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

Human rights bodies and mechanisms

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

Report of the Chair

Summary

In accordance with Human Rights Council resolutions 28/14 and 40/9, the Forum on Human Rights, Democracy and the Rule of Law held its third session in Geneva on 16 and 17 November 2021 on the theme “Equal access to justice for all: a necessary element of democracy, rule of law and human rights protection”. The present report contains a summary of the discussions held and of the conclusions reached, and the recommendations of the Forum.



I. Introduction

1. In its resolution 28/14, the Human Rights Council decided to establish the Forum on Human Rights, Democracy and the Rule of Law to provide a platform for promoting dialogue and cooperation on issues pertaining to the relationship between those areas and to identify and analyse best practices, challenges and opportunities for States in their efforts to secure respect for human rights, democracy and the rule of law. In its resolution 40/9, the Council decided that the theme of the third session of the Forum would be “Equal access to justice for all: a necessary element of democracy, rule of law and human rights protection”.
2. Also in its resolution 28/14, the Human Rights Council requested the President of the Council to appoint for each session a Chair of the Forum. The Director-General of the International Development Law Organization, Jan Beagle, was appointed to serve as Chair for the third session.
3. The annotated provisional agenda¹ of the third session of the Forum was prepared with inputs from relevant stakeholders.² The present report contains a summary of the discussions held, as well as recommendations.
4. The third session of the Forum was held in Geneva, with some participants joining online, on 16 and 17 November 2021. It was attended by representatives of States, United Nations specialized agencies, regional and intergovernmental bodies, national human rights institutions and non-governmental organizations.

II. Opening of the Forum

5. In her opening remarks, the President of the Human Rights Council, Nazhat Shameem Khan, stated that Council resolution 28/14 highlighted the importance of maintaining a dialogue on human rights, democracy and the rule of law and that the Forum provided a platform for promoting such a dialogue and cooperation on those issues. Since its establishment, the Forum had become a space for sharing experiences, challenges and good practices in securing respect for human rights, democracy and the rule of law in an environment of mutual respect and understanding. In choosing the theme “Equal access to justice for all”, the Council had recognized that access to justice was a core component of democracy and the rule of law. Furthermore, as the Council had reaffirmed in its resolution 46/4, the independence and impartiality of the judiciary, the integrity of the judicial system and an independent legal profession were essential prerequisites for the protection of human rights, the rule of law, good governance and democracy and for ensuring that there was no discrimination in the administration of justice. The Council was committed to protecting the rights and lives of those who cooperated with the United Nations and its mechanisms in the field of human rights and condemned any act of intimidation or reprisal against such individuals or groups.
6. The United Nations High Commissioner for Human Rights, Michelle Bachelet, too noted that the theme of the third session of the Forum was central to human rights, democracy and the rule of law. Access to justice was fundamental to democracy, as it ensured that people could hold decision makers accountable. It was also essential to the rule of law, as it ensured equal and independent adjudication of the norms that bound all people and institutions, whether public or private. Furthermore, access to justice was also an expression of human rights, as it was intrinsically linked to the rights to an effective remedy, to equality before the courts, to a fair trial and to equality and non-discrimination, and was also linked to the protection and promotion of all other human rights. Access to justice was essential for preventing human rights violations, which was in turn key to sustaining both peace and development, as illustrated by the inclusion of access to justice in Sustainable Development Goal 16. In 2019, the Task Force on Justice had found that more than 5 billion people lacked

¹ [A/HRC/FD/2021/1](#).

² Available at www.ohchr.org/democracyforum.

meaningful access to justice.³ That “global justice gap” affected mainly marginalized individuals, and systemic discrimination based on ethnicity, race, gender or economic status was often at the core of the problem. The coronavirus disease (COVID-19) pandemic had exacerbated those long-standing issues and emergency measures imposed in response to the pandemic had restricted access to the courts precisely when legal oversight, protection and services were most needed. Those restrictions reduced civic trust in institutions. As the Secretary-General had noted, justice was an essential dimension of the new social contract;⁴ it was therefore urgent to both improve the functioning of the judiciary and make justice truly accessible to all. To that end, trust had to be restored by ensuring that public institutions were truly inclusive, responsive, effective and accountable to all members of society. Meaningful participation was essential to ensure that justice systems were more gender-sensitive, sustainable and responsive to everyone’s needs, without discrimination. Justice had to be people-centred, which meant placing people’s needs and solutions at the centre of justice institutions. It was also necessary to ensure the independence of judicial systems. Judges, lawyers and prosecutors had to be free of all interference, pressure or threat that might affect the impartiality of their work.

7. The Chair for the third session of the Forum, Jan Beagle, said that the ability to gain access to justice was central to good governance and the realization of human rights, but still remained out of reach for far too many. The experience gained by the International Development Law Organization in promoting the rule of law and access to justice had led to three insights. First, closing the justice gap required working from the bottom up to empower people with the tools and knowledge to claim their rights. This included engaging with customary and informal justice systems, through which over 80 per cent of disputes around the world were resolved. It was critical to link such systems to statutory systems and increase their respect for the rights of women, youth, minorities and others who were often at risk of marginalization in traditional power structures. Second, it was essential to work from the top down to make laws and institutions more effective, accessible, accountable and responsive. When working with justice institutions, the International Development Law Organization had seen the importance of ensuring that solutions were owned nationally and designed to meet local demands and needs. An innovative grassroots approach – using *cadres de concertation* – in Burkina Faso and Mali had brought together criminal justice officials, traditional leaders and civil society representatives to identify and address priority criminal justice concerns and formulate joint solutions. Third, those most at risk of being left behind need to be prioritized. The COVID-19 pandemic had most severely affected those already living in conditions of poverty and exclusion and risked threatening to roll back decades of hard-won development gains, particularly for women, girls and young people more generally. The rule of law was key to tackling multiple intersecting and overlapping forms of discrimination and investment in justice services that mattered most to women, including family courts, legal aid providers and small claims tribunals, was critical. The COVID-19 pandemic had not only laid bare the consequences of years of underinvestment in justice systems and widened the justice gap, but it had also provided an opportunity to innovate and explore alternative approaches to strengthen justice systems by basing them on a clearer understanding of people’s needs and a renewed commitment to safeguarding their human rights. A people-centred approach to justice could promote human rights, build trust and address the root causes of many global challenges, including corruption, fragility and inequality.

