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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Independence of judges and lawyers

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the independence of judges and lawyers, Diego García-Sayán, submitted in accordance with Human Rights Council resolution [44/8](#).

* [A/77/50](#).



Report of the Special Rapporteur on the independence of judges and lawyers, Diego García-Sayán

Summary

This is the sixth and final report of the Special Rapporteur on the independence of judges and lawyers, Diego García-Sayán, submitted in accordance with Human Rights Council resolution [44/8](#).

In the present report, the Special Rapporteur examines the challenges and outlook for judicial independence in the context of the 2030 Agenda for Sustainable Development¹ and its reflection in Sustainable Development Goal 16, “Promote just, peaceful and inclusive societies”. He focuses on justice for all, a fundamental guiding concept running through his various reports.

The Special Rapporteur examines the contributions of his reports to the achievement of the targets of Sustainable Development Goal 16, and identifies the outstanding challenges and tasks for States in the area of justice. These challenges, owing to their contents and characteristics, can be grouped into three main areas: the influence of authoritarianism on judicial independence and the role of lawyers; the challenges posed by corruption for the justice system; and access to justice for all.

The Special Rapporteur concludes his report with five major recommendations for achieving the targets of the 2030 Agenda, ensuring justice for all.

¹ General Assembly resolution [70/1](#).

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I. Introduction

1. This is the sixth and final report of the Special Rapporteur on the independence of judges and lawyers, Diego García-Sayán, submitted in accordance with Human Rights Council resolution 44/8.²

2. In the present report, the Special Rapporteur examines the challenges and outlook for judicial independence in the context of the 2030 Agenda for Sustainable Development and its reflection in Sustainable Development Goal 16, “Promote just, peaceful and inclusive societies”. The Special Rapporteur focuses on justice for all, a fundamental guiding concept running across his various reports.

3. Throughout the document, the Special Rapporteur refers to the outstanding challenges for the independence of judicial systems in the 2030 Agenda. The Special Rapporteur started making an express reference to the 2030 Agenda in the very first report he submitted to the Human Rights Council in 2017 when presenting the perspectives on his mandate (A/HRC/35/31, para. 78).

4. The fact that the 2030 Agenda constitutes the broadest initiative agreed to date at the global level for the elimination of extreme poverty, the reduction of inequality and protection of the planet makes it a due reference for the structure and coherence of the work accomplished. This is why the Special Rapporteur focuses in his latest report on the nexus between judicial independence and the 2030 Agenda, the deadline of which is fast approaching.

5. The 2030 Agenda has been a common thread throughout the mandate of the Special Rapporteur, conceptually guiding the activities and reports developed during his mandate and serving as a basis for the crafting of forward-looking guidelines and fundamental objectives.

6. Throughout his mandate, the Special Rapporteur was able to note a number of obstacles and threats to the realization of justice, the rule of law and basic human rights. The international context has paved the way for authoritarian currents exercising public power, international organized crime networks and corruption, with their corresponding manifestations in the violation of judicial independence and the fundamental rights of the population. All of this has been reflected, inter alia, in setbacks for gender equality and women’s rights, the impact of corruption and organized crime, attacks against human rights defenders, the violation of judicial independence and the legal profession, and violence against vulnerable groups.

7. The Special Rapporteur would like to thank the Human Rights Clinic of the Human Rights Research and Education Centre of the University of Ottawa for its outstanding support in the research for and drafting of the present report, as well as the persons and institutions, within and outside the United Nations, that have made it possible for him to discharge his mandate effectively and independently.

II. On-site visits, ad hoc reports and communications

8. In performing the functions set out in his mandate, the Special Rapporteur conducted country visits at the invitation of the Government concerned. Unfortunately, the impact of the pandemic prevented him from conducting such visits in 2020 and 2021, although they may resume in 2022.

² The Special Rapporteur, appointed in December 2016, will complete his mandate on 31 October 2022. The new mandate holder will be appointed at the fifty-first session of the Human Rights Council and will begin his or her term on 1 November 2022.

9. The purpose of those visits was to examine different processes that could have an impact on the independence and impartiality of justice systems. During the visits, the Special Rapporteur assessed legislative and other measures (A/HRC/38/38/Add.1), the progress made by the various countries in fulfilling their international obligations to ensure the independence and impartiality of judges and prosecutors and the free exercise of the legal profession (A/HRC/44/47/Add.2), ongoing reforms of the justice system (A/HRC/44/47/Add.1), the status of the administration of justice, access to justice, and the capacity of the justice system to address major national challenges such as corruption, violence against women and the defence of the rights of indigenous peoples. Following the visits, the Special Rapporteur submitted his corresponding reports to the Human Rights Council (A/HRC/50/36/Add.1).

10. During his mandate, the Special Rapporteur recorded a significant number of attacks against judges and prosecutors as well as restrictions on the free and independent exercise of their profession, bringing that information to the attention of the national authorities with a view to addressing possible violations of international standards on the subject. The 300 communications sent by the Special Rapporteur on the basis of specific information from reliable sources helped to bring about reconciliation and pave the way for satisfactory solutions.

III. Independence of judges and lawyers in the 2030 Agenda for Sustainable Development

11. The 2030 Agenda sets out the specific task of making human rights for all people a reality, achieving gender equality, empowering all women and girls, and ensuring the rule of law and justice. In the specific context of the work of the Special Rapporteur, the 2030 Agenda focuses on three fundamental areas: ensuring universal access to independent justice; fostering transparent, responsible and accountable institutions; and building national capacities to ensure the achievement of these goals.

12. Goal 16, in addition to being a goal in and of itself, facilitates the achievement of the other goals, since those goals require institutions capable of responding to the demands of society in a transparent and responsible manner. The 2030 Agenda entails an essential commitment to human rights, justice, accountability and transparency as prerequisites for ensuring an enabling environment in which people can live free, secure and prosperous lives.

