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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, Margaret Satterthwaite, submitted in accordance with Human Rights Council resolution [44/8](#).

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Report of the Special Rapporteur on the independence of judges and lawyers, Margaret Satterthwaite

The promise of legal empowerment in advancing access to justice for all

Summary

Human rights law guarantees access to independent and impartial legal systems that fulfil people's justice needs. But if legal systems are ineffective at checking abuses and solving problems, if people cannot access legal institutions equally and if communities are left feeling alienated and disenfranchised, these systems are failing. An estimated 5.1 billion people – two-thirds of the Earth's population – lack meaningful access to justice. Behind this statistic are lives lost, dreams crushed and conflicts sparked. People-centred justice responds to the enormity and urgency of the gap between rights and reality. It acknowledges that tinkering around the edges or doubling down on doing things the way we have always done them will not ensure access to justice for all. By supporting the ability of communities to know and use the law, legal empowerment – one kind of people-centred justice intervention – can expand access to justice in a rapid, relatively inexpensive and concrete way. Going further, by equipping communities with tools to shape laws and transform unfair and harmful laws, legal empowerment helps to democratize legal systems. By placing people and communities at the heart of the debate and by enhancing their ability to make their voices heard, people-centred justice approaches also respect the inherent dignity of all members of the human family, as recognized by the Universal Declaration of Human Rights and set out as a foundational tenet of the United Nations human rights system.

Contents

| | <i>Page</i> |
|--|-------------|
| I. Introduction | 4 |
| II. The justice gap | 5 |
| III. Legal standards: access to justice and legal assistance | 9 |
| IV. Legal empowerment to ensure access to justice for all | 10 |
| A. Defining legal empowerment | 10 |
| B. Legal empowerment methods and approaches | 11 |
| V. Challenges to advancing legal empowerment | 18 |
| A. Harassment and attacks | 19 |
| B. Prohibition | 19 |
| C. Lack of resources | 21 |
| VI. Lawyers and judges as partners in legal empowerment | 22 |
| VII. Conclusions and recommendations | 22 |

I. Introduction

1. Human rights law guarantees access to independent and impartial legal systems that fulfil people's justice needs. But if justice systems are ineffective at checking abuses and solving problems, if people cannot access legal institutions equally and if communities are left feeling alienated and disenfranchised, these systems are failing.

2. An estimated 5.1 billion people – two-thirds of the Earth's population – lack meaningful access to justice.¹ The Task Force on Justice explains that this includes people who cannot obtain justice for everyday problems, people who are excluded from the opportunity the law provides and people who live in extreme conditions of injustice.² Behind this statistic are lives lost, dreams crushed and conflicts sparked.³ For example, in many places, undocumented workers cannot access remedies when they are not paid. In rural areas, pregnant persons die when their local health centre is out of materials needed for an emergency blood transfusion. In Indigenous territories, communities are forced to abandon water sources when companies mining on their lands leave toxic waste that seeps into their water. In cities, families face choices about whether to offer their children two or three meals a day because they must save money for rent or face eviction.

3. Laws often exist to prevent and remedy these human rights problems. However, too often, laws that exist in writing do little to help people solve their justice problems. Migrant workers may not know they can recover wages regardless of their documentation status. Rural people may be rebuffed when they try to transfer their family member to a city hospital. Indigenous communities may be ignored when they demand that companies obtain their free, prior and informed consent for work on their lands. Urban families may lack access to legal help to assert protections against eviction. Unlike some justice problems, many of these issues can be solved without major law reform, huge investment in technology or lengthy litigation. What is needed instead is accessible information about the laws that protect rights-holders and inexpensive, quick, and simple ways for people to use those laws to obtain just outcomes.

4. Nevertheless, many legal systems also fail to confront emerging problems or contain rules and procedures that exclude some people from protection, relegate others to a lower status or actively harm some communities. For example, labour laws may exempt some activities, such as domestic work or agricultural labour, from protections like overtime pay or rules against discrimination. Other laws may restrict rights claims on the basis of nationality or documentation status, preventing migrants from obtaining health care or food aid. Still other laws might themselves constitute discrimination and a violation of rights, including laws that punish lesbian, gay, bisexual and transgender (LGBT) persons with prison time or subject "vagrants" to detention for being houseless. And some systems do not help with the most terrible dilemmas facing people today: should a family continue to live on their low-lying subsistence farm, despite increasingly deadly flooding, or immigrate to a country that – while it may bear significant historical responsibility for the climate crisis – does not open its doors to climate refugees? In such cases, what is needed is to empower affected communities so they can make their voices heard to reshape discriminatory laws and ensure that the law – both domestic and international – addresses the issues that matter the most.

5. Around the world, lawyers, judges and others are operating in contexts of increasing social and economic inequality, valiantly striving to meet people's justice

¹ See Task Force on Justice, *Justice for All* (Center on International Cooperation, 2019), p. 18.

² Submission of Pathfinders for Peaceful, Just and Inclusive Societies.

³ Submission of Legal Link.

needs within systems that are often subject to chronic underfunding and neglect. Much more must be done to enhance and finance these systems and to help excluded people to gain access. But we must also recognize that it is not realistic for existing systems to address all the justice needs identified above. In addition to improving access, we must imagine new ways of achieving access to justice for all.

6. People-centred justice approaches can offer a transformative solution to these problems. People-centred justice responds to the enormity and urgency of the gap between rights and reality. It acknowledges that tinkering around the edges or doubling down by doing things the way we have always done them will not ensure access to justice for all. By supporting the ability of communities to know and use the law, legal empowerment – one kind of people-centred justice intervention – can rapidly and efficiently expand access to justice. Going further, by equipping communities with tools to shape laws and transform unfair and harmful laws, legal empowerment helps to democratize legal systems. And by placing people and communities at the heart of the debate, enhancing their ability to make their voices heard, people-centred justice approaches respect the inherent dignity of all members of the human family, as recognized by the Universal Declaration of Human Rights.

7. The present report,⁴ Special Rapporteur Margaret Satterthwaite's first delivered to the General Assembly, briefly describes the extent to which justice systems are failing to meet people's needs, defines legal empowerment, provides examples of legal empowerment approaches, identifies challenges to advancing legal empowerment and makes recommendations about how Member States, lawyers, bar associations, communities and other actors can use legal empowerment approaches to close the justice gap. Drawing on more than 60 submissions from Member States, academia and civil society,⁵ more than two dozen interviews with experts and data from seven regional consultations with practitioners from 67 countries,⁶ the report aims to advance legal empowerment as a way to synergize major advances on access to justice. The need is urgent, and legal empowerment can drive progress across the Sustainable Development Goals, especially on target 16.3, by which Member States agreed to "promote the rule of law at the national and international levels and ensure equal access to justice for all".

II. The justice gap

8. In countries around the world, legal systems are failing to help people achieve justice in the ways that matter most to them. There is a yawning gap between what these systems can offer and the justice problems people need help to solve. In a new study, the Overseas Development Institute found that less than 10 per cent of legal needs – problems the law could solve, if appropriate legal support were available – are being met in lower-income countries, and that in most lower-income countries

⁴ The Special Rapporteur thanks Katarina Sydow, María Alejandra Torres and her students at New York University School of Law for their support in preparing the present report. She thanks Namati and the Bernstein Institute for Human Rights at New York University School of Law for their support in organizing regional consultations. They bear no responsibility for the final content.

⁵ The submissions will be available on the website of the Office of the United Nations High Commissioner for Human Rights at <https://www.ohchr.org/en/calls-for-input/2023/call-input-upcoming-report-legal-empowerment-un-special-rapporteur>.

⁶ The Rapporteur undertook online consultations with practitioners based in the following regions: Africa, Asia, Latin America, Middle East and North Africa, North America, and Europe and Central Asia.

studied, less than 5 per cent of such needs are met.⁷ The study updates findings released in 2019 by the Task Force on Justice, which estimated that of the 5.1 billion people who have justice problems, 1.5 billion people cannot find solutions to everyday issues like reporting a crime or obtaining wrongfully withheld wages, 4.5 billion people do not have basic legal tools, like a birth certificate or land title, necessary to protect their rights, and 253 million people experience extreme injustices like modern slavery, statelessness or armed conflict.⁸

9. Unfortunately, data confirming these estimates and providing details about these legal problems has been scarce, since justice data has traditionally been collected by formal institutions, such as courts, prisons and police. These data do not capture the legal problems that people experience but do not bring to formal institutions – either because they cannot access them or because they do not realize that solutions may be available.⁹ This leads to sometimes dramatic misunderstandings about the justice needs of a given population. Data showing a low number of court filings concerning discrimination against women, for example, could be interpreted as evidence that there are few such incidents. Alternatively, it could reflect a justice system that is inaccessible or inhospitable to women who experience discrimination.

