

# Traditional and Customary Justice Systems: Report of the 2017 Geneva Forum of Judges and Lawyers



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Published in February 2018

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International Commission of Jurists  
P.O. Box 91  
Rue des Bains 33  
Geneva  
Switzerland

Cover Photo: Traditional leaders preside over a case in B-Court, Nyang Payam, Torit County, South Sudan.  
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The 2017 Geneva Forum of Judges & Lawyers, and this and accompanying publications, were made possible by the support of the Republic and Canton of Geneva, Switzerland.



# **Traditional and Customary Justice Systems: Report of the 2017 Geneva Forum of Judges and Lawyers**

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## Introduction

The eighth annual Geneva Forum of Judges and Lawyers was convened by the International Commission of Jurists (ICJ) on 22-23 November 2017, at the Villa Moynier in Geneva, Switzerland. The Forum brought together judges, lawyers, prosecutors, and UN and other experts from around the world, to discuss the relationship between traditional and customary justice systems and international human rights, access to justice and the rule of law.

During the two days of rich discussions, participants exchanged experiences, expertise and perspectives with the aim of developing practical conclusions and recommendations.<sup>1</sup> This report summarizes the discussions at the Forum and the preliminary conclusions of the ICJ; it should be read in conjunction with the separately published *Traditional and Customary Justice Systems: Selected International Sources*, which compiles relevant treaty provisions, standards, conclusions and recommendations of UN and other expert bodies.

### Contact, reading and acknowledgement

For more information about the annual ICJ Geneva Forum, please contact Matt Pollard, Director of the ICJ Centre for the Independence of Judges and Lawyers, e-mail: [matt.pollard@icj.org](mailto:matt.pollard@icj.org)

You can also read this webpage:

<https://www.icj.org/themes/centre-for-the-independence-of-judges-and-lawyers/geneva-forum/>.

The ICJ thanks legal and policy intern Ms Rebecca Horton for her assistance with the preparation of the report.

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<sup>1</sup> While this report seeks to reflect the range of opinions shared during the Forum, it does not necessarily include every point expressed by every individual participant, nor should the inclusion of any conclusion, opinion or recommendation in this report be taken to indicate the agreement of any particular participant. Equally, views of participants reported here do not necessarily represent the views of the ICJ. To encourage open exchange and debate, the discussions at the Forum were conducted on the basis of non-attribution.





## The Potential for Improving Access to Justice

The participants at the Forum confirmed that in numerous countries the majority of legal disputes, especially in rural areas, are resolved by traditional and customary justice systems that are not necessarily recognized by national law as a part of the official court system.

Many participants offered the view that traditional and customary justice systems tended to be the most accessible to rural (and sometimes other) communities, including in terms of geographic proximity, cost, cultural considerations including language, and degree of trust. In some situations, local populations had little choice as formal courts were entirely absent. One participant noted their experience with a rural community that was 150 kilometers away from the nearest formal justice system.

An added consideration, particularly for indigenous justice systems in post-colonial settings, is how the formal State justice system may be seen by indigenous communities as the continuation of illegitimately imposed foreign institutions and laws. By way of illustration, one participant gave an in-depth introduction to the specific history and legal context for imposition of colonial courts and law on indigenous peoples in the Americas.

Some participants stated that communities often prefer their own traditional or customary justice mechanisms because of a common and widespread belief that formal systems prioritize punishment and fail to address underlying problems or causes of the wrongdoing or the broader effects of the wrongdoing on the community. Customary justice systems, it was suggested, place the wellbeing of the community over consideration of the individual in order to reach a resolution that will provide peace for the entire community. It was asserted that such an approach stood in stark contrast to the approach of formal State justice systems. However, other participants were of the view that the primary focus on the solidarity of the group rather than the individual could at times lead traditional and customary justice systems to conduct unfair or discriminatory proceedings or to impose unjust outcomes including violations of human rights. It was also suggested that this characterization of formal State justice systems might itself be an overgeneralization, as many such systems are themselves changing their approach to better address the situation of victims and of the broader community, for instance along the lines of the UN Basic Principles on the Use of Restorative Justice in Criminal Matters.<sup>2</sup>

Many participants stressed that, whatever role traditional and customary justice systems could play, it was important that States and their judiciaries ensure that everyone has effective access to the official State justice system regardless of their geographic, economic, social or cultural situation, identity or status. Measures such as circuit or mobile courts, programmes of legal aid, availability of interpretation services, development of culturally appropriate facilities and methods, and greater investment of resources, were all cited in this regard.

