



# INTERNATIONAL COMMISSION OF JURISTS

Commission internationale de juristes - Comisión Internacional de Juristas

*"Dedicated since 1952 to the primacy, coherence and implementation of international law and principles that advance human rights"*

## **ICJ DECLARATION AND PLAN OF ACTION ON UPHOLDING THE RULE OF LAW AND THE ROLE OF JUDGES AND LAWYERS IN TIMES OF CRISIS**

*Reaffirming* its primary mission to uphold the principles of the Rule of Law, the independence of the judiciary and the legal profession and human rights;

*Recalling* that the principles of the separation of powers and the independence of the judiciary are bedrock components of the Rule of Law and must remain invulnerable in times of crisis;

*Emphasising* the universality, indivisibility and interdependence of all human rights and the need in times of crisis to protect civil, cultural, economic, political and social rights;

*Recognising* that in times of crisis, the capacity of judges and lawyers, including prosecutors and government counsel and advisers, to fulfil their essential role as protectors and guarantors of human rights may come under enormous strain;

*Aware* that such crises may consist in or arise out of, among other situations, a declared or undeclared public emergency, armed conflict, internal political instability, period of transitional justice, civil unrest, generalised situation of violence, terrorism, social, economic or financial upheaval, or natural disaster;

*Recalling* the critical role of the legal community in opposing impunity for violations of human rights and international humanitarian law;

*Reaffirming* that the victims of violations of economic, social and cultural rights must be protected, including by means of access to effective judicial remedy;

*Recalling* its commitment to take effective steps to promote the abolition of the death penalty, and urging retentionist states to abolish the death penalty and in the interim to observe a moratorium on the practice;

*Recalling* its Declarations, resolutions and conclusions adopted at previous Conferences, in particular, the Act of Athens on *the Rule of Law* (1955), the Declaration of Delhi on *the Rule of Law in a Free Society* (1959), the *Law of Lagos* (1961), the Resolution of Rio de Janeiro on *Executive Action and the Rule of Law* (1962), Declaration of Bangkok (1965), the Conclusions of Vienna on *Human Rights in an Undemocratic World* (1977), the *Caracas Plan of Action on The Independence of Judges and Lawyers* (1989) and the Berlin Declaration on *Upholding Human Rights and the Rule of Law in Combating Terrorism* (2004) and the principles and standards to which the ICJ is committed;

*Recalling* principles and standards of international law, including the UN Basic Principles on the Independence of the Judiciary, the UN Basic Principles on the Role of Lawyers, the UN Guidelines on the Role Prosecutors;

The International Commission of Jurists proclaims the following principles and plan of action:

## *Principles on Upholding the Rule of Law and the Role of Judges and Lawyers in Times of Crisis*

1. The role of the judiciary and legal profession is paramount in safeguarding human rights and the Rule of Law in times of crisis, including declared states of emergency. The judiciary serves as an essential check on the other branches of the State and ensures that any laws and measures adopted to address the crisis comply with the Rule of Law, human rights and, where applicable, international humanitarian law. In times of crisis, the principle of judicial review is indispensable to the effective operation of the Rule of Law. Judges must retain the authority within the scope of their jurisdiction as final arbiters to state what the law provides. The judiciary itself must have the sole capacity to decide upon its jurisdiction and competence to adjudicate a case.

2. In times of crisis, the executive, legislative and judicial branches must preserve and guarantee, in law and practice, the independence and effective functioning of the judiciary in carrying out the fair administration of justice and the protection of human rights. They must ensure effective remedies and full reparation for violations. They must not take any decision or action the effect of which would be to nullify, invalidate or otherwise revise or undermine the integrity of judicial decisions, without prejudice to mitigation or commutation of sanctions by competent authorities consistent with international law.

3. The executive, legislative and judicial branches should under no circumstance invoke a situation of crisis to restrict the competence or capacity of the judiciary to carry out its essential functions, to transfer those functions to non-judicial bodies or to circumvent judicial proceedings, control or review. They must not:

- a) remove from the jurisdiction or supervision of ordinary tribunals the capacity to adjudicate complaints concerning human rights violations or to provide fundamental judicial remedies; or
- b) place the administration of justice under military authority; or
- c) confer on the military any power or authority to carry out criminal investigations in matters within the jurisdiction of ordinary justice.

4. To safeguard the Rule of Law and the indivisibility of all human rights, all measures adopted to address the crisis, including those taken pursuant to a declared state of emergency or to prevent social dissent in times of economic crisis, must be subject to judicial oversight and review. Affected persons must have the right to fair and effective judicial proceedings to challenge the legality of these measures and/or their conformity with national or international law.

5. In times of crisis the stability and continuity of the judiciary is essential. Judges should not be subject to arbitrary removal, individually or collectively, by the executive, legislative or judicial branches. Judges may only be removed, by means of fair and transparent proceedings, for serious misconduct incompatible with judicial office, criminal offence or incapacity that renders them unable to discharge their functions. The right of judges and lawyers to freedom of association, including the right to establish and join professional associations, must at all times be respected.

6. The establishment of temporary or interim judges during times of crisis should be avoided. In respect of exceptional circumstances where it may become necessary to augment the capacity of the judiciary by expanding the number of active judges or through the creation of special chambers or units, the fundamental principles regarding the appointment and security of tenure must be strictly respected. Considerations of merit must remain essential criteria for appointments. Appropriate terms of tenure, protection and remuneration of judges must be ensured and the judiciary must have adequate resources to discharge its functions.

