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**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

**Safeguarding the independence of judicial systems in the face  
of contemporary challenges to democracy****Report of the Special Rapporteur on the independence of judges and  
lawyers, Margaret Satterthwaite\****Summary*

In the present report, the Special Rapporteur on the independence of judges and lawyers, Margaret Satterthwaite, warns of a growing trend of governments undermining democracy by attacking the rule of law and the independence of judicial systems.

Justice systems and personnel play an essential role in safeguarding democracy: ensuring free and fair elections and the peaceful transfer of power; enforcing key rights; guaranteeing that the law is applied equally to all people, including State officials; and checking excessive power of political actors. But these important roles also make justice systems a target for power-seeking political actors attempting to weaken them or to seize command.

The Special Rapporteur offers a typology of techniques that autocratizing governments use to undermine the capacity or independence of justice systems and justice actors. Those techniques include: (a) capturing or curbing justice systems and justice institutions; (b) abusing those systems to influence or control justice actors; and (c) carrying out direct attacks an interference against judges, prosecutors, lawyers and community justice workers.

The year 2024 is a “mega election year”, during which people in more than 60 countries, encompassing nearly half the world’s population, will vote. The Special Rapporteur makes recommendations to States and actors within the justice system on steps they can take to resist autocratic trends, safeguard justice systems and advance meaningful participatory governance.

\* The present report was submitted to the conference services for processing after the deadline so as to include the most recent information.



## I. Introduction<sup>1</sup>

1. The world is at a crossroads for participatory government. The United Nations High Commissioner for Human Rights has described 2024 as a “mega election year”, in which people in more than 60 countries, encompassing nearly half the world’s population, will vote.<sup>2</sup> However, despite the apparent prevalence of democratic elections, in 2023, the level of democracy enjoyed by the average person plummeted to levels last witnessed in 1985.<sup>3</sup> Elections alone do not guarantee meaningful democracy. In countries where multiparty elections occur, 3.5 billion people lack sufficient safeguards to ensure that elections are free and fair.<sup>4</sup> Evidence suggests that other components of effective and accountable participatory government are also faltering. In 2023, in most countries in the world, the rule of law has weakened and the ability of the judicial system to effectively check excesses by other government branches has fallen in 56 per cent of countries.<sup>5</sup>

2. There are various elements that characterize democratic governance, including free and fair elections, inclusive citizenship and civil and political rights that allow people to exchange information about candidates, to form and participate in political organizations and to engage in peaceful protests.<sup>6</sup> In aggregate, these factors ensure that governments are chosen by, and accountable to, the people. By contrast, autocratic or authoritarian governance is marked by the lack of free and fair elections and the inability of the people to limit the power of government officials or to hold them to account.<sup>7</sup>

3. Justice systems promote and protect a fundamental principle that undergirds participatory governance: the rule of law.<sup>8</sup> This principle insists, inter alia, that all people, even State actors, are subject to the same laws, applied fairly and consistently.<sup>9</sup> In general, the realization of the rule of law involves dividing State power into distinct branches, with the judiciary serving to ensure that executive and legislative actions do not exceed the limits of the constitution and law.

4. To carry out such work effectively, justice systems must be independent of political control. At times, politicians have contested the importance of independent judicial checks on their power, arguing that judicial institutions undermine the will of “the people”.<sup>10</sup> The Special Rapporteur observes that constraints on elected power ensure that officials act within

<sup>1</sup> The Special Rapporteur thanks Katarina Sydow, Aloysia Sonnet, Ben Polk, María Alejandra Torres and her students at New York University School of Law for their support in preparing the present report. She also thanks Africa Judges and Jurists Forum, Alternative Law Groups, Due Process of Law Foundation, International Bar Association’s Human Rights Institute, Namati, Yayasan Lembaga Bantuan Hukum Indonesia for their support in organizing regional consultations. They bear no responsibility for the content of the report.

<sup>2</sup> United Nations News, “‘Mega election’ 2024 could be a landmark for democracy: UN rights chief”, 4 March 2024.

<sup>3</sup> V-Dem Institute, *Democracy Report 2024*, p. 9.

<sup>4</sup> *Ibid.*, p. 11.

<sup>5</sup> World Justice Project, *Rule of Law Index*, p. 33.

<sup>6</sup> Anna Lührmann, Marcus Tannenberg and Staffan I. Lindberg, “Regimes of the world (RoW): opening new avenues for the comparative study of political regimes”, *Politics and Governance*, vol. 6, No. 1 (2018), p. 62.

<sup>7</sup> *Ibid.*, p. 63.

<sup>8</sup> United Nations, “[New vision of the Secretary-General for the rule of law](#)” (2023); and Organization of American States, Inter-American Democratic Charter, art. 2.

<sup>9</sup> S/2004/616: “The ‘rule of law’ is a concept at the very heart of the Organization’s mission. It refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency”.

<sup>10</sup> Nicola Lacey, “Populism and the rule of law”, *Annual Review of Law and Social Science*, vol. 15 (2019); and Julio Ríos Figueroa, “El poder judicial ante el populismo y la erosión democrática. El caso de México, 2018–2021”, *Revista de Estudios Políticos*, No. 198 (2022), pp. 191 and 198.

the law and remain answerable to the people once they are elected. Such constraints are also necessary for the fundamental rights and diverse interests of everyone living in a State, including marginalized people and communities who may otherwise be overlooked, excluded or persecuted by the majority. Those constraints also protect civil society organizations and minority political parties that are critical of the government. By upholding the rights of all, independent judiciaries, along with other institutions of democracy, ensure that a plurality of perspectives are given voice in society, that governments are accountable and responsive to everyone and that the dignity of individuals is preserved against the might of the State.<sup>11</sup>

5. The report focuses on trends that pose a risk to the ability of the judicial system to uphold the rule of law, which constitutes the foundation of democratic governance. The Special Rapporteur deploys the concept of “autocratization” to describe a move away from the meaningful exercise of participatory governance and democratic values, focusing on how such changes can occur through the decline of independent judicial systems.<sup>12</sup>

6. The report provides a brief account of the challenges to democratic governance worldwide and outlines the international legal standards enshrining the human right to participate in political life and the importance of the rule of law and judicial independence in protecting that right. The report also examines the vital role played by the legal professionals who comprise the justice system, including judges, prosecutor, lawyers and community justice workers, in safeguarding democracy and explores the myriad threats and obstacles that they face in carrying out their work. The Special Rapporteur makes recommendations to States and justice system actors concerning the steps they can take to resist autocratic trends and to advance participatory governance. The report draws on more than 89 submissions from academia and civil society,<sup>13</sup> as well as data from five online consultations with interlocutors from 43 countries.<sup>14</sup>

## II. Contemporary challenges to democracy

7. Overt challenges to participatory governance have often taken the form of revolutions or coups d'état.<sup>15</sup> In recent decades, subtler challenges to democracy have become increasingly common.<sup>16</sup> In some States, leaders who have been legitimately elected (at least in the first instance) wield their power to debilitate or eliminate democratic institutions and rights. Such leaders may, for example, seek to undermine the institutions responsible for ensuring free and fair elections or to restrict individual freedoms of expression, association or information.

<sup>11</sup> Inter-American Court of Human Rights, *Case of López Lone et al. v. Honduras*, Judgment, 5 October 2015, para. 201 (“judicial independence, including within the Judiciary, is closely related not only to the consolidation of the democratic system, but also seeks to preserve the human rights and freedoms of every citizen”).

<sup>12</sup> The concepts of autocratization and democratic backsliding are widely used by scholars and policy analysts around the world. Alejandro Monsiváis-Carrillo, “Autocratización”, *Prontuario de la Democracia*, 26 March 2021, available at <https://prontuario-democracia.sociales.unam.mx/autocratizacion/>; Héloïse Lhéréte, “Un monde moins démocratique?”, in *La Démocratie: Entre Défis et Menaces*, Jean-Vincent Holeindre, éd. (Éditions Sciences Humaines, 2020), pp. 107–116; V-Dem Institute, *Democracy Report 2024*; and Julian Huertas, “Protecting individual rights to counteract democratic backsliding: human rights law as a partial response to autocratic populism”, *Proceedings of the 116th Annual Meeting of the American Society of International Law* (2022), p. 137. World Justice Project reports that “[a]uthoritarian trends spurred the global rule of law recession starting in 2016” (*Rule of Law Index*, p. 33).

