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United Nations Office on Drugs and Crime

Third session of the Forum on Human Rights, Democracy and the Rule of Law on “Equal access to justice for all: a necessary element of democracy, rule of law and human rights protection”

Tuesday 16-17 November 2021

Submission including recommendations

Background

Access to justice is a key component of fair, humane, effective, inclusive and efficient criminal justice systems, and a key means of ensuring the respect, protection and fulfillment of human rights for all. The adoption of the Sustainable Development Agenda signalled an international commitment to equality, non-discrimination, and the need for achieving all 17 interconnected sustainable development goals (SDGs) in order to leave no one behind. With SDG 16 the international community undertook to develop effective, accountable and transparent institutions, to promote the rule of law at the national and international levels, and to ensure equal access to justice for all. The interconnected dimensions of non-discrimination and equal access to justice for all are key to upholding human rights, ensuring trust in public institutions, and strengthening social inclusion and support for the rule of law.

UNODC’s efforts to promote equal access to justice focus on the provision of legal advisory services and technical assistance in the fields of police reform, access to legal aid, restorative justice programmes and access to justice for victims of crime as well as specific programmes addressing gender in the criminal justice system, criminal justice responses to gender based violence as well as the rights of children to access justice. UNODC’s approach is based on an understanding that, to truly realize this objective, all those affected by crime must have meaningful, equitable and safe access to legal protection. This requires; capacity building and service provision strengthening to enhance access to justice and strengthen the legal empowerment that enables people to make better use of the law and legal services in the protection of their rights; ensuring equal access to specialised services to protect and assist victims impacted by crime while mitigating any risks of secondary victimisation; and safeguarding the rights of prisoners, and persons alleged or accused of crimes, to ensure their humane treatment at all stages of criminal proceedings. UNODC also places at the center of its programming the rights of those at most risk of being left behind, individuals and groups that face structural, systemic and intersectional discrimination to put into practice the promise to leave no one behind. While access to justice includes access to both criminal and civil and administrative justice, UNODC’s mandates and work focus exclusively on criminal justice.

At the heart of the work of UNODC is the provision of technical support to Member States in ensuring the implementation of international human rights law, and the United Nations standards and norms in crime prevention and criminal justice (more than 50 instruments covering crime prevention, criminal justice, and victim protection). Key to this, is the recognition that justice actors



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and institutions are the gateway to justice. Police, for example, have the scope to facilitate access to justice - and uphold the rights of victims, witnesses, accused persons and prisoners in a manner that is consistent with the international legal framework. Yet in situations where discriminatory law or practice prevails, or where professional capacity is weak, individuals may experience harm, or injustice as a result of their contact with criminal justice officials.

UNODC Participation in the Forum

In addition to participation in the plenary of the Third session of the Forum on Human Rights, Democracy and the Rule of Law on “Equal access to justice for all: a necessary element of democracy, rule of law and human rights protection” UNODC organized an online side event to the Forum entitled “*Equal access to justice for all: Voices from around the world.*” The event addressed how to measure access to justice and UNODC’s work to ensure equal access to justice for all at global level. It also included presentations of technical assistance programmes addressing equal access to justice for all from different regions. The side event was opened and moderated by Elizabeth Sáenz, Liaison Officer (UNODC-WHO Programme on Drug Dependence Treatment and Care). The first part of the side event explored the challenges faced in seeking to analyse and measure access to justice empirically, and Maurice Dunaiski (UNODC Research and Trend Analysis Branch) outlined the methods used by UNODC to collect data from Member States and analyse global trends in relation to SDG 16. The first part of the side-event also covered the UNODC strategy, mandates, tools, services and partnerships to ensure equal access to justice for all, including in the context of the COVID-19 pandemic. The presentation by Anna Giudice, Lead, Access to Justice Team, Justice Section, underscored the importance of access to justice as an enabler for human rights and the SDGs and importance of placing the most vulnerable at the centre of any efforts to enhance access to justice. The pedagogical approach and technical assistance services of the UNODC Global eLearning Programme were outlined by Sonya Rahaman, who highlighted the growth in usership of the services, especially as a complement to face-to-face capacity building efforts and the existing eLearning modules on access to justice.

