

The Tunis Declaration on Reinforcing the Rule of Law and Human Rights

March 2019

Composed of 60 eminent judges and lawyers from all regions of the world, the International Commission of Jurists (ICJ) promotes and protects human rights through the Rule of Law, by using its unique legal expertise to develop and strengthen national and international justice systems. Established in 1952 and active on the five continents, the ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession.

® The Tunis Declaration on Reinforcing the Rule of Law and Human Rights

© Copyright International Commission of Jurists
Published in March 2019

The International Commission of Jurists (ICJ) permits free reproduction of extracts from any of its publications provided that due acknowledgment is given and a copy of the publication carrying the extract is sent to its headquarters at the following address:

International Commission of Jurists
P.O. Box 91
Rue des Bains 33
Geneva
Switzerland

The Tunis Declaration on Reinforcing the Rule of Law and Human Rights

Recalling its Declarations, Resolutions and Conclusions adopted at previous Conferences, including 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), the Declaration of Bangkok (1965), the Declaration of Colombo (1966), the Declaration of Dakar (1967), 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), the Bangalore Declaration concerning Economic, Social and Cultural Rights and the Role of Lawyers (1995), The Cape Town Commitment (1998), the Berlin Declaration on Upholding Human Rights and the Rule of Law in Combating Terrorism (2004), the Geneva Declaration and Plan of Action on Upholding the Rule of Law and the Role of Judges and Lawyers in Times of Crisis (2008), the Declaration on Access to Justice and Right to a Remedy in International Human Rights Systems (2012);

Acknowledging that in 2012 all States recommitted themselves to the Rule of Law at the national and international levels through the unanimous adoption by the UN General Assembly of the Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels;

Concerned however that in recent years there have emerged manifest and widening cracks in the fealty and commitment of States and other powerful actors to the primacy of the Rule of Law and human rights as indispensable to the betterment of the human condition and a dignified life for all people;

Aware that this degradation has been largely driven by a broad questioning of the value of universal human rights, the causes of which are complex, but which has been cynically exploited by authoritarian “populist” leaders and movements and other powerful actors to foment a wider global backlash against the Rule of Law and international human rights law framework;

Insistent that despite these retrograde tendencies, it is critical that the Rule of Law and human rights law and standards be developed and harnessed so as to effectively contribute to addressing the great challenges to human life and dignity of our times, including catastrophic climate change and the multifarious and sometimes adverse effects of new digital technologies, especially as applied to communications, artificial intelligence, and surveillance;

The International Commission of Jurists, including its Commissioners, Honorary Members, National Sections and Affiliated Organizations, on the Occasion of its Global Congress held in Tunis on 23-24 March 2019, reaffirms that:

1. The ICJ maintains an unyielding commitment to defend and advance the Rule of Law and the legal protection of civil, cultural, economic, political and social rights, and their protection from attack from any quarter, whether by a State agent, business enterprise, armed group or other organized actor.
2. The Rule of Law, as pronounced in the 1959 Declaration of Delhi, is a dynamic concept for the expansion and fulfilment of which jurists are primarily responsible and which should be employed to safeguard and advance human rights.
3. The Rule of Law is not merely a technical instrument of governance, but is necessarily a normative concept, consisting of principles and correlative standards and subject to progressive development.
4. The Rule of Law is inextricably linked to and interdependent with the protection of human rights, as guaranteed in international law and there can be no full realization of human rights without the operation of the Rule of Law, just as there can be no fully operational Rule of Law that does not accord with international human rights law and standards.
5. The Rule of Law is essential to the proper implementation of other important internationally agreed global priorities, such as environmental protection and sustainable development, which, as the 2030 Agenda for Sustainable Development affirms, must be guided by the purposes and principles of the Charter of the United Nations and grounded in the Universal Declaration of Human Rights and international human rights treaties.
6. Individuals, organizations, public institutions, and business enterprises from all sectors of international and domestic society, public or private, are responsible for and accountable to the Rule of Law.
7. The UN Charter, the Universal Declaration of Human Rights and universal and regional human rights treaties are central pillars of international law and essential for the maintenance of international peace and security.
8. All human rights, including civil, cultural, economic, political, and social rights, are universal, indivisible, interdependent, interrelated and must be accorded the same importance and priority.
9. The principles that comprise the Rule of Law include the protection of human rights and, among other elements, the following:
 - a) the separation of powers in governance,
 - b) law made by democratic institutions applying democratic processes,
 - c) the right to participation in decision-making and governance,
 - d) the presence of a pluralistic system of political parties and organizations and the holding of periodic free and fair elections based on secret balloting and universal and equal suffrage,
 - e) the independence of judges and lawyers, as well as their accountability,
 - f) the right to a fair trial by a competent, independent, and impartial tribunal established by law,
 - g) the accountability of the military to civilian authorities,