Further, some participants noted that for some communities it could be misleading to speak of a preference of the community as a whole, since individuals in the community could be acting in response to pressures from within their own communities to avoid State systems, and examples were cited of individuals being stigmatized or persecuted by their community for having chosen to take a dispute or crime to the official State justice system rather than a local traditional or customary system of justice.

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<sup>2</sup> ECOSOC Res. 2000/14 (2000).

Overall, however, there was widespread agreement that, in principle, traditional and customary justice systems could make an important contribution to ensuring access to justice and the realization of and respect for other internationally-recognized human rights.

From the discussions it was also clear that the capacity and role of traditional and customary justice systems around the world, and their relationship with official court systems of States, can be key factors in the realization of “access to justice for all” and “effective, accountable and inclusive institutions” under Goal 16 of the UN Sustainable Development Goals.<sup>3</sup>

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<sup>3</sup> General Assembly, resolution 70/1 (25 September 2015): “Goal 16. Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.”



## **The risks for human rights, particularly of women and children, and for the rule of law**

At the same time, the experience and expertise shared at the Forum confirmed that the composition, procedures, and outcomes of traditional and customary justice system mechanisms and processes can conflict with the human rights protections contained in international law and standards on human rights and the rule of law.

Participants reported numerous examples of ways in which the practices, procedures and decisions of traditional and customary justice systems had been arbitrary or discriminatory. While it was clear that traditional and customary justice systems are not homogenous, either globally or within particular regions or countries, a recurring theme was that such systems frequently result in discrimination or other inconsistencies with international human rights norms, particularly in relation to women, children and LGBTI persons and persons from other similarly marginalized groups.

Participants confirmed that many customary justice systems are rooted in patriarchal systems, and reinforce harmful gender stereotypes and cultural assumptions that result in discrimination against women and children and otherwise negatively impact upon their rights. At the same time, as various participants observed, such views and practices are frequently also entrenched in the official State court system. In general however, in terms of measures designed to identify and counter discrimination, official court systems have received greater focus and effective techniques for improvement are better established. Traditional and customary systems on the other hand were for a long time either ignored in such processes or were seen as inherently incapable of change and therefore simply to be targeted for total replacement by State courts.

Several participants described traditional or customary systems where formal rules prevented women from presenting their own cases or sometimes even from giving testimony as a victim or witness, or in some cases from being present at all during the discussion of the case – everything had to be done via male interlocutors. In other situations, it was recounted, bias towards women would be mean that little or no weight would be given to testimony or arguments presented by women. Indeed, one participant described a situation where traditional and customary decision-makers had chastized women when the women displayed such great knowledge and intelligence in presenting their case, that it clearly showed the community that the women were the intellectual equals, if not superiors, to the male decision-makers deciding the case. The outcomes in these cases seemed to be driven by embarrassment and resentment of the male decision-makers.

It was widely considered that rules or practices excluding women from being decision-makers in traditional or customary justice systems, or resulting in their being significantly under-represented, were clearly inconsistent with international law and standards. Unequal representation of women as decision-makers within traditional courts means that men are able to control the majority of legal procedures and services, and, as a result, continue to place precedence on patriarchal norms. Strengthening female participation in customary justice systems, participants asserted, would provide women with stronger means of protection and greater access to fair judicial outcomes. Participants from several different regions cited examples of progress in increasing the number of women among traditional decision-makers.

A further problem associated with some traditional and customary systems is the

use of women and children as a kind of commodity to settle legal disputes. Participants highlighted the dangers of customs such as compensation marriage, in which young girls are given away in marriage as payment for a crime committed by a family member. While formal law has banned compensation marriage in most countries, such customs are still accepted and practiced in some local communities.

