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Agenda item 3

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

**Albania, Armenia,* Australia,* Austria,* Belgium, Botswana,* Bulgaria, Chile,
Colombia,* Costa Rica, Croatia,* Cyprus,* Denmark,* Ecuador,* Estonia,* Finland,
France, Germany, Greece,* Guatemala,* Hungary,* Iceland,* Ireland,* Italy,* Japan,
Latvia,* Liechtenstein,* Lithuania, Luxembourg, Maldives, Malta,* Marshall
Islands,* Mexico,* Montenegro, Netherlands (Kingdom of the), New Zealand,* North
Macedonia,* Norway,* Paraguay, Peru,* Poland,* Portugal,* Romania, Slovakia,*
Slovenia,* Spain,* Sweden,* Switzerland,* Thailand,* Ukraine,* United Kingdom of
Great Britain and Northern Ireland,* United States of America and Uruguay*: draft
resolution**

56/... Independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers

The Human Rights Council,

Guided by the purposes and principles of the Charter of the United Nations, articles 7, 8, 9, 10 and 11 of the Universal Declaration of Human Rights, articles 2, 4, 9, 14 and 26 of the International Covenant on Civil and Political Rights, and the Convention on the Elimination of All Forms of Discrimination against Women, and bearing in mind the Vienna Declaration and Programme of Action and all relevant human rights instruments,

Recalling the Basic Principles on the Independence of the Judiciary, the Basic Principles on the Role of Lawyers, the Guidelines on the Role of Prosecutors, the Bangalore Principles of Judicial Conduct and the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems,

Recalling also all previous resolutions and decisions of the Human Rights Council, the Commission on Human Rights and the General Assembly on the independence and impartiality of the judiciary and on the integrity of the judicial system,

Taking note of the reports of the Special Rapporteur on the independence of judges and lawyers submitted to the Human Rights Council at its fifty-third¹ and fifty-sixth sessions² and to the General Assembly at its seventy-eighth session,³

Taking note also of all relevant general recommendations and general comments adopted by the treaty bodies,

* State not a member of the Human Rights Council.

¹ A/HRC/53/31.

² A/HRC/56/62.

³ A/78/171.



Convinced that an independent and impartial judiciary, an independent legal profession, an objective and impartial prosecution able to perform its functions accordingly and the integrity of the judicial system are prerequisites for the protection of human rights and the application of the rule of law and for ensuring fair trials and the administration of justice without any discrimination,

Recalling that prosecutors should, in accordance with the law, perform their functions fairly, consistently and expeditiously, respect and protect human dignity and uphold human rights, thus contributing to due process and the smooth functioning of the criminal justice system, and that they should avoid and combat all forms of prejudice, discrimination and stigmatization based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Emphasizing that the independence and impartiality of the judiciary and the independence of lawyers and the legal profession are necessary elements in the realization of Sustainable Development Goal 16 of the 2030 Agenda for Sustainable Development, in which States Members of the United Nations committed, inter alia, to provide access to justice for all and build effective, accountable and inclusive institutions at all levels,

Condemning the increasingly frequent attacks on the independence of judges, lawyers, prosecutors and court officials, in particular threats, intimidation and interference in the discharge of their professional functions,

Recalling that every State should provide an effective framework of remedies to redress human rights grievances or violations and that the administration of justice, including law enforcement and prosecutorial agencies and, especially, an independent judiciary and legal profession consistent with applicable standards contained in relevant international instruments, is essential to the full and non-discriminatory realization of human rights and indispensable to the processes of democracy and sustainable development,

Recalling also that it is essential to ensure that judges, prosecutors, lawyers and court officials possess the professional qualifications required for the performance of their functions through improved methods of recruitment, as well as legal and professional training, and through the provision of all necessary means for the proper performance of their role in ensuring the rule of law,

Noting the importance of tailored and interdisciplinary human rights training for all judges, lawyers, prosecutors and other professionals concerned in the administration of justice as a measure for avoiding discrimination in the administration of justice,

Stressing the importance of ensuring accountability, transparency and integrity in the judiciary as an essential element of judicial independence and as a concept inherent to the rule of law when it is implemented in accordance with the Basic Principles on the Independence of the Judiciary and other relevant norms, principles and standards,

Emphasizing that judges, prosecutors and lawyers play a critical role in upholding human rights, including the absolute and non-derogable right to freedom from torture and other cruel, inhuman or degrading treatment or punishment,