13. The express reference in Goal 16 to one of the essential elements of the Special Rapporteur's mandate, namely access to justice for all, makes it one of the foundational elements of the mandate. It promotes independent and impartial justice based on fair, robust, effective and accessible systems that ensure access for all people, making the courts and the judicial system an intrinsic part of national accountability systems. This goal is complemented by targets 16.a and 16.b,³ which focus on strengthening the institutions of law and justice and combating discrimination.

14. During his mandate, the Special Rapporteur wove the contents of the 2030 Agenda into his reports in a cross-cutting manner, and aligned them with the specific targets of Goal 16. Chronologically, the following topics were addressed in the reports: perspectives on the mandate of the Special Rapporteur; the impact of organized crime on the judicial system; the role that both judicial councils and bar associations are called upon to play in judicial independence; analysis of possible restrictions on the freedoms of expression, of association and of peaceful assembly of judges and prosecutors; the Basic Principles on the Independence of the Judiciary;

³ <https://www.un.org/sustainabledevelopment/es/peace-justice/>.

the role of independent prosecution services in the protection of human rights and in the fight against corruption; disguised sanctions against judges and magistrates; the impact that the coronavirus disease (COVID-19) pandemic has had on independent justice and the challenges posed; and the participation of women in the administration of justice.

15. In the report containing perspectives on the mandate of the Special Rapporteur on the independence of judges and lawyers (A/HRC/35/31), the Special Rapporteur presented an overview of the thematic work of his predecessors, followed by a few specific issues of concern that he paid particular attention to during his mandate, particularly the issue of corruption and organized crime.

16. The Special Rapporteur incorporated the targets of Goal 16 directly by focusing on global issues such as the guarantee of judicial independence, corruption, judicial accountability and independence of the justice system, protection of legal professionals, empowerment of women in the administration of justice, and restrictions on the right to a fair trial and due process of law before an independent, impartial and competent tribunal.⁴

17. In his report dealing with organized crime and its impact on the judicial system (A/72/140), relating to targets 16.4, 16.5 and 16.b, the Special Rapporteur presented a summary of the activities carried out from January to July 2017, focusing on the effects of corruption, in particular through the actions of organized crime, judicial independence and judicial impartiality, and the challenges posed for justice systems.

18. Under the United Nations Convention against Corruption, justice and international legal cooperation play a central role in addressing the challenges that justice systems face in combating that scourge. In the report, the Special Rapporteur emphasized the importance of the Convention and the fact that, as a key tool for addressing corruption, the Convention should also be considered a basic international instrument for protecting human rights.

19. Judges and prosecutors play the key role in the enforcement and application of the Convention in the States parties. The fight against organized crime and corruption must be based on independent and impartial justice systems, an essential ingredient for effective international legal cooperation. Another aspect of the same issue that the Special Rapporteur examined was the impact of organized crime on the judicial system, analysing the content in both cases in relation to objectives set out in targets 16.4 and 16.5.

20. In his report on judicial councils (A/HRC/38/38), in the light of the existing international and regional standards, and based on the contributions received from States and civil society, the Special Rapporteur offered some recommendations relating to the establishment, composition and functions of judicial councils with a view to strengthening such national institutions. He indicated that it was estimated that currently more than 70 per cent of the countries in the world have some form of judicial council (*ibid.*, para. 85).

21. The recommendations did not purport to identify a single model of judicial council, but rather seek to identify common principles for ensuring the independence of such bodies, where they exist, and their effectiveness in the discharge of their functions as guarantors of judicial independence. The recommendations highlighted issues related to the development of international standards, the standards necessary for the establishment of judicial councils, the duties and responsibilities of judicial

⁴ United Nations Office on Drugs and Crime, “Las actividades contra la corrupción son esenciales para construir la paz, proteger los derechos humanos y garantizar el desarrollo sostenible”, 10 December 2018. Available at www.unodc.org/bolivia/es/.

councils, the selection and appointment of judges, court administration and budget control, disciplinary proceedings, and the composition of judicial councils and selection of their members (*ibid.*, paras. 88–112).

22. The primary objective of the report was, in keeping target 16.6, to identify those elements that strengthen and safeguard their institutional role in the independence of the judicial system.

23. Judicial councils are increasingly being entrusted with powers to promote the efficiency and quality of justice and rationalize the administration of justice, court management and budgeting. These functions can only be carried out effectively if the principles of transparency and accountability are respected.

24. Despite the increase in the number of judicial councils in all regions of the world, there is a lack of international standards specifically regulating the role, composition and functions of judicial councils. The Special Rapporteur believes that the processes for the establishment of and appointments to such bodies must be transparent and participatory. Civil society should play a major role in this area, in order to avoid and prevent corporatism and the appropriation of the process by the *de facto* powers.

25. Bar associations play a vital role in the organization and safeguarding of the independence and integrity of the legal profession and its members. In his 2018 report ([A/73/365](#)), the Special Rapporteur highlighted the importance of bar associations in ensuring the free and independent exercise of the legal profession and access to justice, as well as the protection of human rights.

26. The underlying rationale for the creation of bar associations – their *raison d'être* – is to provide a platform to allow the legal profession to carry out its legitimate activities without any undue interference. On the basis of that analysis, the Special Rapporteur identified a number of good practices to ensure the independence and effectiveness of bar associations, including recommendations on the establishment, composition and functions of those bodies. The State has the duty to ensure the free exercise of the functions of lawyers. That duty has an active and a passive component, namely adopting the necessary legislative and policy measures to enable the effective performance of these functions; and ensuring that there is no interference with the actions of lawyers or bar associations that may be deemed to infringe on their free decision-making and the free exercise of their functions.

27. In the report, the Special Rapporteur documented various forms of interference with the independence of bar associations, ranging from a number of patterns that foster the erection of legal or administrative obstacles to prevent lawyers from establishing or joining independent professional organizations, to different forms of control by the executive branch and threats of disciplinary action and intimidation against the members of bar associations.

28. In relation to target 16.6, the Special Rapporteur expressed his concerns at the lack of transparency in the allocation of funds to bar associations, which allegedly was sometimes subject to personal affinities and political allegiance ([A/73/365](#), para. 28).

