**The role of judges, lawyers and prosecutors in a framework approach to prevention**

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**International Commission of Jurists**

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The International Commission of Jurists (ICJ), an organization of judges and lawyers, has worked to promote the rule of law, including legal protections for human rights, since 1952. Throughout that time we have seen judges, lawyers and prosecutors as playing an key role, not only in responding to human rights violations and abuses after they have occurred, but in prevention as well.

Indeed, the first resolution of the first Congress of the ICJ, in Athens in 1955, noted that the UN was at the time preparing a convention on human rights, but held that it would not be enough to have binding rules, “practical means to prevent violations of these human rights” were also needed. The Congress affirmed the essential role of independent judges and lawyers in this regard.

Global experience over the last 65 years has demonstrated that the existence of a legal system that all actors know will respond effectively and consistently to violations and abuses has a general deterrent effect. The same experience has demonstrated that we cannot expect a legal system to respond effectively and consistently to human rights violations and abuses unless judges are independent and impartial, lawyers (as a particular kind of civil society actor) are independent and free to fulfil their duties, and prosecutors are impartial and committed to human rights and the rule of law.

Judges, lawyers and prosecutors also have powers and responsibilities that enable and require them to act directly to prevent violations and abuses in individual cases and in relation to systemic issues. Independent associations of judges, lawyers and prosecutors also have a key role to play in any framework for prevention, by protecting their members ability to fulfil their roles, by promulgating professional standards, and by engaging in law reform and human rights promotion activities.

These points have been long established within the United Nations, including in the 1985 *UN Basic Principles on the Independence of the Judiciary*, and the 1990 *Basic Principles on the Role of the Lawyer* and *Guidelines on the Role of Prosecutors*. The detailed provisions of these three key standards must be seen as central planks of any viable framework for prevention of human rights violations and abuses.

The special roles of judges, lawyers and prosecutors are recognised in a general way in the 2015 OHCHR report on prevention and the 2017 report of the Special Rapporteur on truth, justice, reparation and guarantees of non-recurrence. The joint statement to the Human Rights Council delivered in September 2018 on behalf of some 58 States, on the Council’s prevention mandate, also refers explicitly to the rule of law and the role of independent judiciaries. Implementation of the specific provisions of the three UN standards I referred to a moment ago should be seen as setting out in this regard the specific minimum measures essential to any framework for prevention, and consequently should be explicitly incorporated in any enumeration of elements for such a framework.

Beyond these three overarching UN standards, many other sources of guidance exist to how States and other actors can best ensure that judges, lawyers and prosecutors are able to fulfil their roles in prevention. To name just a few examples (we maintain a fuller compilation on our website [www.icj.org](http://www.icj.org)):

* The Bangalore Principles of Judicial Conduct, prepared by the judges who make up the Judicial Integrity Group (and subsequently endorsed by ECOSOC), as well as the subsequently-developed Implementation Measures.
* Human Rights Council resolutions on the independence of judges and lawyers and the integrity of judicial systems (most recently res 35/12 from June 2017, and res 31/2 of March 2016, respectively), together with the reports of the UN Special Rapporteur on independence of judges and lawyers.
* Standards promulgated by international professional membership associations such as *the Universal Charter of the Judge* from the International Association of Judges, *the Standards of professional responsibility and statement of the essential duties and rights of the prosecutor* from the International Association of Prosecutors, and the various standards adopted by the International Bar Association.
* Practitioners Guides and other technical materials produced by the ICJ and other civil society organisations of judges and lawyers.
* Standards and best practices promulgated at the regional level.

Here are just a few illustrations of how judges, lawyers and proescutors can contribute to prevention:

* Judicial review of legislation, both automatically or by referral before it enters into force, and through ensuring that individuals and organisations can challenge its validity or application, helps prevent the law from resulting in human rights violations or abuses in its application. Ensuring claimants have access to lawyers is frequently essential to the effectiveness of such procedures. Some States provide for legal aid for such challenges; in others, the legal profession or individual lawyers organise pro bono assistance.
* Ensuring that prosecutors refuse to use evidence that they know or reasonably suspect to have been obtained through torture or other abuses of human rights, removes one key incentive for such abuses.
* Ensuring that anyone deprived of liberty has access to an independent lawyer as soon as possible and in any case within 48 hours, and can effectively challenge the deprivation of liberty before an independent and impartial judge, helps reduce the risk of arbitrary detention and related abuses such as torture and other ill-treatment.
* Ensuring that judges and lawyers understand the application of human rights law and standards to the resolution of disputes between private individuals or organisations, contributes for instance to effective protection against violence and discrimination against women and abuses of the rights of children, that the rights of members of ethnic, religious or linguistic minorities are not abused, and that businesses take human rights into account when planning and carrying out their operations.
* Ensuring that individuals and organisations can seek judicial remedies not only for civil and political rights, but also legal aspects of economic, social and cultural rights, can allow the courts to set legal parameters for policy-making that helps avoid policies that result in violations or abuses of these kinds of rights, which are also often at the root of conflicts.

When, on the other hand, we see in a given country a pattern of interference with the independence and impartiality of the judiciary, attacks on the independence and freedom of the legal profession in general and human rights lawyers in particular, and the instrumentalisation of prosecutors, history shows these are “early warning” signals of even more widespread and systematic violations of human rights to come, and should trigger preventive action by relevant mechanisms such as the Human Rights Council.

Finally, in addition to engaging with legal systems as advocates, litigants or legal service providers, civil society can play an important role in building the awareness and capacity of judiciaries, legal professionals and prosecutors, through creating opportunities for exchange of experience, expertise, best practices and problem solving both within and across regions. Especially with judicial actors, and in light of the special concern for their independence, the ICJ and other organisations have found peer to peer engagement to be a particularly effective means of building judicial capacity to prevent violations and abuses.