Side Event Proposal

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

17 November 2021 12:30-14:00 - Geneva time

Palais des Nations

Organized by;

Just Access e.V. (Germany)

Maat for Peace, Development and Human Rights (Cairo, Egypt)

The International Organization for the Least Developed Countries (IOLDCs) (Geneva, Switzerland)

The International Alliance of Women (IAW) (Geneva, Switzerland)

Word for Peace (New Delhi, India)

Overview


1 A/HRC/RES/40/9, Paragraph 3, Page 3, Available at the following link: https://undocs.org/en/A/HRC/RES/40/9
The issue of “access to justice for vulnerable groups, including migrant workers, and the promotion of reliance on technology to facilitate access to justice” is central to the theme of the third session of the Forum and is essentially consistent with the panel discussion on “Making justice truly accessible to all” under Agenda Item 3 of the Forum, which will be held on November 16, 2021. The discussion of this topic will be an affirmation that the access of vulnerable groups, including migrant workers and individuals in conflict areas, to just, equitable and effective judicial systems is indispensable for the realization of all human rights, the spread of democracy and the achievement of Sustainable Development Goals (SDGs), especially SDG 16.

Access to justice for vulnerable groups while promoting the reliance on technology

First: Access of migrant workers to justice

3. Access of migrant workers to justice in destination countries is often faced with structural obstacles, which worsen their chances of accessing effective remedies or obtaining adequate and speedy reparation for the harm suffered, as established by the Special Rapporteur on the Human Rights of Migrants. These obstacles include the failure to investigate complaints by migrant workers about their exposure to human rights violations, including complaints concerning the delays in receiving their due wages, the withholding of passports and identity cards and threats of forced deportation to countries of origin, the prolonged procedures and intransigence in paying compensations, even after obtaining court orders. This is in addition to the charges and fees for filing complaints, which often makes some workers disregard filing complaints in the first place.

4. The poor quality of translation and interpretation services, and their non-availability in many other cases, also represent a structural obstacle to the access of migrant workers to speedy and effective justice. Migrant workers who are detained in destination countries find themselves at risk of arbitrary detention by migration and nationality services and they are often charged in a language they do not understand, and therefore they are not aware of the means of challenging their detention.

5. In some stages of the investigation and proceedings, the translators may be changed, resulting sometimes in inconsistencies in the victim’s testimony, which is in favor of the offender, since these inconsistencies make it a contradictory testimony. This makes ruling in favor of the latter very difficult, and the court may eventually charge the migrant worker with perjury.

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2 Available at the following link: [https://bit.ly/3qaYfDI](https://bit.ly/3qaYfDI)


6. Migrant workers’ lack of knowledge of their legal rights is also an obstacle to their access to justice systems in the countries of their destination. For example, when migrant workers are detained in the destination country, they have the right to contact the authorities of their home country through the consular and diplomatic authorities as stated in Paragraph 7 (a) of Article 16 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families\(^5\) and in accordance with paragraph 1 (b) of Article 36 of the Vienna Convention on Consular Relations, which stipulates, “If he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall be forwarded by the said authorities without delay.”\(^6\) However, in most cases, the reporting to the authorities of the country of origin about the detention of some migrant workers in an extremely slow process, which causes delays in providing support to these workers and their access to speedy justice.

7. The reluctance of many countries that receive migrant workers, surpassing the number of their original population, to ratify international human rights treaties, particularly the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, represents a regression from achieving justice for all individuals on their territory, which delays the harmonization of national laws and legislation of these countries with the human rights treaties. In this context, Maat believes that the final recommendations of the Forum must include urging and encouraging countries to accede to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families as well as the international instruments and conventions in general. Maat agrees with the remarks of the Committee on the Rights of Migrant Workers in its last annual report that funding promotional campaigns for the guidance notes issued by the Committee contributes to further ratifications of the Convention\(^7\).

8. For this purpose, and in order to ensure access to justice for all, as a necessary element for the protection of democracy, the rule of law and human rights.” States should, first and foremost, follow the models established to protect the migrant workers, and to issue laws and legislation that emphasize the “contractual nature” away from the control of one party over another, in addition to laws related to labor protection, and those concerned with the fields of employment, wages, housing, and health. It provides workers with channels for reporting, complaints and free litigation, as many measures have been taken to guarantee the rights of expatriate workers by issuing laws that protect workers, including those that

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\(^5\): International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Paragraph 7(a) Article 16, at the following link: https://bit.ly/3jZ4Ugl

\(^6\): Vienna Convention on Consular Relations, Article 36(b), Available at the following link: https://bit.ly/3GPWyS4

\(^7\): Report of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, Paragraph 33, Page 6, Available at the following link: https://undocs.org/en/A/76/48
require employers to abide by health, environment and safety regulations, and to provide comprehensive health insurance for all workers, in addition to the rules strict about the provision of suitable accommodation. More than 3.2 million workers are paid through the Wage Protection System.

