companies", IESE Business School Working Paper, No. 656, University of Navarra, Barcelona, Spain, p. 9.

transnational corruption and crime. In order to achieve such a goal, it is indisputable that judges and prosecutors must have the necessary tools to ensure their independence and impartiality.

30. The Convention offers a strong normative framework for States to engage in international cooperation both formally and informally. Chapter IV contains detailed provisions on the main modalities of international cooperation in criminal matters, such as extradition, mutual legal assistance and the transfer of sentenced persons; it also covers law enforcement cooperation, joint investigations and special investigative techniques. Thus, these provisions also cover judges, prosecutors and other categories of civil servants. Moreover, article 43 provides for States parties to assist each other in investigations of and proceedings in civil and administrative matters relating to corruption.

31. The scope of international cooperation in criminal matters, as laid down in chapter IV, not only covers “traditional” forms of cooperation, but also extends to other, relatively new options in transnational criminal justice, including the transfer of criminal proceedings, the establishment of joint investigative bodies and the appropriate use of special investigative techniques.

32. The broad scope and mandatory nature of the Convention make it the only instrument capable of providing a comprehensive response to a global problem, response for which an impartial and independent judiciary and prosecution are absolutely crucial. It covers a number of fundamental and progressive issues and provides clear and concrete tools that make it possible for a number of States to make progress in simultaneous and joint criminal investigations ([A/72/140](#), para. 29).

#### **Multilateral standards for prosecutors**

33. The Guidelines on the Role of Prosecutors, in which the Basic Principles are recognized, provide guidelines on promoting the effective, impartial and fair role of public and ad hoc prosecutors in criminal proceedings. The Guidelines were adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana from 27 August to 7 September 1990, and were subsequently endorsed by the General Assembly in its resolution [45/166](#).

34. Although not a binding instrument, the Guidelines were formulated to assist Member States in their tasks of securing and promoting the effectiveness, impartiality and fairness of prosecutors in criminal proceedings. This compendium of good practices presents valuable and indispensable guidelines relevant to the qualifications, status, role and functions of prosecutors ([A/HRC/20/19](#), para. 20).

35. The Special Rapporteur has expressed full support for the Guidelines, noting the importance of the standards set out therein ([A/HRC/35/31](#), para. 47) and their extensive overlapping with the Basic Principles on the Role of Lawyers.

#### **Other international standards**

36. The Basic Principles on the Role of Lawyers, which were also endorsed by the General Assembly in its resolution [45/166](#), include a recognition of the importance of an independent legal profession and set forth principles to be observed by States. Principle 1 of those Basic Principles provides that all persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings. They also establish safeguards for the professional functions of lawyers. The Special Rapporteur has expressed full support for those Basic Principles, noting the importance of the standards set out therein ([A/HRC/35/31](#), para. 47).



37. In article 1 of the Universal Charter of the Judge,<sup>7</sup> judicial independence is recognized as indispensable to the functioning of a fair justice system.

38. In the Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in 1993, the World Conference noted that an independent judiciary that conforms to international human rights law is essential to the full and non-discriminatory realization of human rights and indispensable to the processes of democracy and sustainable development.

39. A number of other United Nations conventions make general reference to the importance of an independent judiciary, including the Convention on the Rights of the Child (articles 37 (d) and 40 (2) (b) (iii) and (v)), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (article 18 (1)), the International Convention for the Protection of All Persons from Enforced Disappearance (article 11 (3)), the Convention on the Rights of Persons with Disabilities (article 12 (4)), the United Nations Standard Minimum Rules for Non-custodial Measures (articles 3.3, 3.5, 3.6, 6.3, 9.3 and 14.6), and the Basic Principles and Guidelines on the Right to a Remedy and Reparation (article 23 (c)).

40. The New Delhi Code of Minimum Standards of Judicial Independence, the International Code of Ethics (first adopted in 1956, updated in 1988), the Standards for the Independence of the Legal Profession (1990), the General Principles for the Legal Profession (2006), the International Principles on Conduct for the Legal Profession (2011) and the Anti-Corruption Guidance for Bar Associations (2013) of the International Bar Association similarly protect the independence of the judiciary, without explicit reference to the Basic Principles on the Independence of the Judiciary.

## B. Regional standards

### Inter-American system

41. The American Convention on Human Rights stipulates that the independence of the court should be respected and that all persons have a right to trial by an independent and impartial tribunal (article 8). Other documents of the Inter-American Commission on Human Rights have referred to the Basic Principles in dealing with matters related to the independence of the judiciary from other branches of government or organs of the State, budget control, general conditions of equality and non-discrimination in the context of the judiciary, the selection of judicial officials on the basis of merit and qualifications, and others.<sup>8</sup>

42. In its case law, the Inter-American Court of Human Rights has indicated that “the scope of judicial guarantees and effective judicial protection for judges must be examined in relation to the standards on judicial independence”.<sup>9</sup> In the case of *Reverón Trujillo v. Venezuela*, the Court emphasized that judges, unlike other public officials, enjoy specific guarantees as a result of the independence required of the

<sup>7</sup> Adopted by the Central Council of the International Association of Judges in Taiwan on 17 November 1999 and updated in Santiago de Chile on 14 November 2017.

