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**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development****Reimagining justice: confronting contemporary challenges to  
the independence of judges and lawyers****Report of the Special Rapporteur on the independence of judges and  
lawyers, Margaret Satterthwaite***Summary*

The present report is the first submitted by the current mandate holder, Margaret Satterthwaite. In it, she presents her vision for the mandate in the coming years.

The Special Rapporteur on the independence of judges and lawyers sets out the need for a reimagining of access to justice and the rule of law from the diverse perspectives of those who bear the brunt of deep inequalities, systematic discrimination and persistent marginalization. She outlines major challenges to the independence of judges and lawyers that she will prioritize in her work.

The Special Rapporteur also describes her methods of work and shares initial recommendations. She looks forward to collaborating with member States and other relevant actors to address systemic problems within judicial and legal systems, to safeguard the role of independent judges and lawyers in checking unaccountable power and protecting rights, to advance access to justice for all and to support grass-roots justice solutions.



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## I. Introduction

1. The present report<sup>1</sup> is the first submitted to the Human Rights Council by the newly appointed Special Rapporteur on the independence of judges and lawyers, Margaret Satterthwaite. In it, she presents her vision for the mandate in the coming years. Identifying core principles underlying her mandate, she sets out the need to reimagine access to justice and the rule of law, paying special attention to the perspectives of those who bear the brunt of deep inequalities, systematic discrimination and persistent marginalization.
2. The Special Rapporteur also outlines several major challenges to the independence of judges and lawyers that are among the topics that she will prioritize in her work. Her treatment of each topic will necessarily be limited given the nature of the present report, and the list of priorities is not inclusive of every topic she plans to address.
3. She also describes her methods of work and how she will engage with member States, judges and lawyers, civil society and others to improve access to justice for all, strengthen the rule of law and promote the realization of human rights through independent and fair legal and judicial systems. Finally, she shares conclusions and recommendations aimed at encouraging member States to safeguard the independence of the judiciary, the legal profession and the prosecution function, with the aim of protecting human rights and the rule of law.<sup>2</sup>

## II. Reimagining access to justice and the rule of law

4. As the world confronts brutal wars in several regions, the third year of a global pandemic, the climate crisis, shocking levels of inequality and heightened polarization, it is time to reinvigorate, and even reconceive of, institutions and norms relating to justice. Challenges exist in all regions: leaders who hold themselves above the law, organized crime that escapes legal strictures, powerful economic actors who play by different rules and marginalized communities that cannot harness legal protection. These perils manifest in similar ways, including through interference by political leaders in the role of independent judges; bribes, threats or other efforts to assert undue influence over the judiciary and the legal profession; and denial of legal services – even the most basic – to communities experiencing discrimination and exclusion.
5. The mandate of the Special Rapporteur on the independence of judges and lawyers, established in 1994, has a modest but crucial role to play. International human rights law requires that States create independent and impartial legal systems that guarantee that no one is above the law, no one is outside the protection of the law and no one is excluded or harmed by the law. Many hurdles stand in the way of making this vision a reality. But a clear-eyed look at key obstacles, an embrace of international human rights law and norms, and lessons from emerging good practice across the globe suggest that there are ways forward. By carrying out and supporting such work, the mandate can address systemic inequalities within legal systems, safeguard the role of independent judges in checking unaccountable power, advance access to justice and amplify grass-roots justice solutions.
6. The new mandate holder believes that this moment calls for a fundamental reimagining – or, in some cases, a recommitment to – the rule of law and access to justice. This moment demands the prioritization of the insights of those for whom these systems are falling short, as well as taking into account data, lessons from practice and innovative approaches to entrenched problems. Reimagining the rule of law from the diverse perspectives of those whose rights are too often violated will require that the mandate holder engage with, and learn from, those who are often left outside the protection of the law. It will demand renewed engagement with bedrock guarantees, including how best to safeguard the role of an independent judiciary in the face of corruption, organized crime and efforts to

<sup>1</sup> The Special Rapporteur thanks Rebecca Riddell for outstanding research and analysis for the present report and her students at the New York University School of Law for their assistance with its preparation. They bear no responsibility for the final content.

<sup>2</sup> Human Rights Council resolution 44/8.

assert undue influence. It means asking how best to address judicial systems affected by autocratization, democratic decay, the climate crisis, polarization, viral and weaponized disinformation, systemic discrimination and the legacies of colonialism. Reimagining the rule of law also requires a considered look at criminal legal systems and the role of prosecutors, including considering how they can best ensure the human rights of all to security and dignity.

7. Reimagining access to justice requires ensuring that all persons can enjoy the whole range of human rights – civil, political, economic, social and cultural. Lawyers and community-based justice advocates play a key role in this endeavour. Lawyers must be able to freely exercise their profession with the resources necessary to defend those charged with crimes, seek remedies for grave violations and facilitate fulfilment of rights. They can also undertake efforts to dismantle the dynamics of exclusion in the legal system, including those that affect groups marginalized due to ethnic or racial discrimination, persons experiencing extreme poverty, persons with disabilities, those of diverse gender identities and sexual orientations, Indigenous Peoples and others facing histories of entrenched dispossession or discrimination. Finally, reimagining access to justice entails embracing an expanded legal ecosystem and recognizing the power and promise of community-based justice advocates, such as community paralegals, “barefoot lawyers” and legal navigators, to extend and enhance legal services and support for isolated and underserved communities.

### III. Priority challenges to judicial independence

8. Judicial independence is an issue of vital importance in the shared struggle for the realization of human rights. It is a bedrock aspect of the right to a fair trial and essential to advance the full range of human rights.<sup>3</sup> Properly understood, judicial independence is a key safeguard against rising authoritarianism and an indispensable element in ensuring justice systems are fit for purpose. It requires attention to the structure of the State and the separation of powers.

9. In carrying out her mandate, the Special Rapporteur will seek to build on the work of the previous mandate holders on this topic, as well as explore contemporary challenges and best practices for strengthening judicial independence. This will entail focusing on situations in which judges and prosecutors are at grave risk, identifying individual and systemic threats to judicial independence, contributing to greater appreciation of emerging challenges and exploring innovative, rights-enhancing prosecutorial practices.

#### A. Legal standards

10. The preamble to the Universal Declaration of Human Rights recognizes that human rights should be protected by the rule of law. Article 10 states that every person is entitled to a fair and public hearing by an independent and impartial tribunal in the determination of any criminal charge. This right has been broadly included in major international and regional human rights treaties since the adoption of the Universal Declaration of Human Rights. The International Covenant on Civil and Political Rights guarantees the right to a fair and public hearing by an independent and impartial tribunal established by law in the determination of any criminal charge and any rights and obligations in a suit at law.<sup>4</sup> The requirement of an independent and impartial tribunal is an absolute right not subject to any exception, and States must take specific measures to guarantee the independence of the judiciary.<sup>5</sup>

11. The full enjoyment of human rights depends on and requires an independent judiciary. For example, judicial independence is essential to the realization of women’s rights,<sup>6</sup> and its

<sup>3</sup> Human Rights Committee, general comment No. 32 (2007), para. 58.

<sup>4</sup> International Covenant on Civil and Political Rights, art. 14.

<sup>5</sup> Human Rights Committee, general comment No. 32 (2007), para. 19.