- h) the principle of legality and legal certainty, including that law must be stated with clarity and intelligible to those whom it concerns,
- i) the principle of transparency in governance and the administration of justice,
- j) the functioning of a free, independent, and pluralistic media,
- k) the right to recognition as a person before the law,
- l) the principle of equality, equal protection of the law, and non-discrimination on the grounds of race, colour, sexual orientation or gender identity, age, gender, religion, language political or other opinion, citizenship, nationality or migration status, national, social or ethnic origin, descent, health status, disability, property, socio-economic status, birth or other status,
- m) the principle of accountability and intolerance of impunity, particularly for serious crimes under international law, and
- n) the right to an effective remedy and reparation for human rights and international humanitarian law violations.

10. The ICJ equally affirms the following as critical to the operation of the Rule of Law and the protection of human rights in a democratic society.

Independence of Judges and Lawyers

11. The independence, impartiality and accountability of the judiciary, as well as the independence of lawyers and prosecutors, are fundamental to the Rule of Law and legal protection of human rights, yet all are facing heightened challenge from governments and other powerful actors in many countries across all regions of the world.

12. These include laws, policies and practices aimed at: limiting or otherwise undermining the jurisdiction of ordinary courts, including by substituting military or other forms of tribunals that provide deficient independence and fair trial guarantees; undermining the security of tenure of judges; removal or discipline of judges on unjustified grounds or through non-independent or otherwise unfair procedures; directly or indirectly interfering with a judge's decision-making in individual cases, including through legislation imposing mandatory minimum sentences; processes of appointments or promotions of judges that are politicized or otherwise fail to value individual independence; failure of other branches of government to enforce court orders and judgments; depriving judiciaries, legal aid programmes, or prosecution services, of necessary financial and human resources; undermining bar associations or other institutions that protect the independence of the legal profession; unduly interfering with the work of individual independent lawyers, including by sanctioning lawyers for fulfilling their professional duties in cases perceived to be against the government's interests, identifying lawyers with their clients or their clients' causes as a result of discharging their functions, or denying people access to independent lawyers of their choosing; interfering with the independence and objectivity of prosecutors; criticism of the judiciary, legal profession, or prosecution services by members of the executive or legislative branches of government, intended to bring one or more of them into disrepute and thereby undermine public confidence; and otherwise weakening guarantees of judicial independence.

13. Political influence or control of the judiciary, other forms of intimidation or interference by governments or other powerful actors, and the corruption of judges, lawyers or prosecutors, as well as lack of independence of individual judges within a judicial hierarchy, manipulation of assignment of cases, and similar issues of internal independence, have often resulted in the judiciary itself being unable or unwilling to fulfil its role as an independent check on the arbitrary use of power by the executive and legislative branches of government, as an impartial arbiter of disputes between private persons, and as a guarantor of the fair administration of justice and fair trial rights.