<sup>8</sup> Inter-American Commission on Human Rights, *Guarantees for the Independence of Justice Operators: Towards Strengthening Access to Justice and the Rule of Law in the Americas* (OEA/Ser.L/V/II, Doc. 44, 5 December 2013).

<sup>9</sup> *Supreme Court of Justice (Quintana Coello et al.) v. Ecuador*, Series C, No. 266, Preliminary Objection, Merits, Reparations and Costs, Judgment, 23 August 2013, para. 144.

judiciary, which the Court considered “essential for the exercise of the judicial function”.<sup>10</sup>

43. In the case of *López Lone et al. v. Honduras*, the Court pointed out that “the State must guarantee the autonomous exercise of the judicial function as regards both its institutional aspect, that is, in relation to the judiciary as a system, and also as regards its individual aspect, that is, in relation to the person of the specific judge”.<sup>11</sup>

44. In the cases of the Supreme Court of Justice (Quintana Coello et al.) and the Constitutional Tribunal (Camba Campos et al.), both against Ecuador, the Court clarified that judicial independence should not be analysed in relation to the defendant only, because the judge also should have a series of guarantees to ensure judicial independence.<sup>12</sup>

45. Finally, and without going into a detailed analysis, it should be mentioned that the Court has, on several occasions, referred to the Basic Principles as a source of law when issuing its judgments related to the independence of the judiciary, for example in the cases mentioned above.

## Europe

46. In Europe, it is primarily the Council of Europe and its bodies that have established regional standards on the independence of judges and judicial conduct. The Basic Principles are building blocks for the European Charter on the statute for judges.<sup>13</sup> In recommendation No. R (94) of the Committee of Ministers to member States on the independence, efficiency and role of judges, the Committee asserts that “all necessary measures should be taken to respect, protect and promote the independence of judges”.

47. The Consultative Council of European Judges recognizes the Basic Principles as particularly important for the implementation of judicial independence (see Opinion No. 1 (2001)) and makes specific reference to the Basic Principles in several other opinions as well.<sup>14</sup>

48. In its resolution on judicial ethics, adopted on 23 June 2008, the European Court of Human Rights articulates the principles of independence, impartiality, integrity, diligence and competence, discretion, and freedom of expression of judges.

49. Finally, the European Association of Judges has expressed its support for the Basic Principles. In 2018, the Association considered “that these general principles continue to be relevant 33 years after their adoption and stresses the importance of worldwide rules designed to ensure the independence of judges and to enable judges, through the creation of associations, to defend the principles of judicial

<sup>10</sup> *Reverón Trujillo v. Venezuela*, Series C, No. 197, Preliminary Objection, Merits, Reparations and Costs, Judgment, 30 June 2009, para. 67, citing *Herrera Ulloa v. Costa Rica*, Series C, No. 107, Preliminary Objections, Merits, Reparations and Costs, Judgment, 2 July 2004, para. 171, and *Palamara-Iribarne v. Chile*, Series C, No. 135, Merits, Reparations and Costs, Judgment, 22 November 2005, para. 145.

<sup>11</sup> *López Lone et al. v. Honduras*, Series C, No. 302, Preliminary Objection, Merits, Reparations and Costs, Judgment, 5 October 2015, para. 194.

<sup>12</sup> *Supreme Court of Justice (Quintana Coello et al.) v. Ecuador*, para. 153, and *Constitutional Tribunal (Camba Campos et al.) v. Ecuador*, Series C, No. 268, Preliminary Objections, Merits, Reparations and Costs, Judgment, 28 August 2013, para. 197.

<sup>13</sup> Adopted by participants from European countries and two international associations of judges in a meeting organized by the Council of Europe in Strasbourg, France, on 8–10 July 1998.

<sup>14</sup> Opinion No. 3 (2002); Opinion No. 4 (2003); Opinion No. 17 (2014); Opinion No. 19 (2016).

independence”. Nevertheless, the Association also noted that “some of these principles could usefully be recast and clarified” so as to include new concerns.<sup>15</sup>

### **Africa**

50. Pursuant to article 26 of the African Charter on Human and Peoples’ Rights, States parties to the Charter have a duty to guarantee the independence of the courts. The Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa outline regional standards on the right to an independent and impartial tribunal, appropriate training for judges and the independence of lawyers.<sup>16</sup> While the need for an independent judiciary is asserted in both documents, neither includes a reference to the Basic Principles.<sup>17</sup>

### **Asia and the Pacific**

51. According to the Beijing statement of principles of the independence of the judiciary in the region of the Law Association for Asia and the Pacific,<sup>18</sup> “the maintenance of the independence of the judiciary is essential to the attainment of its objectives and the proper performance of its functions in a free society observing the rule of law”.

