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Tanvi Goel, President of GA3

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Strengthening Criminal Justice Systems to Guarantee Fair Legal Access

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Introduction

Strengthening criminal justice and creating fair legal access is a global issue that impacts not only human rights but public trust in governance. Criminal justice systems are designed to uphold the rule of law by ensuring that justice is provided to victims and equal legal representation is given to all, nevertheless in many countries these systems fail to function equitably and uphold the standard of justice that subsequently leads to widespread discrimination and a violation of fundamental rights.

A main cause of this issue is the lack of representation for vulnerable and marginalised populations such as but not limited to; low income individuals, ethnic minorities and migrants. Furthermore in many regions legal access is not only unaffordable and inaccessible but often results in individuals being unfairly detained, coerced or convicted without adequate defense. Additionally these problems are worsened by the lack of legal aid services as we see disparities in state capacity, economic development, governance and corruption in different nations. This results in overcrowded prisons, case backlogs and worsening human rights conditions. The increasing divide between affordable and quality legal aid erodes public trust in governance and the rule of law, which undermines legitimacy and stability in states.

The very justice systems designed to protect citizens have instead become mechanisms that often do the opposite. This report will highlight the significance of this global issue as well as its causes including resource disparities, state capacity, governance and unfair treatment of vulnerable groups, historical and relevant background and possible solutions.

Definition of key terms

Arbitrary detention

Arrested or held without correct legal evidence or care such as lack of legal justification, adequate evidence for detention.

Alternative dispute resolution (ADR)

The use of any procedure agreed to by all parties in which mediation or arbitration methods of a neutral party is used to assist the parties in reaching an agreement without resort to litigation.

Criminal justice system

The network of institutions, laws and procedures in a region which is in place to apprehend, prosecute, defend, sentence and punish those that have been convicted or suspected of crime.

Fair legal access

The ability of all individuals and citizens of a region to have equitable access to legal information, representation and judicial processes with disregard to their personal characteristics such as ethnicity or gender.

Due process

The fair treatment within the justice system including the right to be informed of legal charges, the right of presentation and the protection against arbitrary arrest or detention.

Legal aid

State or publicly funded legal services provided to individuals who lack access or are unable to afford private legal representation.

Legal literacy

The knowledge and awareness that the public has of legal rights, responsibilities and procedures.

Marginalised groups

Communities that are often underrepresented and are excluded from the majority of social, economic and political life due to characteristics such as race, gender, disability, sexual orientation, religion or economic status often causing barriers in education, healthcare and in jobs.

Judicial independence

The ability of courts and judges to function free from the control or overreach of other governmental branches, the public or private parties, allowing them to focus solely on the law and facts.

General Overview

There is a huge global justice gap, where roughly 5.1 billion people, two thirds of the world's population, lack adequate and meaningful access to justice. The global issue of lack of fair legal access in criminal justice systems is a core part of why many nations struggle in ensuring accountability, safeguarding individual freedoms and protecting fundamental human rights.

Furthermore, this global justice gap specifically impacts low income and marginalised groups, those who lack the correct resources for legal aid, who face systemic discrimination and who are often excluded from national legal information.

Criminal justice systems are the foundation of the rule of law and in ensuring that basic human rights are upheld, however internationally, many regions of the world face extreme structural weaknesses that undermine the right to fair legal access which results in unequal testament and judgement before the law and violations of due process.

Defining *Fair Legal Access* and *Fair Trials* in Criminal Justice Systems

Many United Nations and International Directives have already created a model of what *fair legal access* insinuates. Fair legal access is the right of individuals to access legal systems and services that are equal and affordable regardless of individual characteristics, this includes legal aid, remedies, and access to information as promoted by the Organisation for Economic Co-operation and Development (OECD).

Fair trials are a crucial component to upholding rights in the criminal justice system, individuals should possess adequate notice of proceedings, have an opportunity to be represented and prepared in an affordable manner, be able to present arguments and refute opposing arguments, consult a counsel or an interpreter, have verdicts made based solely on adequate evidence, as emphasised by the United Nations Office on Drugs and Crime (UNODC).

The inability to have access to fair trials and legal aid has had adverse consequences; The world prison briefly estimates that above 30% of the global prison population are held in pre-trial detention for a variety of reasons such as an inability to navigate legal procedures.