10. People-centred justice data is needed: information that captures the full range of justice problems, including both issues for which people seek help and problems they may see as impossible to solve.¹⁰ Much progress in this realm has been made in recent years. Practitioners and researchers have begun to use legal needs surveys to measure so-called “unmet legal needs”, instances when people are unable to solve a problem that could be resolved with legal knowledge or support.¹¹ Legal needs surveys have revealed that common legal problems that go unresolved include matters related to housing and land, money and debt, public services, family and employment.¹² Data from legal needs surveys in 108 countries are now hosted online by the World Justice Project.¹³ And other evidence is available. In a crucial study, the World Justice Project estimated that 2.1 billion people are employed in the informal economy (where they are deprived of many labour law protections); 1.1 billion are victims of non-violent crime such as burglary or theft annually; 2.3 billion lack proof of secure housing or land tenure rights; and 1.4 billion have unmet civil or administrative justice needs.¹⁴

⁷ See Clare Manuel and Marcus Manuel, “Get serious about justice finance and fund front-line justice services”, Medium, 1 June 2023. Available at <https://medium.com/sdg16plus/get-serious-about-justice-finance-and-fund-front-line-justice-services-979dba189981> (accessed on 27 June 2023).

⁸ See Task Force on Justice, *Justice for All*; and Sarah Chamness Long and Alejandro Ponce, “Measuring the justice gap: a people-centered assessment of unmet justice needs around the world” (World Justice Project, 2019), p. 5.

⁹ Submission of Albania.

¹⁰ Submission of Pathfinders for Peaceful, Just and Inclusive Societies.

¹¹ See Long and Ponce, “Measuring the justice gap”, p. 13.

¹² See Peter Chapman and others, “Grasping the justice Gap: opportunities and challenges for people-centered justice data” (New York and Paris, World Justice Project, Pathfinders for Peaceful, Just and Inclusive Societies and Organisation for Economic Co-operation and Development (OECD), 2021), p. 5.

¹³ World Justice Project, “Atlas of legal needs surveys”. Available at: <https://worldjusticeproject.org/our-work/research-and-data/atlas-legal-needs-surveys> (accessed on 27 June 2023).

¹⁴ See Elizabeth Andersen, Executive Director of the World Justice Project, “What is people-centred justice?”, statement to the American Bar Association conference “Putting People First: People-Centred Justice at Home and Abroad”, Washington, D.C., 18 May 2023. Available at: <https://worldjusticeproject.org/news/what-people-centered-justice#:~:text=Rather%20than%20reinforcing%20institutions%20to,services%20to%20meet%20those%20needs> (accessed on 27 June 2023).

11. Deep inequalities align with exposure to legal problems: those who experience discrimination, exclusion or marginalization are often more likely to experience unmet legal needs.¹⁵ Those with one legal need are also likely to experience multiple problems,¹⁶ as one issue causes a new one. For example, being fired unfairly for an illness may lead to the inability to pay rent, which can result in eviction and difficulty paying for health care, which can precipitate a health crisis. In Indonesia, those whose income is below the minimum wage are the most vulnerable to legal problems.¹⁷ In the United States of America, multiracial and Black Americans most commonly experience legal problems.¹⁸ In Tunisia, issues related to public services arise most frequently among older people in rural areas with a primary-level education and financial need.¹⁹ In Burkina Faso, individuals who cannot pay for their basic needs are more likely than richer ones to experience land problems.²⁰ An intersectional approach is plainly needed when making sense of justice needs.²¹

12. More data is required to understand the pathways people take in seeking justice. In 2019, a new indicator (16.3.3) was approved for use in tracking progress on Sustainable Development Goal target 16.3. The indicator measures the “proportion of the population who have experienced a dispute in the past two years and who accessed a formal or informal dispute resolution mechanism, by type of mechanism”. At the time of writing in July 2023, very few Member States had formally reported on the indicator.²² Once data becomes available, this indicator will shed important light on the mechanisms people use to solve their disputes.

13. However, legal needs surveys already provide some evidence about the types of services that are working – or failing – to solve people’s justice problems. One major insight is that many people do not rely on formal justice institutions. Only 17 per cent of respondents in the World Justice Project global legal needs surveys reported that they would bring legal problems to an authority or other third party for mediation or adjudication.²³ This means that judges and lawyers may be involved in a small minority of the world’s justice problems.

14. There are many reasons people do not bring their legal problems to formal justice systems. Lawyers may be scarce or concentrated in cities.²⁴ The ratio of lawyers to inhabitants ranges greatly across the world: from one lawyer for every 125,635 people in Burkina Faso to one per 9,073 in Vietnam and one per 260 in

¹⁵ See OECD and Open Society Foundations, *Legal Needs Surveys and Access to Justice* (Paris, 2019), pp. 32 and 33.

¹⁶ Ibid.

¹⁷ Indonesia Judicial Research Society and others, *Legal Needs Survey in Indonesia 2019 in Lampung and South Sulawesi Provinces* (Jakarta, 2020), p. 2.

¹⁸ See The Hague Institute for Innovation of Law and Institute for the Advancement of the American Legal System, *Justice Needs and Satisfaction in the United States of America 2021: Legal Problems in Daily Life*, p. 8; and submission of the American Association for the International Commission of Jurists.

¹⁹ See The Hague Institute for Innovation of Law, *Justice Needs and Satisfaction in Tunisia 2023: Legal Problems in Daily Life* (2023), p. 6.

²⁰ See The Hague Institute for Innovation of Law, *Justice Needs and Satisfaction in Burkina Faso 2022: Legal Problems in Daily Life* (2022), p. 60.

²¹ See Kathryn M. Young and Katie R. Billings, “An intersectional examination of U.S. civil justice problems”, *Utah Law Review*, vol. 2023, No. 3 (2023).

²² Submission of Pathfinders for Peaceful, Just and Inclusive Societies.

²³ See World Justice Project, *Global Insights on Access to Justice: Findings from the World Justice Project General Population Poll in 101 Countries* (2019), p. 7. Available at <https://worldjusticeproject.org/sites/default/files/documents/WJP-A2J-2019.pdf>.

²⁴ In the United States, see Ethan Roubenoff, Jasmijn Sloopjes and Irene Bloemraad, “Spatial and sociodemographic vulnerability: quantifying accessibility to health care and legal services for immigrants in California, Arizona and Nevada”, *SOCIUS*, vol. 9 (2023).

Greece.²⁵ Similarly, courts are few and far between in many countries, particularly in rural areas, and there may be limited or no affordable public transportation to facilitate access.²⁶

15. Even when the supply of lawyers is relatively plentiful, this does not translate into adequate availability of legal services. Hiring a lawyer may be too expensive for those who are not wealthy, even in industrialized countries.²⁷ In the United States, where there is one lawyer for every 249 people, most low-income people do not bother to seek legal help, with more than half saying they do not know if they could find or afford a lawyer if they needed one.²⁸

16. There are other, more complex, reasons why people may be reluctant to engage with formal justice institutions. In some countries, people who commonly experience discrimination, including women, racially, ethnically or nationally marginalized groups, persons with disabilities and LGBT persons, among others, may be poorly represented among lawyers and the judiciary. People from these groups may worry that legal professionals will struggle to understand the problems they face, or even fear discriminatory treatment, particularly if such treatment is widespread. Formal justice systems may also be ill-equipped to engage broader society, especially when they operate in unfamiliar languages or require literacy or Internet connectivity.

17. Given the scale of the justice gap, it is clear that a significant and urgent shift is needed. A growing number of Member States, civil society organizations and researchers agree that solutions should be identified from the perspective of those seeking resolution to their justice problems.²⁹ These people-centred justice approaches stress that top-down changes, based on what experts believe is best, risk replicating the problems identified above. Furthermore, recognizing the importance of individuals' capacity to solve their own justice dilemmas acknowledges their essential human dignity and agency, while harnessing their expertise promises to unlock innovation.

18. The principles of people-centred justice have been summed up as follows:

- (a) Put people and their justice needs at the centre of justice systems;
- (b) Resolve justice problems;
- (c) Improve justice journeys;
- (d) Use justice for prevention and to promote reconciliation;

²⁵ See United Nations Office on Drugs and Crime and United Nations Development Programme, *Global Study on Legal Aid Country Profiles* (2016), pp. 69, 89 and 441.