52. In its *Analysis of the Draft Code of Judicial Conduct for the Kingdom of Cambodia*, the Asia Law Initiative of the American Bar Association encourages the adoption of article 9 of the Basic Principles,<sup>19</sup> should Cambodia not have a judges association. The Bangalore Principles are annexed to that report and particular attention is paid to the way in which the Bangalore Principles are reflected in chapter IV, entitled “Honest principle”, of the Code.<sup>20</sup>

### **North America**

53. Without making direct reference to the Basic Principles, the Ethical Principles for Judges<sup>21</sup> of the Canadian Judicial Council provide guidelines for the ethical conduct of federally appointed judges, in particular in the areas of integrity, diligence, equality and impartiality.

54. Regarding the Code of Conduct for United States Judges, while the principles of independence, impartiality and freedom of association laid down therein are consistent with the Basic Principles, no reference to the Principles is made.

55. The former mandate holder, Dato’ Param Cumaraswamy, recommended that the Council of the Federal Judiciary of Mexico ensure that disciplinary proceedings are

<sup>15</sup> See [http://www.uhs.hr/data\\_sve/docs/rezolucije2018/Res\\_EAJ\\_Basic\\_UN\\_Principles\\_2018.pdf](http://www.uhs.hr/data_sve/docs/rezolucije2018/Res_EAJ_Basic_UN_Principles_2018.pdf).

<sup>16</sup> African Union document DOC/OS(XXX)247, sections A, B, and I.

<sup>17</sup> At the national level, the UNODC *Judicial Ethics Training Manual for the Nigerian Judiciary* includes references to the Basic Principles and the Bangalore Principles. In the document, UNODC stresses the importance of the judicial values of independence, impartiality, integrity, propriety, equality, and competence and diligence. Also, a discussion of the independence of the “Somaliland” judiciary in reference to the Basic Principles can be found in the 2014 paper entitled “The principle of judicial independence and Somaliland courts” by Judge Abdishakur Ali Mohumed.

<sup>18</sup> Adopted at the sixth Conference of Chief Justices of Asia and the Pacific, held in Beijing in August 1995. The statement was further refined during the seventh Conference of Chief Justices, held in Manila in August 1997.

<sup>19</sup> “Judges shall be free to form and join associations of judges or other organizations to represent their interests, to promote their professional training and to protect their judicial independence.”

<sup>20</sup> See [www.americanbar.org/content/dam/aba/directories/roli/cambodia/cambodia\\_judicial\\_conduct\\_draft\\_code\\_analysis.pdf](http://www.americanbar.org/content/dam/aba/directories/roli/cambodia/cambodia_judicial_conduct_draft_code_analysis.pdf).

<sup>21</sup> Published in Ottawa in 1998.

transparent and conform with the Basic Principles (E/CN.4/2002/72/Add.1, recommendation (c)).

### III. Gaps and opportunities

#### A. Impact of corruption and organized crime and responses from States and the judicial system, including prosecutors

56. Over the past 10 years, gross corruption has evolved from a national concern to a worldwide problem and societies are becoming increasingly aware of the issue. Globalization and technology have made it easier for transnational crime to thrive. Owing to ever-increasing globalization in the commercial, corporate, private and technological spheres, systems are much more interrelated. As a result, political, private and economic interdependence is part of the day-to-day functioning of all countries, and a new type of global corruption has arisen, involving interaction with organized crime at the decision-making level and having an impact on public institutions.

57. When it comes to identifying global corruption, some characteristics must be taken into consideration. Global corruption usually operates through organized crime channels seeking the cooperation of political power to secure impunity or seeking to influence political actors. It normally involves high-level power, in particular interactions among powerful political and business actors. It results in the mobilization of large amounts of resources and money, benefiting the few at the expense of the many and causing serious and widespread harm to individuals and society.

58. Transnationality, which is a direct consequence of globalization, greatly complicates efforts to prevent and combat corruption at the global level. In this respect, globalization “acts on the supply side of corruption, giving incentives to international business seeking to accede new markets or to displace competitors”.<sup>22</sup> Cases of corruption are simultaneously affecting different countries, calling the attention of judicial systems.

59. Corruption scandals such as the one known as “Operation car wash” have highlighted the relationship between organized crime and corruption at the global level. Being one of the most notorious cases of transnational bribery in Latin America, the scandal concerns major Brazilian construction companies involved in extensive acts of corruption with politicians and local construction companies in several Latin American, and even African, countries. The case provides a very relevant example of transnational corruption, which is raising awareness of the need for an effective and coordinated action by the justice systems of different countries.