9. It also issued decrees that guarantee the adoption of a unified, approved job offer in several languages, which the worker sees and signs before he is hired, that is, in his home country, so that it turns into a binding contract registered with the Ministry of Labor, in order to avoid any fraud against the foreign worker. It also provides for the employer to keep the worker’s passport.

Second: Individuals affected by armed conflicts

10. Access to justice for individuals affected by armed conflicts is a necessary step to provide reparation as well as effective and equitable remedies and is a first step towards realizing Target 16.3 of SDGs. The justice sector in countries affected by armed conflicts often lacks independence and is subject to the executive authority, resulting in the widespread phenomenon of impunity and lack of accountability for violations, which consequently affects the people who have suffered from violations, including girls who are subjected to sexual abuse and other forms of violence. In parallel, these girls suffer from the lack of legal protection in these areas as stated in the quarterly briefing of “Pramila Patten”, the Special Representative of the Secretary-General on Sexual Violence in Conflict. This lack of legal protection undermines measures to reintegrate those individuals back into their societies. Upholding the independence and efficiency of the justice sector in these countries and ensuring accountability are fundamental to the promotion of democracy, the achievement of equality for all and the realization of all other human rights. Justice also enhances the rule of law at the international and national levels. Moreover, in the declaration issued by the high-level meeting of the United Nations General Assembly, the UN member States agreed on the importance of the rule of law in consolidating the three main pillars of the United Nations, which are international peace and security, human rights and development.

11. The Forum on Human Rights, Democracy and the Rule of Law may represent a focal starting point for individuals in areas of armed conflict to access justice and effective remedies. Furthermore, civil society organizations that are active in conflict areas can participate in facilitating the access of individuals affected by armed conflicts to justice by providing legal assistance for them and can also contribute to raising awareness of these individuals about their legal rights and procedures for accessing justice and facilitate such procedures. The United Nations and its civil society bodies, including non-governmental organizations, can also participate in developing national capacities to increase the capacity to investigate and prosecute cases of conflict-related sexual violence and other violations, in addition to proposing prompt mechanisms for resolving disputes between individuals in these areas.

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12. The United Nations can contribute to the achievement of justice in conflict areas by expanding the support for the use of mobile and specialized dispute-resolution courts, especially in remote areas, in addition to providing technical assistance to help build consensus on a model that is most likely to improve the structure of the judicial system in these countries and make it independent. The United Nations can also allocate at least 20% of the funds provided to post-conflict states to support the access to justice for conflict-affected individuals. The use of mobile courts by the United Nations to resolve armed conflicts in Central Africa is a good practice to ensure the access of individuals, including the most vulnerable groups, to justice and effective and equitable remedies. Moreover, the mainstreaming of these practices will accelerate the achievement of justice in conflict areas and in post-conflict periods in countries experiencing transitional phases and will effectively contribute to stabilization and the realization of SDG 16\textsuperscript{9}.

13. Delays in accessing effective justice in areas of armed conflict can undermine the relation between the state and the individuals it serves. In the context of armed conflicts in particular, the speedy access to an effective and equitable remedy can contribute to rebuilding the relation between the state and its population and strengthening the lost confidence in national institutions, as stated in the report of the Secretary-General of the United Nations on strengthening and coordinating United Nations rule of law activities\textsuperscript{10}.

**Third: The promotion of dependence on technology to facilitate access to justice.**

14. Reliance on technology, including receiving complaints online, is a necessary step in order to accelerate litigation, achieve speedy justice and enable the access of vulnerable groups to effective remedies, in addition to enhancing the rapid response to and adjudication of complaints received online by the judicial system in an effective manner to achieve justice. States can empirically start to rely on modern technologies in order to facilitate access to justice and rapid completion of litigation procedures in cases that do not require going to national courts, provided that this reliance on technology takes into account the guarantees for the accused in normal circumstances.

15. However, the use of technology in accessing justice is still limited to specific countries whose citizens do not face general obstacles to accessing justice. On the contrary, the developing countries and countries affected by armed conflicts, which are most in need of a facilitated access to justice, face structural problems that should be covered by the main conclusions of the Forum on Human Rights, Democracy and the Rule of Law. Although the developed countries have relied on technology during the

\textsuperscript{9} UN Peace Operations and the Role of the Local in (Re)Building the Rule of Law, Utrecht Law Review, Available at the following link: [https://www.utrechtlawreview.org/articles/10.36633/ulr.649/](https://www.utrechtlawreview.org/articles/10.36633/ulr.649/)

\textsuperscript{10} Strengthening and coordinating United Nations rule of law activities Report of the Secretary-General, Paragraph 6, Page 3, Available at the following link: [https://undocs.org/en/A/72/268](https://undocs.org/en/A/72/268)
Corona pandemic to promote faster access to justice and to conclude litigation procedures, other countries, most of which are less developed countries, used this pandemic as a pretext to postpone trials and investigations before the courts, slowing down the pace of access to justice\textsuperscript{11}.

