



Diverse pathways to people-centred justice

Report of the Working Group on Customary
and Informal Justice and SDG16+

SEPTEMBER 2023

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A note on terminology

The term “customary and informal justice” (CIJ) is used in this document to signify pathways to justice and dispute resolution outside of formal justice systems. These have diverse normative foundations, varying degrees of recognition by the State, and evolve over time. The term embraces traditional and community-based justice systems, faith-based and informal dispute resolution practices, and mediation and arbitration activities, among many others. It is important to note that many CIJ systems, such as indigenous legal orders, have distinctive international and national normative and legal bases, and that many countries have integrated formal and customary justice systems into hybrid systems, including through legislation. Given the vast array of systems, actors and practices, the term itself is necessarily inadequate and reductive, and acknowledged as such by the members of our Working Group, many of whom would not themselves ordinarily apply the term. The Working Group uses CIJ as a recognized term that captures the broad spectrum of justice providers outside of the State, and one that is generally familiar to the policy audience of this report.

Main messages

- A people-centred approach is urgently needed to achieve the goal of access to justice for all by 2030 in line with Sustainable Development Goal (SDG) 16.
- Customary and informal justice (CIJ) provides an opportunity to leverage and learn from existing people-centred solutions.
- The case for greater recognition of CIJ systems is straightforward: most people resolve their justice problems and claim their rights outside of formal state-based courts, and resort overwhelmingly to CIJ systems.
- While CIJ is not without its risks, particularly to the rights of women and girls, these systems are diverse and evolving, thus a more granular, discerning approach to risk is required.
- A spectrum of engagement options is possible, ranging from building a deeper understanding of the empirical reality of CIJ, to empowering justice seekers, to working with community-based groups adjacent to CIJ systems, to fostering coherence and collaboration within justice ecosystems, to direct engagement with CIJ themselves.
- Efforts to achieve SDG 16's target of justice for all, including through engagement with CIJ, will require a significant boost in funding from governments and development partners.

Recommendations

1. Adopt a justice ecosystems approach to understand the diversity of justice providers and shape reform plans
2. Deliver a step-change in justice support through expanded CIJ engagement to achieve justice for all by 2030
3. Empower justice seekers, especially marginalised groups, to participate in and benefit from CIJ systems
4. Advance women and girls' participation and leadership and ensure the protection of their rights in CIJ systems
5. Support development partners to engage with CIJ to deliver people-centred justice
6. Increase investment in people-centred justice, including CIJ systems



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DCAF Geneva Centre
for Security Sector
Governance



ICTJ Justice
Truth
Dignity



ilac International
Legal Assistance
Consortium

PaRD International Partnership on
Religion and Sustainable Development



4

NAMATI

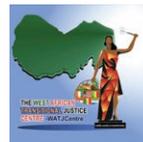


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Working Group on CIJ and SDG16+

Established in 2020, the Working Group is a global alliance of diverse justice stakeholders united by a common agenda, advocating for the centrality of CIJ systems in achieving justice for all. The Working Group has over 100 members across all regions of the world. Its vision is of a world in which all people have equal access to justice that meets their needs, provided by systems that are inclusive, responsive, effective, and consistent with human rights norms and standards; in which states understand CIJ systems as playing a central role in people-centred justice and the rule of law in their contexts; in which donors support and invest in access to justice across a spectrum of justice providers; and in which civil society has the space and capacity to empower justice seekers, safeguard their rights, and demand accountability from all justice providers.

Contributing organizations

- African Centre of Excellence for Access to Justice for Access to Justice
- Centre on Armed Groups
- Cordaid
- Folke Bernadotte Academy
- Geneva Centre for Security Sector Governance
- Grassroots Justice Network
- Hiil
- Inanga
- Indigenous Law Research Unit
- International Center for Transitional Justice
- International Development Law Organization
- International Legal Assistance Consortium
- International Partnership on Religion and Sustainable Development
- Just Future Consortium
- Justice and Corrections Service of the Office of Rule of Law and Security Institutions in the Department of Peace Operations, United Nations
- Kituo Cha Sheria
- Ministry of Justice and Community Services of the Republic of Vanuatu
- Namati
- National Steering Committee on Implementation of Alternative Justice Systems, Kenya
- ODI
- Pathfinders for Peaceful, Just and Inclusive Societies
- Public International Law & Policy Group
- STEWARDWOMEN
- Terre des Hommes
- UN Development Programme
- UN Women
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- West African Transitional Justice Centre
- World Justice Project
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This report is the culmination of more than four years of collaboration between practitioners, researchers, and activists united by a shared commitment to fulfilling the promise of justice for all. Our journey started in 2019, with the founding members of the Working Group concluding that efforts to overcome the cyclical nature of international engagement with customary and informal justice were likelier to deliver results if undertaken in concert. This report would not be possible without the commitment and perseverance of the activists, policymakers, practitioners, and scholars comprising the Working Group, who brought it to fruition and will carry its messages forward in the coming years.

In the first half of 2023, 13 Working Group members and allies organized 10 stakeholder consultations intended to generate diverse perspectives on CIJ, ensure the participation of constituencies under-represented in the Working Group itself, and build consensus around a set of policy recommendations. The consultations engaged 260 people representing nearly 50 countries, from Afghanistan to Zimbabwe. This report draws on the varied outcomes and recommendations of those stakeholder consultations. The Working Group acknowledges all those organizations that convened stakeholder consultations: African Centre of Excellence for Access to Justice; the Embassy of Sweden in Liberia; Folke Bernadotte Academy; Geneva Centre for Security Sector Governance (DCAF); Grassroots Justice Network; Ibero-American Alliance for Access to Justice; International Center for Transitional Justice; International Development Law Organization; International Legal Assistance Consortium; International Partnership on Religion and Sustainable Development; Kituo Cha Sheria; Pathfinders for Peaceful, Just, and Inclusive Societies; UN Development Programme; and Young Justice Leaders. A full list of stakeholder consultations is included in an annex.

Lisa Denney served as lead author of the report, and led the complex multi-stakeholder process underpinning its development. The Working Group would like to acknowledge the work of Carolyn Graydon, who prepared an extensive background study on which this report draws heavily.

