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Committee: Special Conference on Conflict Resolution in a Changing World

Issue: Assessing the implications of conflict resolution practices for access to justice

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INTRODUCTION

In a world that is under constant change and conflict, there are certain aspects of one's fundamental rights that can easily be made non-existent. One of these rights is access to justice. Through the propagation of conflict and conflict resolution worldwide, access to justice has become a prominent discussion topic that needs attention. As a main overview, providing Access to Justice is a law principle that provides legal representation to people in need of legal representation and does not have access to such representation. There are legal bodies such as The Declaration of the High-level Meeting on the Rule of Law that work to establish a legal framework for nations to provide the right of equal access to justice for all. ¹

As much as Access to Justice is present in our society, there are still different facets through which it can be impaired and is impaired. One of the reasons why this right is impaired is due to discrimination. Discrimination comes in many forms, and those that affect access to justice the most are race, sexual orientation/gender, and religion. Furthermore, it is critical to assess that these areas do not exist independently; in fact, several of these areas coupled together are a cause for the inaccessibility of justice.

The inequality caused by a lack of access to justice is the reason why this is such a pressing issue. The guiding principle of the 21st century has been implementing equality in society. However, limiting justice to some is a complete hindrance to the objective of the century. With justice being the bedrock of civilization, it is crucial for nations to provide justice to all if other problems want to be solved.

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¹"Access to Justice - United Nations and the Rule of Law." United Nations, United Nations, www.un.org/ruleoflaw/thematic-areas/access-to-justice-and-rule-of-law-institutions/access-to-justice/.

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DEFINITION OF KEY TERMS

Justice

"The maintenance or administration of what is just especially by the impartial adjustment of conflicting claims or the assignment of merited rewards or punishments" ²

Conflict Resolution

"The informal or formal process that two or more parties use to find a peaceful solution to their dispute." ³

Access to Justice

"The ability of people to seek and obtain a remedy through formal or informal institutions of justice for grievances." 4

Good Governance

Governance is defined as: "the process of decision-making and the process by which decisions are implemented (or not implemented)" Good governance is when the following eight characteristics are applied to governance. The eight characteristics go as follows: "(1) participatory, (2) consensus-oriented, (3) accountable, (4) transparent, (5) responsive, (6) effective and efficient, (7) equitable and inclusive, and (8) follows the rule of law." 6

Criminal Justice

"A generic term for the procedure by which criminal conduct is investigated, evidence gathered, arrests made, charges brought, defenses raised, trials conducted, sentences rendered, and punishment carried out." ⁷

law/access-justice

² "Justice." Merriam-Webster, Merriam-Webster, www.merriam-webster.com/dictionary/justice.

³28, Shekarau D. October. "What Is Conflict Resolution, and How Does It Work?" PON, 16 Apr. 2020, www.pon.harvard.edu/daily/conflict-resolution/what-is-conflict-resolution-and-how-does-it-work/.

⁴https://www.usip.org/guiding-principles-stabilization-and-reconstruction-the-web-version/rule-

⁵ "What Is Good Governance?" *United Nations Economic and Social Commission for Asia and the Pacific,* United Nations Economic and Social Commission for Asia and the Pacific, www.unescap.org/sites/default/files/good-governance.pdf.

⁶ "What Is Good Governance?" United Nations Economic and Social Commission for Asia and the Pacific, United Nations Economic and Social Commission for Asia and the Pacific, www.unescap.org/sites/default/files/good-governance.pdf.

⁷ "Legal Dictionary - Law.com." Law.com Legal Dictionary, Law.com, dictionary.law.com/Default.aspx?selected=405.

Rule of Law

"Rule of law is a principle under which all persons, institutions, and entities are accountable to laws that are: Publicly promulgated. Equally enforced. Independently adjudicated." 8

BACKGROUND INFORMATION

Racially based limitations to Access to Justice

As racial disparities have existed for decades, they have deep roots in the legal system of nations, and therefore have a direct impact on Access to Justice. However, the recent unfolding of the death of George Floyd and the Black Lives Matter (BLM) protests have shed light on how justice and access to it is a problem in the United States and beyond.