²⁶ In the United Kingdom of Great Britain and Northern Ireland, a retiring senior judge described a litigant making a 24-mile round trip on foot to attend court. See Jamie Grierson, "Access to justice in family courts 'inadequate' says outgoing head", *The Guardian*, 27 July 2018.

²⁷ See Bill Graveland, "A 'broken system': Canadians can't afford lawyers but don't qualify for legal aid", *The Canadian Press*, 6 December 2019.

²⁸ See Legal Services Corporation, *The Justice Gap: the Unmet Civil Legal Needs of Low-Income Americans* (2022), p. 8.

²⁹ More than 60 Member States have endorsed people-centred justice principles through The Hague Declaration on Equal Access to Justice for All by 2030; the Buenos Aires Declaration on Equal Access to Justice for All; the Group of Seven Plus Joint Action Plan on Access to Justice for All in Conflict-Affected Countries; the joint letter to the Secretary-General on reimagining social contracts endorsed at the Ministerial Meeting on Building Peaceful and Inclusive Societies Through Justice for All, held on 14 April 2021; the endorsement of the joint letter by the Conference of Ministers of Justice of the Ibero-American Countries; the OECD Riga Justice Agenda: Transforming Justice for a Vibrant Social Contract; and the Summit for Democracy joint statement and call to action on the rule of law and people-centered justice. See Kelechi Achinonu and others, "From justice for the few to justice for all: a model for high-ambition action to deliver the SDGs" (United Nations Foundation, 2023), p. 9.

(e) Empower people to access services and opportunities.³⁰

19. People-centred justice focuses on the problems people have in their everyday lives and the kinds of legal services and tools they need to solve them. People-centred justice seeks to learn from quality data, prevent – and not only respond to – legal problems and ensure that people know their rights and can access justice to vindicate them and that justice systems embrace bottom-up innovation and lessons from those too often left out of the protection of the law.³¹ Legal empowerment is a key people-centred justice innovation that can expand access to justice. Embracing legal empowerment will increase momentum towards equal access to justice for all, at a time when the world lags behind on this crucial commitment of the 2030 Agenda for Sustainable Development.

III. Legal standards: access to justice and legal assistance

20. The right of access to justice is derived from articles 8 (right to an effective remedy) and 10 (right to a fair hearing before an independent and impartial tribunal) of the Universal Declaration of Human Rights, as well as articles 2 (3) (right to an effective remedy); 14 (rights to equality and fair hearing before a competent, independent and impartial tribunal, right to legal assistance) and 26 (rights to equality before the law and equal protection of the law) of the International Covenant on Civil and Political Rights. Equality before the law is also protected by provisions of the core non-discrimination treaties, including article 15 of the Convention on the Elimination of All Forms of Discrimination Against Women, article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination, article 5 of the Convention on the Rights of Persons with Disabilities and article 18 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Article 34 of the United Nations Declaration on the Rights of Indigenous Peoples affirms the right of Indigenous Peoples to promote, develop and maintain their distinctive “juridical systems or customs”, and article 40 recognizes their right to access to just and fair procedures for the resolution of conflicts and to effective remedies for infringements of their individual and collective rights.

21. Article 14 of the International Covenant on Civil and Political Rights makes clear that those facing criminal charges have a right to counsel of their own choosing, and that those who cannot pay must be given free legal assistance. This right has been developed through the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems. The Human Rights Committee has explained that States are also obliged to provide free legal aid in some civil cases for those with financial need.³²

22. Former Special Rapporteurs have emphasized the centrality of access to justice to ensuring human rights for all. Former Special Rapporteur Leandro Despouy explained that the “richness of the concept of access to justice lies in the fact that it is both a right in itself and the means of restoring the exercise of rights that have been disregarded or violated”.³³ Previous Rapporteurs have underscored that States are responsible for guaranteeing access to justice,³⁴ without discrimination, to everyone within the State’s territory or subject to its jurisdiction.³⁵

³⁰ Ibid.

³¹ Interviews; submission of the United Nations Foundation.

³² See [CCPR/C/GC/32](#), para. 10.

³³ See [A/HRC/8/4](#), para. 17.

³⁴ See [A/HRC/47/35](#), para. 109.

³⁵ See [A/HRC/23/43](#) and [A/HRC/23/43/Corr.1](#), para. 43.

23. Furthermore, former Rapporteurs have identified the need for legal aid to ensure access to justice when human rights are at stake.³⁶ Former Special Rapporteur Gabriela Knaul pointed to a wide range of rights that require legal aid for their protection, including the rights to be free from forced eviction, discrimination and torture, as well as rights that arise in contract, property and tort law, and “equivalent notions in the area of administrative law, such as the termination of employment of civil servants or the determination of their social security benefits”.³⁷ Many Special Rapporteurs, including those on racial discrimination³⁸, migrants’ rights³⁹ and freedom of association⁴⁰ have stressed the importance of legal aid and access to counsel to protect rights under their mandates. Former Special Rapporteur Knaul emphasized that the “right to legal aid” is “both a right and an essential procedural guarantee for the effective exercise of other human rights”.⁴¹

24. While recognizing that lawyers play a central role in ensuring legal aid, former Special Rapporteur Knaul also highlighted the important role of paralegals in providing such services. She noted that paralegals are force multipliers where lawyers are scarce or overburdened, and, “since they usually live and work within the community, they often have direct knowledge of the situation and needs of the community”.⁴²

IV. Legal empowerment to ensure access to justice for all

A. Defining legal empowerment

25. Legal empowerment is an approach to expanding access to justice by placing the law in the hands of those most directly impacted by injustice.⁴³ It has been summed up as the effort to ensure that people can know, use and shape the law to achieve justice.⁴⁴ Where the law is being used to oppress or harm, a critical form of legal empowerment also seeks to transform law by building community power to demand systemic change.⁴⁵ Legal empowerment embraces intersectionality, responding to the ways injustice manifests differently across communal and individual forms of discrimination.⁴⁶

26. Legal empowerment was born in sites of grave injustice, and legal empowerment efforts have often been led by community paralegals – individuals from impacted communities who use the law to advance community rights. As the preamble to the Kampala Declaration on Community Paralegals recalls, “community paralegals

³⁶ Ibid., para. 35.

³⁷ Ibid., para. 37.

³⁸ See [A/74/321](#).

³⁹ See [A/73/178/Rev.1](#).

⁴⁰ See [A/HRC/47/24](#).

⁴¹ See [A/HRC/23/43](#) and [A/HRC/23/43/Corr.1](#), para. 28.

⁴² Ibid., para. 71.

⁴³ See Stephen Golub, “Beyond rule of law orthodoxy: the legal empowerment alternative”, *Carnegie Papers, Rule of Law Series*, No. 41 (Carnegie Endowment for International Peace, 2003); see also the submission of Rachel M. Gisselquist.

⁴⁴ Submission of Namati; interviews; consultation, North America region.

⁴⁵ See Margaret Satterthwaite, “Critical legal empowerment for human rights”, in Gráinne de Búrca, ed., *Legal Mobilization for Human Rights* (Oxford, Oxford University Press, 2021), p. 89; and Anuradha Joshi, Marta Schaaf and Dina Zayed, “The use of legal empowerment to improve access to quality health services: a scoping review”, *International Journal for Equity in Health*, vol. 21, No. 1 (2022).

⁴⁶ See Ariadna M. Godreau-Aubert, “Lawyering in times of peril: legal empowerment and the relevance of the legal profession”, *New York University Law Review*, vol. 97, No. 6 (2022), p. 1,608.

have been active in Africa for decades, at least since the 1950s, when paralegals began assisting black South Africans to navigate and resist the codes of apartheid”. Community paralegals were also essential in the period under martial law in the Philippines during the 1970s and early 1980s, when advocates “pioneered a strategy of training and deploying paralegals for ‘first aid legal aid’” using “strategies like accompanying the would-be detainee to his detention centre to help him avoid torture or extrajudicial execution”.⁴⁷

27. And legal empowerment has proven its value over the years.⁴⁸ A review of the evidence in this field found that legal empowerment is effective in helping individuals and communities understand their rights and how to vindicate them and has a concrete impact on legal policies, institutional practices and the law itself.⁴⁹ Much more research is needed, but important efforts are under way in this realm.⁵⁰

B. Legal empowerment methods and approaches

28. Legal empowerment encompasses a wide range of approaches to advancing access to justice. The present section examines a few prevalent methods, starting with the most impactful innovation: expanding the legal ecosystem to embrace community justice workers.