60. Corruption is an essential element of organized crime in the context of attempts to influence the decision-making process.<sup>23</sup> Major corruption offences typically involve a range of intermediaries, many of whom are politicians at top levels. The way in which the judicial and prosecutorial systems of some of the 21 countries affected by “Operation car wash” are reacting is illustrative of the relevance of many

<sup>22</sup> Alfredo Rehren, “The ethical challenges of political corruption in a globalized political economy”, in *The Ethics of Foreign Policy*, Robert G. Patman, David MacDonald and Betty Mason-Parker, eds. (London, Ashgate Press, 2007).

<sup>23</sup> Edgardo Buscaglia, Samuel González-Ruiz and César Prieto Palma, “Causas y consecuencias del vínculo entre la delincuencia organizada y la corrupción a altos niveles del Estado: mejores prácticas para su combate”, in *Terrorismo y Delincuencia Organizada: Un Enfoque de Derecho y Economía*, Andrés Roemer and Edgardo Buscaglia, eds. (National Autonomous University of Mexico, 2006).

of the provisions of the Convention against Corruption. Judicial and prosecutorial international cooperation is crucial as a means to shed some light on many such cases in order to carry out a thorough investigation and recuperate some of the money that has been unduly and illegally appropriated by individuals. Many such individuals are now being investigated or prosecuted, in a process involving a vigorous application of the regulations on international cooperation established under the Convention.

61. When facing problems arising from corruption and dealing with its effects on the judicial system, it must be borne in mind that corruption is a cross-cutting issue that cannot be ignored. The phenomenon can undermine the independence of institutions and thus lead to the impunity of criminals. At the same time, a critical situation like this has opened major routes for action by independent and impartial judges and prosecutors.

62. The corruption of political institutions and politicians has become an important tool for criminal groups, as its broad scope of action enables them to influence virtually every area of State administration, including the judicial system. Decision-making processes become compromised when judges are influenced, especially by economic and political interests.

63. Evidence of corruption or threats to judicial systems, including prosecutors' offices, caused by organized or transnational crime has been consistently increasing in recent years.<sup>24</sup> Through its links to politics, organized crime seeks to conceal its illicit activities to be able to carry them out without having to face any consequences. From their position of power, corrupt politicians are able to act as intermediaries and thereby conceal the illicit activities. Public authorities and politicians have become an essential tool to enable criminal groups to carry out their actions effectively. Corruption is, in such cases, the nexus between the two groups. This way of operating enables organized criminal groups to penetrate the judiciary (A/72/140, paras. 48–53).

64. Corruption, in addition to its direct impact on the appropriate functioning of the State and the observance of human rights,<sup>25</sup> has dire consequences on those bodies responsible for ensuring the rule of law. In this regard, in its resolution 23/9, the Human Rights Council declared its concern for the increasing negative impact of widespread corruption on the enjoyment of human rights. Furthermore, according to the Office of the United Nations High Commissioner for Human Rights (OHCHR), “corruption in the rule-of-law system weakens the very accountability structures which are responsible for protecting human rights and contributes to a culture of impunity, since illegal actions are not punished and laws are not consistently upheld”.<sup>26</sup>

65. Actors involved in global corruption and organized crime seek impunity through the use of threats, attacks or corruption; it is an international duty of States to protect their institutions from such menaces. Given the role of the judiciary as a safeguard against corruption in general, judicial corruption could be, in many cases, intimately linked to the pressure applied by organized criminal groups in order to diminish the necessary independence that should govern the actions of the judicial power and to secure impunity for their crimes (A/72/140, paras. 51, 66, 69, 70 and 72).

66. Such contexts can generate very sensitive situations for honest and independent judges, prosecutors and auxiliary personnel. Principles 1 and 2 of the Basic Principles and principle 1.1 of the Bangalore Principles require that States provide security

<sup>24</sup> National Security Council, “Transnational organized crime: a growing threat to national and international security”.

<sup>25</sup> Morten Koch Andersen, “Why corruption matters in human rights”, *Journal of Human Rights Practice*, vol. 10, No. 1 (February 2018), p. 7.

<sup>26</sup> OHCHR, “The human rights case against corruption”, p. 4.

measures to protect the judiciary from any extraneous influences, inducements, pressures, threats or interference. Those measures become even more necessary when judicial corruption is both a threat to judicial independence and a matter of the investigation.

67. The Special Rapporteur considers that, to ensure the independence of the judicial system, judges, lawyers and prosecutors must be free of any interference, pressure or threat that might affect the impartiality of their judgments and decisions (A/HRC/35/31, para. 70). In this regard, it is important that States not only respect the independence of judges, prosecutors and judicial staff in their decision-making processes, but also implement systems of security and protection to ensure their safety and welfare. Furthermore, such systems should be professionally designed and rigorously maintained, lest they result in the concealment or disguise of judges' activities (A/72/140, para. 82).