The narrative that is propagated by the BLM movement is that the United States is inherently and systematically racist, and by proxy, there is not fair access to justice for people of color.

The murder of George Floyd acted as a catalyst to the current exponential growth of this movement. A brief recollection of that brutal moment goes as follows. George Floyd was apprehended by the police because he allegedly used a forged \$20 bill. As he was apprehended, he did not show any serious signs of repulsion from his arrest; nevertheless, Former Police Officer Derek Chauvin, layed Floyd on the ground and placed his knee on his neck for around 8 minutes. During the said time frame, Floyd said that he could not breathe, yet Chauvin did not stop. Floyd remained unconscious after the sixth minute and died an hour after the incident. The death led to countless posts on social media, with the most prevalent one having the title, "Justice for George." This post led to the creation of many other posts and slogans that ask for justice in the cases of other murders of black people. Through this, it highlighted many other cases where justice was not accessible for a myriad of black people because of the color of their skin. This type of discrimination needs to be addressed imminently and deserves serious thought when trying to formulate solutions.

⁸ "Overview - Rule of Law." United States Courts, www.uscourts.gov/educational-resources/educational-activities/overview-rule-law.

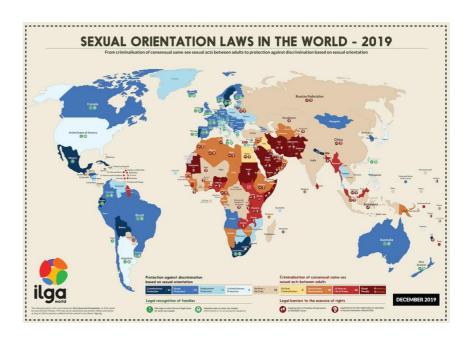
⁹ Bogel-Burroughs, Nicholas. "8 Minutes, 46 Seconds Became a Symbol in George Floyd's Death. The Exact Time Is Less Clear." The New York Times, The New York Times, 19 Jun. 2020, www.nytimes.com/2020/06/18/us/george-floyd-timing.html.

¹⁰"George Floyd: What Happened in the Final Moments of His Life." BBC News, BBC, 16 Jul. 2020, www.bbc.com/news/world-us-canada-52861726.

Sexual orientation-based limitations to Access to Justice

Ideas on gender and sexual orientation are a complicated topic, as in most cases, it is heavily intertwined with religion, and due to the fact that many nations have religious foundations, the discriminatory aspect of the situation can easily be overlooked. In this facet, there are two types of access to justice, the first being just treatment, meaning that are treated in a just manner under the Rule of Law, and second, not being able to have proper legal representation due to gender or sexual orientation. However, it is essential to understand that if a state does not have access to justice in the former form, then the latter is certainly a lot harder to achieve.

As an example, one can take the nation of Afghanistan. Afghanistan has stringent LGBT laws, and those are comprised of capital punishment for sexual activity between homosexual couples and criminalized all other types of homosexual engagements. The common Rule of Law, and Universal Declaration of Human Rights does, in no way, find the act of



being gay punishable, let alone by death. This unjust treatment of people is limited to no access to justice and occupies the first type of access to justice mentioned above. However, due to the fact that being gay is heavily pejorative, it is incredibly hard to find legal representation. As the two types of access to justice interact with one another, it is essential to note that sometimes the issues are deeply rooted in society and culture. In addition, Afghanistan is not the only nation with such conditions. Above there is a graph that details a nation's stance on LGBT rights.¹¹

¹¹ Wareham, Jamie. "Map Shows Where It's Illegal To Be Gay – 30 Years Since WHO Declassified Homosexuality As Disease." Forbes, Forbes Magazine, 17 May 2020, www.forbes.com/sites/jamiewareham/2020/05/17/map-shows-where-its-illegal-to-be-gay--30-years-since-who-declassified-homosexuality-as-disease/#2848f484578a.