16. In a related context, some African countries and other countries suffering from armed conflicts lack an infrastructure that supports fast internet that would promote people’s access to the dispute-resolution mechanisms established by the state, which hinders the states themselves from using technology in the judicial system. For example, Target 9.c of SDGs aims to achieve universal and affordable access opportunities in the least developed countries by 2020, but this has not been realized\textsuperscript{12}. In addition, some regions, such as Africa, for example, have the highest internet fees in the world, which hinders the ability of the poorest groups to access justice\textsuperscript{13}.

17. The OHCHR can play a very positive role by putting pressure on industrial countries to provide technology for the developing countries in a manner that promotes its use in all aspects of life, including facilitating access to justice. Moreover, the expansion of activities by the UN Technology Bank for the Least Developed Countries in the aforementioned countries can lead to good practices aimed at achieving access to justice in conflict-affected areas and in the poorest countries. Engaging into partnerships as stated in SDG 16, including greater transfer of knowledge and technology to the least developed countries, may contribute to the removal of some of the structural obstacles in justice systems in developing countries\textsuperscript{14}.

Just Access, Maat, IAW, Word for Peace & IOLCDs organize the side event focusing in particular on the panel discussion on “Making justice truly accessible to all” under Agenda Item 3 of the Forum which includes the obstacles faced by vulnerable groups, including migrant workers, in accessing justice, amidst the emerging COVID-19 pandemic, which has exacerbated the suffering of such groups, while providing a space for the issue of relying on technology to promote access to justice. In addition, the objectives of the panel discussion include:

- Clarifying the critical link between facilitating migrant workers' access to justice and legal support and the improvement of the human rights situation and the achievement of democracy and the rule of law.
- Clarifying the structural challenges facing the access of migrant workers to justice systems in destination countries and their contribution to many individuals being left behind, which is inconsistent with the

\textsuperscript{11} Women and peace and security Report of the Secretary-General, Security COUNCIL, Paragraph 69, Available at the following link: https://undocs.org/en/S/2020/946

\textsuperscript{12} Human Rights Handbook for Sustainable Development, Goals, Targets and Indicators, Target 9.c, at the following link: https://sdg.humanrights.dk/ar/goals-and-targets?page=2

\textsuperscript{13} Can Technology Be Leveraged to Improve Access to Justice? Human Rights Pulse, 8 January 2021, Available at the following link: https://bit.ly/3BTBQxi

\textsuperscript{14} Least Developed Countries Report 2019, United Nations Conference on Trade and Development (UNCTAD), p. 7, at the following link: https://bit.ly/2ZVo5kC
realization of Target 16.3 of SDGs and further undermines confidences in the judicial systems in these countries.

- Drawing attention to the importance of alternative strategies that were used before and had a positive impact on achieving justice, such as the practices of mobile courts supported by the United Nations in a set of countries, including the Central African Republic.
- Clarifying the roles that civil society, including non-governmental organizations, can play in supporting and facilitating access to justice and effective remedies for marginalized groups, especially in areas of armed conflict.

Speakers:

Noura al-Jarawi: Chairperson of the Women for Peace Initiative in (Yemen)

Mounir Ahmadi: Journalist and a lawyer in the Internet Governance Forum (Afghanistan) (IGFA)

Ayman Okeil: Lawyer and General Director of Maat for Peace. (Egypt)

Salah Bin Laghbar: Yemeni journalist and academic. (Yemen)

Gulam Rasoul: Classical Islamic Scholar, Founding Editor of Word for Peace (India)

Marion Boker: Independent Human Rights Expert, Director Consultancy for Human Rights & Gender Issues (Germany)

Derya Akinci: International Alliance of Women (IAW) (Switzerland)

Mark Somos & Lucas Sanchez: Just Access e.V. (Germany) – focusing on “NGOs and victim-focused access to justice: lessons and best practices”

Too many individuals and groups around the world today are denied access to justice. Such access is vital for making human rights effective and securing human dignity. Especially those in a situation of vulnerability – such as women, children, minorities, migrants or detainees – face excessive impediments and difficulties in claiming their rights and accessing justice. They are often even unaware of the possibility of enforcing their rights internationally.

For these reasons, Just Access intends to provide legal assistance and representation for victims of human rights abuses, as well as to counter injustice through legal action. The organisation specialises in the field of public international law, so that legal action will be carried out mainly at the international level, before human rights treaty bodies. One of the main aims of Just Access is to help protecting and enforcing the rights contained in international treaties.
By enforcing the rights of the victims, Just Access also intends to expose and highlight situations of structural injustice. Therefore, through individual and collective legal action, we will seek to use and create remedies that address structural situations of human rights infringements. Thus, the objective is to be able to change patterns of systemic abuses and improve the implementation of human rights standards in the relevant legal orders. We seek justice not only for some individuals directly affected by human rights violations, but for all those in similar circumstances. One way to achieve this is to initiate and develop strategic litigation that allows holding state actors accountable for their human rights infringements.