68. As previously mentioned, in the Convention against Corruption, States parties are called upon to adopt preventive measures, and the criminalization of the most prevalent forms of corruption in the public and private sectors is promoted. Moreover, the judiciary is identified as an institution critical to preventing and combating corruption. Such work must be conducted in both its internal and external dimensions. As the Secretary-General stated in 2004, in matters of justice and the rule of law, "an ounce of prevention is worth significantly more than a pound of cure" (S/2004/616, para. 4).

69. The implementation of prevention mechanisms is of primary importance when addressing the issue of corruption and organized crime. However, only when the risks of corruption and crime have been identified and assessed will it be possible to implement such mechanisms. The Special Rapporteur has already highlighted the importance of strengthening the judiciary in order to mitigate the impact of corruption in the judicial branch (A/HRC/35/31, para. 83). In his report of 2017 to the General Assembly, the Special Rapporteur identified a number of good practices and preventive measures in this area (A/72/140, paras. 74–106).

70. Among other elements identified by the Human Rights Committee in its general comment No. 32, stability in the workplace is an essential tool to combat judicial corruption, as it is a basic means of ensuring judicial independence. Such stability requires the implementation of a set of tools and measures to prevent the arbitrary transfer of judges and prosecutors and to ensure that judicial staff can perform their functions without fear of being replaced for reasons other than purely professional ones. The independence and impartiality of the judiciary are greatly influenced by security of tenure (A/HRC/35/31, para. 33, and E/CN.4/1995/39, para. 65). Furthermore, with regard to criminal proceedings dealing with organized criminal activities, States should ensure that judiciary staff with the appropriate expertise and psychological resilience are available to deal with trials involving organized crime (A/72/140, para. 96).

71. The correlation between the impunity of organized crime and the inability of institutions to carry out their functions adequately has a direct impact on the independence of the judiciary and the rule of law. It is therefore essential for States to have solid institutional capacities if the challenges posed by transnational crime are to be addressed. The various corruption cases affecting several countries around the world demonstrate that organized and/or transnational criminal groups will not hesitate to use any means at their disposal to infiltrate the judicial, political, economic

and social strata.<sup>27</sup> Therefore, only through strong and democratically consolidated institutions will it be possible to address the corrupt practices resulting from organized criminal activities.

72. In his report of 2017 to the General Assembly, the Special Rapporteur described how criminal networks attempt to extend their reach into the legal system, imposing their power and influence on the basis of their own rules, thereby creating spheres of immunity and impunity within the State system itself. An important element of their organization is their ability to penetrate and influence institutions in the justice sector, in particular by using corruption as a means of gaining access to the judicial administration (A/72/140, para. 39). Corruption is thus at the root of the impunity that such criminal groups acquire for themselves.

73. The interest in using political power to control or influence the judiciary in particular, and the State apparatus in general, is a pressing problem. It undermines judicial independence and affects the impartiality of the relevant institutions that is necessary for them to act when confronted with powerful structures of corruption and crime. The criminal organizations have, most of the time, developed a network of contacts working in connivance with the political power. It is important to remember that such situations can occur in any country, regardless of its economic situation or degree of democratic consolidation.<sup>28</sup> The subtlety of the approach used in transnational crime to achieve the goal of influencing judicial decisions is one of the main reasons why the phenomenon is so dangerous and difficult to prevent. Thus, political influence over the courts is a key element of judicial corruption.

74. The independence and integrity of the judiciary are therefore the most important tools judiciaries have at their disposal to contain and deal with the interference of political power. The more independent the judiciary, the less effective corrupt practices employed by transnational criminals are bound to become. This also applies to the interactions of such criminals in the private sector in their attempts to gain influence over politicians, and thus over the judiciary, in order to secure impunity.

75. The Special Rapporteur has identified some of the measures taken to highlight the transparency of judicial processes and ensure accountability for violations of fundamental rights and standards of conduct, noting the key role of international judicial cooperation as an essential element for dealing with the problem (A/72/140, paras. 74 and 97–106).

76. Given the characteristics and structure of organized crime and transnational corruption, international coordination is an absolute requirement when combating criminal organizations and corruption caused by them. Without dismissing national institutional capacities operating in isolation, it is clearly easier and more efficient to combat systematic conduct that has international ramifications if the international community as a whole is able to articulate a set of coordinated policies and strategies with a view to addressing underlying threats. International cooperation is an excellent way to gather knowledge, exchange experiences and allocate resources, activities clearly provided for in the Convention against Corruption (A/72/140, para. 109).

77. As previously mentioned, in article 11, paragraph 1, of the Convention against Corruption, the crucial role played by the judiciary in combating corruption is recognized. The Convention also highlights the key importance of international

<sup>27</sup> Salvador Herencia Carrasco and Jordi Feo Valero, “La integridad e independencia del poder judicial como garantía frente a la amenaza del crimen organizado transnacional”, *Relaciones Internacionales*, vol. 27, No. 55 (2018).

