

NEW DELHI PRINCIPLES

ON THE ROLE OF JUDICIARY IN ENSURING EQUAL ACCESS TO JUSTICE FOR ALL IN THE GLOBAL SOUTH

New Delhi, 27 November 2023

INTRODUCTION

In November 2023, twenty-one Chief Justices and judges from fifteen countries of the Global South, from the regions of Africa, Asia and the Pacific, came together to be a part of the Chief Justices' Roundtable on Equal Access to Justice for All in the Global South at New Delhi, India. The Roundtable was conceptualised with a view to strengthen south-south cooperation, and exchange learnings and good practices to further efforts to ensure equal access to justice for all.

Bearing in mind the critical role of an independent and impartial judiciary in ensuring States make progress on Goal 16 of the *2030 Agenda on Sustainable Development* towards equal access to justice for all, the roundtable sought heightened commitment from the judiciary in promoting equality and ensuring that no one is denied justice due to their social, economic, or other circumstances. Meeting on the sidelines of the *First Regional Conference on Access to Legal Aid: Strengthening Access to Justice in the Global South* the roundtable enabled discussions on the role of the judiciary in ensuring the right to legal representation including availability of legal aid services that are credible, effective and accessible to all; technological innovations that are significant in advancing equal access to justice; and good practices on expanding access to legal information as well as alternative dispute resolution mechanisms.

Discussions touched upon the differences and commonalities across jurisdictions, including the nature of codification of the right to legal aid; the institutionalization and funding of legal aid institutions; and the provision of legal aid services. The varied stages at which legal assistance is available for suspects, arrested and accused persons were discussed, and a consensus was reached on its provision from the initial stages of criminal proceedings. Emphasis was placed on improving court efficiency in terms of e-filing, virtual hearings and simplification of court procedures.

In light of the discussions made at the roundtable, the *New Delhi Principles on the Role of Judiciary in Ensuring Equal Access to Justice for All in the Global South* were adopted.

PREAMBLE

Whereas the *Universal Declaration of Human Rights, 1948* outlines the principles of equality and states that all human beings are born free and equal in dignity and rights; that all are equal before the law and; are entitled without discrimination to equal protection of the law;

Whereas the *Basic Principles on the Independence of the Judiciary, 1985* provide a comprehensive framework for ensuring the independence of the judiciary, and outline principles that require the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected;

Whereas the *Bangalore Principles of Judicial Conduct, 2006* emphasize the importance of integrity, independence, impartiality, competence, and diligence in the conduct of judicial duties and outlines the principle that ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office;

Whereas the *Beijing Statement of Principles of the Independence of the Judiciary, 1997* states that the objective of the judiciary is to ensure that all persons are able to live securely under the rule of law; to promote the observance and attainment of rights and; to administer law impartially among persons and between persons and the state;

Whereas the *Basic Principles on the Role of Lawyers, 1990* places responsibility on the legal profession to ensure that everyone has access to counsel, regardless of means or background, to protect the right to equality before the law; and emphasizes the important role of lawyers in protecting fundamental rights.

Whereas the *2030 Agenda on Sustainable Development* calls upon States to promote peaceful and inclusive societies for sustainable development by providing equal access to justice for all and building effective, accountable, and inclusive institutions at all levels;

Whereas the *International Covenant on Civil and Political Rights, 1966* affirms that in the determination of any criminal charge, everyone shall be entitled to be tried in his presence, and to defend themselves in person or through legal assistance of their own choosing, and to be informed, if they do not have legal assistance of this right;

Whereas the *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 1988* affirm that a detained person shall be entitled to have the assistance of, and to communicate and consult with legal counsel;

Whereas the *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, 2012* affirm that States should ensure that anyone who is detained, arrested, suspected of, or charged with a criminal offence punishable by a term of imprisonment or the death penalty is entitled to legal aid at all stages of the criminal justice process; and that effective remedies and safeguards apply if access to legal aid is undermined, delayed, or denied;

Whereas there is an increasing recognition of the significance of access to legal representation, including provision of legal aid services in civil matters, particularly for women, girls and vulnerable/marginalised groups, and where significant individual rights are at stake, being the cornerstone of social justice and promotion of equality within the society;

And Whereas the judiciary/administration of justice in every country should be inspired by these principles and efforts should be undertaken to translate them fully into reality;

The Following Principles are intended to establish the crucial role of the judiciary in ensuring the right to legal representation. They are also intended to emphasize upon the importance of legal information and creation of publicly available data that enables easy access to courts and its procedures for all persons. These principles seek to further the integration of technology in court processes making access to legal remedies easier, faster and equitable.

Principle 1

Equal Protection of Laws

- (1) Judges have a pivotal role in upholding the rule of law and safeguarding the fundamental rights of all individuals. Judges must be committed to promote equality and equal protection of laws by ensuring that no one is denied access to justice due to social, economic or other circumstances.

Principle 2

Non-discrimination and Equality

- (1) Judges should uphold the principle of non-discrimination and ensure that everyone is treated equally before the law. Judges should ensure that individuals, while accessing justice, do not face any discrimination based on race, ethnicity, gender, religion, identity, sexual orientation, disability or any other personal characteristic.

Principle 3

Right to a Fair Trial

- (1) Judges should safeguard the right to a fair trial by ensuring that proceedings in criminal cases are conducted in an impartial and independent manner, in accordance with the law, and the right of an accused to be presumed innocent is safeguarded.
- (2) Judges must ensure that the rights of accused persons, victims and witnesses are protected, including the right to legal representation and access to legal information.