14. International and regional organizations, executive (including administrative), legislative, and judicial authorities of every government, and civil society groups, should do everything possible within their respective competencies and capacities to defend and promote the Rule of Law at the international and national levels against the threats identified above. Such efforts include applying and reinforcing international standards on independence and accountability of judges, lawyers and prosecutors, and human rights in the administration of justice.

15. International legal and other standards for the independence, accountability and appropriate role of judges, lawyers and prosecutors remain at all times vital and their full implementation should be pursued as a matter of urgency, including particularly the right to a fair and public hearing by a competent, independent and impartial tribunal established by law.

16. In every country, provisions of a constitutional nature should provide specific safeguards for judicial independence and accountability and for equal access to independent legal assistance within the framework of an independent legal profession, including enforceable guarantees of free legal aid in accordance with international standards.

17. In addition to elements already recognized in the UN Basic Principles on the Independence of the Judiciary, UN Basic Principles on the Role of Lawyers, and UN Guidelines on the Role of Prosecutors, including the right of judges, lawyers and prosecutors to form professional associations to defend their independence and appropriate roles and to promote the rule of law and legal protection for human rights, effective safeguards can include among other things:

- judicial councils, with at least a majority of their members being judges elected by their peers, and without involvement of the political branches of government, developing and administering fair and transparent grounds and procedures for discipline and removal, or recommendation of removal, of judges and other aspects of the judicial career;
- the adoption and implementation by judiciaries themselves of ethical and professional conduct standards to secure judicial integrity and prevent and respond to judicial corruption and other judicial misconduct including sexual harassment and other forms of discrimination or other judicial involvement in, or inaction in reaction to, violations of human rights.

18. To ensure public confidence and promote human rights values, judiciaries, the legal profession, and prosecution services should reflect the diversity in the societies they serve. All forms of discrimination in the composition of judiciaries, legal profession and prosecution services, as well as in the administration of

justice, must be eliminated. In this respect, particular attention is needed to direct or indirect exclusionary discrimination on the basis of such grounds as sex, gender, national or ethnic origin, religion, caste, language, race or sexual orientation, or against persons from frequently marginalized or disadvantaged groups such as people living in poverty, indigenous peoples, rural populations, refugees and migrants, and persons with disabilities. Continuing legal education for judges, lawyers and prosecutors should be organized by their respective professional associations or similar independent bodies.

19. The ICJ commits to contributing to these objectives by, among other things:

- acting at the national, regional and global levels to support institutional and operational independence of the judiciary, legal profession and prosecution services, and to protect individual judges, lawyers and prosecutors who face attack arising from their work to uphold the Rule of Law or otherwise to protect human rights;
- acting at the national, regional and global levels to promote impartiality of judges and prosecutors and the duty of judges and prosecutors to fulfil their duties in a manner consistent with international law and standards on the Rule of Law and human rights, and to promote appropriate mechanisms to hold judges and prosecutors accountable when they fail to do so;
- challenging, through litigation and other forms of advocacy and legal reform efforts, any legislation, policies or other measures, inconsistent with international standards on the independence or appropriate roles of judges, lawyers or prosecutors; and
- contributing to the work of the United Nations and regional organizations with the aim of developing and strengthening standards relevant to the independence and accountability of judges, lawyers and prosecutors, and their implementation.

Accountability and Access to Justice

20. Accountability and Access to Justice mechanisms organized and pursued in accordance with Rule of Law principles are essential for the protection of human rights. There has been significant progress, in some respects, in ensuring accountability for violations and access to justice to victims in recent times. A series of national mechanisms, and international justice institutions, including those involved in the prosecutions of high-ranking officials, and international institutions such as the International Criminal Court, have been established to advance the fight against impunity and facilitate justice and reparation. Various non-judicial mechanisms have also contributed to accountability and reparation.

21. There is understandable frustration at the pace of progress in fighting impunity around the world. In recent years there have also been increased attacks on the international accountability and justice framework and institutions, including the International Criminal Court (ICC) and its work. The ICC lacks sufficient political, financial and technical support and cooperation of states, including in executing arrest warrants. Political impasses have made Security

Council referrals rare and unlikely. This situation has led to impunity for some of the most serious crimes under international law.