<sup>13</sup> Submissions are available on the website at <https://www.ohchr.org/en/calls-for-input/2024/call-input-special-rapporteur-independence-judges-and-lawyers-next-thematic>.

<sup>14</sup> The Special Rapporteur undertook online consultations with judges, lawyers, community justice workers and representatives of civil society in the following regions: Africa, Asia, Latin America and the Caribbean and Europe. She also undertook a consultation with members of the global Grassroots Justice Network.

<sup>15</sup> Nancy Bermeo, “On democratic backsliding”, *Journal of Democracy*, vol. 27, No. 1 (2016).

<sup>16</sup> *Ibid.*

8. The report outlines a subset of efforts that target justice systems and institutions that hinder justice sector personnel from playing their indispensable role in protecting the rule of law and democratic processes or that even co-opt the judicial apparatus for deployment against political opponents. While such efforts may lack the dramatic tumult of a coup d'état, they nevertheless present a threat to the equal and inalienable human rights that serve as the foundation for freedom, justice and peace in the world. The Special Rapporteur notes that such dynamics can take place in countries where leaders have come to power through means other than elections. In those circumstances, the hallmark remains the same: a slide away from independent judiciaries and towards politically influenced institutions that are at risk of being unable to play their key role in ensuring the rule of law.

### III. Legal standards

9. Participation in political life is an essential human right, as well as a vital tool for protecting and advancing other fundamental human rights. Article 21 (1) of the Universal Declaration of Human Rights provides that “[e]veryone has the right to take part in the government of [their] country, directly or through freely chosen representatives”. Article 25 (b) of the International Covenant on Civil and Political Rights affirms that every citizen shall have the right and the opportunity to “vote and to be elected at genuine periodic elections [that reflect] the free expression of the will of the electors” and also requires, in articles 19 and 22, that States parties ensure the civil and political rights necessary for meaningful elections, including freedom of opinion, expression, information and association. Other international human rights treaties affirm the right of every person to participate equally in public life, free from discrimination on the basis of race, colour, national or ethnic origin,<sup>17</sup> gender,<sup>18</sup> disability<sup>19</sup> and other axes of discrimination. The Special Rapporteur observes that judges, lawyers and courts play an essential role in protecting these and other rights and freedoms.

10. International law also affirms the principle of the rule of law, requiring governments to act solely in accordance with the power vested in them by the people. The Universal Declaration of Human Rights, in its preamble, deems it “essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law”. Further, the International Covenant on Civil and Political Rights, in article 26, requires respect for that principle, stating that “[a]ll persons are equal before the law and are entitled without any discrimination to the equal protection of the law”.

11. The rule of law requires judicial independence, which plays an important role in securing participatory rights.<sup>20</sup> If judges are not independent, they may struggle to apply the law equally to powerful political actors or to uphold fundamental democratic rights in the face of governmental pressure. International human rights law requires States to guarantee judicial independence. Article 14 (1) of the International Covenant on Civil and Political Rights provides that all people have the right to be heard by an independent and impartial tribunal, established by law, in the determination of any criminal charge against them, or of their rights and obligations in a suit at law. The Human Rights Committee has clarified that a “tribunal” designates a body that is established by law, is independent of the executive and legislative branches of government or which enjoys in specific cases judicial independence in proceedings that are judicial in nature.<sup>21</sup> To be independent, a tribunal must be insulated from political interference by the government. Justice systems that are structurally and functionally dependent on political bodies are at greater risk of political capture. The Human Rights Committee has stated that a “situation where the functions and competencies of the

<sup>17</sup> International Convention on the Elimination of All Forms of Racial Discrimination, art. 5 (c).

<sup>18</sup> Convention on the Elimination of All Forms of Discrimination against Women, art. 7.

<sup>19</sup> Convention on the Rights of Persons with Disabilities, art. 29.

<sup>20</sup> Human Rights Committee, general comment No. 25 (1996), para. 20.

<sup>21</sup> *Ibid.*, general comment No. 32 (2007), para. 18.

judiciary and the executive are not clearly distinguishable or where the latter is able to control or direct the former is incompatible with the notion of an independent tribunal”.<sup>22</sup>

12. The fundamental interdependence of participatory governance, the rule of law and judicial independence has been recognized on multiple occasions by the United Nations. The General Assembly, in its resolution 62/7, reaffirmed that “... human rights, the rule of law and democracy are interlinked and mutually reinforcing”; they “belong to the universal and indivisible core values and principles of the United Nations”. Similarly, the mandate, in previous reports, has highlighted that “respecting the rule of law and fostering the separation of powers and the independence of justice are prerequisites for the protection of human rights and democracy”.<sup>23</sup> Those linkages have also been affirmed in the Sustainable Development Goals, as set out in the 2030 Agenda for Sustainable Development, which include targets on promoting the rule of law at the national and international levels, ensuring equal access to justice for all,<sup>24</sup> and ensuring responsive, inclusive, participatory and representative decision-making at all levels.<sup>25</sup> Furthermore, the role of independent judges in upholding human rights, the rule of law and the separation of powers has been recognized by regional human rights courts.<sup>26</sup>

#### **IV. The role played by judges, prosecutors, lawyers and community justice workers in safeguarding democracy**

13. Justice systems play an essential role in safeguarding democracy, from ensuring that free and fair elections and the peaceful transfer of power take place; to enforcing key civil and political rights; to ensuring that the law is applied equally to all people, including State officials; to checking excessive power of political actors. The work of justice systems is carried out by people. In the present section, the Special Rapporteur examines the specific roles played by various justice personnel – judges, prosecutors, lawyers and community justice workers – in ensuring that governments work for the people, represent their views, and respect their rights.

14. Justice personnel play a critical role in ensuring free and fair elections. Specific roles vary across legal and electoral systems: community justice workers may educate voters on electoral processes and their voting rights;<sup>27</sup> community justice workers as well as lawyers may observe and monitor polling places; and lawyers often represent citizens who contest violations.<sup>28</sup> Prosecutors may bring criminal charges for electoral misconduct that rises to the level of crime, such as fraud or voter harassment. Judges adjudicate disputes regarding the fairness and lawfulness of electoral proceedings, from voting district boundaries and candidate eligibility to campaign finance rules and electoral procedures and accessibility.<sup>29</sup> In some systems, such disputes are heard in specialized electoral tribunals that resolve disputes concerning electoral outcomes, while in others, they are heard in ordinary courts.<sup>30</sup>

15. Aside from their work in connection with elections, justice personnel act to ensure that elected officials in the executive and legislative branches do not exceed the authority granted to them by the people. Courts regularly adjudicate claims by individuals that State authorities have improperly or unlawfully applied the law.<sup>31</sup> In many countries, courts

<sup>22</sup> Ibid., para. 19.

<sup>23</sup> A/HRC/35/31, para. 16.

<sup>24</sup> General Assembly resolution 70/1, Sustainable Development Goal target 16.3.

<sup>25</sup> Ibid., target 16.7.

<sup>26</sup> Inter-American Court of Human Rights, *Constitutional Tribunal (Camba Campos et al.) v. Ecuador*, Judgment, 28 August 2013, para. 221 (asserting that dismissing all members of the Constitutional Tribunal destabilized democracy in Ecuador by compromising the separation of powers, crucial for safeguarding human rights and freedoms); and submission of European University Institute.

<sup>27</sup> Submission of Kariobangi Paralegal Network.

<sup>28</sup> See <https://aceproject.org/ace-en/topics/lf/lfb12/lfb12a/lfb12a03/default>.

<sup>29</sup> Human Rights Committee, general comment No. 25 (1996), para. 20; and submission of International Bar Association’s Human Rights Institute.

<sup>30</sup> See <https://aceproject.org/ace-en/topics/lf/lfb12/lfb12a/lfb12a03/default>.