<sup>28</sup> The Odebrecht corruption scandal, with ramifications in Brazil, Colombia and Peru, among other countries, “Operation car wash”, the Ibiza case in Austria, the Gürtel plot in Spain and the SNC-Lavalin affair in Canada are some examples.



cooperation among judicial systems for that purpose. It therefore stipulates that the judiciary must not be corrupt. In addition, under article 11, paragraph 1, State parties are called upon to take measures to strengthen the integrity and independence of the judiciary and to prevent opportunities for corruption among its members.

78. Chapter IV of the Convention, on international cooperation, is entirely dedicated to establishing clear and very specific rules in this regard, including on crucial matters such as the transfer of sentenced persons, mutual legal and judicial assistance, the transfer of criminal proceedings, law enforcement cooperation and joint investigations, among many other specific measures to combat crime set forth in the Convention.

79. When dealing with global corruption, transnational crime and the need for action by the justice system as a whole, the principles and standards guiding the actions of public prosecutors must be taken into account. The close relationship and crucial interaction between prosecutors and judges in ensuring the proper operation of the system of justice must be borne in mind. Thus, the Special Rapporteur considers that he is duty-bound to publicly support and reaffirm international standards for prosecutors.

80. The corruption of members of prosecution services undermines the rule of law and adversely affects public confidence in the justice system. The integrity, independence and impartiality of prosecutors are essential prerequisites for the effective protection of human rights and economic development (E/CN.15/2008/L.10/Rev.2).

## **B. Integrity, accountability and independence of the justice system**

81. The Basic Principles refer, first and foremost, to standards that States should uphold in order to preserve judicial independence. The Special Rapporteur has repeatedly stressed, however, that judicial independence requires the full accountability of the justice system and the maintenance of its integrity. Judicial independence and accountability must operate in conjunction with each other, as they are both essential conditions for an efficient and legitimate system of justice. Thus, safeguards for the independence of the judiciary must not exclude or hinder judicial accountability (A/HRC/26/32, para. 23).

82. In its resolution 25/4, the Human Rights Council specifically stressed that the integrity of the judiciary should be observed at all times and, together with its independence and impartiality, is an essential prerequisite for the protection of human rights and fundamental freedoms, for upholding the rule of law and democracy and ensuring that there is no discrimination in the administration of justice. That notion had already been acknowledged in 2012 by the former mandate holder, Gabriela Knaul, when she stated that a judiciary of undisputed integrity is an essential institution for ensuring compliance with democracy and the rule of law (A/67/305, para. 14).

83. There is no explicit mention in the Basic Principles of judicial accountability, and therefore no specific standards on this matter are set out therein. However, principle 2 of the Principles provides that the judiciary must decide matters before them impartially, without any improper influences, inducements, pressures, threats or interference. In principle 8, it is established that judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary. In principle 18, it is stated that judges should be suspended or removed only for reasons of incapacity or behaviour that renders them unfit to discharge their duties.



84. The Bangalore Principles, considered to be complementary to the Basic Principles, were adopted in order to establish an international standard for the ethical conduct of judges, to provide guidance on universal judicial ethics and to strengthen judicial integrity. They therefore represent an important attempt to fill the gap in the international legal framework regarding judicial accountability ([A/HRC/26/32](#), para. 29).

85. In the preamble to the Bangalore Principles, it is explicitly stated that the Principles presuppose that judges are accountable for their conduct to appropriate institutions established to maintain judicial standards, which are themselves independent and impartial and are intended to supplement and not to derogate from existing rules of law and conduct which bind the judge. Principle 6 further provides that judges should devote their professional activity to judicial duties and that their conduct should not be incompatible with those duties.

86. The concept of judicial accountability is formulated in the Bangalore Principles on the basis of the pillars of independence, impartiality, integrity, propriety, equality, and competence and diligence. None of those values can be fully achieved in isolation. Likewise, the challenges faced by judiciaries across the globe come in various forms, all of which must be taken into account.

87. Other international, regional and national documents reflect attempts to regulate judicial conduct in a such way as to ensure, inter alia, judicial integrity and accountability. Some examples are the Universal Charter of the Judge, the European Charter on the statute for judges, the Commonwealth (Latimer House) Principles on the Three Branches of Government,<sup>29</sup> the Statute of the Ibero-American Judge,<sup>30</sup> the Beijing statement of principles of the independence of the judiciary, the Ethical Principles for Judges of the Canadian Judicial Council and the Guide to Judicial Conduct of the Australasian Institute of Judicial Administration.<sup>31</sup>

88. The formulation of judicial codes of ethics and the establishment of judicial complaints mechanisms composed only of sitting and/or retired judges have been mentioned as processes to be promoted ([E/CN.4/2002/72](#), para. 37). The Bangalore Principles were annexed to the annual report of the Special Rapporteur in 2003 in order to stress that approach ([E/CN.4/2003/65](#)).