1. Expanding the legal ecosystem

29. Various called community paralegals, justice defenders, grassroots legal advocates and barefoot lawyers, these justice operators (community justice workers) are generally not university graduates with professional degrees in law, nor are they accredited members of the bar, like lawyers. Instead, they typically receive more limited training – from civil society organizations and lawyers, training academies or government agencies – in specific areas of law and in skills like negotiation, community organizing and advocacy, as well as the workings of relevant justice or other sectoral institutions. Once trained, they raise awareness of rights, laws and policies; help people navigate legal and administrative processes in pursuit of remedies; and support communities’ engagement in law and policy reform.⁵¹ They are often members of – and live within – the communities they serve, while some work in mobile clinics or relocate to be close to communities facing injustice.⁵²

30. There are various approaches to ensuring that community justice workers provide quality services based on appropriate knowledge and skills and that qualified

⁴⁷ See Jennifer Franco, Hector Soliman and Maria Roda Cisnero, “Community-based paralegalism in the Philippines: from social movements to democratization”, Justice and Development Working Paper Series (World Bank, 2014), p. 5.

⁴⁸ See Laura L. Goodwin and Vivek Maru, “What do we know about legal empowerment? mapping the evidence”, *Hague Journal on the Rule of Law*, vol. 9 (2017); Rachel M. Gisselquist, “Legal empowerment and group-based inequality”, *The Journal of Development Studies*, vol. 55, No. 3 (2019); and Mark Weston, “The benefits of access to justice for economies, societies and the social contract: a literature review” (Open Government Partnership and Pathfinders for Peaceful, Just and Inclusive Societies, 2022).

⁴⁹ Goodwin and Maru, “What do we know about legal empowerment?” (see footnote 48).

⁵⁰ See Rebecca L. Sandefur, Matthew Burnett and Julia Dos Santos Drummond, “People-centred access to justice research: a global perspective” (forthcoming); and Namati, “Learning Agenda for Legal Empowerment” (available at <https://namati.org/network/learning/learning-agenda/> (accessed on 27 June 2023)).

⁵¹ Submissions of Namati, the International Bar Association’s Human Rights Institute and the Institute for Defense of the Right to Defense in Brazil; consultations with practitioners based in the regions of Europe and Central Asia, Africa, Asia, Latin America, and the Middle East and North Africa.

⁵² Consultation, Europe and Central Asia region.

operators can be identified by consumers. In some countries, formal legal recognition has been included in legal aid legislation or regulations.⁵³ In others, legal recognition is extended by relevant agencies.⁵⁴ In many, the best approach to recognizing trained justice operators is still being developed.⁵⁵ The relationship between community justice workers and lawyers also varies across jurisdictions: sometimes community justice workers are directly supervised by lawyers, and sometimes they carry out their functions autonomously. The distinction between the type of services offered by qualified lawyers and those offered by community justice workers is important. Regulation should be directed to ensuring that those who need legal support can obtain quality assistance by distinguishing among the services providers are equipped to offer, while enlarging the ecosystem of those able to offer services and making such services more accessible.

31. Community justice workers sometimes work in specific sectors: “jailhouse lawyers” in the United States, for example, are incarcerated individuals who generally have no formal legal training prior to their incarceration, but learn legal skills and substantive law to advocate for themselves and the rights of their peers.⁵⁶ Community justice workers and lawyers work together in prisons in India and in Sierra Leone, and have a presence in police stations, allowing them to assist at the time of arrest.⁵⁷ In the Philippines, community justice workers are trained by civil society organizations or government agencies to help communities with basic legal problems, act as community-based guardians for forest conservation and practice before agrarian reform tribunals and labour commissions.⁵⁸ In countries as diverse as Guyana, Liberia, Mozambique, Sierra Leone, Uganda and Zimbabwe, trained community justice workers work to defend community or Indigenous land rights.⁵⁹ Community justice workers are trained to provide case support to refugees, asylum seekers, migrants and internally displaced persons in a variety of countries, including Colombia, Egypt, Indonesia, Jordan, Kenya, Lebanon, Thailand, Türkiye, Ukraine and the United States.⁶⁰ Health-sector-specific community justice workers provide support in countries across regions, including in Guatemala, Indonesia, India, Kenya and Mozambique.⁶¹ Community justice workers provide support to survivors of sexual and gender-based violence in all regions.⁶² They are also working to advance

⁵³ See Vivek Maru and Varun Gauri (eds.), *Community Paralegals and the Pursuit of Justice* (Cambridge, Cambridge University Press, 2018), p. 9.

⁵⁴ Such as in the Philippines. See Franco, Soliman and Cisnero, “Community-based paralegalism in the Philippines” (see footnote 47).

⁵⁵ As in the United States. See Michael Houlberg and Natalie Anne Knowlton, “Allied legal professionals: a national framework for program growth” (Institute for the Advancement of the American Legal System at the University of Denver, 2023).

⁵⁶ Submission of The Jailhouse Lawyer Initiative in the United States; interviews.

⁵⁷ Consultation, Asia region. In Sierra Leone, AdvocAid trains paralegals to provide support in prisons and at police stations (see <https://advocaidsl.org>).

⁵⁸ See Maru and Gauri, *Community Paralegals and the Pursuit of Justice* (see footnote 53), p. 22; interviews.

⁵⁹ *Ibid.*, p. 7; interviews.

⁶⁰ See Emily E. Arnold-Fernández, “Refugee legal empowerment: from accompaniment to justice” (New York University Center on International Cooperation, 2022); interviews.

⁶¹ Interviews; Ellie Feinglass, Nadja Gomes and Vivek Maru, “Transforming policy into justice: the role of health advocates in Mozambique”, *Health and Human Rights Journal*, 22 September 2016 (available at: <https://www.hhrjournal.org/2016/09/transforming-policy-into-justice-the-role-of-health-advocates-in-mozambique/> (accessed on 27 June 2023)).

⁶² The percentage of participants from the regional consultations that work on sexual and gender-based violence: 71 per cent in Africa; 56 per cent in Asia; 54 per cent in Latin America; and 25 per cent in the Middle East and North Africa. The Special Rapporteur was unable to collect this data from the Europe and Central Asia or the North America regional consultations, but practitioners mentioned working on sexual and gender-based violence during those consultations.

community rights in the context of the climate emergency,⁶³ in the face of disaster⁶⁴ and during armed conflict.⁶⁵ Community justice workers work to defend rights in relation to States and companies, and, while they focus on national legal systems, some efforts have also targeted international or extraterritorial actors.⁶⁶

32. Community justice workers are sometimes empowered to work across sectors and may enjoy recognition – either by the State or by specific institutions – as specialists who can represent others in formal proceedings.⁶⁷ In the United States, community justice workers are increasingly recognized as having the authority to undertake limited legal practice, frequently focused on family law, landlord/tenant disputes, consumer debt and other high-need areas.⁶⁸ Accredited individuals can also represent immigrants before immigration judges and administrative decision-makers in the United States,⁶⁹ a context in which representation is not supplied by the State but has a significant impact on outcomes.⁷⁰ In Kenya, community justice workers have provided frontline legal support to poor communities – often in informal settlements⁷¹ – since the 1970s, and were recently formally recognized as legal aid providers.⁷² Community justice workers are formally recognized – either generally or in specific sectors – in a number of other countries, including China, Indonesia, Malawi, New Zealand, the Philippines, the Republic of Moldova, Sierra Leone, the United Republic of Tanzania and Zambia.⁷³

⁶³ See, e.g., Erica Sánchez, “Activists around the world are fighting for climate justice. How Is This Rights Champion Helping?”, Global Citizen, 11 June 2021. Available at <https://www.globalcitizen.org/en/content/climate-justice-vivek-maru-namati/> (accessed on 27 June 2023); Godreau-Aubert “Lawyering in times of peril” (see footnote 46); consultation, Latin America region.

⁶⁴ See Godreau-Aubert, “Lawyering in times of peril” (see footnote 46).

⁶⁵ See Borys Grachov, “Ukrainian LGBTI activist on breaking down barriers to health despite deadly conflict”, the Global Fund, 16 May 2022.

⁶⁶ Interviews; Satterthwaite, “Critical legal empowerment” (see footnote 45).

⁶⁷ Such as in the Philippines. Submission of the International Bar Association’s Human Rights Institute; consultation, Europe and Central Asia region.

⁶⁸ See Michael Houlberg and Janet Drobinske, *The Landscape of Allied Legal Professional Programs in the United States* (Institute for the Advancement of the American Legal System at the University of Denver, 2022).

⁶⁹ See United States Department of Justice, “Recognition & Accreditation (R&A) Program”. Available at: <https://www.justice.gov/eoir/recognition-and-accreditation-program> (accessed on 27 June 2023). Promising programmes exist to prepare such representatives. See, for example, Villanova University, “Villanova interdisciplinary immigration studies training for advocates”. Available at <https://www1.villanova.edu/university/professional-studies/academics/professional-education/viista.html>.