7. Since the protection of human rights may be precarious in times of crisis, lawyers should assume enhanced responsibilities both in protecting the rights of their clients and in promoting the cause of justice

and the defence of human rights. All branches of government must take all necessary measures to ensure the protection by the competent authorities of lawyers against any violence, threats, retaliation, *de facto* or *de jure* adverse discrimination, pressure or any other arbitrary action as a consequence of their professional functions or legitimate exercise of human rights. In particular, lawyers must not be identified with their clients or clients' causes as a result of discharging their functions. The authorities must desist from and protect against all such adverse actions. Lawyers must never be subjected to criminal or civil sanctions or procedures which are abusive or discriminatory or which would impair their professional functions, including as a consequence of their association with disfavoured or unpopular causes or clients.

8. In times of crisis, lawyers must be guaranteed prompt, regular and confidential access to their clients, including to those deprived of their liberty, and to relevant documentation and evidence, at all stages of proceedings. All branches of government must take necessary measures to ensure the confidentiality of the lawyer-client relationship, and must ensure that the lawyer is able to engage in all essential elements of legal defence, including substantial and timely access to all relevant case files.

9. In times of crisis, anyone who is deprived of liberty or any person with a legitimate interest has the right to challenge the lawfulness of detention (*habeas corpus*, *amparo*) before an ordinary tribunal or court and to be released if the detention is arbitrary or otherwise unlawful. Deprivation of liberty must at all times be under judicial control or supervision. Judges, prosecutors, lawyers and other competent authorities must do all in their power to ensure that detainees enjoy the right to prompt access to lawyers, contact with family members, and when necessary, access to adequate and prompt medical attention.

10. In times of crisis, only courts and tribunals should dispense justice and only a court of law or tribunal should try and convict a person for a criminal offence. Every person has the right to a fair trial by an independent and impartial tribunal or court established by law. In times of crisis, civilians must only be tried by ordinary courts or tribunals, except when special rules of international law allow military tribunals to try civilians. All such proceedings must respect the inherent minimum guarantees of a fair trial. In particular, governments must not, even in times of emergency, derogate from or suspend the presumption of innocence, the right to be informed of the charge, the right of defence, the right against self-incrimination, the principle of equality of arms, the right to test evidence, the prohibition against the use of information obtained under torture or other serious human rights violations, the non retroactivity of criminal liability and the right to judicial appeal.

11. The executive, legislative and judicial branches should under no circumstance invoke a situation of crisis to deprive victims of human rights violations and/or their relatives of their rights to effective access to justice, effective judicial remedies and full reparation. The adoption of measures to remove jurisdiction or the judicial remedies for human rights violations from the ordinary courts constitutes a serious attack against the independence of the judiciary and basic principles of the Rule of Law. State secrecy and similar restrictions must not impede the right to an effective remedy for human rights violations.

12. The integrity of the judicial system is central to the maintenance of a just and democratic society. Impartiality of the judiciary requires that cases be decided only on the basis of lawfully and fairly obtained evidence and of the application in good faith of the law, free from any extraneous influences, inducements, pressure, threats or interference, direct or indirect, from any quarter or for any reason.

13. Members of the legal profession, including members of the judiciary and their legal staff, prosecutors, legal advisers to the executive and legislature, public defenders, members of the private bar, and lawyers' associations have a legal and ethical responsibility to uphold and promote the Rule of Law and human rights and to ensure that in carrying out their professional functions they take no measures that would impair the enjoyment of human rights. Judges in times of crisis are under a special duty to resist actions which would

undermine their independence and the Rule of Law. Judges are entitled to protection to enable them to discharge their professional duties. A lawyer who knowingly gives advice which would foreseeably lead to a violation of human rights or international humanitarian law or to a crime under international law breaches his or her professional responsibility. When such advice leads to a crime under international law, the offending lawyer should incur civil and criminal responsibility.

### *Plan of Action*

The International Commission of Jurists, including its Commissioners, Honorary Members, National Sections and Affiliated Organisations, in pursuance of its primary mission to uphold the principles of the Rule of Law, the independence of the judiciary, the legal profession and human rights:

1. Reaffirms that the judiciary and legal profession have an enhanced responsibility during times of crisis to ensure the Rule of Law, the protection of human rights and the effectiveness of the administration of justice.
2. Calls on all members of the Judiciary, the legal profession and bar associations around the world to support the primacy of the Rule of Law in countries facing times of crisis and in particular to support judges and lawyers who may be under attack, persecution or harassment;
3. Decides as a global network to work collectively:
  - (a) To monitor situations where the institutional independence and effectiveness of the judiciary or the legal profession are threatened or under attack;
  - (b) To intervene, by appropriate means, to support and protect judges and lawyers who are harassed or persecuted as a result of carrying out their professional duties in times of crisis;
  - (c) To challenge, through advocacy and litigation, any legislation, measures or other actions contemplated, established or implemented in times of crisis at the national level, which place at risk or undermine the independence and effectiveness of the judiciary and the legal profession and their essential missions to protect human rights and the Rule of Law;
  - (d) To provide to the United Nations and regional organisations relevant information on the independence of the judiciary and the legal profession in times of crisis and to request from them action to protect judges and lawyers under attack.
4. Charges its Centre for the Independence of Judges and Lawyers (CIJL) with the responsibility:
  - (a) To act as a focal point in all matters concerning the independence and effectiveness of the judiciary and the legal profession in times of crisis;
  - (b) To initiate and implement the above Plan of Action;
  - (c) To work with the ICJ Network to assist efforts and initiatives to support and protect judges and lawyers in times of crisis; and,
  - (d) To disseminate this Declaration and the Plan of Action of the Conference to national, regional and international associations of judges and lawyers (including ICJ National Sections and Affiliated Organisations), to intergovernmental organisations and to governments.