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Contents

08 INTRODUCTION

10 WHAT IS CUSTOMARY AND INFORMAL JUSTICE?

11 Characteristics of CIJ

13 WHY CUSTOMARY AND INFORMAL JUSTICE IS INTEGRAL TO ACHIEVING JUSTICE FOR ALL

17 REFRAMING RISKS OF ENGAGEMENT AND NON-ENGAGEMENT WITH CIJ

17 Human rights and risk concerns

18 Aid effectiveness concerns

18 Feasibility concerns

20 WAYS TO WORK WITH CUSTOMARY AND INFORMAL JUSTICE

21 Approach 1: Build and share knowledge, data and evidence on CIJ

25 Approach 2: Empower CIJ users

28 Approach 3: Support and protect rights-based organizations working alongside CIJ

31 Approach 4: Foster coherence and collaboration in the justice ecosystem

37 Approach 5: Strengthen CIJ practice

44 MOBILIZING FINANCING TO SUPPORT CIJ

46 RECOMMENDATIONS AND CALL TO ACTION

49 ENDNOTES

Introduction

More than five billion people lack meaningful access to justice.¹ As a result, they are often denied their rights, marginalized, displaced from land, or subjected to violence without remedy. To tackle this global justice gap, the 2030 Agenda commits United Nations Member States to ensure equal access to justice for all, articulated in Sustainable Development Goal (SDG) 16 on peaceful, just and inclusive societies. The failure to meet this goal has implications for all other SDGs.² While formal justice systems and institutions are essential for justice delivery and as pillars of societies for the rule of law, evidence shows that most people do not resort to courts to solve their justice problems but instead rely on diverse providers frequently referred to as customary and informal justice (CIJ).³ To address justice needs, justice systems must therefore transform and meet people where they are. Formal justice systems cannot meet the justice needs of all people. Delivering equal access to justice for all requires governments, development partners and civil society to engage with the empirical reality of CIJ and factor this into justice delivery and programming. CIJ provides a huge portion of the population with access to justice systems and offers indispensable solutions and learning about what works for people in achieving justice.

The case for greater recognition of CIJ systems is straightforward: most people resolve their problems and claim their rights outside of national statutory courts or “formal justice systems”, and resort overwhelmingly to CIJ systems. CIJ systems cover a broad spectrum of what are variously called alternative, community-based, customary, grassroots, hybrid, indigenous, informal, local, non-State, religious, traditional, tribal and other

systems (henceforth, CIJ) to resolve disputes and seek redress for crimes or grievances.⁴ For many people, CIJ systems regulate access to land, water and other natural resources, and family relations – issues that are fundamental to their daily lives.⁵ While in some contexts CIJ providers may be the only option available to many people, they are also often accepted, or even preferred, by the people who use them because they may be seen as legitimate and capable of dispensing justice or resolving disputes.⁶ CIJ systems (the providers and the normative foundations on which they draw) are critical not only because the courts alone will never be able to provide justice for all but also because in some cases they are more people-centred, more grounded in the communities they serve, more accessible, affordable and proximate than “formal” statutory systems; they tend to emphasize restorative justice, flexible rules and procedures, and consent-based negotiated solutions that are culturally resonant.⁷ These features can make them an important, or even preferred, justice system in many contexts, including fragile and conflict-affected settings.

In some cases, CIJ systems intersect with statutory law, either formally or informally, and may be integrated into these systems.⁸ CIJ systems, and customary-based systems in particular, can reflect unequal power dynamics and may reproduce the status quo and conservative social norms, with particularly adverse effects for women, children, youth, the poor and other marginalized groups who tend to be disproportionately reliant on CIJ.⁹ Yet it is also important to recognize that formal justice systems themselves are not exempt from these flaws – indeed, these flaws are

often the very reason that development partners seek to undertake justice sector support.¹⁰

Yet despite this, justice spending remains overwhelmingly focused on formal justice. Governments tend to take an institutional approach, dividing funding between formal institutions of police, courts, prisons, prosecution, etc., overlooking some of the ways that people-centred justice is best delivered.¹¹ Donors cut their justice spending by a third between 2018 and 2021, and focus most of what they do spend on top-down institutional reform of formal justice systems.¹² If SDG 16.3 is to deliver people-centred justice and meet people where they are then it must begin with the ways in which people access justice¹³ – not with idealized visions of what justice should look like according to donor plans. Greater recognition of and, where appropriate, politically astute engagement with the dynamism and diversity of CIJ systems is needed to realize equal access to justice for all. This can also help decolonize approaches to justice reform that have tended to replicate the justice systems of donor countries in the West, rather than prioritizing the diverse ways that people resolve justice problems in the places where reforms are undertaken.

This report sets out a constructive way forward to achieve greater engagement with the empirical reality of CIJ and – in appropriate cases – engagement with CIJ. It is timed to inform the second SDG Summit in September 2023, which will provide a key moment for the international justice community to reflect on and revitalize progress towards achieving SDG 16.3. Section 1 illustrates the breadth of actors that CIJ encompasses and key features of CIJ systems. Section 2 demonstrates why CIJ is

integral to achieving justice for all. Section 3 sets out a spectrum of practical approaches for gathering data on and engaging with CIJ systems. Section 4 makes the case for mobilizing financing to support CIJ systems. Section 5 reframes some commonly cited risks of engagement (and non-engagement) with CIJ. Finally, section 6 details recommendations to progress this agenda and capitalize on the potential of CIJ to assist in delivering justice for all.

Delivering equal access to justice for all requires governments, development partners and civil society to engage with the empirical reality of CIJ and factor this into justice delivery and programming

The case for greater recognition of CIJ systems is straightforward: most people resolve their problems and claim their rights outside of national statutory courts or formal justice systems

What is customary and informal justice?