Availability and Quality of Legal Aid

Legal aid provides state funded legal assistance, including things like lawyers, information and more in an affordable manner. Many states recognise the right to legal aid, however access to *effective and quality* legal aid remains an unresolved issue. In many cases public defense systems and legal representation is underfunded and overstretched, this undermines the equality of arms, where both the defense and the prosecution (*all parties*) have the right to equally present their cases.

The UNODC Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems illustrate clearly that legal aid should be timely, competent, affordable and accessible in all stages of criminal proceedings, however once more, the lack of funding, training, and oversight hinders the quality of legal aid available in some nations.

State Capacity and Governance

The efficiency and fairness of the criminal justice systems in nations is linked to *state capacity*, governance and political structures. Judicial independence is a component of the justice system that ensures impartiality and fair trials, however a lack of accountability and transparency arises when political corruption and external involvement comes into play. This leads to selective enforcement of laws, prolonged legal proceedings and often unequal treatment before the law.

State capacity is a government's ability to effectively implement policies and laws. High state capacity provides provision of accessible legal aid, trained judicial personnel and efficient court administration which contributes to public security and protection and authority and legitimacy, conversely; corruption and weaknesses in a state's governance creates struggle in enforcement of laws and a low capacity often entails impartiality in justice systems such as overcrowded detention facilities, limited legal representation. Such conditions ultimately affect vulnerable and marginalised populations.

The World Justice Project (WJP), rule of law index provides data that supports the conclusion that nations with lower scores in *absence of corruption* and *constraints on government powers* simultaneously score lower in *criminal justice* and *fundamental rights*.

Nations' Economic development and Resource Disparities

Globally, economic development varies from nation to nation, however this plays a significant role in legal access and the efficiency of criminal justice systems. In less developed and *lower-income* countries, legal aid services are often underfunded and limited. The Organisation for Economic Co-Operation and Development (OECD) notes that criminal justice systems in lower-income states often struggle with internal issues that include lack of judicial personnel, limited infrastructure, lack of legal informative resources, case backlogs, and prolonged legal proceedings.

In contrast, *high-income* countries are able to have more refined framework due to their increased access to resources. Nevertheless even such nations possess issues, such as in the United States of America, while the Bill of Rights 'guarantees legal representation', many public criminal systems remain underfunded and unfair including overload of cases, backlogs, lack of quality of representation and more. Although economic access assists legal systems, the use of funding in most nations illustrates that it alone is not the only barrier to fair legal access.

Marginalised Groups and Vulnerable Populations

Access to fair legal processes in the criminal justice system is often limited for *marginalised* and *vulnerable populations*. This includes groups that are often excluded due to characteristics such as race, gender, citizenship, immigration and more. Often these groups encounter systemic barriers in all stages of the criminal justice process, such as linguistic barriers, limited financial and representation resources and discrimination.

International frameworks such as the *Universal Declaration of Human Rights* stand to implement policies that ensure even legal access is provided, nevertheless individuals such as those from *low-income* backgrounds lack access to bail funding or legal counsel and often have prolonged legal proceedings. Additionally, *migrants* and *refugees* face challenges including restricted access to state funded legal aid. The equality before law is often

undermined based on the arrests, furthermore unfair treatment is often given to racial and ethnic minorities.

Major parties involved

Amnesty International

Amnesty International is a non-governmental organisation (NGO) founded in 1961, that advocates for the protection of human rights internationally. It further campaigns for the prevention of unfair legal access and it works to combat unfair trials, arbitrary detention and discrimination within criminal justice systems through their *fair trials manual*, other guidelines, campaigns, independent investigations and more. Amnesty International's reports and work with UN bodies such as the Human Rights Council plays huge significance in battling systematic failures in justice systems nevertheless they do not possess *enforcement authority*.

Office of the United Nations High Commissioner for Human Rights (OHCHR)

The Office of the United Nations High Commissioner for Human Rights is crucial for the protection of human rights across all Member States, including the right to just and accessible criminal justice systems. The OHCHR examines legislation and manuals and gives guidance on training in the field, ensuring that policing and the criminal justice system *uphold dignity and equality to protect and serve all members of communities*. The OHCHR monitors states' adherence with international human rights treaties and reports violations on the lack of due processes, furthermore the OHCHR places a high priority on the protection of marginalised populations that are frequently impacted by unjust legal systems.