Acknowledging that an independent, impartial judicial and prosecutorial system that integrates and advances gender equality is an important factor for the realization of all human rights, for democracy, the rule of law and the inclusion of all voices in matters of public interest, as well as for the eradication of sexual and gender-based violence and gender stereotypes, and for the enforcement of gender-responsive laws and the achievement of Sustainable Development Goal 5 of the 2030 Agenda for Sustainable Development,

Emphasizing the importance of establishing a legal framework that protects judges, prosecutors and lawyers from attacks, threats, harassment and intimidation simply for performing their professional duties, and that judicial bodies, prosecutors' offices and other legal institutions and organizations should institute safe and effective procedures reflecting international human rights standards that protect, as appropriate, the anonymity of the complainant and avoid re-victimization, while mainstreaming a gender perspective and addressing the specific threats that women participating in the judicial system might face,

Acknowledging that digital technologies, if applied with adequate safeguards, have the potential to improve the functioning of justice systems, and that the use of digital technologies provides the potential to build more inclusive, accountable, transparent and efficient institutions, including through digitization and the use of artificial intelligence, search engines, digital case management and digital communication systems,

Emphasizing simultaneously that the application of digital technologies in the justice sector may pose risks to the full realization of human rights, inter alia, the risk of exacerbating already existing forms of discrimination, prejudice and stereotypes by reproducing and reinforcing existing biases and the risk of compromising decision-making processes in the administration of justice,

Underlining that the digital development of the justice sector must be in conformity with international human rights law and consistent with the principles of due process and fair trial standards, including the independence and impartiality of the judiciary, equality before the law, the guarantee of effective legal protection, the right to a fair and public hearing, the principle of equality of arms, the possibility of judicial review by a higher tribunal in accordance with the law and professional secrecy with regard to confidential information acquired other than in public proceedings,

Emphasizing that an independent and impartial judiciary, objective and impartial prosecution service and an independent legal profession, which foster a balanced representation of men and women and the establishment of gender-responsive procedures, are essential for the effective protection of women's rights, including protection from violence, harassment, intimidation and re-victimization through court systems, for ensuring that the administration of justice is free from gender-based discrimination and stereotypes and for a recognition that society as a whole benefits when women are treated equally by the justice sector,

Acknowledging the vital role of professional associations of lawyers in upholding professional standards and ethics, protecting their members from persecution and improper restrictions and infringements and providing legal services to all in need of them,

Recognizing the importance of independent and self-governing bar associations and professional associations of judges and prosecutors and of non-governmental organizations working in defence of the principle of the independence of judges and lawyers,

Recognizing also the vital role that lawyers and the legal profession, bar associations, law societies and national and international lawyers' organizations can play in upholding the rule of law and in promoting and protecting human rights,

Expressing its concern about situations where the entry into or continued practice within the legal profession is controlled or arbitrarily interfered with by the executive branch, with particular regard to the abuse of systems for the licensing of lawyers,

Stressing the role that independent and effective national human rights institutions established in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) can and should play in strengthening the rule of law and in supporting the independence and integrity of the judicial system,

Recognizing that accessible and effective legal aid is an essential element of a fair, humane and efficient system of administration of justice that is based on the rule of law,

Noting the rights and specific needs of women, children and persons belonging to minorities, in particular those in situations of vulnerability who are in contact with justice systems, who may require particular attention, protection and skills from the professionals interacting with them, especially from lawyers, prosecutors and judges,

Acknowledging the importance of a privileged lawyer-client relationship based on the principle of confidentiality,

Noting the threats and challenges to justice systems posed by extraordinary and crisis situations, including with regard to access to justice, and reaffirming that emergency measures, including those that relate to the administration of justice, taken by States in

response to these situations must be necessary, proportionate to the evaluated risk, applied in a non-discriminatory way, have a specific focus and duration and be in accordance with the State's obligations under applicable international human rights law,

Reaffirming the Human Rights Council resolutions in which the Council extended the mandate of Special Rapporteur on the independence of judges and lawyers for a period of three years, and acknowledging the importance of the mandate holder's ability to cooperate closely, within the framework of the mandate, with the Office of the United Nations High Commissioner for Human Rights, including in the fields of advisory services and technical cooperation, in the effort to guarantee the independence of judges and lawyers,