<sup>6</sup> Committee on the Elimination of Discrimination against Women, [general recommendation No. 33](#) (2015), paras. 1 and 14 (observing that independence is a requirement of a good quality justice system, in turn an essential component of access to justice, which is essential for the realization of

absence has been tied to corruption, an overall culture of impunity and the undermining of women's access to justice.<sup>7</sup> Judicial independence is also key to safeguarding economic, social and cultural rights,<sup>8</sup> as well as the rights of migrant workers.<sup>9</sup> Similarly, rights and obligations relating to the prohibition on torture clearly require judicial independence and its absence raises serious concern about accountability.<sup>10</sup> Human rights guarantees in turn inform the meaning of, and requirements concerning, judicial independence and the right to a fair trial.<sup>11</sup>

12. The Basic Principles on the Independence of the Judiciary provide helpful guidance, including on the need for judicial independence to be enshrined in the constitution or the law of the country, as well as for judges to decide on matters without any restrictions, improper influences, inducements, pressures, threats or interferences – whether direct or indirect.<sup>12</sup> They have played an essential role as guarantors of judicial independence since they were adopted in 1985.<sup>13</sup>

## B. Priority challenges

13. The Special Rapporteur is gravely concerned about persistent challenges to judicial independence, despite strong protection in international law and standards. She will seek to build on the excellent work carried out by previous mandate holders, who rightly focused attention on a broad range of challenges and threats, such as those involving organized crime,<sup>14</sup> corruption,<sup>15</sup> states of emergency,<sup>16</sup> military tribunals<sup>17</sup> and “disguised sanctions” – sanctions with the aim of interfering with the professional activities of judges.<sup>18</sup>

14. The Special Rapporteur will also focus on a number of challenges to judicial independence that may have been overlooked, are emerging, or are taking on new relevance in the present moment. She will consider how human rights, and related international law and standards, can guide the response to these challenges.

### 1. Autocratization and democratic decay

15. Recent years have been characterized by severe polarization and a global wave of democratic decay and autocratization that pose serious risks to human rights. Democratic decay happens when key features of a country's formal democratic system see meaningful decline.<sup>19</sup> Autocratization occurs when leaders dismantle or reduce the capacity of other branches of government to check their power. These dynamics encompass changes in governing structures, as well as limits and outright attacks on basic rights.<sup>20</sup> They often go hand in hand with crackdowns on civil society, shrinking civic space and increased persecution of human rights defenders.

protected rights).

<sup>7</sup> CEDAW/C/HND/CO/9, paras. 14 and 15; and CEDAW/C/TUR/CO/8, paras. 18 and 19.

<sup>8</sup> E/C.12/UZB/CO/3, para. 7; and E/C.12/SRB/CO/3, para. 9.

<sup>9</sup> International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 18; and CMW/C/SYR/CO/2-3, para. 35.

<sup>10</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, arts. 2 and 13; Committee against Torture, *general comment No. 3* (2012), paras. 2 and 18; and CAT/C/ARE/CO/1, paras. 23 and 24.

<sup>11</sup> Amal Clooney and Philippa Webb, *The Right to a Fair Trial in International Law* (New York, Oxford University Press, 2021), pp. 8–10, citing *Jadhav (India v. Pakistan), Judgment, I.C.J. Reports 2019*, p. 418, at p. 510, Declaration of Judge Robinson.

<sup>12</sup> *Basic Principles on the Independence of the Judiciary*, principles 1 and 2.

<sup>13</sup> A/74/176, para. 3.

<sup>14</sup> A/72/140.

<sup>15</sup> A/67/305.

<sup>16</sup> A/63/271.

<sup>17</sup> A/68/285.

<sup>18</sup> A/75/172.

<sup>19</sup> Vanessa A. Boese and others, *Autocratization Changing Nature? Democracy Report 2022* (Gothenburg, Varieties of Democracy Institute, 2022).

<sup>20</sup> *Ibid.*, pp. 16 and 17.

16. Attacks on judicial independence are a hallmark feature of autocratization and democratic decay. On the other hand, an independent judiciary can play a critical role in protecting rights in the face of autocratization and resisting democratic decline. The Special Rapporteur will focus on attacks on judicial independence, especially those that may amount to situations in which the functions and competencies of the judiciary and the executive are not clearly distinguishable or in which the latter is able to control or direct the former, which the Human Rights Committee has clarified are incompatible with the notion of an independent tribunal.<sup>21</sup>

17. Member States certainly have wide latitude in the establishment and reform of court systems and a variety of institutional arrangements are permissible under human rights law. However, where changes threaten the independence of tribunals, the broad range of rights that depend on the independence of the judiciary are placed at risk. Attacks on the independence of the judiciary should not be allowed to masquerade as benign reforms.

18. The Special Rapporteur will carry out a careful review of court reforms to understand the conditions under which they may constitute efforts to dismantle or undermine judicial independence in connection with autocratization or democratic decay. Often, such changes are implemented slowly and their impact may be difficult to fully understand until the changes have had systemic effects. The Special Rapporteur will attend to such changes and their impact on human rights, raising concerns and seeking protection for independent judiciaries. She will offer support to member States seeking to recover from incursions on judicial independence, and she will identify good practices among States seeking to insure against such attacks.

19. Situations of concern to the Special Rapporteur may include new limits on courts' jurisdiction to review the legality of executive or parliamentary action or reforms to the nature or composition of courts – particularly high courts – that effectively diminish their independence and ability to remedy human rights violations. These may include politically strategic reductions in the size of the highest court, arbitrary removal of judges or reductions in their terms, or the subjection of judges to early retirement in a manner that politicizes their role. Alternatively, such situations may include the appointment or retention of judges seen as favourable to those in other branches of government through a politicized expansion of the size of the highest court, the arbitrary abolishment of a retirement age or extension of terms, or the irregular creation of extraordinary chambers. The Special Rapporteur will also consider situations in which the process or rules around selection and appointment are altered in a way that reduces the focus on potential judges' capability and integrity and increases the role of candidates' presumed or stated political affiliations. The Special Rapporteur will also look into imposed changes to the rules regulating judicial interpretation and reasoning, or abrupt restrictions on their discretion, in contexts in which these changes are politically inflected. Even seemingly neutral rules of judicial administration may be politicized and used as tools to discipline or reward judges for their decisions. The Special Rapporteur is also concerned about the possibility of remunerative efforts to undermine judicial independence – such as politicized cuts to or long-term freezes of salaries that materially affect judges' livelihoods and that diminish the strength and independence of the profession.

## **2. Climate crisis and climate-related displacement**

20. As a result of the climate crisis, a number of new and complex challenges are being brought to bear on public institutions, including judicial systems, and people-centred justice solutions have taken on heightened importance.<sup>22</sup> Courts are facing new questions, including the adjudication of high-stakes climate-related litigation, as well as issues relating to climate change-induced displacement. As a result, new pressures may be brought to bear on courts and judges may confront novel efforts to infringe on their independence. The Special Rapporteur will carry out work looking at judicial independence in these contexts.

<sup>21</sup> Human Rights Committee, general comment No. 32 (2007), para. 19.

<sup>22</sup> International Development Law Organization, "Rule of law: responses to climate insecurity", Issue Brief (2022), pp. 10–16.