United Nations office on Drugs and Crime (UNODC)

The United Nations Office on Drugs and Crime, created in 1997, to fight crime, corruption and drugs, has its commitment set on promoting evidence-based crime prevention policies and practices, as well as bettering the public knowledge and implementation of prevention initiatives that target root causes of crime and violence. UNODC provides Member States with technical assistance to enable them to create judicial reforms, the UNODC advocates for improved legal aid services furthermore supports Member States by providing assistance to strengthen their legislative frameworks for victim support and witness protection and further empowers equal and accessible legal care for crimes such as violence against children, women and other marginalised groups.

United States of America (USA)

The United States of America has a large influence on global legal systems and has its own highly debated and questioned criminal justice system. The USA promotes security and crime prevention and also advocates globally for just criminal legal systems and judicial independence yet nevertheless faces huge criticism on their unequal access of proper legal care towards marginalised groups based on characteristics such as race leading to unfair arbitration and more.

European Union (EU)

The European Union is a union of 27 Member States that promoted fair legal access within both individual Member States but internationally. Through institutions such as the

European Union Agency for Fundamental Rights and the European Court of Human Rights (ECHR), the EU affirms standards for judicial independence, legal aid and other just legal practices. Regardless of the EU's progress and achievement in equal access to legal aid, some Member States' struggle with corruption, availability and quality of legal aid and slow judicial processes.

The Organisation for Economic Co-operation and Development (OECD)

The Organisation for Economic Co-operation and Development (OECD), created in 1961 is a multilateral organisation with 38 member countries collaborating to promote economic growth, sustainable development and prosperity. It promotes fair legal access by providing a framework for countries to make *people centred on justice services*. Furthermore the OECD provides monitoring, evaluation and evidence based planning on the criminal justice system of many nations.

Timeline of events

1948 December 10th The United Nations adopts the Declaration of Human Rights (UDHR) which ensures a right to representation before the law, a fair public trial and effective remedies as fundamental human rights.

1955 August 22nd The first United Nations Congress on the Prevention of Crime and the Treatment of Offenders was held in Geneva Switzerland which launched global discussions on crime prevention and the standard for treatment of offenders.

1985 November 29th The Basic Principles on the Independence of the Judiciary was adopted by the seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders and was endorsed by the General Assembly.

2012 December 20th The United Nations Office on Drugs and Crime, in cooperation with the General Assembly passes the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice systems.

2015 September 25th The United Nations adopted the 2030 Agenda and the Development Goal 16, aimed to “promote peaceful and inclusive societies for sustainable development, and provide justice for all and build effective accountable and inclusive institutions at all levels”.

2019 June 27th The World Justice Project (WJP) Publishes Global Insights on Access to Justice including conducting surveys of over 100,000 people in 101 countries and highlighting the worldwide ‘Justice Gap’.

2023 December 5th The United Nations General Assembly adopts A/RES/78/69, reaffirming and establishing the importance of accountability, and access to justice within international legal frameworks.

Relevant UN treaties and events

The First United Nations Congress on the Prevention of Crime and Treatment of Offenders: The first coordinated international effort to battle crime and reform global criminal justice systems that highlighted the standards for fair legal procedures, advocating for equal legal representation, due process and protection against arbitrary detention, 22 August - 3 September 1955.

A/RES/217(III); Universal Declaration of Human Rights (UDHR): General Assembly human rights document that emphasises a common standard of achievement for all peoples in all nations, establishing the right to equality before the law, a fair hearing and the requirement of adequate evidence, 10 December 1948.

A/RES/67/187; UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems: General Assembly resolution affirming the necessity of legal assistance as a crucial component of fair and effective criminal justice systems across Member States, 20 December 2012.

A/RES/68/188; The Rule of Law, Crime Prevention and Criminal Justice in the United Nations Development Agenda Beyond 2015: General Assembly resolution recognizing and affirming the role of the rule of law and access to criminal justice in sustainable development and calling on Member States to take effective measures to ensure equal legal access to all, 18 December 2013.