Customary and informal justice is complex to define, covering a wide range of justice and dispute-resolution providers, practices and systems, with diverse normative foundations, varying degrees of recognition by the State and that evolve over time.¹⁴ Numerous terms are used to describe CIJ and dispute resolution. These can include, but are not limited to: alternative, clan-based, community-based, customary, everyday, grassroots, hybrid, indigenous, informal, local, non-State, people's, popular, plural, religious, traditional, tribal and village justice providers.¹⁵ In other cases, they are described by what they are not – State-directed, statutory systems (although in many cases CIJ is recognized and even integrated into those systems, so this binary can also be unhelpful). Most of these terms have been criticized for failing to adequately capture diverse empirical realities, and no universally agreed terminology exists, given contextual differences across time and place, as well as different disciplinary or theoretical approaches and engagement priorities. The vast array of concepts underlines the many forms that CIJ takes. It is also important to note that many countries have resolved these challenges by integrating formal and customary justice systems into hybrid systems, including through legislation. The international community is thus playing conceptual catch up in this regard. The Working Group uses CIJ as an increasingly recognized term that captures the broad spectrum of providers outside of the State that people seeking justice use to resolve disputes and grievances – though also recognizes its limitations. This plurality of justice providers is also increasingly recognized in a range of international fora, as well as by governments.¹⁶

In practice, CIJ can include: chiefs, elders, clan leaders, religious leaders or institutions, paralegals, mediators, indigenous peoples' groups, community volunteers, workplace associations, youth associations and local leaders providing dispute resolution services to people in their communities. In some cases, militias and non-State armed groups also provide dispute resolution functions and may operate with some legitimacy – but these groups require specific analysis given their more coercive dynamics and are not the focus here. CIJ thus refers to a broad spectrum of justice providers, whose authority and legitimacy derive from a combination of custom, tradition, social and



community norms, religion, as well as statutory law in some instances. Those working in contexts where diverse justice providers are a feature should be aware of the definitional challenges of using a term like CIJ (or related concepts), but this complexity should not deter engagement with the realities of the many ways that people access justice.

While CIJ is generally considered in contrast to formal legal systems, viewing justice providers in such distinct ways can be unhelpful in policy and programming. In practice, from a people-centred perspective, there is a justice ecosystem of diverse providers and normative orders that are interlinked in various ways.¹⁷ In Somalia, for instance, framing providers as part of a specific "system" (customary or formal) is unhelpful because from a peoples' perspective, they are mixed, different authorities can represent different normative orders that are deployed for different purposes.¹⁸ For this reason, a justice ecosystem of diverse and overlapping providers that draw on different normative orders is a useful framing. The challenge for governments, donor agencies and



civil society working to deliver SDG 16.3, then, becomes how to improve the effectiveness and responsiveness of these ecosystems – in all their diversity – and ensure that they contribute to equal access to justice that upholds human rights.

Characteristics of CIJ

As CIJ covers a broad range of actors, it is difficult to make generalizations about its characteristics. Inevitably, the normative foundations of CIJ and its sources of legitimacy will depend on the context and particularities of the specific provider. It is useful, however, to set out some of the broad features that commonly characterize CIJ actors.

CIJ systems often (though not only) facilitate restorative justice, with a focus on restoring relationships and community harmony.¹⁹ A restorative justice approach means that CIJ proceedings are usually consent-based, negotiated solutions, but can be coercive in some cases.²⁰ This focus and approach of CIJ

actors can be valuable in dealing with particular justice problems (such as land or resource disputes, neighbourhood disputes, some family matters or petty crime), or in particular contexts where restoring community relations and social cohesion, or preventing conflict, is a priority. A notable example is the use of gacaca courts in post-genocide Rwanda, where the “formal” court system was overwhelmed with more than 120,000 people imprisoned and awaiting trial for accusations of involvement in atrocities. Had it not been for this CIJ mechanism, rates of pretrial detention in Rwanda would have been exponentially worse.²¹ In other conflict-affected settings where widespread human rights violations have occurred, CIJ processes may play a role through the provision of acknowledgment and repair of harm and responsibility to facilitate outcomes such as the reintegration of displaced persons and young people involved in complex violence.

CIJ actors draw on a range of normative foundations that inform the content of the



laws and rules they uphold. These can emerge from custom, religious doctrine, community norms, indigenous knowledge and worldviews, and human rights discourse.²² These various normative orders (legal pluralism) may be accommodated within, complement or compete with formal laws and rules.²³ Norms and rules are often unwritten and maintained orally by communities. This means that rules are often flexibly interpreted and applied.²⁴ This flexibility “allows leaders to craft pragmatic solutions that suit local conditions and respond to the issues at the crux of a dispute.”²⁵ In some cases, women have strategically used this flexibility to contest conventional interpretations of norms and push for alternatives that better uphold their rights.²⁶ Yet it can also mean that CIJ systems lack predictability and opens the possibility that different groups may receive different treatment under the same norms, due to discrimination, bias or other reasons.²⁷

The normative foundations of CIJ are not fixed – all evolve as contestation within communities about rights, power, identity and the content of custom plays out.²⁸ This dynamic nature of CIJ systems is important for governments and development partners looking to support reforms that bolster human rights protections and ensure equal access to justice, for instance, but it is critical to recognize that not all change is progressive – as is true of legal change in all justice systems. Processes of change

are contested, and local power dynamics will shape whose views prevail.²⁹ Those who are supportive of the status quo and continuity with the past are usually those who benefit from that order. Often this is older men, who tend to occupy leadership positions in CIJ systems, particularly those that are customary or religious in nature.³⁰ This can exclude women and youth, who can find their rights and experiences are not prioritized in CIJ systems. Change (or lack thereof) is thus political and not always linear.³¹

The diversity, prevalence and changeability of CIJ systems underlines the fact that CIJ cannot be thought of as outdated, “traditional” institutions that are likely to wither away. Rather, they are contemporary justice providers that continue to be relevant to people’s everyday justice needs.³² These providers emerge in response to justice needs in communities and thus often reflect what works for people in that context. This is underlined by the views of young people, who are often thought to be irrelevant to CIJ but are increasingly seen as active participants. While young people report at times feeling left out of CIJ systems due to their age, they nonetheless believe they have an important role to play in shaping the future of CIJ systems and in some contexts are being actively engaged in so doing.³³ CIJ systems innovate and adapt, and their longevity should be taken as a testament not to their outdatedness, but to their enduring relevance.



Why customary and informal justice is integral to achieving justice for all

It is widely recognized that achievement of the SDGs by 2030 – just seven years away – will require people-centred approaches that “meet people where they are at”.³⁴ For SDG 16.3, this means understanding if, how and why people seek justice in the ways that they do and working to improve their experiences from that starting point.³⁵ From this perspective, engaging with CIJ, or at least its empirical reality, must be embraced as an indispensable

source of solutions and learning about what works for people in resolving justice problems.