22. Nonetheless, accountability and justice mechanisms and the progress achieved are under persistent attack. During periods of transition, judicial and non-judicial measures can be helpful in revealing the truth, ensuring reparations, facilitating prosecutions and paving the way to institutional reforms, and reconciliation. But in many transitional processes, the Rule of Law is inadequately addressed, perpetuating impunity. Justice and investigative mechanisms face reduced budgets, questions about their efficiency and legitimacy, accusations of bias and threats against judges and court officers and insufficient protections for witnesses. In various countries, accountability and justice components of peace agreements are not implemented or their import limited by legal or judicial decisions that fail to investigate and sanction gross human rights violations and crimes under international law.

23. Access to justice and the right to effective remedies and reparation for human rights violations and abuses are increasingly recognized in principle. Nonetheless, in certain countries accessible, affordable justice is prevented or impeded in practice, as political, financial, procedural and legal barriers persist. The prevalence of corruption in the judiciary undermines access to justice and accountability in many countries.

24. While some national justice systems increasingly use universal and other expansive grounds of jurisdiction to address impunity, and some prosecution services are more willing to investigate and/or prosecute private economic actors' involvement in the commission of crimes abroad, these efforts still remain the exception. The creation of innovative accountability mechanisms such as the International Independent Investigative Mechanisms (IIIMs) is a welcome development.

25. The ICJ reaffirms that it is the obligation of all States to conduct prompt, independent, thorough, transparent and impartial investigations of alleged international human rights and serious international humanitarian law violations, and where appropriate prosecute those responsible in fair trials. Any sentence should be commensurate with the gravity of the offence. Any amnesties or immunities provided which contravene international law and standards should be removed.

26. The duty of States to investigate extends to situations where violations or abuses have been committed directly or with the participation of business enterprises. In relation to non-State actors, including business actors, States should ensure that they enact legislation holding them accountable for the commission of or participation in violations or abuses, ensuring that their courts are accessible, that trials are fair and that remedy and reparation is effective.

27. All victims of human rights violations have a right to access justice and to an effective remedy and reparations for human rights violations and the State should take prompt action to dismantle barriers with special attention to marginalized and disadvantaged groups. These rights must be able to be exercised at all times, including in times of conflict or transition. States must remove barriers to persons seeking justice against abuses by business enterprises, including through legal and judicial reform. At the international level, this means successful elaboration of legally binding instruments on business and human rights.

28. Respect for Rule of Law principles is essential in the global fight against impunity. This requires that:

- States that have not already done so become party to the Rome Statute of the International Criminal Court (ICC) and accept the Kampala amendment on the crime of aggression - in particular this should be expected of all Members of the Security Council.
- States should effectively cooperate with the ICC, including by executing its arrest warrants and ensuring that it is adequately resourced.
- Members of the United Nations Security Council (UNSC) must apply objective criteria for referring situations to the ICC and refrain from unduly obstructing referrals to the ICC.

29. All States should enable and make the fullest use of the full range of grounds of jurisdiction mandated or permitted under international law, through their national justice systems, including by implementing universal jurisdiction or other expansive forms of jurisdiction to ensure that there is no impunity for crimes under international law. They should allocate adequate resources for administration of justice for such purposes. All States should cooperate with other States and international organizations in the investigation and prosecution of crimes under international law in fair trials and enforcement of sentences, including by facilitating mutual legal assistance and extradition in line with international human rights law and standards.