<sup>31</sup> Submission of International Bar Association’s Human Rights Institute.

possess the power of judicial review, including the power to evaluate the constitutionality of laws and executive acts and to strike them down if they exceed such bounds. Judicial review may also assess compliance with international human rights law<sup>32</sup> and may be especially important when evaluating executive claims that existential threats, such as terrorism or national security risks, justify suspension of constitutional rules or individual rights. Justice systems can thus serve as a bulwark against the undemocratic usurpation of power by the executive branch in times of real or perceived emergency.

16. Prosecutors check power outside of elections by holding State actors accountable when evidence demonstrates that they have committed crimes, including corruption, bribery or gross human rights violations. Lawyers may seek redress for clients for individual violations of human rights. Community justice workers work with communities to identify avenues and resources to seek justice for such violations.

17. The Special Rapporteur observes that fulfilment of each of the protective functions described above requires access to independent courts, which enable claimants to challenge the constitutionality of legislation or the legality of executive acts.

18. However, independent courts alone are insufficient. Individuals seeking redress must also have access to support from lawyers who are able to exercise their profession without restriction, fear or harassment. Lawyers must be free to represent clients without regard to status or affiliation, including members of racially, ethnically, nationally, religiously or otherwise marginalized groups. Community justice workers must have the freedom to accompany communities in their quest for human rights.

19. Judges, prosecutors, lawyers and community justice workers play key roles in upholding the rule of law and protecting fundamental human rights throughout election cycles and beyond. In doing so, they are an indispensable part of a system in which the separation of powers and meaningful democratic governance are secured. However, as a result of their essential work in upholding democratic values, justice personnel face threats to the free and independent exercise of their professional activities (see details in sect. V below).

## **V. Obstacles, risks and challenges faced by judges, prosecutors, lawyers and community justice workers when defending the rule of law and fundamental human rights**

20. States have the right, and the duty, when systems are not performing well, to make changes to justice systems in order to ensure their efficacy and improve access to justice. However, these changes must not have the effect of infringing upon the rule of law or the protection of fundamental human rights.<sup>33</sup> When States act to weaken the independence of the judiciary, the autonomy of the prosecution or the free exercise of the legal profession, this may undermine the capacity of justice systems to play their part in securing meaningful democratic governance, as described above.

21. Government authorities who seek to undermine judicial constraints on their power employ a range of strategies. These include conduct that targets individual justice personnel because of their work defending democratic values, systemic legal changes that improperly undermine the independence or capacity of judicial systems and institutions to uphold the rule of law and co-opting the powers of justice systems and institutions to intimidate, harass and punish justice personnel who might otherwise check their power.

22. The Special Rapporteur presents examples of conduct that risks eroding the separation of powers or weakening the ability of courts to play their role in upholding the rule of law and fundamental rights. She observes, however, that the impact of such conduct on the overall trajectory of specific States, towards or away from the meaningful exercise of participatory

<sup>32</sup> Ibid.

<sup>33</sup> John Ferejohn and Larry D. Kramer, "Judicial independence in a democracy: institutionalizing judicial restraint", *Norms and the Law*, John N. Drobak, ed. (New York, Cambridge University Press, 2006), pp. 161–207.

governance, must be assessed within the context of national systems as a whole. That exercise is outside the scope of the present report.

## A. Modifying to capture or curb justice institutions

### 1. Capturing or curbing courts

23. One systemic threat to participatory governance is the improper increase of executive or legislative control over courts and judges. By eroding the separation of powers, the independence and legitimacy of courts can be undermined, along with their capacity to act as a check on political power. The Special Rapporteur refers to this phenomenon as the “capture” of courts. Court capture poses an especially serious risk to democratic values when it occurs in apex and constitutional courts, which often play the most important role in checking State power, reviewing the legality and constitutionality of government acts and adjudicating electoral disputes. However, court capture can impact courts and rights-holders throughout the justice system.

24. Two types of reform herald the possibility of capture; although such reforms do not dispositively indicate capture, they should be scrutinized to ensure that their aims and expected impacts are not undemocratic. The first is when the rules governing judicial appointments are altered to increase the influence of the executive and/or legislative branches. In States where judicial councils<sup>34</sup> are responsible for appointing judges, risks of capture can arise when political branches acquire more control over how members of such councils are appointed or removed,<sup>35</sup> when the composition of the councils is changed to include representatives or affiliates of the political branches<sup>36</sup> or when the councils are dissolved or replaced, as occurred in Tunisia in 2022.<sup>37</sup> In all States, there is a risk of capture when laws or practice increase the direct role of the executive or legislative branch in judicial appointments. Capture may take place overtly, as in Myanmar, where the State Administration Council dismissed several Supreme Court justices and replaced them with individuals affiliated with the military.<sup>38</sup> Finally, there is a risk of court capture when laws establish that political branches should be involved in selecting judges to hear certain politically sensitive cases. The Human Rights Committee, the Special Rapporteur and others have expressed concern to China about the duty of the Chief Executive of Hong Kong, China, to designate a list of judges to hear national security cases.<sup>39</sup> Whatever the reform, the risks of court capture are increased by any change in law or policy that alters the rules of judicial selection in order to increase the possibility of appointment on the basis of judges’ (perceived) political affiliation and decrease the role of objective, merit-based criteria and processes.<sup>40</sup>

25. The second type of reform that increases the risk of court capture through changing the composition of the judiciary is the politicized creation of new judicial vacancies that allow the political branches to appoint judges seen as more loyal to their aims, either by expanding the size or number of courts or by removing existing judges.<sup>41</sup> Examples include attempts to remove or impeach sitting judges, laws that make it easier for the political branch to remove judges,<sup>42</sup> the refusal of new administrations to recognize judges appointed by previous

<sup>34</sup> See [A/HRC/38/38](#).

<sup>35</sup> Submission of Nulai.

<sup>36</sup> Submission of European University Institute.

<sup>37</sup> Human Rights Watch, *World Report 2023: Events of 2022* (2023); and communication TUN 5/2022.

All communications mentioned in the present report are available at <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.

<sup>38</sup> See communication OTH 74/2023; and Human Rights Watch, “‘Our numbers are dwindling’: Myanmar’s post-coup crackdown on lawyers” (2023).

<sup>39</sup> [CCPR/C/CHN-HKG/CO/4](#); communication CHN 2/2023; and submission of The 29 Principles.

<sup>40</sup> Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August–6 September 1985: report prepared by the Secretariat (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. D.2, annex. principle 10; and [A/HRC/38/38](#), para. 49.

<sup>41</sup> Submission of the Human Rights Institute of the International Bar Association; and submission of Stichting Justice Square.

<sup>42</sup> Submission of Due Process of Law Foundation.

administrations<sup>43</sup> and the implementation of new laws that apply a novel or lowered compulsory retirement age for sitting judges.<sup>44</sup> In Hungary, legislation that lowered the mandatory retirement age of judges from 70 to 62 years of age led to the early retirement of more than 200 judges.<sup>45</sup> The executive branch may also purport to impose a judicial term limit or to alter the length of service of sitting judges.<sup>46</sup> Further, judicial councils may be impacted by the creation of vacancies. In 2024, the Congress of Peru removed multiple members of the National Board of Justice by imposing an imprecise set of legal provisions that put the independence of the Board at risk.<sup>47</sup>

26. Expanding the number or size of courts may create vacancies and may also occasion changes in the appointment process that increase the influence of the executive or legislative branches. A particularly concerning practice is the creation of new courts or chambers (often with more politically inflected appointment methods) or the adoption of specific procedures for designating judges when they are given jurisdiction over sensitive issues such as counterterrorism or national security. In submissions for the present report it was revealed that judges in such separate security courts are often hastily appointed by the executive branch and may hand down high conviction rates, sometimes even reaching 100 per cent.<sup>48</sup> New courts may also be granted significant powers in relation to democratic processes or institutions or control over other actors in the justice system. In Poland, a new Extraordinary Review and Public Affairs Chamber of the Supreme Court was created, with exclusive jurisdiction over electoral disputes, election results and complaints and questions of law concerning the lack of independence of a court or judge.<sup>49</sup> The new chamber was also given the power to review any final judgment issued by Polish courts in the preceding 20 years.<sup>50</sup>

27. Capture can occur even in circumstances where no judicial vacancies are created. For example, if an administration expects that vacancies are likely to be filled by more independent judges, the size of courts may be reduced in order to eliminate the vacant posts and thus concentrate the influence of judges seen to be loyal to the political branch. Similarly, capture may arise where there are no new judicial appointments when the State assumes greater control over methods of appointing certain key figures within the judiciary, such as the chief justice or court presidents.