The second part of the side event looked at the technical assistance programmes UNODC is currently undertaking in a range of countries around the world. The large-scale joint support to the Government of Kenya by UNODC, UNDP and the EU through the Programme for Legal Empowerment and Aid Delivery in Kenya (PLEAD) was presented by Joyce Matara from the Regional Office for Eastern Africa. Sven Pfeiffer, from the UNODC Justice Section, illustrated the lessons learned in a multi-country project (Liberia, Senegal and Sierra Leone) in West Africa on legal aid for women in contact with the criminal justice system that UNODC implemented jointly with UN Women and in cooperation with OHCHR. Nivio Nascimento, from the Liaison and Partnership Office for Brazil, presented the challenges and lessons learned on making justice accessible to all in the scope of detention control hearings in Brazil within the joint programme with UNDP, the National Council of Justice and the Department of Penitentiary Affairs entitled *Fazendo Justiça*. Finally, Edwin Cantu from the Liaison and Partnership Office for Mexico, spoke about the “Justice without Discrimination #JusticiaSinDiscriminacion” project which through joint awareness raising with civil society and community organisations had led to the criminalisation of



conversion therapies in several Mexican states and the provision of training for law enforcement on LGBTIQ+ rights by UNODC. The video of the event is available on UNODC webpage.

Recommendations to the Third session of the Forum on Human Rights, Democracy and the Rule of Law

Equal access to justice: a foundation for human rights, democracy, the rule of law and sustainable development

There are many challenges that hinder access to justice, including inadequate or discriminatory legislation and policy, limited financial resources, a lack of knowledge of which services exist and how to access them, and insufficient numbers of qualified justice actors to effectively deliver support, especially when it comes to addressing structural barriers and discrimination and achieving equal access to justice. These challenges have been significantly deepened in the context of the physical distancing measures introduced to reduce transmission of COVID-19. The closure of courts or the introduction of reduced court lists has had a massive impact on pre-trial detainees, prisoners and victims of crime. Resort to remote hearings impacted the rights to due process and to a fair trial, and excluded poor persons, as they did not have the means to pay for or understand how to use the required technology, while at the same time the COVID19 pandemic has given rise to some promising practices in terms of expediting proceedings for releasing pre-trial and other prisoners.

Equal access to justice: a foundation for human rights, democracy, the rule of law and sustainable development

Recognising that equal access to justice for all is a foundation for human rights, democracy, the rule of law and sustainable development, and, recalling the [Kyoto Declaration on advancing crime prevention, criminal justice and the rule of law: towards the achievement of the 2030 Agenda for sustainable development](#)¹ in particular its paragraph 48 States may consider to :

- Promote the application of crime prevention and criminal justice standards to achieve peaceful societies, access to justice, and effective, accountable and inclusive criminal justice institutions.
- Strengthen criminal justice systems to enable effective and equal access to justice for all.

¹ 14th United Nations Crime Congress on Crime Prevention and Criminal Justice (7-12 March, Kyoto, Japan).



- Ensure access to justice for all through adopting holistic and multisectoral approaches. Criminal justice institutions should cooperate and collaborate with other governmental and non-governmental sectors working in areas related to access to justice.

Legal Aid

Legal aid is a key element for guaranteeing equal access to justice for all, and it is also at the heart of the equality requirement and of the overarching objective of the 2030 Agenda: *to leave no one behind*. Access to legal aid translates into access to justice for the poor, the marginalized, and the disadvantaged. Provided at no cost, it protects those who do not have the means to defend their rights in the criminal justice system: the detained, arrested or imprisoned; those suspected, accused of, or charged with a criminal offence; and victims and witnesses. States should continue to implement the *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*² and may consider to:

