

**Developments concerning human rights in relation to the administration of
justice
Submission to report of the Secretary General**

30 May 2018

The International Commission of Jurists (ICJ) is pleased to provide this submission pursuant to paragraph 35 of General Assembly Resolution 71/ 188 of 19 December 2016, which requested the Secretary General “to submit to the General Assembly at its seventy-third session a report on the latest developments, challenges and good practices in human rights in the administration of justice, including on efforts to ensure equal access to justice for all through the independent, impartial and effective administration of justice, and on the activities undertaken by the United Nations system as a whole”.

The ICJ was established in 1952 and has held ECOSOC consultative status with the United Nations since 1957. The ICJ’s 60 commissioners are eminent lawyers and judges from around the world. They are supported by a Secretariat based in Geneva and with offices in all regions. While the ICJ works on a wide range of issues related to the rule of law and legal protection for human rights, the independence, integrity and accountability of judges, lawyers and prosecutors remains of central concern

The developments highlighted in this submission accordingly focus mainly on the situation of judges, lawyers and prosecutors. The main time period covered by this submission is from June 2016 to the present, although some slightly earlier developments of continuing relevance, which were not mentioned in the previous report (A/71/405), are also included as they may not have been publicized at the time of the previous report.

An overarching concern of the ICJ during the relevant period has been that **attacks on the independence of judges, lawyers and prosecutors are a continuing and growing concern worldwide**. This concern is reflected in a wide range of reports and statements by, among others, the International Commission of Jurists, the International Association of Judges, the International Bar Association, the Union internationale des avocats, the International Association of Prosecutors, and the Commonwealth Magistrates’ and Judges Association.¹ It is also supported by numerous sources from within the United Nations System during the relevant period, including:

¹ Further details available on the websites of the various organisations : www.icj.org , www.iaj-uim.org , www.ibanet.org , www.uianet.org , www.iap-association.org , www.cmja.org .

- UN Human Rights Council Resolution 35/12 on the Independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers, adopted 29 September 2017, which stated in its Preamble:

“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”.
- Report of the Special Rapporteur on the situation of human rights defenders, Addendum, Observations on communications transmitted to Governments and replies received, UN Doc A/HRC/34/52/Add.1 (20 February 2017), paras 91, 338-350, 353, 362, 364, 367, 383, 391-394, 422, 430, 476, 479, 484, 487, 490, 491, 540-547, 548-549, 576, 583, 607, 634, 649, 692, 706-707.
- UN Special Rapporteur on the Independence of Judges and Lawyers:
 - Report to the Human Rights Council, 2017, UN Doc A/HRC/35/31, paras 36, 38, 41, 43, 44, 52, 53, 70, 74, 76-77, 107.
 - Report to the Human Rights Council, 2016, UN Doc A/HRC/32/34, paras 12, 35.
 - Report to the General Assembly, 2017, UN Doc A/72/40, paras 2, 10, 18, 21-23, 27, 39-42, 52, 55-58, 60, 65, 72.
 - Report to the General Assembly, 2016, UN Doc A/71/348, paras 26, 42-44, 46-47, 49, 52, 64, 69, 71-72, 75, 87, 96.
 - Report on mission to Sri Lanka, 2017, UN Doc A/HRC/35/31/Add.1, paras 28, 31-32, 35-36, 43, 48, 50, 72, 80, 82, 84, 86-87, 90.
 - Report on mission to Guinea-Bissau, 2016, UN Doc A/HRC/32/34/Add.1, paras 18, 31, 33, 36-46, 48-51, 53-54.
- Communications report of Special Procedures - Communications sent, 1 June to 30 November 2017; Replies received, 1 August 2017 to 31 January 2018, UN Doc A/HRC/37/80 (19 February 2018), and the associated communications in the online database <https://spcommreports.ohchr.org/> showing 81 communications were sent concerning the independence of judges and lawyers between 1 June 2016 and 30 May 2018.

Other relevant developments of potential interest include:

UN Developments:

- The UN Office on Drugs and Crime (UNODC) launched a global judicial integrity network that provides a global platform for support and learning. The assembly of judges, lawyers and other stakeholders, one of the largest groups of Chief Justices and other senior judicial actors ever assembled, adopted a declaration on judicial integrity *Published 3 May 2018*.
<https://www.icj.org/wp-content/uploads/2018/05/Declaration-on-Judicial-Integrity-UNODC-event-2018.pdf>
<https://www.unodc.org/ji/en/restricted/network-launch.html>

<http://www.unodc.org/ji/>

- UN Special Rapporteur on Independence of Judges and Lawyers report (A/HRC/ 35/31) in June 2017 made specific reference to various topics including:
 - The principle of separation of powers with particular attention to countries undergoing transition to democracy
 - How anti-terrorism measures affects the independence of the judiciary
 - Concerns in relation to judicial independence in states of emergency
 - Difficulty of women accessing the judiciary
 - Investing in children’s human rights
 - Education, training and capacity building for judges

<http://www.ohchr.org/EN/Issues/Judiciary/Pages/Annual.aspx>
- UN Human Rights Council Resolution 37/22 ‘Equality and non-discrimination of persons with disabilities and the right of persons with disabilities to access to justice’. Adopted 23 March 2018. (draft - A/HRC/37/L.35; final official version not yet published). Set out a series of legal and practical measures for ensuring equal participation and enjoyment of rights by persons with disabilities in their interactions with justice systems.

