



SUMMIT OF HEADS
OF SUPREME COURTS AND
CONSTITUTIONAL COURTS
OF G20 MEMBERS



BRIEFING PAPERS for the J20 Summit



2024 MAY 12 - 14
RIO DE JANEIRO
BRAZIL



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FEDERAL SUPREME COURT

Presidency of the Brazilian Federal Supreme Court

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FOREWORD

Brazil's presidency of the Group of 20 (G20) in 2024 presents an unparalleled opportunity for collaboration among institutions representing the world's largest economies. Initially conceived as a forum for finance ministries and central banks, the G20's scope has expanded over time to encompass a diverse array of sectors and stakeholders beyond governmental spheres.

Against this backdrop, the Federal Supreme Court (STF) of Brazil is honored to host the **J20 - Summit of Heads of Supreme Courts and Constitutional Courts of G20 members**, scheduled to unfold in Rio de Janeiro, from May 12th to 14th. By convening heads of supreme courts, constitutional courts, and equivalent bodies of G20 countries, alongside representatives from the regional courts of the African Union and the European Union, the summit seeks to transcend geopolitical boundaries and foster the cooperation and synergy among Judiciaries.

In an increasingly interconnected world, marked by massive transnational movements of people, goods, capital, and information, common phenomena and challenges emerge across nations. These challenges, spanning from growing income and wealth inequalities to the looming threat of climate change, alongside the profound effects of the technological revolution, demand coordinated and collaborative responses. Recognizing this imperative, Judiciaries worldwide must actively pursue closer ties with their international counterparts, engaging in substantive dialogue and joint initiatives to address shared challenges.

The Summit aims to facilitate substantive debate and the exchange of ideas on three pivotal themes shaping the contemporary legal landscape:

- 1. The promotion of citizenship and social inclusion by the Judiciary;**
- 2. Climate litigation and sustainable development; and**
- 3. Digital transformation and the use of technology to enhance judicial efficiency.**

Structured as a comprehensive volume, this publication serves as a repository of knowledge and discussion topics on these thematic areas. For each session, two distinct documents are presented: one prepared by the STF itself and other authored independently by a renowned institution in each respective field, working as knowledge partners.

For the session on social inclusion, we selected **Conectas Direitos Humanos**, a Brazilian network of jurists and experts focused on enforcing and expanding human rights and combating inequalities. The session on sustainable development benefited from the contribution of **Instituto Igarapé**, an independent Brazilian think tank that develops research, solutions, and partnerships to impact public and corporate policies and practices for overcoming global challenges in the areas of climate resilience, public security, and digital innovation. For the session on the use of technology in the Judiciary, we partnered with **UNESCO**, the United Nations Educational, Scientific and Cultural Organization, renowned for its contribution to international cooperation in education, sciences, culture, communication, and information. We extend our gratitude to these institutions for their invaluable contributions to this endeavor.

It is our hope that the insights offered within these pages will contribute to enrich the preparation of delegations attending the J20 Summit, stimulating the exchange of ideas and initiatives among each participating body.

We envision the J20 Summit as a catalyst for instigating more effective collaboration between judicial branches worldwide. Through dialogue and shared commitment to justice, we aspire to chart a path towards a more equitable and sustainable future for all.

Luís Roberto Barroso

Chief Justice

Federal Supreme Court

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THE PROMOTION OF CITIZENSHIP AND SOCIAL INCLUSION BY THE JUDICIARY



The Promotion of Citizenship and Social Inclusion by the Judiciary

STF's Briefing Paper

1. Objectives

The aim of the session “The Promotion of Citizenship and Social Inclusion by the Judiciary” is to discuss key challenges encountered by the courts of J20 members in their efforts to enhance proximity to citizens and ensure comprehensive legal and constitutional protection for all. This discussion is framed within the evolving concept of access to justice. It aims to explore potential solutions for bridging the gap between citizens and judicial systems, addressing entrenched structural barriers, such as the intricate complexity of legal systems, the difficulty society has in understanding legal jargon, and the escalating erosion of trust in institutions, among other issues. Furthermore, the session seeks to promote a debate on the pivotal role of constitutional jurisdiction in addressing the most relevant social demands presented to the courts and fostering citizenship and social inclusion. It will delve into innovative decision-making techniques that facilitate legitimate judicial protection while encouraging broader social participation.

2. Background

The concept of citizenship embodies the notion of active engagement by individuals in shaping the life, organization, and trajectory of their community, through the exercise of fundamental human rights, including civil, political, and social rights. Nonetheless, on a global scale, various groups facing vulnerability and marginalization, stemming from economic disparities or attributes such as gender, race, ethnicity, religion, sexual orientation and gender identity, disability, age or occupation, confront obstacles hindering

their complete political, social and economic participation. These barriers manifest in the form of restricted rights, systemic discrimination, and social exclusion.

These marginalized groups and social segments often struggle to exert influence within conventional democratic forums, including Legislative and Executive branches. Furthermore, the Judiciary remains largely inaccessible to vulnerable populations. These barriers encompass intricate procedures, legal jargon, prolonged proceedings, and pervasive institutional mistrust. Despite these hurdles, the Judiciary, and particularly supreme courts and constitutional courts, emerges as pivotal agents in acknowledging and safeguarding the fundamental rights of marginalized groups. They achieve this by employing more adaptable decision-making techniques, such as *structural injunctions*, to address systemic inequalities and promote social justice.

The following considerations are structured into three sections. Firstly, it delves into the multifaceted dimensions of access to justice (Section 2.1). Secondly, it explores the concept of “People-Centred Justice,” exemplified by initiatives aimed at simplifying legal language to enhance public engagement with the Judiciary and broaden access to justice (Section 2.2). Finally, the third section discusses the tools and mechanisms available to supreme courts and constitutional courts for advancing citizenship and social inclusion.

2.1. Access to Justice and its Multiple Dimensions

Access to justice stands as a fundamental human right, serving as a cornerstone of the Rule of Law. Its importance is unequivocal, as it underpins the protection and enforceability of all other fundamental rights and assurances. The definition provided by the European Union Agency for Fundamental Rights (FRA) encapsulates this essence, acknowledging access to justice as a conduit for realizing rights and seeking redress for violations.¹ Therefore, the United Nations Sustainable Development Goal (SDG) 16 articulated a commitment to “provide access to justice for all” through “effective, accountable and inclusive institutions”.²

1 EUROPEAN UNION. Agency for Fundamental Rights. **Fundamental rights**: challenges and achievements in 2011. Vienna: FRA, 2012. (Annual Report 2011). Available at: http://fra.europa.eu/sites/default/files/fra_uploads/2211-FRA-2012_Annual-Report-2011_EN.pdf. Accessed on: 16.03.2024.

2 Available at: <https://www.un.org/sustainabledevelopment/peace-justice/>. Accessed on: 16.03.2024.

The right to access to justice assumes a plural and multifaceted nature. At its core lies the entitlement of every individual to request from the State the provision of jurisdiction by an impartial body. This encompasses the right to initiate legal proceedings. From a procedural standpoint, this guarantee also presupposes the availability of adequate legal aid and the presence of an impartial and independent Judiciary.

However, access to justice extends beyond mere procedural access to the courts. It encompasses a substantive dimension where the *efficacy* of the sought judicial protection must be ensured. From this perspective, access to justice entails pursuing decisions that are fair, effective, and rendered within a reasonable timeframe. In essence, guaranteeing access to justice involves not only providing equitable access to the legal system for all but also producing outcomes that are just both on an individual level and for society as a whole.

Given that access to justice serves as conduit for seeking protection of numerous other rights, the paramount challenge for States is to ensure its full realization, particularly by vulnerable groups. Despite the persistent endeavours of countries and organizations to promote access to justice, data from the World Justice Project reveals that over five billion individuals remain excluded from this right, constituting a staggering two thirds of the global population.³

Furthermore, the effectiveness and efficiency of the justice system introduce additional layers of complexity. Research conducted by the HiiL institute, drawing on data from 15 countries, sheds light on a sobering reality: a substantial proportion of individuals interacting with the justice system perceive that their grievances remain unresolved, with only a mere 24% reporting complete resolution of their issues through judicial intervention.⁴

These statistics underscore the crucial need for constitutional provisions guaranteeing access to justice to be coupled with an unwavering institutional commitment from

3 THE WORLD JUSTICE PROJECT. **Measuring the justice gap**: a people-centred assessment of unmet justice needs around the world, 2019. Available at: <https://worldjusticeproject.org/our-work/publications/special-reports/measuring-justice-gap>. Accessed on: 16.03.2024.

4 THE HAGUE INSTITUTE FOR INNOVATION OF LAW. **Understanding justice needs**: the elephant in the Courtroom. Hague: HiiL, 2018. Available at: <https://www.hiil.org/wp-content/uploads/2018/11/HiiL-Understanding-Justice-Needs-The-Elephant-in-the-Courtroom.pdf>. Accessed on: 16.03.2024.

the Judiciary. This requires the collective engagement of all stakeholders within the justice system in devising and implementing measures and policies aimed at dismantling the primary barriers to access to justice and achieving the full realization of fundamental rights. By doing so, greater societal proximity to the Judiciary can be fostered.

2.2. Establishing a People-Centred Justice System

Justice exists to serve people, and forging a connection that bridged these two poles is vital for enhancing the effectiveness of judicial services provision. This approach, termed *People-Centred Justice*,⁵ aims to construct justice systems that better comprehend and address the diverse needs of individuals. This entails removing barriers to accessing legal assistance, enhancing the experience and satisfaction of those who seek legal recourse, and ultimately improving the overall outcomes of judicial proceeding.⁶

In July 2023, the OECD adopted the Recommendation of the Council on Access to Justice and People-Centred Justice Systems (OECD/LEGAL/0498), providing a framework for advancing this new paradigm of justice. Notably, it outlined several guidelines, including the need for justice services to be:

- i. designed based on an empirically verified and comprehensive understanding of people's legal needs, preferences and capacities, incorporating considerations of their rights and vulnerabilities;
- ii. delivered in clear, simple and inclusive language and manner;
- iii. proportionate, accessible, effective and responsive to the legal needs of individuals, emphasizing the prevention and timely resolution of conflicts;

5 ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT. **OECD framework and good practice principles for people-centred justice**. Paris: OECD Publishing, 2021. Available at: <https://read.oecd.org/10.1787/cdc3bde7-en?format=html>. Accessed on: 17.03.2024.

6 ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT. **Framework and good practice principles for people-centred justice**. *Op. cit.* UNITED NATIONS. UN Women Asia and the Pacific. Justice that fits like a glove. New York: UN Women, [20--?]. Available at: <https://asiapacific.unwomen.org/en/focus-areas/governance/womens-access-to-justice/blogpost-series/blog-04-justice-that-fits-like-a-glove>. Accessed on: 16.03.2024.

- iv. equipped with safeguards and procedures to ensure fair processes and outcomes, including by identifying and acting to eradicate any bias or discrimination in the functioning of the system and the outcomes it produces; and
- v. updated as to maximize the potential of technology and the use of data, promoting responsible digital transformation across the justice sector.

Of particular significance is the recommendation concerning the simplification of language as a powerful tool for rendering the judicial system more accessible and *user-friendly*. Navigating judicial systems can be challenging, and overcoming this obstacle is essential for expanding access to justice and fostering social inclusion through the Judiciary. Legal terminology, often referred to as “legalese”, coupled with the inherent complexity of court decisions and judicial communications, often alienate citizens from the justice system, thus paving the way for misunderstandings and misinformation.

This calls for concerted efforts by the Courts to render legal information comprehensible and accessible to all. Specifically, the Judiciary must take action to empower all individuals, particularly members of minority and vulnerable groups, to understand⁷ : (i) the process of seeking redress for legal infringements through the justice system, including how to access legal assistance and the available legal remedies; (ii) the fundamental aspects of case proceedings; and (iii) the content of decisions that affect them.

In various regions across the globe, Courts have committed to provide information in a simpler, clearer, and more impartial manner. One notable example is Brazil, where the “National Pact of the Judiciary for Plain Language” was launched in 2023. This initiative engages all judges and courts in the country in efforts to eradicate excessively formal terms, adopt direct and concise language in all legal documents, explain the implications of each decision on citizens’ lives, and enhance accessibility through means such as sign language and audio description. In line with these efforts, the Federal Supreme Court of Brazil initiated the project “Understand: Justice Speaking Your Language”. This project comprises measures such as the use

7 UNITED NATIONS DEVELOPMENT PROGRAMME. **Access to justice practice note**. New York: UNDP, 2015. Available at: <https://www.undp.org/publications/access-justice-practice-note>. Accessed: 16.03.2024.

of *pop-ups hints* in the Court's online docket system, elucidating the status of cases and the steps in the process in a straightforward manner, and the dissemination of the "Information to Society" bulletin. This bulletin contains a summary in simple language of all decisions rendered by the Plenary of the Supreme Court, released shortly after the conclusion of the trial.

Also noteworthy are the efforts aimed at identifying and eradicating biases and discriminatory practices perpetuated by the justice system. The application of the law, influenced by conscious or unconscious biases, frequently results in unfair treatment based on gender, race and other identity factors, thus exposing stereotypes and discriminatory practices. Women, Black individuals, and other racial and ethnic minorities represent some of the most pervasive examples of the detrimental effects of such biases on the administration of justice, particularly within the realm of criminal justice.

Injustices and rights denials stemming from judgments influenced by biases significantly hinder access to justice for affected groups and exacerbate distrust in the Judiciary. Therefore, investing in training and transparency is crucial for fostering a prejudice-free justice system. In Latin America, particularly through the influence of the Inter-American Court of Human Rights, countries such as Mexico, Colombia, Uruguay, and Brazil have implemented protocols for judicial decision-marking with a gender perspective. These protocols aim to steer judges' actions in cases involving women and gender issues, with the goal of promoting equality and preventing the perpetuation of stereotypes and subordination.⁸

Moreover, promoting diversity in the composition of judicial bodies is essential for fostering inclusion and reducing discrimination within the justice system. Globally, there is a notable underrepresentation of women and ethnic-racial minorities in the Judiciary.⁹ Establishing a more diverse Judiciary, reflective of the population it serves, would yield various benefits, enhancing service quality, responsiveness,

8 BRAZIL. National Council of Justice. **Protocolo para julgamento com perspectiva de gênero**. Brasília: CNJ: Escola Nacional de Formação e Aperfeiçoamento de Magistrados, 2021. Available at: <https://www.cnj.jus.br/wp-content/uploads/2021/10/protocolo-18-10-2021-final.pdf>. Accessed on: 15.04.2024.

9 ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT. **OECD framework and good practice principles for people-centred justice**. Paris: OECD Publishing, 2021. Available at: <https://read.oecd.org/10.1787/cdc3bde7-en?format=html>. Accessed on: 17.03.2024.

and inclusivity. In the Brazilian context, two policies exemplify this direction. Firstly, the National Congress enacted a law in 2024 reserving 20% of federal civil servant positions (including judges' positions) for Black candidates. Secondly, in 2023, the National Council of Justice mandated gender parity in the promotion of judges.¹⁰

In a global context marked by declining trust in institutions, the importance of crafting judicial systems that are "people-centred", promoting inclusivity, representation, and fairness, cannot be overstated. Reports such as the *Edelman Trust Barometer* reveal a trust index of 51 out of 100 in public institutions across 27 surveyed countries.¹¹ Similarly, the "Trust in Government 2021" report by the OECD, with respondents from 22 countries, reported an average trust in the courts of 56.9%. Against this backdrop, reshaping the Judiciary to prioritize the people's needs is a pivotal step towards expanding access to justice and simultaneously strengthening institutional trust.

2.3. Promoting Citizenship and Social Inclusion Through Constitutional Jurisdiction

For access to justice to truly gain traction, the active participation of constitutional courts, supreme courts and similar bodies is imperative. By shaping a nation's legal and normative landscape through their rulings, these courts wield the authority to foster a more egalitarian society and create a more inclusive legal environment. In such an environment, access to justice becomes a tangible reality for all citizens, including historically marginalized and vulnerable groups.

In recent decades, there has been a significant institutional ascent of the Judiciary, particularly of supreme courts and constitutional courts. This trend has been marked by the transfer of responsibility for deciding relevant political, social, and moral issues from the Legislative and Executive branches to judges and courts. Social groups and political actors have increasingly sought interventions and solutions from

10 BRAZIL. National Council of Justice. **Resolução n° 525, de 27/09/2023**. Brasília: CNJ, 2023. Available at: <https://atos.cnj.jus.br/atos/detalhar/5277>. Accessed on: 16.03.2024.

11 2023 EDELMAN trust barometer: global report. Available at: https://www.edelman.com.br/sites/g/files/aatuss291/files/2023-04/2023%20Edelman%20Trust%20Barometer_Brazil%20Report_POR%20%281%29_0.pdf. Accessed on: 16.03.2024.

the Judiciary to address a diverse range of issues. This societal shift toward greater judicial involvement is commonly referred to as “judicialization”.

The phenomenon of judicialization is global and stems from various factors.¹² Initially, it arises from the transition from a “Legislative” rule of law to a “constitutional” rule of law.¹³ In this framework, the Constitution holds legal validity, and judicial supremacy prevails, understood as the primacy of a constitutional court in the binding interpretation of constitutional norms, particularly through judicial review. Another determining factor is the incorporation of a broad range of justiciable fundamental rights, including social and economic rights, into national constitutions. Institutional and political factors, such as the crisis of representative democracy, and the use of courts by political parties, particularly when they are defeated through majoritarian processes, further fuel the phenomenon of judicialization.

Another driver of the institutional ascent of the Judiciary is the expansion of access to justice, which includes providing legal aid for the underprivileged and simplifying access to supreme courts. In Brazil, for instance, numerous public and private entities have the standing to file direct actions before the Supreme Court. Additionally, access to the Supreme Court is complemented by mechanisms designed to engage civil society, such as the option to convene public hearings on cases under review and the admission of *amici curiae*, representative entities that provide input on constitutional matters.

In this context, the democratic legitimacy of constitutional jurisdiction relies on two primary pillars: a) safeguarding fundamental rights, which constitute the ethical minimum and the justice reserve of a political community¹⁴, which cannot be overridden by majority political deliberations; and b) protecting the avenues for political participation and the rules of the democratic process¹⁵.

12 For an analysis of the conditions for the emergence and consolidation of judicialization, see TATE, C. Neal; VALLINDER, Torbjörn (ed.). **The global expansion of judicial power**. New York: New York University Press, 1997. p. 117.

13 On the subject, see FERRAJOLI, Luigi. Pasado y futuro del estado de derecho. In: CARBONELL, Miguel (ed.) **Ne-constitucionalismo(s)**. Madrid : Editorial Trotta, 2003. p. 14-17; and ZAGREBELSKY, Gustavo. **El derecho dúctil: ley, derechos, justicia**. Madrid: Trotta, 2002. p. 21-41.