Access to Justice for Refugees

As previously mentioned there are several factors that lead to the lack of access to justice, and those same factors contribute to the creation of refugees. Discrimination and prosecution due to sexual orientation, race, and also religion, are all contributors to the creation of refugees. Due to the correlation between these two situations, it is very common that refugees do not have access to justice. Furthermore, the need for legal aid and justice for refugees and asylum seekers is incredibly essential, as the process by which they have to adhere to reside in the host nation legally is very intricate. Another aspect that hinders access to justice for refugees is the lack of financial leniency to afford a lawyer. For these reasons, it is important to provide a framework in order to help refugees gain access to legal aid and, most importantly: justice.

UNDP: Global Focal Point for Police, Justice and Corrections

In 2012 Secretary General Ban Ki-moon instigated the UNDP: Global Focal Point for Police, Justice and Corrections in Crisis Countries as a collaborative project that incorporated the Department of Peacekeeping Operations (DPKO) and the United Nations Development Program (UNDP)¹²

The objectives that were established for the Focal Point go as follows:

- 1. Ensure and nourish the Rule of Law in crisis-affected situations;
- 2. Support in delivering police, justice, and corrections assistance in crises;
- 3. Provide high-quality technical assistance in the aforementioned categories at the country-level. 13

The focal point would also implement a "two-tier" system. The system entails a UN representative at an in-country level, and the respective agencies at the UN Headquarters. The in-country representative is responsible for any technical or legal advice needed as it pertains to the rule of law in that nation, as well as overseeing the implementation of rule of law-related programs. The UN representatives in the Headquarters focus more on collaboration with other UN agencies, entities, member states, as well as NGOs, think tanks, and more. The importance of Rule of Law in nations that are going through conflict is

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¹² "Fact Sheet: Global Focal Point for Police, Justice and Corrections in Crisis Countries." Department of Peacekeeping Operations and United Nations Development Programme, United Nations, www.refworld.org/pdfid/537dceeb4.pdf.

¹³"Fact Sheet: Global Focal Point for Police, Justice and Corrections in Crisis Countries." Department of Peacekeeping Operations and United Nations Development Programme, United Nations, www.refworld.org/pdfid/537dceeb4.pdf.

paramount to providing Access to Justice. This is due to the fact that, for there to be justice in the first place, the presence of a healthy government that follows the Rule of Law is necessary.

MAJOR COUNTRIES AND ORGANISATIONS INVOLVED

United States of America

Even though the United States is receiving a significant amount of backlash on its justice system, it can be argued that it has a very accessible court system, and has been taking several strides in terms of trying to promote access to justice. A clear example of this is the United States' Department of Justice (DOJ): Access to Justice Office or, also known as, the ATJ.

Founded in March of 2010 the ATJ has been thoroughly guided by three main principles which are:

- 1. Promoting Accessibility;
- 2. Ensuring Fairness;
- 3. Increasing Efficiency. 14

The first principle serves to help break down the barriers that avert citizens from knowing, understanding, and, most importantly, exercising their rights. The second principle is to provide just and fair decisions for all types of parties, and those include people with a lack of financial resources and other disadvantages. The third principle is expanded to provide the second principle in a timely manner.

With these principles in mind, the United States Legal system, the DOJ, and the ATJ have set out the following steps:

- Advance new statutory, policy, and practice changes that support the development of quality indigent defense and civil legal aid delivery systems at the state and federal level;
- 2. Promote less lawyer-intensive and court-intensive solutions to legal problems; and
- 3. Expand research on innovative strategies to close the gap between the need for, and the availability of, quality legal assistance. 15

Syria

The nation of Syria has been pestered with conflict and the continuous digression of the situation leads to a society in which accessing justice is extremely hard. The necessary

¹⁴"About the Office." The United States Department of Justice, 24 Oct. 2018, www.justice.gov/archives/atj/about-office.