### 3. Digital technologies

21. The Special Rapporteur is concerned about challenges to judicial independence linked to digital technologies, especially disinformation, online harassment and threats, and artificial intelligence.

#### (a) Disinformation

22. In recent years and due in large part to digital technologies, the reach and impact of disinformation has expanded rapidly. Disinformation – understood here as false information disseminated intentionally to cause serious social harm<sup>23</sup> – can have profound negative consequences for human rights.

23. In this context, the Special Rapporteur notes with great concern the challenge that disinformation poses to judiciaries globally, and also recognizes the important role that an independent judiciary can play in upholding human rights in the context of disinformation. The Special Rapporteur intends to focus on the corrosive impact of efforts to spread disinformation about judicial decisions, systems and actors – such as disinformation campaigns that exploit racist, xenophobic or sexist tropes. She will disseminate best practices for courts to address disinformation affecting judicial independence, including by strengthening engagement with members of the public, providing greater transparency about procedures and decisions, and ensuring meaningful access to information for all.

#### (b) Online attacks

24. The Special Rapporteur is concerned about online attacks against judges in retaliation for their professional activities. Defined here as the pervasive or severe targeting of an individual judge or group of judges online through harmful behaviour,<sup>24</sup> online attacks against judges can take different forms, such as the release of highly sensitive personal details, the spread of disinformation or even making unfounded allegations that foreseeably place judges at a heightened risk of physical attack. The Special Rapporteur is particularly concerned about online attacks against judges traditionally underrepresented in the judiciary, including women judges, judges with disabilities, LGBTQI+ judges, as well as judges from groups marginalized due to ethnic, racial, religious, or other forms of discrimination or exclusion. Online attacks are a significant concern not only because digital platforms are well-established public squares, but also because of the potential relationship between online abuse and physical harassment or attacks.

25. The Special Rapporteur will prioritize online attacks carried out as part of broader efforts to undermine the independence of the judiciary. In such cases, online attacks may constitute a violation of the rights of an individual, as well as an attack on the rule of law and the separation of powers. Such efforts, especially ones coordinated and carried out by public officials, affiliates and political parties, represent an important and alarming trend.

26. States have an obligation to protect judges and court officials from online attacks. It is also critical that responses by States and companies not punish or censor legitimate criticism of public officials, including judges, and judicial decisions. In her work, the Special Rapporteur will seek to better understand the nature and impacts of online abuse targeting judges, including through engagement with judicial professionals. She will seek to support individual judges who face online abuse, highlight patterns and identify and disseminate best practices for combating such abuse while upholding human rights.

#### (c) Artificial intelligence

27. The Special Rapporteur is eager to address the consequences and impacts of artificial intelligence on judicial independence, including the high stakes and grave risks involved as artificial intelligence moves increasingly into judicial decision-making spaces, as well as conditions under which its use may be compliant with human rights law and could advance

<sup>23</sup> A/HRC/47/25, para. 15.

<sup>24</sup> Pen America, “Defining ‘online abuse’: a glossary of terms”. Available at: <https://onlineharassmentfieldmanual.pen.org/defining-online-harassment-a-glossary-of-terms> (last accessed 4 April 2023).

access to justice. Artificial intelligence is not one thing only, but rather refers to a “constellation” of processes and technologies enabling computers to complement or replace specific tasks otherwise performed by humans, such as making decisions and solving problems.<sup>25</sup>

28. Understood this way, artificial intelligence is of inherent interest for the judiciary and, indeed, many judicial systems across the world are adopting it for a variety of purposes and activities.<sup>26</sup> However, algorithmic decision-making brings promise and peril for the rule of law and for judicial independence. The Special Rapporteur intends to examine these issues in depth, exploring especially how issues of algorithmic bias, inequalities inherent in many data sets used to train artificial intelligence, the need for democratic oversight, auditing and accountability regarding artificial intelligence systems, as well as threats to privacy, interact with judicial independence. She hopes to contribute to greater understanding of the measures member States should take if they are to involve artificial intelligence in judicial processes, in order to ensure that judicial independence is preserved and to ensure compliance with human rights law and standards.

#### **4. Efforts by businesses and those with economic advantages to unduly influence the judiciary**

29. The Special Rapporteur is concerned about the potentially distorting effects of economic and corporate power on the independence of the judiciary. Communities and civil society organizations that look to courts to vindicate rights have long raised concerns about the risks of corporate and economic elite “capture” of the judiciary. In this context, “capture” expresses the idea of a public interest being trumped by specific private interests such that State action is “taken over by a private actor whose outcome is designed and operated primarily for their benefit and at the expense of society as a whole”.<sup>27</sup>

30. The Special Rapporteur will explore ways that businesses and individuals or groups with significant economic advantages may seek to unduly influence judges in order to obtain favourable outcomes. This could include attempts at quid pro quo corruption, but also other activities that could constitute inappropriate, sometimes systemic, efforts to unduly influence judges. She will ask, for example, when training programmes for judges that are paid for by corporations or interest groups, or offers of future employment in fields in which the candidate is not well qualified, may involve undue influence. She will also consider the range of ways that businesses and economically advantaged actors may seek to shape the nature and composition of the overall judiciary to create a climate more conducive to specific business or economic interests, including long-term, organized efforts to unduly influence the judicial appointment process.

31. Additionally, she will look at whether and how businesses may seek to use judicial proceedings and litigation tactics – at times abusive ones – to undermine activities protected by human rights law. If successful, such efforts could challenge the very notion of an independent judicial system as a means for achieving justice. She will endeavour to understand how corporations may seek to use courts to challenge rights defenders, communities and officials seeking to pursue the public interest, such as through strategic litigation against public participation suits<sup>28</sup> or abuse of defamation laws.<sup>29</sup>

32. The Special Rapporteur will explore the types of evidence that can be used to assess the impacts of such efforts, including data on resolution of disputes, access to information and procedural guarantees in specialized and privatized forums, as well as the impact on civil

<sup>25</sup> A/73/348, para. 3.

<sup>26</sup> United Nations Educational, Scientific and Cultural Organization, “AI and the rule of law: capacity building for judicial systems”, 1 February 2023.

<sup>27</sup> Caroline Devaux, “Towards a legal theory of capture”, *European Law Journal*, vol. 24, No. 6 (November 2018), pp. 458 and 460.

<sup>28</sup> A/77/201, paras. 71 and 72; and International Center for Not-for-Profit Law, *Protecting Activists from Abusive Litigation: SLAPPs in the Global South and How to Respond* (Washington, D.C., July 2020).

<sup>29</sup> Communication AL OTH 16/2018. All communications referenced in this report are available at <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.



society. She will also look at special topics such as the implications in the context of a rapidly expanding field of climate litigation.<sup>30</sup>

33. The Special Rapporteur will examine the measures taken by member States to ensure judiciaries are insulated from improper interference, consider judicial standards in light of any evidence of sustained efforts by businesses or those with economic advantages to seek to unduly influence judges and judicial systems, and disseminate best practices and innovative ideas for safeguarding the independence of the judiciary.