14 The equation between human rights and the minimum reserve of justice is made by Robert Alexy in several of his works. See, e.g., ALEXY, Robert. **La institucionalización de la justicia**. Albolote, Granada: Comares, 2005. p. 76.

15 For this proceduralist view of the role of constitutional jurisdiction, see ELY, John Hart. **Democracy and distrust: a theory of judicial review**. Cambridge: Harvard University Press, 1980.

With regard to groups in vulnerable situations, the expansion of judicial review has empowered the Judiciary to address repeated and severe violations of fundamental rights. For various reasons, these groups lack the voice and influence to advocate for their demands through traditional political channels, thus turning to courts to seek redress for unmet social demands. Constitutional jurisdiction has, in many parts of the world, catalysed egalitarian reforms and addressed the inclusion demands of social movements and marginalized groups.

This expansive role of the Judiciary has encountered criticism. Some argue that judicial decisions, particularly those concerning public spending and budgetary decisions, may lack democratic legitimacy. Additionally, concerns have been raised regarding the limited participation in judicial debates due to the formalities and costs associated with legal proceedings, as well as the risk of undue politicization of justice. Critics also question the *institutional capacities* of courts to address complex technical issues and formulate public policies, alongside the potential for unforeseen and adverse *systemic effects* resulting from such rulings.

All of these criticisms warrant serious consideration and advocate for caution and deference.¹⁶ However, despite these concerns, constitutional justice can play a decisive role in achieving equality and social inclusion. It is possible to devise solutions and decision-making techniques that enable courts to effectively protect the rights of vulnerable groups while fostering dialogue and cooperative action with majority bodies and relevant stakeholders.

In this vein, several supreme courts and constitutional courts have adopted a decision-making technique known as “structural injunctions” to address serious violations of constitutional rights resulting from systemic flaws in public policies. These cases, often referred to as “structural litigation,” seek to rectify a persistent situation of non-conformity in the functioning of State powers that causes or perpetuates violations

16 SUNSTEIN, Cass; VERMEULE, Adrian. Interpretation and institutions. **Public Law and Legal Working Papers**, n. 28, 2002. Available at: https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1159&context=public_law_and_legal_theory. Accessed on: 15.04.2024. “By drawing attention to institutional capacities and systemic effects, we are suggesting the need for a kind of institutional turn in the study of legal interpretation issues” (p. 2). On the subject, see also VERMEULE, Adrian. System effects and the Constitution. **Harvard Law Review**, v. 123, n. 1, Nov. 2009. Available at: <https://harvardlawreview.org/wp-content/uploads/2009/10/vermeule09.pdf>. Accessed on: 15.04.2024.

of fundamental rights by reformulating public policies. This is achieved through a collaborative effort involving various state entities, authorities, and powers.

The understanding of structural injunctions has evolved over time in various jurisdictions. In addition to identifying systematic and serious violations of the fundamental rights of vulnerable groups, the following procedural characteristics are prominent in this type of litigation:

- i. *Multi-phase nature*: such actions encompass various stages. Initially, an “un-constitutional state of affairs” is acknowledged, and the general objectives to address it are identified. Subsequently, a detailed solution is outlined, measures necessary for addressing the situation are planned and implemented, and compliance with the decision is monitored in a third stage.
- ii. *Procedural flexibility*: these processes entail a degree of flexibility in complying with procedural rules, prioritizing the actual attainment of the intended outcomes (overcoming the situation of non-compliance with the constitution);
- iii. *Dialogicity*: effective structural injunctions typically involve interactions among diverse authorities, institutions (*inter-institutional dialogue*), affected individuals and civil society (*social dialogue*). This interaction allows courts to consider a wide array of perspectives, avoiding “blind spots”, and enhancing information levels. It also fosters coordination among institutions, and promotes mutual understanding of challenges faced;
- iv. *Complexity of the solution*: structural cases deal with complex problems necessitating multiple measures and solutions. Precisely for this reason, in addition to recognizing systemic rights violations, they entail defining and detailing appropriate means to protect violated rights. Often, these decisions prompt various authorities and civil society to collaboratively formulate a plan to address the issue through dialogue and deliberation, selecting the most effective solutions.

The first instance of structural litigation identified by scholars is the 1954 decision of the U.S. Supreme Court in *Brown v. Board of Education*, wherein the overcoming of constitutional violations due to racial segregation in schools occurred progressively. This was achieved through the implementation of a series of judicial and Legislative measures and orders.

Since this landmark ruling, this decision-making approach has been employed by various constitutional courts and supreme courts. Within the US legal system, reference is made to the *prison reform cases*: structural injunctions through which the Judiciary initiated a comprehensive overhaul of the country's prison system, addressing issues such as overcrowding and improving conditions of deprivation of liberty.¹⁷ In India, the Supreme Court intervened in the authority of the Public Administration to guarantee the right to food, in *People's Union for Civil Liberties (PUCL) v. Union of India*. Similarly, the Constitutional Court of South Africa, since 1996, has entertained different claims regarding the right to housing, exemplified by cases like *Government of the Republic of South Africa and Others v. Grootboom*.

In Latin America, the most well-known form of structural litigation is the *unconstitutional state of affairs*, derived from the case law of the Colombian Constitutional Court.¹⁸ Examples of rulings handed down by the Colombian Court include those aimed at overcoming prison overcrowding (T-153/1998), addressing structural failures in healthcare (T-760/2008), and guaranteeing essential rights for displaced persons (T-025/2004). In Argentina, the Supreme Court of Justice of the Nation, in its ruling on *Beatriz y ots. v. Estado Nacional y ots.*, ordered structural measures to protect the fundamental right to the environment. Meanwhile, Brazil's Federal Supreme Court is currently adjudicating several structural disputes, covering issues such as public health policies for indigenous communities, combating structural racism, reforming the prison system, protecting the rights of homeless populations, addressing police lethality in Rio de Janeiro, and implementing policies to safeguard the Amazon and the Pantanal.¹⁹

Given this panorama, the great challenge facing supreme courts and constitutional courts in managing structural litigation lies in their institutional capacities to intervene in public policies, formulate interdisciplinary solutions, and monitor their

17 FISS, Owen. **The civil rights injunctions**. Bloomington: Indiana University Press, 1978. Available at: <https://law.yale.edu/sites/default/files/documents/faculty/papers/injunction.pdf>. Accessed on: 15.04.2024. FEELEY, Malcom M.; RUBIN, Edward L. **Judicial policy making and the modern state**: how the courts reformed America's prisons. Cambridge, U.K.: Cambridge University Press, [1998].

18 CEPEDA-ESPINOSA, Manuel José. Judicial activism in a violent context: the origin, role, and impact of the Colombian Constitutional Court. **Washington University Global Studies Law Review**, v. 3, n. 4, Jan. 2004. Available at: https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1256&context=law_globalstudies. Accessed on: 15.04.2024.

19 BRAZIL. Federal Supreme Court. ADPFs 347, 635, 708, 709, 760, 973 and 976.

implementation. Effectively protecting fundamental rights of vulnerable groups requires a comprehensive restructuring of state's actions. However, crafting an efficient remedy necessarily implies interference in public policies and in the powers of other branches of government, even though judges may lack expertise to deal specifically with the issues.

To address this challenge, Brazil's Supreme Federal Court established the Centre for Structural and Complex Litigation (in Portuguese, *Núcleo de Processos Estruturais e Complexos* - NUPEC) in 2023. Comprising specialists in various fields, such as economics, statistics, public policy and government management, the centre assists the Court in handling structural cases, from a multidisciplinary perspective.

In conclusion, the engagement of constitutional and supreme courts in structural litigation underscores the Judiciary's potential to address systemic obstacles to administrative action in support of the rights of vulnerable groups. Therefore, it is crucial to contemplate parameters for effectively employing these procedural techniques and fostering dialogical construction of solutions based on the involvement of all stakeholders.

3. Discussion Topics

As a result of these pressing issues, it is necessary to reflect on access to effective judicial provision and how the Judiciary and, more specifically, Constitutional Justice can contribute to promoting citizenship and social inclusion. To this end, the following questions are proposed for discussion:

1. How can the Judiciary meet the growing social demands for more accessible and inclusive justice? What strategies can be implemented to improve judicial processes and make them more responsive to society's needs?
2. How can Constitutional Justice collaborate to promote social inclusion, realize the principle of equality and strengthen the rule of law?
3. How can the Judiciary deal with systemic barriers to access to justice for vulnerable people and groups? What measures can the Judiciary take to strengthen public confidence in legal institutions and promote more active citizen participation in the administration of justice?

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The Promotion of Citizenship and Social Inclusion by the Judiciary

Conectas' Contribution as a Knowledge Partner

Introduction

Within the framework of the J20 —Summit of Heads of Supreme Courts and Constitutional Courts of the G20 members—, under the Brazilian presidency of the G20, discussions are raised on “The Promotion of Citizenship and Social Inclusion by the Judiciary”. The aim is to advance cooperation projects among constitutional courts and equivalent bodies on a global scale.

In this regard, it is crucial to underscore the significance of a robust global platform capable of contributing to overcoming limitations observed in other international forums. This entails acknowledging, from the outset, the pivotal role of the interaction between governmental bodies and organized civil society in generating solutions for both national and global challenges. Such an approach merits recognition for its ability to amplify the voices of individuals, activists, and organizations who have historically confronted and identified pathways to address human rights infringements, spanning from legacies of colonialism and slavery to contemporary issues such as the climate crisis and access to digital rights.

Indeed, it is imperative to acknowledge the indispensable contribution of the Judiciary in promoting citizenship and societal inclusion, facilitating significant progress in civilization. In democratic societies, equitable access to justice stands as an inalienable right that must be safeguarded for every individual, regardless of their origin, socioeconomic status, gender, race, religion, or any other aspect of their identity.

Amidst the process of constitutionalization of fundamental rights and guarantees across numerous countries, the Judiciary has been entrusted with resolving increasingly complex and multifaceted conflicts. Hence, it becomes crucial to explore strategies and approaches aimed at rendering the judicial system more accessible, inclusive, and responsive to the needs of society. This endeavor is essential to ensure that equality and human rights are protected and realized for all citizens.

Despite the diverse social and cultural landscapes across the nations comprising this summit of Heads of Constitutional Courts, the pursuit of citizenship and social inclusion emerges as a common challenge. This theme is recurrently brought to the Judiciary through various proceedings, from structural litigation to those addressing labor relations, the enforcement of social rights, and fiscal and tax matters. Such diversity highlights that, in different contexts, the Judiciary serves as a forum for conflict resolution and rights advancement, crucial to maintaining societal equilibrium.

Building upon this premise, this essay delves into the Judiciary's role in promoting citizenship and social inclusion, exploring the challenges, strategies, and opportunities entailed in this endeavor, guided by the three overarching inquiries presented in the summit's concept note.

1. How can the Judiciary meet increasing societal demands for a more accessible and inclusive justice? What strategies can be implemented to enhance judicial processes and make them more responsive to societal needs?

The rapid technological advancement, coupled with evolving modes of wealth production and exploitation, and the imperatives to confront climate crises and safeguard the welfare of diverse populations, presents profound human rights challenges. At the global level, income inequality, the enduring legacies of colonialism in many nations, the recent pandemic, and the emergence of new armed conflicts exert significant social pressures, straining various sectors of society, including the Judiciary.

Despite its status as a distinct branch of government entrusted with unique prerogatives aimed at upholding our foundational legal norms, the Judiciary grapples with challenges that extend beyond those typically encountered by elected officials. Notably, the goal of promoting citizenship and social inclusion exemplifies this.¹ To address this theme from the standpoint of the judicial branch, it is crucial to acknowledge the inequalities inherent in societies and their reflection within the Judiciary itself. Moreover, it is necessary to explore solutions aimed at mitigating power disparities between litigants, which often underlie instances of rights violations and injustices.

In light of the persistent prevalence of numerous inequalities², it is essential to conceptualize the Judiciary as an active agent in shaping public policies. This requires the establishment of robust technical capabilities within the Judiciary to analyze administrative activities akin to those performed within the public sector.³

However, to effectively discharge its role of promoting the public policy of access to justice,⁴ the Judiciary must intimately understand the individuals it serves. It is crucial to accurately map the population navigating the justice system and their characteristics. To this end, meticulous mapping of the demographic traversing the justice system becomes imperative. This requires identifying not only those who actively engage with the justice system, but also the circumstances surrounding their engagement. Equally important is understanding why certain individuals refrain from seeking justice, with an emphasis on identifying the underlying reasons for such disengagement.

1 SADEK, Maria Tereza Aina. Acesso à justiça: porta de entrada para a inclusão social. In: LIVIANU, R. (coord.). **Justiça, cidadania e democracia**. Rio de Janeiro: Centro Edelstein de Pesquisa Social, 2009. p. 170-180. Available at: <https://backoffice.books.scielo.org/id/ff2x7/pdf/livianu-9788579820137-15.pdf>. Accessed on: 15.04.2024.

2 UNITED NATIONS DEVELOPMENT PROGRAMME. **Human development report 2021/2022: uncertain times, unsettled lives: shaping our future in a transforming world**. New York: UNDP, 2022. Available at: Human Development Report 2021-22: UNDP (United Nations Development Programme). 2022. Un certain Times, Unsettled Lives: Shaping our Future in a Transforming World. New York. Available at: https://hdr.undp.org/system/files/documents/global-report-document/hdr2021-22reportenglish_0.pdf. Accessed on: 15.04.2024. RIDDELL, Rebecca et al. **Inequality Inc.: how corporate power divides our world and the need for a new era of public action**. Oxford, UK: Oxfam Policy & Practice, 2024. Available at: <https://policy-practice.oxfam.org/resources/inequality-inc-how-corporate-power-divides-our-world-and-the-need-for-a-new-era-621583/#>. Accessed on: 15.04.2024.

3 COELHO, Maria Francisca Pinheiro; TAPAJÓS, Luziele Maria de Souza; RODRIGUES, Monica. **Políticas sociais para o desenvolvimento: superar a pobreza e promover a inclusão**. Brasília: Ministério do Desenvolvimento Social e Combate à Fome: UNESCO, 2010. Available at: https://www.mds.gov.br/webarquivos/publicacao/assistencia_social/Livros/politicas_desenvolvimento.pdf. Accessed on: 15.04.2024.

4 PESSOA, Flávia Moreira Guimarães (org.). **Democratizando o acesso à justiça**: 2022. Brasília: CNJ, 2022. Available at: bibliotecadigital.cnj.jus.br/xmlui/handle/123456789/534. Accessed on: 15.04.2024.

On one hand, an inquiry into the institutional framework of the Judiciary is warranted, exploring the distribution of various demographic profiles within its purview, including gender, age, income, race, and Human Development Index (HDI) of the region in which they reside. Also, it is relevant to understand how these profiles are distributed across various types of legal cases (plaintiff or defendant), sectors of law (public, private, and criminal), and legal representation (public or private)?

On the other hand, it is pertinent to inquire: what factors contribute to some individuals' ineffective access to the justice system? Is it attributable to a lack of legal demands or to barriers impeding access? Are there institutional deficiencies these individuals' access to justice, and if so, what are they? Based on this information, is it conceivable that the Judiciary might render decisions that promote solutions to systemic issues, or at the very least, contribute to the adoption of governmental interventions or societal initiatives that offer more comprehensive remedies to social problems?

Understanding its operating environment, its population, the civil society movements, and the conditions under which they interact or fail to interact with the justice system, the Judiciary can engage more effectively and authoritatively with local demands and formulate region-specific responses, thereby enhancing its efficacy and inclusivity for all individuals.

Lastly, it is pertinent to highlight the role of institutional structures such as external ombudsman offices, which provide formal mechanisms for mapping and gathering information from societal demands. These structures, operate in various countries within both the public administration and the justice system, play a pivotal role in bridging the gap between citizens and judicial institutions.

2. In what ways can Constitutional Justice contribute to promoting social inclusion, upholding the principle of equality, and strengthening the Rule of Law?

Constitutional Justice plays a crucial role in promoting social inclusion and strengthening the Rule of Law, particularly when it acts to safeguard fundamental

rights such as the right to equality and non-discrimination.⁵ In this regard, the Judiciary's counter-majoritarian role is vital for upholding substantive democracy. Consequently, bolstering the Federal Supreme Court holds utmost significance, especially in politically polarized and dialogue-deficient political contexts. This reinforcement primarily hinges on preserving the independence of Judiciary members in discharging their judicial duties.

When referring to substantive democracy, we emphasize the importance of protecting fundamental rights, particularly those belonging to groups experiencing legal, social, economic, or political vulnerabilities. In essence, substantive democracy extends beyond mere formal equality; it actively seeks to promote and safeguard minority rights. This involves ensuring their meaningful participation in the democratic process and guaranteeing that their voices are not only heard but also considered in both political and legal decision-making processes.

In this context, the role of Constitutional Justice as an advocate for social inclusion is evident. The post-pandemic landscape poses significant challenges, given the exponential growth of social exclusion and the ongoing economic restructuring in most states. The Judiciary, notably Constitutional Courts, plays a pivotal role in guaranteeing fundamental rights like access to healthcare and advancing citizenship by ensuring that vulnerable groups can effectively exercise these rights.

Hence, mechanisms facilitating social participation and ensuring access to justice for the most vulnerable are crucial and should be integrated into the judicial system. Swift and effective judicial remedies for marginalized individuals are equally imperative. Therefore, more than granting access to justice, the efficacy of judicial decisions must be ensured. This perspective acknowledges that enhancing the justice system goes beyond the Judiciary and involves all organs, actors, and institutions contributing to dispute resolution, including active involvement from civil society and citizens. The commitment of all institutions to collective advancement and progress is indispensable, serving as a fundamental cornerstone of democracy.

5 BARROSO, Luís Roberto. **O direito constitucional e a efetividade de suas normas: limites e possibilidades da Constituição brasileira**. 8. ed. Rio de Janeiro: Renovar, 2006.

3. How can the Judiciary address systemic barriers to access to justice for vulnerable individuals and groups? What measures can be taken to bolster public trust in legal institutions and promote more active citizen participation in the administration of justice?

To effectively tackle systemic barriers to accessing justice and encourage greater citizen participation, the Judiciary should contemplate the following considerations and implement the following measures:

Complexity of Social Problems

It is essential to recognize the daunting challenges facing humanity today. Multiple crises overlap amidst geopolitical tensions, encompassing issues such as food and energy insecurity, climate change, racism, intolerance, and xenophobia. These pressing issues demand concerted national and global efforts, involving all institutional and civilian sectors within each country and in international forums. Drawing on the 2030 Agenda for Sustainable Development Goals, a global call for poverty eradication, environmental protection, promotion of peace, justice, and the well-being of all people, it becomes evident that significant progress is yet to be made. It underscores the imperative for the Judiciary to actively engage in this collective endeavor.