30. The ICJ will continue to support and advocate for:

- Effective accountability and justice institutions, including the ICC, at the global, regional and national levels and collaboration with others in the same effort;
- Protection of national law enforcement and prosecution authorities against interference and their empowerment to enforce international criminal law obligations;
- Effective implementation of decisions of national, regional, and global judicial bodies;
- The establishment of effective regional mechanisms, where they do not exist, and the strengthening and protection of existing mechanisms; and
- The creation of additional mechanisms, for which there is a pressing need, including a world human rights court, to provide access to justice for human rights violations at the universal level and an effective treaty on business and human rights. Other needed mechanisms include an international permanent standing Independent Investigative Mechanism, or at least ad hoc mechanisms where needed to gather and preserve evidence of crimes under international law, particularly in respect of situations where there are not yet international or domestic judicial mechanisms able or willing to administer justice.

Security and the Rule of Law

31. Fifteen years after the ICJ issued its Berlin Declaration the world faces heightened and new challenges to the Rule of Law and human rights because of States' responses to terrorism and other security challenges. Well-established and cherished legal principles continue to be called into question in all regions of the world. Resort to ill-conceived responses to terrorism and to new security threats continues, undermining the Rule of Law and human rights protections, without compelling scientific evidence that those responses actually work.

32. States continue to shift from criminal law based responses to administrative means to address real and purported security challenges, with far reaching consequences but less human rights protection. Recourse to states of exception has severely diminished or deprived persons of their rights protection under the Rule of Law. So-called exceptional measures - such as the use of indefinite detention and internment without charge or trial, special courts, and extended jurisdiction of military tribunals - have often been announced as temporary but have become permanent in law or in practice. At times, some States have resorted to extrajudicial executions, including by targeted killings, under the pretence of countering terrorism.

33. Governments adopting xenophobic, authoritarian or extreme nationalistic policies have expanded resort to these forms of exception in order to suppress human rights defenders and other civil society, political opposition, migrants, refugees, stateless persons, minorities or other persons exercising their human rights and fundamental freedoms. Those persons who are marginalized are arbitrarily targeted by authorities and the media and designated as 'security threats'.

34. Recourse to overly broad notions of 'violent extremism', terrorism, sedition, rebellion and 'hate speech', and to vaguely defined preparatory or ancillary offences far removed from any violent act of terrorism, erode the principle of legality and in some cases effectively criminalize the exercise of freedoms of expression, assembly, association and political participation.

35. Rapid technological advancements, including the use of "big data", have given States greater capacity to conduct invasive, targeted and wide-scale surveillance. This has far-reaching impacts on almost all human rights offline and online, particularly the right to privacy, including through pervasive powers to regulate online content and prosecute a range of expression. The push by States for supremacy of security over other interests includes pressure on private service providers to take steps that unnecessarily or disproportionately interfere with human rights.

36. The ICJ condemns terrorism and affirms that all States have an obligation to take effective measures against terrorism, including for the purposes of protecting human rights. No grievances can justify terrorist acts or inflicting terror on the population. Those individuals and groups that commit terrorist acts, crimes under international law and gross human rights abuses must be held accountable.

37. The ICJ reaffirms the centrality of the Rule of Law and human rights in upholding the right to security of all people. Security and human rights are not conflicting objectives but are complementary and mutually reinforcing. In

contrast, violations of the Rule of Law and of human rights are conducive to the spread of terrorism or other crimes.

38. The ICJ reaffirms that any resort to the use of force by a State outside its borders in the territory of another State must be undertaken in conformity with its obligations under the UN Charter.

39. The ICJ commits to continue to promote the centrality of the ordinary criminal justice system and of an independent and impartial judiciary in countering security threats. It will act to ensure that the basic principles of legality, necessity and proportionality are fully respected.

40. The ICJ will oppose *de jure or de facto* states of exception without legal mechanisms in place to ensure their temporary, necessary, proportionate and non-discriminatory nature, in line with the standards enshrined in the derogation clauses of international human rights treaties.

41. The ICJ will oppose the use of security and counter-terrorism laws and practices to suppress human rights defenders, civil society, political opposition, marginalized or disadvantaged groups within their societies, or other persons expressing dissent.