## 5. Systemic inequalities and discrimination that threaten independence

34. To effectively play its role in defending equality for all under the rule of law, the composition of the judiciary should be diverse and representative. The right to equality and to take part in public institutions on the basis of non-discrimination is guaranteed by human rights law, with specific considerations relating to participation in the judiciary articulated for those who commonly experience discrimination, including women,<sup>31</sup> members of groups marginalized due to ethnic, racial or other forms of discrimination,<sup>32</sup> persons with disabilities<sup>33</sup> and LGBTIQ+ persons.<sup>34</sup> These guarantees have been echoed in the Sustainable Development Goals, in which target 16.7 reflects States' commitment to ensure responsive, inclusive, participatory and representative decision-making at all levels. One of the two indicators for this target is "proportions of positions in national and local institutions, including ... (c) the judiciary, compared to national distributions, by sex, age, persons with disabilities and population groups."<sup>35</sup> Despite these commitments, where disaggregated data exist, they often indicate that dominant groups make up a disproportionate share of the

<sup>30</sup> Communication [AL OTH 16/2018](#).

<sup>31</sup> The Human Rights Committee has, for example, urged the United Kingdom of Great Britain and Northern Ireland to increase the representation of women in the civil service and in the judiciary, where women were concentrated in the lower-instance courts ([CCPR/C/GBR/CO/7](#), para. 12). The Committee on the Elimination of Discrimination against Women has recommended the adoption of legislative provisions promoting or addressing gender representation in the judiciary to States, including France ([CEDAW/C/FRA/CO/6](#), para. 25), Luxembourg ([CEDAW/C/LUX/CO/5](#), para. 22), Norway ([CEDAW/C/NOR/CO/7](#), paras. 24 and 25) and Panama ([CEDAW/C/PAN/CO/8](#), paras. 29 and 30), and welcomed the establishment of proportional lists and quotas in Morocco ([CEDAW/C/MAR/CO/5-6](#), para. 27).

<sup>32</sup> For example, the Committee on the Elimination of Racial Discrimination has recommended that States adopt measures to ensure fair and equitable representation of ethnic minorities in decision-making positions, including through special measures and by identifying and removing barriers ([CERD/C/AZE/CO/10-12](#), para. 25), and the recruitment of individuals from minority and/or ethnolinguistic groups and regions to ensure equitable representation in the judiciary ([CERD/C/ZWE/CO/5-11](#), para. 44; and [CERD/C/POL/CO/22-24](#), para. 20).

<sup>33</sup> In its [general comment No. 7](#) (2018), the Committee on the Rights of Persons with Disabilities observed that the right of persons with disabilities to have access to justice (art. 13) implied that persons with disabilities had the right to participate on an equal basis with others in the justice system as a whole. That participation included persons with disabilities assuming the roles of judges as part of the democratic system that contributed to good governance (para. 81). The Committee has recommended that States implement measures to ensure that persons with disabilities are represented in the judiciary, such as providing individualized support and procedural accommodation for persons with disabilities who wish to act as judges ([CRPD/C/BGD/CO/1](#), para. 28) or other measures, including legislation, to ensure that women with disabilities are represented in the judiciary ([CRPD/C/KOR/CO/2-3](#), para. 14; and [CRPD/C/SGP/CO/1](#), para. 12).

<sup>34</sup> For example, the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity has stressed the need for greater representation along lines of sexual orientation and gender identity in the judiciary ([A/HRC/38/43/Add.1](#), para. 80).

<sup>35</sup> See <https://sdgs.un.org/goals/goal16>.

judiciary<sup>36</sup> and those seeking a judicial career may face intersectional discrimination or obstacles.<sup>37</sup>

35. Former mandate holders have paid needed attention to gender inequality among judges and magistrates around the world, urging States to ensure that women have the same rights as men to be judges, court officers and members of international judicial bodies.<sup>38</sup> The Special Rapporteur commends member States that have made significant improvements in the representation of women in the judiciary in recent years. Empirical research shows that efforts to change the process for appointment to these courts has a concrete impact, improving women's representation appreciably.<sup>39</sup> She notes that former Special Rapporteur Diego García-Sayán urged States to ensure that at least 50 per cent of their judiciary was made up of women by 2030, as envisioned by target 16.7 of the Sustainable Development Goals.<sup>40</sup> The Special Rapporteur would like to extend this work to examine gaps in women's representation across the different levels of the judiciary, and ask whether women tend to cluster at lower levels of judicial systems. Another issue she intends to examine is that of "autocratic genderwashing", which entails taking limited actions that advance women's representation – such as nominating women to judicial posts – in the context of carrying out more systemic practices that undermine human rights, including gender equality.<sup>41</sup>

36. The Special Rapporteur will also examine other forms of systemic discrimination as it manifests in judicial systems, advancing the principle that the right to an independent and impartial tribunal encompasses the right to access a court that is not marred by racism, ethnic prejudice, gender discrimination, ableism or other forms of systemic discrimination or bias.<sup>42</sup> The Special Rapporteur will also prioritize, in her engagement with member States, the need to improve the collection and publication of disaggregated data that will help officials and the broader public better understand the nature and impact of discrimination and inequality on the judiciary.

37. The Special Rapporteur will also look at legacies of colonialism that continue to affect the judiciary today. Many countries' judicial systems were deeply shaped by colonialism. The Special Rapporteur will highlight successful efforts to address contemporary manifestations of colonialism, which can threaten the legitimacy of judicial systems and undermine the right to a fair trial.<sup>43</sup> She will work with Governments, intergovernmental organizations and civil society to identify good practices for dismantling institutional forms of discrimination and advancing equality for all.

<sup>36</sup> American Constitution Society, "Diversity of the Federal Bench: current statistics on the gender and racial diversity of the Article III courts"; Tracey E. George and Albert H. Yoon, "The gavel gap: who sits in judgment on state courts" (American Constitution Society, 2016); Eric Lesh, "Justice out of balance: how the election of judges and the stunning lack of diversity on state courts threaten LGBT rights" (Lambda Legal, 2016), p. 14; and United Kingdom, Ministry of Justice, "Diversity of the judiciary: legal professions, new appointments and current post-holders – 2022 statistics" (14 July 2022), sect. 6.4.

<sup>37</sup> International Legal Assistance Consortium, "Judicial diversity: a tool to increase access to justice in Colombia, Guatemala and Mexico", Discussion Paper III of the Judges as Peacebuilders Project (Stockholm, 2022), p. 11.

<sup>38</sup> [A/66/289](#).

<sup>39</sup> Nancy Arrington and others, "Constitutional reform and the gender diversification of peak courts", *American Political Science Review*, vol. 115, No. 3 (2021).

<sup>40</sup> [A/76/142](#), para. 99.

<sup>41</sup> Pär Zetterberg and Elin Bjarnegård, "How autocrats weaponize women's rights", *Journal of Democracy*, vol. 33, No. 2 (2022). See also United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), "Democratic backsliding and the backlash against women's rights: understanding the current challenges for feminist politics", Discussion Paper (2020).

<sup>42</sup> Committee on the Elimination of Racial Discrimination, general comment No. 31 (2005).

<sup>43</sup> African Court on Human and Peoples' Rights, *Request for Advisory Opinion by the Pan African Lawyers Union (PALU) on the Compatibility of Vagrancy Laws with the African Charter on Human and Peoples' Rights and Other Human Rights Instruments Applicable in Africa*, No. 001/2018, Advisory Opinion, 4 December 2020, paras. 79 and 88–94 (holding that the formulation of vagrancy laws "are a reflection of an outdated and largely colonial perception of individuals without any rights and their use dehumanizes and degrades individuals with a perceived lower status" and that detention using such laws entails violations of the right to a fair trial).