89. Both judicial accountability and judicial integrity should be part of the components of the Basic Principles and considered to be essential elements of the rule of law, the protection of human rights and general justice. Judicial accountability, in both its individual and institutional dimensions, needs to be ensured in order to enhance the transparency, fairness, integrity and predictability of judicial institutions. The efficiency of the entire judiciary relies on its legitimacy, which in turn depends on its integrity.

90. Judicial accountability and judicial integrity are woven into many challenges facing the judiciary in modern times. Issues such as a lack of transparency in the decision-making process, the improper use of new technology and social media, problems with modern developments in the administration of justice, the inefficiency of judicial institutions, judicial unresponsiveness to societal needs and widespread judicial corruption, among others, can negatively influence public perception of the justice system and undermine public trust in the functioning of judicial institutions. Furthermore, failures to improve judicial accountability and the lack of public

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<sup>29</sup> Agreed upon by the Law Ministers of the Commonwealth and endorsed at the Commonwealth Heads of Government Meeting held in Abuja in 2003.

<sup>30</sup> Adopted at the Ibero-American Summit of Presidents of Supreme Courts and Tribunals of Justice, held in Santa Cruz de Tenerife, Canary Islands, on 23–25 May 2001.

<sup>31</sup> Third edition was published in 2017.

confidence in the judiciary create a propitious environment for attacks and restrictions on judicial independence (A/HRC/26/32, para. 22).

91. A good example of international cooperation in the field of judicial independence and integrity is the Global Judicial Integrity Network, promoted by UNODC as part of its Global Programme for the Implementation of the Doha Declaration.<sup>32</sup> The Special Rapporteur has explicitly supported the Network since its inception and contributes directly as a member of its advisory board.

92. Since the beginning of his mandate, the Special Rapporteur has emphasized the importance of cooperation on the matter of judicial independence and integrity. In 2017, in his first report to the Human Rights Council, the Special Rapporteur stated that entities of the United Nations system should work in closer cooperation to follow up on the implementation of the Convention against Corruption. He provided, as an example, the launch in 2016 by UNODC of a global programme on promoting a culture of lawfulness, which included the establishment of the Global Judicial Integrity Network, to exchange best practices and lessons learned on priority challenges and emerging issues with regard to judicial integrity and the prevention of corruption (A/HRC/35/31, para. 85).

93. Finally, besides the need to underpin the Basic Principles with the concepts of accountability and integrity, contained in the Bangalore Principles, and the provisions on organized crime and corruption, included in the Convention against Corruption, the Special Rapporteur has identified other topics that are closely related to the independence of the judiciary and that could be included, in due course, in the Basic Principles, including contemporary issues such as the role of the judiciary in a globalized world, the role of prosecutors, gender and minority representation, military courts, judicial councils, the impact of new forms of media and technology and the protection of data in a globalized world and the participation of citizens and civil society.

94. The Special Rapporteur would like to reiterate that the aim of the reflection initiated with the present report is not to replace the Basic Principles with a new set of principles but rather to identify spaces for coordination aimed at filling the gaps highlighted in the present report and other discussion forums.

## IV. Conclusions and recommendations

### A. Conclusions

**95. The existence of a solid set of international legal rules, standards and principles aimed at ensuring and reinforcing the independence and integrity of the justice system as a whole should not be taken for granted. Ensuring that independence requires continuous attention and monitoring to identify and tackle new or re-emerging problems and challenges triggered by societal, political and economic changes.**

**96. Through his work and activities, the Special Rapporteur has realized that, in some places, there is an institutional attitude of indifference towards soft law rules envisaging judicial independence. The situation requires a reaffirmation of**

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<sup>32</sup> The Global Programme is aimed at supporting countries in the implementation of four thematic areas, one of which is judicial integrity, underlined in the Doha Declaration on Integrating Crime Prevention and Criminal Justice into the Wider United Nations Agenda to Address Social and Economic Challenges and to Promote the Rule of Law at the National and International Levels, and Public Participation, adopted by the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice in 2015.

the Basic Principles and other complementary international standards on the matter.

97. The Basic Principles provide the operational guidelines and standards for safeguarding the independence of the judiciary. However, after more than 30 years, the Principles need to be expanded in order to face challenges that were not taken into account or did not exist in 1985. Thus, the Basic Principles should be supplemented with other existing international standards, including those on prosecutors, aimed at dealing with new threats to the independence of the judiciary.

98. As the Special Rapporteur has acknowledged in a previous report to the General Assembly, the lack of sufficient information and details concerning the increasing influence of organized and transnational crime and corruption on the independence of the judicial system highlights the need to pay specific attention to the topic in order to identify the means by which criminal organizations attempt to influence the independence and impartiality of judges and other officials of the judicial system (A/72/140, para. 45). At the same time, judges and prosecutors must be fully aware of the major challenge they are facing as guarantors of the independence of the judiciary, the role of which is fundamental to combating those threats.

