

HUMAN RIGHTS COUNCIL – 56th SESSION

Interactive dialogue with the Special Rapporteur on the Independence of Judges and Lawyers

25 June 2024

Ms. Margaret Satterthwaite, in her capacity as Special Rapporteur on the Independence of Judges and Lawyers, provided insightful remarks on her **country visits** to Montenegro and Mongolia; introduced her new **thematic report** on the vital role played by the judicial system and its personnel in safeguarding democracy; and highlighted some key trends arising in the context of **communications**.

Following her visit to **Montenegro**, the Special Rapporteur explained that the country had made considerable progress in its constitutional and legislative frameworks, as well as significant advances in the fight against corruption and organized crime. However, the justice system continued to face legislative gaps, institutional shortcoming, and practical problems that undermined the independency and impartiality of the judiciary, and limited or prevented access to justice. Specifically on judges and prosecutors, the proposed text was not sufficient to protect them from external interference; and their salaries and working conditions were in need of improvement. Similarly, more should be done ensure that lawyers could carry out their professional activities without any undue interference or pressure.

In conclusion, **Montenegro** should pursue its reform of the justice system under the guidance of existing norms and standards relating to the independence of the judiciary, the autonomy of the prosecution service, and the rule of law. All political forces in the country should constructively join forces to find a durable solution to the deep institutional crises that limited the functioning of several bodies composing the justice system; legal aid providers should be subject to a professional code of conduct and establish appropriate oversight mechanism; the accessibility of court facilities and procedures should be enhanced as well as adequate specialization to sensitive and complex cases.

Turning to her visit to **Mongolia**, the Special Rapporteur acknowledged many achievements in the country's transition to democracy, the adoption of its constitution, and the reform of the judiciary to strengthen its independence, such as the establishment of an independent judicial disciplinary committee. She further welcomed efforts in progress to review the criminal code and a new bill under consideration, including provisions to ensure timely access to legal counsel as well as 24-hour access to a judge as a guarantee, respectively, of the right fair trial and the prohibition of arbitrary detention.

Noting the chronic underfunding, deficiencies in infrastructure and the lack of public trust in the judiciary, the Rapporteur called upon Mongolia to earmark a percentage of its budget for the judiciary, and to enhance transparency, knowledge and understanding as vital factors for building trust in judicial processes. Furthermore, adaptations are required for persons with disabilities and defence advocates should be granted prompt, unhindered and effective access to case files and their clients.

The Rapporteur's **thematic report** explored the nexus between independent justice systems, the rule of law, and meaningful participatory government. Independent judicial systems and personnel played a crucial role in safeguarding meaningful democracy which required more than political participation alone. Indicators of meaningful democracy, including adherence to the rule of law and the existence of checks on governmental power, were declining across the world. However, the existence of strong independent judicial systems could be a valuable tool against anti-democratic forces, as highlighted by the main findings of the thematic report.

Most importantly, **independent justice systems** upheld the rule of law requiring governments to act in accord and to ensure equal treatment of each individual before the law, including government and political leaders. In doing so, the judiciary helped to guarantee that state action was legal, constitutional, and compliant with international human rights law, and checked undemocratic exercise of power. Justice systems also played a critical role in ensuring free and fair elections, adjudicating the disputes on the fairness and law of electoral proceedings.

Furthermore, the thematic report identified four categories of **threats to independent justice systems**, namely capture, curbing, instrumentalization, and attacks. **Capture** involved reforms that decrease independence and increase political control, thereby impairing justice systems to act an effective check on governmental power. **Curbing** consisted of legal changes that systematically reduce the power of these institutions to act, especially in relation to possible abuses of power by the political branches. **Instrumentalization** entailed abusing justice systems to influence or control individual justice personnel through politically motivated prosecutions and disciplinary proceedings, or by manipulating conditions of service. Finally, individual justice operators may be subject to **attacks and individual targeting**, such as public disparities on government officials, harassment and threats, and even arbitrary detention, killings, and torture, which may serve as punishment, retribution, or warning for their work to challenge the legality of government action. As a result, such a hostile environment deterred other justice workers from acting to defend democracy and undermining the rule of law.

As regards **key issues arising in the context of communications** which were giving rise to current global trends, the Rapporteur noted with great concern **attacks and threats to the lives of judges** on social media, including disparagement and verbal threats against individual judges emanating from executive powers. Demeaning messages against judges not only singled them out, but also labelled them as ‘enemies’, ‘incompetent’, and even worse. In some instances, attacks by executives online then triggering popular attacks online by others than even became physical action. **Assassinations, killings, detention of lawyers, and raids on bar associations’ premises** were also issues of utmost concern to the Rapporteur, who reiterated in passing her call for an effective investigation into the brutal killing of the well-known human rights lawyer **Thulani Maseko** in Eswatini.

In relation to the ICC, the Rapporteur noted with alarm media reports on alleged efforts to **intimidate former Prosecutor Bensouda** and to **surveil the current Prosecutor** in connection to his ongoing work on Palestine. In recent weeks, officials in the US and Israel had made inflammatory statements on the ICC; congressional leaders in the US were preparing possible retaliatory actions, should arrest warrants be issued against Israeli officials; and threats were uttered by the Israeli finance minister to withdraw funds from the Palestinian authority as a reprisal. Alarm was also raised in relation to reports on the destruction of the Gaza’s courthouse and bombing of the headquarters of the Palestinian bar association, thus destroying its archives.