³ *Justice for All: Final Report* (New York, Center on International Cooperation, 2019). Available at <https://www.justice.sdg16.plus>.

⁴ [A/75/982](#).

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

A. Discussion

8. The discussion on agenda item 2 was moderated by the Chair for the third session of the Forum. The panellists were Janine M. Otálora Malassis, Judge at the Electoral Tribunal of the Federal Judiciary of Mexico; and Clément Nyaletsossi Voule, Special Rapporteur on the rights to freedom of peaceful assembly and of association. The discussion focused on how equal access to justice was the foundation of governance systems based on human rights, democracy and the rule of law. Participants explored how human rights-oriented, effective and inclusive justice systems were central to democratic governance and the rule of law. The views expressed illustrated the ways in which access to justice could safeguard participation by protecting the democratic space and guarantee electoral processes that were genuine and reflected the freely expressed will of the people.

9. The Special Rapporteur reiterated the importance of access to justice for the enjoyment of the rights to freedom of peaceful assembly and of association.⁵ He noted that people were killed, injured and sexually assaulted every year as a result of the unlawful and excessive use of force by law enforcement officials in the context of protests around the world. Those acts remained largely unpunished because of the lack of access to justice and an independent judiciary. Hindering access to justice in the context of peaceful protests not only infringed the rights of individuals but also had a chilling effect on social discourse, discouraging participation in assemblies and contributing to shrinking civic space. Ensuring accountability and access to remedies required the adoption of a variety of legislative, judicial, administrative, budgetary and educational measures and policies. The Special Rapporteur made recommendations in that regard. He stressed that acts that undermined access to justice in the context of peaceful protests included barriers to appeal mechanisms for challenging decisions restricting or prohibiting assemblies, the lack of identification of law enforcement officials, the lack of access to legal counsel immediately after the arrest of a protester and the denial of access to all relevant police files and documentation. To address those concerns, it was important that violations of the rights to freedom of peaceful assembly and of association be systematically, exhaustively and independently investigated. Considering the key role played by lawyers and other legal professionals in that context, the Special Rapporteur referred the participants to the guidelines for lawyers in support of peaceful assemblies he had presented to the Human Rights Council in 2021.⁶ When lawyers could carry out their functions, the result was increased compliance with the law by protesters and a decrease in violence and repression by law enforcement officers. The United Nations human rights mechanisms too were important for victims who were unable to gain access to independent, impartial and effective justice at the national level. Finally, the Special Rapporteur emphasized the importance of ensuring access to legal aid, especially for those most vulnerable, and the need to recognize access to justice as a fundamental element of the right to legal protection.

10. Ms. Otálora Malassis stressed the importance of protecting political rights. Democracy required access to electoral justice for all citizens, especially for individuals and groups that had been historically marginalized. In that regard, efforts had been made to ensure respect for the autonomy and right to self-determination of indigenous peoples by ensuring that cases involving them were judged from an intercultural perspective, by promoting human rights, especially the human rights of women, in the internal regulatory systems of indigenous municipalities and by promoting access to justice by indigenous people. In Mexico, the Public Electoral Ombudsman for Indigenous Peoples and Communities had been established to provide political and electoral advice, free of charge, to indigenous peoples and communities. Moreover, the Electoral Tribunal had expanded access to justice for women by addressing gender parity and gender-based political violence. Ensuring access to justice and recognizing the standing of women and indigenous peoples was critical. It was precisely

⁵ [A/HRC/47/24](#).

⁶ [A/HRC/47/24/Add.3](#).

through rulings that underscored the importance of equality that society could become more inclusive, democratic and just. Ms. Otálora Malassis emphasized the importance of international treaties in ensuring access to justice for historically marginalized groups. By applying international and regional conventions, judges in Mexico had been able to defend the autonomy of indigenous communities, as well as their right to being consulted with the aim of seeking their free, prior and informed consent, when it came to developing laws that affected them, combating discrimination against women and protecting the human rights of groups who had historically been discriminated. All judges should consider international treaties as an important and universal asset that the judiciary had a responsibility to apply in its work to protect and promote human rights and to achieve more equal democracies.

11. During the discussion, participants emphasized the need to have access to justice, judicial oversight and democratic, participatory processes to safeguard democratic principles, especially during times of crisis. Some focused on the importance of a competent, independent and impartial judiciary as a central pillar of the rule of law and the protection of human rights and encouraged respect for the Basic Principles on the Independence of the Judiciary. The report “Our Common Agenda”⁷ was recalled, as in it the Secretary-General had stressed the importance of bridging the justice gap and strengthening trust in judicial institutions. Furthermore, it was recognized that access to justice could safeguard participation by protecting democratic space, including media freedom.

12. Participants emphasized that the right to a remedy and redress for human rights violations had to be guaranteed. They discussed the need to promote a culture of accountability and strengthen national mechanisms, including to ensure accountability for gross human rights violations. The importance of transitional justice processes was noted. Participants underlined the need to reform justice systems to ensure their responsiveness to the needs of individuals in each country and to pay attention to legal pluralism and the role of indigenous justice systems.

13. Participants discussed how access to justice had global dimensions and noted that the pandemic had exposed inequalities among States. They recalled the recommendation of the Special Rapporteur on the independence of judges and lawyers, who had urged States to consider the administration of justice an essential public service during the pandemic. Finally, participants called for immediate action to ensure the achievement of all the targets linked to Sustainable Development Goal 16.

B. Recommendations

14. **States should adopt measures to protect the independence of the judiciary in line with the Basic Principles on the Independence of the Judiciary. They should hold accountable those responsible for attacks on the independence of judges, lawyers, prosecutors and court officials, in particular for threats and acts of intimidation and interference experienced in the discharge of their professional functions.**

15. **In order to foster good governance and trust in judicial institutions, States should take measures to strengthen the integrity of and to prevent opportunities for corruption among members of the judiciary in line with article 11 of the United Nations Convention against Corruption. They should promote judicial transparency, including by facilitating the monitoring of trials, so as to expose any malfunctioning, and by identifying remedial measures.**

16. **States should ensure that violations and abuses of the rights to freedom of peaceful assembly and of association and any alleged violence, threats and attacks against journalists and media workers are systematically, promptly, thoroughly and independently investigated and that the perpetrators are brought to justice. They should provide effective mechanisms for access to comprehensive reparations and guarantees on non-recurrence. Victims, including detained protesters, must also always be able to access prompt, confidential and free legal assistance when needed.**

⁷ [A/75/982](#).