As societal inequalities deepen and efforts to address systemic issues face obstacles, social groups are resorting to litigation to urgently secure their fundamental rights. In this social landscape, the Judiciary must continually innovate and adopt comprehensive approaches to address these pressing concerns. The complexities of globalization, alongside domestic and international health crises, as well as climate change, present new hurdles for legal practitioners, necessitating ongoing adaptation to deliver timely and effective judicial remedies.

Therefore, fostering dialogue among various sources within the local, regional, and global constitutional human rights systems, and engaging all state institutions, as well as social and economic actors, in developing structural solutions through the Judiciary's intervention, are imperative paths forward.

Implementing Racial Inclusion Policies

Historical events associated with colonial pasts, the African diaspora, and other forms of exploitation, alongside the promotion of racism and racial disparities, emphasize the critical need for the Judiciary to possess mechanisms ensuring representativeness, both institutionally and substantively. This is essential to bridge the gap between Judiciary members and the general population. It is crucial to note that the lack of diversity in the Judiciary reflects a detachment between its members and society, leading to unequal access to and treatment within the justice system, especially for the most vulnerable segments of society.

Hence, it is imperative to implement effective racial affirmative action policies across all levels of the Judiciary, including judges and judicial branch employees, to address representational barriers and tackle institutional racism. Increasing representativeness is a fundamental step for the Judiciary to be perceived by the most vulnerable groups as an institutional structure capable of genuinely promoting access to justice.

It is of paramount importance for Constitutional Courts to address issues related to racism and colonization, acknowledging the structural and institutional inequalities promoted by these historical injustices. Effective justice requires acknowledging the existence of inequalities perpetuated by institutional structures and actively confronting them.

We highlight several ways to address this issue: interpreting laws while considering social and historical inequalities; acknowledging the presence of structural and institutional racism when establishing legal precedents; promoting education on structural racism and its impacts on law and society; adopting and applying norms outlined in international treaties and resolutions regarding racial inequality, to name a few.

Implementing such changes poses significant challenges. However, it is evident that, for the effective realization of human rights and the maintenance of democracy, addressing these issues by the Judiciary, particularly through its Constitutional Courts, is imperative.

Promoting Citizen Participation

Collaboration between the Judiciary and civil society is essential for effectively identifying and addressing citizenship and social inclusion issues. To achieve this, the Judiciary should actively encourage and facilitate citizen participation in the administration of justice. This can be obtained through initiatives such as conducting public consultations and open hearings, therefore providing opportunities for citizens to engage directly with the legal process.

Recognizing International Human Rights Mechanisms

The international human rights protection system plays a relevant role in safeguarding and promoting fundamental rights globally, shielding individuals from state abuses, and upholding human dignity.

It is essential for legal professionals within the Judiciary to adopt this system at all levels. Doing so provides an additional source of norms and jurisprudence to support their decisions, enhancing their ability to protect citizens' rights and ensuring that national laws align with universal human rights principles.

Indeed, by adopting the international human rights protection system, the Judiciary not only upholds its duty to safeguard citizens' rights but also strengthens its effectiveness and significance in promoting the rule of law and justice.

It is crucial to underscore that when the Judiciary overlooks the significance of engaging with international human rights mechanisms, it hampers progress in protecting these rights. A lack of institutional awareness creates opportunities for continued violations. Thus, proactive engagement and ongoing education of judicial branch members nationwide on this matter are indispensable measures to foster citizenship, social inclusion, and to counteract potential institutional conservatism.

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CLIMATE LITIGATION AND SUSTAINABLE DEVELOPMENT



Climate Litigation and Sustainable Development

STF's Briefing Paper

1. Objectives

The aim of the session “Climate Litigation and Sustainable Development” is to discuss the challenges pertaining to environmental protection, climate litigation, and sustainable development faced by the supreme courts, constitutional courts, and equivalent bodies of each G20 member, along with the corresponding responses they have offered. The topic encompasses a range of debates, including the Judiciary’s role in environmental disputes, the legal grounds for such intervention, and the most significant cases within each jurisdiction. The goal is to gain insight into the Judiciary’s contribution to the subject and facilitate the exchange of experiences and solutions.

2. Background

2.1. Climate Change

Climate change stands as the paramount challenge of our era. Since the first Industrial Revolution, the Earth’s climate has been undergoing continuous warming. This phenomenon is accountable for a wide range of transformations, including glacier melting, alteration in vegetation cover, unprecedented species extinction rates, and a surge in extreme weather events such as hurricanes, tornadoes, and floods. The cumulative impact of these changes poses a threat to human life on our planet.

There is a broad scientific consensus attributing the primary cause of global warming to the emission of greenhouse gases (GHGs) stemming from human activities. Consequently, mitigating the rise in temperature requires collective

efforts from all nations and communities to curb their emissions. Reduction measures, in turn, must strike a delicate balance between the need to safeguard the environment and climate, and the imperative to sustain national economic development. Economic growth plays a crucial role in job creation, tax revenue generation, and the production of goods, all of which are indispensable for human survival.

In this context, the concept of achieving “sustainable development” is advocated—a model defined as capable of “meeting present needs without compromising the chances of future generations to meet their needs.”¹ In other words, this signifies an economic development paradigm that does not entail resource depletion or compromise climatic conditions for the future.

2.2. International Climate Regulations

In addressing these challenges, numerous international treaties have been adopted under the framework of the United Nations (UN), with the objective of establishing regulations that facilitate collective action among several countries on the matter. Among these treaties are the United Nations Framework Convention on Climate Change (1992), which established general standards on greenhouse gas inventory and reduction; the Kyoto Protocol (1997), which set GHG reduction targets for industrialized nations; and, finally, the Paris Agreement (2015), through which each country committed to “nationally determined contributions” to GHG reduction. Other significant treaties include the United Nations Convention on Biological Diversity (1992) and the United Nations Convention to Combat Desertification (1994).

However, despite the adoption of such treaties and the efforts already undertaken by various countries, the Sixth Assessment Report of the Intergovernmental Panel on Climate Change (IPCC), released in March 2023, indicates that the global measures taken so far to address climate change are not sufficient. According to the report, there is a greater than 50% likelihood of global temperatures surpassing a 1.5°C increase by 2040. It concludes that, at the current stage, limiting the average

¹ UNITED NATIONS. United Nations Sustainable Development Group. What is sustainable development? **Sustainable Development Goals**, 2023. Available at: <https://www.un.org/sustainabledevelopment/blog/2023/08/what-is-sustainable-development/>. Accessed on: 05.03.2024.

temperature rise to 1.5°C would require immediate and drastic measures to reduce GHG emissions worldwide².

2.3. The Debate on Judicial Intervention

In this context, civil society across different countries has initiated mobilization efforts to advocate for the reduction of GHGs and to pursue legal action on the matter. Through these lawsuits, they resort to the Judiciary to guarantee the protection of the right to a balanced environment, often challenging both States and private companies. Moreover, they also request the Judiciary to safeguard the rights of future generations. These future generations, who are either yet to be born or are very young, lack voting rights and thus are not represented in political bodies. However, climate change already poses and will continue to pose a threat to the exercise of their rights in the future.

Nevertheless, the Judiciary's intervention in public policy matters encounters certain resistances. It is contended, based on democratic principles and the doctrine of the separation of powers, that public policies should be formulated and implemented by elected representatives, whose actions are legitimized by popular suffrage. Consequently, decisions regarding environmental protection and the optimal allocation of resources for this purpose should fall within their purview. It is further argued that the Executive and Legislative branches are better suited to address the issue, as they possess greater institutional capacity to assess the systemic impacts resulting from adopted policies.

2.4. International and Comparative Jurisprudence

Despite the resistances, as demonstrated by the previously cited IPCC report, the efforts of elected representatives in addressing climate issues have fallen short. In many ways, governments find themselves torn between competing incentives: the need to ensure employment, income, and tax revenue, while also curbing potentially polluting activities. Furthermore, as discussed, new generations may not have

² UNITED NATIONS. Intergovernmental Panel for Climate Change. Synthesis Report of the Sixth Assessment Report: a report of the Intergovernmental Panel on Climate Change. IPCC, 2024. Available at: <https://www.ipcc.ch/ar6-syr/>. Accessed on: 29.08.2023.

adequate representation in political bodies. However, at the heart of the climate change debate lies the survival of all humanity. In this context, new arrangements are being sought to enable the Judiciary to contribute to a solution. Indeed, numerous judicial decisions, both at the international and domestic levels, have addressed the issue, asserting:

- i. *Emergence of New Rights*. Examples of new rights recognized in response to the climate crisis include the human right to a healthy environment as an autonomous entitlement³, the right of citizens to combat climate change⁴, the attribution of rights to nature⁵, and the justiciability of the rights of future generations in climate-related matters⁶. The legal rationale underpinning these rights varies across legal systems. Some rely on explicit norms, while others draw on the inseparability between environmental conditions and other fundamental rights, such as the rights to life, property, and family and community life. It is also considered the recognition of the interconnectedness of all entities—humans, other beings, and environmental elements—within a system whose balance must be sought to preserve the life and survival of all; each constituting a fundamental component of the whole.
- ii. *State Duties in Combating the Climate Crisis*. International treaties rely on voluntary adherence and the commitment of countries to uphold them. Unlike domestic courts, international organizations lack coercive mechanisms for en-

3 INTERAMERICAN COURT OF HUMAN RIGHTS. **Opinión Consultiva OC 23/2017 solicitada por la República de Colombia**, Nov. 15, 2017. par. 62 and 142; HDI CUT, *Indigenous Communities Members of the Lhaka Honhat Association (Nuestra Tierra) vs. Argentina*. Fund, reparations and costs. Feb. 6, 2020. par. 207. Available at: https://www.corteidh.or.cr/docs/opiniones/seriea_23_esp.pdf. Accessed on: 08.03.2024. The same right was recognized, successively, by the Human Rights Council and the UN General Assembly. V. UNITED NATIONS. Human Rights Council (General Assembly). **Resolution A/HRC/48/L.23/Rev.1**. New York: United Nations, Oct. 5, 2021. The human right to a safe, clean, healthy, and sustainable environment. Human Rights Council, 48th Session, Oct. 5, 2021. Available at: https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/48/L.23/Rev.1. Accessed on: 04.03.2024. UNITED NATIONS. (General Assembly). **Resolution A/76/300**. New York: United Nations, The human right to a safe, clean, healthy, and sustainable environment. United Nations General Assembly, 76th Session, Aug. 1, 2022. Available at: <https://www.un.org/en/ga/76/resolutions.shtml>. Accessed on: 04.03.2024.

4 EUROPEAN COURT OF HUMAN RIGHTS. Court (Grand Chamber). **Case of Öneriyildiz v. Turkey**, n° 48939/99, Nov. 30, 2004. Ruling, paras. 71, 89, 90 and 118; EUROPEAN COURT OF HUMAN RIGHTS. Court (First Section). **Case of Budayeva and Others v. Russia**, n° 15339/02, 21166/02, 20058/02, 11673/02 e 15343/02, Mar. 20, 2008. Ruling, paras. 128 to 130, 133 and 159; EUROPEAN COURT OF HUMAN RIGHTS. Court (Second Section). **Case of M. ÖZEL and Others v. Turkey**, n° 14350/05, 15245/05 e 16051/05, Nov. 17, 2015. Ruling, paras. 170, 171 and 200. Accessed on: 04.03.2024.

5 COLOMBIA. Constitutional Court. **Ruling T-622/16**, Nov. 10, 2016. The ruling recognized the Atrato River as a subject of rights, in order to ensure its protection.

6 GERMANY. Federal Constitutional Court (First Senate). **BVerfG, Beschluss des Ersten Senats vom 24. März 2021 - 1 BvR 2656/18 -, Rn. 1-270**, Mar. 24, 2021. The Court found that current insufficient protection against climate change created disproportionate burdens for future generations.

forcing their norms, potentially impeding enforcement and diminishing their effectiveness. In view of this challenge, certain national courts have demonstrated a willingness to recognize the justiciability of states' duties to implement a comprehensive strategy against climate change⁷. Some rulings even invoke the environmental commitments undertaken at the international level⁸.

iii. *Duties and/or Civil Liability of Private Companies for GHG Emissions*. Certain court rulings have acknowledged the enormous economic output and GHG emissions of transnational private corporations, which often surpass those of entire nations. These entities wield significant influence over the formulation of normative frameworks and governmental actions pertaining to environmental affairs. Considering their substantial power, some judicial decisions have asserted that these companies—akin to states—bear the responsibility to uphold the fundamental rights of the citizens of the countries in which they operate. They must comply with heightened duties of care and due diligence in protecting the environment and addressing climate change. In this context, there is a trend of domestic courts acknowledging the duty of private enterprises to reduce their emissions⁹. They also discuss these companies' obligation to compensate third parties for the climate-related harm they have contributed to¹⁰. Furthermore, some courts of developed countries—where these transnational corporations are headquartered—have also considered the possibility of adjudicating lawsuits filed by citizens and organizations from developing countries, particularly when they concern impacts arising from

7 HOLLAND. Supreme Court of the Netherlands. Civil Division. **Urgenda Foundation vs. State of the Netherlands**, Dec. 20, 2019. The ruling recognized the duty of the Dutch State to reduce the country's carbon emissions by 25% by 2020. ARGENTINA. Supreme Court of Justice. **CSJ 468/2020**, Aug. 11, 2020. In this case, the court ordered the creation of an Environmental Emergency Committee aimed at containing habitual and persistent fires on a group of islands.

8 BRAZIL. Federal Supreme Court (Full Court). **Claim of Non-Compliance with a Fundamental Precept 708/DF**. Rapp. Justice Luís Roberto Barroso, j. July 4, 2022. In this case, the Federal Supreme Court determined that the operation of the National Fund on Climate Change be reestablished, and its resources effectively implemented to combat such changes. FRANCE. Conseil d'Etat. **Commune de Grande-Synthe and Others vs. France, case n° 427301**, July 1, 2021. Although this is an administrative court, the decision invokes the commitments made by the country in the Paris Agreement, among other norms, to order the President of the Republic to adopt additional measures to achieve climate goals.

9 HOLLAND. District Court of The Hague. **Milieudefensie and Others vs. Royal Dutch Shell PLC, C/09/571932 / HA ZA 19-379**, May 26, 2021. In this case, Royal Dutch Shell PLC (RDS), a private company, was ordered to reduce the carbon emissions generated by the group by 45%, by the year 2030, worldwide.

10 GERMANY. Higher Regional Court of Hamm. **Lucianno Lliuya vs. RWE AG**, Nov. 30, 2017. This case discusses the duty of Germany's largest electricity company to compensate a Peruvian farmer, due to the activities of a subsidiary in Peru. The allegation is that the GHGs emitted by the branch led to the melting of a glacier that impacted the aforementioned citizen's farm.

the activities of their subsidiaries¹¹. This expansion of the jurisdiction of courts aims to ensure the effective implementation of decisions and the availability of assets to support them.

2.5. Climate Litigation in Brazil

In Brazil, there is broad access to the Judiciary and significant litigation concerning environmental and climate matters. The 1988 Constitution provides for the right to a balanced environment as a fundamental right, and the country has ratified numerous international treaties addressing climate change. Moreover, the Federal Supreme Court (STF) has recognized these treaties as norms of supralegal status within the domestic legal framework. Consequently, the STF has concluded that, while the methods employed by the government to combat climate change may be subject to debate, there is no political discretion regarding whether to address it or not. It is deemed a constitutional duty that can be enforced through legal action¹².

In this regard, the STF: (i) acknowledged the legitimacy of charging compensation for projects with significant environmental impact¹³; (ii) affirmed that lawsuits for environmental damage are exempt from statutes of limitations¹⁴; (iii) determined the effective allocation of resources from the Fund to Combat Climate Change for initiatives aimed at this purpose¹⁵, among numerous other rulings on the subject. Concerning environmental protection and climate preservation, the Judiciary has, in some cases, directed elected representatives to develop plans and public policies, by elected representative rather than prescribing the most appropriate solution, in respect of the separation of powers and the institutional capacities of each branch.

11 GERMANY. Higher Regional Court of Hamm. **Lucianno Lliuya vs. RWE AG**, Nov. 30, 2017. In this case, the Hamm Court of Appeal reversed a lower court ruling that had denied the filing of the lawsuit, allowing the case to be filed in Germany, despite the environmental damage having occurred in Peru. The merits of the case are still awaiting trial.

12 BRAZIL. Federal Supreme Court (Full Court). **Claim of Non-Compliance with a Fundamental Precept 708/DF**. Rapp. Justice Luís Roberto Barroso, July 4, 2022.

13 BRAZIL. Federal Supreme Court (Full Court). **Direct Action of Unconstitutionality 3.378-6/DF**. Rapp. Justice Ayres Britto, June 20, 2006.

14 BRAZIL. Federal Supreme Court (Full Court). **Extraordinary Appeal 654.833/ AC**. Rapp. Justice Alexandre de Moraes, Apr. 20, 2022.

15 BRAZIL. Federal Supreme Court (Full Court). **Claim of Non-Compliance with a Fundamental Precept 708/DF**. Rapp. Justice Luís Roberto Barroso, July 4, 2022.

3. Discussion Topics

Considering the outlined considerations, environmental and climate litigation across various countries prompts the following questions:

1. What is the current landscape of climate-related litigation and ecological protection? What challenges exist in utilizing legal avenues to drive climate security, and how can these challenges be addressed through the judicial system?
2. How can the Judiciary contribute to the implementation and oversight of policies promoting sustainable economic development and environmental preservation? What are the limitations of judicial intervention in this field? Have there been notable rulings in your jurisdiction concerning this matter? If so, what were the rulings and their legal basis? What obstacles arise in enforcing such rulings?
3. What role does the Judiciary play in balancing economic development interests with environmental conservation within the legal system? How can the Judiciary encourage innovative legal approaches to address climate change and promote sustainable practices? Are there court decisions impacting the environmental duties of private enterprises in your jurisdiction?

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Climate Litigation and Sustainable Development

Instituto Igarapé's¹ contribution as a knowledge partner

1. Introduction

The inaugural hosting of the G20 summit in Brazil presents an opportunity to contemplate the pathways for tackling the climate crisis from the perspective of the Global South. Key priorities include energy transition and promoting sustainable development across economic, social, and environmental dimensions. Brazil has been among the pioneering countries in the development of environmental-climate law and stands as a notable reference for other nations. The multifaceted and cross-border nature of climate change and its environmental impacts underscore a series of challenges. Cooperation among states is paramount in devising solutions aimed at sustainable development.