1. *Calls upon* all States to guarantee the independence of judges and lawyers and the objectivity and impartiality of prosecutors, and their ability to perform their functions accordingly, including by taking effective legislative, law enforcement and other appropriate measures that will enable them to carry out their professional functions without interference, harassment, threats or intimidation of any kind;

2. *Encourages* States to promote diversity in the composition of the members of the judiciary, including by taking into account a gender perspective and by actively promoting the balanced representation of women and men from various segments of society at all levels, and of persons belonging to minorities and other disadvantaged groups, and to ensure that the requirements for joining the judiciary and the selection process therefor are non-discriminatory, public and transparent, based on objective criteria and guarantee the appointment of individuals of integrity and ability with appropriate training and qualifications in law based on individual merit and under equal working conditions;

3. *Calls upon* States to promote the full, equal and meaningful participation and representation of all women, as well as equality in access to positions at all levels of the administration of justice, and encourages States to adopt substantive and procedural standards to make progress towards achieving gender balance and to ensure the full, equal and meaningful participation of women in public decision-making roles in the judicial system, including the judiciary and prosecution services;

4. *Stresses* that the term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and age of retirement should be adequately secured by law, that the security of tenure of judges is an essential guarantee of the independence of the judiciary and that grounds for their removal must be explicit, with well-defined circumstances provided for by law, involving reasons of incapacity or behaviour that renders them unfit to discharge their functions, and that procedures upon which the discipline, suspension or removal of a judge are based should be in compliance with due process;

5. *Encourages* States to develop, as appropriate, policies, procedures and programmes in the area of restorative justice as part of a comprehensive justice system;

6. *Also encourages* States to consider, in collaboration with relevant national entities, such as bar associations, associations of judges and prosecutors and educational institutions assisting the judiciary developing guidance on issues such as gender, children, persons with disabilities, Indigenous Peoples and migrants, among others, to inform the action of judges, lawyers, prosecutors and other actors in the judicial system;

7. *Underscores* that lawyers must not be identified with their clients or their clients' causes as a result of discharging their function;

8. *Emphasizes* that lawyers should be enabled to discharge their functions freely, independently and without any fear of reprisal;

9. *Calls upon* States to ensure that prosecutors can perform their functional activities in an independent, objective and impartial manner;

10. *Condemns* all acts of violence, intimidation or reprisal, from any quarter and for any reason, against judges, prosecutors and lawyers, and reminds States of their duty to uphold the integrity of judges, prosecutors and lawyers and to protect them and their families and professional associates against all forms of violence, threat, retaliation, intimidation and

harassment, whether from State authorities or non-State actors, resulting from the discharge of their functions, and to condemn such acts and to bring perpetrators to justice;

11. *Expresses its deep concern* at the significant number of attacks against lawyers and instances of arbitrary or unlawful interference with or restrictions to the free practice of their profession, and calls upon States to ensure that any attack or interference of any sort against lawyers is promptly, thoroughly and impartially investigated and that perpetrators are held accountable;

12. *Calls upon* States, in collaboration with relevant national entities, such as bar associations, associations of judges and prosecutors and educational institutions, to provide adequate training, including human rights training, for judges, prosecutors and lawyers, both on initial appointment and periodically throughout their careers, taking into account regional and international human rights law and, where applicable and relevant, the concluding observations and decisions of human rights mechanisms, such as the treaty bodies and regional human rights courts;

13. *Encourages* States to take measures to combat discrimination in the administration of justice by, inter alia, providing for tailored and interdisciplinary human rights training, including anti-racist, multicultural, gender-responsive and child rights training, to all judges, lawyers and prosecutors;

14. *Underscores* the importance for States of developing and implementing an effective and sustainable legal aid system that is consistent with their international human rights obligations and takes into account relevant commitments and good practices so that legal aid is available and accessible at all stages of legal proceedings, subject to appropriate eligibility criteria;

15. *Encourages* States to take appropriate measures to ensure that women have meaningful access to legal aid and assistance through gender-, age- and disability-responsive means, including by conducting information and awareness-raising programmes for women about the existence of legal aid and public defence services;

16. *Urges* all Governments to cooperate with and to assist the Special Rapporteur on the independence of judges and lawyers in the performance of her tasks, to provide all information requested and to respond to communications transmitted to them by the Special Rapporteur without undue delay;

17. *Invites* States to take measures, including by adopting domestic legislation, to provide for independent and self-governing professional associations of lawyers and to recognize the vital role played by lawyers in upholding the rule of law and promoting and protecting human rights;