17. States should ensure that laws provide recourse to a prompt and effective remedy against decisions restricting or prohibiting assemblies. This includes the provision of an administrative review process and a mechanism for independent judicial review if appropriate.

18. States should ensure prompt, adequate and effective electoral justice. This should be enforceable within the context of the electoral calendar as a means to ensure the protection of the right to vote and to be elected at genuine periodic elections and the right to a remedy. In this context, States should pay particular attention to ensuring access to electoral justice for individuals and groups who have been historically marginalized, including women, indigenous peoples and minorities, including people of African descent.

IV. Making justice truly accessible to all

A. Discussion

19. The discussion on agenda item 3 was moderated by Ana María Suarez Franco, Permanent Representative of FIAN International to the United Nations in Geneva. The panellists were Claire Carlton Hanciles, Executive Director of the Legal Aid Board of Sierra Leone; Joshua Castellino, Executive Director of Minority Rights International; and Larry Salomon Pedro, a lawyer and member of the Sumu-Mayangna indigenous people of Nicaragua. The debate focused on the importance of legal empowerment and how intersecting forms of discrimination affect people's ability to access justice.

20. Mr. Castellino recognized the presence of inherent structural discrimination in the law, highlighting how the historical edifice of the law had been designed by the powerful to protect their own interests. Legal institutions and inherent bias had had a negative impact on the rule of law and colonization and forced migration had reinforced the inherently discriminatory structure of the law. Upholding human rights would end structural discrimination by ensuring respect for the equal dignity of all people and by underscoring that no one was above the law and that full participation was crucial to the creation of equitable democracies. Three contemporary political trends were having an impact on the law and undermining human rights, democracy and the rule of law: fragmentation and unemployment, which weakened the social fabric; the growth in identity-based politics; and the creation of artificial majorities through hate. The murder of George Floyd had once again brought to the world's attention the structural discrimination within criminal justice systems. Firstly, it was necessary to transition from equality in law to equality in practice. Secondly, the rule of law needed to be strengthened, as its weakening, including in the context of the COVID-19 pandemic, had allowed the unjust enrichment and concentration of power in the hands of a few. Thirdly, democracies had to overcome the challenge of identity politics. Mr. Castellino made a number of recommendations, including by drawing on the outcome of the eighth session of the Forum on Minority Issues.⁸ In conclusion, it was necessary to focus on three overarching principles: the need for education, training and capacity-building for both institutions and communities facing the brunt of discrimination in criminal justice; the importance of community engagement to ensure that communities could contribute to justice systems rather than merely being seen as recipients of services; and the need for diversity targets, to ensure that institutions could better meet the needs of the multi-ethnic, multireligious and multilingual communities they worked in. Finally, independent oversight mechanisms needed to be established that could work with the State, in the framework of technical cooperation, towards ensuring that societies were free of hate, that human rights were protected and that the dignity and work of every individual were respected.

21. Ms. Carlton-Hanciles examined the legal empowerment of the poor and the marginalized, especially women and girls, and the experience gained by the Legal Aid Board of Sierra Leone in providing legal aid. While the establishment of a credible, reliable and affordable legal aid scheme improved a State's standing internationally on human rights

⁸ [A/HRC/31/72](#).

issues, it was also critical for satisfying the legal needs of people in situations of vulnerability. People who lived below the poverty line, especially women and children, were often unaware of their legal rights or did not have the means to claim those rights. That resulted in human rights violations, including violations of the rights to property, food and housing. The Legal Aid Board of Sierra Leone, which was established in 2015, provided affordable, accessible and credible legal aid services in a timely and efficient manner. It was mandated to provide legal representation and assistance, as well as legal education and the means of empowerment, to people living in poverty with regard to both civil and criminal matters. In order to reduce the number of civil cases, the Board was also mandated to set up alternative dispute resolution panels. Moreover, the Board provided legal representation for accused and convicted persons brought before any of the criminal courts in Sierra Leone. Ms. Carlton-Hanciles referred to a number of good practices developed by the Board to ensure access to justice for women and girls. Those included the establishment, in partnership with the Sierra Leone Police, of a campaign against sexual and gender-based violence during COVID-19, encouraging women to report cases of abuse. The Board also worked closely with formal and informal courts, where the rights of women and children were often at risk. Considering the existence of many customary laws, the Board also intervened to mediate between parties in customary law disputes, which were highly patriarchal, to ensure that women were granted equal access to justice. Ms. Carlton-Hanciles also underscored the importance of legal education and empowerment, which the Board provided through community town hall meetings, mobile law clinics and community radio stations. She also emphasized the importance of legal aid for the achievement of Sustainable Development Goal 16.

22. Mr. Salomon spoke about indigenous justice systems, drawing from his experience as a lawyer and a member of the Sumu-Mayangna indigenous people of Nicaragua. He expressed appreciation for those States that had recognized legal pluralism and indigenous justice systems in their constitutions. While the constitution of Nicaragua was silent on indigenous justice systems, it did recognize the principle of the self-determination of indigenous peoples, which had led to the recognition of the role of indigenous justice systems, albeit only in respect of less serious crimes. There were gaps in indigenous justice systems, and tensions between State and traditional norms, as often State norms overrode customary norms. Also, community judges and elders tended to favour mediation and other alternative dispute resolution methods; in contrast, the judgments handed down in the ordinary courts tended to lead to detention. Difficulties were also encountered with regard to crimes committed in indigenous territories by third parties, since usually the State authorities prohibited the indigenous justice system from issuing sentences against non-indigenous persons and entities present in indigenous lands. Although indigenous justice systems took decisions more quickly and directly, many accused persons, when presented with the choice of being tried either by the State or by an indigenous system, chose the former – not because it provided more procedural guarantees, but because there were more techniques that could be used, for example, to slow down legal proceedings.