⁷⁰ See Donald Kerwin and Evin Millet, “Charitable legal immigration programs and the US undocumented population: a study in access to justice in an era of political dysfunction”, *Journal on Migration and Human Security*, vol. 10, No. 3 (2022).

⁷¹ Interviews; consultation, Africa region.

⁷² See Annette Mbogoh, “Pouring new wines in old wineskins: State capture, contestations and conflicting understanding of the paralegalism in Kenya with the advent of the Legal Aid Act 2016”, *Egerton Law Journal*, vol. 1, No. 1-192 (2021), p. 161.

⁷³ See Namati, “China: community paralegals: recognition & financing” (2019), “Indonesia: community paralegals: recognition & financing” (2019), “Malawi: community paralegals: recognition & financing” (2019), “Moldova: community paralegals: recognition & financing” (2019), “New Zealand: community paralegals: recognition & financing” (2019), “Philippines: community paralegals: recognition & financing” (2019) and “Sierra Leone: community paralegals: recognition & financing” (2019) (available at <https://namati.org/resources/community-paralegals-recognition-and-financing/>). See also Helen Dancer, “Power and rights in the community: paralegals as leaders in women’s legal empowerment in Tanzania”, *Feminist Legal Studies*, vol. 26 (2018); and Robert Nanima and Ebenezer Durojaye, “The legal recognition of paralegals in Africa: lessons, challenges and good practices”, Dullah Omar Institute for Constitutional Law, Governance and Human Rights and the African Centre of Excellence for Access to Justice (2021) (available at: <https://reformar.co.mz/publicacoes/legal-recognition-of-paralegals-in-africa.pdf>).

33. Across the world, the legal ecosystem is expanding, with community justice workers stepping into the justice gap and providing tools for communities to solve their own legal problems, big and small. These justice defenders do not replace lawyers. The right to counsel, the ability to access a lawyer of one's choosing and the right to legal aid are enshrined in human rights law.⁷⁴ And for good reason: when the full weight of the State is brought to bear, an individual deserves an independent, competent and ethical lawyer. This right must be guaranteed by the State. The Special Rapporteur emphasizes that efforts to enlarge the legal ecosystem must not be understood as a way to avoid or weaken the right to access a lawyer under human rights law.

34. A comparison is often drawn between community justice workers and nurses or community health workers. Like these professionals, community justice workers act as force multipliers, extending legal first aid to marginalized, isolated and excluded communities. Embedded in, and often coming from, the communities they serve, these justice defenders also bring special expertise such as Indigenous knowledge and problem-solving methods derived from custom and innovation alike.⁷⁵ They expand options for those who face legal problems and refer people to lawyers when technical expertise is needed.⁷⁶ And through their work on individual and community issues, they learn where legal systems are weak or broken and can suggest solutions designed from the bottom up.⁷⁷

35. Community justice workers also help to democratize the rule of law. Legal rules, norms and processes impact people's daily lives in ways both big and small. When communities understand the legal regimes that impact them, they are more likely to use the law as a tool to further their life goals. And when marginalized communities confront systems of discrimination, exclusion or criminalization in efforts to advance their rights, they demand changes that shift, equalize or improve the accountability of power within those structures.

2. Know your rights and community legal education

36. Legal empowerment practitioners also conduct "know your rights" campaigns, provide community legal education and rights awareness, and engage in work aimed at ensuring that people have critical consciousness about the law.⁷⁸ This work is crucial: in a global legal needs survey, the World Justice Project found that fewer than one in three people (29 per cent) understood their problem to be legal in nature as opposed to bad luck or a community matter.⁷⁹ When people do not know that legal remedies are available, they are unlikely to seek those solutions and may be discouraged from speaking out about injustice.⁸⁰ This can lead to disengagement from public institutions, which are seen as aloof, irrelevant or even predatory.⁸¹ Such disengagement can sow the seeds of disaffection, polarization and even conflict. On the other hand, when communities know the law and understand avenues for using legal processes, they are often pulled into a deeper democratic relationship with the State, eventually engaging in efforts to make legal systems more user-friendly.⁸²

⁷⁴ See discussion in paras. 20–23.

⁷⁵ Interviews.

⁷⁶ Consultations, Asia and Europe and Central Asia regions.

⁷⁷ Interviews.

⁷⁸ Interviews; see the submissions of FIMA Chile, Asia Pacific Forum, Centre to Assist and Protect Child Rights of Nepal, SUAKA in Indonesia, Maat for Peace, Development and Human Rights in Egypt and Avocats sans frontières in Canada.

⁷⁹ See Andersen, "What Is People-Centered Justice?" (see footnote 14).

⁸⁰ Interviews.

⁸¹ Consultations, North America and Middle East and North Africa regions; interviews.

⁸² Interviews; consultation, Asia region.

3. Accompaniment, navigation and pro se support

37. Communities that face entrenched injustice are often isolated or marginalized and may not trust or understand how justice systems work. They may experience or fear discrimination, stigmatization or rejection by legal institutions or those working within them. For these reasons, accompaniment and navigation are common legal empowerment methods, through which trained community members walk the justice path with those seeking legal assistance.⁸³ This may involve attending court hearings, administrative proceedings and meetings with government officials.⁸⁴ In such settings, community justice workers help ensure that officials follow proper procedures and do not abuse, denigrate or belittle those seeking justice.⁸⁵ They also “find legal hooks to get remedies” alongside community members, and in so doing, assist those communities to build “a deeper understanding and sense of agency”.⁸⁶ Those providing accompaniment may also be trained to offer moral support or psychological first aid to those who have survived abuse.⁸⁷ Meanwhile, “legal navigators” provide orientation to legal systems, answers to common questions about what to expect within institutions and advice for creative problem-solving.⁸⁸

38. Pro se support is another service commonly provided by legal empowerment practitioners.⁸⁹ In jurisdictions where paralegals cannot provide even simple advice about legal matters for fear of engaging in the unauthorized practice of law, pro se support takes on greater importance. It entails the provision of legal materials, answers to common questions and in-depth explanation of legal processes without offering individualized advice. One former jailhouse lawyer in the United States said that the work is “about strengthening your community by making sure the people beside you are strong”.⁹⁰

4. Monitoring and data-gathering

39. Communities that experience discrimination, marginalization, criminalization and exclusion are often either misrepresented or missing from government data about justice systems.⁹¹ But designing people-centred justice solutions requires high-quality data that can elucidate the justice challenges experienced by those communities and the resources needed to find solutions.⁹² It is not surprising, then, that such communities have used data-gathering and monitoring to document violations and

⁸³ See the submission of the Association for Emancipation, Solidarity and Equality of Women in North Macedonia.

⁸⁴ Consultations, North America, Africa and Latin America regions.

⁸⁵ Consultation, Middle East and North Africa region.

⁸⁶ Interviews.

⁸⁷ Consultation, Europe and Central Asia region.

⁸⁸ Submission of Legal Link; consultations, Europe and Central Asia, Africa and Latin America regions.

⁸⁹ See The National Self-Represented Litigants Project (available at <https://representyourselfcanada.com/> (accessed on 27 June 2023)); see also the submission of the American Association for the International Commission of Jurists for data on pro se litigants.

⁹⁰ Interviews.

⁹¹ Communities that are criminalized, including LGBT communities, sex workers and injecting drug users, are often uncaptured or undercounted (see Sara L.M. Davis, *The Uncounted: Politics of Data in Global Health* (Cambridge, Cambridge University Press, 2020), pp. 45–64). The bottom 5 per cent economically of the world’s population is estimated to be uncaptured in national censuses and major surveys. This includes people in situations of homelessness, incarceration and hospitalization, as well as those living in informal settlements and many Indigenous Peoples (see Alex Cobham, *The Uncounted* (Hoboken, New Jersey, Wiley, 2020), pp. 157 and 158).

