



Pathfinders' Justice for All program inputs for the upcoming report on legal empowerment by UN Special Rapporteur on the independence of judges and lawyers on:

- The contribution of legal empowerment and other people-centered approaches to efforts to achieve equal and effective justice for all in line with Sustainable Development Goal 16
- Challenges experienced by those seeking to advance and/or implement legal empowerment approaches

Introduction: people-centered justice and legal empowerment

The [Task Force on Justice](#) in its [Justice for All](#) report for the first time, provided an estimate of the global justice gap: 5.1 billion people – 2/3rd of the world's population – lack meaningful access to justice. This figure includes people who cannot obtain justice for everyday problems, people who are excluded from the opportunity the law provides, and people who live in extreme conditions of injustice. And, this estimate was developed before the pandemic, which saw [a host of justice problems emerge and/ or become exacerbated](#), potentially driving this number up even further.

It notes that traditionally, justice reforms have in many instances focused on institutions that are distant from people and fail to effectively address people's needs. To counter this, the report proposed a different approach, an approach that places people at the center of justice systems and justice at the heart of sustainable development.

This notion, of people-centered justice, is of the paramount importance if the promise of [SDG 16.3](#) (equal access to justice for all by 2030) is to be realized. If we need to move from the current justice system that serves the elite few to a system that ensures equal access to justice for all, justice systems need a transformative shift. They need to:

- Use data and evidence to steer reform
- Be innovative in their approach
- Implement smarter justice financing
- Be more coherent and inclusive

Over 60 countries have recognized and endorsed the following principles towards achieving people-centered justice including in [The Hague Declaration](#), the [Buenos Aires Declaration](#), the [Joint Action Plan](#) of the G7+ countries, the [Joint Statement and Call to Action](#) of the Rule of Law and People-Centered Justice Cohort of the Summit for Democracy and other declarations and statements:

- **Put people and their justice needs at the center of justice systems.** Make better use of data to map and understand people’s justice needs and their justice journeys, and tailor actions to groups that are more likely to suffer injustice.
- **Resolve justice problems.** Transform justice institutions and broaden the range of formal and informal justice actors to provide people with fair, inclusive, relevant and timely justice solutions that respect human rights.
- **Improve justice journeys.** Empower people and communities to understand, use and shape the law, increase meaningful participation in justice, and provide people-centered justice services that help them achieve fair outcomes.
- **Use justice for prevention and to promote reconciliation.** Take measures to reduce violence and de-escalate conflicts and disputes, build trustworthy and legitimate justice systems, prevent recurrence of grave human rights violations, tackle the root causes of injustice and use the law to reduce risks.
- **Empower people to access services and opportunities.** Eliminate legal, administrative, financial and practical barriers that people face to obtain documents, access public services, including for mental health, and participate fully in society and the economy, while promoting gender equality.

The Justice for All Report proffers legal empowerment a key avenue to achieve people-centered justice. According to the report:

legal empowerment helps people understand and use the law. It enables them to recognize legal problems when they arise and equips them with the skills and confidence to take action. Accessible information and good advice are important, but empowerment is about more than correcting a deficit in knowledge about the law.

Legal empowerment is not only effective but it is also sustainable. The *Justice for All* report notes that:

Legal empowerment approaches can prevent disputes through a shift from dealing with individual cases to tackling the root causes of collective injustices. Justice defenders can help communities use the law to challenge powerful business and state interests, by tackling abuses by mining, agricultural or logging companies, for example, or by corrupt officials. Resolving a dispute of this kind benefits all members of the community, but it also empowers a community to “know, use, and shape the law” in a way that protects it against future exploitation.