23. In the course of the discussion, participants examined how equal access to justice protected and promoted other human rights. In order to understand which groups faced systemic discrimination, justice interventions should be evidence-based and data-driven. Reference was made to the misuse of anti-terrorism laws to prevent access to justice on discriminatory grounds and to prosecute political activists.

24. Participants also expressed concern about the lack of access to quality legal aid and the need to enhance such services. They encouraged adherence to the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems; considered how unilateral coercive measures could be a threat to the international rule of law and directly affect access to justice; denounced the use of the military jurisdictions to investigate gross human rights violations and prosecute those responsible; underscored that ordinary criminal justice systems should be used when such violations are committed by military personnel; and, in relation to migration, acknowledged that not enough was being done to ensure equal access to justice for migrants, especially women migrants.

25. In closing, the panellists emphasized how different situations, such as conflict and occupation, required different solutions in order to address the needs of discriminated communities. Legal asymmetries, which were often the product and legacy of colonialism,

were emphasized, as was the need for global solidarity. Victims of human rights violations arising from the non-fulfilment of the extraterritorial obligations of States too needed to have access to justice. Finally, States should be held accountable if they did not respect civil and political rights, as well as economic, social and cultural rights.

B. Recommendations

26. States should address discrimination and expressions of hatred in the public and private sectors. In line with international human rights law, they should prevent and respond to racist behaviour, incitement to racial hatred, violence and hate crimes with the full force of the law and strong leadership, including by holding perpetrators accountable.

27. States should guarantee equal treatment in the criminal justice system by, for example, addressing prejudice, bias and stereotypes against racial, ethnic and religious minorities, including people of African descent, within law enforcement and criminal justice systems, by requiring gender-sensitivity and by ensuring equal treatment for women and girls. With due regard for their independence, States should take measures to assess and monitor justice systems and their bias, including by undertaking audits on discrimination and by creating and strengthening independent oversight, complaint, integrity and accountability mechanisms.

28. States should provide procedural accommodations, in all their forms and in all legal proceedings, to ensure that justice services, facilities and communications are universally accessible, including by ensuring that laws and policies do not restrict access to justice based, *inter alia*, on a denial of legal capacity. States should, in particular, enable persons with disabilities, whether as applicants, defendants, witnesses, jurors, experts, judges, lawyers or other interlocutors within the justice system, to exercise their right to participate in public and political life on an equal basis with others.

29. States should adopt confidence-building measures, including by ensuring that all communities can participate in defining the criminal justice system, with the aim of developing trust in institutions, in particular by minorities and marginalized groups. In this context, States should ensure, *inter alia*, diversity in law enforcement and criminal justice systems, and enhance community policing.

30. States should establish compulsory training, education and capacity-building programmes for law enforcement and judicial officials in human rights, including the rights of minorities, women and persons with disabilities. Such programmes should also be provided and designed with the participation of affected communities.

31. States should follow international guidelines for policing and criminal justice, including the Minnesota Protocol on the Investigation of Potentially Unlawful Death, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the International Principles and Guidelines on Access to Justice for Persons with Disabilities.

32. States should ensure the collection of data, including on access to legal aid, disaggregated on the basis of sex, age, ethnicity, migration or displacement status, disability, religion, civil status, income, sexual orientation and gender identity, as a diagnostic tool across the law enforcement and criminal justice systems so as to better design measures for tackling inequalities in access to justice.

33. States should establish legal aid schemes that provide both civil and criminal legal services. Legal aid should be effective, sustainable and accessible to all without discrimination and available at all stages of the justice process. Legal aid services should be designed in consultation with interested populations and be fully accessible and cater to the specialized needs of all, including women, persons with disabilities, indigenous peoples and members of minorities.

34. States should increase their investment in legal and human rights education. Efforts should also be made to raise awareness on the availability of legal aid services

and on how to access them. Efforts should be made by the international community, States and civil society to encourage networking among legal aid providers to exchange information and best practices.

35. States should ensure the recognition in constitutional and other legal provisions of the principle of legal pluralism and the right of indigenous peoples to maintain and operate their own legal systems. States should consult with indigenous peoples on the best means for dialogue and cooperation between indigenous and State systems. Discriminatory attitudes towards indigenous justice systems should be combated.

36. States must include sexual orientation, gender identity and sex characteristics as protected grounds in laws against discrimination and hate crimes. States have an obligation to construct legal and institutional frameworks and procedures that facilitate access to independent and effective judicial mechanisms and ensure a fair outcome for those seeking redress, without discrimination of any kind. States also have a duty to address impunity for violations and abuses, including by repealing all laws or policies that allow, justify or condone violence and discrimination against lesbian, gay, bisexual, transgender and intersex persons.

V. When emergency strikes: access to justice in times of crisis

A. Discussion

37. The discussion on agenda item 4 was moderated by Mark Stephens, Co-Chair of the International Bar Association's Human Rights Institute. The panellists were Mihaela Laura Radu, President of the Bucharest Tribunal; Hadeel Abdel Aziz, Executive Director of the Justice Centre for Legal Aid in Jordan; and Roselyn Hanzi, Executive Director of Zimbabwe Lawyers for Human Rights. The panellists spoke about the strategies adopted and the challenges faced by justice systems in ensuring equal access to justice in the context of crises, including the COVID-19 pandemic. Panellists considered lessons learned from the pandemic response and how they could guide rights-based responses to future crises.

38. Ms. Radu described how justice systems had made use of information and communications technology (ICT) during the COVID-19 pandemic. The Bucharest Tribunal, for example, had to adapt its work to the new health regulations following the adoption of a state of emergency in Romania, while continuing to uphold the rights to access to justice and a fair trial. Furthermore, the High Council of the Judiciary and the Court of Appeal had developed and published common non-discriminatory criteria to determine the urgency of cases. In civil matters, the criteria prioritized cases related, for example, to the protection of minors; in criminal matters, the criteria prioritized related, for example, to parole or custodial measures. Hearings for urgent cases took place remotely through the use of ICTs. Efforts were made to ensure that those who had no access to such tools could reach the tribunal by telephone, post or in-person appointment. It was important to set out clear rules for the use of videoconferencing tools. At the Bucharest Tribunal, for example, such tools were only used for urgent and non-confidential matters, with the consent of all parties and their lawyers, not for hearing sensitive cases related, for example, to gender-based violence. While public and in-person hearings had to be limited, after the end of the state of emergency journalists and members of the public were permitted once again to attend hearings. It was also important to ensure confidential and effective communication between lawyers and their clients during remote hearings, for example through the interruption of audio and video connections. Access to legal aid was also ensured during the pandemic, in accordance with national laws. The pandemic had provided an opportunity for the ICT departments of the courts to develop digital applications to facilitate access to justice, including through an electronic filing system and online registration services and archives.