28. Steps that reduce the judiciary's overall power also risk negating the capacity of justice systems to uphold the rule of law. Reforms that curb court strength may include removing or restricting courts' jurisdiction to review legislation or executive acts; limiting judicial oversight or scrutiny in certain categories of politically sensitive cases, such as those involving terrorism offences or immigration and asylum claims;<sup>51</sup> authorizing executive or legislative branches to override court decisions; mandating less stringent standards of review; or passing legislation shielding ordinary law from constitutional review.<sup>52</sup> Efforts to reduce

<sup>43</sup> A/HRC/38/38/Add.1, para. 23; and communication POL 1/2017.

<sup>44</sup> Submissions of International Bar Association's Human Rights Institute and European University Institute.

<sup>45</sup> European Court of Justice, *European Commission v. Hungary*, case C-286/12, Judgment, 6 November 2012; European Court of Human Rights, *Baka v. Hungary*, Application No. 20261/12, Judgment, 23 June 2016; and communication HUN 1/2012.

<sup>46</sup> See communication KIR 1/2023; and Commonwealth Lawyers Association, "Statement on the attempted deportation and arbitrary detention of High Court Judge David Lambourne, the continued suspension of the Chief Justice of Kiribati and the continuing disregard for judicial independence in Kiribati", 11 August 2022.

<sup>47</sup> See communication PER 6/2023; and Human Rights Watch, "Perú: el Congreso avasalla el Estado de derecho", 11 March 2024 (English version available at <https://www.hrw.org/news/2024/03/11/peru-congress-runs-roughshod-over-rule-law>).

<sup>48</sup> Submission of Committee for Justice and Egyptian Front for Human Rights; submission of The 29 Principles; and submission of Syrians for Truth and Justice.

<sup>49</sup> European Court of Justice, *European Commission v. Poland*, Case No. C-204/21, Judgment, 5 June 2023.

<sup>50</sup> A/HRC/38/38/Add.1, paras. 59–62.

<sup>51</sup> Submission of Law Society of England and Wales.

<sup>52</sup> See communication HUN 3/2013; Human Rights Watch, "Wrong direction on rights: assessing the impact of Hungary's new constitution and laws" (2013); and European Commission for Democracy



the power of judicial systems may include significantly reducing resources, increasing their workload<sup>53</sup> or preventing or delaying the publication of court decisions in order to limit the impact of the work of the judiciary.<sup>54</sup> Finally, measures to curb and capture courts may proceed in tandem, for example through a State policy of refusing to apply court rulings until steps are taken to change the composition of the court.

29. Legal changes that alter how judges are appointed or removed or that affect the administration or operation of the courts are not necessarily indicative of capture. Such changes can be pursued for legitimate reasons and with safeguards for judicial independence. But if such changes increase the influence of political viewpoints or affiliations in the daily work of courts and judges, they should be interpreted as increasing the risk of autocratization through the capture or curbing of courts.

## 2. Capturing or curbing bar associations

30. Courts are not the only legal institutions vital to safeguarding democracy. International norms recognize the right of lawyers to form and join self-governing professional associations.<sup>55</sup> Bar associations – professional bodies responsible for regulating the conduct and often licensing of lawyers – function to ensure the independence and quality of the legal profession’s independence and quality.<sup>56</sup> This, in turn, enables lawyers to play their role in protecting the rights of their clients, including by making claims against the State, without interference or intimidation.

31. Bar associations may be targeted by governments that feel threatened by the independence of the legal profession. Potential capture efforts include attempts to exert control over or to appoint the leadership of bar associations,<sup>57</sup> to authorize other bodies to investigate bar associations<sup>58</sup> or to arbitrarily review the qualifications of members.<sup>59</sup> For example, in submissions and consultations for the present report instances were identified of independent lawyers’ associations being placed under the control of State-led national bar associations, which may censor and prohibit publications or use their authority to administer unannounced examinations of lawyers on various subjects, irrespective of their areas of expertise. Lawyers who fail to pass such ad hoc examinations may be disbarred.<sup>60</sup> In the Russian Federation, proposed amendments to the law establishing bar associations would transfer authority to request disciplinary sanctions against lawyers and control qualification examinations to the Ministry of Justice; such measures could be used to target lawyers involved in sensitive or politically charged cases.<sup>61</sup>

32. Efforts to curb bar associations include attempts to restrict their ability to defend their members or to criticize the government<sup>62</sup> or measures authorizing and even encouraging the creation of competing bar associations, thus fragmenting the collective power of lawyers and undermining their control over the quality of their membership.<sup>63</sup>

33. All the steps described above create the risk that lawyers will be registered, disciplined or disbarred for reasons other than their professional qualifications and adherence to ethical and professional standards. Those reasons could include their political affiliation, their work to defend fundamental democratic rights or their representation of clients in politically sensitive cases. If the rights of lawyers are not protected by strong and independent bar

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through Law (Venice Commission), Opinion on the Fourth Amendment to the Fundamental Law of Hungary, document CDL-AD(2013)012, para. 87.

<sup>53</sup> See communication SLV 2/2023; and submission of Cristosal.

<sup>54</sup> [A/HRC/38/38/Add.1](#), para. 32.

<sup>55</sup> Basic Principles on the Role of Lawyers, principle 24.

<sup>56</sup> [A/73/365](#).

<sup>57</sup> Submission of Defenders Belarus.

<sup>58</sup> [A/HRC/44/47/Add.1](#), paras. 82 and 83; and submission of Maat for Peace.

<sup>59</sup> Submission of Maat for Peace, Development and Human Rights Association.

<sup>60</sup> Submission of Initiative 2018, Defenders Belarus.

<sup>61</sup> See communication RUS 1/2024.

<sup>62</sup> Submission of Maat for Peace, Development and Human Rights Association.

<sup>63</sup> [A/HRC/35/31/Add.1](#), para. 64; and submission of International Association for Human Rights Advocacy in Geneva.

associations, the number and quality of lawyers available to carry out this essential work may be diminished.

## **B. Abusing justice systems for influence or control**

34. Existing legal institutions, procedures and laws are sometimes misused to exert undue political influence over justice actors. Such misuse may take the form of criminal prosecution, administrative disciplinary processes or the use of administrative or management decisions to punish and reward judges and prosecutors. When those methods are used to intimidate, influence or punish judges, prosecutors or lawyers solely or primarily for political reasons, such as their work to uphold the rule of law and hold government officials to account or their perceived association with opposition figures or pro-democracy ideals, they constitute a significant threat to the rule of law and democracy.