The majority of the world’s population resolve disputes and claim their rights outside of formal justice systems. They overwhelmingly use CIJ systems to resolve their justice issues. In 2019, the World Justice Project analysed primary data from their Global Population Poll in 101 countries and found that the vast majority of legal issues

are not resolved through the formal justice system.³⁶ In fragile and conflict-affected settings, in particular – from Central African Republic to Haiti to Solomon Islands – it is routinely estimated that 80–90 per cent of disputes are dealt with through CIJ.³⁷ In part this is due to the absence of formal justice institutions, but also due to many people's distrust of them and preference for CIJ mechanisms.³⁸ The g7+ Group of Conflict-Affected States is itself working to raise the profile of people-centred justice and CIJ in many of its member countries. Importantly, given the SDGs commitment to leaving no one behind, CIJ provides access to justice for some of the people most in need of protection, such as the poor, women, rural and remote populations and sometimes indigenous groups, who are often the primary users of CIJ systems.³⁹ In addition to the sheer scale of people who access justice through CIJ, these systems also regulate some of the most important aspects of people's day-to-day lives. CIJ systems cover everyday issues that affect people's lives and development prospects, including access to land, water and other natural resources; neighbour and community relations; debt disputes; family matters such as inheritance, divorce or disputes; and family violence, as well as prevention of these justice issues.⁴⁰

The high level of reliance on CIJ and the relevance of CIJ to some of the most common justice issues people face are due to multiple factors. Often, the popularity of CIJ is attributed to the weakness or inaccessibility of statutory or formal justice systems. The reasoning goes that if only formal justice systems were stronger or had greater reach, then CIJ would fade. This misunderstands why people choose to rely on CIJ, the permanence and adaptability of CIJ and the limitations of formal justice. Indeed, a United States Institute of Peace study on Liberia found that *even if* the many failings of the formal system were to be overcome, ordinary people would still prefer the customary system because of its many "pull" factors.⁴¹ Viewing CIJ systems as a second-best system also underlines the dominance of Western-centric ideas of how justice should be delivered, rather than embracing the diverse ways in which people have fashioned this for themselves in their specific contexts.

People choose to take matters to CIJ systems for a range of interrelated reasons, including because they are often the most geographically accessible dispute resolution forums, they operate in local languages that people understand, are reasonably timely in producing an outcome and are often considered more affordable (although this



CIJ systems continue to be a crucial component of how people access justice because achieving justice for all through formal systems alone is financially and logistically impossible



differs across contexts).⁴² In addition, CIJ systems can be considered more legitimate and trusted because they are aligned with local understandings of justice and prevailing social norms and are led by recognized leaders or members of peoples' own communities.⁴³ For indigenous communities, indigenous justice is simply viewed as the main system, with formal State systems seen as the alternative. Similarly, for the 8 in 10 people globally who identify with a religious, spiritual or indigenous tradition, the guidance of their faith leaders and weight of their belief systems also influence who they turn to with justice needs.⁴⁴ This closer correspondence between CIJ systems and community life translates into justice mechanisms that can be more responsive and better suited to the justice needs of people in each specific context. It also means they tend to deliver outcomes that are in keeping with dominant community ideas of justice. This connection with prevailing social norms means that outcomes are more likely to be

enforced but can perpetuate existing power dynamics, resulting in marginalization and exclusion of some groups to the benefit of others.⁴⁵ Like all justice systems, CIJ encodes values and power relations that will affect groups in the community unevenly. These values and power dynamics must be understood to determine who is most likely to lack meaningful access to justice and to guide efforts to improve the equality and rights compliance of all justice providers.

Finally, CIJ systems continue to be a crucial component of how people access justice because achieving justice for all through formal systems alone is financially and logistically impossible. Even with increased investments, formal justice systems face challenges related to insufficient funding and personnel to provide timely relief and adjudication. In many countries, formal justice systems have insufficient justice personnel. In Chad, there is one licensed lawyer for

every 78,103 people.⁴⁶ In Mozambique, there is approximately one prosecutor for every 65,000 people and one public defender for every 124,000 people.⁴⁷ Many parts of the world experience overwhelming case backlogs in criminal and civil courts, with people denied justice and kept in excessive pre-trial detention (PTD). On any given day there are 2.5 million people in PTD globally.⁴⁸ In Africa, pre-trial detainees make up over 40 per cent of the prison population (in some countries rates are significantly higher), with some people awaiting trial for over 15 years.⁴⁹ In the Americas, rates of PTD in some places are over 60 per cent of the prison population, affecting men and women unequally.⁵⁰ In Mexico in 2021, 28 per cent of men deprived of their liberty had not been sentenced, compared with 46 per cent of women.⁵¹ While restorative justice practices are being adopted to deal with minor offences and reduce detention rates, including through CIJ, support for such efforts remains marginal. CIJ can help fill the gaps that formal justice systems are unable to account for.

The estimated cost of delivering justice through formal systems in low-income countries has been calculated at \$13 billion a year globally – far outstripping current government and development partner justice spending.⁵² While this prompts a strong argument for increasing justice financing, it also underscores the depth of the challenge and the need for alternatives to ensure that the world's poorest are not denied justice indefinitely. CIJ can provide one such alternative.

Within SDG 16.3 there is increasing and welcome recognition of the relevance of CIJ. In 2019, an additional indicator (16.3.3) was added, measuring: 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.⁵³ While not yet measuring perceptions or experiences of processes or outcomes, this indicator is a step towards ensuring that the goal of access to justice for all is considered more holistically and is relevant to and achievable for the majority of the world's population.⁵⁴ This is not only important for achieving SDG 16.3 but also all other SDGs, given that justice is recognized as a cross-cutting enabler (see box 1). As the Taskforce on Justice found:

Justice is a thread that runs through all 17 Sustainable Development Goals ... Without increased justice, the world will not be able to end poverty, reduce inequality, reach the furthest behind first, create conditions for shared and sustainable prosperity, or promote peace and inclusion.⁵⁵

BOX 1

SDG 16.3 as an enabler of other SDGs

In addition to its intrinsic value as a basic human right, increasing access to justice (SDG 16.3) is seen to be an essential enabler for progressing all the other SDGs, creating an even stronger imperative to prioritize its advancement. For instance, access to justice for all is important for conflict prevention and reducing violence (SDG 16.1) by helping to address root causes of conflict and insecurity, which often relate to issues of discrimination, exclusion and marginalization. SDG 16.3 is seen as critical to:

- **SDG 5:** supporting the achievement of gender equality and empowerment of women and girls;
- **SDGs 3, 4 and 6:** supporting access to equitable service delivery and water;
- **SDG 15:** enabling access to land;
- **SDG 11:** supporting access to safe housing;
- **SDG 8:** enforcing labour rights;
- **SDG 10:** ensuring equal opportunity; and
- **SDG 13:** providing a foundation for climate justice.