Some participants noted that traditional or customary courts in certain countries had contributed to impunity for men that had ordered or committed violence against women, when the violence was viewed as "honour killings" or "honour crimes". With few or no women allowed to participate in the relevant traditional justice systems, the outcomes inherently favoured the protection of the men, despite the severity of the crime committed. Women in these areas had insisted that the customary law must be pushed to evolve and protect against customs or cultural views that harm women or deprive them of their rights.

At the same time, another participant highlighted that the experience of some indigenous communities in the Americas was that it was the formal State court system which did not take violence against indigenous women seriously, due to discriminatory attitudes against indigenous people in the non-indigenous society, and consequently some indigenous women felt they had a better chance of achieving justice for such offences in the indigenous justice system than in the official State system. The participant noted that this was premised on indigenous courts having, in circumstances such as where the offence occurred within their territory, jurisdiction over non-indigenous accused.

The rights of children can also suffer as the result of the approach or methods of some customary and traditional judicial systems. The best interests of the child might for instance be subordinated to other perceived communal interests. Such systems also sometimes might not have a clear or consistent means of distinguishing children from adults, applying factors other than age for instance. As a consequence, traditional courts might endorse marriage of a child at an age at which the marriage would clearly be unlawful and rejected by the formal State court system and international law. A participant also pointed out that sometimes traditional justice proceedings would take place in front of the entire community, including in cases where the accused offender is a child, whereas under international standards access should be restricted and the child's identity protected to protect the privacy and further interests of the child.<sup>4</sup>

In cases involving child abuse, a tendency was also cited for some traditional courts to view the conflict as a matter between two families and seek to resolve it through "compensation" to the victim's family, rather than through punishment of the perpetrator or protective action for the child. One participant shared the story of a 14-year-old female who was assaulted by three boys in her local Sub-Saharan African community. The case was not brought to a formal court, but was instead settled by the parents, who agreed to accept "compensation" from the families of the boys. The community considered the father the real victim of the case, because his family would no longer be able to receive a high bride price when marrying off his daughter. The desire not to forgo "compensation" through traditional justice systems was cited as a reason why some parents of child victims might choose not to bring such a matter to the official court system.

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<sup>4</sup> See for instance United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), Adopted by General Assembly resolution 40/33 of 29 November 1985, article 8.

On the other hand, some participants highlighted that in practice many State justice systems would place a child offender into a closed State institution as punishment or for "rehabilitation", separating the child from his or her family, whereas a similar case handled by the traditional and customary courts and focussing on inter-family "compensation" could result with the child staying with his or her family, which might in fact be better from the point of view of the interests and development of the child.

A number of participants highlighted that the women and children adversely affected by discriminatory beliefs or practices within traditional or customary justice systems often would themselves accept or hold the same discriminatory beliefs. As such, awareness building of human rights and equality norms should not be focussed exclusively on decision-makers within traditional and customary systems, but should also engage with women and children who are the users or potential users of such systems so that they have a better understanding of their rights and support in asserting those rights.

Other concerns about potential negative impacts of traditional and customary justice systems discussed at the Forum included: consistency with the right to a competent, independent and impartial tribunal established by law; respect for fundamental guarantees of fairness comprising the right to fair trial; accountability of judicial decision-makers for corruption and other misconduct; and non-discrimination, equal protection of the law, and equality before the law.

Participants highlighted that customary justice systems may have greater risks of personal opinion, connections or bias entering into decision-making than in formal State systems, meaning decisions could be produced arbitrarily rather than through the application of law. Several participants noted that communities might not have homogeneous local practices or norms, leading to internal dissent and inconsistent court decisions. The lack of established policies or accountability mechanisms, it was said, too often resulted in an unpredictable and highly subjective legal system.

It was noted that the manner of selection of decision-makers within traditional and customary justice systems varied widely; however, frequently this was an office or function that passed within a given family from father to son, for instance as the chieftom of a village. Such decision-makers would not necessarily recuse themselves from disputes in which they or their families or other acquaintances were involved. Some participants highlighted that such means of selection and possible lack of impartiality of the decision-maker appear to be inherently incompatible with international standards, while others considered that depending on the scope of matters to be determined by such systems, this was less of a concern.