35. The actions described in the present section can be distinguished from the disparagement, attacks and interference described below (see sect. C). In the latter section, the Special Rapporteur outlines circumstances that, on their face, appear to be improper incursions on judicial independence and the free exercise of the legal profession. In this section, the Rapporteur explores situations that could be characterized as appropriate uses of criminal, judicial or disciplinary systems but which may, in fact, constitute an abuse of those systems as part of disguised attempts to interfere with the legitimate exercise of the professional activities of judges, prosecutors and lawyers.<sup>64</sup>

### **1. Politically motivated prosecution of judges, prosecutors, lawyers and community justice workers**

36. Judges and prosecutors who are perceived as threatening to State authorities may become the targets of criminal prosecution by justice actors who have come under the control of the State. Criminal prosecution may target judges and prosecutors who have handled cases concerning public corruption or government violations of human rights, thus discouraging them from holding the State accountable under the law. This has been described as “a strategy to secure impunity”.<sup>65</sup> Judges and prosecutors who have been involved in such cases may see their immunity protections rescinded, allowing charges to be brought pertaining to their professional work. Justice actors may also face criminal charges that seem to be unrelated to their professional work, but which are motivated by political ends<sup>66</sup> and may end in their conviction and punishment.<sup>67</sup> Such actions hijack the prosecutorial function, transforming it into a tool of repression. Captured courts sometimes use repressive prosecution on a broad scale. In Türkiye, thousands of judges and prosecutors were arrested and dismissed in the years after the attempted coup in 2016 as part of what the Office of the United Nations High Commissioner for Human Rights (OHCHR) called “collective” and “arbitrary” acts.<sup>68</sup>

37. Lawyers and community justice workers may also face repressive prosecution for their work. In some cases, lawyers who are viewed as being aligned to the political opposition or who represent opposition political figures or human rights defenders may be vulnerable to politically motivated criminal prosecution. In consultations held for the report it was indicated that lawyers seeking accountability for crimes allegedly committed by political leaders have been criminalized. In other cases, lawyers may be targeted, including through administrative and civil proceedings, for representing marginalized groups in politicized environments. A grassroots organization reported that community justice workers in various countries have been subjected to defamation charges and strategic lawsuits against public

<sup>64</sup> See [A/75/172](#).

<sup>65</sup> Cyrus R. Vance Center for International Justice, “Criminalization of justice operators in Guatemala as a strategy to secure impunity”, December 2022.

<sup>66</sup> Submission of Be Just.

<sup>67</sup> Submission of Stichting Justice Square.

<sup>68</sup> OHCHR, “Report on the impact of the state of emergency on human rights in Turkey, including an update on the south-east”, March 2018, paras. 48–55; and submission of Stichting Justice Square. See also communication TUR 5/2017.

participation,<sup>69</sup> a practice condemned by the Inter-American Court of Human Rights as an “abusive use of judicial mechanisms” that undermines democratic oversight by society.<sup>70</sup>

38. The Special Rapporteur, as well as previous holders of the mandate and other mandate holders have expressed concern to the Government of China about its use of a practice known as “residential surveillance at a designated location” to target human rights lawyers for their professional activities. Unfortunately, the practice has been codified and accepted by national courts in China as a permissible form of detention. The conditions of detention are equivalent to incommunicado detention and place those detained at a heightened risk of torture and other inhuman and degrading treatment or punishment.<sup>71</sup>

39. The politicized deployment of criminal law and legal institutions against judges, prosecutors, lawyers and community justice workers can have a system-wide impact on the rule of law. Criminalization demonstrates that judges, who are assigned the role of upholding a fair legal system, are personally vulnerable to punishment for carrying out their professional responsibilities. It can have a chilling effect on prosecutors, making them reluctant to bring cases against powerful political figures. And it may induce or enhance a climate of fear among lawyers who defend individuals against the State and may even discourage them from invoking their right to counsel.<sup>72</sup> Finally, targeting community justice workers is detrimental to their lives and livelihoods and “creates a deterrent effect” for other justice workers.<sup>73</sup>

## 2. Instrumentalizing discipline, removal and disbarment

40. Judges, prosecutors and lawyers are all bound by professional standards, which are enforced by disciplinary bodies. Judges are required to act independently and competently and to “exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the judiciary”.<sup>74</sup> Prosecutors, as “essential agents of the administration of justice”, must “maintain the honour and dignity of their profession.”<sup>75</sup> And lawyers should “act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession”.<sup>76</sup>

41. Appropriate processes for disciplining judges, prosecutors and lawyers are informed by clear international norms, which provide that disciplinary charges shall be processed expeditiously and fairly under consistent procedures and that those facing disciplinary charges have the right to a fair hearing.<sup>77</sup> Disciplinary decisions should be subject to independent review.<sup>78</sup> Where such decisions concern lawyers, international norms stipulate that this should be an independent judicial review.<sup>79</sup> Disciplinary proceedings should be determined in accordance with applicable laws, international norms and established standards of professional conduct.<sup>80</sup>

42. Disciplinary bodies are important both for ensuring that professional standards are upheld and for protecting the independence of the judiciary and the free exercise of the legal

<sup>69</sup> Submission of Namati.

<sup>70</sup> Inter-American Court of Human Rights, *Baraona Bray v. Chile*, Judgment, 24 November 2022, paras. 90 and 91.

<sup>71</sup> See communications CHN 3/2017, CHN 15/2018, CHN 6/2020, CHN 16/2020, CHN 20/2020, CHN 8/2022, CHN 10/2022 and CHN 5/2023; International Service for Human Rights, “Several questions about ‘residential surveillance at a designated location’”, 23 February 2022; and submission of The 29 Principles.

<sup>72</sup> Submission of Aministia I llibertat.

<sup>73</sup> Submission of Namati.

<sup>74</sup> Bangalore Principles of Judicial Conduct, principle 1.6.

<sup>75</sup> Guidelines on the Role of Prosecutors, guideline 3.

<sup>76</sup> Basic Principles on the Role of Lawyers, principle 14.

<sup>77</sup> Basic Principles on the Independence of the Judiciary, principle 17; Guidelines on the Role of Prosecutors, guideline 21; and Basic Principles on the Role of Lawyers, principle 27.

<sup>78</sup> Basic Principles on the Independence of the Judiciary, principle 20 (with the caveat that this principle may not apply to the decisions of the highest court and those of the legislature in impeachment or similar proceedings); and Guidelines on the Role of Prosecutors, guideline 21.

<sup>79</sup> Basic Principles on the Role of Lawyers, principle 28.

<sup>80</sup> Basic Principles on the Independence of the Judiciary, principles 18 and 19; Guidelines on the Role of Prosecutors, guideline 22; and Basic Principles on the Role of Lawyers, principle 29.

profession. The Basic Principles on the Role of Lawyers provide that “disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court”.<sup>81</sup> No matter the form, such authorities must be “free from any influence or pressure from the legislative or the executive branches of power or any other party”.<sup>82</sup>

43. Nevertheless, government officials may seek to instrumentalize existing disciplinary bodies to discourage or punish challenges to State authority or to malfeasance. Alternatively, captured courts or institutions may seek to create new disciplinary institutions or to expand the reach of existing ones to include politically inflected infractions. The mandate has expressed concern about regulations proposed in Israel to give the disciplinary body of the Israeli Bar Association broad ability to suspend lawyers for protected political speech without due process guarantees.<sup>83</sup>

44. Disciplinary sanctions, including suspension or removal, may be imposed on individual judges in ways that undermine human rights and democratic values, for example when judges are disciplined for work to uphold the human rights of groups experiencing social opprobrium. Judges may also be disciplined in apparent reprisal for their opinions in high-profile electoral cases or when speaking on issues related to the functioning of the judiciary. In a case in the United States of America, the Special Rapporteur received allegations that a judge was investigated for speaking out against racial injustice within the legal system.<sup>84</sup>

45. Cases in which judges have allegedly been removed from office for objecting to legislative amendments,<sup>85</sup> for imposing convictions in political corruption cases<sup>86</sup> or for challenging corruption in international courts were described in submissions for the report.<sup>87</sup> In some instances, such removal allegedly occurred without due process.<sup>88</sup>

46. Prosecutors may also be removed for improper political reasons, compromising their ability to act impartially, especially in cases involving prominent political figures.<sup>89</sup> Prosecutors have been subjected to discipline, removal and arbitrary detention that could amount to retaliation for anti-corruption work, forcing some into exile.<sup>90</sup>

47. Furthermore, lawyers are also vulnerable to politically motivated disciplinary proceedings and sanctions that can lead to the revocation of their licenses to practice. Such proceedings are powerful tools for governments intent on interfering with the work of lawyers, especially “those dealing with cases against the State or representing causes or clients that are unpopular with the existing regime”.<sup>91</sup> Lawyers have also had their licenses removed in reprisal for their work to defend government opponents.

48. In other cases, disciplinary proceedings against lawyers have been enabled or initiated – sometimes resulting in disbarment or suspension – following statements that amount to the legitimate exercise of freedom of expression. These include statements advancing women’s rights; supporting the right to self-determination; advocating for democracy; or calling for reform of a monarchy. In Equatorial Guinea, a lawyer was suspended from practicing law after sharing a video expressing her views on the country’s judicial system, highlighting its

<sup>81</sup> Basic Principles on the Role of Lawyers, principle 28.