- Take appropriate measures to ensure that legal aid is effective, sustainable and accessible to all without discrimination and is provided at all stages of the criminal justice process;
- Raise awareness of the continued availability of legal aid services and how to access them, and actively work with populations to ensure that they understand how to use online and other remote services and that these services meet their needs;
- Ensure availability of and access to specialized services for groups with specific rights and needs in the criminal justice system, such as, *inter alia*, women, children, victims of crime, members of minorities, or internally displaced persons, as well as groups that are disproportionately impacted by emergency regulations or practices;
- Encourage and support coordination of other justice and law enforcement actors, such as police, prosecution and the judiciary, with legal aid providers, to ensure continued and safe service provision also during times of emergency, including through hotlines and online services;
- Enable, where in person meetings are not possible, remote training and other capacity building measures for legal aid providers to ensure quality of services;
- Encourage networking among legal aid providers to exchange information and best practices, and to assist each other in carrying out their work;
- Encourage the collection, analysis and sharing of data on access to legal aid to inform evidence-based measures.

E-Justice

² General Assembly Resolution 67/187 (2012), annex.



The use of e-justice, and, in particular, of remote meetings has become widespread since the beginning of the pandemic, as a measure to prevent transmission of COVID-19. This situation created a demand for guidance on a variety of issues that are related to the use of e-justice, for both criminal justice actors and individuals in contact with the justice system. From the perspective of access to justice, the use of e-justice and technology can have advantages, as it can enable enhanced access to legal aid services, for example for clients based in remote areas, and ensure availability at all stages of the criminal justice process and increase legal awareness and legal empowerment. Where there are strong justifications that mandate the use of remote justice procedures, remote hearings should only take place if there are adequate safeguards in place that address various threats to the right to a fair trial. UNODC has recently embarked on research on the issue of eJustice and its impact on access to justice and necessary safeguards. While building the evidence-base, possible recommendations may include the following:

- All prisons and detention centres, including police stations, should have adequate facilities to make sure that all detainees have effective and frequent access to telephones;
- Strict confidentiality or defendant-lawyer communications should be respected. Defendants should have access to secure spaces for confidential discussions, out of earshot from prison staff and police;
- Defendants should be given sufficient time before, during, and after court hearings to consult their lawyers;
- Where there are restrictions on client-defendant correspondence these should be significantly relaxed to compensate for the reduction of in-person legal visits;
- Where a defendant is unrepresented in a remote hearing, judges, prosecutors, or court staff should proactively assist the defendant to ensure that they have access to legal advice, assistance, and representation;
- Legal aid eligibility rules should be reviewed to ensure that no defendant taking part in remote court hearings is unrepresented for financial or other reasons;
- Where remote hearings involve the filing or review of evidence, the defendant should be given access to facilities that enable them inspect evidence and submit evidence during the hearing;
- Data should be collected to monitor the impact of remote justice procedures on criminal justice outcomes and fairness of criminal justice proceedings;
- Defendants taking part in remote criminal justice proceedings should be subject to an individualised needs assessment, so that any impairments that affect their ability to participate effectively can be identified;
- Depending on the type of vulnerability or impairment, remote justice proceedings might not be appropriate at all. If they are, individualised procedural adjustments should be made to facilitate effective participation;
- Defendants with language or other communication assistance needs should be given access to suitably qualified professionals to aid communication with the court and with their

lawyers. As far as possible, language and communication assistance professionals should be present in the same room as the defendant during court proceedings;

- Defendants and defence lawyers should be given access to case files in a way that enables defendants to exercise their defence rights effectively; and
- Defendants should be given physical or electronic access to the case file, free of charge.

The UNODC report on “*The impact of COVID-19 on criminal justice system responses to gender-based violence against women: a global review of emerging evidence*³” contains specific guidance as relates to Guidelines for the use of e-justice mechanisms in GBVAW cases.