29. The Special Rapporteur highlighted the need for the selection process for members of the executive body of a bar association to be transparent and participatory, so as to avoid corporatism or politicization of the process, possibly calling into question their ultimate function, which is to ensure the free exercise of the legal profession in a free and independent manner and without undue interference.

30. In his report on freedoms of expression, of association and of peaceful assembly of judges and prosecutors ([A/HRC/41/48](#)), also related to target 16.6, the Special

Rapporteur emphasized that when it comes to justice, the establishment of effective, transparent and accountable institutions at all levels requires a strong set of international standards, norms and principles to ensure and strengthen the independence and integrity of the justice system and to address any possible undue interference.

31. Throughout the report, the Special Rapporteur documented various forms of interference with the exercise of fundamental freedoms by judges and prosecutors. In the light of the existing international and regional standards and the jurisprudence of regional courts and mechanisms, the Special Rapporteur offered some recommendations to State authorities on how to strike a fair balance between the fundamental rights of individual judges and prosecutors and the legitimate interests of the State.

32. Through his recommendations, he also provided guidance to individual judges and prosecutors on how to exercise their fundamental freedoms in a way that is consistent with the dignity of their profession and the independence and impartiality of their office, with a view to promoting effective and transparent justice based on the necessary balance between the fundamental rights of individual judges and prosecutors and the legitimate interests of the State (A/HRC/41/48, paras. 92–112).

33. In his report marking the thirty-fifth anniversary of the Basic Principles on the Independence of the Judiciary (A/74/176), related to target 16.b, the Special Rapporteur emphasized that after more than 30 years, there was a need for reflection and discussion on the relevance of supplementing the principles in order to deal with new circumstances. This does not imply, under any circumstances, that the established principles are subject to revision or modification.

34. The Special Rapporteur wishes to highlight the fact that the Basic Principles, as provisions on judicial independence, have the character of peremptory norms and, as such, belong to the domain of *jus cogens*.⁵

35. In that connection, the Special Rapporteur recommended that strong links be established between the Basic Principles, the Bangalore Principles of Judicial Conduct and the United Nations Convention against Corruption. Thus, taking an updated approach to the Basic Principles implies that they be interpreted jointly with the Guidelines on the Role of Prosecutors, the Bangalore Principles and the Convention in order to fill any gaps that may exist in some of these instruments.

36. This is also advisable, in order to achieve target 16.b, in relation to the Vienna Declaration and Programme of Action, which states in its paragraph 27 that an independent judiciary and legal profession in full conformity with applicable standards contained in international human rights instruments are essential to the full and non-discriminatory realization of human rights and indispensable to the processes of democracy and sustainable development.

37. In his report on the role of independent prosecution services in the protection of human rights and the fight against corruption (A/HRC/44/47), and in relation to targets 16.5, 16.6 and 16.b, the Special Rapporteur presented the current state of affairs in public prosecution services and then described the role of such services in the fight against corruption, emphasizing the importance of effective international cooperation in achieving the set objectives.

38. In addition to contributing to the understanding of those targets, the Special Rapporteur highlighted a number of good practices and ongoing challenges for prosecution services concerning cooperation and the fight against corruption. In

⁵ Alirio Abreu Burelli, *Independencia judicial (jurisprudencia de corte interamericana de derechos humanos)*, Anuario de Derecho Constitucional Latinoamericano, 2007.

relation to the target to promote and enforce non-discriminatory laws and policies for sustainable development (16.b), the Special Rapporteur helped launch an event in July 2019, in New York, in the context of the high-level political forum on sustainable development, to address this issue under the theme of Goal 16, “Peace, justice and strong institutions” (A/HRC/44/47, para. 13).

39. The independence of prosecution services falls within the general scope of judicial independence enshrined in article 10 of the Universal Declaration of Human Rights. This is an obligation that has been set out in the Guidelines on the Role of Prosecutors and which must be upheld, since it is mandatory, along the same lines as the Basic Principles on Judicial Independence.

40. As noted throughout the Special Rapporteur’s mandate, corruption has a direct impact on the defence of human rights, in that it deprives societies of significant resources that could be used to meet basic needs. It also has direct consequences for the functioning of State institutions, in general, and for the credibility and transparency of the justice system, in that it delegitimizes the institutions through its actions (A/72/140, para. 18). This blight undermines society’s perception of justice and judicial integrity as an indispensable element of a just society.

41. Both the United Nations Guidelines on the Role of Prosecutors and the United Nations Convention against Corruption serve as the basic reference frameworks on which prosecution services should base their efforts to combat corruption and address its impact on human rights.

42. In his report on disciplinary measures against judges and the use of “disguised” sanctions (A/75/172), related to targets 16.6. and 16.10, the Special Rapporteur examined and documented the existence of a pattern used in various forms of disguised sanctions imposed on judges to harass, punish or otherwise interfere with the legitimate exercise of their professional activities.

43. Unlike the penalties imposed at the outcome of regular disciplinary, administrative, civil or criminal proceedings, disguised sanctions are not imposed in the cases provided for by law or in accordance with a fair, transparent and objective procedure. The aim of disguised sanctions is to induce a judge to dismiss the consideration of a case, to adjudicate a case in a particular way or to punish the judge for a decision taken in the exercise of the judicial function, especially when dealing with politically sensitive cases.

44. These types of actions undermine the effectiveness of judicial institutions by aiming to avoid publicity and accountability when it comes to their application. In these circumstances, the Special Rapporteur considers it impossible to ensure the effectiveness and transparency of the institutions in accordance with target 16.6. This also highlights the work that remains to be done in relation to target 16.10.

45. In the report on the impact and challenges of the COVID-19 pandemic on independent justice (A/HRC/47/35), related to targets 16.3 and 16.7, the Special Rapporteur focused on the impact of the COVID-19 pandemic on judicial systems and their independence and on access to justice. Following his analysis, he made a number of recommendations intended to help State authorities, society and its institutions to ensure access to justice and a functioning and independent justice system that is open to the people.