<sup>82</sup> [A/73/365](#), para. 67.

<sup>83</sup> See communication ISR 3/2024; and Adalah – Legal Center for Arab Minority Rights in Israel, “Crackdown on freedom of speech of Palestinian citizens of Israel”, 23 October 2023.

<sup>84</sup> See communication USA 5/2024; and National Association for the Advancement of Colored People, “Civil rights organizations stand with North Carolina Supreme Court Justice Anita Earls”, 25 September 2023.

<sup>85</sup> Submission of Romanian Judges Association Forum.

<sup>86</sup> Submission of Be Just.

<sup>87</sup> Submission of European University Institute.

<sup>88</sup> Submission of International Association for Human Rights Advocacy in Geneva, Nulai, Cristosal and Due Process of Law Foundation.

<sup>89</sup> Submission of Anita Dywaba.

<sup>90</sup> Submissions of Be Just, Stichting Justice Square and Due Process of Law Foundation.

<sup>91</sup> [A/73/365](#), para. 71.

shortcomings and encouraging judges to be more independent.<sup>92</sup> Such punishments undermine democracy by reducing the variety of perspectives given voice in civic spaces.

49. In addition, lawyers may be punished simply for doing their jobs. As reported in a number of submissions, lawyers have been suspended or disbarred for arguing for the acquittal of their clients, for “insulting” judges through their work representing detained clients<sup>93</sup> or for calling for the release of political prisoners.<sup>94</sup> Some of these disciplinary actions have allegedly come at the request of ministries of justice.<sup>95</sup>

50. The politically motivated disciplinary actions described above risk corrosion of the ability of justice systems to fulfil their essential democratic role and weaken public trust in them. Judges may experience a chilling or “deterrent effect”, which is “likely to influence the content of their decisions”, reduce judicial independence and diminish the rule of law.<sup>96</sup> Similarly, prosecutors may hesitate before pursuing politically sensitive investigations or charges. Lawyers and community justice workers could become reluctant to work with individuals who are out of favour with the government or to pursue cases that challenge State authority and protect fundamental democratic rights.

### 3. Manipulating conditions of service

51. International norms require States to provide adequate resources to enable public justice officials to carry out their work. Principle 11 of the Basic Principles on the Independence of the Judiciary provides that adequate remuneration and conditions of service for judges shall be secured by law. A similar requirement for reasonable conditions of service of prosecutors to be set out by law or published rules or regulations is stated in guideline 6 of the Guidelines on the Role of Prosecutors. Those provisions are aimed at ensuring that the political branches of government cannot improperly influence judges or prosecutors by degrading the environment and conditions required for their work.

52. Despite these clear international norms, judicial resources and security arrangements have been changed in circumstances that suggest attempts to influence the behaviour of judges or prosecutors. In some States, security protections have been withdrawn from individual judges hearing high-profile or politically sensitive cases. Submissions also describe cases in which governments have sought to reduce the overall resources available to the judiciary, including for benefits and security, amidst rhetorical attacks on judges and the judiciary as a whole.<sup>97</sup>

53. Undue influence may also be effected through the transfer of prosecutors and judges to locations viewed as underresourced, dangerous or otherwise undesirable.<sup>98</sup> Submissions for the report described the widespread perception of such transfers as punishment, retribution or “warnings”.<sup>99</sup> In other instances, the allocation of cases may be manipulated in order to ensure that “politically sensitive cases” are assigned to judges seen as sympathetic to the government or that judges who hold an unfavourable disposition to government policies are excluded from hearing those cases.<sup>100</sup> Such acts undermine the rule of law and the principle that all people are entitled to equal protection, without discrimination, before the law.

<sup>92</sup> International Observatory for Lawyers in Danger, “Joint letter to the Equatorial Guinea Bar Association for the protection of lawyer Gemma Jones”, 13 February 2024, available at <https://protect-lawyers.org/en/item/gemma-jones/>; and communication GNQ 1/2024.

<sup>93</sup> Submission of SHOAA for Human Rights.

<sup>94</sup> Ibid.

<sup>95</sup> Submission of Initiative 2018.

<sup>96</sup> European Court of Justice, *European Commission v. Poland*, Case No. C-791/19, Judgment, 15 July 2021, para. 157; and Allyson Duncan and John Macy, “The collapse of judicial independence in Poland: a cautionary tale”, *Judicature*, vol. 104, No. 3 (Fall/Winter 2020–2021).

<sup>97</sup> Submission of Instituto Internacional de Responsabilidad Social y Derechos Humanos.

<sup>98</sup> See communication COL 7/2023.

<sup>99</sup> Submission of Due Process of Law Foundation.

<sup>100</sup> Submission of ICJ regarding India.

## C. Attacks and interference against justice actors

54. Judicial and legal personnel should be able to carry out their duties without fear for their physical safety or freedom or that of their families. International norms affirm that States must protect the safety and security of justice actors and their families.<sup>101</sup> Not only must States refrain from killing, disappearing, physically attacking, unlawfully detaining and otherwise harassing justice operators, they must also provide sufficient security protections for justice personnel who may face such attacks by non-State actors or parties to legal proceedings before them. States must also refrain from disparaging or harmfully labelling justice actors, which can encourage a permissive environment for physical attacks by non-State actors.

55. The Special Rapporteur outlines below circumstances in which attacks and interference against justice operators, or the failure to protect them from such acts, may constitute politically motivated reprisal for their work in upholding human rights and the rule of law. Such attacks may also be designed to discourage or dissuade justice actors from taking such actions in the future. In both cases, the capacity of the justice system to defend democracy is undermined.

### 1. Government disparagement and harmful labelling

56. Disparagement and labelling by government officials of judges, prosecutors and lawyers may interfere with their independence and sow the seeds of disdain among the public. The Special Rapporteur emphasizes that vigorous critiques of reasoning, disagreements with decisions or expressions of dismay concerning the outcomes of cases by members of the public are often appropriate, as disagreement is inherent to democratic governance. However, when Government officials launch ad hominem attacks, disparage personal characteristics or identities and describe justice workers using degrading or humiliating terms or refer to them as “enemies”, such comments cross the line, often constituting targeted interference.

57. Repeated and unsupported disparagement can suggest calculated attempts to intimidate or influence judges. In Poland, the 2017 “Fair Courts” campaign, led by a foundation created by the ruling party and a State-owned corporation, utilized billboards, advertisements on television and social media and a dedicated portal to depict judges as “the enemy” of Polish people and an evil in Polish society.<sup>102</sup> The Special Rapporteur has also shared her concern about high ranking officials of the Government of Israel publicly labelling a specific judge as a “domestic enemy” and an “enemy from within” following the judge’s decision to release defendants who oppose the Government.<sup>103</sup>

58. The former President of Mexico has singled out judges he disagrees with as “corrupt” and has labelled them using other disparaging terms at daily press conferences. In some cases, the accusations have reportedly been followed up by investigations or online harassment. In an unrelated case, the Inter-American Court of Human Rights has warned that similar statements by public officials attacking judges, especially those in high-ranking positions, may amount to interference with judicial independence, in particular when coupled with threats of legal proceedings or disciplinary proceedings.<sup>104</sup> In the United States, the attacks of former President Donald Trump on individual judges while he was in office have been widely reported.<sup>105</sup>

<sup>101</sup> Basic Principles on the Independence of the Judiciary, principle 11; Guidelines on the Role of Prosecutors, guideline 5; and Basic Principles on the Role of Lawyers, principle 17.

<sup>102</sup> A/HRC/38/38/Add.1, para. 19; and European Court of Justice, *European Commission v. Poland*.

<sup>103</sup> See communication ISR 3/2024.