## 6. Strengthening respect for the independence of Indigenous Peoples' justice systems

38. The Special Rapporteur also intends to focus on judicial independence in the context of the realization of Indigenous Peoples' rights. Consistent with her emphasis on systemic discrimination, she will look at how questions of judicial independence relate to stark discrimination and inequalities faced by Indigenous Peoples within "ordinary" justice systems.<sup>44</sup>

39. She will also prioritize the independence of Indigenous justice systems. Human rights law recognizes, as set out in the United Nations Declaration on the Rights of Indigenous Peoples, Indigenous Peoples' right to autonomy or self-government in matters relating to their internal and local affairs, the right to maintain and strengthen their distinct political and legal institutions, as well as the right to promote, develop and maintain juridical systems or customs.<sup>45</sup> However, despite the valuable contributions of Indigenous justice mechanisms around the world towards resolving disputes and realizing rights, in practice, recognition of the traditional justice systems and customary laws of Indigenous Peoples remains generally limited.<sup>46</sup> Building on the work of other mandate holders and treaty bodies, and the writings of Indigenous judges, scholars and leaders, the Special Rapporteur will look at persistent and contemporary challenges to recognition of the judicial independence of judges in Indigenous legal systems. She will explore the impact on rights, including on women's rights,<sup>47</sup> of jurisdictional, territorial or subject-matter restrictions on Indigenous justice systems.<sup>48</sup> She will consider what measures member States and others can undertake to ensure the respect of the right of Indigenous Peoples to autonomous legal institutions and processes and disseminate good practices for member States in their relations with Indigenous Peoples' justice systems.<sup>49</sup>

## 7. Challenges to judicial integrity

40. In addition to focusing on institutional threats to judicial independence, the Special Rapporteur will address the issue of judicial integrity, understood as judicial independence at an individual level. The realization of human rights depends on judicial integrity, including freedom from bias, impartiality and the equal treatment of all.

41. The Bangalore Principles of Judicial Conduct, a non-binding but authoritative set of principles adopted in 2002 following an extensive international and consultative process, provide useful guidance to judges everywhere, including by providing them with a framework for regulating judicial conduct.<sup>50</sup> They stress the value of independence, impartiality, integrity, propriety, equality, competence and diligence. They also offer concrete guidance, for example, on recusal due to the economic interest of a judge or family member or, in relations with members of the bar, avoiding situations that could reasonably give rise to the appearance of favouritism or partiality.<sup>51</sup>

42. Former Special Rapporteurs have carried out important work examining potential departures from standards of judicial integrity by judges, including in relation to potential bias against defendants,<sup>52</sup> non-nationals<sup>53</sup> and women.<sup>54</sup> They have affirmed the relevance of the Bangalore Principles as a framework for analysing judicial conduct and strengthening judicial integrity, with former Special Rapporteur García-Sayán urging the integration of the Bangalore Principles into the Basic Principles on Independence of the Judiciary.<sup>55</sup> The present Special Rapporteur will continue this work and ask how judicial integrity and the

<sup>44</sup> [A/HRC/42/37](#), paras. 28–49.

<sup>45</sup> United Nations Declaration on the Rights of Indigenous Peoples, arts. 4, 5 and 34.

<sup>46</sup> [A/HRC/42/37](#), paras. 52 and 62–67.

<sup>47</sup> [A/77/136](#), para. 29.

<sup>48</sup> [A/HRC/42/37](#), para. 75.

<sup>49</sup> *Ibid.*, para. 50.

<sup>50</sup> Bangalore Principles of Judicial Conduct, preamble.

<sup>51</sup> *Ibid.*, principles 2.5 and 4.3.

<sup>52</sup> Communication [LKA 5/2012](#).

<sup>53</sup> [A/HRC/29/26/Add.1](#), para. 43.

<sup>54</sup> *Ibid.*, para. 72.

<sup>55</sup> [A/74/176](#), para. 23.

Bangalore Principles can help address a number of contemporary challenges to judicial conduct, including discrimination, harassment or abuse on the basis of sex, race, class, disability, gender identity, sexual orientation and other, often intersecting, prohibited grounds.

## 8. Strengthening the role of independent prosecutors in protecting human rights

43. Across legal systems, prosecutors are entrusted with the authority to act on behalf of society and enforce criminal laws fairly, consistently and expeditiously. The Guidelines on the Role of Prosecutors underscore that prosecutors must act with impartiality, objectivity, confidentiality and victim-centredness. As former Special Rapporteur García-Sayán explained, prosecutors, as guarantors of the justice system, had a responsibility to ensure respect for the rule of law based on the obligation to respect, protect and uphold established human rights.<sup>56</sup>

44. Former Special Rapporteur Gabriela Knaul explored the thin line between ensuring that prosecutors were accountable in the discharge of their functions and the imperative that prosecutors operated independently and without fear, pressure, threats or favour.<sup>57</sup> Former Special Rapporteur García-Sayán emphasized the central role of prosecutors in the fight against corruption, explaining that no matter which form it took, corruption always came at a price, which was ultimately paid by the population and their human rights.<sup>58</sup> The Special Rapporteur endorses this view and intends to continue the work of her predecessors. In this connection, the Special Rapporteur notes that she has already engaged with States on cases in which prosecutors have themselves been targeted for prosecution and detained, apparently for pursuing corruption or other human rights cases against powerful actors.<sup>59</sup> In some situations, prosecutors have even been killed seemingly for their professional activities, an appalling and flagrant human rights violation that seriously undermines the rule of law.

45. The Special Rapporteur will also explore efforts in recent years to reimagine the role of prosecutors in ending discriminatory practices and advancing transitional or reparative justice. In many countries, often following work by social movements and civil society, prosecutors are adopting innovative practices aimed at ending overincarceration, dismantling bias and discrimination, and advancing justice and reconciliation. The United Nations system has recognized the problem of overuse of incarceration, which is often fuelled by “zero tolerance” policies and populist rhetoric that call for stricter law enforcement and sentencing, despite evidence that these steps do not deter crime.<sup>60</sup> It has also emphasized that these factors often combine with discrimination and marginalization, resulting in the overrepresentation of minority and marginalized groups among those incarcerated.<sup>61</sup> The Special Rapporteur intends to engage with creative prosecutors, civil society and those directly affected by these policies to explore decarceration and depenalization. A high priority will be identifying good practices among prosecutors who are using their discretion and authority to explore alternatives to prosecution, as envisioned by the Guidelines on the Role of Prosecutors,<sup>62</sup> and non-prosecution and law reform aimed at decriminalizing statuses or acts that are protected by human rights law.<sup>63</sup>

<sup>56</sup> A/HRC/44/47, summary.

<sup>57</sup> A/HRC/20/19, para. 2.

<sup>58</sup> A/HRC/44/47, para. 20.

<sup>59</sup> Communication [GTM 6/2022](#). The Human Rights Committee and the Committee against Torture have expressed concern about the unilateral termination of the agreement between Guatemala and the United Nations that governed the functioning of the International Commission against Impunity in Guatemala and the persecution and criminalization of some former staff of the Commission ([A/HRC/WG.6/42/GTM/2](#), para. 28).