46. During that time, the functioning of the justice system came under attack with severe limitations on access to justice and, consequently, on the need to ensure, as per target 16.3, equal access to justice for all. During the pandemic, the judiciary expressed some concerns regarding the impact that the use of technology might have, in criminal and civil proceedings, on the rule of law and fundamental rights.

47. The Special Rapporteur also highlighted questions concerning access to the Internet in a global context with varying degrees of technological capacity. The use of technology in the judicial sphere requires the ability to access electronic means and technological know-how.

48. In accordance with target 16.7, the State is responsible for ensuring access to justice, and must therefore explore measures to ensure more flexible access to the use of intellectual property related to technology and to examine the design of policies that foster accelerated investment in this area (*ibid.*, para. 115). To achieve this goal, as per target 17.3, resource mobilization, including the intervention of the private sector, is important.

49. In his report on the participation of women in the administration of justice (A/76/142), related to targets 5.1, 5.5 and 5.c, the Special Rapporteur documented a number of constraints faced by women in accessing and advancing in a judicial career. He pointed out that discrimination against women in the judicial system stems from various regulatory obstacles and institutional, structural and cultural barriers that lead to the underrepresentation of women in decision-making positions or to their confinement to certain areas of the judicial system.

50. The Special Rapporteur highlighted the overarching goal of achieving gender equality and women's empowerment, which is integral to each of the 17 Sustainable Development Goals.⁶ In concrete terms, the Special Rapporteur proposed that the Sustainable Development Goals be used to ensure that, by 2030, 50 per cent of public positions, both in the judiciary and in prosecution services, are held by women.

51. Specifically, the Special Rapporteur also highlighted the need to promote the rule of law at the national and international levels and to ensure equal access to justice for all. The executive branch and the governing bodies of judicial systems and prosecution services should promote efficient public policies to ensure substantive equality for women judges and prosecutors so that they have equal opportunities not only in access to the judicial profession, but also in the distribution of responsibilities and in substantive work (A/76/142, para. 44).

52. The Special Rapporteur contributed to the understanding of targets 5.1, 5.5 and 5.c in the area of justice by specifically referring to elements that could help to end discrimination against women in the judicial sphere, to ensure women's full and effective participation and equal leadership opportunities, and to strengthen applicable policies and laws to promote gender equality and the empowerment of all women (*ibid.*, paras. 98–111).

53. In his report to the Human Rights Council on attacks against lawyers (A/HRC/50/36), related to targets 16.1 and 16.6, the Special Rapporteur addressed the issue of the protection of persons practising law, since the free exercise of the legal profession is an indispensable element of the legal guarantees that ensure a fair trial and the protection of human rights, as well as an essential element in ensuring the achievement of target 16.3. Lawyers are especially vulnerable when their activities are focused on the fight against corruption, the defence of human rights, women's rights and the protection of vulnerable groups. States therefore have the duty to ensure, both formally and materially, that such persons can perform their professional duties without any kind of interference, harassment, threats or intimidation or any other kind of external interference by State and non-State actors.

54. Members of the legal profession may be attacked or intimidated by a variety of actors, including State bodies and institutions, organized crime entities and, in certain circumstances, lawyers' associations themselves. Attacks on groups of lawyers

⁶ <https://www.unwomen.org/es/news/in-focus/women-and-the-sdgs>.

defending certain causes have increased considerably in many countries in recent times.

55. Legal practitioners whose work touches on topics such as the exercise of freedom of expression or political rights, defence of human rights, the environment, women's rights, the rights of ethnic minorities or the rights of the lesbian, gay, bisexual, transgender and queer community are the targets of threats and attacks, even attempts on their lives. The denunciation of these types of actions has helped to reduce all forms of violence and the corresponding mortality rates among this group (target 16.1).

56. In some countries, disbarment has been used as a form of repression by the authorities against lawyers who defend human rights cases or members of the political opposition or protesters and lawyers who advocate essential principles of the rule of law and human rights. Once again, publicizing such conduct helps to enhance the effectiveness of institutions by holding them accountable, as stated in target 16.6.

IV. Outstanding challenges for judicial independence and access to justice in the 2030 Agenda

57. The independence, impartiality and integrity of the justice system are indispensable components of the rule of law and the goal of ensuring that justice is administered fairly. Judicial independence takes on special relevance in this context by enabling society to bring its disputes to court and have them resolved in accordance with the law. Without judicial independence, the other principles that make up the rule of law would be undermined. The rule of law is therefore an indispensable element for ensuring international peace and security, human rights and development.⁷

58. Throughout his mandate, the Special Rapporteur identified a number of outstanding challenges in the judicial system in relation to the 2030 Agenda. Based on their content and characteristics, these challenges can be grouped into three main areas: the influence of authoritarianism on judicial independence and the role of lawyers; challenges posed by corruption for the justice system; and improved access to justice for all.

59. The targets of Goal 16 include to promote the democratic rule of law and access to justice (16.3), to fight corruption (16.5), to build effective institutions (16.6), and to ensure access to information (16.10). The 2030 Agenda expressly involves judicial systems through the different targets it sets out and that form part of the challenges the world faces. Justice is particularly connected to the promotion of peaceful and inclusive societies for sustainable development, the provision of access to justice for all and the building of accountable and effective institutions at all levels.⁸

Influence of authoritarianism on judicial independence and the role of lawyers

Rule of law

60. In order to be sustained, the rule of law requires an effective system of separation of powers that, among other things, ensures judicial independence. The different measures taken to address the three challenges posed relating to the administration of justice, namely authoritarianism, corruption and universal access to

⁷ General Assembly resolution 67/1 of 24 September 2012.

⁸ United Nations Educational, Scientific and Cultural Organization (UNESCO), *Guía para operadores judiciales sobre la Agenda 2030 para el Desarrollo Sostenible con énfasis en el ODS 16*, Cuadernos de Discusión de Comunicación e Información, No. 9, 2017.

justice, can only be articulated by promoting the institutions and principles governing the rule of law.

