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**STATEMENT**

**Paris, 12 November 2024**

**Statement on the 40<sup>th</sup> Anniversary of the Basic Principles on the Independence of the Judiciary**

**Ahead of the 40<sup>th</sup> anniversary of the adoption of the Basic Principles on the Independence of the Judiciary<sup>1</sup> (“The Basic Principles”), the Institute for the Rule of Law of the International Association of Lawyers (UIA-IROL) reaffirms its unwavering commitment to the Rule of Law and the protection of judicial independence worldwide.**

Adopted at the 7<sup>th</sup> United Nations Congress on the Prevention of Crime and the Treatment of Offenders in Milan in 1985, and reinforced by the [Bangalore Principles in 2006](#), these Basic Principles are a cornerstone in safeguarding the right to a fair trial and ensuring impartial justice. The independence of the judiciary is also specifically recognized in all regional legal frameworks<sup>2</sup>, all of them acknowledging the fact that it derives from the basic principles of the Rule of Law, in particular the principle of separation of powers.<sup>3</sup>

As we commemorate this important milestone, it is crucial to reflect on the ongoing relevance of the Basic Principles and the current challenges to their full implementation.

The past years have demonstrated how crises that threaten fundamental rights and freedoms can directly impact the judiciary and all actors of the judicial system, often through exceptional measures

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<sup>1</sup> [Basic Principles on the Independence of the Judiciary](#), Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 6 September 1985, and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

<sup>2</sup> [Council of Europe’s Recommendation on judicial independence CM/Rec\(2010\)12](#) states inter alia that “the independence of judges and of the judiciary should be enshrined in the constitution or at the highest possible legal level in member, with more specific rules provided at the legislative level” and that “all necessary measures should be taken to respect, protect and promote the independence and impartiality of judges”; the [Resolution on the Respect and Strengthening of the Independence of the Judiciary adopted by the African Commission on Human and People’s Rights at its 19<sup>th</sup> Ordinary Session \(1996\)](#); [Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa \(2003\)](#), states, as a guarantee of the independence of the judiciary, that “There shall not be any inappropriate or unwarranted interference with the judicial process nor shall decisions by judicial bodies be subject to revision except through judicial review, or the mitigation or commutation of sentence by competent authorities, in accordance with the law”; the [Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA Region](#) (1995, the Beijing Principles) stipulates that the “Independence of the Judiciary requires that [it] decide matters before it in accordance with its impartial assessment of the facts and its understanding of the law without improper influences, direct or indirect, from any source”; the [Statute of the Iberoamerican Judge \(2001\)](#) specifically establishes an obligation of respect for judicial independence (art. 2) “the other powers of the State and, generally speaking, all the national or international authorities, institutions and organisms, as well as the various groups and social, economic and political organisations, must respect and make the independence of the Judiciary efficient”.

<sup>3</sup> See the press release from UN experts: Ms. Margaret Satterthwaite, Special Rapporteur on the independence of judges and lawyers, Mr. Gehad Madi, Special Rapporteur on the human rights of migrants, and Ms. Siobhán Mullally, Special Rapporteur on trafficking in persons, especially women and children, issued on 1 March 2024 <https://www.ohchr.org/en/press-releases/2024/03/uk-rwanda-bill-threatens-undermine-independence-judiciary-un-experts-say>

imposed by States. This is particularly the case in States seeking to avoid criticism or dissent by restricting freedom of expression and access to justice.

While the Basic Principles encompass various elements necessary for a fair and effective justice system, they place a particular emphasis on protecting the independence and integrity of judges. The attacks against judges, through political interference, threats, violence, and intimidation, are a direct assault on the foundation of an independent and impartial judiciary. In fact, judicial independence is not only a basic principle related to the Rule of Law; it must be acknowledged as the core element of the very notion of jurisdiction.<sup>4</sup> Arbitrary removals, harassment, and systemic underfunding further exacerbate the vulnerability of judges, jeopardizing their ability to act without fear or favor. These threats not only undermine the personal safety of judges but also erode the integrity of judicial processes, compromise the good administration of justice, and thus ultimately weaken the Rule of Law.

**Since its creation, UIA has been consistently warning of threats to the independence of the judiciary, the persecution of magistrates, and attacks on the free exercise of their functions. International protection mechanisms have unanimously stressed the importance of preserving the independence of the judiciary and guaranteeing respect for fundamental freedoms, particularly in the legal profession.**

In addition, UIA-IROL has carried out various actions to promote the independence of the judiciary and the defence of the juridical profession.

Among these, UIA-IROL examined the [situation of the reform of the judiciary in Mexico](#) and expressed its concern about the potential negative impacts on the independence and autonomy of judges. UIA-IROL has repeatedly drawn attention to similar threats to judicial independence in various countries. In Poland<sup>5</sup> and Tunisia<sup>6</sup>, controversial legislative changes have jeopardized the autonomy of judges and sparked strong international criticism. UIA-IROL remains extremely concerned about the alarming situation of actors of the justice system in Afghanistan<sup>7</sup> where judges, and particularly women judges who have been effectively banned from a now collapsed judicial system, face severe and continuous threats to their security in a constantly deteriorated context. The situation is also troubling in Guatemala where judicial appointments have been marred by political interference. In the Philippines, the recent fact-finding mission called the “[Caravana](#)” revealed ongoing attacks and harassment of judges and magistrates.