Addressing the climate crisis requires a framework rooted in principles of climate and environmental justice. Acknowledging that climate change impacts various social groups differently, effective action involves measures ensuring (i) no particular social group disproportionately bears the brunt of the negative environmental consequences of government actions and omissions, (ii) equal access to natural resources, (iii) access to information and the right to participate in decisions affecting them, and (iv) collective rights of peoples and social movements that advocate for alternative development models guaranteeing democratized access to environmental resources and the sustainability in their use.²

¹ The conception and coordination were carried out by the Igarapé Institute, while the research was conducted by the Research Group on Law, Environment, and Justice in the Anthropocene. (JUMA/NIMA/PUC-Rio).

² ACSELRAD, Henri; MELLO, Cecília Campello do A.; BEZERRA, Gustavo das Neves. **O que é justiça ambiental?** Rio de Janeiro: Garamond, 2009. p. 41.

Climate change presents a challenge of unequal transboundary pollution, underscoring the need for fair global solutions. Greenhouse gases (GHGs), the primary drivers of the crisis, accumulate in the atmosphere irrespective of their country of origin. Likewise, their impacts—including escalating global temperatures, sea-level rise, and heightened frequency of extreme weather events—disregard borders, thus disproportionately affecting socially vulnerable populations. The international community has made efforts to tackle this issue through treaty negotiations within the International Climate Change Regime since 1992, under the principle of common but differentiated responsibilities. In 1992, the United Nations Conference on Environment and Development convened at the Earth Summit in Rio de Janeiro to address global environmental concerns, marking the genesis of the United Nations Framework Convention on Climate Change (UNFCCC). Accompanying this landmark convention were two sister agreements: the Convention on Biological Diversity (CBD) and the United Nations Convention to Combat Desertification (UNCCD), underscoring the interconnected nature of environmental crises and their solutions. Following the UNFCCC, the first international climate treaty, subsequent advancements were made with the adoption of the Kyoto Protocol in 1997 and the Paris Agreement in 2015. However, climate change escalates global insecurity, exacerbating issues such as food insecurity, conflicts, and migration³. Therefore, discussions on security must encompass the concept of climate security⁴.

Despite numerous climate commitments made by States, scientific evidence suggests they are insufficient and/or inadequately implemented⁵. Consequently, interested parties are turning to the Judiciary to demand greater climate action from both States and private entities. Climate litigation refers to lawsuits addressing facts or norms related to climate change. As of early 2024, over 2,500 climate litigation cases⁶ have been identified across at least 51 countries and various international bodies and

3 Available at: <https://igarape.org.br/global-futures-bulletin-no-place-to-run/>. Accessed on: January 25, 2024.

4 For a deeper understanding of the concept of climate security, please refer to: <https://igarape.org.br/temas/seguranca-climatica/>. Accessed on: 25.01.2024.

5 UNITED NATIONS ENVIRONMENT PROGRAMME. **Emissions Gap Report 2023**: broken record –temperatures hit new highs, yet world fails to cut emissions (again). Nairobi: UNEP, 2023. Available at: <https://doi.org/10.59117/20.500.11822/43922>. Accessed on: 08.03.2024.

6 Numbers are available from the database of the Sabin Center for Climate Change Law at Columbia University, which gathers cases of climate litigation in the United States and worldwide. Available at: <http://climatecasechart.com/search/>. Accessed on: 06.01.2024.

courts, targeting a wide range of defendants and with diverse legal reasonings⁷. The urgency of the climate crisis requires various degrees of intervention and involvement from multiple sectors, including the business sector, civil society organizations, and governmental authorities at all levels of governance – local, national, and global. In this context, climate litigation emerges as a crucial tool of climate governance. It allows the participation of diverse stakeholders the integration of actions to boost climate ambition at different levels.

The urgency of addressing the climate crisis reveals the critical importance of protecting tropical forests. While we recognize the vital role of forests and related ecosystems in mitigating climate change impacts, we also witness a concerning trend of exploitation and illicit activities surrounding these resources. A report by the Igarapé Institute indicates that tropical forests, increasingly pressured by agricultural and mining interests, are also vulnerable to an “environmental crime ecosystem.” This includes illicit activities such as land grabbing, illegal deforestation, unauthorized mining, murder, among others⁸, which not only harm the environment but also lead to social and economic repercussions. The Amazon rainforest, as the world’s largest tropical forest, is particularly at risk, necessitating regional governance that addresses environmental crimes, violence, and challenges to territorial control.

In this regard, the Igarapé Institute has developed a Multidimensional Security Agenda for the Brazilian Amazon⁹, which outlines measures to strengthen governance in the region across multiple dimensions: (i) innovation in governance and management, (ii) investment in human and logistical resources, (iii) prevention of crimes and environmental illicit activities, (iv) accountability, command, and control, (v) traceability and control of supply chains impacting deforestation in the Amazon, (vi) transparent data production, (vii) violence prevention, (viii) strengthening of

7 SETZER, Joana; HIGHAM, Catherine. **Global trends in climate change litigation**: 2023 snapshot. London: Grantham Research Institute on Climate Change Environment: Centre for Climate Change Economics and Policy, 2023. Available at: https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2023/06/Global_trends_in_climate_change_litigation_2023_snapshot.pdf. Accessed on: 24.01.2024.

8 Available at: <https://igarape.org.br/wp-content/uploads/2023/11/Global-Future-Bulletin-Mecanismo-internacional-de-financiamento-para-manter-as-florestas-em-pe.pdf>. Accessed on: 24.01.2024.

9 The Agenda addresses (i) structural and governance issues considering the challenges in the Amazon, (ii) concrete actions related to reducing the ecosystem of environmental crimes and ensuring the commitment to zero illegal deforestation, and (iii) violent crimes, particularly in urban areas. Available at: <https://igarape.org.br/wp-content/uploads/2022/09/Agenda-de-Seguranca-Multidimensional-para-a-Amazonia.pdf>. Accessed on: 24.01.2024.

law enforcement agencies, and (ix) improvement of prison and socio-educational system management. Once again, the central role of the Judiciary in protecting and promoting climate security is evident.

This article will delve into the role of the Judiciary in climate governance. To this end, the second section will address the main challenges faced in global climate litigation, examining its key elements, from legal grounds to the most common types of climate lawsuits worldwide. Subsequently, the article will explore the efforts undertaken by the Judiciary and litigants aimed at bolstering environmental and climate protection. As final remarks, attention will be drawn to significant challenges such as the enforcement of judicial decisions, barriers to access to justice, and the integration of climate justice into legal proceedings. These issues stand as pivotal points to be addressed by the Justice System. It is concluded that climate litigation emerges as a potent legal tool to promote sustainable development, with the Judiciary being a central actor in multilevel climate governance.

2. Challenges of Climate Litigation and Ecological Protection

The legal framework concerning climate issues is integral to environmental legal protection. The right to a stable and secure climate should be construed as the essence of the fundamental right to a healthy environment. In Brazil, the right to an ecologically balanced environment has undergone a process of constitutionalization, with the Judiciary affirming its status as a fundamental right. This process was led by the Federal Supreme Court (STF), which, since the 1990s, have been interpreting the right to an ecologically balanced environment as an autonomous fundamental human right, albeit interconnected with other rights. Notably, in the landmark ruling of the Writ of Mandamus (WM) 22,164/1995¹⁰, the STF held that the environment constitutes a third-generation human right, held collectively. This pioneering recognition aligns with recent developments in the field of International Law,

10 BRAZIL. Federal Supreme Court (Full Court). **Mandado de Segurança 22164/SP**. Reforma Agrária. Imóvel Rural situado no Pantanal Mato-Grossense. Desapropiação-sanção (CF, art.184). Possibilidade – Falta de notificação pessoal e prévia do proprietário rural quanto à realização da vistoria [...] Nulidade radical da declaração expropriatória. Mandado de segurança deferido. Relator: Min. Celso de Mello, 30 de outubro de 1995. Available at: <https://portal.stf.jus.br/processos/detalhe.asp?incidente=1606388>, Accessed on: 11.03.2024.

including the acknowledgment of the human right to the environment in the following documents: (i) Advisory Opinion 23 of the Inter-American Court of Human Rights in 2017¹¹; (ii) Resolution 48/L.23/Rev.1 of the UN Human Rights Council in 2021¹²; and (iii) Resolution 76/300 of the UN General Assembly in 2022¹³, which explicitly address climate change. The acknowledgment by courts of the autonomous nature of the right to the environment serves as a significant strategy for advancing climate litigation, positioning Brazil as a global reference in this regard.

The climate crisis underscores the global and cross-border nature of environmental issues, as its impacts transcend national boundaries and extend beyond those directly responsible for environmental degradation. Recognizing the environment as a global public good is essential for developing effective global governance to address the climate crisis while acknowledging historical inequalities among nations that have profited from environmental exploitation. In this context, the report "A Breakthrough for People and Planet"¹⁴, drafted by the United Nations High-Level Independent Advisory Board on Effective Multilateralism, proposes recommendations for both State and non-State actors to implement the 2030 Agenda for Sustainable Development.

These recommendations include measures to: (i) facilitate the rebuilding of trust in multilateralism, such as the inclusion and commitment of the private sector, inclusion of cities and regions in the multilateral system, innovations that enable more effective decision-making, among others; (ii) allow for the restoration of environmental balance and the provision of clean energy, such as the conclusion of a pact for people and the planet, equitable distribution of clean energy, regulation of the carbon market for a fair and green transition; (iii) ensure sustainable financing that serves all, such as strengthening the global financial safety net, adapting the Multilateral Development Bank system, promoting global tax reforms, among others;

11 INTERAMERICAN COURT OF HUMAN RIGHTS. **Opinión Consultiva OC 23/2017 solicitada por la República de Colombia**, 15 nov. 2017. Available at: https://www.corteidh.or.cr/docs/opiniones/seriea_23_esp.pdf. Accessed on: 08.03.2024.

12 UNITED NATIONS. Human Rights Council (General Assembly). **Resolution A/HRC/48/L.23/Rev.1**. New York: United Nations, 5 Oct. 2021. Available at: <http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/48/L.23/Rev.1&Lang=E>. Accessed on: 08.03.2024.

13 UNITED NATIONS. (General Assembly). **Resolution A/76/300**. New York: United Nations, 1 Aug. 2022. Available at: <https://undocs.org/en/A/RES/76/300>. Accessed on: 08.03.2024.

14 Available at: <https://highleveladvisoryboard.org/breakthrough/>. Accessed on: 09.01.2024.

(iv) support a fair digital transition that addresses poverty, inequalities, and digital risks; (v) strengthen collective, effective, and equitable security mechanisms; and (vi) strengthen governance for current and emerging transnational risks, such as climate governance, peace and security, governance of biological and health risks, safe and effective management of emerging technologies, and combating transnational organized crime. The Judiciary must also play a role in ensuring the implementation of these measures.

The inequalities exacerbated by the climate crisis extend beyond the current generation, with far-reaching consequences for future ones. As climate change escalates, its most devastating impacts will be borne by generations yet to come, potentially reaching the point of no return if immediate measures are not adopted. To counteract this trend, the concept of sustainable development was formulated, seeking “development that meets the needs of the present without compromising the ability of future generations to meet their own needs”¹⁵. Internationally recognized since 1992, in Principle 3 of the Rio Declaration on Environment and Development, concern for future generations underscores a growing legal focus, with the codification of the principle of intergenerational justice. Emphasizing this, the report “A Breakthrough for People and Planet” emphasizes the crucial role of legally recognizing the rights of future generations,¹⁶. However, for these rights to hold genuine weight, it is imperative for courts to actively consider them and ensure accountability from all parties toward future generations.

It falls upon the Judiciary to safeguard the rights of those without a voice or a vote, such as children and individuals yet to be born, particularly in light of the prevailing short-term and immediate political perspectives. This responsibility has been underscored in climate litigation, exemplified by the case of *Neubauer et al. v. Germany*. In this landmark 2021 ruling, the German Federal Constitutional Court declared certain provisions of the German climate law unconstitutional due to their lack of specificity regarding greenhouse gas emissions reduction from 2031 onwards. The Court deemed this omission a violation of proportionality, as it unfairly shifted a

15 UNITED NATIONS. World Commission on Environment and Development. **Our common future (Brundtland Report)**. Oxford: Oxford University Press, 1987. Available at: <https://archive.org/details/ourcommonfuture00worl/mode/2up>. Accessed on: 08.03.2024.

16 Available at: <https://highleveladvisoryboard.org/breakthrough/>. Accessed on: 05.01.2024.

greater burden of emission reduction to the post-2030 period, thus compromising the fundamental rights of future generations. Such cases highlight the potential role of the Judiciary in safeguarding rights and emphasize the need for greater ambition and coherence in formulating and implementing laws and public policies to combat climate change.

Due to the pervasive nature of climate change and its potential to affect diverse aspects of life on Earth, climate litigation covers a broad spectrum of actions. These actions can be categorized into four dimensions: (i) mitigation, (ii) adaptation, (iii) civil liability for climate damage, and (iv) assessment of climate risks¹⁷. These approaches are often complementary rather than mutually exclusive, and a single case may simultaneously involve multiple dimensions, sometimes targeting both public and private entities as defendants. Furthermore, there are emerging innovative approaches that leverage human rights to promote climate security¹⁸.

Litigation addressing mitigation involves actions aimed at reducing greenhouse gas emissions, such as those demanding greater ambition or the implementation of laws and policies toward this end. One notable example is the case of *Neubauer et al. v. Germany*, which scrutinized emission reduction targets outlined in the German climate law. However, similar cases also target corporations, as seen in *Millieudéfensie et al. v. Royal Dutch Shell*. In this case, the District Court of The Hague ruled in 2019 that Shell, a major player in the global fossil fuel market, had an obligation to reach a 45% net reduction in its carbon dioxide emissions by the end of 2030, compared to 2019 levels. This case was groundbreaking as it marked the first instance where a private corporation was compelled to align its actions with the goals of the Paris Agreement. It highlighted the crucial role of fossil fuel companies in facilitating an energy transition and emphasized the Judiciary's role in regulating private actors.

17 Classification inspired by the analysis conducted by the Research Group on Law, Environment, and Justice in the Anthropocene (JUMA) of cases from the Climate Litigation Platform in Brazil. This and other classifications are examined to profile climate litigation in Brazil in: MOREIRA, Danielle de Andrade *et al.* **Boletim da Litigância Climática no Brasil 2023**. 2. ed. Rio de Janeiro: PUC-Rio, 2023. E-book (p.11). Available at: https://www.juma.nima.puc-rio.br/_files/ugd/a8ae8a_297d7c0470044a49bba5c325973675cb.pdf. Accessed on: 08.01.2024.

18 In the study on how climate change affects security, forced displacement stands out as a significant issue. There are several cases of climate litigation on this matter, with the most paradigmatic being *Teitiota v. New Zealand*, where a citizen of Kiribati challenged New Zealand's denial of refugee status based on climate change. Despite being decided unfavorably, the case sparked debate on climate refugees.

Litigation concerning adaptation measures remains relatively uncommon but holds profound significance as it aims to mitigate vulnerabilities to the impacts of climate change. Such cases demand the implementation of strategies to address both current and future challenges posed by this crisis. A notable example is the *Torres Strait Islanders vs. Australia* case, where the UN Human Rights Committee, in 2022, held Australia internationally accountable for its failure to promote adaptation measures and safeguard against the impacts of climate change. The Committee determined that this negligence resulted in violations of the human rights to culture, as well as to private and family life, of fourteen indigenous individuals from the Torres Strait region.

Litigation addressing civil liability for climate damage often involves compensation claims seeking redress for harms caused by greenhouse gas emissions or adverse impacts of climate change. One notable case, although still awaiting a substantive decision, is *Luciano Lliuya v. RWE*. In 2015, Saúl Luciano Lliuya, a Peruvian farmer, filed a civil liability lawsuit in Germany against RWE, the country's largest electricity producer. He alleges that RWE has knowingly and significantly contributed to climate change by historically emitting substantial volumes of greenhouse gases. Lliuya contends that, as a result, the company bears responsibility for the melting glaciers near the city of Huaraz, Peru, which pose flood risks to the city. Consequently, he requests that RWE compensate him for a portion of the costs to implement flood protections. This case highlights the pivotal role of the energy sector in transitioning to a decarbonized economy. Additionally, in countries like Brazil and Indonesia, discussions on environmental-climatic damage are also advancing based on cases of illegal deforestation.

Litigation addressing climate risk assessment involves cases that demand the evaluation and management of risks associated with climate change. These cases may require States to consider such risks in environmental licensing processes or similar procedures, and compel companies and financial institutions to include them in their reports and balance sheets. An illustrative example is the case of *EarthLife Africa Johannesburg v. Minister of Environmental Affairs and Others*. In March 2017, the Gauteng High Court in Pretoria, South Africa, ruled that, although the country's licensing law did not explicitly address climate change, the approval of the *Thabametsi Project*, a proposed coal-fired power plant, should have considered its impacts on the global climate and the potential impacts of climate change on the

project itself. The court held that the failure to assess these impacts rendered the Ministry of Environment's approval of the project illegal.

This latter case illustrates the significance of incorporating climate considerations into assessments of human activities' environmental impacts, even in cases where specific legislation does not explicitly mention climate change. This trend is evident in court decisions worldwide, as highlighted by a comparative study conducted by the Research Group on Law, Environment, and Justice in the Anthropocene (JUMA) on climate litigation and environmental licensing. The study concludes that it is both effective and legitimate to present climate issues as essential aspects of environmental discussions, encompassing various dimensions, including social aspects and their connection to human rights¹⁹. Recognizing that climate matters are implicitly covered by environmental legal protections, the environmental legal framework should be used to safeguard the climate. This understanding arises from a holistic view of the environment, which should also be applied to the climate crisis. Consequently, climate action is enhanced by linking it with broader environmental issues (such as air pollution control and biodiversity conservation) and social aspects inherently tied to environmental challenges. In this context, Brazil stands out as an example, with its climate litigation seen as an extension of its environmental litigation²⁰.

3. Contributions of the Judiciary to Sustainable Economic Development

The Role of the Judiciary in Ensuring Sustainable Development

Disputes surrounding environmental and climate issues are not new. In this context, the Judiciary has emerged as a pivotal actor in interpreting the legal framework and shaping legal precedent concerning environmental protection, playing a significant

19 MOREIRA, Danielle de Andrade (coord.). **Litigância climática no Brasil: argumentos jurídicos para a inserção da variável climática no licenciamento ambiental**. Rio de Janeiro: PUC-Rio, 2021. *E-book* (p.128.) (Coleção Interseções. Série Estudos). Available at: <http://www.editora.puc-rio.br/cgi/cgilua.exe/sys/start.htm?infoid=956&sid=3>. Accessed on: 30.07.2023.