The Justice for All Report also notes that legal empowerment and non-formal approaches to justice are more affordable. It estimates that in low-income settings, it would cost just \$1 per person to scale such approaches up to at least the minimum level required – *given the size of the justice gap, countries need to invest in alternative approaches that can provide cost-effective access to justice at scale.*

Challenges in advancing legal empowerment approaches

There is great merit for legal empowerment, with a strong business case as an affordable, fit-for-purpose, solution. One of the contributory factors towards the global justice gap is that, while legal empowerment is worthwhile, those seeking to advance and/or implement legal empowerment approaches have often encountered obstacles in achieving these objectives. Three (3) key challenges are: (1) lack of an enabling environment in which to operate; (2) inadequate financing for legal empowerment and (3) insufficient data to support and inform legal empowerment.

An Enabling Environment

To be effective in closing the justice gap, legal empowerment requires an enabling environment. First, this requires a normative framework: Those in Afghanistan, for example, will find it difficult empower women to claim rights because the normative framework does not exist. This does not mean that women in such contexts cannot be empowered at all but that legal empowerment will not enable them to prevent and resolve their justice problems.

Second, it requires a recognition or at least tolerance for community-based efforts to empower people. In some countries, the provision of legal services by non-registered legal practitioners is either strictly or partially prohibited. In the United States for example, many states such as New York make it a criminally punishable offence for an individual who has not been formally admitted to a State Bar Association to participate in the “[unlawful practice of law](#)”.

This challenge, of the lack of a conducive, enabling environment for which those working in the legal empowerment space to effectively operate, is true in many countries. In 2021, as part of the [NGOs Forum](#) on the sidelines of the 69th Ordinary Session of the African Commission on Human and Peoples’ Rights, a group of non-governmental organizations in Africa [articulated the challenges they were facing](#) in this regard.

The group, which comprised to a great extent of community-based paralegal service providers, articulated how amongst other things, they experienced a fraught relationship with the legal fraternity. They found that some bar associations, in the jurisdictions in which they operated, were not always supportive of their work and generally considered such services to be in violation of the rules and regulations governing the provision of legal services.

Put simply, many of those that seek to provide assistance to others who lack meaningful access to justice, at a community and non-formal level, actually have an unmet justice need of their own – the need for a legal and regulatory framework that enables them to operate effectively.

Financing

In [a study focused on prison paralegals](#) conducted by ODI and Pathfinders, it emerged that paralegals had the capacity to be a cost effective and affordable means to significantly reduce the percentage of unsentenced prisoners in low-income countries by about half, to similar levels of OECD countries. That is, from 46% in low-income countries to 24% in OECD countries.

The study made financially compelling arguments for investing in people-centered justice which included the fact that prison paralegal services had relatively low investment costs and comparatively high savings (at about three times the costs). The costs in low-income countries were estimated at \$9 million a year (\$20 per prisoner) while this investment had the potential to produce a cost-saving north of \$28 million a year.

In spite of the business case being strong, the sector is still underfunded to a great extent. According to ODI and Pathfinders, low-income countries are generally unable to make the entire \$9 million a year investment required to support prison paralegal services. Supplementation, perhaps through donor funding, is therefore required to make up the difference.

In fact, research shows that [aid to justice](#) has fallen by 27% over the past 10 years and most of it goes to middle-income countries while it is low income countries which most need it. [Research](#) also shows that governments and donors need to change the business-as-usual approach and fund front line services.

The challenge of funding within is not limited to the prison paralegal sector either, it also applies to community-based paralegals as well. Even though the legal empowerment is effective in providing access to justice, it [remains underfunded](#).

The [Legal Empowerment Fund](#), a noteworthy development and funding mechanism, was created in direct response to some of the challenges faced by legal empowerment service providers. Apart from the limited funding available, compounded by resource allocation which may not support these types of services, is the fact that the providers do not always have the formal structures necessary to apply for and receive funding.

Data

Over the last five (5) years, there has been some noteworthy backing for the provision of legal empowerment services. For example, [The Hague Declaration on Equal Access to Justice for All by 2030](#) calls for fair informal and formal justice processes that meet people's needs in terms of both procedures and outcomes. The [Justice Action Coalition](#), in the [Joint Letter to the UN Secretary General](#) called for an improvement of justice journeys which includes the empowerment of *people and communities to understand, use and shape the law, increase meaningful participation in justice, and provide people-centered justice services that help them achieve fair outcomes*.