Getting SDG 16.3 right – by ensuring it is people-centred and relevant to the ways in which people access justice – is therefore crucial to the achievement of sustainable development more broadly.



Reframing risks of engagement and non-engagement with CIJ

Despite the strong case for engaging with CIJ – either directly or with its empirical reality – some governments and development partners face a range of obstacles to doing so. Addressing these obstacles is key to leveraging more financing and supporting greater engagement. Three primary challenges are addressed here: human rights and risk concerns; aid effectiveness concerns; and feasibility concerns. In each case, suggested reframing is put forward that can assist in opening the possibility of productive engagement on CIJ.

Human rights and risk concerns

In some contexts, CIJ systems can be discriminatory, deny human rights, lack due processes and safeguards, prohibit or coerce community members from using other justice providers and deliver outcomes that do not meet the rights, needs or interests of all justice seekers. Such experiences can have particularly harmful impacts on marginalized groups. These human rights abuses are real and association with such justice providers – even if to improve those practices – is ethically and

politically difficult for many governments and development agencies.⁵⁶ For donors, this goes to concerns about reputational risk and legitimacy. Accountability of donors to governments and home publics for taxpayer funds, combined with a growing critique of aid spending in many donor countries means that donors can be reluctant to work with potentially controversial actors that may harm and jeopardize the donor's reputation and legitimacy domestically.

Here, context is important. Engaging with CIJ in some places does not imply the need to engage with CIJ everywhere. It is for this reason that a spectrum approach is put forward here. In all places it is important to be aware of the empirical fact of CIJ and to understand those systems and how they impact on the wider justice ecosystem. But engaging directly with CIJ actors will only be appropriate in some contexts. CIJ – like all justice systems – is diverse and not monolithic. While there are examples of egregious denial of rights, so too are there examples of rights-respecting CIJ actors. While some CIJ actors are particularly problematic in upholding the rights of women and girls, there are similarly examples of CIJ

actors that have a positive record in this regard. Moreover, CIJ providers are not fixed, rather they evolve and change. This has been critical to their ongoing relevance in many contexts. Recognizing this diversity and mutability must be the starting point to replacing stereotyped views of CIJ as uniformly risky. Building the knowledge and expertise of government and donor staff on CIJ is key. Terminology may also be important, and for some governments and donor agencies, using terminology of legal pluralism, community justice or everyday justice may help avoid unhelpful stereotypes and underscore the potential for change.

In addition to recognizing the diversity of CIJ, human rights concerns can be reframed as being a reason to *engage*, rather than not to engage. Across various sectors, the primary rationale for much development assistance is to improve rights compliance of, for instance, formal justice systems, police services, militaries, schoolteachers, healthcare workers, migration authorities and so on. Formal justice systems are not exempt from risks of corruption, rights abusive practices and discrimination. In the same way, the rights abrogating practices of CIJ are not likely to change *without* efforts to address them. Non-engagement with CIJ might be felt to mitigate some risk to funders; but it does nothing to mitigate the risk that people will continue to experience injustice. When thinking about the risks of engagement with CIJ, these must be balanced against the risks of *not engaging*. We know that most people turn to CIJ to seek justice, therefore not engaging means leaving millions of people behind, without access to fair, inclusive and non-discriminatory justice. More sophisticated risk management tools are needed, as is an understanding of the diversity of engagement options. Some international organizations have also developed principles to guide engagement with CIJ, setting out a normative commitment to human rights and using these to ground their work.⁵⁷

Aid effectiveness concerns

A second obstacle that can prevent engagement with CIJ is that there is at least a perception of an underdeveloped evidence base and limited demand from partner governments. Bilateral justice aid has dropped significantly over the past decade, with donor representatives suggesting a key reason being that other sectors are considered to perform better, and that justice sector support (albeit overwhelmingly to formal systems) has failed to deliver measurable returns and impacts hoped for.⁵⁸ In addition, the long time frames for change in justice systems, requiring longer-term investments, may be less attractive to donors, especially if outcomes are considered uncertain. While in some cases this

Engaging with CIJ requires good contextual understanding but does not necessarily require formal partnerships with CIJ directly

has led donors to reorient support to civil society organizations delivering justice services, others stopped or dramatically reduced their justice contributions.⁵⁹ This speaks to the need for more politically sensitive and strategic approaches to justice support, as well as finding meaningful ways of measuring impact and capturing stories of change in a complex sector like justice. Positive stories of change do exist (some are set out below) and have been disparately documented but are not well aggregated.⁶⁰

In addition, host governments rarely seek support from donors for CIJ engagement, suggesting that it is not their priority. This combines with access to justice not being a high priority within most donor agencies (with some exceptions). Rather, justice is regularly overshadowed by a focus on health, education, climate and gender, among other issues. This fails to recognize the cross-cutting nature of justice as an enabler of other SDGs and its role in upholding the rule of law.⁶¹ Legally empowered individuals and groups are in a better position to claim their rights and have a voice in policy development, contributing to more inclusive, accountable and peaceful societies and preventing injustices. Engaging with CIJ requires momentum from host governments committed to applying people-centred approaches through national plans and justice reform efforts. It may also require donor agencies to build justice into the other sectoral priorities to secure funding and raise profile, or to mobilize growing investments in security for justice, given the inextricable links between justice and security and given that CIJ providers often combine security and justice functions.⁶²

Feasibility concerns

Third, development partners can face challenges engaging with CIJ due to incompatibilities with their programming approaches. Multilateral and bilateral



development partners are primarily mandated to work with partner governments. Working with CIJ actors can be seen to fall outside of this and can raise concerns about undermining State legitimacy.⁶³ In addition, operational challenges make engaging with CIJ systems more complex. Their variety might challenge global policies and guidance as they call for nuanced and context-specific approaches. Because customary systems are unique in each context, they can be hard for outsiders to understand. Leadership of CIJ may not be unified, meaning leaders can be difficult to identify and access.⁶⁴ CIJ mechanisms may require adjustments to usual programme mechanisms, as they are not always organizations that can be “partnered” with via conventional contracts or grants.⁶⁵ They may not have an organizational structure, financial records or the ability to meet financial and monitoring and reporting requirements.