18. *Calls upon* States to ensure that legal provisions that are to be or have been adopted in relation to counter-terrorism or national security are consistent with the international obligations of the State concerning the right to a fair trial, the right to liberty and the right to an effective remedy for violations of human rights and other provisions of international law relevant to the role of judges, prosecutors and lawyers;

19. *Urges* States to ensure that judiciaries have the necessary resources and capacity to help to maintain functionality, accountability, transparency and integrity, and to ensure due process and the continuity of judicial activities, including efficient access to justice consistent with the right to a fair trial and other rights and fundamental freedoms, during extraordinary and crisis situations;

20. *Encourages* States to make available to judiciaries safe, secure, trusted and responsibly developed current and emerging digital technologies, including artificial intelligence and innovative online solutions enabling digital connectivity, to help to ensure access to justice and respect for the right to a fair trial and other procedural rights, including in extraordinary and crisis situations, with special attention given to closing digital divides, including the gender digital divide, reducing inequalities and to ensuring that judicial and any other relevant national authorities are able to elaborate the necessary procedural framework and technical solutions to this end, while stressing the importance of international cooperation and technical assistance to developing countries in this regard;

21. *Stresses* the importance of enhancing the capacities of judges, prosecutors, lawyers and public servants in judicial administrations, including through adequate training, in order for them to understand and be able to manage risks related to the use of digital technologies, as well as by providing them guidance on the responsible use of artificial intelligence systems within judicial contexts, with the aim of promoting the adherence to international human rights law;

22. *Underlines* that the use of digital technologies, including artificial intelligence, in the administration of justice requires human oversight, scrutiny and human accountability and must not impair human rights or encroach on human dignity, nor interfere with the decision-making power of judges, prevent transparency of judicial activities or infringe on the right to a fair trial, effective remedy or access to justice;

23. *Reiterates* the importance of ensuring appropriate safeguards and human oversight in the application of safe, secure, trusted and responsibly developed new and emerging digital technologies, including artificial intelligence, as well as the importance of respecting, protecting and fulfilling human rights in the conception, design, use, development, further deployment and decommissioning of such technologies in the justice sector, and of paying particular attention to thorough and transparent human rights impact assessments throughout their life cycle in order to prevent or mitigate effectively potential risks they may pose to human rights and to prevent any form of discrimination or the reinforcement of existing bias;

24. *Invites* the Special Rapporteur to collaborate with relevant stakeholders within the United Nations system in the areas pertaining to the mandate;

25. *Calls upon* Governments to give serious consideration to responding favourably to the requests of the Special Rapporteur to visit their countries, and urges States to enter into a constructive dialogue with the Special Rapporteur with respect to follow-up to and the implementation of her recommendations to enable her to fulfil the mandate even more effectively;

26. *Encourages* the Special Rapporteur to facilitate the provision of technical assistance and capacity-building and the dissemination of guidelines and best practices, including through engagement with relevant stakeholders and in consultation with the Office of the United Nations High Commissioner for Human Rights, when requested by the State concerned, with a view to establishing and strengthening the rule of law, paying particular attention to the administration of justice and the role of an independent and competent judiciary and legal profession;

27. *Encourages* Governments that face difficulties in guaranteeing the independence of judges and lawyers, the objectivity and impartiality of prosecutors and their ability to perform their functions accordingly, or that are determined to take measures to implement these principles further, to consult with and to consider the services of the Special Rapporteur, for instance, by inviting the mandate holder to visit their countries;

28. *Encourages* Governments to give due consideration to recommendations made by United Nations human rights mechanisms, and to implement recommendations supported under the universal periodic review process, addressing the independence and effectiveness of the judiciary and their effective implementation, and invites the international community, regional organizations and the United Nations system to support any implementation efforts;

29. *Invites* United Nations agencies, funds and programmes to continue their activities in the areas of the administration of justice and the rule of law, including at the country level at the request of the State, encourages States to reflect such activities in their national capacity-building plans, and emphasizes that institutions concerned with the administration of justice should be properly funded;

30. *Encourages* States to ensure that their legal frameworks, implementing regulations and judicial manuals are fully in line with their international obligations and take into account relevant commitments in the areas of the administration of justice and the rule of law;

31. *Decides* to continue consideration of this issue in accordance with its annual programme of work.