Participants generally agreed that there was a need for the practices of traditional and customary justice systems to become more consistent with international human rights norms. Although questions about the universality of certain human rights standards were raised, it was pointed out by a number of participants that that this question had effectively been definitely settled in favour of universality, at the international level, by for instance the 1993 Vienna Declaration and Programme of Action<sup>5</sup>. Participants also generally agreed that formal State courts and traditional and customary justice systems could and should develop better awareness of each other and better coordination between themselves. The potential role of prosecutors as a point of liaison, referral or diversion between systems was a recurring theme.

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<sup>5</sup> Adopted by consensus by all UN Member States at the World Conference on Human Rights in Vienna on 25 June 1993, see particularly articles 1 and 5.

Differences remained among some participants on certain questions such as:

- Whether the scope of matters subject to decision by traditional and customary justice systems should be limited, and if so, to which kinds of matters.
- Whether on some or all matters, decisions of traditional and customary justice systems must be subject to appeal or review by an official State court, and whether individuals, either as claimants or defendants, should in some or all circumstances have the option of insisting that the matter be determined from the beginning by an official State court rather than the traditional or customary justice system.
- Whether, in determining if traditional and customary justice systems are operating consistently with international human rights law and standards, the methods for selecting the decision-makers should be assessed against international standards such as the UN Basic Principles on the Independence of the Judiciary.
- Similarly, whether the procedures used by traditional and customary justice systems should be assessed against international fair trial standards such as article 14 of the International Covenant on Civil and Political Rights, and the UN Basic Principles on the Role of Lawyers.
- Whether consistency could be improved by codifying into written form, customary norms currently being preserved, passed on and applied in a purely oral tradition; or on the other hand, whether this form of written codification risked making progressive development of the norms more difficult.
- Whether and to what extent the relevant provisions of the UN Declaration on the Rights of Indigenous Peoples apply to other kinds of traditional and customary justice systems.

Participants also held a variety of views on how States should respond where a given traditional or customary justice system is clearly acting in a manner inconsistent with international human rights norms: Some participants warned against the use of coercive measures, arguing it would not be effective to change practices and that it risked continuing illegitimate impositions of the past. They argued that such issues could only be addressed by State authorities by entering into consultation and dialogue with traditional and customary authorities. Other participants argued that States could not stand by when the human rights of individuals were being violated or abused by traditional or customary justice systems, and that State authorities were obliged to intervene to protect the rights of the affected individuals, including by coercive means if necessary.

Over the course of the Forum, participants contributed many ideas and suggestions with respect to techniques for bringing the practices and decisions of traditional and customary justice systems into accordance with international human rights standards. Many participants stressed the importance of building trust with the actors within traditional and customary systems, through the development of communication channels based on respect for their perspective and culture. Furthermore, participants shared that providing human rights education and training for decision-makers and other participants in traditional and customary justice systems is essential for raising their awareness of human rights. In addition, basic legal training would help officials to better understand standards of impartiality and fairness, and as well as awareness of the larger national legal context in which they were operating, including constitutional provisions and frameworks, and international human rights obligations and

commitments. Some participants suggested that, in some contexts, it might be more effective to begin the engagement with traditional and customary justice system actors with broader notions of fairness, equality and justice, rather than to immediately frame the discussion explicitly in terms of international human rights or national law.

Some participants expressed the view that formal State justice systems should also themselves seek to adapt to better accommodate or coordinate with traditional systems, including through the integration of customary laws and values into the hierarchy of State law. Some participants emphasized that there should be mutual cooperation and learning in both directions, rather than an expectation of a one-way intervention.

A common message delivered by the participants was that greater research and engagement directly with actors within traditional and customary justice systems was a necessary precondition to understanding their methods and approaches, both in terms of their diversity and their commonalities, before drawing any final conclusions or recommendations or designing engagement strategies. Another point stressed repeatedly was that there is a great diversity among the multitude of traditional and customary justice systems around the world. This diversity means special caution must be exercised in making generalizations about such systems. It also means that specific strategies for engagement with and progressive changes to the practices of any given traditional or customary justice system, should be tailored to the circumstances and characteristics of the particular system.