⁹² Submissions of Pathfinders for Peaceful, Just and Inclusive Societies, the Association for Emancipation, Solidarity and Equality of Women in North Macedonia and Asia Pacific Forum; interviews.

advance rights fulfilment.⁹³ In Guyana, an Indigenous District Council has trained community monitors to document activities such as unlawful mining; the Council then uses such data to seek government action to halt the unlawful activities.⁹⁴ In Guatemala, Indigenous communities nominate individuals to be trained to monitor the right to health.⁹⁵ These defenders collect data and use it to advocate for more equitable health services. A similar approach has been used by health advocates in Mozambique.⁹⁶ In partnership with lawyers, communities may also use monitoring and data-gathering to design and advance community-led litigation, as in the United States.⁹⁷

5. Filing complaints and grievances, and community-led litigation

40. Government agencies often do not require complaints or grievances to be filed by lawyers, leaving space for community justice workers to collate evidence and seek remedies alongside communities.⁹⁸ In North Macedonia, community justice workers work with Roma community members to obtain identity documents required for health care.⁹⁹ In Guatemala, community justice workers use formal redress mechanisms to address the availability of medicines and services and the lack of ambulance response.¹⁰⁰

41. The evidence collected by community justice workers can also uncover and demonstrate broader patterns of discrimination or other violations of the law, which can form the basis for advocating for systemic change. For example, health advocates in Mozambique achieved redress to over 1,000 grievances across 27 health facilities. By engaging in advocacy based on the data they collected, they also achieved better access to services and improved medical care.¹⁰¹

42. Finally, data collection by community justice workers can power community-driven litigation, in which strategic litigation is crafted to vindicate community rights.¹⁰² In such cases, those most affected by injustice are in charge of deciding on the goals of a case and take the lead in monitoring enforcement.¹⁰³ This “requires a reimagination of the relationship between attorney and client from one of an ‘expert’ to that of an ‘ally’”.¹⁰⁴ In Argentina, informal settlement residents used participatory mapping to demonstrate that services were concentrated in wealthier areas, then used

⁹³ Interviews.

⁹⁴ See South Rupununi District Council, “*Wa wiizi wa kaduzu: our territory, our custom*” (available at <http://wapichanao.communitylands.org/index.html> (accessed on 27 June 2023)); see also Satterthwaite, “Critical legal empowerment” (see footnote 45).

⁹⁵ See Alison Hernandez and others, “‘History obligates us to do it’: political capabilities of Indigenous grassroots leaders of health accountability initiatives in rural Guatemala”, *British Medical Journal Global Health*, vol. 7, No. 5 (2022).

⁹⁶ See Feinglass, Gomes and Maru, “Transforming Policy into Justice” (see footnote 61).

⁹⁷ Interviews; consultation, North America region.

⁹⁸ Submissions of the Center for Reproductive Rights and Asia Pacific Forum.

⁹⁹ See Anuradha Joshi, “Legal empowerment and social accountability: complementary strategies toward rights-based development in health?”, *World Development*, vol. 99 (2017), pp. 165 and 166.

¹⁰⁰ See Joshi, Schaaf and Zayed, “The use of legal empowerment to improve access to quality health services” (see footnote 45).

¹⁰¹ Feinglass, Gomes and Maru, “Transforming Policy into Justice” (see footnote 61).

¹⁰² Submission of the International Bar Association’s Human Rights Institute.

¹⁰³ See Bernstein Institute for Human Rights and Global Justice Clinic, “Community-driven litigation”, Justice Power. Available at: <https://justicepower.org/community-driven-litigation> (accessed on 27 June 2023).

¹⁰⁴ Ibid.

these data in public health advocacy and, in partnership with lawyers, in community-driven litigation.¹⁰⁵

6. Community organizing and building community power

43. Community justice workers not only help communities know and use legal systems, they also empower them to shape and ultimately transform the law. When communities are disempowered through systemic discrimination and exclusion, reclaiming agency and collective voice is key.¹⁰⁶

44. Community justice workers engage communities in analysing how individual injustices are linked to larger processes of exclusion or marginalization and help identify and articulate community demands for change.¹⁰⁷ Community justice workers also help build the capacity of communities to seek changes in law and policy by providing training in advocacy with government officials¹⁰⁸ or policy and budget analysis.

45. Legal empowerment practitioners stress the importance of the community coming together to forge collective understanding.¹⁰⁹ This point demonstrates both an ethical commitment to democratic processes within legal empowerment spaces and an insight about what is needed to pursue more thorough-going changes, transforming legal systems from the bottom up. As one practitioner explained, “human rights is about shifting power”,¹¹⁰ giving weight to justice demands from communities that are too often discounted. When groups come together “where the power of the law and the power of community ... coalesce towards justice”,¹¹¹ they can shift power in ways that unblock injustices.¹¹²

7. Alternative dispute resolution, indigenous systems, and customary and informal justice systems

46. Legal empowerment efforts do not focus only on States’ formal legal systems and institutions. Grassroots justice efforts commonly utilize alternative dispute resolution.¹¹³ For example, in Kenya, community justice workers spearhead mediation and arbitration.¹¹⁴ In Guatemala, community justice workers working in the health sector have found that informal mediation often resolves cases more quickly than formal grievance processes.¹¹⁵ By interacting directly with institutional

¹⁰⁵ See Sukti Dhital and Tyler Walton, “Legal empowerment approaches in the context of COVID-19”, *Journal of Human Rights*, vol. 19, No. 5 (2020).

¹⁰⁶ Submissions of Asia Pacific Forum and Natural Justice: Lawyers for Communities and the Environment.

¹⁰⁷ See Samuel Nesner and Ellie Happel, “In Haiti, legal empowerment is resistance against exploitation”, *Open Global Rights*, 27 August 2018. Available at: <https://www.openglobalrights.org/in-haiti-legal-empowerment-is-resistance-against-exploitation/> (accessed on 27 June 2023).

¹⁰⁸ See Meena Jagannath, Nicole Phillips and Jeena Shah, “A right-based approach to lawyering: legal empowerment as an alternative to legal aid in post-disaster Haiti”, *Northwestern Law Journal of International Human Rights*, vol. 10, No. 1 (2011), p. 10.

¹⁰⁹ Interviews; submission of The Right to Immigration Institute.

¹¹⁰ Interviews.

¹¹¹ See Jhody Polk and Tyler Walton, “Legal empowerment is abolition”, *New York University Law Review Online* (2023). Available at: https://www.nyulawreview.org/wp-content/uploads/2023/06/NYULawReview98_PolkWalton.pdf (accessed on 30 June 2023).

¹¹² See Adrian Di Giovanni and Luciana Bercovich, “Legal empowerment in informal settlements: lessons on using the law to overcome urban exclusion and poverty in the Global South”, *New York University Journal of International Law and Politics*, vol. 54 (2021), pp. 93–151.

¹¹³ Submissions of Maat for Peace, Development and Human Rights and the International Bar Association’s Human Rights Institute.

¹¹⁴ Submission of Strategic Advocacy for Human Rights.

¹¹⁵ Interviews.

leaders, community justice workers increase their stature in the community, lending weight to recommendations they make based on their experience of repeated engagement.¹¹⁶

47. International law guarantees the rights of Indigenous Peoples to develop and maintain their own juridical systems.¹¹⁷ These Indigenous justice mechanisms make significant contributions to resolving disputes and realizing rights.¹¹⁸ Indigenous community justice workers expand access to justice by engaging with such systems.¹¹⁹ The role and independence of Indigenous juridical systems are enhanced through the legal empowerment work of Indigenous community justice workers.

48. Community justice workers also frequently work with customary or informal justice systems.¹²⁰ This is important since customary or informal justice mechanisms are the most commonly used justice institutions, often relied upon by marginalized populations.¹²¹ Customary or informal justice institutions benefit from “cultural and historical foundations”, and they are “often more accessible than domestic State systems, because of their cultural relevance, availability and proximity”.¹²²

49. Some customary or informal justice systems have been rightly critiqued by marginalized groups for engaging in discrimination, using procedures that do not prioritize victim protection or due process rights and accepting some forms of violence.¹²³ These concerns are important: human rights must be upheld for all, no matter the context. Before deciding whether a given customary or informal justice institution is an appropriate space for legal empowerment work, communities should consult with any members who are concerned about the capacity of those institutions to uphold their rights. The widespread use of these systems is often a reason that legal empowerment practitioners engage with, and seek to improve, customary or informal justice institutions. Because they are aimed at advancing human rights for all, legal empowerment approaches can be an important driver of rights-enhancing reforms.¹²⁴ Further, critical engagement of customary or informal justice systems can advance processes of decolonization by embracing previously denigrated pre-colonial systems while ensuring that they uphold the rights of all.¹²⁵

V. Challenges to advancing legal empowerment

50. Regrettably, despite their many contributions to advancing people-centred justice, community justice workers face myriad challenges, some of which are

¹¹⁶ Ibid.

¹¹⁷ See United Nations Declaration on the Rights of Indigenous Peoples, art. 34.

¹¹⁸ See [A/HRC/42/37](#), paras. 52 and 62–67.