<sup>104</sup> Cyrus R. Vance Center for International Justice and Fundación Barra Mexicana Joint Committee, “Seguimiento a los Ataques a la Independencia Judicial en México”, available at <https://www.vancecenter.org/our-programs/latin-america-policy-program/vcfbm/>; submission of Fundación Justicia que Queremos; and Inter-American Court of Human Rights, *Apitz Barbera et al. (First Court of Administrative Disputes) v. Venezuela*, Judgment, 5 August 2008, para. 131.

<sup>105</sup> Michael J. Nelson and James L. Gibson, “Has Trump trumped the courts?”, *New York University Law Review Online*, vol. 93 (2018); and Christopher D. Kromphardt and Michael F. Salamone,

59. In submissions and consultations for the report, cases were described in which lawyers have been labelled as “traitors” or “foreign agents” when they represented politically sensitive clients or took on human rights-related matters.<sup>106</sup> Bar associations have called attention to the labelling, by officials of the Government of the United Kingdom of Great Britain and Northern Ireland, of immigration and other human rights lawyers as “lefty” or “abetting criminal gangs”; some lawyers reported death threats after the widespread publication of such comments.<sup>107</sup> Submissions for the report included similar concerns arising in multiple countries.<sup>108</sup>

## 2. Harassment and threats

60. The mandate has repeatedly expressed concern about harassment and threats against judges, prosecutors, lawyers and community justice workers. In Ecuador, justice personnel, including judges, prosecutors and court officials, have been the victims of violent attacks and intimidation.<sup>109</sup> In Guatemala, repeated acts of intimidation, attacks and reprisals have taken place against judges and prosecutors, especially those overseeing corruption and human rights cases.<sup>110</sup> At times, reprisals have taken on a gender dimension, as in the leaking of private information related to female judges online.

61. The existence of physical, legal and digital threats and harassment targeting lawyers and community justice workers who are upholding democratic values and human rights are a matter of concern. In Bangladesh, a lawyer was reportedly threatened and harassed by the Government, apparently for defending the rights of ethnic, religious and LGBTIQ+ minorities and opposition politicians.<sup>111</sup> In the Russian Federation, lawyers defending anti-war protestors have experienced harassment and intimidation by law enforcement officials.<sup>112</sup> The mandate has received allegations concerning similar threats and the harassment of lawyers, either by government personnel or in circumstances where the government has allegedly provided inadequate security measures to protect against non-State actors, including in Lebanon,<sup>113</sup> Pakistan<sup>114</sup> and Venezuela (Bolivarian Republic of).<sup>115</sup> The mandate is also concerned about the ongoing “red-tagging” of lawyers and community justice workers in the Philippines working with clients who are members of marginalized

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“‘Unpresidential!’ or: what happens when the president attacks the federal judiciary on Twitter”, *Journal of Information Technology & Politics*, vol. 18, No. 1 (2021).

<sup>106</sup> Submission of SHOAA for Human Rights.

<sup>107</sup> Submission of the Law Society of England and Wales; and Anne McMillan, “The global assault on rule of law”, International Bar Association, 14 September 2022).

<sup>108</sup> Submission of Romanian Judges Association Forum.

<sup>109</sup> Inter-American Commission on Human Rights, “Ecuador: CIDH condena violencia política y alerta ataques a la democracia”, 11 August 2023.

<sup>110</sup> Inter-American Commission on Human Rights, “Chapter IV.B: Guatemala”, in *Annual Report 2022* (2022), para. 8; see Inter-American Commission on Human Rights, Precautionary Measure No. 574-23: Cesar Bernardo Arévalo de León and Karin Herrera Aguilar regarding Guatemala, resolution 48/2023; and communication GTM 3/2021.

<sup>111</sup> See communication BGD 1/2023; and Council of Bars and Law Societies of Europe, letter regarding continuous threats and harassment against lawyer Shahanur Islam and his family, 7 July 2023, available at [https://www.ccbe.eu/fileadmin/speciality\\_distribution/public/documents/HUMAN\\_RIGHTS\\_LETTER/Bangladesh\\_-\\_Bangladesh/2023/EN\\_HRL\\_20230707\\_Bangladesh\\_Continuous-threats-and-harassment-against-lawyer-Shahanur-Islam-and-his-family.pdf](https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/HUMAN_RIGHTS_LETTER/Bangladesh_-_Bangladesh/2023/EN_HRL_20230707_Bangladesh_Continuous-threats-and-harassment-against-lawyer-Shahanur-Islam-and-his-family.pdf).

<sup>112</sup> See communication RUS 6/2022; and International Commission of Jurists, “Access to lawyers for anti-war protestors in the Russian Federation”, briefing paper, June 2022.

<sup>113</sup> See communication LBN 8/2021; Geneva Bar Association, letter regarding grave concerns about the situation of lawyer Mohammad Ahmad Samir Sablough, 10 November 2021, available at [https://odage.ch/wp-content/uploads/2021/12/2021\\_11\\_10\\_mrr\\_mohammad\\_ahmad\\_samir\\_sablough.pdf](https://odage.ch/wp-content/uploads/2021/12/2021_11_10_mrr_mohammad_ahmad_samir_sablough.pdf).

<sup>114</sup> See communication PAK 4/2023; and International Bar Association’s Human Rights Institute, “IBAHRI concerned about the discrimination of Ahmadiyya lawyers in Pakistan”, 10 August 2023.

<sup>115</sup> See communication VEN 9/2021.

communities.<sup>116</sup> Recognizing the important role of human rights defenders in strengthening democracy, the Inter-American Court of Human Rights recently imposed a “special duty of protection” for defenders, including a reinforced obligation on States to prevent attacks or intimidation against them, to mitigate existing risks and to adopt and provide adequate and effective protection measures in risk situations.<sup>117</sup>

62. The increased pressure on lawyer-client confidentiality as a result of advanced surveillance technologies was highlighted in a number of submissions for the report. Participants at regional consultations reported instances of governmental use of surveillance software against lawyers and the tapping of communication networks.

### 3. **Arbitrary detention, torture, enforced disappearance, physical attacks and assassinations**

63. Judges and prosecutors have been arbitrarily detained and sometimes subjected to temporary disappearance when their actions displeased other branches of the State. Similarly, the prosecutions of lawyers discussed earlier in the report are sometimes initiated with acts of arbitrary detention or enforced disappearance. In other cases, lawyers may be held without charge or may face charges related to national security.

64. In submissions for the report, it was underscored that judges and prosecutors are sometimes subjected to torture or cruel, inhuman and degrading treatment or punishment in connection with their efforts to uphold democratic norms.<sup>118</sup> It has also been reported that lawyers have been assaulted, tortured and killed in circumstances which have been inadequately investigated. Such cases have occurred, on numerous occasions, in Türkiye.<sup>119</sup> In the Philippines, one human rights lawyer, Juan Macababba, was killed, while another, Angelo Karlo Guillen, survived an attempt on his life.<sup>120</sup> In Eswatini, lawyer and pro-democracy advocate Thulani Maseko was assassinated at his home in front of his family.<sup>121</sup>

65. The Special Rapporteur urges States to ensure that these terrible crimes are investigated. She stresses that justice personnel should receive protection, respect and support commensurate with the vital role they play in upholding the rule of law, defending fundamental human rights and supporting an environment that allows meaningful participatory government to flourish.

## VI. **Conclusions and recommendations**

66. **International law requires all organs of the State to actively respect, protect and ensure human rights and to uphold the principles of judicial independence, participatory governance and the rule of law. Those principles are most effective when**

<sup>116</sup> See communication PHL 2/2023. Regarding the use of red-tagging, see Special Rapporteur on freedom of opinion and expression, preliminary observations at the end of visit to the Philippines, February 2024, available at <https://www.ohchr.org/sites/default/files/documents/issues/expression/statements/20240202-eom-philippines-sr-freedex.pdf>; and A/HRC/44/22.

<sup>117</sup> Inter-American Court of Human Rights, *Miembros de la Corporacion colectivo de abogados “José Alvear Restrepo” v. Colombia*, Judgment, 18 October 2023, paras. 972–981.

<sup>118</sup> Submission of Stichting Justice Square, The 29 Principles, Committee for Justice and Egyptian Front for Human Rights.