39. Ms. Aziz referred to the ability of civil society to show resilience and adapt quickly to support access to justice in the context of crises. Justice systems should be designed with crisis in mind from the outset. Their design should also take into account the needs of those most vulnerable, as the effectiveness of responses to crises should be measured against their ability to meet the needs of those left behind. Protection and justice systems should be

designed separately, as a protection system that was too dependent on the judiciary or the police would not have the flexibility necessary to reach those needing protection in a crisis. It was important to collect disaggregated data to identify gaps in the provision of legal services, particularly legal aid, to ensure that those most vulnerable could access services. While using technology to conduct hearings had increased access for some, it had further marginalized those without access to the Internet or smartphones. Legal empowerment too was key to ensuring that vulnerable and marginalized persons trusted justice institutions. Legal aid should be incorporated in the design of all justice systems. Civil society played an important role in making justice systems more humane and accessible, which is why it was necessary to counter the trend of restricting civic space and cracking down on civil society organizations, which provided critical services in times of crisis. The services provided during the pandemic by the Justice Centre for Legal Aid, including the operation of a hotline for individuals to request protection or the services of a lawyer, the launch of an awareness-raising campaign on the law regulating the state of emergency and related decrees, and the provision of support to migrants and illiterate persons to register for online welfare services.

40. Ms. Hanzi described the experiences and challenges faced in the African context in ensuring access to justice for victims of gender-based violence, in both the private and public spheres, particularly in the context of the COVID-19 pandemic. With regard to gender-based violence in private spaces, many women might not have had the means to access justice, as they did not dispose of independent sources of income, which in some cases were controlled by the perpetrators themselves. Corruption was a major challenge, as many victims were forced to pay bribes to justice officers to ensure progress in their cases. In the context of curtailments of movement during pandemic-related lockdowns, plans for activating a criminal response to gender-based violence were generally ineffective. While some countries, including Zimbabwe, had eventually recognized legal aid providers as essential workers in the context of the pandemic, restrictions of movement and the unavailability of sufficient means of transport still affected the work of civil society. Victims of sexual and other forms of physical violence faced challenges in seeking treatment and in gathering and preserving evidence to be used in criminal proceedings. Delays in the administration of justice and the non-prioritization of gender-based violence cases presented an additional challenge.⁹ Ms. Hanzi reported that many courts in Africa lacked the capacity and tools needed to conduct online proceedings, with some exceptions in Kenya and South Africa. She underscored that gender-based violence also occurred in the public sphere, affecting women human rights defenders especially. The incidence of such cases had increased following the deployment of military forces tasked with enforcing lockdown measures. Another focus was child marriages, which justice systems had not adequately dealt with and which had increased during the pandemic. In conclusion, Ms. Hanzi drew attention to the need to create safe spaces for the victims and survivors of gender-based violence and noted that such services were often provided by civil society.

41. During the ensuing discussion, participants examined how the independence of the judiciary played an essential role in ensuring access to justice in times of crisis. It was important to share good practices on access to justice to prepare for, respond to and recover from the COVID-19 pandemic and other crises. Participants examined the opportunities presented by ICTs to enhance access to justice, as well as the challenges they posed for those most marginalized, including in terms of the digital divide within and among countries. In that context, they referred to the need for guidance on the use of electronic technologies by criminal justice systems.

42. Participants recognized the incidence of gender-based violence in the context of the pandemic, highlighting the potential of ICTs to provide legal aid to victims of such violence. The challenges faced by victims of gender-based violence in conflict-related crises was also mentioned. In that context, it was necessary to strengthen domestic prosecutions to ensure

⁹ African Union Commission, United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), Office of the United Nations High Commissioner for Human Rights and United Nations Population Fund, "Gender-based violence in Africa during the COVID-19 pandemic" (2020).

accountability and to increase international scrutiny in that regard. Participants also discussed the importance of ensuring accessibility for persons with disabilities.

43. In responding to questions, the panellists underscored the importance of establishing an adequate legal framework to face crises that catered to the needs of the most vulnerable. They called for increased investments in infrastructure and training, including in ICTs, and emphasized the need to mitigate the practical challenges that various groups would face in accessing justice in times of crisis.

B. Recommendations

44. In the context of emergencies, States should continue to guarantee the right to a remedy, to equality before the courts and tribunals and to a fair trial, as provided in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Justice systems should therefore be designed and adapted to ensure crisis preparedness. Courts must continue, during and after crises, to exercise their vital role by: providing an effective remedy against the unnecessary, disproportionate or discriminatory application of emergency measures; ensuring scrutiny of emergency legislation; and providing remedies for urgent cases. The rule of law has a particularly important role to play in ensuring rights-based approaches to pandemic recovery and in helping to restore the social contract within and between States.

45. Justice authorities should develop clear, non-discriminatory and transparent criteria for the prioritization of cases and how to identify certain cases as urgent; such criteria should be published widely and be made accessible to court officials, legal professionals and the public at large. All special measures adopted to face an emergency situation should be limited in time and reviewed regularly, including through the participation of the users.

46. Justice-sector crisis preparedness plans should be developed with the participation of civil society. Authorities should communicate which special measures have been adopted to face a given crisis promptly, clearly, accurately and through accessible means and formats to defendants, witnesses, victims and civil parties, as well as to lawyers and the general public. Such communication should include the nature of the measures, their legal basis and the time frame for their application, and set out procedures for recourse.