20 MOREIRA, Danielle de Andrade et al. Rights-based climate litigation in Brazil: an assessment of constitutional cases before the Brazilian Supreme Court. **Journal of Human Rights Practices**. 4 Aug. 2023. p.18. Available at: <https://academic.oup.com/jhrp/advance-article-abstract/doi/10.1093/jhuman/huad023/7237274?redirectedFrom=fulltext&login=true>. Accessed on: 08.03.2024. p. 18.

role in addressing environmental and climate regressions. An exemplary instance of the Judiciary's intervention to halt environmental and climate regressions is the Brazilian case discussing the allocation of resources for climate change mitigation and adaptation in the Claim of Non-compliance with a Fundamental Precept (ADPF, the acronym in Portuguese) 708²¹. In a 2022 decision, the Federal Supreme Court (STF) recognized the unconstitutional omission of the Federal Union in allocating resources from the Climate Fund, and granted supralegal status to the Paris Agreement, equating international environmental treaties with human rights treaties. This decision has been widely regarded as landmark in national, regional, and international climate litigation, serving as a reference for other countries.²²

The Justice System faces the challenge of addressing climate change from a perspective that considers human rights, different uses and management of the environment, and social and racial inequalities in environmental, social, and economic impacts. Climate litigation must incorporate a comprehensive approach to climate justice, aiming for equitable distribution of responsibilities, costs, and consequences of climate change, as well as formulating solutions that consider various environmental uses and management practices. However, the reality reveals a state of climate injustice, with the impacts disproportionately affecting Black and Indigenous populations. For instance, climate insecurity is particularly acute in West Africa²³. Climate justice is evident across different dimensions in the climate field, such as (i) within the United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement, which recognize historical inequalities and establish the concept of climate loss and damage. In cases where the effects of climate change result in economic, social, and environmental losses that cannot be mitigated, countries with significant contributions to climate change are expected to provide resources to the most vulnerable nations; and (ii) the UN Human Rights Committee, as seen in the *Torres Strait Islanders' vs. Australia*²⁴, case, acknowledges

21 Available at: <https://portal.stf.jus.br/processos/detalhe.asp?incidente=5951856>. Accessed on: 05.01.2024.

22 TIGRE, Maria Antonia; SETZER, Joana. **Human rights and climate change for climate litigation in Brazil and beyond**: an analysis of the Climate Fund Decision. In press.

23 Available at: <https://igarape.org.br/west-africa-at-the-precipice-visualizing-climate-stress-and-insecurity/>. Accessed on: 05.01.2024.

24 Available at: <https://climatecasechart.com/non-us-case/petition-of-torres-strait-islanders-to-the-united-nations-human-rights-committee-alleging-violations-stemming-from-australias-inaction-on-climate-change/>. Accessed on: 09.01.2024.

that climate change disproportionately affects indigenous peoples' traditional lifestyles and cultural rights.

The climate issue is inherently interdisciplinary, and as such, the Judiciary must rely on scientific evidence in decision-making processes. There are various experiences in climate litigation that incorporate technical and scientific methods to address climate-related matters within the legal system. Among them, noteworthy are: (i) climate change attribution science, which utilizes technological advancements to identify the influence of greenhouse gas emissions on natural systems, enabling the assessment of risks and probabilities and potential liability for resulting damages²⁵; (ii) methodologies for quantifying climate-related damages, providing frameworks for assessing the extent of harm caused by climate change²⁶; and (iii) the use of scientific data to support decisions, employing the criterion of the best available science to assess the adequacy of the Public Administration's actions in creating and implementing environmental and climate policies²⁷.

Encouraging Innovative Legal Approaches

The importance of the Judiciary in climate litigation positions it as a key actor in driving innovative solutions to tackle the climate crisis. In recent years, various initiatives have emerged at national, regional, and international levels to empower the Judiciary's role. These initiatives encompass both the development of legal frameworks related to climate issues and the implementation of institutional measures prioritizing action

25 BURGER, Michael; WENTZ, Jessica; RADLEY, Horton. The law and science of climate change attribution. **Columbia Journal of Environmental Law**, New York, v.45, n.1, p.60-240, 2020. Available at: <https://journals.library.columbia.edu/index.php/cjel/article/view/4730>. Accessed on: 11.03.2024.

26 For the Brazilian case, Moreira, Gonçalves, and Segovia highlight that "calculations for compensations are based on estimating the amount of emitted carbon (and the corresponding amount of carbon dioxide equivalent), multiplied by the price attributed to these emissions. However, in these lawsuits, there is no identification of a single methodology for this two-phase process of valuing environmental-climatic damage; different methodologies are used for both the quantification of emissions and the pricing of the amount of greenhouse gases emitted. Similarly, there is no uniformity in judicial decisions, where they exist, regarding the acceptance of such methodologies." MOREIRA, Danielle; GONÇALVES, Victória; NEVES, Maria Eduarda Segovia Barbosa. **Nota técnica sobre dano ambiental-climático no Brasil**. In press.

27 For an analysis of this trend based on decisions from the Federal Supreme Court (STF) in climate litigation, refer to: MOREIRA, Danielle de Andrade et al. Rights-based climate litigation in Brazil: an assessment of constitutional cases before the Brazilian Supreme Court. **Journal of Human Rights Practices**. 4 Aug. 2023. p.18. Available at: <https://academic.oup.com/jhrp/advance-article-abstract/doi/10.1093/jhuman/huad023/7237274?redirectedFrom=fulltext&login=true>. Accessed on: 08.03.2024. p. 18.

on the topic²⁸. Notable examples include: (i) the Brazilian Judiciary's pioneering move to institutionalize the United Nations' 2030 Agenda²⁹ in 2018, an initiative that promoted the indexing of the docket according to the 17 Sustainable Development Goals (SDGs) and integrating the 2030 Agenda as a National Goal of the Brazilian Judiciary in 2020³⁰; and (ii) discussion surrounding the adoption of technological tools as means of evidence to enhance the legal treatment of climate cases. The Brazilian National Council of Justice (CNJ) issued a recommendation guiding judges on the use of remote sensing data and satellite-derived information in collecting evidence for civil and criminal environmental lawsuits³¹.

Considering the global challenge of addressing climate change, it is imperative for courts to recognize its cross-border implications. It is interesting to note the transnational exchange of judgments across different jurisdictions, where courts engage in a genuine dialogue, citing various foreign decisions in climate litigation, in addition to the use of international treaties and jurisprudence³². Thus, judges demonstrate an understanding of the climate issue stemming from the complex, multipolar, and urgent reality of environmental protection as a global public good, paying attention to comparative jurisprudential experiences.

Litigants worldwide draw inspiration from successful cases and strive to replicate them in various jurisdictions. This was the case following the landmark victory in the *Urgenda Foundation v. Netherlands*, which marked the first judgment in the world to recognize a government's legal obligation to prevent dangerous climate change and to mandate an increase in a country's greenhouse gas emission reduction targets. Following the historic ruling in 2015, the Urgenda Foundation established the Climate

28 For an analysis of the Brazilian Judiciary's initiatives related to compensation for climate-related environmental damage, refer to: MOREIRA, Danielle; GONÇALVES, Victória; NEVES, Maria Eduarda Segovia Barbosa. Aspectos conceituais e práticos da responsabilidade civil por dano ambiental-climático no Brasil. **Revista de Direito Ambiental**. São Paulo. In press.

29 Available at: <https://www.cnj.jus.br/programas-e-acoas/agenda-2030/>. Accessed on: 09.01.2024.

30 Available at: <https://www.cnj.jus.br/wp-content/uploads/2020/01/Metas-Nacionais-aprovadas-no-XIII-ENPJ.pdf>. Accessed on: 09.01.2024.

31 BRAZIL. National Council of Justice. **Recomendação nº 99, de 21 de maio de 2021**. Recomenda a utilização de dados de sensoriamento remoto e de informações obtidas por satélite na instrução probatória de ações ambientais. Available at: <https://atos.cnj.jus.br/files/original1342402021052560acfed0b907d.pdf>. Accessed on: 05.01.2024.

32 For an analysis of this trend based on decisions from the Federal Supreme Court (STF) in climate litigation, consult: MOREIRA, Danielle de Andrade et al. Rights-based climate litigation in Brazil: an assessment of constitutional cases before the Federal Supreme Court. **Journal of Human Rights Practices**. 4 Aug. 2023. p.17. Available at: <https://academic.oup.com/jhrp/advance-article-abstract/doi/10.1093/jhuman/huad023/7237274?redirectedFrom=fulltext&login=true>. Accessed on: 08.03.2024.

Litigation Network (CLN), with the aim of inspiring, nurturing, and supporting new cases against governments worldwide. Leveraging the innovative legal strategy and experience gained from initiating this pioneering case, the CLN seeks to empower further lawsuits in the fight against climate change³³.

Another strategy involves initiating international and transnational litigation. In the latter, victims from the Global South, either individually or represented by civil society organizations, have begun to file lawsuits in domestic courts of the Global North, challenging damages or violations of human rights related to climate change. Overcoming the historical ecological debt between countries to materialize the ideals of climate justice underpins this type of interstate procedural strategy. The pioneering case of *Luciano Lliuya v. RWE* exemplifies this approach. In this case, a Peruvian farmer filed a lawsuit in Germany alleging climate damages, compelling the German Judiciary to rule on damages occurring in Peru. The Higher Regional Court of Hamm's recognition of the claim's admissibility on appeal in 2017 marked a significant milestone. Subsequently, similar transnational cases have been brought forth in France and Switzerland, potentially holding companies accountable as defendants. This development is noteworthy given the challenges of enforcing human rights obligations under International Law.³⁴ Transnational domestic litigation aims to overcome the lack of coerciveness inherent in International Law. This strategy seeks enforceable rulings domestically, acknowledging the difficulty of implementing decisions from International Courts. It is crucial because compliance with judicial decisions and enforcing measures granted in court are key obstacles to the effectiveness of climate litigation.

A conscientious consideration of climate justice also prompts us to contemplate the risk that "green" measures aimed at addressing the climate crisis may inadvertently infringe upon human rights. This occurs when climate solutions fail to adopt a holistic understanding of social and environmental issues. Cases related to just transition are beginning to emerge in courts: climate litigations challenging policies, measures, or projects designed to benefit the climate, questioning their design or their impacts

33 Available at: <https://climatelitigationnetwork.org/>. Accessed on: 09.01.2024.

34 MANTELLI, Gabriel et al. Litígios climáticos devem se transnacionalizar. *Jota*. 9 mar. 2023. Available at: <https://la-clima.org/wp-content/uploads/2023/09/Liti%CC%81gios-clima%CC%81ticos-devem-se-transnacionalizar.pdf>. Accessed on: 08.01. 2024.

on specific groups and/or other environmental concerns. These cases illustrate the intricate nature of climate litigations; they do not necessarily oppose climate action *per se*, but rather highlight deficiencies associated with it³⁵. Examples include cases involving land use restrictions for the installation of large hydroelectric plants or wind farms, and in the future, they are expected to address situations related to the growing global demand for the extraction of critical and strategic minerals to facilitate the transition to green and digital technologies³⁶. A just transition requires that courts consider the equitable distribution of costs and benefits associated with transitioning to a decarbonized economy, ensuring that affected parties receive adequate support.

4. Final Considerations

The Judiciary is a key player in addressing the climate crisis, situated within a broader and more complex context of interdisciplinary and multidimensional climate governance. In this regard, the justice system holds fundamental importance in achieving environmental and climate equity. To do so, justice institutions must confront social and racial inequalities in their actions, aiming to balance historical disparities among stakeholders advocating for different development paths, while ensuring the autonomy and self-determination of communities with diverse environmental uses. Access to justice and participation, which are cornerstones of environmental and climate justice, are the foundation of the Environmental Democratic Rule of Law and should be upheld and expanded worldwide, particularly for the most vulnerable affected populations.

Advocating for access to justice regarding climate change is still a relatively recent movement. The first judicial ruling addressing climate change was delivered in the US in 1990, and the first lawsuit specifically crafted as climate litigation was filed in Australia in 1994³⁷. Since then, climate litigations have experienced both defeats and

35 SAVARESI, Annalisa; SETZER, Joana. Rights-based litigation in the climate emergency: mapping the landscape and new knowledge frontiers. **Journal of Human Rights and the Environment**, v. 13, n. 1, p. 7-37, Mar. 2022. Available at: <https://www.elgaronline.com/view/journals/jhre/13/1/article-p7.xml>. Accessed: 09.01. 2024.

36 For an analysis of the challenges related to the extraction of critical and strategic minerals, refer to: <https://igarape.org.br/wp-content/uploads/2023/10/Minerais-Criticos-e-Estrategicos.pdf>. Accessed on: 09.01.2024.

37 SETZER, Joana; CUNHA, Kamila; FABBRI, Amalia Botter (coords.). **Litigância climática**: novas fronteiras para o direito ambiental no Brasil. 1. ed. São Paulo: Revista dos Tribunais, 2019. p. 26.

winnings, offering valuable lessons learned along with the challenge of implementing favorable judicial rulings across different jurisdictions. However, it can broadly be asserted that climate litigation serves as one of the legal tools to promote sustainable and fair development for present and future generations, while also enhancing multi-level climate governance. In this context, the Judiciary is increasingly becoming a crucial player in global climate action.

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Research Group on Law, Environment, and Justice in the Anthropocene (JUMA/NIMA/PUC-Rio)



SUMMIT OF HEADS
OF SUPREME COURTS AND
CONSTITUTIONAL COURTS
OF G20 MEMBERS





DIGITAL TRANSFORMATION AND THE USE OF TECHNOLOGY TO ENHANCE JUDICIAL EFFICIENCY



Digital Transformation and the Use of Technology to Enhance Judicial Efficiency

STF's Briefing Paper

1. Objectives

The aim of the session “Digital Transformation and the Use of Technology to Enhance Judicial Efficiency” is to discuss the opportunities, challenges, and risks associated with integrating technological tools, particularly artificial intelligence (AI), into the justice system. Integrating technological tools into judicial processes is vital for constructing more efficient, accurate, and transparent institutions across all levels. The session seeks to explore the innovative technologies employed by J20 participants’ courts and discuss their potential contributions to enhancing the Judiciary. Additionally, it aims to address necessary safeguards to mitigate risks associated with technology implementation. The overarching goal is to foster the exchange of ideas, best practices, and regulatory frameworks concerning AI solution development, cybersecurity protocols, data protection measures, and strategies to counter disinformation that could impact the justice system.

2. Background

Individuals, governments, and organizations are confronted with the stark reality of a world where technology pervades every aspect of social, political, and institutional life, undergoing constant and rapid change. The digital society witnesses the emergence of new patterns of information production and consumption, the rise of an economy built on data exploitation, the consolidation of algorithmic power by major technology firms, and the formation of a public sphere vulnerable to various negative influences,

notably disinformation. Within this framework, novel ethical, legal, and socio-political challenges echo throughout the daily workings of constitutional courts and the administration of justice.

Nevertheless, the significant progress of new technologies can be harnessed by judicial administration bodies in a broad manner. There are exceptional opportunities associated with the pursuit maximum effectiveness in judicial proceedings, ensuring the right to a timely trial, and enhancing access to justice. Additionally, these advancements can facilitate closer engagement between society and the Judiciary.

2.1. e-Justice

The modernization of justice systems is a shared priority among many nations. In recent years, there has been a growing trend towards embracing digital justice and the establishment of virtual courts, particularly in the wake of the COVID-19 pandemic. Research conducted by the United Nations Development Program (UNDP) has highlighted how the health crisis underscored the overreliance of courts on physical spaces and activities for their functioning. This urgency to ensure the continuity of judicial services during such times has led to a swift transition of courts into the digital sphere, with the implementation of diverse technological solutions.

Following the exceptional period, the momentum toward digital transformation within the justice system has continued, driven by its potential to improve efficiency and streamline access to justice. One of the significant challenges facing the Judiciary is the prolonged duration of case resolution, which undermines public confidence in the judicial process. Therefore, the digitization of processes, virtual procedural hearings (such as videoconferencing with judges), and the implementation of artificial intelligence and automation solutions are vital tools to expedite and enhance the effectiveness of judicial services. For instance, data from the Brazilian Judiciary reveals that the average processing time for electronic cases is approximately one-third of that for physical cases, illustrating the tangible benefits of digitalization.¹

¹ BRAZIL. National Council of Justice. **Justice in numbers 2023**. Brasilia: CNJ, 2023. Base year 2022. Available at: <https://www.cnj.jus.br/wp-content/uploads/2024/02/justice-in-numbers-2023.pdf>. Accessed on: 21.03.2024..

Technologies also represent a substantial leap forward in facilitating access to justice, offering opportunities to overcome geographical, economic, and social hurdles. For instance, technological solutions provide alternatives to in-person proceedings, incorporating accessibility features for individuals with disabilities and flexible options for court appearances, thereby reducing travel expenses. Moreover, these solutions can be utilized to pinpoint and rectify systemic barriers to justice by gathering and analyzing data².

Hence, e-Justice arises as a comprehensive term encompassing all types of digital technology employed in legal services, including their provision, administration, improvement, or monitoring.³ Within this domain, there is a diverse range of possibilities⁴, with the following categories being particularly notable:

- i. Digital case management systems: These platforms facilitate the digital handling of cases, allowing for the complete or partial processing of legal matters. They include features such as case filing, procedural updates, evidence management, and the publication of rulings.
- ii. Virtual courts: This entails utilizing video conferencing technology to conduct judicial proceedings remotely. Virtual courts enable hearings, trial sessions, and other interactions between users and the justice system to take place online, providing a means for accessing procedural information and participating in legal processes from a distance.
- iii. Case Data and Statistics: This involves leveraging data to gain insights, enhance transparency, and optimize the functioning of judicial systems. It includes analyzing data to identify bottlenecks and areas with high litigation rates. Judicial data encompasses statistics on case backlogs, new case filings, number of decisions, productivity levels, average processing times, as well as demographic information disaggregated for both system users and judges.

2 RAMOS MAQUEDA, Manuel; CHEN, Daniel L. **The role of justice in development: the data revolution**. Washington: World Bank Group, 2021. (Policy Research Working Paper, n. 9720). Available at: <https://documents1.worldbank.org/curated/en/423061624976141321/pdf/The-Role-of-Justice-in-Development-The-Data-Revolution.pdf>. Accessed on: 16.04.2024.

3 UNITED NATIONS DEVELOPMENT PROGRAMME. **E-Justice: digital transformation to close the justice gap**. New York: UNDP, 2022. Available at: <https://www.undp.org/publications/e-justice-digital-transformation-close-justice-gap>. Accessed on: 21.03.2024.

4 UNITED NATIONS DEVELOPMENT PROGRAMME. **Global map of e-Justice projects**. New York: UNDP, 2024. Available at: <https://public.tableau.com/app/profile/undp.ejustice/viz/UNDPGlobalMapofe-JusticeProjects/UNDPe-Justice-ProjectsGlobalMap>. Accessed on: 21.03.2024.

