

**Proposed topics for discussion
at the Third Forum on Human Rights, Democracy and the Rule of Law**

30 April 2020

The International Commission of Jurists (ICJ), a non-governmental organization in ECOSOC consultative status with the United Nations since 1957, thanks the OHCHR for the invitation to provide suggestions for topics to be discussed at the third session of the Forum on Human Rights, Democracy and the Rule of Law, to be convened in November 2020 pursuant to Human Rights Council Resolution 40/9, on the theme of "Equal access to justice for all: a necessary element of democracy, rule of law and human rights protection".

The ICJ proposes that the Forum could best ensure its relevance and positive impact by including discussions on the following topics:

- Ensuring equal access to justice through and in relation to **indigenous and other traditional or customary justice systems**.
- Effective measures for ensuring **women's** equal access to justice.
- Safeguards for the **independence and impartiality of the judiciary** and **access to independent lawyers** as key elements of effective equality of access to justice.
- Equal access to justice for **persons with disabilities**.

Indigenous and other traditional or customary justice systems

Indigenous and other traditional or customary justice systems play a significant role in many societies around the world, in terms of access to justice for rural communities, indigenous peoples, minorities, and other marginalized populations. At the same time, there is need for further analysis and guidance on how best to ensure respect and protection for human rights and equal access to fair, independent and impartial justice, particularly for women and children, by and in relation to such systems. Sharing of best practices and lessons learned, in a UN session such as the Forum, would make an important contribution.

With a view to developing relevant analysis and guidance, the ICJ has undertaken several years of work on this topic, in cooperation with the mandates of the UN Special Rapporteur on the rights of indigenous peoples and the UN Special Rapporteur on the independence of judges and lawyers, other international experts, and practitioners from formal and informal justice systems around the world. The ICJ has organized global¹ and regional (in Asia² and Africa³) consultations,

¹ <https://www.icj.org/gf2017/>

² <https://www.icj.org/gf2018/>

³ <https://www.icj.org/gf2020a/> jointly with the International Development Law Organization (IDLO)s

produced a compilation⁴ of relevant international sources, and plans a final phase of global consultations and the publication of legal and policy guidance by November 2020. The Special Rapporteur on rights of indigenous peoples addressed various elements of access to justice for indigenous peoples in her 2019 report to the Council (A/HRC/42/37); including a discussion on this topic at the Forum could both contribute to responding to her recommendation that, “The United Nations, its Member States, and other stakeholders should support indigenous peoples in their advocacy for the recognition of their justice systems”, and clarify the similarities and differences that may arise between indigenous justice systems and other forms of traditional or customary justice.

The timeliness of the Forum considering such systems is further underscored by the fact that a new indicator covering “informal dispute resolution systems” was recently adopted for SDG16 by the UN Statistical Commission, in relation to target 6.3 “Promote the rule of law at the national and international levels and ensure equal access to justice for all”: “16.3.3 Proportion of the population who have experienced a dispute in the past two years and who accessed a formal or informal dispute resolution mechanism, by type of mechanism.” This is understood to include a wide range of indigenous and other traditional or customary justice processes.

Women’s equal access to justice

The right of access to justice for women is a fundamental component of the rule of law, good governance, and human rights guarantees including those articulated in Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Enhancing the ability of women to access justice is essential for reducing gender inequality and discrimination, and for furthering development and human security. Women’s empowerment in every aspect of their lives is reliant upon systems of law and justice that work for women. The CEDAW Committee identifies women’s access to justice as having several dimensions including: justiciability, availability, accessibility, good quality and accountability of justice systems, and provision of remedies to victims.

Over the years, there has been an expansion of women’s legal entitlements in many national contexts. However, laws that are discriminatory toward women and gaps in legal frameworks continue to be serious challenges around the world. There has been progress in strengthening the promotion and protection of women’s human rights, but for millions of women across the region, the reality remains that justice is still out of reach. Discussion of this topic at the Forum could contribute to identifying and sharing ways to consolidate and accelerate progress.

Judicial independence and access to a lawyer

The independence and impartiality of the courts, and access to independent lawyers, are key elements of access to justice. The UN Basic Principles on Independence of the Judiciary were adopted in 1985, and the UN Basic Principles on the Role of Lawyers and UN Guidelines on the role of Prosecutors in 1990. While these standards remain fundamental and were presciently formulated in terms that remain appropriate more than 30 years later, a discussion at the Forum would contribute to elaborating and updating relevant aspects of their interpretation and

⁴ <https://www.icj.org/traditional-customary-justice-systems-updated-and-expanded-icj-compilation-of-standards-launched/>

application, and explicitly linking the relevant safeguards to effective equal access to justice (the Basic Principles on Independence of the Judiciary do not mention “access to justice” per se, and the Basic Principles on the Role of Lawyers do so only in relation to victims of crime). The UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (adopted by the General Assembly in resolution 67/187), include provisions on non-discrimination and special measures to ensure equity for certain groups but, as the title suggests, apply only in relation to criminal justice.

In addition to the Human Rights Committee (CCPR/C/GC/32), the Working Group on Persons of African Descent (A/HRC/27/68), the CEDAW (CEDAW/C/GC/33), the CERD (Gen Rec 31), the CRC (CRC/C/GC/24, CRC/C/GC/12), among others have all highlighted the importance of the independence and impartiality of the judiciary, and access to independent lawyers, as key to achieving equal access to justice.

One key issue in relation to the judiciary, legal profession, prosecution services and equality of access to justice, is the need for these institutions to reflect the diversity in society in order to ensure the confidence of diverse groups in society of the institutions’ impartiality and appreciation of the situation of such groups. The Human Rights Council has acknowledged this factor (see for example HRC resolution 35/12 OP2), and including discussion at the Forum on this topic could contribute to sharing of experience and good practices.

Access to justice for persons with disabilities

Access to justice for persons with disabilities has received some attention from the Human Rights Council, with a report of the High Commissioner (A/HRC/37/2), the March 2018 annual interactive debate on the rights of persons with disabilities, and adoption of resolution 37/22. Building on this foundation, the outgoing Special Rapporteur on the rights of persons with disabilities, Ms. Catalina Devandas Aguilar, has undertaken a process to develop a set of international principles and guidelines on access to justice of persons with disabilities.⁵ The ICJ encourages the OHCHR to discuss with the outgoing Special Rapporteur and incoming Special Rapporteur, the potential contribution to these ongoing processes, of a discussion on access to justice for persons with disabilities at the November 2020 Forum.

For further information please contact:

Matt Pollard, Senior Legal Adviser (UN Representative & Director of the ICJ Centre for the Independence of Judges and Lawyers) matt.pollard@icj.org

5

<https://www.ohchr.org/EN/Issues/Disability/SRDisabilities/Pages/GoodPracticesEffectiveAccessJusticePersonsDisabilities.aspx>