However, creative solutions are possible. Adapting the internal political economy of donors to the realities on the ground should be the way forward – not the other way around. Engaging with CIJ requires good contextual

understanding but does not necessarily require formal partnerships with CIJ directly. Partnering with local civil society organizations who engage with CIJ themselves has been an effective strategy in many contexts. In other cases, formal partnership might be through government ministries. South-South cooperation to explore how justice ecosystems have harnessed the potential of CIJ can be valuable. In addition, there are an increasing number of international organizations that have developed expertise on CIJ that can assist governments and donors in navigating the complexity.

While the challenges of engaging with CIJ are real, so too are the possibilities for addressing them and harnessing the potential of CIJ. Many governments and donor agencies have overcome these challenges and developed more people-centred justice solutions that can be learnt from, as the following section demonstrates. Reframing risks around human rights, aid effectiveness and feasibility should be prioritized so that greater investment in justice, including CIJ, can be realized.

Ways to work with customary and informal justice

Without scaling up the justice solutions that most people access and are considered most relevant to people's unmet justice needs, SDG 16.3 cannot be achieved. Governments and development partners must therefore give greater attention to CIJ systems.⁶⁶ That means that the empirical reality of CIJ must be routinely factored into government and development partner thinking and planning about delivery of people-centred justice. Additionally, it may also involve engaging with CIJ systems directly (and there are many under-explored opportunities for doing so), although that determination will be context specific.

As CIJ systems are diverse, so too must be the ways of working to better recognize their role within justice ecosystems. Organizations that have worked with CIJ have found success in utilizing a diverse range of entry points that are appropriate to the context in question. This opens up more nuanced opportunities for people-centred justice support that is more

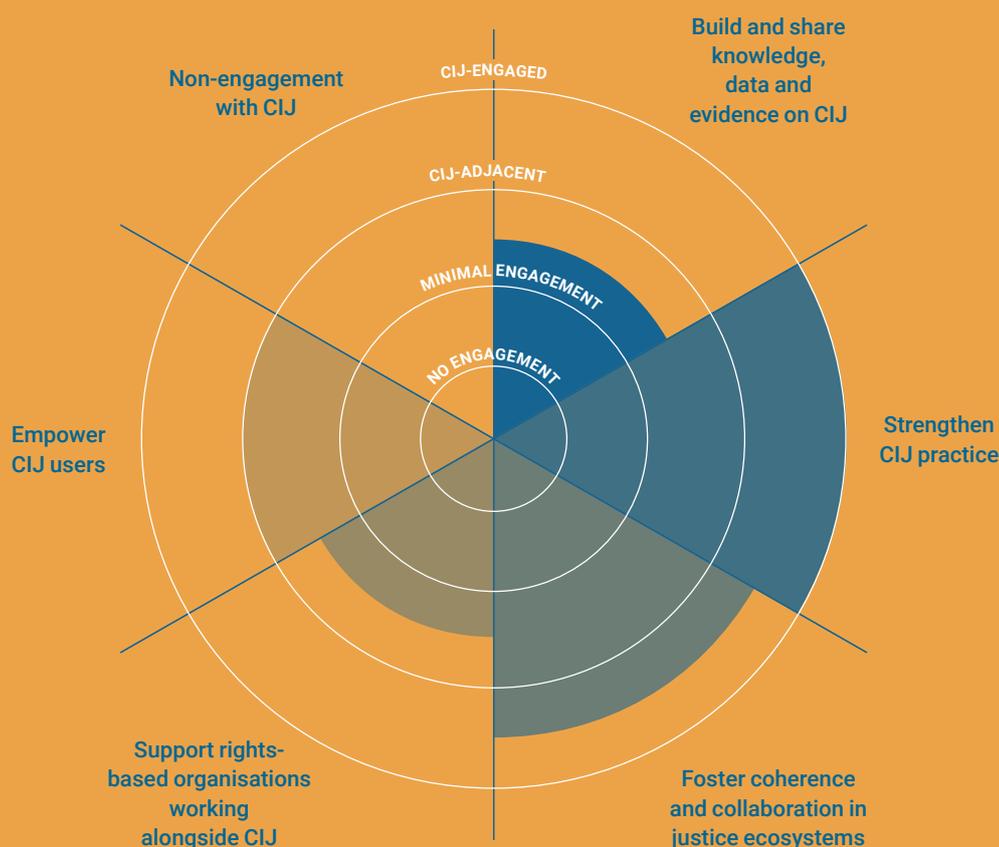
reflective of empirical realities. Here, a spectrum of approach options is set out, enabling a range of entry points for working with CIJ to suit what is possible and appropriate in light of contextual realities and government and donor appetite. These approaches sit on a spectrum from less extensive to more extensive engagement (see figure 1).

Importantly, the most minimal engagement is not "nothing" but an investment in understanding the empirical reality of CIJ. This is important so that even where governments and development partners do not work directly with CIJ, they are nonetheless cognisant of the wider justice ecosystem, and recognize that engagement and reforms in one part of that ecosystem will inevitably have reverberations around the system as a whole. For this reason, an in-depth understanding of the justice ecosystem, how its various components operate and interact – and how people use it – is essential for any justice work. Each of the engagement options are detailed below.



FIGURE 1

A spectrum of approaches to working on CIJ



Approach 1

Build and share knowledge, data and evidence on CIJ

RATIONALE

The shift towards people-centred justice approaches has driven efforts to generate better data and evidence regarding people's justice needs; their journeys seeking justice, including which justice mechanisms they use and trust; their degree of satisfaction with outcomes; or why no justice option is accessed. Such data and evidence are needed to inform an evidence-based selection of relevant strategies in particular contexts that are attuned to the needs of marginalized groups.⁶⁷ Data and evidence is also at the heart of identifying "what works", where and why, so that the impact of frontline efforts to deliver people-centred justice – and external support efforts – can be improved and, where

applicable, shared to expand good practice. Finally, data and evidence can persuasively tell the story of legal needs, demonstrate the impact of support and demonstrate transparency for governments, communities and development partners. Yet there remains a paucity of global data regarding CIJ mechanisms – both their use and how they operate and the role of internationals in engaging with CIJ (although there is much rich knowledge among grassroots organizations and researchers working with CIJ). The bulk of global justice data is heavily weighted towards formal justice systems, as these systems systematically collect data and have funding to do so.⁶⁸ The need for rapid transition to generating people-centred justice data, away from reliance on administrative data from formal justice institutions, has been a major focus of the SDG 16 agenda.