61. The importance of this pillar is expressly recognized in the 2030 Agenda, in which the international community is urged to promote the rule of law at the national and international levels and to ensure equal access to justice for all. Through this principle, all groups, entities and organizations that make up a State are subject to laws enacted by the legislature on an equal footing. Democracy also means that the applicable laws must be consistent with international human rights standards (S/2004/616).

62. The rule of law implies the need for measures to ensure adherence to the principles of supremacy of the law, equality before the law, separation of powers, participation in decision-making, legality, avoidance of arbitrariness, and procedural and legal transparency (ibid.). These circumstances make it possible to counterbalance any authoritarian excesses that the executive branch might implement.

63. One of the greatest effects of authoritarianism on judicial independence is the failure of Governments to comply with the legal provisions that must govern their actions (A/HRC/47/35). In March 2020, the Special Rapporteur publicly warned of the dangers that declarations of states of emergency in response to the COVID-19 pandemic could pose for human rights.⁹

64. In a large number of countries, it is still the political authorities – the executive branch, the legislature or both – that are the decisive actors in the procedures for selections and appointments of high court judges, of public prosecutors and of members of constitutional courts. These procedures are sometimes developed through mechanisms that lack transparency, that limit the participation of civil society organizations and that do not always incorporate objective criteria for the evaluation of merit.¹⁰

65. In emergency situations, it has been observed that, on some occasions, Governments tend not to be as scrupulous as they should be in complying with the requirements and guarantees set out in international human rights standards that should govern declarations of states of emergency (A/HRC/47/35, para. 11).

66. The Special Rapporteur is aware of the pressures to which States may be subjected in emergency situations. However, the need to safeguard the principles that should govern the rule of law in general, and the independence and integrity of members of the judiciary in particular, must be respected at all times, regardless of the challenges faced.

67. A judiciary of undisputed integrity is an essential institution for addressing authoritarian tendencies of States and ensuring compliance with democracy and the rule of law (A/67/305, para. 14). The integrity of the judicial system is an essential prerequisite for the protection of human rights and fundamental freedoms, for upholding the rule of law and democracy and for ensuring that there is no discrimination in the administration of justice (Human Rights Council resolution 25/4).

Cross-cutting nature of the judicial system

68. The judicial system, as the institution ultimately responsible for ensuring respect for human rights and fundamental freedoms in society, is a cross-cutting

⁹ www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25722&LangID=E.

¹⁰ UNESCO, *Guía para operadores judiciales sobre la Agenda 2030 para el Desarrollo Sostenible con énfasis en el ODS 16*, Cuadernos de Discusión de Comunicación e Información, No. 9, 2017.

element that ensures the realization of all the elements recognized by the 2030 Agenda.

69. An independent judicial system is essential for safeguarding the mandates of the different branches of government, in order, for example, to enforce accountability, enable the balance of power and, where necessary, prevent executive or legislative initiatives that are outside the bounds of national constitutional frameworks and are inconsistent with international standards.

70. The 2030 Agenda alludes expressly to justice as a value when it refers to the factors that give rise to violence, insecurity and injustice, and promotes the building of peaceful, just and inclusive societies. Target 16.3 may even be considered to establish a subjective right by stipulating that societies should provide equal access to justice. Accordingly, justice is an essential element for development and peaceful coexistence, and hence a cross-cutting element with respect to any of the Sustainable Development Goals.

71. The promotion of just and peaceful societies, the eradication of gender-based violence, the protection of human rights, and the right to health, education and a healthy environment are some of the issues of general interest where the judicial system is called upon to develop cross-cutting actions to ensure that no one is left behind in the implementation of the 2030 Agenda.

Role of prosecution services in achieving the Goals of the 2030 Agenda for Sustainable Development.

72. The Special Rapporteur had already indicated, in his 2020 report to the Human Rights Council, that in selection processes for prosecutors, objective criteria based on merit, suitability and transparency must prevail, given the paramount nature of the role of prosecution services in ensuring the rule of law and equal access to justice (A/HRC/44/47, para. 29).

73. There is a disparity of models and constitutional provisions on the organization of prosecution services in the world. Irrespective of the model adopted, the autonomy of prosecution services and their effective independence from any undue pressure or interference is an indispensable corollary of the independence of the judiciary.

74. Since the functions of prosecution services include the duty to act on behalf of society as a whole and to defend the public interest, high standards of conduct, neutrality, fairness and professionalism must prevail. In selection and appointment processes, care must be taken to ensure that the criteria of merit, suitability and transparency are paramount (ibid.).

75. In 2016, the Council of Europe noted that the processes for the selection of prosecutors represented one of the main challenges for ensuring judicial independence, recalling that some forms of election of public prosecutors may make it easier for political pressure or influence to be exerted on prosecution services, thus jeopardizing their independence (SG/Inf(2016)3rev).

76. The Organisation for Economic Co-operation and Development has also noted the close linkage between the independence of prosecutors and the manner in which they are selected, stressing the need for fair and impartial selection processes based on the highest professional qualifications and free from the influence of political groups or institutions.¹¹

¹¹ Organisation for Economic Co-operation and Development, *The Independence of Prosecutors in Eastern Europe, Central Asia and Asia Pacific*. 2020. Available at: <https://www.oecd.org/corruption/The-Independence-of-Prosecutors-in-Eastern-Europe-Central-Asia-and-Asia-Pacific.pdf>.

Challenges posed by corruption for the justice system

77. There is evidence of the destructive effects of corruption on human rights and on institutional structures, with issues such as concentration of power and a lack of transparency in public administration. Corruption also has a direct impact on the obligation of States to allocate the maximum available resources to the fulfilment of the economic, social and cultural rights of the population, in particular the poorest sectors of society and children (A/HCR/44/47, para. 80).