¹⁵"About the Office." The United States Department of Justice, 24 Oct. 2018, www.justice.gov/archives/atj/about-office.

conflict resolution in Syria is needed to restore a fully intact legal system that everyone can access. The situation in Syria is vastly different from the United States. In Syria, there is serious conflict that has been happening for the past decade, and the Rule of Law in that region is scarcely established and enforced. That is why it is harder for Syria to help itself, contrary to the United States. As a consequence, organizations like the Syria Legal Network are established. The Syria Legal Network is an NGO based in The Netherlands that focuses on access to legal materials for Syrians. More specifically, it is a database of legal materials about the internal legal framework behind the conflict in Syria 16 The important takeaway from the case of Syria is that there are nations that are under constant duress and aren't able to instill national initiatives like the ATJ, and therefore third parties like the UN have to assist.

Norway

Similar to the United States of America, Norway, states in their constitution the right to "a fair and public trial by an independent and impartial court within a reasonable time, without further explication." ¹⁷ In addition to its prominent public/criminal legal aid system, Norway offers a civil legal aid system that is well funded and well-functioning. The civil legal aid system in Norway can aid in the following fields of the law: immigration law, family law, employment law, and more. The selection process by which the aid is provided is through financial availability. ¹⁸

China

Due to the Chinese legal system's precarious state, which is often claimed to be under the control of the Chinese Communist Party, access to justice is considered a hardship. The situation has led its citizens to find justice through alternative means such as petitions and political pressure. The criminal justice system in China is said to be biased towards guilty until proven innocent, instead of the vice-versa, which is common in many more nations around the world. ¹⁹ Furthermore, prior to the trial, there are still accounts of torture. ²⁰ In

¹⁶"Our Work." Syria Legal Network, 26 Jul. 2019, www.syrialegalnetwork.nl/our-work/.

¹⁷ Johnsen, Jon T. "Nordic Legal Aid and 'Access to Justice' in Human Rights. A European Perspective." *SpringerLink*, Palgrave Macmillan, Cham, 1 Jan.1 Jan 1970, link.springer.com/chapter/10.1007/978-3-319-46684-2_10.

¹⁸ Rønning, Olaf Halvorsen. "Legal Aid in Norway." *Springer*, Springer, link.springer.com/content/pdf/10.1007%2F978-3-319-46684-2_2.pdf.

¹⁹ "Access to Justice in China." *Council on Foreign Relations*, Council on Foreign Relations, www.cfr.org/backgrounder/access-justice-china.

²⁰ "Access to Justice in China." *Council on Foreign Relations*, Council on Foreign Relations, www.cfr.org/backgrounder/access-justice-china.

addition, to the torture, China has re-education camps. These re-education camps are essentially labor camps for people who oppose political and religious policies instilled by the Chinese government. The police in China can detain people and place them in the camps for three or even four years with no trial.²¹ This allows the police to go around the court system, completely disregarding the concept of justice.

TIMELINE OF EVENTS

Date	Description of Event
1791	The ratification of the US Bill of Rights and, in turn, the 6th
	Amendment.
17 May 1814	Adoption of the Norwegian Constitution, outlining a global
	example regarding the promotion of and access to justice. 22
1948	The creation of the UN Peacekeeping forces by the Security
	Council.
March 2010	The creation and implementation of the Access to Justice DOJ
	Office in the United States.
2012	The adoption of the Declaration of the High-level Meeting on
	the Rule of Law UN resolution.
2012	The UNDP: Global Focal Point for Police, Justice, and
	Corrections in Crisis Countries was agreed upon and put into
	action.
2013	The passing of the "UN Principles and Guidelines on Access to
	Legal Aid in Criminal Justice System" resolution
1 Jan. 2016	The implementation of the UN Sustainable Development
	Goals, including goal number 16.
2017	Opening of re-education camps in China. ²³

²¹ "Access to Justice in China." *Council on Foreign Relations*, Council on Foreign Relations, www.cfr.org/backgrounder/access-justice-china.

²² "The Constitution." *Stortinget*, www.stortinget.no/en/In-English/About-the-Storting/The-Constitution/.

²³ "China: Free Xinjiang 'Political Education' Detainees." *Human Rights Watch*, 7 Aug. 2020, www.hrw.org/news/2017/09/10/china-free-xinjiang-political-education-detainees.

25 May - Present 2020	The murder of George Floyd followed by the Black Lives
	Matter movement, protests, police brutality, and riots around
	the world seeking justice.

