

**Initiative to supplement the content of the United Nations Basic Principles on the Independence of the Judiciary**

Madam president,

It is an honor for me to share some reflections at this 28th session of the Commission on Crime Prevention and Criminal Justice on judicial independence and its direct relation with the matters that relays with this forum.

The United Nations Basic Principles on the Independence of the Judiciary were adopted in 1985 by the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. These principles were then confirmed by the General Assembly. When the Fourteenth Congress will be held in Kyoto next year, 35 years of these fundamental decisions will be fulfilled.

The purpose of the Basic Principles is to function as guiding criteria to help member states guarantee and promote the independence of the judiciary. The member states have the duty to incorporate and respect its principles in their domestic law, such as (i) the independence of the judiciary; (ii) freedom of expression and association; (iii) clear criteria for qualifications, selection and training; (iv) conditions of service and possession; (v) professional secrecy and immunity; and (vi) discipline, suspension and removal.

The Human Rights Commission of the United Nations - now the Human Rights Council - decided to appoint in 1994 a Special Rapporteur on the Independence of Judges and Lawyers. By decision of the Board, this responsibility has been assigned to me since the end of 2016.

Based on these considerations, the Rapporteurship has invited the international community to supplement the Basic Principles in three main aspects:

1. Reflecting on the frequent threats of networks of corruption and organized crime against judges and lawyers;
2. Explain in the Basic Principles the need to guarantee judicial responsibility and integrity as mechanisms to counteract and prevent corrupt practices in the institutions of justice and the challenges faced by judges and prosecutors; and

3. Highlight the decisive role of the judicial system in addressing corruption in accordance with the provisions of Article 11 of the United Nations Convention against Corruption, which entered into force in 2005.

Internal and external corruption practices are not alien to human rights or independent justice. Corruption has a direct impact on the validity of human rights for two reasons. First, corruption strips societies of important resources that could be used for basic needs, such as public health, education, infrastructure or security. Second, corruption has detrimental consequences on the functioning of state institutions and, in particular, on the administration of justice.

In seeking impunity, corruption has a devastating effect on society and the judicial system as a whole. For this reason, the United Nations Convention against Corruption - which assigns a central role to justice systems - is a fundamental instrument for the protection of human rights, as I have already stressed in a report to the General Assembly. Corruption and its interaction with the judicial system is a new variable that deserves further reflection among the international community.

Today I call for the explicit inclusion of corruption in the Basic Principles as one of the most severe contemporary threats to judicial independence. Also, the importance of including the notion of judicial integrity recognized in the Bangalore Principles on Judicial Conduct as adopted by the meeting of presidents of judicial systems in The Hague in November 2002. Finally, it is pertinent make explicit in the Basic Principles on Judicial Independence the central role that the Convention against Corruption assigns to judges and prosecutors.

As Special Rapporteur I have been insisting on the idea that those concepts should be regard as complementary components in the Basic Principles. The goal of this proposal is to strengthen not only the Basic Principles, but also judicial independence around the world.

It is pertinent to specify, however, that guidelines such as these do not intend to draft an alternative "set" of the Basic Principles that we all know. The point is that States consider complementing existing principles taking into account the above-mentioned contemporary threats and challenges. This proposal could be considered for adoption at the 14th Congress to be held in Kyoto in 2020.

**Diego García-Sayán,**

**United Nations Special Rapporteur on the Independence of Judges and Lawyers**