- iv. Online Dispute Resolution (ODR): These platforms provide an online avenue for resolving disputes, where parties can pursue conciliation, settle legal conflicts, and receive decisions remotely. ODR mechanisms may entail human mediation, AI-driven processes, or automated resolution methods.
- v. User Applications: These digital tools offer information and direct legal assistance to users, including chatbots, or perform specific tasks to streamline access to and understanding of legal processes. They may also automate steps within a judicial process, such as obtaining certificates.
- vi. Artificial Intelligence and Machine Learning: AI tools can serve diverse roles within judicial frameworks, encompassing case clustering, screening, summarization, drafting decision templates, predictive analytics, and discerning trends within legal proceedings.

By way of illustration, the Brazilian Judiciary has engaged with all of these solutions. Among the notable utilities ushered in by the Technological Revolution in the legal realm in Brazil are:

- i. Electronic Case Management: Judicial proceedings have undergone a complete digital transformation, with all stages from filing to accessing decisions now occurring digitally, rendering paper-based processes obsolete. By 2022, Brazil achieved a remarkable 98.4% rate of cases being processed electronically;⁵
- ii. Virtual Plenary Sessions: The Federal Supreme Court, along with the majority of Brazilian courts, has instituted virtual trial sessions, particularly since the advent of the pandemic. These sessions operate asynchronously and are predominantly employed for adjudicating matters of lesser complexity or repetitive nature. This approach significantly boosts the volume of rulings issued by the courts. Notably, in 2023, nearly 99% of collegiate decisions by the Federal Supreme Court were rendered in the virtual setting;⁶
- iii. Virtual Helpdesk: Across the Brazilian Judiciary, a video conferencing tool is available to facilitate instant communication for both lawyers and the general

5 BRAZIL. National Council of Justice. **Justice in numbers 2023**. Brasília: CNJ, 2023. Base year 2022. Available at: <https://www.cnj.jus.br/wp-content/uploads/2024/02/justice-in-numbers-2023.pdf>. Accessed on: 21.03.2024.

6 BRAZIL. Federal Supreme Court. **Relatório de atividades 2023**. Brasília : STF, Secretaria de Altos Estudos, Pesquisas e Gestão da Informação, 2024. Available at: <http://bibliotecadigital.stf.jus.br/xmlui/handle/123456789/5941>. Accessed: 16.04.2024.

public with the customer service department of each judicial unit during regular public service hours.

- iv. **Case Monitoring, Statistical Dashboards, and Transparency:** In addition to allowing citizens to track case progress via court websites, Brazilian courts and the National Council of Justice (CNJ) provide Business Intelligence (BI) dashboards containing comprehensive data on various aspects of judicial operations. This includes case backlogs, number of rulings, judicial productivity, processing times, prevalent case topics, as well as Judiciary costs and expenses.⁷ The CNJ annually publishes consolidated data in reports titled "Justice in Numbers," ensuring transparency and accountability within the judicial system;⁸
- v. **Artificial Intelligence Tools:** Throughout the Brazilian Judiciary, there are over 150 AI solutions either in development or already operational. Notably, at the Federal Supreme Court (STF), AI tools like Victor, VitorIA, and RAFA2030 streamline the court's operations by assisting in the identification and categorization of significant or recurring cases.⁹

The integration of digital tools into the judicial framework has the potential to significantly enhance both the efficiency and inclusivity of the justice system. However, it's imperative to recognize and address the risks associated with these new technologies. These risks span a spectrum of concerns, including threats to privacy, data protection, individual autonomy, non-discrimination, and access to comprehensive information. Thus, it's essential to ensure that any innovations implemented within the justice system prioritize the protection of fundamental rights.¹⁰

7 BRAZIL. National Council of Justice. **Data Jud:** base nacional de dados do Poder Judiciário: Justiça em números. Brasília: CNJ, [2024], Available at: <https://justica-em-numeros.cnj.jus.br/>. Accessed on: 16.04.2024. e BRAZIL. Federal Supreme Court. **Corte aberta:** acervo geral. Brasília: STF, [2024]. Available at: <https://transparencia.stf.jus.br/extensions/acervo/acer-vo.html>. Accessed on: 16.04.2024.

8 BRAZIL. National Council of Justice. **Justice in numbers 2023.** Brasília: CNJ, 2023. Available at: <https://www.cnj.jus.br/wp-content/uploads/2024/02/justice-in-numbers-2023.pdf>. Accessed on: 21.03.2024.

9 In 2018, the STF introduced "Victor," a tool designed to swiftly classify topics of general interest in appellate proceedings, thereby expediting the identification of cases with broader significance. Subsequently, in 2022, the "RAFA 2030" was developed. It utilizes artificial intelligence to categorize STF cases according to the Sustainable Development Goals (SDGs) outlined in the UN's 2030 Agenda, aiming to enhance transparency and strengthen jurisprudence in areas critical for social and environmental progress. Finally, in 2023, "vitorIA" was launched, enabling the grouping of judicial cases based on textual similarity. This facilitates the identification of cases suitable for joint treatment or new topics of broader significance. Such tools not only streamline the search for precedents but also enhance the efficiency of legal teams' work.

10 UNITED NATIONS DEVELOPMENT PROGRAMME. **E-Justice:** digital transformation to close the justice gap. New York: UNDP, 2022. Available at: <https://www.undp.org/publications/e-justice-digital-transformation-close-justice-gap>. Accessed on: 21.03.2024.

Additionally, it's important to acknowledge that technology may not be equally accessible to all individuals and communities. As a result, initiatives aimed at promoting digital literacy and expanding internet access become critical in addressing disparities in access to digital justice.

2.2. AI and the Judiciary

One of the most heated debates in the realm of new technologies concerns artificial intelligence (AI), its applications, and associated risks. UNESCO¹¹ underscores that the term AI lacks a singular definition, encompassing a range of information systems and technologies capable of processing data and information in ways akin to intelligent behavior. These functionalities typically include perception, reasoning, learning, problem-solving, prediction, planning, and control, among others.¹²

Utilizing AI to Enhance Judicial System Efficiency

A global movement across various sectors seeks to identify areas where AI can bolster efficiency.¹³ Within the Judiciary, AI tools are being developed and embraced by judges and courts worldwide, offering diverse applications. For courts, AI holds promise in expediting processes, enhancing efficiency, and even predicting or recommending outcomes.¹⁴

AI solutions have been utilized in various capacities within the judicial system. For example, they assist in categorizing legal documents through semantic processors, freezing funds in bank accounts to ensure execution compliance, transcribing, and storing testimonies and discussions from court hearings, summarizing legal proceedings, and automating the flow of judicial notifications.

11 UNESCO. **UNESCO capacity building needs assessment for artificial intelligence**. Paris: UNESCO, [2019]. Available at: <https://secure.unesco.org/survey/index.php?sid=67959&lang=en>. Accessed on: 21.03.2024.

12 UNESCO. **Recommendation on the Ethics of Artificial Intelligence**. Paris: UNESCO, 2022. Available at: https://unesdoc.unesco.org/ark:/48223/pf0000381137_eng. Accessed on: 21.03.2024.

13 ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT. **OECD framework for the classification of AI systems**. Paris: OECD Publishing, 2022. (OECD Digital Economy Papers, n. 323, Feb. 2022). Available at: <https://www.oecd.org/publications/oecd-framework-for-the-classification-of-ai-systems-cb6d9eca-en.htm>. Accessed on: 21.03.2024.

14 UNITED NATIONS DEVELOPMENT PROGRAMME. **E-Justice: digital transformation to close the justice gap**. New York: UNDP, 2022. p. 27. Available at: <https://www.undp.org/publications/e-justice-digital-transformation-close-justice-gap>. Accessed on: 21.03.2024.

Experiments with AI extend to the very formulation of judicial decisions and the determination of case outcomes. This includes offering assistance or guidance during the drafting of decisions, votes, or sentences. For example, these tools may suggest the most statistically precise arguments, highlight relevant theoretical frameworks or principled connections, or map similar cases to provide parameters for calculating compensations, fines, or the duration of liberty restrictions.

Other potential – and already ongoing – uses involve controlling and reducing processing errors, electronically monitoring the performance of judicial authorities (preventing undue delays), and expediting less significant cases (using video conferencing technologies to save on travel time).

In Brazil, courts have been extensively experimenting with artificial intelligence solutions, particularly generative AI. In an annual survey to map AI projects being developed by Brazilian courts, more than 150 different applications were identified in 2023 for a variety of tasks.¹⁵

At the Federal Supreme Court of Brazil, in addition to the applications already in operation that assist in classification, clustering, and handling of cases, the Presidency, in 2023, initiated a public call for the development of prototypes for generative AI solutions capable of generating automated summaries of judicial proceedings. A total of 23 legal entities successfully developed prototypes and showcased them at a demonstration event. Following an evaluation of these prototypes, it was determined that Large Language Models (LLMs) could be feasibly adapted for the task of summarizing judicial cases. Despite this positive outcome, the need for enhancements was recognized to ensure greater accuracy in the generated summaries.

The multiple AI experiments conducted by the Brazilian Judiciary indicate a promising effort by the courts to innovate and enhance the efficiency and effectiveness of their judicial systems using technology. However, despite these advancements, there are significant challenges in implementing generative AI solutions on a national scale, particularly because of the high costs involved with this technology.

15 BRAZIL. National Council of Justice. **Informações dos tribunais vão apoiar o GT do CNJ sobre novos modelos de inteligência artificial**. Brasília: CNJ, 2024. Available at: <https://www.cnj.jus.br/informacoes-dos-tribunais-va-apoiar-o-gt-do-cnj-sobre-novos-modelos-de-inteligencia-artificial/#:~:text=Com%20as%20informa%C3%A7%C3%B5es%20dos%20tribunais,de%20IA%20generativa%20na%20Justi%C3%A7a>. Accessed on: 16.04.2024.

Precautions and Risk Management

The increasing use of AI in judicial systems brings with it various risks and challenges, particularly concerning ethical issues, human rights protection, and ensuring equitable access to justice. A significant concern is AI's potential to perpetuate existing biases.¹⁶ Since AI algorithms rely on the data they are trained on, any incompleteness or inherent biases in the data can lead to unfair or discriminatory decisions, which often disproportionately impact marginalized groups.

Moreover, employing AI for decision-making within the Judiciary might erode public trust, especially as many people do not fully understand how such technology works. While AI can enhance the consistency and speed of legal proceedings, there's a risk of losing crucial human judgment elements vital for fairness. This includes considering individual contexts, nuances, and emotional factors like empathy, all of which are essential for just outcomes.¹⁷

Precisely for these reasons, the topic sparks discussions on the need for new regulatory frameworks and strict governance standards by judicial institutions. It is essential to ensure human oversight of all tasks that employ AI, in order to protect the rule of law, human rights, and democratic values. Additionally, this new reality highlights the necessity to incorporate into these regulatory models ethical and legal concerns related to the harmful effects of algorithmic biases. There is also a pressing need for the imposition of duties regarding transparency, accountability, and the explainability of automated models used to support the resolution of judicial cases.

In this context, numerous countries are actively debating how to regulate artificial intelligence. Several notable documents have been developed in this field: the Executive Order on Safety, Protection, and Reliability in the Development and Use of Artificial Intelligence, issued by President Biden on October 30, 2023; the European Union's Artificial Intelligence Regulation, approved by the European Parliament on

16 UNITED NATIONS DEVELOPMENT PROGRAMME. **E-Justice**: digital transformation to close the justice gap. New York: UNDP, 2022. Available at: <https://www.undp.org/publications/e-justice-digital-transformation-close-justice-gap>. Accessed on: 21.03.2024.

17 UNITED NATIONS DEVELOPMENT PROGRAMME. **E-Justice**: digital transformation to close the justice gap. New York: UNDP, 2022. Available at: <https://www.undp.org/publications/e-justice-digital-transformation-close-justice-gap>. Accessed on: 21.03.2024.

March 30, 2024; UNESCO's Recommendation on the Ethics of Artificial Intelligence; and OECD's Recommendation on Artificial Intelligence.

To illustrate, the OECD recommendation (OECD/LEGAL/0449), adopted in 2019, outlines principles for the responsible stewardship of trustworthy AI.¹⁸ These principles include commitments to: (i) use AI to promote sustainable growth, reduce inequalities, and improve human well-being; (ii) respect the rule of law, human rights, and democratic values throughout the AI system lifecycle; (iii) ensure transparency and explainability of AI systems; (iv) develop robust and secure AI systems, with proper risk management; and (v) hold AI actors accountable for their systems' functioning and adherence to all guiding principles.

Specifically within the judicial context, in December 2018, the European Commission for the Efficiency of Justice (CEPEJ) of the Council of Europe adopted the European Ethical Charter on the Use of Artificial Intelligence in Judicial Systems and their environments.¹⁹ The Charter established five ethical principles: (i) the principle of respect for fundamental rights; (ii) the principle of non-discrimination; (iii) the principle of quality and security; (iv) the principle of transparency, impartiality, and fairness; and (v) the principle "under user control".

The European Commission also proposed classifying the ways AI is used by the Judiciary into four categories based on their adherence to the principles established in the Charter²⁰: The first category, related to *uses to be encouraged* includes: enhancing jurisprudence; improving access to legal information; and both quantitative and qualitative analysis, including forecasting to improve court services. The second category, related to *possible uses, requiring considerable methodological precautions*, covers: compiling precedents in repetitive cases;

18 ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT. **Recommendation of the Council on Artificial Intelligence**: OECD/LEGAL/0449. Paris: OECD, 2023. Available at: <https://legalinstruments.oecd.org/en/instruments/oecd-legal-0449>. Accessed on: 21.03.2024.

19 COUNCIL OF EUROPE. European Commission for the Efficiency of Justice. **European ethical charter on the use of artificial intelligence in judicial systems and their environment**. Strasbourg: CEPEJ, 2018. Adopted at the 31st plenary meeting of the CEPEJ (Strasbourg, 3-4 December 2018). Available at: <https://rm.coe.int/ethical-charter-en-for-publication-4-december-2018/16808f699c>. Accessed on: 21.03.2024.

20 COUNCIL OF EUROPE. European Commission for the Efficiency of Justice. **European ethical charter on the use of artificial intelligence in judicial systems and their environment**. Strasbourg: CEPEJ, 2018. Adopted at the 31st plenary meeting of the CEPEJ (Strasbourg, 3-4 December 2018). Available at: <https://rm.coe.int/ethical-charter-en-for-publication-4-december-2018/16808f699c>. Accessed on: 21.03.2024.

supporting the facilitation of settlements in civil matters; resolving disputes online when agreed upon by the parties; and using algorithms in criminal investigations to identify crime locations. The third category corresponds to *uses to be considered following additional scientific studies*, which includes analyzing judges' decision-making profiles and predicting judicial decisions. Finally, the fourth category, which refers to *uses to be considered with the most extreme reservations* includes the use of algorithms in criminal cases to create individual profiles and the development of consolidated jurisprudence based on quantitative criteria.

A thorough review of the established norms and principles highlights the array of risks associated with using AI in the justice system, underscoring the need to carefully consider these to mitigate any potential drawbacks and negative impacts. In this context, it's critical to implement these technological innovations in a manner that safeguards fundamental rights and encourages ongoing dialogue about the role of artificial intelligence within the Judiciary. Facilitating such discussions can help pinpoint effective strategies for applying AI justly and equitably, ensuring that all affected rights are protected. Additionally, involving a diverse range of stakeholders in these conversations is vital to achieve an inclusive approach that respects and integrates multiple perspectives and needs, thereby fostering the development of a judicial system that is fairer and more accessible to everyone.

2.3. Institutional Capacities for the Development of New Technologies

The development and integration of new technologies by courts also require appropriate institutional capacities. According to the World Bank²¹, institutions should consider three macro categories of capacities: strengthening social participation and stakeholder engagement, efficiency of public policy instruments, and effectiveness of organizational arrangements. From a practical standpoint, for the incorporation of new technologies, three types of institutional capacities stand out: governance, technical, and risk management.

21 WORLD BANK GROUP. **Institutional capacities and their contributing characteristics for institutional diagnostics, program design and results management**. Washington: World Bank Group, 2011. Available at: <http://documents.worldbank.org/curated/en/249381467986349471/Institutional-capacities-and-their-contributing-characteristics-for-institutional-diagnostics-program-design-and-results-management>. Accessed on: 22.03.2024.

Governance capacity refers to how courts are implementing governance mechanisms to manage the introduction and use of new technologies within their institutional frameworks. This involves the critical tasks of reviewing and crafting regulatory instruments and policy implementation strategies to align the institution with modernization needs and the integration of new technologies into their operations. In practice, this is being observed in several countries where courts are establishing new regulatory frameworks to facilitate these institutional advancements and enable the effective adoption of technologies.

Technical capacity involves the ability of judicial institutions to conduct appropriate contracting and to critically evaluate the advantages and drawbacks of integrating technological solutions into judicial processes. The rapid advancement of technology often leads to significant informational asymmetries, driven by the swift pace of technological releases and updates. This situation underscores the importance of establishing partnerships, both among public entities and between public and private sectors, to facilitate the development and implementation of technology within judicial operations. Given the wide array of technological solutions available on the market, it is crucial that the selection process consider this diversity to choose technologies that align closely with the specific needs of the courts.

Finally, *risk management* capacity is crucial for addressing cybersecurity and data protection - key concerns in the adoption of new technologies. Preventing cyberattacks²² on court systems requires robust information security mechanisms to safeguard against data breaches. As our society becomes increasingly digital, it is imperative to invest in proactive cybersecurity measures and enforce strict regulatory compliance to protect judicial institutions from escalating cyber threats. This means continuously updating security protocols and infrastructure to keep pace with evolving technological risks and ensuring comprehensive protection measures are in place.

Amid growing cybersecurity concerns, the development of robust personal data protection programs within the Judiciary is vital to safeguard the confidentiality and privacy of individuals' information. As courts handle an ever-increasing volume of

22 IGNUDO, Tom. Portions of Pennsylvania Courts website unavailable due to cyberattack. **CBS News**, Feb. 4, 2024. Available at: <https://www.cbsnews.com/philadelphia/news/pennsylvania-courts-cyber-attack/>. Accessed: 22.03.2024 and HACKERS hit Australian state's court recording database. **Reuters**, 2024. Available at: <https://www.reuters.com/technology/cybersecurity/hackers-hit-australian-states-court-recording-database-2024-01-02/>. Accessed on: 22.03.2024.

data, it is imperative to implement effective safeguards against unauthorized access and misuse. This involves establishing comprehensive data protection strategies, which should include deploying data anonymization technologies, enforcing strict access control policies, and conducting regular training sessions for staff on best data protection practices. By investing in and continuously enhancing these data protection measures, the Judiciary demonstrates its commitment to upholding citizens' privacy and strengthening public trust in the judicial system.