<sup>60</sup> United Nations system common position on incarceration (April 2021), p. 4.

<sup>61</sup> *Ibid.*

<sup>62</sup> Guidelines on the Role of Prosecutors, arts. 18 and 19.

<sup>63</sup> United Nations system common position on incarceration, p. 4 (“Individuals may also be deprived of liberty for apostasy or so-called ‘moral crimes’, many of them linked to discrimination against women and lesbian, gay, bisexual, transgender or intersex persons”). See also African Court on Human and Peoples’ Rights, *Request for Advisory Opinion by the Pan African Lawyers Union*, para.

46. Other promising practices the Special Rapporteur will examine include the creation of conviction integrity review units, in which individual cases or sets of related cases are reinvestigated to uncover and remedy potential miscarriages of justice, especially cases involving communities that experience systemic discrimination or marginalization. Such units and related practices have led to exonerations, the overturning of wrongful prosecutions and remedies for cases that involved mistreatment, including the use of torture to coerce false confessions.<sup>64</sup>

47. The Special Rapporteur also intends to highlight prosecutorial efforts to embrace restorative or reparative justice approaches and transitional justice models when these comport with human rights law. These approaches encompass efforts to repair the harm done by crime and restore victims and their communities to a sense of wholeness. In some contexts, transitional justice models may be appropriate, especially following conflict or widespread violence. These models require active engagement by perpetrators and victims alike, and must be implemented in ways that protect victims' rights, as well as defendants' rights to due process, independent and impartial justice and legal aid. In assessing these practices, the Special Rapporteur will attend to practices that diminish rights-violating practices while advancing the human rights of victims, defendants and marginalized communities.

#### **IV. Priority challenges to the independence of lawyers and access to justice**

48. The Special Rapporteur will seek to build on the important work of her predecessors to identify concrete ways to strengthen the free and independent practice of law, highlight risks to lawyers and improve access to justice. This includes the valuable work by former Special Rapporteur Mónica Pinto on protecting the independence of lawyers and the legal profession,<sup>65</sup> as well as efforts by former Special Rapporteur García-Sayán to highlight attacks on the independence of lawyers, including interference in bar associations, physical and psychological abuse of lawyers and their families, defamation in the media and abusive disciplinary proceedings.<sup>66</sup> It also encompasses the long-standing and important work of multiple mandate holders to clarify States' obligations with regard to providing legal aid schemes in criminal and non-criminal matters, and in judicial as well as non-judicial proceedings.<sup>67</sup>

##### **A. Legal standards**

49. The critical role of lawyers in advancing access to justice is firmly established in international law and standards. The Universal Declaration of Human Rights recognizes the right of everyone charged with a criminal offence to all the guarantees necessary for one's defence.<sup>68</sup> Article 14 of the International Covenant on Civil and Political Rights contains a number of guarantees related to access to counsel for those accused of a criminal offence, including the right to legal assistance of one's choosing, and free legal assistance when the interests of justice require and defendants do not have sufficient means to pay. A number of requirements follow, including the right to confidentially communicate with a lawyer in private, and that courts and other relevant authorities not hinder lawyers from fulfilling their tasks effectively.<sup>69</sup>

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155 (iii) (finding that vagrancy laws, because they criminalize "the status of an individual", are incompatible with the human rights set out in the African Charter on Human and Peoples' Rights).

<sup>64</sup> Barry Scheck, "Conviction integrity units revisited", *Ohio State Journal of Criminal Law*, vol. 14, No. 2 (2017), pp. 705–752. Another model is the use of conviction review commissions. See, for example, New Zealand Criminal Cases Review Commission/Te Kāhui Tātari Ture, "How the process works".

<sup>65</sup> [A/71/348](#).

<sup>66</sup> [A/HRC/50/36](#).

<sup>67</sup> [A/HRC/8/4](#), para. 23; and [A/HRC/23/43](#), paras. 46–48.

<sup>68</sup> Universal Declaration of Human Rights, art. 11.

<sup>69</sup> Human Rights Committee, general comment No. 32 (2007), paras. 34 and 38.



50. Other instruments offer useful guidance on the concrete meaning of these guarantees, as well as measures that member States should adopt to ensure that lawyers are able to play their critical role defending human rights.<sup>70</sup> These include the Basic Principles on the Role of Lawyers, which are the most comprehensive international normative framework aimed at safeguarding the right of access to legal assistance and the independent functioning of the legal profession.<sup>71</sup> Crucially, the Basic Principles set out a number of guarantees necessary for lawyers to function.<sup>72</sup> Governments should, for example, ensure that lawyers are able to perform all their professional tasks without intimidation, harassment or improper interference; be able to consult with their clients freely; and not be threatened with sanctions for actions taken in accordance with their professional role.<sup>73</sup> The Basic Principles apply, as appropriate, to persons who exercise the function of lawyer without having the formal status of lawyers. They have been explicitly cited by a number of regional and national courts and, furthermore, the values and protections they articulate are recognized in many other jurisdictions.<sup>74</sup>

## B. Priority challenges

### 1. Targeting of lawyers

51. The Special Rapporteur is extremely concerned about widespread and increasing efforts to target lawyers for their work. Amidst deepening autocratization globally, lawyers increasingly may face threats, arrest, prosecution, imprisonment and even death. This is especially true for lawyers who are active in the defence of human rights, women's rights, minority groups, refugees and migrants, Indigenous Peoples, the LGBTQI+ community and the environment.<sup>75</sup> Such targeting violates the rights of lawyers, but also affects the rights of other individuals to a fair trial and to the broad range of human rights meant to be protected by rule of law and a functioning judicial system.<sup>76</sup>

52. The Special Rapporteur intends to work in this area by responding to individual threats – particularly where they are grave or suggest a systemic effort to undermine the ability of the legal profession to advance rights – and by identifying common and emerging trends. She will pay close attention to criminal and civil proceedings instituted against lawyers, including strategic litigation against public participation suits, and other potential misuses of legal proceedings to punish and silence legitimate legal work.

53. She is also focused on the issue of reprisals against lawyers and other justice system actors due to their engagement with international or regional human rights mechanisms. She will take care to highlight these cases, which seek to undermine the critical safeguarding role that independent human rights entities can play.

54. Additionally, and consistent with her priority of expanding the legal ecosystem, she will seek to systematically examine the targeting of all persons exercising legal functions, such as paralegals, whether they have the status of lawyer or not. She will also concern herself with the targeting of the wide range of actors who may face attacks because of their affiliation with legal systems, including court and justice agency staff.

55. Through dialogue with United Nations and government officials, businesses, civil society, lawyers, community-based justice advocates and others, the Special Rapporteur will

<sup>70</sup> A/71/348, para. 21.

<sup>71</sup> *Ibid.*, para. 22.

<sup>72</sup> *Basic Principles on the Role of Lawyers*, principles 16–22. Other principles set out that lawyers must be able to provide legal services, play their special role in criminal justice matters, have specific qualifications and training, fulfil certain duties and responsibilities, enjoy freedom of expression and association, be able to take part in professional associations and be guaranteed fairness in disciplinary proceedings.