Independence is the most important aspect of the impartial administration of justice, and necessitates, among other things, autonomy in the mechanisms for appointing those who will adjudicate.<sup>8</sup>

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<sup>4</sup> The case-law of the European Court of Justice for instance gives very interesting examples of decisions concluding to the lack of independence – as being inherent in the task of adjudication – on the basis of the absence of effective judicial review. See Judgment of 27 February 2018, Associação Sindical dos Juizes Portugueses, C-64/16, [EU:C:2018:117](#), para. 36.

<sup>5</sup> See, for instance, [here](#) and [here](#).

<sup>6</sup> See, for instance, [here](#).

<sup>7</sup> See, for instance, [here](#) and [here](#).

<sup>8</sup> See for example before the Court of Justice of the European Union, Judgment of 2 March 2021, A.B. and Others, C-24/18, [EU:C:2021:153](#), which relates to the appointment of Judges to the Supreme Court by the executive and in which the EU Court underlines the difficulties arising in circumstances in which possibilities for obtaining judicial remedies against the adoption of those appointment decisions, which previously existed, are suddenly eliminated and give rise to systemic doubts in the minds of individuals as to the independence and impartiality of the judges appointed.

All these threats to judges and lawyers highlight the urgent need for States to uphold their obligations under international customary law and relevant treaties.

UIA-IROL emphasizes that, although the Basic Principles may not have the same legal weight as a treaty or convention, their respect is essential to the realization of the right to a fair trial and, ultimately, to the protection of all other rights enshrined in legally binding instruments. Furthermore, these principles have been incorporated into customary international law, making them enforceable against the States that have adopted them.

The International Covenant on Civil and Political Rights (ICCPR), provides in Article 14 that:

*“1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. [...]”*

The Human Rights Committee’s [General comment no. 32 on this Article 14](#) precises that:

*“19. The requirement of competence, independence and impartiality of a tribunal in the sense of article 14, paragraph 1, is an absolute right that is not subject to any exception. [...]”*

It is important to note that the Basic Principles echo many of the guarantees enshrined in Article 14 of the ICCPR, such as equality before the law; presumption of innocence; and the right to a fair and public hearing by a competent, independent and impartial tribunal established by law, and that they are therefore legally binding on many States.

Furthermore, UIA-IROL highlights the relevance of Sustainable Development Goal 16 which provides for the promotion of peaceful and inclusive societies for sustainable development, ensuring access to justice for all and building effective, accountable and inclusive institutions at all levels.

In order to promote peace, justice and strong Institutions, UIA-IROL actively supports targets 16.3 and 16.C which aim, respectively to:

*“Promote the rule of law at the national and international levels and ensure equal access to justice for all”*

*“Promote and enforce non-discriminatory laws and policies for sustainable development”*

The Basic Principles on the Independence of the Judiciary are intrinsically linked to achieving these targets. In this light, UIA-IROL calls for renewed efforts to reinforce judicial independence, not only through national legal frameworks but also within the broader context of international cooperation.

In addition, in accordance with the [Human Rights Council’s resolution adopted on 11 July 2024](#), UIA-IROL also calls on States to actively promote the participation of women in the judiciary and ensure their equal access to leadership roles within the profession. More generally, States should actively promote broadly inclusive decision-making to strengthen the judicial system as a whole. To this end, UIA-IROL encourage both the implementation of gender-sensitive approaches as well as measures to ensure effective representation of persons of different social backgrounds at all levels, as well as people from minorities and disadvantaged groups. UIA-IROL stresses the responsibility of States to

ensure that admission requirements and selection processes for judicial positions are non-discriminatory, public and transparent.

Moreover, in line with this declaration, UIA-IROL takes the opportunity to recognize the potential of new digital technologies to enhance the functioning of justice systems when applied with adequate safeguards. However, it emphasizes that the integration of digital technologies in the justice sector must not come at the expense of human rights protections. Misuse or inadequate implementation of these technologies can exacerbate existing forms of discrimination, reinforce biases, and pose risks to fair decision-making processes in the administration of justice.

**In this context and as we mark the 40<sup>th</sup> anniversary of the Basic Principles on the Independence of the Judiciary, UIA-IROL therefore calls for concerted action to respect and, where necessary, to reinforce these principles through national, regional and international legal frameworks. It is essential that States uphold their international obligations and create and guarantee the necessary conditions to ensure that judges, as well as all other actors of the judiciary, can operate with full independence and free from political or other forms of interference, including fear of attacks, threats, harassment and any kind of intimidation while performing their professional functions. This includes providing the means for efficient access to justice in line with the right to a fair trial and other rights and fundamental freedoms, particularly in times of extraordinary or crisis situations.**

**The justice professions should work with the necessary resources and capacity to maintain functionality, accountability, transparency, and integrity, and to ensure due process and continuity of judicial activities.**

**UIA-IROL stands ready to work collaboratively with international institutions, human rights organizations, and members of the legal and judiciary profession to strengthen judicial independence and ensure that justice remains a pillar of equality, democracy and the Rule of Law.**

#### **More about the UIA-IROL**

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*The Institute for the Rule of Law of the International Association of Lawyers (UIA-IROL) promotes the Rule of Law and supports and defends, in particular, (1) lawyers, judges and human rights defenders who are harassed, threatened and/or persecuted in the exercise of their professions, (2) the independence of the legal and judicial professions, and (3) the UN Basic Principles on the Role of Lawyers, especially in defense of human rights.*

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