47. States should develop their capacity to make use of ICTs to enhance access to justice, including by investing in ICT tools and strengthening the capacity of justice officials. The use of ICTs should be regulated by clear legal and policy frameworks, established ahead of a crisis, and be respectful of international human rights law, in particular with regard to gender equality. Effective measures to close the digital divides should be developed and implemented, especially for women, persons with disabilities, older persons, persons living in rural areas and indigenous peoples.

48. States should ensure the continued and safe provision of legal aid during times of emergency, including through hotlines and online services. Legal aid should be considered by States and the international community as an essential element of crisis response, rather than simply as a development intervention.

49. States should acknowledge the critical role played by civil society in supporting individuals, especially those most marginalized, in accessing justice and recognize civil society actors who provide legal empowerment and aid services, including community paralegals, as essential workers in the context of a crisis.

50. States should ensure an empowering, enabling and safe environment for civil society representatives, including by ensuring their protection from all threats, attacks and acts of reprisal and intimidation against them or their family members, associates or legal representatives, whether offline or online, and by ensuring also that such acts are promptly, thoroughly and impartially investigated, that perpetrators are brought to justice and that effective remedies are provided.

51. States should ensure continued access to justice and to protection structures and services for victims of gender-based violence, including by prioritizing cases relating to gender-based violence as urgent and considering services for victims essential. In this context, States should ensure that legal aid services are available to victims, as well as the continuation of medical, psychosocial and economic support to survivors and the safe clinical management of cases of sexual violence, in particular rape, including marital rape. Service providers, including law enforcement, should be instructed to be extra vigilant and their capacity to deal with victims should be strengthened. States should ensure that all instances of gender-based violence perpetrated by State actors are investigated, that those responsible are prosecuted and punished and that redress is provided to the victims.

52. In the event of a public health crisis, States should immediately take steps to address prison overcrowding, including by implementing the guidance of the World Health Organization on social distancing. The release of individuals, including children, persons with underlying health conditions, persons with low-risk profiles who have committed minor and petty offences, persons with imminent release dates and those detained for offences not recognized under international law, should be prioritized. The authorities should urgently establish non-custodial alternatives in accordance with international law, including with regard to the detention of migrants. In the context of crises, preparedness measures should be taken to improve conditions in places of detention, reduce overcrowding and ensure compliance with international standards.

VI. Broadening the horizons of access to justice

A. Discussion

53. The discussion on agenda item 5 was moderated by the Chair for the third session. The panellists were Sara Hossain, Executive Director of the Bangladesh Legal Aid and Services Trust; Colette Flanagan, Founder of Mothers against Police Brutality; Lavanya Rajamani, Professor of International Environmental Law at Oxford University; and Pablo de Greiff, Director of the Transitional Justice Program and the Human Rights, Prevention, and Sustainable Peace Project at the Center for Human Rights and Global Justice of the School of Law at New York University. The debate focused on how human rights-oriented justice systems could correct rather than perpetuate injustices and inequalities and act as tools for prevention. The panel explored the experiences of victims in accessing justice and how people are strategically seizing justice systems to broaden public awareness of, and find solutions to, current challenges.

54. Ms. Hossain focused on the key barriers to accessing justice, in both the formal and informal systems, and on the need to work with communities and legal practitioners to address those barriers. Informal justice systems existed in many countries and were often more accessible to people than formal systems. While they presented some challenges, related to internal biases and power imbalances, better processes could be created within traditional systems that were rooted in the reality of the community but also reflected international standards and values. Formal justice systems, through legal aid programmes, had enhanced access to formal justice, not only by providing legal representation and advice but also by providing alternative dispute resolution mechanisms. It was important to strengthen legal empowerment at the community level and in local languages, including through community paralegals, the sharing of information and greater awareness of services and remedies available under national law. Legal empowerment was important also because it led to better connections between communities and institutions, which was another means for overcoming barriers to access to justice. Resources too were necessary to improve access to justice systems, for example through pro bono practitioners and legal aid programmes. In that context, she indicated that courts needed to reduce the costs of access to legal remedies, including by introducing the use of technology. During the COVID-19 pandemic, courts showed that they were able to prioritize those issues that affected communities the most. The emphasis on prioritization should be maintained when developing strategies for the recovery phase. Ms. Hossain stressed the importance of adopting a grass-roots legal empowerment

approach, without which State and civil society services could not be truly effective in providing equal access to justice. The human rights defenders involved in delivering justice at the grass-roots level often faced great risks, and their protection needed to be ensured to allow the true broadening of access to justice.

55. Ms. Flanagan said that, after her only son, Clinton Allen, an unarmed young Black man, was killed by the police, her family suffered indifference by the leadership of the police department and the district attorney's office. Families that had lost loved ones through police violence found themselves isolated from the police investigation and were left with no answers or compensation of any kind. After years of protests, Mothers against Police Brutality had convinced the district attorney to establish a civil rights unit to conduct investigations into police shootings. The lack of accountability for the use of excessive and deadly force against the public was a key contributor to the toxic culture found in most police departments in the United States of America. That reality was rooted in the history of racism in the country. Black people accounted for 13 per cent of the United States population, but were killed by the police at more than twice the rate of white people. Bias in the use of deadly force was well documented in everyday policing, with research indicating that "police stops and search decisions suffer from persistent racial bias".¹⁰ While protests and advocacy for policy change could lead to incremental reforms in law enforcement practices, the challenge could only be addressed through a nationwide movement and a national legislative and policy strategy. There was a need for a nationwide policy on the use of deadly force and the appointment of specialized federal investigators and prosecutors to address cases of fatal police violence. Furthermore, compensation should be provided to the families of the victims of police brutality. In closing, Ms. Flanagan noted that police abuse was a worldwide phenomenon, one that was staining the social contract and that required international solidarity and pressure. She appealed to the United Nations to take action, including by calling for a robust international accountability mechanism that could support and complement the efforts being made to dismantle systemic racism in the United States.

