



## Equal Access to Justice for All: A Fundamental Human Right

By Jennifer Smith♦

This International Human Rights Day, I was honored to join experts from 26 countries around the world at the Ministry of Justice in Brazil to discuss urgent action needed to tackle inequality, discrimination and other barriers to equal access to justice in criminal justice systems. The expert meeting was called for by the first ever resolution on Equal Access to Justice for All adopted by the UN General Assembly. This historic resolution, introduced by Canada at the 32nd session of the United Nations Commission on Crime Prevention and Criminal Justice (CCPCJ), highlights the critical importance of ensuring that all individuals have equal access to justice and that no one is left behind. It addresses the need to dismantle structural and systemic discrimination and address inequities within criminal justice systems.

Article One of the Universal Declaration of Human Rights (UDHR) holds that: “All human beings are born free and equal in dignity and rights.” Since the adoption of the UDHR over 75 years ago, governments have incorporated equal protection clauses into their constitutions, and many have adopted anti-discrimination laws. Yet, in practice, countries around the world discriminate against and disproportionately criminalize people who are marginalized because of their economic and social situation as well as other

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♦ Executive Director, *The International Legal Foundation (ILF)*

identities such as race, caste, ethnicity, religion or belief, disability, nationality, gender, and sexual orientation.

Over the past year, the ILF has been working with the [Campaign to Decriminalize Poverty and Status](#), civil society organizations, and independent experts around the world to elevate this important expert meeting as an opportunity to meaningfully advance Equal Access to Justice for all and to advocate that a key focus of the meeting should be on discrimination in justice systems, as a key barrier to justice. We have also worked with partners and allies to help ensure that the expert group is diverse, and includes civil society experts, justice stakeholders, and people with lived justice system experiences. Most recently, on November 14, 2024, the ILF and the Konrad Adenauer-Stiftung (KAS) foundation in New York hosted a meeting attended by civil society, UN agencies, and government representatives where we discussed the importance of collaboration between civil society and governments in supporting the resolution's goals.

Also, in advance of the expert group meeting, the ILF and our partners at the African Policing Civilian Oversight Forum (APCOF), Penal Reform International (PRI), and Women Beyond Walls hosted a meeting of independent experts including judges, prosecutors, legal aid lawyers, advocates, researchers, and persons with lived experience at the offices of the Public Defender's Office of the State of Rio de Janeiro, Brazil. The purpose of this meeting was to draft a set of international principles and guidelines for addressing discrimination in law enforcement and criminal justice systems. The meeting resulted in the drafting of more than 20 principles that provide a concrete framework for addressing discrimination and inequity

I was happy to see that our collective advocacy had an impact. Discrimination was the first topic on the agenda, and civil society, public defenders and other independent advocates were nominated to attend the expert group meeting. Civil society was also given the opportunity to make recommendations to the expert group virtually on the first morning of the meeting.

The expert group meeting also enabled meaningful exchange and consensus on how to strengthen equal access to justice for all and address inequity in

criminal justice systems. During the expert meeting, I and other experts highlighted that while the structures of criminal justice systems differ across countries, the drivers of discrimination in justice systems are the same. The legacies of colonialism, slavery, and segregation mean that countries have similar laws, policies, and practices that criminalize poverty and status-based conduct through, for example, vagrancy and disorderly conduct laws, laws against sleeping or eating outdoors, or adultery laws that are often applied only to women. I also raised up best practices for addressing discrimination in criminal justice systems, in particular the principles articulated at the Rio meeting of independent experts, and I highlighted the many barriers to equal access to justice that exist around the world. Of note, I shared the ILF's soon-to-be published research showing that in many countries, requirements or conditions that individuals need to meet to qualify for legal aid when they are accused of a criminal offense are creating barriers to access.

Though the outcome document from the three-day meeting is still being finalized, there were many critical issues and recommendations discussed including:

- Addressing systemic racism and discrimination, and the legacies of colonialism and the transatlantic slave trade on persons of African descent and Indigenous people.
- Decriminalizing conduct and eliminating law enforcement practices that target and/ or disproportionately impact poor and marginalized persons.
- Eliminating court-imposed fines and fees, and where they do exist, ensure that courts must hold hearings to determine an individual's ability to pay.
- Collecting and analyzing data on crime, policing, and justice outcomes and disaggregating data by all relevant demographics and making it publicly available.
- Establishing independent oversight bodies to monitor law enforcement and criminal justice practices, and to ensure transparency and accountability.

- Adopting strategies to promote diversity, equality and equity within law enforcement, criminal justice institutions and legal aid and public defender organizations.
- Ensuring the responsible use of technology and taking steps to address the ways in which technology can exacerbate existing bias and discrimination.
- Removing barriers to access to legal aid services for people detained, arrested, suspected of, or charged with a criminal offence and to victims and survivors.

There were also strong calls from experts that this is just one step in an ongoing and collaborative process. This important expert meeting and the outcome document that will soon be shared as a result mark a critical moment in the struggle to achieve equal access to justice for all. Given the growing urgency to overcome inequality and combat discrimination worldwide, it is critical that experts, community organizations and practitioners work together to share experiences and lessons learned, and to develop guidance on how to make justice a reality for all.

### About the author

Jennifer Smith is the executive director of the International Legal Foundation. An international expert in the field of legal aid and an experienced criminal defense lawyer, Ms. Smith has worked on legal aid reform across Asia, the Middle East, and Africa. She is regularly called upon as an expert by the United Nations, governments, and organizations around the world. At the ILF, Ms. Smith has spearheaded efforts to strengthen international support for the right to quality legal representation for poor and vulnerable people accused of crimes. She was one of the key drafters of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, the first international instrument on legal aid (adopted by the UN General Assembly in 2012), and has contributed to a number of UN guidance tools that assist governments and other stakeholders in the implementation of the right to legal aid for the criminally accused. She was also the driving force behind the first-ever international legal aid conference held

in Johannesburg, South Africa in June 2014, now a biennial event. She holds a law degree from Boston College and received the institution's Hon. David S. Nelson Public Interest Law Award in 2019.