Investing in robust institutional capacities yields better returns in the adoption of new technologies. Well-established institutions are capable of crafting clear and appropriate policies to guide the integration of solutions, improving efficiency, and enhancing the quality of services provided to citizens.

2.4. New Technologies, the Judiciary, and Disinformation

Finally, beyond governance issues, the rise of new technologies has brought substantial challenges for the Judiciary in addressing disinformation and related problems like hate speech, conspiracy theories, and incitement to violence. The swift and widespread dissemination of inaccurate and context-stripped information can jeopardize the integrity of judicial decisions and erode the public's confidence in the Judiciary system's overall functionality.

According to the OECD²³, while disinformation itself isn't a novel issue, the advent of digital technology has dramatically increased both its scope and effects. Nowadays, anyone with internet access can create and share content on digital platforms, circumventing the ethical, journalistic, academic, and scientific standards that have traditionally safeguarded information integrity. The progression of generative AI technologies further heightens this issue. The capability to easily produce convincing synthetic videos, images, and audio (known as deepfakes) enables the manipulation of reality to bolster untrue narratives, complicating the fight against disinformation.

23 ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT. **Facts not fakes:** tackling disinformation, strengthening information integrity. Paris: OECD Publishing, 2024. Available at: <https://www.oecd.org/publications/facts-not-fakes-tackling-disinformation-strengthening-information-integrity-d909ff7a-en.htm>. Accessed on: 22.03.2024.

According to the World Economic Forum's analysis in this year's Global Risks Report, disinformation stands as the foremost short-term global threat. This concern is amplified by the increasing generation of synthetic content through AI.²⁴ The report highlights that the spread of disinformation, combined with rising skepticism towards traditional information sources like the media and governments, poses a significant risk of deepening polarization, igniting social unrest, and compromising the integrity of electoral processes across numerous economies within the next two years.

In judicial systems globally, courts are currently facing challenges with disinformation campaigns aimed at compromising their integrity and independence. As a result, the emergence of new technologies has introduced significant hurdles to maintaining the credibility and trust in judicial institutions. Addressing this issue, various nations have started to reevaluate and adapt their policies and institutional frameworks to combat disinformation effectively. In response, numerous targeted solutions have been implemented. Many courts are dedicating resources to public awareness initiatives, fostering digital literacy, and deepening public understanding of legal processes. These efforts help individuals discern between authentic and fraudulent information. Additionally, deploying fact-checking tools has emerged as a valuable strategy in detecting and curtailing the spread of disinformation pertaining to legal proceedings. These tools empower courts to swiftly counteract misinformation by offering timely clarifications and correcting inaccuracies, thereby preventing the further dissemination of falsehoods.

Increasingly, courts are adopting innovative communication strategies to engage with the public proactively. This includes leveraging a variety of channels and formats, with a notable emphasis on social media, to foster openness and transparency. Such transparent and open communication efforts by the Judiciary are vital for nurturing and preserving public trust. By providing clear, easily understandable, and accessible information about the Judiciary's operations, legal procedures, and rulings, courts are making strides towards demystifying their processes. This approach significantly aids in clarifying misconceptions and building a closer relationship with the community.

24 WORLD ECONOMIC FORUM. **The global risks report 2024**: insight report. 19th. ed. Coligny: WEF, 2024. Available at: <https://www.weforum.org/publications/global-risks-report-2024/>. Accessed on: 08.03.2024.

In Brazil, the Federal Supreme Court established the Program to Fight Disinformation (PCD-STF, the acronym in Portuguese) in 2021 to counteract the negative effects of disinformation that could compromise its constitutional duties and missions. The program acts as a hub, bringing together around 100 partners, including universities, civil society organizations, and digital platforms, to promote cooperation in the fight against disinformation. Faced with an exponential increase in false narratives seeking to undermine the institution's reliability, distort the meaning or scope of its decisions, and jeopardize democratic stability, the Court set up a strategic plan in 2023, comprising various actions.

The actions of the Program to Fight Disinformation are organized around three main pillars: (i) understanding disinformation, ensuring the necessary information is available for effective action against disinformation; (ii) reducing the impact of disinformative narratives, enabling society at large to adopt quick responses to disinformation; and (iii) restoring public trust, promoting the value of truth, democracy, and institutions.

3. Discussion Topics

Based on the points discussed, we need to collectively consider the impacts, risks, and opportunities linked to the adoption and implementation of new technologies by the Judiciary. The following questions are suggested for discussion, sharing experiences, and reflection:

1. What are the main opportunities, impacts, and challenges associated with implementing new technologies, such as artificial intelligence, to enhance the efficiency of the Judiciary? How can transparency, personal data protection, adherence to ethical principles, and the mitigation of risks and biases in the use of these tools be ensured? What are the best practices in utilizing technology to provide greater agility and efficiency to the judicial system, without compromising justice and due process?
2. How can the Judiciary adapt and innovate in response to the rapid evolution of new technologies, particularly in the context of legal procedures and judicial administration?
3. What role should the Judiciary play in combating disinformation campaigns that affect judicial proceedings? How can the Judiciary protect the integrity of legal and judicial information?

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Digital Transformation and the Use of Technology to Enhance Judicial Efficiency

UNESCO's contribution as a knowledge partner

Abstract

This paper aims at providing some elements for a specific discussion about how digital transformation and the use of technology may become a central tool to enhance judicial efficiency, protect human rights and fight disinformation. Lawyers, law firms, courts, and government agencies are using AI for different purposes. AI-enabled justice systems thus promise to scale up quality of services while reducing expenses related to judicial operations. For AI to benefit the public good, its design and implementation must, at minimum, avoid harming fundamental human values guaranteed by international human rights law, which provides a robust framework for the protection of these values. AI, if adequate safeguards are implemented, can also be a key enabler in enhancing and promoting human rights. Any AI initiative in the Judiciary must also adhere to the ethical norms of accountability of AI systems' judgements and openness.

Disinformation may target and harm the role of the Judiciary and the rule of law. According to freedom of expression and other human rights international obligations and standards, disinformation must be dealt through a variety of instruments and based on the respect of a series of fundamental principles and values. Moreover, UNESCO emphasizes the fact that judicial actors, particularly judges, should pay special attention when reviewing cases related to addressing measures to fight misinformation and disinformation, guaranteeing that international standards on freedom of expression, data protection, and privacy are fully respected within those measures, and that the proportionality principle is applied.

1. Introduction

The summit of heads of Supreme Courts and Constitutional Courts (J20) has become a fundamental activity within the wider context of the Group of G20. The J20 provides a unique opportunity for constitutional jurisdiction bodies to discuss, exchange information, and reinforce cooperation around new and challenging developments in the legal landscape. This initiative thus may bring important improvements in areas such as open justice, improved efficiency, scrutiny and accountability and an overall strengthening of the rule of law principle.

This paper aims at providing some elements for a specific discussion about how digital transformation and the use of technology may become a central tool to enhance judicial efficiency. The text will present how Artificial Intelligence (AI) tools may support judicial and other actors in the performance (and in some cases transformation) of their activities, as well as the risks and challenges both from an ethical and fundamental freedoms perspective. A few reflections are also included regarding the role of the Judiciary in protecting freedom of expression and other fundamentals rights when fighting misinformation and disinformation, particularly from the perspective of the dissemination of misleading narratives which may potentially erode citizens' trust in judicial institutions and harm the rule of law.

This paper particularly benefits from the **comprehensive program to engage members of the judicial systems developed by UNESCO**. Since 2013, through the development of tools and resources, including a series of Massive Open Online Courses (MOOCs), the organization of on-the-ground trainings and workshops, and by building institutional partnerships with regional human rights courts and key judicial institutions, UNESCO's Judges' Initiative has effectively **involved 36,000 judicial actors from over 160 countries** on activities designed to share knowledge on international and regional standards on freedom of expression, access to information, the safety of journalists and digital transformation¹. This approach, based on the

¹ See all the details of the initiative here: UNESCO. **Training security forces and the judiciary on freedom of expression**. [Paris, 2023]. Available at: <https://www.unesco.org/en/freedom-expression-rule-law/training-security-forces-judiciary>. Accessed on: 13.03.2024.

promotion of universal and regional fundamental freedoms, may provide a basis and essential framework for the J20 discussions around the topics mentioned above.

Over the past three years, trainings have also incorporated **sessions to help judicial actors understanding the benefits and risks of AI in their work** and assist them in mitigating the potential **human rights risks of AI** by providing guidance on the relevant international human rights laws, principles, rules, and emerging jurisprudence that underpin the ethical use of AI. These activities are based on needs assessments and surveys launched by UNESCO in 2020 and 2023, which received 1265 responses from judicial actors in 100 countries around the world. **Over 85% of the respondents expressed interest in learning about the working of AI systems**, the use of AI tools in legal systems including in the administration of justice, civil and criminal litigation, and investigations and law enforcement. **About 90% of the respondents underscored the need for legal training concerning the implications of AI systems** for bias, discrimination, freedom of expression, privacy, and understanding the ethical challenges presented by the use of AI in different social contexts.²

2. Artificial Intelligence, Judicial Actors and the Rule of Law

The Judiciary plays a fundamental role in **upholding the rule of law and good governance**. As already mentioned, this role may be enhanced through the use of AI for judicial administration purposes, so that Courts are able to more easily provide modern, digital, and responsive judicial services. This paper will show how the use of AI may not only assist judges and prosecutors in collecting relevant information, identifying appropriate case law and precedents, or facilitating access and analysis of witness depositions and evidence, but also support lawyers, litigants, and government agencies in forecasting case outcomes, or assessing success chances, among other aspects.

2 For this purpose, UNESCO and partners also developed a global online course on AI and the Rule of Law, with the aim to engage judicial actors in a global and timely discussion around AI's application and impact on the rule of law. The course and trainings have reached over 5,900 judicial actors from 142 countries. Additionally, a global toolkit for the Judiciary on this topic was also published. See: UNESCO. **Global toolkit on AI and the rule of law for the judiciary**. Paris: UNESCO, 2023. Available at: <https://unesdoc.unesco.org/ark:/48223/pf0000387331>. Accessed on: 13.03.2024.

In addition to this, the use of new technologies to facilitate access to justice needs to take place avoiding particularly **social exclusion and excessive or unnecessary rigidity**, while keeping respect for procedural safeguards.

Judicial actors sit at the **very heart of the rule of law systems and their checks-and-balances systems**, as they are entrusted to review decisions directly affecting important **areas of public interest or the fundamental rights of citizens**. Thus, they play an important role in protecting freedom of expression, access to information and other rights **both in the context of emerging new technologies or within a more “traditional” landscape**. Judicial actors are at the same time in the position to fight misinformation and disinformation when reviewing cases related to measures in this area by guaranteeing that internationally recognised fundamental freedoms are respected. Also, by supporting an open justice model Courts contribute to guaranteeing the principle of **transparency and access to information**.

3. General Notions and Issues around AI

According to UNESCO, **AI systems have the capacity to process data and information in a way that resembles intelligent behavior**, typically including aspects of reasoning, learning, perception, prediction, planning or control.³ AI systems increasingly employ machine learning (ML), a set of techniques that enables machines to learn automatically using patterns and deductions rather than direct instructions from a person.⁴

Moreover, the specific field of **generative AI** is currently experiencing an era of unprecedented progress. This type of machine learning algorithms has been designed to create new content, including audio, code, images, text, simulations, and videos. **Generative AI is capable of generating text, including legal arguments or research**, by calculating the probability of the word to follow using patterns learned from extensive data sets. This makes **generative AI a potent tool in several fields, including the legal profession**. The emergence, success, and controversies around

3 UNESCO. **Recommendation on the ethics of artificial intelligence**. Paris: UNESCO, 2021. Available at: <https://unesdoc.unesco.org/ark:/48223/pf0000380455>. Accessed on: 13.03.2024.

4 ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT. **Artificial intelligence in society**. Paris: OECD, 2019. Available at: <https://doi.org/10.1787/eedfee77-en>. Accessed on: 13.03.2024.

ChatGPT, for instance, clearly show the challenges around the use of generative AI systems. The potential risks of using AI for legal work range from inaccuracy, falsehood, and unreliability of the information generated by AI chatbot; potential infringements of privacy, data protection and copyright laws; to reinforcement of biases in the data. For this reason, **69% of the respondents to UNESCO's survey highlighted the importance of principles and rules for using these tools.**

The term "black box" is used to denote a technological system that is inherently opaque, whose inner workings or underlying logic are not properly comprehended, or whose outputs and effects cannot be explained.⁵ Many AI systems are considered to be highly complex systems whose decision-making and reasoning processes are not easily understood by users, and even sometimes by their developers. The **opacity of AI algorithms** and the difficulty in determining liability for the decisions produced by AI systems mean that human rights harms can occur, and establishing responsibility for these harms may trigger significant challenges. **Without incorporating ethical and human rights safeguards in AI design and deployment, the risks of using AI tools for different purposes, including the administration of justice, will intensify.** This also shows the need for a proper discussion and legal research around **emerging liability issues** and the need to adapt the existing legal regimes to new scenarios deriving from the use of AI. In other words, the large number of people usually involved in the design, development, deployment, and operation of AI systems makes it difficult for victims to identify the person, company, or institution potentially liable for damage caused and to prove the conditions for a claim for damages.

4. AI and Fundamental Freedoms

4.1. Introduction

For AI to benefit the public good, its design and implementation must, at minimum, **avoid harming fundamental human values guaranteed by international human**

⁵ AMERICAN ASSOCIATION FOR THE ADVANCEMENT OF SCIENCE. **Artificial intelligence and the courts:** materials for judges. New York: AAAS, [2024]. Available at: <https://www.aaas.org/ai2/projects/law/judicialpapers>. Accessed on: 13.03.2024.

rights law, which provides a robust framework for the protection of these values. AI, if adequate safeguards are implemented, could also be **a key enabler in enhancing and promoting human rights**.

Without proper guardrails, AI could however **encroach on human rights**. For instance, undetected bias might be present in ML algorithms that predict recidivism. Or AI deployment could be used to **limit people's freedom of expression** or their ability to engage in political activity or to identify political dissidents. AI could also harm human rights in situations where there is use of poor-quality training data, system design or complex interactions between the AI system and its environment. One such example is **algorithmic exacerbation of hate speech or incitement of online violence**. Another example is the **amplification of disinformation and misinformation**, which could impact the right to participate in political and public affairs, especially during elections. The likely scale and impact of harm will be linked to the scale and potential impact of decisions by any specific AI system. At the same time, it is important to note that AI can be used to **identify hate speech and help with taking down content** related to promotion of terrorism. **Numerous applications of AI may also have the potential to directly affect the equality of access to fundamental rights**.

It is important to bear in mind, in any case, that **several human rights can be implicated when using AI in the justice system**, particularly in criminal cases, including the rights to equality and non-discrimination, equality before the law, personal security and liberty, the right to privacy, the right to a fair and public hearing, procedural fairness, and the presumption of innocence.

The Judiciary, as a public institution, is held to a **higher standard** when it comes to behavior of judicial actors, and judges in particular, towards individuals and society. This has been reflected in the rule of law principles such as justification, proportionality, and equality. On the one hand, **AI can increase the efficiency of judicial practitioners**. **On the other hand, it can also erode the procedural legitimacy of and trust** in democratic institutions and the authority of the law.

Human rights law **institutional mechanisms** provide the direction and basis to ensure the ethical and human-centered development and use of AI in society. Judicial actors can carry out **human rights due diligence such as human rights impact assessments**

(HRIAs) to assess and evaluate the risks posed by deployment of AI on human rights. The higher the risk to human rights, the more AI should be deemed unfit for use without human supervision. Human rights impact assessments can help identify **vulnerable or at-risk groups or communities** in relation to AI. Some individuals or communities may be under-represented due, for example, to limited smartphone use and the absence of their data in the datasets used to train AI systems. Human rights-based approach can thus provide **remedy** to those whose rights are violated.

A challenge related to human rights approach to AI development and deployment is the fact that their enforcement is tied to **jurisdictions**. Claimants must often demonstrate legal standing in a particular jurisdiction. When issues involve major **international corporations and AI systems that span numerous jurisdictions**, these approaches may not be optimal, even though international human rights law may always serve as an overarching framework.

4.2. Fundamental Freedoms Potentially Affected by the use of AI by the Judiciary

Biased and opaque AI systems raise concerns regarding **fair trial standards**, such as the presumption of innocence, the right to be informed promptly of the origin and nature of an accusation, the right to a fair hearing, and the ability to defend oneself in person. The opaqueness of decision making by AI systems also raises concerns regarding the arbitrary deprivation of liberty, and the right not to be punished without law. It is thus important to stress that **no person should be exposed to an automated decision with no human oversight that results in a criminal record**, and AI technologies should not compromise the right to a fair trial by an impartial and independent tribunal. AI systems should not **pre-label individuals as criminals without trial**, nor should they enable the authorities to take unwarranted, disproportionate action against individuals without reasonable suspicion.

The use of AI systems in situations where human rights are at stake may present difficulties in ensuring the **right to remedy**. Since many AI systems are opaque, individuals may be unaware of how decisions affecting their rights were made, or whether the process was discriminatory. Often, the judicial operator using the AI system may be unable to explain the automated decision-making process.

The rights to **protection against discrimination** may be violated by AI systems, due to (i) the potential for bias on the part of algorithm developers; (ii) bias embedded in the model upon which the AI systems are built; (iii) bias embedded in the data sets used to train the models; or (iv) bias introduced when such systems are applied in real-world settings. These risks become exacerbated in situations when AI systems are deployed to assist judicial practitioners in their everyday activities. The design of AI systems and their use in judicial procedures should be governed with the aim of producing human rights-compliant, non-discriminatory results. Minimum standards and safeguards should be established; if they cannot be met, the AI system in question should not be used. Additionally, AI should be **regulated so that algorithmic oversight is sufficiently guaranteed** to allow for effective **independent review**.

5. AI and Legal Actors

Lawyers, law firms, courts, and government agencies are using AI for different purposes. For instance, lawyers are using AI for legal research and to find relevant precedents to strengthen their arguments. Law firms are using it to forecast case outcomes, assess success chances, and counsel clients regarding legal proceedings. AI has also been used by lawyers to forecast how particular judges would rule on various topics. Such systems may also be integrated into **online court platforms or applications** where individuals explore their legal alternatives or enter and exchange case-related information. The AI system would assist litigants in being more efficient when deciding on filing. Similarly, government entities are using AI to assess the likelihood of success in identifying or pursuing particular courses of action against individuals and businesses, such as in tax-related cases.