<sup>73</sup> *Ibid.*, principle 16.

<sup>74</sup> Law Society of England and Wales, *UN Basic Principles on the Role of Lawyers: Independence of the Legal Profession and Lawyer/Client Rights Worldwide* (2022), p. 52.

<sup>75</sup> A/HRC/50/36, para. 2.

<sup>76</sup> International Covenant on Civil and Political Rights, art. 14 (3). See also Human Rights Committee, general comment No. 32 (2007); and *Basic Principles on the Role of Lawyers*.

gather information about threats and share ideas regarding ways to strengthen the free and independent exercise of the legal profession.

## 2. Dismantling harmful structures and practices within the profession

56. In addition to recognizing the essential, admirable and too often dangerous role that lawyers play in advancing access to justice, the Special Rapporteur will also explore the role of lawyers in dismantling structures and practices within the legal system that can harm rights holders and keep equal justice from becoming a reality.

57. She will examine policies and practices in the legal field that may amount to discrimination on the basis of race, ethnicity, caste, sex, sexual orientation, gender identity, ableism, migration status and other arbitrary bases. Some of these practices are easy to identify, such as explicit rules or de facto practices that restrict law licences to men. Others may be underappreciated, such as cases in which courthouses and other legal institutions are not physically accessible. Racism may prevent lawyers from groups marginalized due to ethnic, racial or other forms of discrimination from being viewed on their merits as advocates or legal counsellors. These forms of discrimination occur in relations with the State, as well as among lawyers<sup>77</sup> themselves. In some places, bar associations have applied discriminatory rules or practices, effectively excluding historically marginalized groups.<sup>78</sup> Non-discrimination and equality protections exist for lawyers in too few jurisdictions.<sup>79</sup>

58. Finally, lawyers have too often sought to categorically exclude non-lawyers – even those who are trained and well prepared – from engaging in legal education, advising or advocacy with communities that seek services to access justice. The Special Rapporteur will shine a light on these issues and examine good practices for overcoming them.

## 3. Closing the justice gap by expanding the legal ecosystem

59. In 2019, the Task Force on Justice, a highly regarded group of experts on justice systems, estimated that 253 million people lived in extreme conditions of injustice.<sup>80</sup> This distressing statistic encompasses an estimated 40 million people subjected to modern slavery, 12 million people who are stateless, and more than 200 million people who live in communities “where high levels of insecurity make it impossible for them to seek justice”.<sup>81</sup> The Task Force also pointed to much broader conditions of injustice, estimating that 1.5 billion people had justice problems they could not solve, including unreported violence or crime, or a civil or administrative justice problem they could not resolve.<sup>82</sup> Another 4.5 billion people were estimated to be “excluded from the opportunities the law provides” due to lack of legal identity, work in the informal sector or lack of secure tenure to housing or land.<sup>83</sup> These conditions render them “vulnerable to abuse and exploitation and less able to access economic opportunities and public services”.<sup>84</sup> In addition to these direct impacts, the “lack of access to justice can economically impact individuals, businesses, government finances, and ultimately entire economies”, according to the Open Government Partnership and Pathfinders for Peaceful, Just and Inclusive Societies.<sup>85</sup>

<sup>77</sup> Kieran Pender, *Beyond Us Too? Regulatory Responses to Bullying and Sexual Harassment in the Legal Profession* (London, International Bar Association, 2022).

<sup>78</sup> Adjoa A. Aiyetoro, “Truth matters: a call for the American Bar Association to acknowledge its past and make reparations to African descendants”, *George Mason University Civil Rights Law Journal*, vol. 18 (2007), p. 69.

<sup>79</sup> International Bar Association, “A global directory of anti-discrimination rules within the legal profession: main findings” (London, 2022) (in which it was noted that bars and regulators in only 18 per cent of countries globally dealt with discrimination as a specific issue in their codes, rules or regulations).

<sup>80</sup> Task Force on Justice, *Justice for All – Final Report* (New York, Center on International Cooperation, 2019), p. 18.

<sup>81</sup> Ibid.

<sup>82</sup> Ibid.

<sup>83</sup> Ibid.

<sup>84</sup> Ibid.

<sup>85</sup> Mark Weston, “The benefits of access to justice for economies, societies, and the social contract: a

60. The Task Force on Justice is one of the many initiatives championing equal access to justice for all, which include the Justice Action Coalition, an initiative of States and civil society partners, and the Global Roundtables on Equal Access to Justice of the Organisation for Economic Co-operation and Development.<sup>86</sup> Using ideas around people-centred justice, these initiatives call for a shift from justice systems built “for the few” to systems that provide accessible, affordable and quality justice services for all.

61. The Special Rapporteur commends these efforts and believes that such a shift requires an expanded legal ecosystem. While there are many lawyers in the world, they are often scarce where justice problems are the most severe, including in rural areas, informal settlements, inside prisons and other detention facilities, and among marginalized or excluded communities.<sup>87</sup> Even when lawyers are present, their services may be too expensive or not suited to solve everyday problems. Furthermore, formal training for lawyers may lead to viewing issues technically or in an isolated, acontextual manner, hindering an understanding of the way justice problems arise alongside human relationships, family conflicts and cultural practices. There are also often barriers to entering the profession that are particularly severe for those most affected by conditions of injustice.

62. Lawyers are not the only legal personnel who can accompany people seeking solutions to justice problems. Evidence demonstrates that trained laypersons – variously called community paralegals, “barefoot lawyers” or community-based justice advocates – can make a real difference by helping communities and individuals to know their rights, understand how to use the law to solve their problems and choose a path forward. The direct experience and understanding such actors bring can be especially valuable in supporting others in navigating their unmet justice needs. As in public health systems, which depend on not only doctors but also nurses, physicians’ assistants and community health workers, legal systems that embrace a variety of roles will also have a better chance of systematically addressing the issues that make people’s lives more challenging.<sup>88</sup>

63. The Special Rapporteur will build on the work of former Special Rapporteur Knaul to highlight the contributions of paralegals and their critical role in enhancing access to justice. She recognized that paralegals were often in a better position than lawyers to provide legal services tailored to the needs of specific communities and groups<sup>89</sup> and that they often lived and worked within the community, which often allowed them to have direct knowledge of the situation and needs of the community that legal professionals working outside of the community frequently did not.<sup>90</sup> The Special Rapporteur believes that it is time to recognize the expertise of community-based justice workers.

64. Any expansion of the formal legal system must be carried out carefully, while fully recognizing and protecting the special role of lawyers in the legal system. The Special Rapporteur is eager to engage in discussions that advance this effort, gathering and disseminating good practices from civil society and member States where such expansion has taken place and engaging in capacity-building on these issues. She will highlight examples of how collaboration between lawyers and community-based justice workers can act as a force multiplier for fulfilling the justice needs of those who face obstacles. In her next thematic report, the Special Rapporteur will examine these issues in depth, exploring

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literature review” (Open Government Partnership and Pathfinders for Peaceful, Just and Inclusive Societies, 2022), p. 7.

<sup>86</sup> Organisation for Economic Co-operation and Development, “OECD Framework and Good Practice Principles for People-Centred Justice” (2021), pp. 3–4. Available at: [www.oecd.org/governance/global-roundtables-access-to-justice/good-practice-principles-for-people-centred-justice.pdf](http://www.oecd.org/governance/global-roundtables-access-to-justice/good-practice-principles-for-people-centred-justice.pdf).