¹¹⁹ See [A/HRC/24/50](#) and [A/HRC/24/50/Corr.1](#), para. 5. Indigenous community justice workers also engage in important legal empowerment efforts within formal State systems (see Jérémie Gilbert, “Indigenous Peoples and litigation: strategies for legal empowerment”, *Journal of Human Rights Practice*, vol. 12, No. 2 (2020), pp. 301–320).

¹²⁰ Submissions of Maat for Peace, Development and Human Rights and the International Bar Association’s Human Rights Institute; see also Trevor C.W. Farrow and Ab Currie, “Exploring community-based services, costs and benefits for people-centered justice” (Toronto, Canadian Forum on Civil Justice, 2023), pp. 13 and 32.

¹²¹ See Lisa Denney and Pilar Domingo, “Taking people-centred justice to scale: the role of customary and informal justice in advancing people-centred justice” (Overseas Development Institute, 2023), p. 1.

¹²² See [A/77/160](#), para. 103.

¹²³ See Denney and Domingo, “Taking people-centred justice to scale”, p. 14.

¹²⁴ Ibid., pp. 16–18; submission of the International Development Law Organization.

¹²⁵ See Alvin Kosgei and Robert Mutembei, “Access to justice and institutionalization of traditional dispute resolution mechanisms: lessons from South Africa”, *Egerton Law Journal*, vol. 2 (2021), pp. 89–109.

outlined in the present section. Still, community justice workers retain their resilience in the face of even the most daunting obstacles.

A. Harassment and attacks

51. Community justice workers have been physically harmed and killed, as well as having been targeted for harassment and online attacks.¹²⁶ These attacks appear to be on the rise.¹²⁷ In 2021, 50 per cent of community justice workers responding to a survey reported that members of their organizations or people they serve had been threatened, arrested or harassed pursuing justice in the past year.¹²⁸ Civic space is closing in many countries, leaving community justice workers vulnerable to crackdowns on dissent.¹²⁹

52. Physical attacks have been reported on community justice workers working with peasant communities in Brazil and advocates for LGBTQ and women’s rights in Nepal.¹³⁰ In the Philippines, where there is a long tradition of community justice workers working to advance the rights of rural communities and Indigenous Peoples, paralegals – alongside lawyers – have been subjected to “red-tagging” (being publicly labelled as communists) and have been physically attacked and even killed.¹³¹ Businesses or other economic actors may be a source of reprisals, for example, when community justice workers take action to prevent industrial activities that threaten environmental destruction.¹³² Some community justice workers have been targeted with strategic lawsuits against public participation, subjected to measures under anti-terrorism legislation¹³³ or sued for defamation in retaliation for their justice work.¹³⁴

B. Prohibition

53. One of the most common challenges for community justice workers is the prohibition or punishment of their work through laws and regulations concerning the practice of law. In many countries, community justice workers operate under threat of criminalization for dispensing advice or conducting other legal empowerment activities that are sometimes deemed to amount to unauthorized legal practice.¹³⁵ In the United States, some of these laws – which are implemented at the state level – are being challenged, such as, for example, in the case of an organization that helps low-income people file for debt relief through bankruptcy by training people to use an online tool. Concerned that this service could be treated as “unauthorized practice of

¹²⁶ All regional consultations.

¹²⁷ Submission of Namati.

¹²⁸ Ibid.

¹²⁹ Submission of Legal Hub; see also CIVICUS–World Alliance for Citizen Participation, “People power under attack 2022: a report based on data from the CIVICUS Monitor” (2022); interviews; submissions of Legal Hub, The 29 Principles, Namati and the Center of Constitutionalism and Human Rights of the European Humanities University.

¹³⁰ Submissions of the International Association of People’s Lawyers and the Centre to Assist and Protect Child Rights of Nepal.

¹³¹ Submission of the International Association of People’s Lawyers; consultation, Asia region.

¹³² Submissions of EarthRights International, Natural Justice: Lawyers for Communities and the Environment and Just Ground; interviews.

¹³³ For a discussion of how counter-terrorism measures impact civil society actors, see Fionnuala Ní Aoláin, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, *Global Study on the Impact of Counter-Terrorism on Civil Society and Civic Space* (United Nations, 2023).

¹³⁴ Submission of Namati.

¹³⁵ Ibid.

law” punishable through fines and potential criminal prosecution, the organization is seeking to change unauthorized practice of law rules through litigation.¹³⁶

54. In another example from the United States, jailhouse lawyers, trained in legal research and allowed by law to provide peer support to other incarcerated persons, are not allowed to use their skills to help their communities once they return home.¹³⁷ If they try to do so, they risk fines and even criminal penalties for unauthorized practice of law.¹³⁸ Community justice workers report that lawyers for powerful actors, such as landlords or companies, threaten to report them under unauthorized practice of law rules if they continue with their advocacy.¹³⁹ Practitioners interviewed for this report explained that similar issues have arisen in other countries as well, where community justice workers trained in specific areas of law have reportedly been blocked from providing accompaniment in legal processes.

55. The issue of affirmative legal recognition and regulation of community justice workers and their work is complex. It should be approached contextually and with the aim of recognizing the important work community justice workers do, while ensuring that community members seeking help with justice problems can be confident that community justice workers are competent, ethical and accountable. In various contexts, these goals have been pursued through legal recognition via licensing or certification schemes, through rules decriminalizing work supervised by lawyers or by ensuring that community justice workers do not undertake activities that could amount to the practice of law. There are benefits and risks to each approach. In some places, certification schemes have resulted in exclusion of experienced and capable community justice workers who were unable to meet new licensing or educational requirements due to cost, the inaccessibility of educational opportunities or other challenges.¹⁴⁰ An alternative to this approach that has worked in Canada is to create an optional licensing scheme for paralegals, alongside a system of direct supervision of community justice workers by lawyers working within community legal clinics.¹⁴¹ In other places, licenses or certification are granted for those trained to practice before specific government agencies or tribunals.¹⁴²

56. There are different methods for regulating the legal profession around the world, with bar associations, ministries of justice and courts having a role in different countries.¹⁴³ No matter the regulatory arrangements, principle 25 of the Basic Principles on the Role of Lawyers provides that professional associations of lawyers shall “cooperate with Governments to ensure that everyone has effective and equal access to legal services”. In many countries, bar associations are key partners in extending legal services to those who cannot afford a lawyer, ensuring that lawyers provide services on a pro bono basis and supporting legal aid schemes.¹⁴⁴ However, given the magnitude of the justice gap and the uneven supply of lawyers in many

¹³⁶ See United States District Court Southern District of New York, *Upsolve, Inc. v. James*, Case No. 1:22-cv-00627, Complaint, 25 January 2022.

¹³⁷ Consultation, North America region; interviews; Bernstein Institute for Human Rights, The Jailhouse Lawyer Initiative (available at https://www.law.nyu.edu/centers/bernstein-institute/legal_empowerment/jailhouse_lawyers).

¹³⁸ Submission of The Jailhouse Lawyer Initiative.

¹³⁹ Interviews; Vivek Maru, “Give the people the law”, *Democracy*, 4 September 2020 (available at <https://democracyjournal.org/arguments/give-the-people-the-law/>).

¹⁴⁰ See Mbogoh, “Pouring new wines in old wineskins” (see footnote 72).

¹⁴¹ See Namati, “Ontario, Canada: community paralegals: recognition & financing” (2019). Available at <https://namati.org/wp-content/uploads/2019/02/Ontario-Canada-Community-Paralegal-Research-Brief-Final-1>.

¹⁴² See Franco, Soliman and Cisnero, “Community Based Paralegalism in the Philippines” (see footnote 47).

¹⁴³ See A/73/365, para. 46.

¹⁴⁴ *Ibid.*; submission of Legal Hub.

places where justice needs are unmet, the Special Rapporteur encourages bar associations to embrace and support legal empowerment models, including through withdrawing or advocating for the reform of rules criminalizing or otherwise prohibiting the work of community justice workers. Some bar associations and other lawyers' groups have viewed legal empowerment efforts with concern.¹⁴⁵ Conflict between the bar and community justice workers can be prevented with more open discussion about how best to expand the legal ecosystem, prioritizing access to justice while ensuring the independence, competence and ethical conduct of all justice operators.