Making justice truly accessible to all

Recognising that there are many structural barriers to equal access to justice and that only by addressing and responding to the role of systemic racism and legacies of colonialism can the cycles of violence and dehumanisation be broken, and the key role that criminal justice systems play in this regard, States should consider to:

- Enact laws, develop policy and guidance to implement the right to access to justice for all, particularly for groups most susceptible to violence and discrimination within the criminal justice system (women, children, people of African descent, indigenous peoples, minority groups, members of the LGBTIQ+ communities and people with disabilities).
- Address systemic and institutional racism, sexism and other forms of discrimination, in all its manifestations, within criminal justice systems as a prerequisite to ensuring equal access to justice for all.
- Provide access to timely redress and remedy for victims of multiple and intersecting grounds of discrimination such as gender, age, race, religion, sexual orientation and other grounds;
- Prioritize addressing gender barriers and provide access to justice for women in contact with the law and victims of gender-based violence in line with international standards and numerous recommendations from the UN;
- Implement UN standards and norms in policing in particular by investing in reforming police services towards inclusive, efficient, transparent, human-rights based, community-oriented, effective and gender-sensitive policing, transforming police culture and establishing and strengthening independent police oversight bodies; in this regard address laws, policy and practice as regards use of force, policing public assemblies and protests and preventing and combatting racial profiling by law enforcement officials (see in this regard General Recommendation 36⁴ of the Committee on the Elimination of Racial

³ E/CN.15/2021/CRP.2 at: [E_CN15_2021_CRP2_e_V2102901.pdf \(unodc.org\)](#)

⁴ CERD/C/GC/36 (17 December 2020), particularly paragraphs 31-36.

Discrimination, including as it relates to the increased use of artificial intelligence and algorithmic profiling within criminal justice systems)

When emergency strikes: access to justice in times of crisis

Ensuring equal access to justice for all has been a challenge during the COVID-19 pandemic, as the public health crisis and response measures continued to have implications for human rights, health, peace, security and the rule of law. Overall, access to crucial legal support including advice, assistance and representation, may be hindered or more difficult to obtain for those in need.

Recognising the additional challenges posed by the COVID-19 pandemic UNODC would like to refer Member States to the guidance note contained in the UNODC/UNDP Guidance Note [Ensuring Access to Justice in the Context of COVID-19](#) (May 2020) in order to better prepare, respond and recover from the COVID-19 pandemic and other crises, States may consider to:

- Ensure equal access to timely, effective, adequately resourced, quality legal aid services, legal advice, assistance, and representation, nationwide and without discrimination for all those without sufficient means or where the interests of justice so require;
- Respect the rights of prisoners and detainees, and to consider and apply non-custodial measures whenever appropriate.

In addition, a number of policy guidance documents have been developed to address COVID19 in prisons, COVID19 and Children deprived of their liberty and violence against women.⁵

UNODC Technical Assistance Tools and Services

Technical Tools on Legal Aid

- UNODC Legal Aid Assessment Tool (forthcoming 2022)
- [Handbook on Ensuring Quality of Legal Aid Services in Criminal Justice Processes: Practical Guidance and Promising Practices](#) (2019) and related Training Course, as well as two forthcoming eLearning modules (2022)
- [Global Study on Legal Aid](#) (UNDP and UNODC, 2016)
- Model Law on Legal Aid in Criminal Justice Systems with [Commentaries](#) (2017)
- [Early Access to Legal Aid in Criminal Justice Processes: A Handbook for Practitioners](#) (2014)
- [Handbook on Access to Legal Aid in Africa](#) (2011)
- [Survey Report on Access to Legal Aid in Africa](#) (2011)
- [Child Friendly Legal Aid in Africa](#) (UNICEF and UNODC, 2011)

⁵ See also UNODC COVID-19 Policy Documents at <https://www.unodc.org/unodc/en/covid-19-policy-documents.html>



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Technical Tools on Police Reform

- [UNODC-OHCHR Resource Book on the Use of Force and Firearms in Law Enforcement](#), (2017) (available in Arabic, Spanish, Portuguese and Russian in 2021-2022)
- [UNODC Handbook on Police Accountability, Oversight and Integrity](#) (2011) (available in Spanish in 2021 and Russian in 2022)
- eLearning Modules on Investigative Interviewing with the Norwegian Centre for Human Rights (forthcoming)

For other UNODC tools and publications on crime prevention and criminal justice see: [Crime Prevention and Criminal Justice Reform](#)

For guidance on addressing racial discrimination see: [OHCHR | The UN Network on Racial Discrimination and Protection of Minorities](#).