42. The ICJ will work to ensure that the rights of people offline be protected also online, including through a strong international legal framework of responsibility for human rights violations and abuses in the cyber-sphere.

43. The ICJ will continue to call on States, international organizations, businesses and other private entities to align their security strategies and regulatory frameworks with the Rule of Law and international law. Similarly, the ICJ will urge that judges, prosecutors, lawyers and all justice sector actors worldwide, including in their work related to global security, meet their responsibilities as defenders of the Rule of Law and of internationally protected human rights.

Equality and Non-Discrimination

44. Worldwide, increasing attacks on the rule of law have intensified longstanding inequalities and compounded intersecting forms of discrimination against women and girls and persons from marginalized groups. This has limited their enjoyment of human rights and their effective access to justice. States and non-State actors driven by extreme religious, nationalistic, authoritarian or xenophobic ideologies have directed hostile rhetoric at already disadvantaged groups within their societies, fomenting division, stigma, discrimination and even violence. In many countries, culture, tradition, or religion are being used to justify laws, policies and practices that discriminate against women and girls, migrants, refugees, ethnic, religious, sexual or gender minorities, and others based on their status.

45. This occurs at a time when growing economic inequality, accelerating climate change, conflict and large-scale displacement of people, pose grave risks to the protection of human rights. These risks are compounded by the barriers people living in poverty face in accessing justice, such as lack of access to information about their rights, including through digital technology, and the resulting inability to access the remedies they need. Among those living in poverty, it is women,

children, older persons, persons with disabilities, migrants, refugees, indigenous people, racial, ethnic, religious groups, sexual or gender minorities, or those stigmatized on grounds of caste, language, or health status, who are likely to be most impeded in accessing justice. National constitutions, laws and jurisprudence, as well as allocation of public resources, are often inadequate to ensure that the justice system is accessible and effective in protecting human rights.

46. The ICJ recognizes the persistent, deep entrenchment of patriarchal culture that perpetuates gender stereotypes in many national and international institutions, including those of the legal profession and the judiciary. Such stereotypes restrict women and girls' enjoyment of their human rights and equal access to justice, including for crimes of sexual and gender-based violence. Sexual harassment, violence, bullying and discrimination against women in the workplace, both nationally and internationally, including in the legal profession and the judiciary, have not been sufficiently addressed. Too often, laws that aim to protect women's rights do not comply with international law and standards, or their implementation is poor or non-existent or insufficiently resourced.

47. In many countries, increasing resort to the criminal law has a discriminatory impact. Laws criminally sanctioning consensual, non-exploitative sexual conduct, sexual and reproductive healthcare services including abortion, personal drug use and HIV, have a detrimental impact on health, equality and human rights, particularly for women, girls and sexual and gender minorities. Criminalization of freedom of expression contrary to international human rights law, including through "blasphemy" laws, violates, in particular, the rights of those belonging to minority religions or beliefs as well as non-believers.

48. In accordance with the principles of the universality of human rights, and of non-discrimination, equality and equal protection, under international law, people are entitled to respect, protection and fulfilment of their human rights, irrespective of race, colour, sexual orientation or gender identity, age, gender, religion, language, political or other opinion, citizenship, nationality or migration status, national, social or ethnic origin, descent, health status, disability, property, socio-economic status, birth or other status. Multi-level, intersecting and compounding forms of discrimination exacerbate and influence the nature of disadvantage, particularly for those living in poverty.