Courts are expected to provide modern, digital, and responsive judicial services, while reducing the pendency of cases in a context of increasing budgetary constraints. AI systems gather and analyze vast troves of information, identify patterns, predict optimal approaches, detect anomalies, classify issues, summarize information, and draft documents, including judgements. For example, AI may be used to identify potential cases of SLAPP when a significant number of cases is filed against the same

defendant and justify an early dismissal by the Court⁶. According to UNESCO surveys', **44% of the respondents stated that they had used AI tools for work-related activities, and 41% said they had used ChatGPT or other AI chatbots** to perform three main tasks: searching (43%), drafting documents (28%) and brainstorming (14%).

AI-enabled justice systems thus promise to scale up quality of services while reducing expenses related to judicial operations.

When deployed with human rights and ethical safeguards, **AI systems can make legal procedures more accessible to a wider group of individuals, in multiple languages, and at lower costs.**

Examples:

- a. In the criminal justice system, AI models have been deployed to monitor and recognize defendants; support sentencing and bail decisions; and better assess evidence.
- b. In the civil justice system, AI has been deployed in family, housing, debt, employment, and consumer litigation. This offers opportunities for automating certain judicial functions, such as docket management, scheduling hearings and trials, and managing jury functions, which in turn can lead to greater efficiency.

The promise is therefore that court systems may become **more efficient and be able to prioritize time and resources** to ensure timely justice.

6. AI Tools Supporting the Activities and Responsibilities of the Judiciary

AI tools are frequently used as **forecasting tools** by the Judiciary, including pre-drafting judgment templates for judges, making predictions or sentencing recommendations for bail, sentencing and financial calculations. They are also used

⁶ SORAIDE, Rosario. **The "misuse" of the judicial system to attack freedom of expression: trends, challenges and responses.** Paris: UNESCO, 2022. Available at: <https://unesdoc.unesco.org/ark:/48223/pf0000383832>. Accessed on: 13.03.2024.

to assess the outcome of cases based on the past activities of prosecutors and judges. AI tools can provide information to a judge that factors in a wide amount of case law and can decrease the research time in the preparation of decisions. Predictive systems can assist judges in having better awareness of trends in the case law and in anticipating how a possible decision will stand in the context of the case law⁷.

On the other hand, **there is a risk that judges might improperly use AI-based support systems to automatize decisions by relying, in absence of human oversight, on technological systems** that were not designed for that purpose but are perceived as more objective than they are. Great care should be taken to evaluate what such tools are capable of and under what conditions they may be deployed. In an algorithm driven justice system, judges should not be the mere appliers of algorithms, but also their critical evaluators. For instance, **27% of the judicial actors who answered UNESCO's survey were concerned about** the quality of the AI chatbot's output, particularly **the potential inaccuracy, falsehood, and unreliability of the information generated by the chatbot**, and **39% said they used the chatbot's output but only after conducting a review and editing process. Hence, it is essential to raise capacities of judicial actors on AI issues.**

Increasingly, data-driven risk assessment tools are used to anticipate **the probability of future criminal behavior**. Training data may contain criminal records, arrest records, crime statistics, records of police interventions in certain neighborhoods, social media posts, communications data, personal data, and travel records. **Risk assessment techniques**, according to their proponents, make the criminal justice system more equitable. The proponents of such systems argue that AI could substitute judges' intuition and bias, particularly racial bias, with a risk assessment score that appears to be more objective. However, in practice, numerous studies have shown that **these tools might embed and amplify biases towards marginalized and vulnerable populations.**

The use of AI techniques can reduce the requirement for human translation. These tools can rapidly identify documents containing foreign language text and provide a list of the languages they contain, enabling more thorough planning. Several AI

7 For specific examples, see UNESCO. **Global toolkit on AI and the rule of law for the judiciary**. Paris: UNESCO, 2023. p. 54-86. Available on: <https://unesdoc.unesco.org/ark:/48223/pf0000387331>. Accessed on: 13.03.2024.

technologies can also translate text from one language to another. **Natural language processing** (NLP) is a machine learning technology that gives computers the ability to interpret, manipulate, and comprehend human language. NLP models are still error prone, and **errors in translation can have serious consequences for fundamental rights of individuals** when these models are deployed in judicial operations. It is worth noting that NLP tools are not yet as effective in languages other than English. As a result, automated tools may not be as accurate in evaluating non-English speakers. This is especially true for language translation tools, which can sometimes struggle with nuanced meanings and context. In general, when languages are spoken by less people, less data are available and AI tools are more prone to error.

Digitization of court documents has also enabled courts and other judicial actors to rely on AI assistance for administrative functions. AI could thus also facilitate digital file management, which in turn, would make judicial operators more effective by enabling them to focus on more substantive matters.

7. Ethical Challenges Associated to the Use of AI by Judicial Actors

The UNESCO Recommendation on the Ethics of AI, approaches AI ethics as a systematic normative reflection, based on a holistic, comprehensive, multicultural, and evolving framework of interdependent values, principles and actions that can guide societies in dealing responsibly with the known and unknown impacts of AI technologies on human beings, societies and the environment and ecosystems. UNESCO considers ethics as a dynamic basis for the normative evaluation and guidance of AI technologies, referring to human dignity, well-being and the prevention of harm as a compass and as rooted in the ethics of science and technology⁸.

Any AI initiative in the Judiciary must adhere to the **ethical norms of accountability of AI systems' judgements and openness**. However, while **73%** of the judicial actors responding to UNESCO's survey **considered that there should be mandatory regulations for judicial actors for using AI tools, only 9% declared that their**

8 UNESCO. **Recommendations on the ethics of Artificial Intelligence**. Paris: UNESCO, 2022. Available at: <https://unesdoc.unesco.org/ark:/48223/pf0000381137>. Accessed on: 14.03.2024.

organization had issued guidelines or regulations for using AI systems or provided AI-related training or information.

AI bias is a systematic difference in the treatment of certain objects, people, or groups (e.g. stereotyping, prejudice or favoritism) compared to others by AI algorithms. AI systems are far from being neutral pieces of technology. Instead, they can reflect the (un)conscious preferences, priorities, and prejudices of their creators. Even when software developers take great care to minimize any influence by their own bias, the data used to train an algorithm can be another significant source of bias. Furthermore, even a carefully constructed algorithm must base its judgments on information from an unpredictable and imperfect reality. AI programs are susceptible to making judgement errors in novel situations.

One of the most challenging aspects of **algorithmic bias** is that its creation does not require engineers to be **intentionally** racist or sexist. As the computer industry develops AI, it runs the risk of incorporating racism and other prejudices into code that will make choices for decades. And because deep learning implies that code, not humans, will write code, the need to eliminate algorithmic bias is even higher. Even if an AI system appears to be neutral on the surface, its algorithms might lead to discriminating assessments and consequences. Discrimination often can arise from **prejudiced practices in the real world which feed into the data** used by the AI system. If not accompanied by adequate safeguards against bias, AI technologies might particularly contribute to disproportionately deny access to rights to women, minorities, and those who are already the most **vulnerable and marginalized**.

When dealing with an AI system, **transparency refers to how much information is made available to the user**. The model's structure, its intended uses, how and when deployment decisions were made, who made those decisions are all included in of transparency, which also includes design decisions and training data. Yet, due to the intricately linked and layered processes of algorithmic programming, maintaining algorithm transparency is becoming more and more difficult.

The users of an AI system deployed in the Judiciary (e.g. plaintiffs and defendants) are often unaware about how the AI system was trained and how it takes decisions. Therefore, when it comes to taking legal action against wrong and harmful AI system outputs, it is difficult for those impacted by the use of AI systems to challenge them

in the absence of transparency around how the system was designed and how it functions. In this regard, **14% of judicial actors responding to UNESCO's survey raised concerns regarding the lack of transparency of the AI chatbot.** The main opacity elements regarding AI chatbots identified by respondents were the data used to train the system, how the system was developed, and how it operates.

The need for algorithmic transparency, include requests to companies to disclose their proprietary algorithms so that they can be reviewed by third parties, including independent auditors, regulators, or the general public before implementation. However, providing the algorithms or the underlying software code to the public is unlikely, as private companies regard their algorithm as a **key proprietary asset** and are unwilling to disclose it.

It is obvious that the ethical challenges presented above also pose important implications in the field of the protection of fundamental freedoms. Algorithmic bias may have implications on the effective protection of the right to fair trial and non-discrimination, and transparency can be connected to the right to access to information. In any case it is also clear that discussions on AI ethics often surpass strictly legal standards and refer to broader issues of digital policy and good governance and administration.

8. The Role of the Judiciary in Protecting Legal and Judicial Information

The term disinformation describes intentionally **false or misleading content with potentially harmful consequences.** Disinformation, particularly in the online world, has a complex life cycle ranging from production to transmission, reception, and reproduction. By promoting certain types of narratives, disinformation strategies may have an impact on the quality of election processes, social cohesion, access to public services, or access to information on matters of public interest. It can also be a tool in the hands of malicious (public and private) actors to suppress and silence dissenting voices. During the recent COVID-19 pandemic, UNESCO warned that **falsehoods have spread as fast as the virus itself and issued guidelines on the**

role of judicial actors in the protection and promotion of the rights to freedom of expression, access to information and privacy in relation with the COVID-199.

Disinformation may also **target and harm the role of the Judiciary and the rule of law**. The right to freedom of expression encompasses the possibility of questioning and criticising decisions from State bodies and institutions, including the Judiciary. However, the dissemination of misleading narratives regarding the political intentions of judges and magistrates, the development of judicial procedures, the legal arguments presented by the parties, or the actual content and legal basis of decisions of judicial bodies **may erode citizens' trust in judicial institutions and present a negative impact on the effectiveness of the rule of law principle**.

According to freedom of expression and other human rights international obligations and standards, disinformation must be dealt through a variety of instruments and based on the respect for a series of fundamental principles and values.

Firstly, general legal or regulatory prohibitions on the dissemination of information based on vague and ambiguous ideas, including “false news” or “non-objective information”, are **incompatible with international standards for restrictions on freedom of expression**.

Secondly, State actors **should not make, sponsor, encourage or further disseminate** statements which they know or reasonably should know to be false (disinformation) or which demonstrate a reckless disregard for verifiable information (propaganda).

Thirdly, State actors should, in accordance with their domestic and international legal obligations, and their public duties, take care to ensure that **they disseminate reliable and trustworthy information, including matters of public interest**. Therefore, any government efforts to counter disinformation should be based on the full, honest, and evolving communication with the public, and the careful and public correction of misinformation that could lead to public harm.

9 UNESCO. **COVID-19: the role of judicial operators in the protection and promotion of the right to freedom of expression: guidelines**. [Paris]: UNESCO, 2020. Available at: <https://unesdoc.unesco.org/ark:/48223/pf0000374208>. Accessed on: 13.03.2024.

Fourthly, in order to avoid and discourage disinformation and counter its negative effects, public authorities must promote a free, independent, and diverse communications environment, including media diversity and ensure the presence of strong, independent and adequately resourced public service media. They should also **ensure educational settings that promote media literacy** and otherwise give individuals critical-thinking tools to distinguish between verifiable and unverifiable claims.

Fifthly, measures to combat disinformation must never **prevent journalists and media actors from carrying out their work** or lead to content being unduly blocked on the Internet. In this sense, any **imposition on media and journalists to exclusively rely on official sources** in their reporting activities will represent an excessive and unjustified interference in their right to freely seek and disseminate information.

Finally, UNESCO emphasizes that judicial actors, particularly judges, should pay special attention when **reviewing cases related to addressing measures to fight misinformation and disinformation**, guaranteeing that **international standards on freedom of expression, data protection and privacy are fully respected within those measures, and that the proportionality principle is applied**. In addition to this, it is important to underscore the need to properly guarantee the principle of **transparency and access to information** vis-à-vis the activities of judicial actors, including access to judicial proceedings as well as to decisions.¹⁰

9. Brief Recommendations

- A. Capacity building – there is an urgent need to reinforce the pre-service and in-service education of judges and other judicial operators on these matters.
- B. Administrative and instructional design – The Judicial Branch should incorporate a risk assessment when establishing the policies to acquire AI solutions, this risk assessment must take into account the protection of fundamental freedoms.

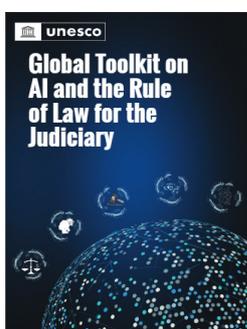
¹⁰ In this regard, UNESCO has published the Guidelines for Judicial Actors on Privacy and Data Protection, that aim to provide a general framework for judicial actors to assess matters of privacy and data protection in the face of other rights, such as freedom of expression and access to information, and the challenges of upholding these rights in the face of new technologies. See: UNESCO. **Diretrizes para atores judiciais sobre privacidade e proteção de dados**. [Paris]: UNESCO, 2022. Available at: https://unesdoc.unesco.org/ark:/48223/pf0000381298_por. Accessed on: 13.03.2024.

- C. Jurisprudence dialogue – the sharing of good practices in these new areas is essential for the improvement of administrative and substantive decisions undertaken by the Judiciary, particularly to protect fundamental freedoms. Therefore, the establishment of a permanent forum of jurisprudence dialogue and exchange of good policies in this area might prove very useful.
- D. International Cooperation – the strengthening of international cooperation with other Courts, but also with multilateral bodies, such as UNESCO, can assist in addressing some of the challenges currently faced by the Judiciary.

Annex UNESCO's Resources on Freedom of Expression and the Rule of Law

Publications and Resources for the Judiciary for Judicial Actors

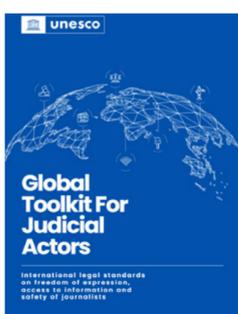
PUBLICATIONS



Global Toolkit on AI and the Rule of Law for the Judiciary

This Toolkit provides judicial operators with the knowledge and tools necessary to understand the benefits and risks of Artificial Intelligence (“AI”) in their work. The Toolkit will support judicial operators in reducing potential human rights risks of AI by offering guidance on the relevant international human rights law instances, principles, regulations, and the emerging case law that underpin the use of AI responsibly.

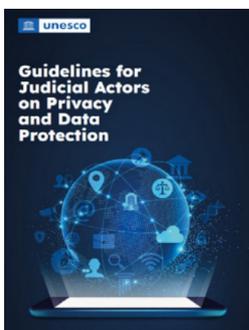
- Available in: [English](#) and [Spanish](#)



Global Toolkit for Judicial Actors: International Legal Standards on Freedom of Expression, Access to Information and Safety of Journalists

This toolkit aims to reinforce the practical application of universal standards on human rights, by bringing in approaches of regional human rights courts as well as perspectives from national legal systems.

- Available in: [Arabic](#), [Chinese](#), [English](#), [French](#), [Portuguese](#), [Russian](#), and [Spanish](#)



Guidelines for Judicial Actors on Privacy and Data Protection

These guidelines provide a general framework for judicial actors to assess matters of privacy and data protection in the face of other rights, such as freedom of expression and the right to privacy. They include relevant case law from various national, international, and regional bodies that may inform judicial actors' understanding of the matters at hand.

- Available in: [Arabic](#), [Chinese](#), [English](#), [French](#), [Portuguese](#), [Russian](#); and [Spanish](#)



COVID-19: Guidelines on the Role of Judicial Operators in the Protection and Promotion of the Right to Freedom of Expression

These guidelines provide support for judges and members of the Judiciary for the protection and promotion of the right to freedom of expression during and in the aftermath of the COVID-19 pandemic.

- Available in: [Arabic](#); [Burmese](#); [Chinese](#); [English](#); [French](#); [Khmer](#); [Portuguese](#); [Russian](#); and [Spanish](#)



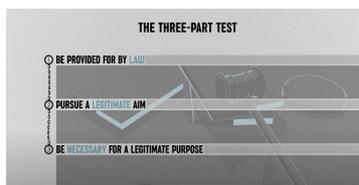
Issue Brief - The "Misuse" of the Judicial System to Attack Freedom of Expression: Trends, Challenges and Responses

The brief addresses current trends, challenges, and responses worldwide on defamation and related laws, with a special focus on abusive practices such as 'forum shopping' and Strategic Lawsuits Against Public Participation (SLAPPs).

- Available in: [Arabic](#), [Chinese](#), [English](#), [French](#), [Portuguese](#), [Russian](#); [Spanish](#) and [Italian](#)

VIDEOS EXPLAINERS

The Three-part Test: legitimate limits to freedom of expression



Freedom of expression is a fundamental right, indispensable in democratic societies. However, this right is not an absolute right, and may be lawfully restricted according to certain principles and conditions. Under international human rights law, and specifically, article 19 of the International Covenant on Civil and Political Rights (ICCPR), the three-part test determines whether a restriction on freedom of expression is legitimate.

- Available in: [Arabic](#); [Chinese](#); [English](#); [French](#); [Portuguese](#); [Russian](#); and [Spanish](#)

The Rabat Plan of Action on the Prohibition of Incitement to Hatred: legitimate limits to freedom of expression



Freedom of expression is a fundamental right. However, is not an absolute right. Under international human rights law, and specifically article 20 of the International Covenant on Civil and Political Rights (ICCPR), certain kinds of speech – such as incitement to hatred - may be prohibited by law. The United Nations Rabat Plan of Action on the Prohibition of Incitement to Hatred provides a comprehensive set of factors for States to address this issue, drawing a clear line between freedom of expression and incitement to hatred and violence.

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- Available in: [Arabic](#); [Chinese](#); [English](#); [French](#); [Portuguese](#); [Russian](#); and [Spanish](#)

OTHER RESOURCES

Global Freedom of Expression Database Caselaw supported by UNESCO and Columbia University



The global case law database is an open access resources for a broad audience of stakeholders working on freedom of expression. It is supported by a network of international experts. It surveys jurisprudence around the world, critically reviews exemplary cases, engages in comparative analysis, and aims to identify national, regional and global trends.

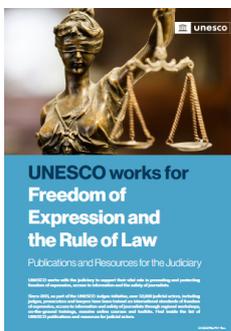
- Available in: [English](#), [French](#), [Spanish](#), [Arabic](#) and [Portuguese](#) and [Russian](#)

UNESCO's Website on Training the Judiciary on Freedom of Expression and Safety of Journalists



On UNESCO's webpage you can find more information about UNESCO's work and initiatives with the Judiciary on freedom of expression and the rule of law.

- Available in: [English](#), [French](#) and [Spanish](#)



Brochure UNESCO Works for Freedom of Expression and the Rule of Law: publications and resources for the Judiciary

The brochure shows the list of all the publications and resources that UNESCO published for judicial actors.

- Available in: [English](#), [French](#), [Spanish](#) and [Arabic](#)



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OF SUPREME COURTS AND
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