99. The use of political power to influence the judiciary, and the State apparatus as a whole, is a historically recurring temptation. It represents, however, a pressing problem that not only undermines the independence of the judicial system but also affects the capacity of the State as a whole to act when dealing with corrupt criminal networks and transnational criminal groups that collude and interact with political actors and public institutions. The independence and integrity of the judicial system are the most effective tools judiciaries have at their disposal to contain and deal with the interference of political power and transnational criminal networks.

100. Given the idiosyncrasy of organized crime and global corruption, the independence of judges and prosecutors, and international judicial cooperation, are absolute requirements when dealing with judicial corruption caused by criminal organizations. The Special Rapporteur considers that the broad scope and the mandatory nature of the Convention against Corruption give it legitimacy as the only instrument capable of providing an overall response to global corrupt practices. Hence, the Convention provides fundamental rules for an efficient and substantial international cooperation in the matter.

101. The implementation of an effective international cooperation among independent and impartial judges and prosecutors is the only possible way to deal with transnational crime and corruption in society and in the judiciary. In order to achieve the greatest possible impact, judicial independence has to be balanced by accountability and integrity of the judicial branch. Thus, only an impartial system of judges and prosecutors, genuinely independent from any external or internal influence, will be able to face the challenges posed by organized crime and global corruption.<sup>33</sup>

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<sup>33</sup> Regarding the guarantee of an appropriate selection process and of tenure and the guarantee against external pressures, the Inter-American Court of Human Rights has stated that all such guarantees are “derived from judicial independence, have also been affirmed by the European Court of Human Rights and are established in the United Nations Basic Principles” (*López Lone et al. vs. Honduras*, para. 195).

102. The lack of integrity within the judiciary leads to a deterioration of judicial accountability and erodes public trust in the judicial system, creating a breeding ground for attacks and restrictions on judicial independence.

103. The Bangalore Principles are of essential importance when dealing with the subject at hand. The fact that they were crafted by judges, working in civil and common law jurisdictions, gives them significant legitimacy and credibility among the judiciary. Even if it is for each national judiciary to adopt this framework regulating judicial conduct, having regard to their own judicial systems, the Bangalore Principles can play a key role in guaranteeing the independence of the judiciary. In this respect, it is worth mentioning that the main utility of the Bangalore Principles lies in the fact that they are considered to be the basis for the development of domestic standards and rules governing the professional conduct of judges (E/CN.15/2007/12, para. 5).

## **B. Recommendations**

104. The Special Rapporteur recommends that the Basic Principles be reinforced in order to prevent interpretations that could jeopardize the objectives pursued therein and to reinforce their strength and consistency in relation to contemporary threats and challenges being faced by the judiciary, that is, by judges, lawyers, prosecutors and other legal professionals, when confronting and combating transnational corruption, and to protect the safeguards that must be enforced to ensure their security and ability to carry out their duties independently.

105. The Special Rapporteur recommends that initiatives aimed at linking the Basic Principles, the Bangalore Principles and the Convention against Corruption be fostered. In this regard, the Basic Principles should not only be interpreted jointly with the Guidelines on the Role of Prosecutors, the Bangalore Principles and the Convention in order to fill the gaps therein, but also be expanded in order to accommodate the important issues included in those international standards.

106. The Convention against Corruption is at the core of national and international initiatives to fight corruption in the judiciary, promoting the implementation and application of common standards and best practices. As a key tool to address corruption in general, the Convention, as a whole, should also be considered a fundamental international instrument complementing the Basic Principles.

107. The main components of the Bangalore Principles should be understood as part of the Basic Principles.

108. The Special Rapporteur calls upon Member States to set up an open-ended intergovernmental expert group in order to expand the Basic Principles. The Special Rapporteur would like to emphasize that such a process must be built upon existing standards included in principles 1 to 20 of the original Basic Principles and should in no way undermine them.

109. The Special Rapporteur calls upon Member States to refer to the current threats and challenges to judicial independence at the Fourteenth United Nations Congress on Crime Prevention and Criminal Justice, which will be held in Kyoto, Japan, in April 2020, and to provide a clear mandate to the relevant United Nations bodies for a formal intergovernmental process aimed at integrating new legal standards on transnational corruption and organized crime and on integrity into the Basic Principles.

110. **The Special Rapporteur stands ready to provide his expertise to the process in order to contribute to the strengthening of the protection afforded to judges and lawyers against any threat, intimidation, harassment or interference.**

111. **The Special Rapporteur would like to reiterate to Member States the importance of renewing their efforts to disseminate the content of the instruments and other international standards relating to the independence of judges, lawyers and prosecutors and to adopt urgent measures aimed at their full implementation. Those measures should include the swift transposition of international law into domestic law for States functioning under a strictly dualist system.**

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