Numerous participants also challenged the perception that traditional and customary justice systems are not open to change, which has often lead to the conclusion that where such systems act inconsistently with international human rights they should be abolished or gradually supplanted by the official court system. Participants cited numerous examples of traditional and customary justice systems progressively developing their practices and norms towards better consistency with international human rights, proving that traditional and customary justice systems can change over time. Participants from all regions highlighted the importance and potential of education in improving access to justice; research suggested that many of the relevant actors in traditional and customary justice systems, including decision-makers, do not even know the national laws in their country, let alone international human rights laws or standards.

At the same time, other participants pointed out numerous examples of situations where given traditional or customary justice systems refused to enter into dialogue or to consider any change to practices and norms, whether on particular issues or in relation to human rights in general. Thus, the fact that some such systems were open to change did not necessarily mean that all were, and thus the question remained as to what other actors, governmental and non-governmental, should do when faced with a system that was constituted or acting in a manner contrary to international human right norms and would not enter into constructive dialogue.





## Preliminary Conclusions

The earliest position taken by the ICJ on traditional and customary justice systems appears to have been at the 1961 "African Conference on the Rule of Law", which brought together 194 judges, practicing lawyers and teachers of law from 23 African nations as well as 9 countries of other continents, assembled in Lagos, Nigeria, under the aegis of the ICJ. One of the Conference resolutions, on "The responsibility of the judiciary and of the bar for the protection of the rights of the individual in society" stated among other things as follows:

4. It is recommended that all customary, traditional or local law should be administered by the ordinary courts of the land, and emphasized that for so long as that law is administered by special courts, all the principles enunciated here and at New Delhi, for safe-guarding the Rule of Law, apply to those courts.
5. The practice whereby in certain territories judicial powers, especially in criminal matters, are exercised by persons who have no adequate legal training or experience ... is one which falls short of the Rule of Law.

During the fifty years following the Lagos Conference, the ICJ in its work on the administration of justice has focussed primarily on promoting and improving in practice the independence, impartiality, integrity and access to the ordinary State courts, rather than engaging in much detailed consideration of or substantial action on traditional and customary justice systems.

A number of developments in the meantime indicate that there is today increasing acceptance of the potential for traditional and customary justice systems to play a role in securing access to justice in a manner consistent with international human rights.

For instance, the 1989 ILO Convention no. 169, the Indigenous and Tribal Peoples Convention, included the following provisions:

8. (1) In applying national laws and regulations to the peoples concerned, due regard shall be had to their customs or customary laws.  
(2) These peoples shall have the right to retain their own customs and institutions, where these are not incompatible with fundamental rights defined by the national legal system and with internationally recognized human rights. Procedures shall be established, whenever necessary, to resolve conflicts which may arise in the application of this principle.  
(3) The application of paragraphs 1 and 2 of this Article shall not prevent members of these peoples from exercising the rights granted to all citizens and from assuming the corresponding duties.
9. (1) To the extent compatible with the national legal system and internationally recognized human rights, the methods customarily practiced by the peoples concerned for dealing with offences committed by their members shall be respected.  
(2) The customs of these peoples in regard to penal matters shall be taken into consideration by the authorities and courts dealing with such cases.

Although ILO Convention no. 169 has not been widely ratified globally (it currently has 22 States Parties), it has been succeeded by a universal instrument adopted by a large majority of the UN General Assembly, the 2007 UN Declaration on the Rights of Indigenous Peoples, which includes some similar provisions:

5. Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

34. Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

These articles of the Declaration are subject to the following overarching provisions:

46. (1) Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.

(2) In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law and in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.

(3) The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.