In relation to CIJ, while there are a range of country case studies that provide often rich empirical detail, global coverage is patchy, and approaches and methodologies vary. This in itself is not a bad thing – a heterogeneous approach to research and data collection spurs new and creative ways of undertaking research and can reflect research that has been tailored to the context.

At the same time, there is also a place for more coordination and standardized approaches to data collection, to provide a recognized starting point for contexts where data is limited, as well as to provide baseline data on CIJ globally. The Taskforce on Justice calculation that 5.1 billion people globally lack effective access to justice, for example, illustrated the power of quantifying the scale and urgency of justice needs, so as to create a compelling narrative.⁶⁹

Three approaches to building data and evidence on CIJ are set out below as a source of inspiration for further development: contextual analysis, case tracing and justice chain mapping, and legal needs surveys. These might be standalone approaches to working on CIJ for governments and development partners, or they might sit alongside other approaches. In particular, investments in data and evidence building can also be built into the monitoring, evaluation and learning of government and development partner justice programmes that also utilize other approaches.⁷⁰ This would go some way to shifting monitoring, evaluation and learning away from accountability for compliance towards monitoring and evaluating what works and what has been learned. Such data must also be shared among organizations to avoid duplication and ensure everyone benefits from accrued learning.

EXAMPLE ENTRY POINTS

Contextual analysis

The importance of local context and understanding the prevailing political economy is fundamental to all development assistance but it bears repeating here given the continued tendency for justice support to be a technical endeavour. There is great value in supporting research that seeks to understand how justice is experienced locally, particularly paying attention to the formal and informal institutions (or rules of the game) and power dynamics within and between systems that shape these experiences. Such research can provide robust understandings of what justice needs are, why they persist and – importantly – what it takes to address them, to ensure feasibility and respect for “do no harm” as a principle of engagement. This helps ensure that justice investments from governments and donors are informed by the political nature of justice challenges – rather than assuming that technical fixes will be sufficient to address issues of relative power, identity and rights.

Such contextually grounded research can take many forms, and this methodological diversity is valuable as the aim is not comparability but uncovering how and why people navigate justice ecosystems on their own terms. The importance of engaging with researchers from the Global

BOX 2

Community-based justice research

From 2018 to 2022, the International Development Research Centre carried out research on targeted areas, including legal empowerment, under its Scaling Access to Justice Research Collaboration. Developing and applying community-based participatory research (CBPR) methodologies, research participants were engaged as co-researchers, rather than only as research subjects. This method recognizes that decolonizing research applies not only to methodology but also involves opening spaces for local knowledge and experiences to be exchanged. In this way, researchers collaborate with those most affected by specific community issues to conduct research and co-create pragmatic strategies to resolve the issues arising. This methodology was applied in relation to a study focusing on the models used by community advice offices and community-based paralegals in South Africa, including analysis of case management strategies, a cost-benefit analysis, and perceptions regarding different aspects of community-based justice delivery.

FOR FURTHER INFORMATION SEE:

<https://www.idrc.ca/en/project/scaling-access-justice-research-collaboration>;
S. Mukorera and W. Martins (2022)
Community-based Participatory Research Methodology, Centre for Community Justice and Development, South Africa.

The need for rapid transition to generating people-centred justice data, away from reliance on administrative data from formal justice institutions, has been a major focus of the SDG 16 agenda

South and the communities being studied to avoid extractive research, prioritize local knowledge and the views of those who are directly affected by the issues examined is increasingly recognized, in line with people-centred justice approaches (see box 2) and efforts to decolonize development, as well as the knowledge production that informs it.

Mapping justice chains and tracing cases

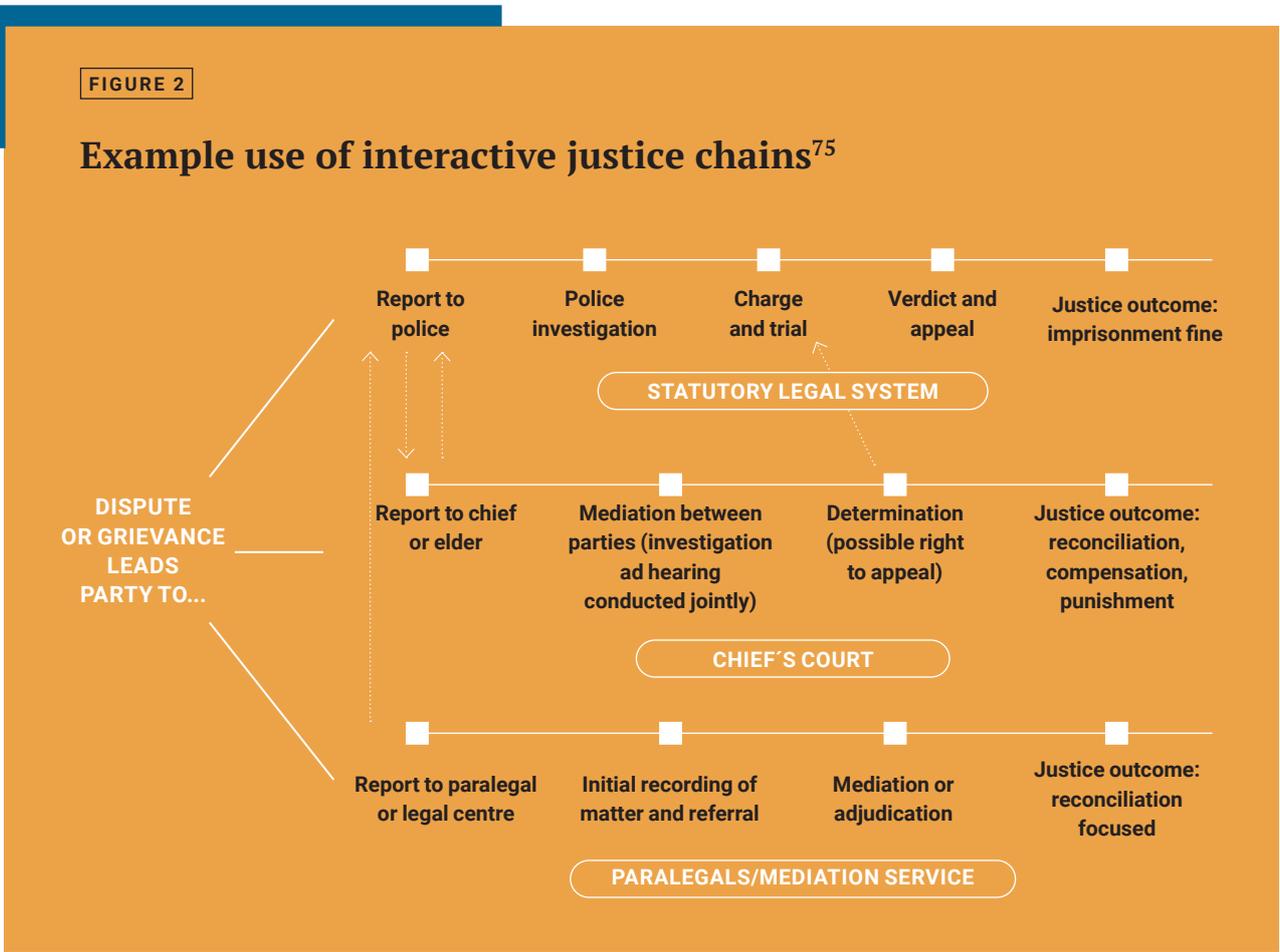
Mapping justice chains takes a people-centred approach to show the pathways people use through different providers in seeking justice, in contrast to diagrams of formal referral pathways.⁷¹ Justice chain frameworks have been used by United Nations Agencies and a range of research institutes.⁷² These chains or pathways often intersect, as people move or are referred among different providers, or use several providers simultaneously (see figure 2), demonstrating the interactive nature of the justice ecosystem. This can help pinpoint blockages within the chains.⁷³