Fight against transnational corruption

78. Drawing attention to the impact of transnational corruption on the independence of the judiciary and examining its implications for judges and lawyers has been a recurring theme throughout the Special Rapporteur's mandate (A/HRC/44/47, A/72/140). The Special Rapporteur has also highlighted the crucial and irreplaceable role that an independent judiciary has to play in effectively combating corruption.

79. Justice officials play an irreplaceably central role in tackling corruption to the extent that they have to act with independence, integrity and neutrality in guiding investigations, formulating charges and collecting evidence used to combat corruption. It is essential that justice be aimed at preventing the sort of impunity that could give rise to a vicious circle consisting of further acts of corruption and human rights violations.

80. As already indicated in 2019 (A/74/176, para. 6), the Special Rapporteur believes that incorporating the Bangalore Principles of Judicial Conduct into the Basic Principles on the Independence of the Judiciary¹² is an effective measure for addressing the impact of corruption on the administration of justice. This initiative would make it possible to integrate into the Basic Principles the principles of integrity, propriety, equality, and competence and diligence set out in the Bangalore Principles of Judicial Conduct and that are absent from the text adopted in 1985.

81. Despite the constant denunciations in that regard, the fight against transnational corruption continues to represent one of the greatest challenges facing our societies, as the COVID-19 crisis once again demonstrated.

82. A large number of countries still face the challenge of accountability and transparency in their response to COVID-19. Restrictions on civil liberties reveal a setback in the tackling of corruption, even in countries where democracy and accountability are more consolidated.¹³

83. The establishment of national accountability mechanisms that allow for the exchange of good practices is essential for strengthening institutional systems and international cooperation concerning corruption.¹⁴

Access to justice for all

Gender in the administration of justice

84. According to Goal 5, gender equality is not only a basic human right but also one of the key building blocks of a peaceful, prosperous and sustainable world.

¹² Adopted by the General Assembly in its resolution 58/4 of October 2003. The Convention entered into force in December 2005.

¹³ Transparency International Corruption Perception Index, 2021.

¹⁴ United Nations Office on Drugs and Crime, Mecanismo nacional de aplicación a los Sistemas Locales Anticorrupción y de la Convención de las Naciones Unidas contra la Corrupción. Available at: https://www.unodc.org/mexicoandcentralamerica/es/sectors/Anticorrupcion_UNCAC_Mecanismo_Nacional.html.

85. The Special Rapporteur addressed the issue in detail in his report [A/76/142](#), in which he recommended using the Sustainable Development Goals to ensure that, by 2030, 50 per cent of public positions, both in the judiciary and in prosecution services, are held by women ([A/76/142](#), para. 99).

86. The judicial system must contain plural and diverse representation at all levels as a way of preserving and enhancing public confidence and the credibility, legitimacy and independence of justice institutions (*ibid.*, para. 89). The points made in the report serve to highlight the urgent need to promote the inclusion of women not only in the administration of justice, but also in the highest positions of responsibility in that area.

87. Women represent a disproportionately low percentage in the hierarchy of justice systems. In many countries, statistics reveal that the percentage of women in senior positions in both the judiciary and the prosecution services is not proportional to the number of women in the two careers. In both cases, women tend to be the majority of members in overall percentages, but their presence in senior positions is significantly lower than that of men.

88. Discrimination against women stems not only from certain explicit regulatory obstacles but also from institutional, structural and cultural barriers that lead to underrepresentation in public decision-making positions or confinement to certain areas of the judicial system (*ibid.*, paras. 17 and 67).

89. Patriarchal institutional structures create an even more pronounced glass ceiling in the systems established for access to high courts, usually with positions for which appointments are not based on objective tests. It is essential to establish systems that ensure women's access to high courts, based on equality and objectivity of the systems, and to review the formal requirements for entering or being promoted in the judicial profession, in order to ensure that the "glass ceiling" does not persist and that there are no bureaucratic barriers that hinder women's access to positions in the judiciary ([A/76/142](#), para. 103).

90. The incomplete affirmation of women's rights in their role as judges or prosecutors, the scarcity of female role models in several countries or the lack of support networks are relevant factors that need to be addressed in order to have an impact on new generations and society as a whole and to encourage the incorporation of women at all levels of the judicial profession.

91. The gender approach in the judicial sphere implies, however, much more than promoting equality policies aimed at achieving equal conditions in access to and performance in the workplace. The limited presence of women in high courts and senior prosecutorial positions is a widespread pattern globally. Even in countries where there is equal representation of the sexes in the different courts, the percentage of women judges decreases significantly as one moves up the ladder of power. States are once again urged to implement sustainable public policy guidelines incorporating a gender perspective (*ibid.*, paras. 91 and 101).

Plurality in the high courts of justice

92. The 2030 Agenda envisages a world of universal respect for human rights and human dignity, the rule of law, justice, equality and non-discrimination. These goals are unattainable in the absence of equal opportunities permitting the full realization of human potential and contributing to shared prosperity.¹⁵

93. The Special Rapporteur has identified a worrying lack of presence and representation of indigenous peoples in high courts of justice ([A/76/142](#), para. 93),

¹⁵ General Assembly resolution [70/1](#), para. 8.

which impedes the full implementation of the 2030 Agenda in general and Sustainable Development Goal 16 in particular. In certain areas with a large concentration of indigenous or Afrodescendent populations, very few, if any, of the women in these high positions belong to these groups. Measures must be taken to allow all women access to the justice system, regardless of their origin or race.

New technologies in the administration of justice

94. The use of new technologies in judicial systems is being explored by judicial systems, prosecution services and other domain-specific judicial bodies around the world. Governments and justice operators must consider rapid developments in this field, the challenges and opportunities related to harnessing such technologies in judicial systems and their implications for human rights and the rule of law.¹⁶

95. Throughout these years, and with particular relevance following the COVID-19 pandemic, there has been a need to improve universal access to justice. To achieve that goal, the range of access to justice infrastructure must be modernized and expanded through coordination, collaboration and communication among the various actors and the introduction of innovative systems for the administration of justice, including information and communications technology systems aimed at alleviating the judicial backlog. Only through the coordination of a public-private partnership that makes the appropriate financial resources available for the necessary investments can the deadlines for achieving the goals set in the 2030 Agenda in the field of justice be accelerated.