56. Ms. Rajamani examined the ways in which civil society groups, especially youth activists, were strategically seizing courts to address climate change. She referred to three regulatory governance gaps resulting from the Paris Agreement that strategic litigation efforts were trying to address: the ambition gap, the accountability gap and the fairness gap. With regard to the ambition gap, the Paris Agreement placed on States an obligation to submit nationally determined contributions but not an obligation to achieve a certain result. Even after agreement was reached on the Glasgow Climate Pact, that had resulted in contributions that were insufficient to achieve the aims of the Paris Agreement. With regard to the accountability gap, there was no mechanism to generate individual accountability for not meeting set targets. Finally, climate litigation had challenged the adequacy of national action and underscored that the burden of addressing climate change was not being shared fairly. A number of cases addressed the above-mentioned gaps, including those brought forward by the Urgenda Foundation in the Netherlands, the Friends of the Irish Environment in Ireland and Neubauer and others in Germany, as well as the case brought before the European Court for Human Rights by a group of Portuguese children. Cases were often brought forward by young activists who also highlighted the issue of intergenerational unfairness. While climate litigation was aimed at triggering the required policy shifts, successful cases were few, as most failed on procedural grounds, for example because of lack of standing, or owing to the fact that causality was difficult to prove and scientific evidence did not exist. The best option for global collective action on climate change was a comprehensive multilateral binding agreement with shared goals, concrete, precise and tailored obligations, and mechanisms to ensure transparency, accountability and compliance. Judicial action was only a small part of the solution, in an ecosystem that comprised both State and non-State actors, as well as many other stakeholders, including activists. The transformative change needed would result from the interplay between the key roles played by legislation, litigation and activism.

¹⁰ Emma Pierson and others, "A large-scale analysis of racial disparities in police stops across the United States", *Nature Human Behaviour*, vol. 4 (May 2020), pp. 736–745.

57. Mr. de Greiff analysed the preventive aspects of justice systems, drawing from his work on the Task Force on Justice, which had outlined the global justice gap.¹¹ He spoke about his work on transitional justice, highlighting that there was a robust correlation between human rights violations and conflict, and stressed the need to ensure redress for human rights violations to prevent the recurrence of violence. In his reports, Mr. de Greiff had focused on nationally led interventions, as the bulk of the preventive work was not done by the international community but at the national level, through nationally led programmes.¹² There was a need to broaden prevention work and to focus efforts upstream, as action should start long before there was a real risk of crisis. Mr. de Greiff described his efforts to support a systematic approach to prevention, in contrast to the scattered approach of multilateral and international agencies. That approach underlined how sustainable social change required changes at the levels of culture, personal dispositions, economic opportunities and societal relations in general. It was therefore necessary to move from standalone initiatives to a framework that clarified how different initiatives related to each other. The justice system was an important element of the prevention framework; it should be seen not only as a mechanism to provide redress but also as a preventive, ex-ante, problem-solving and anti-grievance mechanism. It was important to respect the original functions of institutions and ensure their representativeness and transparency. The problem with prevention was not the lack of knowledge, as solutions for many of the challenges highlighted by participants had been identified. It was instead the lack of awareness in recognizing the global and multisectoral nature of the crisis being faced, and the need for coordinated strategic planning and action as a response.

58. During the debate that ensued, participants recognized that confronting systemic racism and the legacy of colonialism was essential to ensure equitable access to justice and break cycles of violence and dehumanization. They discussed the challenges posed by the discrimination reflected in the increased use of algorithmic profiling and artificial intelligence. Participants called for the spaces for victims' participation and engagement to be broadened and underlined that participatory processes and cooperation between international and grass-roots actors were essential for strengthening democracy.

59. Participants noted that at the core of the independence of legal professionals was the recognition that judges, prosecutors and lawyers had to carry out their professional duties without interference and had to be protected from attacks, harassment and persecution. Access to justice in conflict and post-conflict settings remained a challenge, leading victims to place their hopes for justice in international institutions such as the International Criminal Court. Finally, participants encouraged States and United Nations human rights mechanisms to use the United Nations Rule of Law Indicators¹³ as a strategic tool that could concretely support the implementation of Sustainable Development Goal 16.

60. In concluding, the panellists underscored the need for global solidarity, as well as greater awareness, education, activism and transparency at all levels to achieve positive social change. They discussed the importance of linkages between different stakeholders, including grass-roots civil society. They also stressed the need for all stakeholders to work together to reduce injustice.

B. Recommendations

61. States should make efforts to close the justice gap by ensuring a people-centred approach to justice. This approach should take into consideration people's justice needs and design solutions to respond to them and tackle existing power imbalances, making justice systems more inclusive, approachable and responsive, considering that the rule of law is key to tackling multiple intersecting and overlapping layers of discrimination.

62. States and civil society actors should capitalize on the availability and public legitimacy of customary and informal justice systems. They should harness their

¹¹ *Justice for All: Final Report*. See also para. 6 above.

¹² A/HRC/30/42 and A/72/523.

¹³ See https://www.un.org/ruleoflaw/files/un_rule_of_law_indicators.pdf.

potential, particularly as a means of improving access to justice for women and marginalized populations, while recognizing the challenges they pose, such as internal biases and power imbalances. Efforts should be made to foster new processes within customary and informal systems that are both rooted in the reality of communities and in line with international human rights standards.

63. In taking action to address climate change, States and all other relevant stakeholders should consider the inextricable linkage to issues of fairness, justice and the rule of law, in line with the concept of climate justice. This entails ensuring that climate solutions are grounded in human rights, equality and non-discrimination; the participation of those most affected; the equitable sharing of costs, burdens and benefits; accountability; and the rule of law. All prevention, response, mitigation and remedial measures must include accountability for polluters, redress for victims and protection of the vulnerable.

64. Judges, lawyers and all stakeholders involved in climate litigation should make strategic use of widely accepted state-of-the-art scientific evidence and of all existing international legal frameworks relating to the due diligence obligations of States, including but not limited to those enshrined in international human rights law and climate change agreements.

65. States should ensure a safe and enabling working environment for lawyers and civil society actors involved in climate litigation, including by ensuring the right to access to information, particularly on the environment, the climate, science and environmental impacts. In such an environment, lawyers and civil society should develop and maintain networks of climate litigators across jurisdictions and forums. This will ensure the use of innovative legal argumentations and enable the coordination of legal challenges across jurisdictions.

66. With regard to access to justice for families of victims of African descent who die at the hands of law enforcement officials, States should ensure that law enforcement officials are held accountable, close trust deficits and strengthen institutional oversight, in line with the agenda towards transformative change for racial justice and equality presented by the United Nations High Commissioner for Human Rights.¹⁴ More specifically, robust measures to end impunity and ensure accountability and redress for victims and their families in line with international human rights law are critical.