UN INVOLVEMENT: RELEVANT RESOLUTIONS, TREATIES AND EVENTS

UN Peacekeeping Operations

It is important to assess conflict resolution practices that are happening in the *status quo*, to better understand the effect they have on access to justice. The most extensive UN Conflict Resolution practice is the UN Peacekeeping Operations. Since their inception in 1948, the Peacekeeping forces, which are deployed by the Security Council, have become a beacon of resolution and peace among war-torn nations. ²⁴ UN Peacekeeping forces are deployed into areas that are under duress and are sent to peacefully mediate the conflict. There are three rules by which the UN Peacekeeping forces have to abide by:

- 1. Consent of the Parties;
- 2. Impartiality;
- 3. Non-use of force except in self-defense of the mandate.²⁵

This set of regulations is incredibly important because when a third party sends troops to a state, that state's sovereignty is placed in question.

United Nations Development Program (UNDP)

As one of the most prominent and recognized UN bodies, the UNDP works in over 170 countries. As an organization, it is specialized in humanitarian assistance to nations in need, however, still has a large impact on the social and political landscape of those nations. The diversity of their reach can be summed up into three "development contexts:"

- 1. Eradicate poverty in all its forms and dimensions;
- 2. Accelerate structural transformations;
- 3. Build resilience to shock and crises.²⁶

As it pertains to our topic, the third development context is crucial as it refers to maintaining the effects of conflict resolutions practices and helping prevent the need for

²⁴"Peace and Security." United Nations, United Nations, www.un.org/en/sections/issues-depth/peace-and-security/.

²⁵ "Principles of Peacekeeping Peacekeeping." United Nations, United Nations, peacekeeping.un.org/en/principles-of-peacekeeping.

²⁶ "About Us." UNDP, United Nations, www.undp.org/content/undp/en/home/about-us.html.

conflict resolution by averting conflict. The UNDP also has certain signature solutions that are closely related to the UN Sustainable Development Goals (SDGs). One of the signature solutions that is key to the topic is: governance for peaceful, just and societies. This signature solution is closely aligned with the 16th SDG and, in its essence, urges for a peaceful state with good governance that respects the Rule of Law. The second signature goal that is aligned with the topic is Crisis Prevention and increased resilience. This goal outlines how important it is to prevent conflict rather than resolve conflict. Other solutions include: gender equality, eradicating poverty, cleaner environment etc. The UNDP is a very useful organization that needs to be employed while discussing solutions.

UN Sustainable Development Goal 16: Promote Just, Peaceful, and Inclusive Societies

The full title of this goal is: Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels. The aim is (in collaboration with other UN and non-UN organizations) to mitigate conflict and promote peace.²⁷ It also expands on the accountability of legal institutions and how they (under the rule of law) have to provide justice for all. While doing so, it creates the legal framework to provide access to justice for all. This goal goes hand-in-hand with the issue as it is an amalgamation of finding conflict resolution practices, applying them, and ensuring access to justice for all.²⁸

UN Principles and Guidelines on Access to Legal Aid in Criminal Justice System

Adopted by the General Assembly in 2013, this UN resolution (A/67/458) holds as a main focus how to improve access to legal aid, and, in turn, Access to Justice as an overarching concept. The resolution assesses the different demographics that need legal aid and how to provide it to them. An example can be providing legal aid to victims of crimes, and the resolutions state the following about the aforementioned demographic. "Without prejudice to or inconsistency with the rights of the accused, States should, where appropriate, provide

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²⁷"Peace, Justice and Strong Institutions – United Nations Sustainable Development." United Nations, United Nations, www.un.org/sustainabledevelopment/peace-justice/.

²⁸"Goal 16 | Department of Economic and Social Affairs." United Nations, United Nations, sdgs.un.org/goals/goal16.

legal aid to victims of crime."²⁹ A substantial contributor to why access to justice can be impaired is the lack of money for representation. Legal aid is money (or sometimes direct legal representation) that is provided solely for legal representation.