96. The use of new technologies in the administration of justice has obvious advantages by making legal and justice services more accessible.¹⁷ However, the incorporation of information and communications technologies into the administration of justice must not, under any circumstances, entail a reduction of basic rights or an impairment of judicial independence, key elements of the rule of law.

97. Accessibility to legal and justice services requires ensuring that citizens have sufficient computer equipment and knowledge to be able to access the service. The systems should also be designed so that they can be used by any citizen and incorporate the necessary tools or applications to make it possible for people with disabilities to use them.

98. It is essential to use new technologies with care, since they pose a number of challenges both for the fairness of the justice system and for the most vulnerable social groups (A/HRC/47/35, para. 114).

99. Various organizations have highlighted the different issues to be considered when examining new technologies in the administration of justice. The final report of the XVI Ibero-American Judicial Summit includes a study of the technological gap in justice.¹⁸ The incorporation of information and communications technologies in the administration of justice is not proceeding at the same pace in the global context, with the immediate consequence being that an inequality gap has arisen among citizens.

¹⁶ UNESCO, “Artificial intelligence and rule of law: capacity building for judicial systems”. Available at <https://www.unesco.org/en/artificial-intelligence/rule-law/mooc-judges>.

¹⁷ Organisation for Economic Co-operation and Development: *Access to justice and the COVID-19 pandemic*, 25 September 2020.

¹⁸ Final report of the XVI Ibero-American Judicial Summit, “Technological Gap in Justice”, Plenary Assembly, April 25–27, 2012, Buenos Aires. Available at: http://www.cumbrejudicial.net/c/document_library/get_file?p_l_id=1547708&folderId=129359&name=DLFE-5247.pdf.

100. In addition to the Ibero-American Judicial Summit,¹⁹ the Council of Europe has expressed its opinion on the ethical implications of the use of information and communications technologies and artificial intelligence in judicial systems,²⁰ identifying the elements on which such use must be based, the basic rights that might be violated, the challenges faced by judicial systems with the incorporation of the use of information and communications technologies and artificial intelligence, and the tools necessary for the system to develop within the parameters of judicial ethics.

101. The Working Party on the Quality of Justice of the Council of Europe adopted the “European Ethical Charter on the use of artificial intelligence in judicial systems and their environment”²¹ in December 2018. The document identifies a number of basic principles to be respected in the application of artificial intelligence in the justice arena: respect for human rights, non-discrimination, quality and security, transparency and the “under user control” principle.

Traditional or customary justice

102. Leaving no one behind is one of the fundamental principles underpinning the 2030 Agenda. Countries have therefore made a commitment to strengthen inclusive and participatory political processes, reduce all forms of violence, ensure access to justice for all, and protect human rights by reaching out first to those furthest behind.²²

103. Traditional or customary justice systems are normally community-level dispute resolution mechanisms with non-State origins and cultural and historical foundations.²³ These mechanisms are often more accessible than domestic State systems, because of their cultural relevance, availability and proximity (A/HRC/24/50, para. 50). The United Nations Expert Mechanism on the Rights of Indigenous Peoples has established that the cultural rights of indigenous peoples include access to justice (ibid., para. 28).

104. Traditional justice systems find their legitimacy in the leadership of the traditional authorities in the community where they operate. This circumstance can never prevent them from complying with international standards on gender and human rights.

105. This form of justice is especially rooted in the African and American continents. In Latin America, many national regulatory frameworks recognize the competence of indigenous authorities and their power to apply customary laws.²⁴ In fact, some States, such as Bolivia, Colombia and Peru, have enshrined traditional justice in

¹⁹ Ibero-American Commission on Judicial Ethics, Ninth report, 12 March 2020, on the judge’s use of new technologies: ethical advantages and challenges. Available at: <https://www.poderjudicial.es/cgpj/es/CIEJ/Dictámenes/>.

²⁰ European Commission for the Efficiency of Justice, *European Ethical Charter on the use of artificial intelligence in judicial systems and their environment*. Available at: <https://rm.coe.int/ethical-charter-en-for-publication-4-december-2018/16808f699c>.

²¹ European Commission for the Efficiency of Justice, *European Ethical Charter on the use of artificial intelligence in judicial systems and their environment*.

²² United Nations System Staff College, “La Agenda 2030 para el Desarrollo Sostenible”. Available at: https://www.unssc.org/sites/default/files/2030_agenda_for_sustainable_development_-_kcsd_primer-spanish.pdf.

²³ Office of the United Nations High Commissioner for Human Rights, *Human Rights and Traditional justice systems in Africa* (New York and Geneva, 2016).

²⁴ Justice Studies Centre of the Americas, “La justicia indígena y la justicia ordinaria frente a los conflictos civiles: camino para su articulación”, Chile, 2021.

legislation as part of their legal system, making it an essential component of the justice system.²⁵

106. Community leaders as decision makers, public participation by community members and proceedings aimed at reconciliation and maintaining harmony are among the characteristics of traditional justice systems.²⁶

107. Given the importance of traditional justice in many communities worldwide, and the fact that for a large number of citizens it is the only known system of justice, it is up to each State – regardless of whether the traditional justice system has been incorporated into its legal order or not – to ensure that the decisions of traditional courts are consistent with international and regional human rights standards, and that traditional authorities enjoy the same independence in the performance of their functions as regular judges.

