



UN Forum on Human Rights, Democracy and the Rule of Law

Equal access to justice for all: a necessary element of democracy, rule of law and human rights protection

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Independence of the judiciary and legal profession

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Thank you, Chair.

The International Bar Association's Human Rights Institute (IBAHRI) welcomes this panel discussion on **Equal access to justice as a foundation for human rights, democracy, the rule of law and sustainable development.**

As this Panel has discussed, access to justice is the foundation of governance systems based on human rights, democracy and the rule of law.

Judicial independence is a prerequisite to the rule of law and a fundamental guarantee of a fair trial. Principle 2 of the UN Basic Principles on the Independence of the Judiciary provides that '*the judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason*'. However, the IBAHRI is concerned with the alarming and sustained interference by the executive branch with the judicial process reported in many countries. Examples include the arbitrary appointment, lack of permanent tenure, and removal of judges, violating the principles of judicial independence. In some states, courts are effectively controlled by the executive where they have played a significant role in the persecution of those

critical of the government. Such attacks serve to undermine the trust that the public places in judiciaries.

Further, the role of the legal profession as the primary guardians and enforcers of the rule of law in facilitating access to justice cannot be understated. An effective justice system requires that lawyers be free to pursue their professional activities of advising and representing their clients. When lawyers and the broader legal community defend fundamental elements of the rule of law, including judicial independence; judicial review; access to justice and human rights, they are often targeted in their work as a result.

The rule of law in a democracy is based on institutional checks and balances between the organs of the State, guaranteeing their functioning, cooperation, and mutual control so that power is exercised by one state authority under the scrutiny of others. All too often, states and other actors who violate fundamental rights face no consequences for their actions, even when those violations are grave, widespread and/or systematic and the crucial space of civil society to operate in the system of checks and balances has vastly reduced. Alongside the press, CSOs are a key outlet for debate, public scrutiny, and advocacy. Access to justice can safeguard participation by protecting democratic space, including by protecting the right to freedom of expression, including media freedom and access to information, the right of peaceful assembly and association, and in ensuring accountability for human rights violations.

On this occasion, the IBAHRI calls for firmer action to ensure the justice sector is, in practice, functioning as a key institution of democracy. Including:

- 1) **strengthening judicial independence;**
- 2) **reducing the influence of legislative and executive powers on the justice system;**
- 3) **ensuring transparency and accountability** within national and global institutions;
- 4) **guaranteeing lawyers' independence;** and
- 5) **nurturing an enabling environment for CSOs and the media to operate** without harassment or interference. This is critical in the realisation of SDG 16, *the promotion of peaceful and inclusive societies for sustainable development, the provision of access to justice for all, and building accountable institutions at all levels.*

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