67. States should carry out effective, impartial and timely investigations into every allegation of a violation committed by law enforcement officials, impose commensurate punishments and provide guarantees of non-recurrence. Moreover, they should examine how racial discrimination, stereotypes and biases are central to accountability measures. States should also publish data, disaggregated by the race or ethnic origin of the victims, on racial profiling, law enforcement-related deaths and serious injuries and related prosecutions and convictions.

68. States must respect the right of families affected by law enforcement violations to know the truth, achieve justice and advocate for guarantees of non-repetition for what happened to their loved ones. States should establish and provide resources for independent mechanisms to support families and communities in accessing truth and justice, including by providing them with legal aid and specialized assistance. States should ensure that families are afforded legal standing in the investigations and take steps to protect witnesses, victims and their relatives and persons conducting the investigation from threats, attacks and any act of retaliation. They should also ensure that families can benefit from victim compensation programmes and psychosocial and bereavement assistance.

69. States and other stakeholders are encouraged to cooperate with the International Independent Expert Mechanism to Advance Racial Justice and Equality in Law Enforcement in all parts of the world.¹⁵

¹⁴ See [A/HRC/47/53](#) and the accompanying conference room paper ([A/HRC/47/CRP.1](#)).

¹⁵ See Human Rights Council resolution 47/21.

70. The international community, States, civil society and all stakeholders should recognize the critical role that transitional justice can play in preventing human rights violations, violence and conflict. In particular, the preventive function of guarantees of non-recurrence should be recognized and result in support for and investments in national initiatives to stimulate change at the levels of State institutions, civil society empowerment, culture, personal dispositions and economic opportunities. This includes initiatives aimed at constitutional reform, including the strengthening of judicial independence, the empowerment and protection of civil society, educational reforms, cultural interventions and economic empowerment efforts.

71. The international community, States, civil society and all stakeholders should adopt a “framework approach” to allow for the systematic and orderly planning of a broad prevention policy that should be developed in advance of the risk of crisis and that should link all levels of interventions and actors involved, including civil society. In this context, justice systems should be recognized not only as a mechanism for redress but also as a preventive, problem-solving and anti-grievance mechanism.

72. The Human Rights Council and all human rights mechanisms should mainstream the protection of legal professionals and systematically refer to and call for the enforcement of the United Nations Basic Principles on the Independence of the Judiciary, the Basic Principles on the Role of Lawyers and the Guidelines on the Role of Prosecutors.

73. The Human Rights Council should address more regularly issues relating to the rule of law and access to justice, considering their centrality to the protection of human rights and prevention of human rights violations, including by requesting that they be considered by the existing Human Rights Council mandates, and consider new avenues to further advance discussions on the rule of law and access to justice.

74. The international community, States, civil society and all other relevant stakeholders should consider holding a meeting of those donors that contribute to the financing of access to justice initiatives to identify underfunded areas and how best to pool resources and strategically leverage existing programmes to ensure that justice systems are more inclusive, approachable and responsive, including through the implementation of the recommendations in the present report.

VII. Conclusions

75. In her concluding remarks, the Chair for the third session, Ms. Beagle, expressed appreciation to all participants for their engagement and commitment and thanked all panellists and moderators for their contributions, the Office of the United Nations High Commissioner for Human Rights for having organized the third session of the Forum and the core group of sponsors of the resolution on human rights, democracy and the rule of law. She recalled the statements made by the President of the Human Rights Council and the High Commissioner, who described the symbiotic relationship between human rights, democracy and the rule of law. She referred to the global justice gap affecting more than 5 billion people around the world, often the most marginalized or excluded.

76. The Chair noted the main points arising from the discussions. She expressed satisfaction at the widespread recognition during the session that access to justice was a basic principle of the rule of law, that an open civic space and meaningful participation were essential and that justice systems had to be affordable, accessible, independent, transparent and accountable in order to preserve trust. She recalled that people in situations of vulnerability faced structural and practical barriers to access to justice, including conscious and unconscious biases, and stressed the need for effective legal aid systems and greater public awareness of rights and services. Justice had to be gender sensitive and respond to the needs of women and girls in all their diversity. The Chair underlined the need to recognize the principle of legal pluralism while ensuring respect for international human rights law. The importance of prevention and crisis preparedness in advance of crisis situations was highlighted. Investment in justice

systems and technology was essential but tools and systems must be inclusive and human rights-compliant. Non-discriminatory justice systems were needed to provide redress to victims and to ensure that systemic issues, including racism, persistent bias and misconduct by law enforcement, were addressed. Legal empowerment of communities was essential to drive positive social change, including in climate governance.

77. Drawing on the rich discussion, the Chair reiterated the need to put people at the centre of justice systems. Effective access to justice was central to democratic governance and essential to building resilient and rights-based societies. The inclusion of those who might have been marginalized or left behind should be prioritized. Measures were needed to protect the independence of the judiciary. While innovation was key, care had to be taken not to increase the digital divide or infringe on human rights. Increased efforts for the collection of disaggregated data were needed for sound, evidence-based justice interventions; justice solutions must be nationally owned and tailored to specific contexts and the lived realities of people. The Chair underlined the importance of engaging with customary and informal justice systems, while ensuring that those systems were aligned with international standards and respected the rights of those who might be at risk of marginalization in traditional power structures. Highlighting that the causes and effects of climate change, as well as the actions needed to address them, were inextricably linked to issues of fairness, justice and the rule of law, the Chair noted the evolving concept of climate justice. The rule of law had a particularly important role to play in ensuring rights-based approaches to pandemic recovery and in helping to restore the social contract within and between States. Effective laws and institutions could promote economic recovery, strengthen preparedness for future crises, address the root causes of corruption, fragility and inequality and help to transition towards a greener and more climate-resilient development model. Those issues needed to be addressed more systematically, rather than in a siloed manner, using multistakeholder and multidisciplinary approaches. In conclusion, access to justice and the rule of law were critical to the work of the Human Rights Council and the Chair underlined the desire of the participants to see the Council take up those issues more regularly and to follow up actively on the recommendations of the Forum.
