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Mandate of the Special Rapporteur on extreme poverty and human rights

Submission on the High-Level Meeting of the 67th Session of the General Assembly on the rule of law at the national and international levels

Magdalena Sepúlveda, UN Special Rapporteur on extreme poverty and human rights
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The Special Rapporteur welcomes the high level meeting on the rule of law, to take place at the UN General Assembly on 24 September, and would like to reiterate the call made in the open letter from the Coordination Committee of the Special Procedures of the Human Rights Council for States and other stakeholders to seize this opportunity to “underscore the inherent link between the rule of law and human rights”.

The Special Rapporteur on extreme poverty and human rights notes that one of the core pillars of the rule of law is access to justice for the poorest and most marginalised members of society, and therefore calls on all stakeholders to strengthen the current draft of the outcome document (dated 24 August), by improving the content on access to justice.

Under international human rights law, States have a legal obligation to ensure that all individuals are able to access competent and impartial judicial and adjudicatory mechanisms equally and without discrimination. Access to justice is not only a fundamental right in itself, but it is an essential pre-requisite for the protection and promotion of all other civil, cultural, economic, political and social rights.

Access to justice is essential for tackling poverty and protecting the human rights of persons living in poverty. Even mature democracies with well-functioning state institutions and technically inclusive and fair legal systems struggle to ensure *de facto* equal access to justice by those living in poverty. When the poor are unable to access justice equally and without discrimination, they are prevented from enjoying and claiming their rights, and from seeking remedies to violations of their rights. This may exacerbate their situation, or frustrate their efforts to move out of poverty.

In this regard, the Special Rapporteur invites States to use the unique opportunity provided by the meeting to voluntarily make concrete, forward-looking and, to the extent possible, measurable pledges to improve access to justice by the poorest segments of their societies. Such pledges would show their leadership and commitment to improve the enjoyment of all rights by the poorest segments of society and would be a useful platform to turn the vision for more inclusive and equitable societies into reality.

The Special Rapporteur welcomes the new draft of the outcome document, dated 24th August 2012, especially paragraphs 6 (**rule of law and development**), 13 (**access to justice**) and 15 (**gender**). However, she offers the following specific proposals to improve the outcome document, in order to ensure that it is coherent with existing State obligations and commitments related to access to justice.

Proposal 1:

Include a strong commitment to improve access to justice, especially for disadvantaged groups

Access to justice should be recognized as one of the core pillars or ‘building blocks’ for the rule of law. As the rule of law is meaningless for people living in poverty and social exclusion without effective access to justice, it is vital that the outcome document includes more detailed commitments on ensuring access to justice for the vulnerable and disadvantaged. Without this, we are left with a two-tier rule of law: one for the privileged, and only a rhetorical rule of law for the poor and excluded.

The Special Rapporteur welcomes the paragraph (no. 13) on access to justice in the current draft, especially the explicit inclusion of disadvantaged and vulnerable groups and the inclusion of the right to legal aid/assistance for persons arrested, detained, suspected or charged with a criminal offence. Given

the disproportionate and devastating effects of pre-trial detention on persons living in poverty, free legal assistance must be provided at all stages of the criminal justice process for those who cannot afford legal representation.

In addition to the existing paragraph 13, the Special Rapporteur proposes the following additional language on access to justice, some of it included in an early draft of the outcome document:

We *commit* to ensuring equal access to justice for all and to taking active measures to improve the access to justice of members of disadvantaged and vulnerable groups, including by tackling all legal and extra-legal obstacles - social, financial, geographical, institutional and other – that prevent access to justice by these groups;

We *recognize* that the rule of law is strengthened when all individuals are empowered to claim their rights, to demand effective remedies and to express legitimate demands on public institutions for accountability in the fair and just delivery of public services;

We *commit* to ensuring that poverty is never an obstacle to enjoying the benefits of the rule of law and access to justice, and in this regard *recognize* the importance of legal fee waivers and effective access to legal information and legal assistance for disadvantaged groups, in particular through community-based paralegals and legal aid, at all stages of the criminal justice process but also in civil cases where the enjoyment of human rights is at stake.

We *recognize* that access to justice is an essential element of the fight against poverty, ensuring that persons living in poverty can effectively claim their human rights - civil, cultural, economic, political and social - and seek redress and accountability for crimes, abuses or human rights violations committed against them;

Proposal 2:

Commit to a rule of law that promotes women's equal rights and access to justice

The Special Rapporteur urges States to commit to a rule of law that promotes women's equal rights to security and justice, and acknowledge in the outcome document that all women, including those living in poverty and social exclusion, must be empowered to use the law to uphold their rights. Lack of empowerment and ability to uphold and enjoy their rights is a key factor in the disproportionate poverty experienced by women worldwide.

The outcome document must include recognition of the compounded difficulties that women face in accessing justice, especially women living in poverty and/or those who suffer from multiple forms of discrimination. Moreover, the issue of discrimination and violence against women requires much more than just appropriate legal frameworks in order to tackle this effectively.

Existing provision in paragraph 15 with suggested additions in bold:

We *recognize* the importance of ensuring that **all** women, on a basis of the equality of men and women, fully enjoy the benefits of the rule of law and *commit* to **empowering women, including those living in poverty or social exclusion, to use law to uphold their rights, including through meaningful participation** in institutions of governance and the judicial system, and *commit* to establishing appropriate legal frameworks **as well as specialized strategies, systems and services** to prevent, **investigate and ensure remedy for** all forms of discrimination and violence against women, and to secure their full access to justice;

Proposal 3:

Commit to ensuring informal justice mechanisms uphold human rights and do not obstruct access to formal justice systems

As people living in poverty are more likely to use informal justice systems (partly due to the inaccessibility of the formal justice system for them), this is an important area. Hence, the Special Rapporteur suggests the following additions (in bold) to the existing paragraph 14:



We acknowledge that informal justice mechanisms when in line with international human rights norms and standards, should play a positive role in dispute resolution, and that everyone, particularly women and those belonging to vulnerable or otherwise marginalized groups, should enjoy full and equal access to **and treatment by** these justice mechanisms;

We *commit* to ensure that the existence of informal justice mechanisms in a region or community does not preclude access to the formal justice system for those that need or desire it; and that serious crimes, including gender-based crimes, are dealt with within the formal justice system;

Magdalena Sepúlveda is the Special Rapporteur on extreme poverty and human rights since May 2008. She is independent from any government or organization and reports to the Human Rights Council and to the UN General Assembly. For more on the mandate and work of the Special Rapporteur, visit: <http://www.ohchr.org/EN/Issues/Poverty/Pages/SRExtremePovertyIndex.aspx>