C. Lack of resources

57. Community justice workers frequently lack adequate resources.¹⁴⁶ Many legal empowerment programmes are implemented by civil society organizations, and chronic resource challenges lead to problems of sustainability. In a 2021 survey, 78 per cent of Grassroots Justice Network members reported that they faced operating cuts or closure due to lack of funds.¹⁴⁷ This is unfortunate, not only because this work helps to vindicate human rights, but also because economists have found that legal empowerment is a cost-effective way to advance access to justice for all.¹⁴⁸ A recent analysis¹⁴⁹ shows that Organisation for Economic Co-operation and Development (OECD) member countries and upper middle-income countries can afford basic justice for all, without increasing funding levels for justice systems, if they prioritize universal access. The same analysis shows that lower middle-income countries need to increase their funding for basic justice, but could do so through taxation, and that low-income countries need assistance from donors.

58. In a few countries that have legally defined roles for community justice workers, State funding is provided through legal aid structures. In Sierra Leone, the State-funded Legal Aid Board provides resources to a network of community justice workers.¹⁵⁰ Local governments in Canada and Ukraine fund community justice workers through community legal centres or clinics.¹⁵¹ Worldwide, the multi-donor initiative Legal Empowerment Fund supports justice efforts that aim to shift power to the grassroots.¹⁵²

¹⁴⁵ Consultations, Africa and Latin America regions; interviews.

¹⁴⁶ All regional consultations; submissions of SUAKA in Indonesia and Namati.

¹⁴⁷ Submission of Namati.

¹⁴⁸ A costing study by the Overseas Development Institute estimates that universal basic justice to address people's everyday justice needs cost \$20 per person a year in a typical low-income country, \$64 in a middle-income country, \$190 in a high-income country and \$230 in an OECD member country. See Marcus Manuel, Clare Manuel and Harsh Desai "Universal access to basic justice: costing Sustainable Development Goal 16.3", Working Paper 554 (Overseas Development Institute, 2019). Available at <https://cdn.odi.org/media/documents/12702.pdf>.

¹⁴⁹ Marcus Manuel and others, "Domestic financing for justice: who spends most on justice" (Overseas Development Institute, 2023). Available at https://cdn.odi.org/media/documents/Domestic_financing_for_website_FINAL.pdf (accessed on 29 June 2023).

¹⁵⁰ See Marcus Manuel and Clare Manuel, "People-centred justice for all: a route to scaling up access to justice advice and assistance in low-income countries" (Overseas Development Institute, 2021).

¹⁵¹ Ibid. See also Namati, "Ontario, Canada: community paralegals" (see footnote 141).

¹⁵² See "Q & A: Legal Empowerment Fund Director, Atieno Odhiambo", *Medium* (2021). Available at <https://medium.com/sdg16plus/q-a-legal-empowerment-fund-director-atieno-odhiambo-3acaea20f416> (consulted on 30 June 2023).

VI. Lawyers and judges as partners in legal empowerment

59. Many lawyers welcome and collaborate with community justice workers.¹⁵³ These lawyers recognize that – like doctors – their work is supported, not diluted, when allied professionals are given a role.¹⁵⁴ Like nurses and community health workers, community justice workers expand the capacity of the justice system, often reaching communities that would otherwise be excluded.¹⁵⁵ These actors also bring important skills and capacities to the field, including deep community ties, knowledge of relevant languages and cultures, and perspectives that may be underrepresented in the legal field.¹⁵⁶ Like doctors, lawyers will always have a unique role, providing high-level capacity, technical expertise and the knowledge gained by being a repeat player in a complex system. But working together, lawyers and community justice workers can advance justice for all in ways that lawyers cannot do on their own.

60. Judges in many countries have championed legal empowerment models and embraced the role of community justice workers.¹⁵⁷ In some cases this support grows from concern about unrepresented parties they have encountered in their courtrooms.¹⁵⁸ In other cases, the support is part of a broader effort to advance access to justice. In Kenya, for example, the Chief Justice of the Supreme Court has been enthusiastic about supporting the work of paralegals through engagement in programming, publicly welcoming their ability to make justice more proximate to marginalized communities.¹⁵⁹

VII. Conclusions and recommendations

61. To make access to justice a reality for all, it is time for Member States to acknowledge that justice systems the world over must evolve to be fit for purpose and must strive to resolve the full range of legal problems that most people face. Intersecting forms of discrimination, exclusion and marginalization are perpetuated in legal systems of every type and in countries of varying levels of development, from low-income to high-income. Building on this recognition, Member States should focus their energy and resources on transforming systems that perpetuate injustice.

62. Legal empowerment and other forms of people-centred justice can effectively expand access to justice in ways that make a concrete difference in people’s daily lives. Justice solutions should be led by and build upon the knowledge of affected communities to respond to legal needs in ways that are contextually, culturally and geographically relevant.

¹⁵³ Submissions of Asia Pacific Forum, Strategic Advocacy for Human Rights, the International Bar Association’s Human Rights Institute and Maat for Peace, Development and Human Rights; consultation, North America region.

¹⁵⁴ Consultation, North America region.

¹⁵⁵ Interviews.

¹⁵⁶ Interviews.

¹⁵⁷ Consultation, Asia region; Mbogoh, “Pouring new wines in old wineskins” (see footnote 72).

¹⁵⁸ Consultation, Africa region.

¹⁵⁹ See Namati, “Strengthening the global movement for grassroots justice: a public event” (available at <https://namati.org/news-stories/strengthening-the-global-movement-for-grassroots-justice-a-public-event/>) (accessed on 27 June 2023); Phinta Amondi, “CJ Koome launches PLEAD II to improve the justice sector”, Kenya News Agency, 11 May 2023 [22/24](https://www.kenyanews.go.ke/cj-koome-launches-plead-ii-to-improve-the-justice-sector/#:~:text=Chief%20Justice%20(CJ)%20Martha%20Koome,the%20lives%20of%20of%20countless%20Kenyans.2(CJ)%20; interviews.</p>
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63. **To this end, Member States should:**
- (a) **Do things differently, gathering evidence on effective alternatives:**
 - (i) **Build upon the knowledge and wisdom of communities to respond to their legal needs by learning about existing domestic legal empowerment efforts and consulting with communities and community justice workers about what works, which obstacles stand in practitioners' way and what support is needed from the State;**
 - (ii) **Resource partnerships among communities, civil society and academia to build knowledge and catalyse human-rights-respecting data-gathering about people's justice journeys and the obstacles they experience along the way;**
 - (iii) **Create new avenues for the adoption of justice solutions, encouraging partnerships that use an evidence-based approach to scaling solutions proven and approved at the grassroots level;**
 - (iv) **Be open to innovations emerging across sectors, communities and countries. Consider the use of regulatory sandboxes for encouraging innovation, like those used in other sectors;¹⁶⁰**
 - (v) **Report regularly on progress towards Sustainable Development Goal target 16.3;**
 - (b) **Review law, regulations and policy: work to remove obstacles and advance enabling environments for community justice workers. To this end, Member States should decriminalize unauthorized practice of law for community justice workers, recognize community justice workers as human rights defenders and make protection schemes and security resources available to community justice workers where needed;**
 - (c) **Provide resources:**
 - (i) **Ensure adequate resources for the provision of effective legal assistance whenever required by human rights or domestic law. For low-income countries, prioritize development cooperation in this area and ensure that funds are dedicated to frontline justice needs;**
 - (ii) **Support the legal empowerment work of civil society organizations, while respecting their independence, by resourcing funding facilities that emphasize grassroots justice work.**
64. **In their international work, Member States should:**
- (a) **Consider joining or taking a lead role in the Justice Action Coalition;**
 - (b) **Energize and devote resources to achieving Sustainable Development Goal target 16.3, targeting funds for people-centred justice initiatives in low-income countries;**
 - (c) **Consider supporting the Legal Empowerment Fund and other independent funding facilities devoted to grassroots legal empowerment and other people-centred justice initiatives.**
65. **Bar associations and judges associations are encouraged to consider:**

¹⁶⁰ See Rebecca L. Sandefur and Emily Denne, "Access to justice and legal services regulatory reform", *Annual Review of Law and Social Science*, vol. 18 (2022).

- (a) **Partnering with community justice workers to sensitize lawyers and judges to the contributions – or potential contributions – of community justice workers in their jurisdiction;**
 - (b) **Supporting efforts to decriminalize unauthorized practice of law for community justice workers and partnering with community justice workers to jointly review and reform any practice requirements, ethics codes or other regulations that prevent community justice workers from providing justice services to communities in need, and designing and adopting other methods for ensuring the quality and ethics of legal practitioners;**
 - (c) **Supporting community justice workers by providing training, opening doors and broadening opportunities;**
 - (d) **Engaging with State agencies, civil society organizations and community justice workers to help design, evaluate and scale up solutions to justice problems;**
 - (e) **Listening and learning from community justice workers to understand how legal systems harm and exclude some groups and how judges and lawyers can become reliable allies in work to advance access to justice for all.**
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