49. International law requires States to implement measures to ensure accessibility, affordability and fairness of justice systems to all. In this regard, the ICJ affirms its commitment:

- Not to discriminate on any grounds in its activities and policies; to value the contributions of all those facing discrimination, and to ensure their meaningful participation;
- To advance realization of the human rights of the most marginalized and excluded, through implementation of international human rights law in national law and practice, including by capacity building for judges, lawyers, and civil society, and dissemination and promotion of information on international human rights law, aiming to leave no one behind;
- To advocate for justice systems to provide equal access to justice, effective remedies and redress for all without discrimination; to ensure that particular measures are put in place enabling access to justice for women, children, people living in poverty and other marginalized individuals or groups;

- To work to eliminate gender-based discrimination, in particular gender-based violence, gender stereotypes and bias, and sexual harassment including within and by the judiciary and the legal profession;
- To work for the repeal of laws that have a discriminatory impact, in particular laws that criminalize consensual, non-exploitative sexual conduct; sexual and reproductive healthcare, including abortion; personal drug use or possession; HIV non-disclosure, exposure or transmission; or freedom of expression concerning religion or belief.

50. The ICJ urges judges and lawyers worldwide to meet their responsibilities to uphold the universal and equal protection of human rights for all, in particular those subject to discrimination in national laws, policies or practices; to work to ensure the full implementation in national legal systems of the rights of those groups threatened by discriminatory laws or policies; and to work to end entrenched discrimination and discriminatory stereotypes and bias.

Civil Society Space and Fundamental Freedoms

51. In recent years, there has emerged a trend towards closing civil society space, raising profound concerns for the preservation of the Rule of Law, and the protection of an international legal order. In some countries, including those perceived or self-identified as democratic, this degradation has been achieved through increased regulation and surveillance, prosecution, violence, threats or intimidation. The rise of extreme forms of nationalism and authoritarian populism has contributed to widespread censorship, misinformation and an impoverished public discourse on human rights.

52. The protection of the human rights to freedoms of expression, association and assembly has also been sharply eroded. Governments have framed civil society as agents of unfriendly governments or as “enemies of the people”. Persecution of human rights defenders, political opponents, journalists and pro-democracy activists has also increased - including extrajudicial killings, enforced disappearances, arbitrary arrest and detention, torture and ill-treatment, and failure to protect from attacks and intimidation by non-State actors.

53. Governments have become adept at abusing legal frameworks and invoking distorted notions of the Rule of Law as cover for repressive and regressive policies. Legal threats and harassment have included restrictive NGO laws, or the enforcement of existing law in a biased or politically motivated manner. Laws in diverse areas such as cyber crimes, taxes, money-laundering, and defamation are now as likely to be used to restrict civil society action as laws on national security, counter-terrorism and states of emergency. There is also an increase in unwarranted regulation or outright criminalization of expression online.

54. Governments, particularly their security sectors, have sought to undermine the independence of judiciaries and prosecutors, as well as national human rights institutions and ombudspersons’ offices, to gain cover for the consolidation of political power. In various instances, prosecutors and judges have abdicated their professional responsibilities and are used as a tool to persecute human rights defenders, political opponents, and journalists. Civil society efforts to seek effective remedies from international mechanisms have faced obstacles.

55. Elections, and sound legal frameworks governing the democratic process are necessary for the functioning of the Rule of Law and observance of human rights obligations – but they are not sufficient. Political and civic participation are essential for the strengthening of the Rule of Law, which cannot be left to political parties and government representatives alone. This engagement is a key component to the right to political participation protected under international human rights law and standards. Civic engagement is a pre-requisite for the effective reform of Rule of Law institutions. Civil society’s independent monitoring role is essential to all aspects of democratic governance.

56. States have obligations to respect, protect and fulfil the rights to all fundamental freedoms, including freedom of expression and opinion, freedom of assembly, freedom of association and the right to political participation. States have particular responsibilities in protecting and facilitating the work of human rights defenders and to provide the necessary conditions for civil society and individuals to freely participate in matters of public interest.

57. Heightened attention must be given to the development of legal frameworks governing new technologies, particularly information technology and social media, to ensure that they incorporate human rights and Rule of Law principles. Political and social discourse increasingly takes place online, and it is imperative that existing legal frameworks are updated, and new ones developed that respect human rights.