At the regional level, the African Commission on Human and Peoples' Rights in its 2003 "Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa", an instrument of comprehensive scope that addresses in considerable detail many different aspects of justice systems (and can in many respects be viewed as a global best practice), includes the following provision:

#### Q. TRADITIONAL COURTS

a) Traditional courts, where they exist, are required to respect international standards on the right to a fair trial.

b) The following provisions shall apply, as a minimum, to all proceedings before traditional courts:

(i) equality of persons without any distinction whatsoever as

regards race, colour, sex, gender, religion, creed, language, political or other opinion, national or social origin, means, disability, birth, status or other circumstances;

(ii) respect for the inherent dignity of human persons, including the right not to be subject to torture, or other cruel, inhuman or degrading punishment or treatment;

(iii) respect for the right to liberty and security of every person, in particular the right of every individual not to be subject to arbitrary arrest or detention;

(iv) respect for the equality of women and men in all proceedings;

(v) respect for the inherent dignity of women, and their right not to be subjected to cruel, inhuman or degrading treatment or punishment;

(vi) adequate opportunity to prepare a case, present arguments and evidence and to challenge or respond to opposing arguments or evidence;

(vii) an entitlement to the assistance of an interpreter if he or she cannot understand or speak the language used in or by the traditional court;

(viii) an entitlement to seek the assistance of and be represented by a representative of the party's choosing in all proceedings before the traditional court;

(ix) an entitlement to have a party's rights and obligations affected only by a decision based solely on evidence presented to the traditional court;

(x) an entitlement to a determination of their rights and obligations without undue delay and with adequate notice of and reasons for the decisions;

(xi) an entitlement to an appeal to a higher traditional court, administrative authority or a judicial tribunal;

(xii) all hearings before traditional courts shall be held in public and its decisions shall be rendered in public, except where the interests of children require or where the proceedings concern matrimonial disputes or the guardianship of children;

c) The independence of traditional courts shall be guaranteed by the laws of the country and respected by the government, its agencies and authorities:

(i) they shall be independent from the executive branch;

(ii) there shall not be any inappropriate or unwarranted interference with proceedings before traditional courts.

d) States shall ensure the impartiality of traditional courts. In particular, members of traditional courts shall decide matters before them without any restrictions, improper influence, inducements, pressure, threats or interference, direct or indirect, from any quarter.

(i) The impartiality of a traditional court would be undermined when one of its members has:

(1) expressed an opinion which would influence the decision-making;

(2) some connection or involvement with the case or a party to the case;

(3) a pecuniary or other interest linked to the outcome of the case.

(ii) Any party to proceedings before a traditional court shall be entitled to challenge its impartiality on the basis of ascertainable facts that the fairness any of its members or the traditional court appears to be in doubt.

e) The procedures for complaints against and discipline of members of traditional courts shall be prescribed by law. Complaints against members of traditional courts shall be processed promptly and expeditiously, and with all the guarantees of a fair hearing, including the right to be represented by a legal representative of choice and to an independent review of decisions of disciplinary, suspension or removal proceedings.

Several of the independent expert bodies mandated by international human rights treaties to interpret and apply their provisions have also addressed traditional and customary justice systems. For instance, the Human Rights Committee under the International Covenant on Civil and Political Rights held in 2007, in relation to article 14 (fair trial) of the treaty:<sup>6</sup>

Article 14 is also relevant where a State, in its legal order, recognizes courts based on customary law, or religious courts, to carry out or entrusts them with judicial tasks. It must be ensured that such courts cannot hand down binding judgments recognized by the State, unless the following requirements are met: proceedings before such courts are limited to minor civil and criminal matters, meet the basic requirements of fair trial and other relevant guarantees of the Covenant, and their judgments are validated by State courts in light of the guarantees set out in the Covenant and can be challenged by the parties concerned in a procedure meeting the requirements of article 14 of the Covenant. These principles are notwithstanding the general obligation of the State to protect the rights under the Covenant of any persons affected by the operation of customary and religious courts.

In 2009, the Committee on the Rights of the Child, addressing juvenile justice in relation to the Convention on the Rights of the Child, stated:<sup>7</sup>

States parties are encouraged to take all appropriate measures to support indigenous peoples to design and implement traditional restorative justice systems as long as those programmes are in accordance with the rights set out in the Convention, notably with the best interests of the child.

In 2015, the Committee for the Elimination of Discrimination against Women, commenting on women's access to justice in relation to the Convention for the Elimination of Discrimination against Women, recommended that:<sup>8</sup>

in cooperation with non-State actors, States parties:

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<sup>6</sup> General Comment no. 32 on Article 14: Right to equality before courts and tribunals and to a fair trial (2007), para 24.