Principle 4

Legal Representation in Criminal Cases

- (1) Judges must uphold the fundamental right to a fair trial and safeguard individuals from injustice through assurance of legal representation at all stages of an inquiry, investigation and a criminal proceeding.
- (2) Judges must ensure that legal counsel are competent, experienced and are able to provide effective legal representation.
- (3) Judges should ensure that proceedings in criminal cases do not continue in the absence of legal counsel, and that a counsel is appointed where the accused cannot afford a lawyer.
- (4) The judiciary should ensure that all individuals have access to effective remedies for violation of their right to legal representation, including through the provision of access to state-funded legal services or pro-bono legal assistance.

- (5) Judges must ensure that effective remedies and safeguards apply if access to legal representation is undermined, delayed or denied or if persons have not been adequately informed of their right to legal representation.

Principle 5

Legal Representation in Civil Cases

- (1) Judges have a crucial role in ensuring that individuals do not turn away from courts for lack of resources, legal assistance or fear of lengthy court processes, by reducing inequalities in accessing legal assistance in relation to civil cases.
- (2) Judges must ensure that litigants have access to legal representation in civil cases including disputes relating to family and inheritance rights, domestic violence, migration, land rights etc.
- (3) Judges must ensure that access to legal representation for women, children, disabled persons, and other vulnerable/disadvantaged persons in civil cases is prioritised in justice systems.

Principle 6

Right to Legal Aid

- (1) Judges should uphold the right to legal aid as a fundamental right enshrined in numerous international conventions and declarations including the *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, 2012*.
- (2) The judiciary should advocate for adequate funding and resources for legal aid programs to ensure that legal representation is accessible to all, regardless of their financial means, in criminal, civil and other cases.
- (3) The judiciary should promote the expansion of legal aid programs to reach individuals in remote areas and vulnerable/disadvantaged communities.
- (4) The judiciary should promote specialization among legal aid providers to ensure that individuals have access to representation tailored to their specific legal needs.
- (5) The judiciary should ensure accountability of legal aid providers by establishing mechanisms to monitor the effectiveness and efficacy of legal aid services.

- (6) The judiciary should ensure that individuals can access remedies where the right to legal aid is undermined, delayed or denied or if persons have not been adequately informed of their right to legal aid.

Principle 7

Accessibility and Affordability

- (1) Judges must ensure that the justice system is accessible and affordable to all. Barriers such as location, cost, language, etc. should not prevent individuals from seeking legal redress.
- (2) Judiciary should periodically review existing forms and application processes to simplify them, and make them easier to understand and facilitate access for individuals seeking legal remedies.

Principle 8

Technology Innovations and Advancements

- (1) As technology continues to evolve at an unprecedented rate, the judiciary should adapt to improve efficiency, transparency and accessibility in court processes.
- (2) The judiciary should actively promote integration of technological innovations including provision of online legal information and resources, enabling electronic filing of court documents, facilitating remote hearings and consultations, and promoting use of artificial intelligence to automate administrative tasks.
- (3) Potential risks associated with the use of technology, such as privacy violations, inherent bias and negation of rights should be borne in mind while making decisions to integrate technology in court processes.

Principle 9

Legal Education and Public Awareness

- (1) The judiciary should promote the role of legal education, both in its practical and conceptual aspects, to make it more practical and contextual, while facilitating access to justice and legal aid according to the needs of the respective countries.
- (2) Public legal education and awareness are essential for individuals to understand their rights and enable them to access the justice system. Judiciary can ensure programs that

educate the public about their legal rights and remedies to address violation of these rights are undertaken.

Principle 10

Public Participation and Accountability

- (1) The judiciary should, as far as possible, make its functions transparent to the public, by publishing data and information in the public domain, and implementing freedom of information laws where available.
- (2) Judiciary should consider the use of data dashboards that make information on court activity more accessible to public through publication of relevant data such as the number of cases filed, average length of cases and disposal of cases, etc.

Principle 11

Continuous Improvement

- (1) Judiciary should continuously strive to improve its performance and effectiveness in ensuring equal access to justice for all. It should regularly review its procedures, policies, and practices to identify and address any barriers to justice.

Principle 12

Promoting Alternative Dispute Resolution Mechanisms

- (1) Judges should encourage and promote the use of Alternative Dispute Resolution (ADR) mechanisms that are accessible and effective as a means of resolving disputes in a timely, cost-effective, and amicable manner.
- (2) Judges should ensure that ADR processes protect the rights of parties including the right to be heard, the right to legal representation and the right to confidentiality.
- (3) Judges should ensure that litigants can access appropriate remedies to challenge ADR outcomes if not satisfied with the decision.
- (4) Judiciary should promote research and data collection on the use and effectiveness of ADR mechanisms.

It is the conclusion of the Chief Justices and other Judges of Africa, Asia and Pacific listed below that the principles outlined in this document can strengthen the role of the judiciary in ensuring equal access to justice for all.

SIGNATORIES AT NEW DELHI, 27 NOVEMBER 2023

Bangladesh, Botswana, Cameroon, Cote d'Ivoire, Eswatini, Ghana, India, Kyrgyzstan, Maldives, Mauritius, Nepal, South Sudan, Tajikistan, Uzbekistan, and Zimbabwe.*

**Provisionally signed.*

Adopted at the Chief Justices' Roundtable on Equal Access to Justice for All in the Global South at New Delhi, India on 27 November 2023.