Mongolia (country concerned) coincided with the views of the Rapporteur that an efficient, independent and impartial judicial system was essential for upholding the rule of law and ensuring the protection of rights and fundamental freedoms. Ensuring the independence and impartiality of judges needed constant protection efforts against ever-emerging challenges in society. The Mongolian constitution enshrined the principles of equality before the law, free trial and the judicial power being vested exclusively in courts. To strengthen the impartiality and independence of the judiciary, Mongolia amended its constitution in 2019 and subsequently a related law which led to judicial reforms and allowed to make courts transparent, open, accessible to citizens. Further reforms were expected to take place to enhance quality, swiftness and accessibility of the judicial system and proceedings. In closing, Mongolia appreciated the Rapporteur’s recommendations while requesting insights on best practices in the field of digital justice transformation.

Montenegro (country concerned) welcomed the Rapporteur’s open and constructive exchanges with the three branches of powers and key stakeholders. It further appreciated the recommendations

received as valuable guidelines for addressing and identifying relevant areas for improvement. Montenegro continued to pursue its efforts and achievements guided by the principles of democracy, human rights and rule of law, under the banner of the EU accession and its core founding values. Since the Rapporteur's visit, Montenegro took measures to address deficiencies and harmonize legislation with international standards through amendments to the set of laws governing the rule of law, judicial prosecution and the fight against corruption, including the adoption of brand-new strategies on judiciary reform and countering corruption. Furthermore, the Parliament proceeded to the nominations of key judiciary posts. Montenegro would continue to rely on cooperation with the Rapporteur and other mechanisms in order to tackle the remaining challenges.

Interactive dialogue

52 country delegations took the floor during the interactive dialogue. Vocally reaffirming the separation of powers and the rule of law as cornerstones of democracy, most countries expressed strong support for an accessible, accountable and inclusive justice system. Many emphasised the constitutional anchoring of the principle of judicial independence, along with a commitment towards protecting the integrity of the judicial system against any interference and allocating adequate resources for upholding the delivery of justice. Worrying trends and concerns were raised over the targeting of the justice system by non-liberal regimes or politicians; the instrumentalization of justice; and the dissemination of disinformation undermining the smooth functioning of the justice system. In conclusion, the crucial importance of fostering public trust in the judiciary and an open door policy to visits by UN Special Procedures were also stressed all along the interactive dialogue.

The **International Law Development Organization (IDLO)** concurred on the need for vigorous measures for revitalizing public trust in justice and defending justice workers as indispensable actors for safeguarding democracy. Building on 40 years of global experience, the IDLO drew four lessons for safeguarding the independence of the judicial system amidst contemporary challenges to democracy, which are also reflected in the Rapporteur's thematic report. First, strengthening the legal framework to ensure judicial independence and integrity; second, ensuring adequate resources and support for the judiciary for a greater capacity to address corruption and enhancing people's access to and use of the justice system; third, legal empowerment for expanding access to justice, which should encompass youth, women and historically excluded groups; fourth, judicial independency and impartiality for restoring public trust.

UNDP acknowledged the Rapporteur's perspectives on reaffirming the necessity of commitment to the rule of law and independence of the judiciary in a global landscape marked by challenges to human rights, democratic governance and rule of law. Recognizing the vital role played by justice systems in preventing and addressing conflicts as well as in progressing the SDGs. UNDP's global programme on fostering human rights, development and the rule of law had provided support in 108 different contexts globally. UNDP welcomed the Rapporteur's call to revitalize public trust in justice institutions as well as to defend justice actors and their indispensable role in providing access to justice and securing the rule of law.

UNESCO shared concerns over the increased use of AI, disinformation, surveillance and the weaponization of the judicial system against journalists and human rights defenders. To build capacities and raise awareness on these issues, UNESCO judges' initiative had – since 2023 - engaged over six thousand judicial actors. It implemented on the ground and online courses, developed resources and established partnerships with regional human rights courts and judicial institutions.

Delegations that took the floor during the Interactive dialogue (52 country delegations):

Mongolia, Montenegro, Lithuania (on behalf of the Nordic-Baltic countries), European Union, the Gambia (on behalf of the African Group), International Law Development Organization (IDLO), UNDP, Peru, Norway, Chile, Armenia, Poland, Egypt, Luxembourg, Costa Rica, Maldives, France, Algeria, Belgium, Lesotho, Iraq, United States, China, Colombia, Iran, the Netherlands, Russian Federation, Malaysia, Georgia, UNESCO, Albania, Timor-Leste, Togo, Cameroon, Cuba, Switzerland, Ghana, Afghanistan, Libya, Venezuela, South Africa, Sudan, Vanuatu, Malawi, Bolivia, Ukraine, Cambodia, Botswana, India, Türkiye, Honduras, Tunisia.

NHRIs and NGOs that took the floor during the Interactive dialogue (10):

Law Council of Australia, Arab-European Forum for Dialogue and Human Rights, No Peace Without Justice, International Commission of Jurists, Centre for Justice and International Law, International Bar Association, Freedom Now, Right Livelihood Award Foundation, Rosam Human Development Centre, Association pour l'intégration et le développement durable au Burundi.

To watch the full meeting refer to UN WEB TV: [Part 1](#) and [Part 2](#)