V. Conclusions and recommendations

108. **In the light of the 2030 Agenda, and taking into account the experience of this mandate since its establishment by the then Commission on Human Rights in 1994, the following five key issues stand out as matters to be prioritized by the international community.**

109. **The reports submitted to United Nations bodies during the Special Rapporteur’s mandate have contributed to the understanding of the different targets set out in Goals 5 and 16.**

A. Access to justice: key challenge

110. Under this pillar, the Special Rapporteur presents the following observations and recommendations:

(a) **With 6 billion people on the planet without access to justice, it is critical to make substantial progress toward closing that gap by 2030. States have an obligation to ensure full access to formal and institutionalized justice, including the appropriate budget for adequate territorial coverage;**

(b) **To that end, States have an obligation to ensure the availability of appropriate and accessible procedural systems and the use of the necessary languages, as well as the location and characteristics of the available infrastructure;**

(c) **Facilitate and ensure the operation and exercise of customary justice within the spheres indicated by law and in full accordance with international human rights standards;**

(d) **The use of modern technological means in the delivery of justice services is a reality that is here to stay. The digital divide that exists in many parts of the world represents an obstacle for large segments of the population with regard to access to justice;**

(e) **Artificial intelligence can help to enhance the efficiency and quality of the administration of justice, but it must be used in compliance with the legal**

²⁵ Jordi Feo Valero, “Jurisdicción especial indígena, derecho colombiano y normativa internacional: la necesidad de un equilibrio en el marco de la extracción de minerales y el impacto de género” *Revista Socio-Jurídicos*, 21(2), 387–416 (July 2019).

²⁶ Office of the United Nations High Commissioner for Human Rights, *Human Rights and Traditional justice systems in Africa* (New York and Geneva, 2016).

guarantees established in international human rights instruments. States and international organizations must explore measures to ensure more flexible access to the use of intellectual property relating to technology, as well as the design of policies that foster accelerated investment in this area;

(f) States should put themselves in a position to be able to take the necessary measures to ensure equal access to justice in health emergencies or similar situations. The COVID-19 pandemic highlighted the lack of preparedness of many States in this regard.

B. Independent and integral justice

111. Under this pillar, the Special Rapporteur presents the following observations and recommendations:

(a) **The independence of judges and lawyers is closely related to Goal 16, which, in addition to being a critical goal in and of itself, may be considered a facilitator for achieving all the other Sustainable Development Goals;**

(b) **The Basic Principles on the Independence of the Judiciary should systematically be articulated in connection with the Bangalore Principles and the United Nations Convention against Corruption, in the light of new situations that have arisen since the adoption of the Principles in 1985. This updated approach not only to that instrument but also to other rules and principles affecting the judiciary or prosecution services is essential for ensuring appropriate institutional processes for sustainable development;**

(c) **A legitimate institutional framework with respect for human rights and independent, effective and transparent judicial systems is vital for ensuring access to justice and addressing crimes, including corruption and its various manifestations, in public institutions;**

(d) **Judicial independence should be balanced with mechanisms that ensure accountability, transparency and integrity. To be a driver of reform, bodies such as judicial councils need to operate under clearly defined rules that ensure access and promotion in judicial functions based on merit and commitment to human rights;**

(e) **High courts should have a specific role as guarantors of judicial independence and broader access to justice. Institutional objectives should be shared by the entire justice system, including prosecutors, the police, judges, the penitentiaries and the ministries that deal with these issues.**

C. Justice, a key tool against corruption

112. Under this pillar, the Special Rapporteur presents the following observations and recommendations:

(a) **Corruption is one of the major obstacles to the achievement of the Sustainable Development Goals by 2030, and hence the exercise of human rights;**

(b) **The United Nations Convention against Corruption is part of the international framework for the protection of human rights. Justice and international legal cooperation, using the Convention, are the main tools that the international system has identified for dealing with this cancer. An independent, legitimate and efficient justice system is indispensable in that regard;**

(c) **Society's confidence in the judicial system and its integrity is crucial in a modern society. The implementation of judicial integrity measures as well as surveys on public perception and trust are important institutional tools.**

D. Gender: presence of women in high courts

113. Under this pillar, the Special Rapporteur presents the following observations and recommendations:

(a) **Parity in the judicial system, including the high courts: States should take steps to ensure that by 2030, 50 per cent of positions in high courts or their equivalent, in both the judiciary and the prosecution service, are held by women;**

(b) **The competent bodies in this area should promote efficient public policies to ensure substantive equality of women judges and prosecutors in order to avoid discrimination against them in the administration of justice;**

(c) **States should approve initiatives aimed at preventing the erection of regulatory obstacles and institutional, structural and cultural barriers that lead to the underrepresentation of women in decision-making positions or to their confinement to certain areas of the judicial system;**

(d) **States that have not yet done so should consider adopting special temporary measures for women judges, magistrates and prosecutors to ensure, as soon as possible, that they have access to careers and to the highest functions in their respective institutions.**

E. Rights of judges and lawyers

114. Under this pillar, the Special Rapporteur presents the following observations and recommendations:

(a) **States should ensure, both formally and materially, that judges, prosecutors and lawyers can legitimately exercise their profession without being hindered by harassment, threats or intimidation;**

(b) **States should exercise their duty to put in place timely and effective institutional tools that allow for the reporting, investigation and punishment of actions that undermine the integrity of judges, prosecutors and lawyers, particularly those in charge of cases with special public or political relevance, or that may call into question the policies and actions of power groups;**

(c) **The freedom of expression of judges and magistrates should be ensured and exercised in a manner that is consistent with the dignity of their profession and the independence and impartiality of their office;**

(d) **States should take measures to ensure the independence of prosecution services in accordance with international instruments that apply to these institutions, such as the Universal Declaration of Human Rights or the Guidelines on the Role of Prosecutors;**

(e) **The processes related to the sanctioning of judges, magistrates and prosecutors or the disqualification of lawyers should be transparent and impartial and safeguard the rights of those affected, including the plurality of instances;**

(f) **Political non-interference in the work of bar associations should be ensured, and the selection and appointment processes of the executive bodies of**

these institutions should be independent, transparent and participatory, in order to ensure the free exercise of the legal profession;

(g) The Special Rapporteur calls on States to address the communications sent, in order to strengthen the protection of the independence of the judiciary, prosecution services and lawyers, as a concrete effort and commitment to strengthening these three fundamental areas of the rule of law.