<sup>7</sup> General Comment no. 11 on Indigenous children and their rights under the Convention (2009), para 75.

<sup>8</sup> General Recommendation no. 33 on Women's Access to Justice (2015), para 64.

- (a) Take immediate steps, including capacity-building and training programmes on the Convention and women's rights, for justice system personnel, to ensure that religious, customary, indigenous and community justice systems harmonize their norms, procedures and practices with the human rights standards enshrined in the Convention and other international human rights instruments;
- (b) Enact legislation to regulate the relationships between the mechanisms within plural justice systems in order to reduce the potential for conflict;
- (c) Provide safeguards against violations of women's human rights by enabling review by State courts or administrative bodies of the activities of all components of plural justice systems, with special attention to village courts and traditional courts;
- (d) Ensure that women have a real and informed choice concerning the applicable law and the judicial forum within which they would prefer their claims to be heard;
- (e) Ensure the availability of legal aid services for women to enable them to claim their rights within the various plural justice systems by engaging qualified local support staff to provide that assistance;
- (f) Ensure the equal participation of women at all levels in the bodies established to monitor, evaluate and report on the operations of plural justice systems;
- (g) Foster constructive dialogue and formalize links between plural justice systems, including through the adoption of procedures for sharing information among them.

These and numerous other international sources now explicitly or implicitly recognize that traditional and customary justice systems have a role to play in delivering access to justice; at the same time, all of these sources also clearly affirm that such systems must comply with international human rights law and standards, and provide useful general guidance in this regard.

The focus on traditional and customary justice systems for the 2017 Geneva Forum of Judges and Lawyers was intended to provide a foundation for the ICJ to develop up-to-date and detailed legal, policy and practical guidance, including conclusions and recommendations on the role of traditional and customary justice systems in relation to access to justice, human rights and the rule of law. As a result of the consistently and strongly expressed expert views in the discussions, the ICJ will continue and broaden its work and engagement on this topic with a view to producing more detailed guidance in 2020. In the meantime, in addition to the valuable observations and framework for analysis embodied in the Forum discussions and contained in the present report, the ICJ has published and plans to periodically update a comprehensive compilation, *Traditional and Customary Justice Systems: Selected International Sources*, setting out relevant treaty provisions, standards, conclusions and recommendations of UN and other expert bodies.

In moving forward towards more detailed guidance, the ICJ will continue to take as a starting point key elements of existing international law, including that the administration of justice through any mechanisms outside of the official judiciary must be free from discrimination and otherwise accord with international fair trial standards, that all justice systems must effectively protect the rights of marginalized and disadvantaged groups, and that for certain types of cases the use of such mechanisms may not be appropriate.

The ICJ will seek for its continuing engagement and the further guidance to assist all actors involved in implementation and assessment of Sustainable Development Goal 16 on promoting just, peaceful and inclusive societies, having regard as well to Sustainable Development Goal 5 on achieving gender equality and empowering all women and girls.





# Participants list

## 8<sup>th</sup> annual Geneva Forum of Judges & Lawyers 22-23 November 2017 | Geneva

1. **Justice Nawal AL-JAWHARI**  
Member of the Judicial Council & The Chief of Irbid Court for First Instance in Jordan  
Member, International Association of Women Judges (IAWJ)
2. **Avril CALDER**  
President, International Association of Youth and Family Judges and Magistrates (IAYFJM), United Kingdom
3. **Yann COLLIOU**  
Programme Manager, Juvenile Justice, Terre des Hommes Lausanne, Switzerland
4. **Giselle CORRADI**  
Research Fellow, Human Rights Centre at Ghent University, Belgium
5. **Charles DINDA**  
Senior Legal Adviser, Danish Institute for Human Rights (DIHR), Zambia
6. **Justice Teresa DOHERTY**  
Judge, Residual Special Court for Sierra Leone  
Member, International Association of Women Judges (IAWJ)
7. **Khitam HAMAD**  
Head of Gaza Office, Terre des Hommes Gaza, Palestine
8. **Professor Chuma HIMONGA**  
Law Professor, University of Cape Town, South Africa
9. **Sara HOSSAIN**  
Advocate, Supreme Court of Bangladesh  
Honorary Executive Director, Bangladesh Legal Aid and Services Trust
10. **Judge Jennifer HUMIDING**  
Regional Trial Court, Benguet, Philippines
11. **Khaled KHOFAASH**  
Chief Prosecutor, Public Prosecution Office, Palestine
12. **Justice Emmanuel LODOH**  
High Court Justice, Ghana  
Commonwealth Magistrates' and Judges' Association (CMJA) /  
Association of Magistrates and Judges of Ghana
13. **Jean Claude MISENGA** (23 November p.m. only)  
Human Rights Officer, UN Working Group on the issue of discrimination against women in law and in practice, Office of the High Commissioner for Human Rights (OHCHR), Geneva, Switzerland