However, while there has been increased support and awareness, as noted through the challenges that those in the legal empowerment space still face, there is still much work to be done to make the case for the provision of these services, at scale.

One means by which to make the case for legal empowerment is through data and, a significant step in this direction was taken through the introduction of the [SDG Indicator 16.3.3](#). The indicator is designed to measure the *proportion of the population who have experienced a*

dispute in the past two years and who accessed a formal or informal dispute resolution mechanism, by type of mechanism.

The indicator ought to, *inter alia*, make information pertaining to the accessibility of civil justice institutions and their processes, the barriers to entry, as well as the main reasons for exclusion available. Such valuable information can be used to shed light on where and how people access justice and underwrite the “business case” for legal empowerment.

The indicator was approved in 2019 and yet, as of May 2023, there are only six (6) countries that have formally reported on the indicator. The Justice Action Coalition is conducting research on the extent of reporting and any challenges that countries may be facing in reporting against SDG Indicator 16.3.3 but until more reporting on the indicator occurs, the status quo is that there are gaps in the availability of important data that may be useful for the legal empowerment sector.

Another data challenge lies in the effective use of the large amounts of data that are collected by legal empowerment service providers during the course and scope of their work. The service providers often do not have the requisite skills and mechanisms to harness their data for the benefit of the communities they serve.

And, National Statistics Offices (NSOs) often struggle to merge this, largely qualitative, data with the quantitative data they collect due to, amongst other reasons, a lack of consistent collection by a broad range of entities. There have been some noteworthy developments to address these challenges, like the UK Office of National Statistics’ development of the [UK Sustainable Development Goals: use of non-official sources protocol](#) but much more support is required globally.

Some recommendations

- Legal Empowerment requires greater political support in order to scale for the benefit of more and more people around the world. One of the ways to do this is to explicitly articulate it as an integral part of the people-centered justice movement, which is gaining traction and political support.

It is equally important to link and articulate the potential contribution of legal empowerment towards the attainment of international and regional processes like the [African Union Agenda 2063](#) and the [Sustainable Development Goals](#) which call for access to justice as part of their development agendas. The onus of making these connections is widespread as it falls as much upon the implementers and funders of legal empowerment initiatives as much as it does upon the custodians of these regional and international mechanisms. Creating and strengthening such connections will be instrumental in addressing the three (3) challenges identified.

- There is a need to increase interaction and discourse between the legal fraternity (including judges and lawyers) and those that provide legal empowerment. Not for the mere sake of

discourse but to understand what concerns or challenges may exist and what the potential options for resolution may be. Many members of the legal fraternity, like the [American Bar Association Rule of Law Initiative](#) or the [SADC Lawyers Association](#) have begun to embrace a movement towards people-centered justice. These “early adopters” could prove to be useful allies in making a more pronounced shift towards bridging the gap and scaling legal empowerment mechanisms. Further, when members of the judiciary participate in meetings such as the [Hague Justice Week](#), it presents a unique opportunity for increased interaction and dialogue.

- When it comes to financing, a blended approach, of increased funding and reallocation of existing funds is required. According to [ODI and Pathfinders](#), *there is now growing evidence of the cost-effectiveness of approaches focused on scaled-up local service delivery that start with and address people’s justice needs. Immediate benefits can be achieved, even without improvements in the wider normative rule-of law context. As in education and health, a shift towards a service delivery approach is likely to require a move away from contracting out the delivery of justice aid to consulting firms or international NGOs towards direct funding of service provision, including through results based pooled funding mechanisms.*
- The people-centered justice and the legal empowerment agenda needs more justice data, which articulates its efficiency and effectiveness. This alone could be the single biggest catalyst to scale legal empowerment. Support is required from governments and funders to help the sector collect and collate data to improve service delivery and to make a case for impact. At the same time, legal service implementers can rely on this data, throughout the value chain, to better understand people’s justice journeys and ultimately improve access to justice.