A/HRC/RES/42/11; Human Rights in the Administration of Justice, Including Juvenile Justice: Human Rights Council resolution affirming Member States' responsibility to guarantee a fair trial, judicial independence, access to equal legal assistance and knowledge and special protection for adolescents in conflict with the law, and further reiterating compliance with international human rights standards within criminal justice systems, 26 September 2019.

Previous attempts to solve the issue

Access to justice initiatives, United Nations Development Programme (UNDP)

The United Nations Development Programme (UNDP) targets improvement in the justice system specifically for marginalised groups such as women and girls, migrants and displaced persons. They have launched initiatives such as the Justice Futures CoLab, Human rights and legal literacy campaigns that aim to improve legal literacy and access especially in post conflict and disaster nations. Although their programs have boosted awareness nationwide on legal rights, they have limited resources to implement even reform.

Advocacy and monitoring efforts, Non-Governmental Organisations

Many Non-Governmental Organisations (NGOs) such as Amnesty International or the Human Rights Watch have set in place many advocacy and monitoring programmes such as Amnesty International's reports to the International Criminal Court on human rights violations. These NGOs have positively impacted Legal access to criminal justice globally however often lack enforcement power directly linked to judicial courts and policing systems.

Legal Services Authorities Act 1987, India

In 1987 the nation of India attempted to battle the issue of unequal access to legal services through the Legal Services Authorities Act which was put into force on 9th November, 1995. The act *guaranteed free legal aid* to economically disadvantaged individuals and created the establishment of legal aid clinics to improve efficiency in the criminal justice system. Although the initiative paved the way for many reforms in the nation, a lack of resources and uneven distribution across states constrained the impact of the act.

The Bill of Rights, United States of America (USA)

The United States of America's Bill of Rights aims to guarantee fair legal access through amendments to the *U.S. Constitution*, such as the fourth amendment; protection against unlawful searches, the fifth amendment; protection against self incrimination and guarantee of due process, the sixth amendment; right to a fair trial and judicial independence, and the eight amendment; access punishments are prohibited. All ten of the amendments contribute to the aim of ensuring fair trials and accountability in the criminal justice system; however its enforcement and practice can be corrupted and create disparities within marginalised communities.

Directive on Legal Aid for Suspects and Accused Persons in Criminal Proceedings, European Union (EU)

Directive (EU) 2016/1919 of The European Parliament and of the Council of 26 October 2016, established the minimal standards for the provision of legal aid to those involved in criminal proceedings, it aims to ensure that not only can all have access to sufficient financial resources to access legal representation but also aims to provide a right to fair trials and equality. The directive has safeguarded many and has been effective but still leaves room for possible reform.

Possible solutions

Leveraging Technology to Improve Access

Member States could investigate the use of digital tools and technology to streamline court procedures, improve judicial management and increase access to legal information, nevertheless delegates must note that data protection and unequal access to technological resources pose questions.

In Depth Evaluation Mechanisms

In order to strengthen criminal justice systems, evaluation mechanisms that are guaranteed to be transparent and identify structural weaknesses and monitor compliance with legal standards is crucial. This can include compulsory data sharing and implementation of oversight bodies, judicial councils, court inspections and more run by specific UN bodies. Questions may arise on whether this undermines national sovereignty, resource allocations and how external bodies can influence justice policies.

Addressing Discrimination Within Criminal Justice Systems

Member States could investigate policies that could reduce the systemic discrimination within criminal justice systems, this can include funding for bias awareness training, targeted protections for vulnerable groups and quality trained legal representatives for marginalised populations, questions can however arise on the scope of such measures and funding required as well as their implementation into existing legal frameworks.

Enhancing Legal Literacy and Access to Legal Information

In order to ensure that equal access to legal information is provided, Member States could invest in and promote initiatives to increase legal awareness on legal rights and procedures by using outreach programmes, multilingual resources and partnerships with NGOs.

Alternatives to Detention and Promoting Procedural Efficiency

Governments could consider promoting and implementing alternatives to pre-trial detention and improve procedural efficiency, this includes supervision and bail with conditions, community service, requiring a deposit or other financial guarantee, providing almost immediate access to lawyers, expedite proceedings, conducting hearings within prisons and more. This however poses questions and concerns on public safety, resource allocation and judicial discretion.

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