58. The ICJ commits itself to addressing obstacles to the implementation of international law and standards affecting civil society and the protection of human rights and fundamental freedoms.

59. The ICJ will promote standards and models for transparency and effective participation by civil society and individuals at the national and international levels, including in relation to processes for selection and monitoring of judges and other justice actors in line with the principle of the independence of the judiciary; as well as in relation to national human rights institutions and other institutions that promote and protect human rights; and in the design and implementation of human rights compliant public policies.

60. The ICJ will take a broad approach to addressing human rights and fundamental freedoms and civic space, with the aim of integrating legal and other approaches. Empowering lawyers and civil society and human rights defenders must be augmented by engagement with political actors including parliamentarians, not only for purposes of legal reform, but also when enforcement of judicial decisions become problematic, or where judiciaries cannot protect human rights and fundamental freedoms.

Commission Members

March 2019 (for an updated list, please visit www.icj.org/commission)

President:

Prof. Robert Goldman, United States

Vice-Presidents:

Prof. Carlos Ayala, Venezuela

Justice Radmila Dragicevic-Dicic, Serbia

Executive Committee:

Justice Sir Nicolas Bratza, UK

Dame Silvia Cartwright, New Zealand

(Chair) Ms Roberta Clarke, Barbados-Canada

Mr. Shawan Jabarin, Palestine

Ms Hina Jilani, Pakistan

Justice Sanji Monageng, Botswana

Mr Belisário dos Santos Júnior, Brazil

Other Commission Members:

Professor Kyong-Wahn Ahn, Republic of Korea

Justice Chinara Aidarbekova, Kyrgyzstan

Justice Adolfo Azcuna, Philippines

Ms Hadeel Abdel Aziz, Jordan

Mr Reed Brody, United States

Justice Azhar Cachalia, South Africa

Prof. Miguel Carbonell, Mexico

Justice Moses Chinhengo, Zimbabwe

Prof. Sarah Cleveland, United States

Justice Martine Comte, France

Mr Marzen Darwish, Syria

Mr Gamal Eid, Egypt

Mr Roberto Garretón, Chile

Ms Nahla Haidar El Addal, Lebanon

Prof. Michelo Hansungule, Zambia

Ms Gulnora Ishankanova, Uzbekistan

Ms Imrana Jalal, Fiji

Justice Kalthoum Kennou, Tunisia

Ms Jamesina Essie L. King, Sierra Leone

Prof. César Landa, Peru

Justice Ketil Lund, Norway

Justice Qinisile Mabuza, Swaziland

Justice José Antonio Martín Pallín, Spain

Prof. Juan Méndez, Argentina

Justice Charles Mkandawire, Malawi

Justice Yvonne Mokgoro, South Africa

Justice Tamara Morschakova, Russia

Justice Willly Mutunga, Kenya

Justice Egbert Myjer, Netherlands

Justice John Lawrence O'Meally, Australia

Ms Mikiko Otani, Japan

Justice Fatsah Ouguergouz, Algeria

Dr Jarna Petman, Finland

Prof. Mónica Pinto, Argentina

Prof. Victor Rodriguez Rescia, Costa Rica

Mr Alejandro Salinas Rivera, Chile

Mr Michael Sfard, Israel

Prof. Marco Sassoli, Italy-Switzerland

Justice Ajit Prakash Shah, India

Justice Kalyan Shrestha, Nepal

Ms Ambiga Sreenevasan, Malaysia

Justice Marwan Tashani, Libya

Mr Wilder Tayler, Uruguay

Justice Philippe Texier, France

Justice Lillian Tibatemwa-Ekirikubinza, Uganda

Justice Stefan Trechsel, Switzerland

Prof. Rodrigo Uprimny Yepes, Colombia



**International
Commission
of Jurists**

P.O. Box 91
Rue des Bains 33
CH 1211 Geneva 8
Switzerland

t +41 22 979 38 00

f +41 22 979 38 01

www.icj.org