

TABLE OF CONTENTS

Foreword	xi
The Geneva Declaration	xv
The Legal Commentary	1
Principle 1	1
1. Unlawful national practices	1
2. International legal framework	3
i) General considerations	3
ii) The role of the judiciary and legal profession is paramount in safeguarding human rights and the Rule of Law in times of crisis, including declared states of emergency	4
iii) The judiciary serves as an essential check on the other branches of the State and ensures that any laws and measures adopted to address the crisis comply with the Rule of Law, human rights and, where applicable, international humanitarian law	5
iv) In times of crisis, the principle of judicial review is indispensable to the effective operation of the Rule of Law	7
v) Judges must retain the authority within the scope of their jurisdiction as final arbiters to state what the law provides. The judiciary itself must have the sole capacity to decide upon its jurisdiction and competence to adjudicate a case	8
3. Declarations, Statements and Resolutions adopted by ICJ Congresses & Conferences	10
4. Selected excerpts from international standards	11
Principle 2	17
1. Unlawful national practices	17
2. International legal framework	19
i) Responsibility to guarantee independence and effective functioning of the judiciary and fair administration of justice	19

ii) Governments must ensure effective remedies and full reparation for violations	24
iii) Governments must not take any decision or action the effect of which would be to nullify, invalidate or otherwise revise or undermine the integrity of judicial decisions	25
3. Declarations, Statements and Resolutions adopted by ICJ Congresses & Conferences	26
4. Selected excerpts from international standards	28
Principle 3	33
1. National unlawful practices	33
2. International legal framework	34
i) General aspects	34
ii) The jurisdiction or supervision of ordinary tribunals	36
iii) Special, extraordinary and <i>ad hoc</i> tribunals or non-judicial bodies (commissions)	38
iv) Judicial remedies	41
v) Militarisation of the administration of justice	43
vi) Military and criminal investigations	44
3. Declarations, Statements and Resolutions adopted by ICJ Congresses & Conferences	47
4. Selected excerpts from international standards	50
Principle 4	57
1. National unlawful practices	57
2. International legal framework	58
i) Common legal framework for regulating states of emergency	58
ii) All measures adopted to address the crisis must be subject to judicial oversight	62
iii) The right to fair and effective legal proceedings to challenge the legality of measures and/or their conformity with national or international law	65

3. Declarations, Statements and Resolutions adopted by ICJ Congresses & Conferences	69
4. Selected excerpts from international standards	72
Principle 5	77
1. Unlawful national practices	77
2. International legal framework	78
i) General considerations	78
ii) Judges should not be subject to arbitrary removal, individually or collectively, by the executive, legislative or judicial branches	79
iii) Judges may only be removed, by means of fair and transparent proceedings, for serious misconduct incompatible with judicial office, criminal offence or incapacity that renders them unable to discharge their functions	80
iv) The right of judges and lawyers to freedom of association, including the right to establish and join professional associations, must at all times be respected	83
3. Declarations, Statements and Resolutions adopted by ICJ Congresses & Conferences	85
4. Selected excerpts from international standards	87
Principle 6	95
1. Unlawful national practices	95
2. International legal framework	96
i) General considerations	96
ii) Appointment methods must guarantee the independence of the judiciary	96
iii) Security of tenure of judges	99
iv) Provisional or temporary judges	100
v) Exceptions and conditions required to admit provisional or temporary judges	101
3. Declarations, Statements and Resolutions adopted by ICJ Congresses & Conferences	102

4. Selected excerpts from international standards	104
Principle 7	111
1. National unlawful practices	111
2. International legal framework	112
i) General considerations	112
ii) Protection against violence, intimidation, threats or discrimination	114
iii) Lawyers must not be identified with their clients or their causes	116
iv) Immunity and disciplinary proceedings	117
3. Declarations, Statements and Resolutions adopted by ICJ Congresses & Conferences	118
4. Selected excerpts from international standards	120
Principle 8	125
1. National unlawful practices	125
2. International legal framework	126
i) Legal assistance and detention	127
ii) Legal assistance and fair trial	129
3. Declarations, Statements and Resolutions adopted by ICJ Congresses & Conferences	135
4. Selected excerpts from international standards	137
Principle 9	141
1. National unlawful practices	141
2. International legal framework	142
i) General considerations	142
ii) The right to <i>habeas corpus</i>	143
iii) Administrative detention, judicial control and remedies	147

iv) Right to access a lawyer and to communicate with the outside world	150
3. Declarations, Statements and Resolutions adopted by ICJ Congresses & Conferences	153
4. Selected excerpts from international standards	155
Principle 10	161
1. Unlawful national practices	161
2. International legal framework	162
i) General consideration: the complementarity of international humanitarian law and international human rights law	162
ii) Civilian and Military Tribunals: the general principle	163
iii) Exceptions to the general principle	169
iv) Fair trial and judicial guarantees	172
3. Declarations, Statements and Resolutions adopted by ICJ Congresses & Conferences	176
4. Selected excerpts from international standards	178
Principle 11	181
1. National unlawful practices	181
2. International legal framework	182
i) Non-derogability of the right to an effective remedy	184
ii) Access to justice and judicial remedies	185
iii) Judicial remedies and ordinary tribunals	187
iv) Denial of judicial remedy	190
3. Declarations, Statements and Resolutions adopted by ICJ Congresses & Conferences	192
4. Selected excerpts from international standards	194
Principle 12	197
1. Unlawful national practices	197

2. International legal framework	198
i) General considerations	198
ii) The integrity of the judicial system is central to the maintenance of a democratic society	198
iii) Impartiality of the judiciary requires that cases be decided only on the basis of lawfully and fairly obtained evidence and on the application in good faith of the law, free from any extraneous influences, inducements, pressure, threats or interference, direct or indirect, from any quarter or for any reason	199
3. Declarations, Statements and Resolutions adopted by ICJ Congresses & Conferences	203
4. Selected excerpts from international standards	204
Principle 13	207
1. Unlawful national practices	207
2. International legal framework	209
i) General considerations – Ethical Principles and Codes of Professional Conduct	209
ii) The responsibility of judges and prosecutors to uphold and promote the Rule of Law and human rights and the special duty to resist actions which would undermine the independence of the judiciary and the Rule of Law	212
iii) Judges are entitled to protection to enable them to discharge their professional duties	214
iv) Professional, civil and criminal responsibility of lawyers	215
3. Declarations, Statements and Resolutions adopted by ICJ Congresses & Conferences	219
4. Selected excerpts from international standards	221