<sup>119</sup> See communications TUR 5/2023 and TUR 8/2023; and Council of Bars and Law Societies of Europe, letter regarding violent assault against lawyer Aytekin Aktaş, 5 June 2023, available at [https://www.ccbe.eu/fileadmin/speciality\\_distribution/public/documents/HUMAN\\_RIGHTS\\_LETTER/Turkey\\_-\\_Turquie/2023/EN\\_HRL\\_20230605\\_Turkiye\\_-\\_Torture-threats-and-attacks-against-lawyer-Aytekin-Akta.pdf](https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/HUMAN_RIGHTS_LETTER/Turkey_-_Turquie/2023/EN_HRL_20230605_Turkiye_-_Torture-threats-and-attacks-against-lawyer-Aytekin-Akta.pdf).

<sup>120</sup> See communication PHL 2/2023; Human Rights Watch, *World Report 2022: Events of 2021* (2022); and Amnesty International, “Philippines: surge in killings of lawyers and judges shows justice system ‘in deadly danger’”, 26 March 2021.

<sup>121</sup> See communication SWZ 1/2023; OHCHR, “[Türk condemns killing of Eswatini human rights lawyer, urges accountability](#)”, 23 January 2023; and Human Rights Watch, “Eswatini: activist, rights lawyer brutally killed”, 25 January 2023.



they are enshrined in constitutional provisions, statutory law and administrative regulations, protected by independent courts, judges and other State actors, actively defended by civil society and seen as a core democratic value by the public at large.

67. In recent years, the role of independent justice systems in protecting participatory governance has come under attack from political actors, including through derogatory speech and negative rhetoric. Regrettably, in some countries, such arguments have gained traction, in particular the contention that judicial checks and balances undermine the capacity of governments to carry out the will of the people. In this framing, judges, prosecutors and lawyers are portrayed as part of a remote “elite” or, in the most extreme examples, even as “enemies” of the people. Where such characterizations take hold, communities may be more receptive to the assertion that political branches should have increased influence and control over justice actors.

68. To protect the separation of powers, the rule of law and participatory governance, more must be done to revitalize public trust in justice institutions and to defend justice actors and their indispensable role in safeguarding democracy. The most important step all States can take is to fully respect and ensure the independence of the judiciary, the autonomy of prosecutors, the unfettered exercise of the legal profession and the contributions of community justice workers. States should pay special attention to the roles played by these institutional and individual actors in safeguarding fundamental democratic processes such as elections and referendums, public assemblies and protests and civic discourse and debate.

69. Enhancing the extent to which courts reflect and engage with the communities they serve can also make justice systems more resilient to attack. Increasing diversity on the bench, in the prosecutorial service and among lawyers may assist to combat the populist framing of these professions. States and justice personnel can also democratize justice by ensuring that democratic principles are embodied in justice systems. Increasing the accessibility of courtrooms and procedures, improving the transparency of formal justice processes and explaining the outcome of judicial processes in clear, comprehensible language are important first steps. However, more innovative and unconventional approaches should also be pursued. When citizens feel seen by and connected to justice systems, the systems themselves are more readily recognized as being central to democracy and human rights, and thus worthy of protection.

70. To achieve those ends, the Special Rapporteur recommends that States:

(a) Duly investigate any act of violence or threats of violence or any form of intimidation, coercion or inappropriate interference against judges, prosecutors, lawyers or community justice workers and take steps to prevent their future recurrence;

(b) Ensure the personal safety of judges, prosecutors and their families and provide necessary counselling or psychological support, when appropriate.

71. With regard to the independence of the judiciary, the Special Rapporteur also recommends that States:

(a) Establish judicial councils or similar independent institutions if they do not already have one; judicial councils should operate transparently and be free of any undue influence or pressure from the legislative or the executive branches of government;

(b) Take decisions on the appointment and promotion of judges through a transparent process carried out by judicial councils or equivalent bodies independent of the legislative and executive branches of powers; the procedure for the selection and appointment of judges must be based on objective criteria previously established by law or by competent authorities;

(c) Entrust judicial councils or equivalent independent bodies, rather than the legislature or the executive branch, to the extent possible, with general responsibilities with regard to the administration of the court system (including judicial

assignments and transfers, case allocation and transfer and court scheduling), the preparation of judicial budgets and the allocation of budgetary resources;

(d) Vest responsibility for disciplinary proceedings against judges in an independent authority composed primarily of judges, such as a judicial council or a court, instead of the legislative or executive branches.

72. With regard to the proper functioning of the prosecution, the Special Rapporteur recommends that:

(a) The prosecutor and the prosecution service should be functionally autonomous from the legislative and executive branches, irrespective of the institutional structure; in this regard, States must ensure that prosecutors can perform their duties in an independent, objective and impartial manner so that criminal justice is not instrumentalized in service of Government aims;

(b) Prosecutors must be insulated from politically motivated punishment or reward for undertaking their professional duties; the security of tenure of prosecutors be ensured by law and guaranteed; the promotion of prosecutors be based on objective factors and decided through fair and impartial processes; the transfer of prosecutors to other posts not be used as a threat; and the dismissal of prosecutors be based on law or regulations and subject to independent review.

73. To protect the free exercise of the legal profession, the Special Rapporteur recommends that:

(a) States recognize the establishment of bar associations in law, including, at a minimum, provisions relating to the independence of such associations, their composition and the definition of their functions, and elaborate and augment such provisions through the meaningful participation of the legal profession;

(b) The authority to issue licences to practise law should rest with the bar associations and the procedure for admission to the legal profession should be based on objective criteria previously established by law or by the bar associations themselves;

(c) Bodies responsible for discipline should be free from any influence or pressure from the legislative or the executive branches of power or any other party;

(d) Disbarment of lawyers should be imposed only in the most serious cases of misconduct, as provided in the professional code of conduct, and only after due process before an independent and impartial body granting all guarantees to the accused lawyer.

74. To ensure that community justice workers can create awareness about the law, secure remedies for rights violations and build trust in institutions, which in turn strengthen democracy, the Special Rapporteur recommends that States:

(a) Remove legal or regulatory obstacles for community justice workers, recognize them as human rights defenders and make protection schemes and security resources available to them, where needed;

(b) Put an end to, or work to prevent, the use of strategic lawsuits against public participation, defamation charges or hate speech charges against community justice workers in reprisal for their work supporting rights-holders to know, use and shape the law;

(c) Support the legal empowerment work carried out by civil society organizations, while respecting their independence, by resourcing funding mechanisms that emphasize grassroots justice work.

75. The Special Rapporteur urges States and all actors in the justice system, including judges and judicial associations, prosecutors, lawyers, bar associations and community justice workers, to take a public stance in support of judicial independence, the separation of powers, the rule of law and participatory governance. Important lessons for all such actors have been offered by those engaging with the mandate in the

preparation of the present report. The Special Rapporteur, drawing from those lessons, makes the following recommendations to justice system actors.

76. The Special Rapporteur recommends that the judiciary:

- (a) Be alert to:
  - (i) Changes imposed by governments that may undermine judicial independence and separation of powers;
  - (ii) Administrative or management decisions that appear to reward or punish judicial behaviour based on political criteria;
- (b) Adopt protection measures and transparent rules concerning the allocation of cases (randomized, where possible), the assignment of chambers or other resources;
- (c) Carefully scrutinize cases in which allegations are made or suspicions arise concerning the improper instrumentalization of the administration of justice;
- (d) Enhance opportunities for communities to engage with court processes, including through expanded space for public hearings, the publication of accessible summaries of judgments, livestreaming and the formation of stakeholder groups to monitor the implementation of judgments, especially in cases of great public interest or impact.

77. The Special Rapporteur encourages lawyers and bar associations to:

- (a) Protect the freedom of expression and association of lawyers and protest against attempts to crack down on lawful and ethical speech and expressive activity by lawyers;
- (b) Ensure that, if multiple bar associations exist in one State, they coordinate to align their approaches on key issues concerning the legal profession and its relationship with the State in order to avoid undermining the power and authority of bar associations;
- (c) Clarify that lawyers should never be subject to criminal charges for carrying out their profession according to recognized professional duties, standards and ethics.

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