<http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session37/Pages/ResDecStat.aspx>
- UN Human Rights Council Resolution 36/16 on Human rights in the administration of justice, including juvenile justice, adopted 29 September 2017, set out a series of conclusions and recommendations to States for the better respect of human rights in the administration of justice.
- UN Human Rights Council Resolution 35/12 on the Independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers, adopted 22 June 2017, addressed a number of matters relevant to human rights in the administration of justice.
- The Committee on the Elimination of Discrimination against Women (CEDAW) published General Comment No. 35 on gender-based violence, including numerous conclusions and recommendations relevant to the administration of justice. *Published 26 July 2017.*

<http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Recommendations.aspx>

Regional Developments:

- The African Commission on Human and People’s Rights adopted a set of principles and guidelines on countering terrorism. *Published 21 April to 7 May 2015.*

http://www.achpr.org/files/instruments/principles-guidelines-countering-terrorism/principles_and_guidelines_on_human_and_peoples_rights_while_countering_terrorism_in_africa.pdf

- The African Commission on Human and People's Rights published a set of guidelines on the conditions of arrest, police custody and pre-trial detention (Luanda Guidelines). *Adopted 9 March 2015.*
http://www.achpr.org/files/instruments/guidelines_arrest_detention/guidelines_on_arrest_police_custody_detention.pdf
- The African Commission on Human and People's rights issued a General Comment No.4 on the right to redress for victims of torture and other cruel, inhuman or degrading punishment or treatment. *Adopted 11 May 2017.*
http://www.achpr.org/files/instruments/general-comment-right-to-redress/achpr_general_comment_no._4_english.pdf
- The Consultative Council of European Judges' Opinion No.20 highlights the role of courts in ensuring uniform application of the law to reinforce legal certainty while preventing rigidity in the administration of justice. *Published 10 November 2017.*
<https://rm.coe.int/opinion-no-20-2017-on-the-role-of-courts-with-respect-to-the-uniform-a/16807661e3>
- The 2017 EU Justice Scoreboard provided by the European Commission examines the functioning of the justice system among member states using reliable, quantitative data.
https://ec.europa.eu/info/sites/info/files/justice_scoreboard_2017_en.pdf

The EU adopted a package of fundamental Rules to standardize measures that protect the rights of suspects and accused in justice systems throughout Europe (some of the Directives were adopted before the relevant period of this submission, but the final ones were adopted only in late 2016). The six Directives are:

- *Directive 2012/13/EU* on the right to information in criminal proceedings.
<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012L0013&from=EN>
- *Directive 2010/64/EU* on the right to interpretation and translation in criminal proceedings.
<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012L0013&from=EN>
- *Directive 2013/48/EU* on the right to access to a lawyer in criminal proceedings and in European arrest warrant proceedings and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty.
<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0048&from=EN>
- *Directive 2016/343 EU* on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings.
<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016L0343&from=EN>

- *Directive 2016/800 EU* on procedural safeguards for children who are suspects or accused persons in criminal proceedings.
<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016L0800&from=EN>
 - *Directive 2016/1919 EU* on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings.
<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016L1919&from=EN>
- The Office for Democratic Institutions and Human Rights of the Organisation for Security and Cooperation in Europe convened an Expert Meeting on fair trial rights during states of conflict and emergency, which produced a number of conclusions and recommendations relevant to human rights in the administration of justice. *Published on 27/28 October 2016.*
<https://www.osce.org/odihr/317766?download=true>
 - The African Court of Human and Peoples' Rights issued several groundbreaking judgments concerning the right to a fair trial in the administration of justice, including the cases of *Jonas v Tanzania (2017)*, and *Onyachi and Njoka v Tanzania (2017)*.
<http://justicehub.org/article/emerging-framework-all-africa-right-fair-trial-african-court-human-and-peoples-rights-and>

Other Stakeholder Developments:

- The International Association of Judges adopted an updated version of the Universal Charter of the Judge on *14 November 2017*.
<https://www.iaj-uim.org/universal-charter-of-the-judge-2017/>
- The International Association of Judges published a judicial anti-corruption compact *Published 16 August 2016*.
<https://www.iaj-uim.org/iuw/wp-content/uploads/2016/12/Judicial-AntiCorruption-Compact.pdf>
- The ICJ published a practitioners guide on Judicial Accountability, No.13. *Published June 2016*.
<https://www.icj.org/wp-content/uploads/2016/06/Universal-PG-13-Judicial-Accountability-Publications-Reports-Practitioners-Guide-2016-ENG.pdf>
- The ICJ published a practitioners guide on Women's Access to Justice for Gender Based Violence No.12. *Published March 2016*.
<https://www.icj.org/wp-content/uploads/2016/03/Universal-Womens-access-to-justice-Publications-Practitioners-Guide-Series-2016-ENG.pdf>
- Experts at a meeting organized by the Association for the Prevention of Torture announced a set of guidelines to help law enforcement officers use

non-coercive interviewing techniques. This is designed to eliminate the risks of torture and ill treatment. *Published 22 May 2018.*

https://apt.ch/en/news_on_prevention/moving-away-from-confession-based-criminal-justice-systems/

- The Bellagio Declaration on state obligations and role of the judiciary in ensuring access to justice for gender based violence, including sexual violence in an effective, competent manner and with a gender perspective. *Published on 7 and 8 December 2017.* The Declaration was adopted by the International Judicial Colloquium on Women's Access to Justice in the Context of Sexual Violence, held at Bellagio, Italy, on 7 and 8 December 2017.

http://www.pangeaonlus.org/r/Pangea/Documenti/Pdf/advocacy/Bellagio%20Declaration_Women's%20Right%20of%20Access%20to%20Justice%20and%20Sexual%20Violence.pdf