<sup>87</sup> United Nations Office on Drugs and Crime, *Access to Legal Aid in Criminal Justice Systems in Africa: Survey Report* (New York, United Nations, 2011), pp. 11 and 12, table 1.

<sup>88</sup> Vivek Maru, “How can we make legal support accessible to all?”, video, National Public Radio, 12 October 2018.

<sup>89</sup> A/HRC/29/26, para. 43.

<sup>90</sup> A/HRC/23/43, para. 71.



the promise of community-based justice workers and other forms of legal empowerment for ensuring human rights for all.<sup>91</sup>

## V. Methods of work

65. The Special Rapporteur looks forward to engaging with member States, judicial and legal professional associations, judges, lawyers, community-based justice advocates, members of civil society and others on issues of relevance to the mandate. She is grateful for the strong relationships that former Special Rapporteurs have created with judicial associations, bar and other lawyers' associations and ministries of justice, and she intends to continue these connections. Recognizing that those who experience rights violations have especially important insights into the ways that legal systems may fail, she will also endeavour to prioritize direct exchanges with rights holders in her activities.

66. Since assuming the mandate, the Special Rapporteur has used official communications, statements and press releases to raise concerns about alleged violations of human rights relating to the independence of the judiciary and the legal profession. These include alleged violations of the rights of one or more individuals, including individual judges, lawyers, prosecutors and other justice advocates,<sup>92</sup> as well as alleged violations of the rights of groups and communities, including lawyers and judges more broadly, and particularly women.<sup>93</sup> She has also conveyed her concerns regarding the compliance of proposed national legislation that may affect the independence of judges and lawyers with international human rights law.<sup>94</sup> The Special Rapporteur sees communications as an indispensable tool for her to draw the attention of Governments and others to alleged human rights violations, and to seek to ensure that any violations are prevented, stopped or investigated.

67. The Special Rapporteur looks forward to using future thematic reports to highlight and explore priority areas and to disseminate best practices for tackling complex and urgent issues. Her first report to the General Assembly, on the promise of legal empowerment in expanding access to justice, will be submitted later this year. Other areas she may seek to address include safeguarding the independence of refugee and immigration judges, diagnosing and responding to efforts by businesses or those with economic advantages to unduly influence the judiciary, the independence of Indigenous Peoples' justice systems, the impact of artificial intelligence on judicial independence, and dismantling systemic inequalities within legal and judicial systems.

<sup>91</sup> This work will draw on the expertise of community-based justice advocates in many countries around the world. See, for example, Namati/Global Legal Empowerment Network, "About the Network". Available at: <https://namati.org/network>. For more on legal empowerment, see Stephen Golub, ed., *Legal Empowerment: Practitioners' Perspectives* (Rome, International Development Law Organization, 2010); Commission on Legal Empowerment of the Poor and United Nations Development Programme, *Making the Law Work for Everyone: Report of the Commission on Legal Empowerment of the Poor*, vol. 1 (New York, 2008); Vivek Maru, "Between law and society: paralegals and the provision of justice services in Sierra Leone and worldwide", *Yale Journal of International Law*, vol. 31, No. 427 (2006); and Stephen Golub, "Beyond rule of law orthodoxy: the legal empowerment alternative", Rule of Law Series, No. 41 (Carnegie Endowment for International Peace, 2003). For recent discussions, see, for example: Uganda Association of Women Lawyers, Kenyan Section of the International Commission of Jurists and the Legal Empowerment Network, *The Role of Legal Empowerment Groups in Addressing Gender-based Violence in Sub-Saharan Africa During the Pandemic* (2022); and Sukti Dhital and Tyler Walton, "Legal empowerment approaches in the context of COVID-19", *Journal of Human Rights*, vol. 19, No. 5 (2020).

<sup>92</sup> Communications *GTM 6/2022* and *IRN 30/2022*.

<sup>93</sup> United Nations Office of the High Commissioner for Human Rights, "UN experts: legal professionals in Afghanistan face extreme risks, need urgent international support", media statement, 20 January 2023.

<sup>94</sup> Communication *ISR 2/2023*.

68. The Special Rapporteur will use country visits to engage with Governments and carry out in-depth assessments of the independence of judges, lawyers and community-based justice advocates, as well as access to justice for all and the right to a fair trial. Since assuming the mandate, she has extended requests to a number of countries. She very much hopes for positive responses.

69. The Special Rapporteur also intends for her mandate to play a constructive role as a convenor and disseminator of best practices, including through the organization of and participation in workshops, training and information exchanges. She also hopes to offer her expertise to States, intergovernmental organizations and communities tackling problems relevant to her mandate.

70. In all areas of her work, the Special Rapporteur will focus on strengthening the relationship between her mandate, individuals most affected by human rights violations relating to her mandate and the broader public. She will explore new modalities for incorporating participatory methods into her activities and for increasing the accountability of her office to rights holders. She will also bring a feminist, intersectional and anti-racist lens to her work. To these ends, she plans to convene diverse and globally representative advisory groups that will advise her over the course of her mandate. Additionally, with advice from communities, she will seek to develop accessible multimedia products in multiple languages and use social media and news media to more effectively gather and share relevant information, as well as to provide greater transparency.

## VI. Conclusion and recommendations

71. **The Special Rapporteur shares the Human Rights Council's conviction that an independent and impartial judiciary, an independent legal profession, an objective and impartial prosecution able to perform its functions accordingly and the integrity of the judicial system are essential prerequisites for the protection of human rights and fundamental freedoms and the application of the rule of law and for ensuring fair trials without any discrimination.**<sup>95</sup>

72. **The Special Rapporteur looks forward to carrying out her mandate; to addressing alleged violations regarding the independence of the judiciary, lawyers and all actors carrying out legal functions or affiliated with legal systems, as well as documenting progress achieved in protecting and enhancing their independence; to exploring the issues that she has identified as priorities and making concrete recommendations thereon; to carrying out country visits and, through these and other functions, engaging with member States and others to offer technical assistance and support; to cooperating closely with other special procedures and United Nations bodies, mandates and mechanisms while avoiding duplication; to reporting annually to the Human Rights Council and the General Assembly; and, in so doing, to contributing to the strengthening of judicial independence and the free exercise of the legal profession, as well as the advancement of access to justice for all.**

73. **In this initial report, the Special Rapporteur will offer only limited recommendations regarding how Governments in particular may engage with her office. Further recommendations are not warranted at this time, as she has not addressed the various topics that she plans to prioritize in great depth.**

74. **States should:**

(a) **Undertake measures that protect and enhance an independent and impartial judiciary, as well as an independent legal profession;**

(b) **Cooperate with and assist the Special Rapporteur, including by responding favourably to her requests to visit and providing timely, meaningful responses to the communications that she issues.**

<sup>95</sup> Human Rights Council resolution 44/8.

75. The Special Rapporteur welcomes engagement with judicial and bar associations, judges, prosecutors, lawyers, community-based justice advocates, civil society organizations and others with the mandate. She looks forward to receiving their concerns, responding to alleged violations, documenting best practices and engaging in constructive dialogue.

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