PREVIOUS ATTEMPTS TO SOLVE THE ISSUE

United States 6th Amendment

As part of the Bill of Rights, the 6th Amendment³⁰ of the US Constitution was ratified in 1791 and since then has been a pillar of access to justice in the American Court System.

The 6th Amendment describes the rights one has when criminally prosecuted. The rights afforded to the committer of the crime are existent no matter the race, gender, or age. Furthermore, these rights within the American Criminal Justice System are held in high regard. That is evident by the Miranda rights. Miranda v. Arizona was a Supreme Court Case, and the court held that when one is put under arrest, the arresting officer must state the following rights:

"You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to an attorney. If you cannot afford an attorney, one will be provided for you. Do you understand the rights I have just read to you? With these rights in mind, do you wish to speak to me?³¹"

These rights are provided for those who do not already know their legal rights, and therefore giving access to a more conscious legal decision to the person who was arrested and, in turn, giving more equitable Access to Justice.

Handbook on European law relating to Access to Justice

Handbook on European law relating to access to justice

Prepared by the European Union Agency for Fundamental Rights (FRA), this Handbook assesses the access to justice in the EU. Commencing with explaining what Access to Justice is and concluding with explaining Access to Justice in select focus areas, which include: people with disabilities, victims of crimes, as well as assessing the access to a court and a lawyer.

²⁹"United Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems." United Nations Office on Drugs and Crime, United Nations, 2013, www.unodc.org/documents/justice-and-prison-reform/UN principles and guidlines on access to legal aid.pdf.

³⁰ "Sixth Amendment." Legal Information Institute, Legal Information Institute, www.law.cornell.edu/constitution/sixth amendment.

³¹"What Are Your Miranda Rights?" Miranda Warning, www.mirandawarning.org/whatareyourmirandarights.html.

An interesting topic that the Handbook covers is the "Right to be advised, defended, and represented in non-criminal proceedings. 32" Although Article 6 of the European Charter for Human Rights states that the above is a right for criminal proceedings, the Handbook makes a case as to why it could also be valid for non-criminal proceedings. However, there are very important distinctions between criminal and non-criminal proceedings, and it is at each nation's discretion on what side of the aisle it resides upon.

POSSIBLE SOLUTIONS

Drawing upon inspiration from the DOJs ATJ, the creation and implementation of offices, whose primary focus is to provide Access to Justice, can be a truly viable and efficient solution. The establishment of these offices can happen at the country-level. That entails a more tailored approach for each nation to better suit the different types of issues surrounding Access to Justice in their respective society. It would also promote awareness of the issue at the government level, which is also essential. This solution is effective in nations that are wealthy and stable enough to create such an office. However, a similar office can be created inside of the United Nations office. This solution would be better suited for nations under conflict and also nations going under conflict resolution practices.

Another way to provide Access to Justice is through education. The UN, or respective nations, could instigate a level of intermediate legal knowledge that has to be taught at the secondary school level. As (most) students exit secondary school as legal adults, it is important that they leave an intermediate culmination of legal knowledge needed to understand basic proceedings as to have a better Access to Justice. This solution would tackle the knowledge-based aspect of Access to Justice, which is undoubtedly important.

Exploring ways of generating Legal Aid is also an incredibly helpful solution. The ways of raising funds are limitless, from establishing a charity foundation to organizing fundraisers or even collaborating with already existing NGOs. The funds generated would then be allocated to legal aid in nations and persons where it is most needed.

Another solution can be to expand the mandate of UN Supervision Bodies to help integrate new Access to Justice measures being created. As new measures are being created to provide better Access to Justice, it is imperative that these measures are appropriately implemented and executed. The UN Supervision bodies are an excellent source of pre-

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³²"Handbook on European Law Relating to Access to Justice." European Union Agency for Fundamental Rights, European Union, 2016, fra.europa.eu/sites/default/files/fra_uploads/fra-ecthr-2016-handbook-on-access-to-justice en.pdf.

established framework to utilize in doing said actions. And as a main note, it is important for delegates not to underestimate already established organizations and use them as assets instead of creating new organizations, solely based on the premise of creating new organizations.

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