14. **Seth MNGUNI**  
Chairperson, Council of the Association of Community Advice Offices South Africa (ACAOSA), South Africa
15. **Judge Hina MUZAFFAR**  
Addl. District & Sessions Judge, Chiniot, Pakistan
16. **Dmitry NURUMOV**  
Director of Legal Policy Research Centre (LPRC), Kazakhstan
17. **Karabo OZAH**  
Deputy Director, Centre for Child Law, University of Pretoria, South Africa
18. **Hélène RAMOS DOS SANTOS**  
Senior Fellow–UN Liaison Officer, International Bar Association Human Rights Institute (IBAHRI), Geneva
19. **Darsheenee Singh RAUMNAUTH**  
Technical Assistant, Constitutionalism and Rule of Law, Department of Political Affairs, African Union (AU), Ethiopia
20. **Patricia SCHULZ**  
Member of the UN Committee on the Elimination of Discrimination against Women, Switzerland
21. **Roxane SHEYBANI** (22 November only)  
Lawyer; Member of the Human Rights Commission of the Geneva Bar Association, Switzerland
22. **Stefano SENSI**  
Human Rights Officer, Mandate of the Special Rapporteur on the Independence of judges and lawyers, OHCHR Geneva, Switzerland
23. **Brice VAN ERPS** (23 November only)  
Lawyer; Member of the Human Rights Commission of the Geneva Bar Association, Switzerland
24. **Rasmus WANDALL**  
General Counsel, International Association of Prosecutors (IAP), Denmark
25. **Hannah WU** (23 November a.m. only)  
Secretary, UN Working Group on the issue of discrimination against women in law and in practice, Office of the High Commissioner for Human Rights (OHCHR), Geneva, Switzerland
26. **Professor Raquel YRIGOYEN FAJARDO**  
Lawyer & Professor, Law Faculty at the Pontifical Catholic University of Peru  
Founding member of the International Institute on Law and Society (IIDS)

## **ICJ Staff**

- 27. **Alex CONTE**  
Senior Law and Policy Adviser, ICJ Geneva
- 28. **Natacha CORNAZ**  
Conference Officer, ICJ Geneva
- 29. **Reema OMER**  
International Legal Adviser for Pakistan, ICJ South Asia Office
- 30. **Brian PENDUKA**  
Legal Consultant, ICJ Africa Regional Office, Zimbabwe
- 31. **Matt POLLARD**  
Director of the Centre for Independence of Judges & Lawyers, Senior Legal Adviser, UN Representative, ICJ Geneva
- 32. **Ian SEIDERMAN**  
Legal and Policy Director, ICJ Geneva
- 33. **Olivier VAN BOGAERT**  
Head of Media and Communications, ICJ Geneva
- 34. **Sam ZARIFI**  
Secretary General, ICJ Geneva
- 35. **Livio ZILLI**  
Senior Legal Adviser, UN Representative, ICJ Geneva

Opening remarks were additionally delivered by:

**Olivier COUTAU**  
Delegate to International Geneva, Republic and Canton of Geneva

**Kamelia KEMILEVA**  
Executive Manager, Geneva Academy of International Humanitarian Law and Human Rights



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**International  
Commission  
of Jurists**

P.O. Box 91  
Rue des Bains 33  
CH 1211 Geneva 8  
Switzerland

**t** +41 22 979 38 00

**f** +41 22 979 38 01

[www.icj.org](http://www.icj.org)