Other approaches follow specific cases as they move through the justice ecosystem. This usefully captures how people use the justice system *in practice*, rather than how people think they would respond when hypothetically

faced with a justice issue. Research undertaken between 2015 and 2021 under the EverJust programme in Myanmar, for instance, observed dispute resolution processes and documented the journeys of particular cases through longitudinal ethnographic research. It found that people overwhelmingly sought to resolve their justice issues at the community level, outside the highly distrusted formal justice system.⁷⁴ Following particular cases provides the opportunity to understand how people navigate complex justice ecosystems in practice, and importantly provides insight into people's differing justice experiences and how these are shaped by different justice issues, location, or a range of intersecting inequalities that impact their experience of justice.

Legal needs surveys

Legal needs surveys are a key source of data for understanding community legal needs and CIJ's role in meeting these. They tell us what legal problems arise, how people resolve them (including their use of CIJ mechanisms), what outcomes they achieve and the impacts of dispute resolution on people,⁷⁶ communities and development sectors. Since the Hague Institute for Innovation of Law (HiIL) first introduced





Justice Needs and Satisfaction Surveys in 2013, legal needs surveys also increasingly incorporate questions on satisfaction with outcomes and processes, as well as on the time and costs of achieving outcomes.⁷⁷ Legal needs surveys can show similarities and differences in needs by justice issues, across communities or by geographic location.⁷⁸ Increasingly, this data is being made publicly available through the establishment of the Atlas of Legal Needs Surveys by the World Justice Project,⁷⁹ which provides an interactive, searchable repository of legal needs surveys conducted globally (with 108 countries currently covered). In 2019 the Organisation for Economic Co-operation and Development (OECD) and Open Society Foundations released guidance on standardizing legal needs surveys to make it easier for countries to undertake quality, standardized legal needs surveys to guide their own planning and reform processes.⁸⁰ Also in 2019, the World Justice Project published “Global Insights on Access to Justice”, the first-ever effort to capture comparable data on legal needs and access to civil justice on a global scale, representing the voices of more than 100,000 people in 101 countries.⁸¹ Data from legal needs surveys complement other sources of justice data, showing community justice needs and how they are met, rather than just the minority of disputes reaching a state justice mechanism. It has been through legal needs surveys that the use of CIJ mechanisms has become “officially” visible in many contexts with some clearly showing that CIJ is the dominant dispute resolution method (even though this fact may have already been well

captured in qualitative research). For example, a legal needs survey conducted in Ethiopia found that customary justice is the most used dispute resolution method, with 43 per cent of people with legal needs turning to village elders.⁸² This information is clearly helpful in planning justice sector support, although of course use of CIJ providers cannot always be equated with preference for those systems.

While quantifiable data is important and serves a range of useful purposes, it can also hide important nuances and contextual detail. Legal needs surveys can bring to the surface CIJ providers but often only a small fraction of the existing CIJ mechanisms available in a country are included, leaving many out or lumping them all together as “alternative dispute resolution”. Moreover, family and sexual violence are known to be highly under-reported, including in legal needs surveys.⁸³ To avoid grossly understating legal needs regarding gender-based violence and other sensitive issues, results must be contrasted with other forms of data, such as the UNWOMEN Global Database on Violence Against Women, as well as with qualitative research that can provide more nuanced context.⁸⁴

Despite their value, due to a lack of resources to conduct surveys, legal needs surveys are rarely undertaken, especially in low-income countries. This means that countries most likely to be in greatest need of justice support have the least capacity to get on to the “data scoreboard” and miss the chance to be counted, measured and therefore prioritized.

Approach 2

Empower CIJ users

RATIONALE

This approach is focused on building the knowledge, skills, capacities and confidence of those who rely on CIJ systems to get the best possible outcomes of the justice providers available to them. This focuses on supporting CIJ users, recognizing that they are best placed to make decisions about how to pursue justice, and resolve disputes and grievances in their own context. The focus, then, is on equipping these users with more knowledge and assistance to be able to make an informed choice and make the most of the systems available to them in ways that will best meet their needs and protect their rights. This approach does not aim to push justice seekers to use one justice system or another, but rather focuses on justice seekers themselves and supporting them to navigate the available ecosystems in ways that will best serve their interests and uphold their rights.

WHEN THIS APPROACH MIGHT BE RELEVANT

Legal empowerment approaches are relevant and useful in all contexts, providing justice seekers with more knowledge of their rights, justice pathways and how best to navigate them. Such approaches can be appropriate in situations where formal and CIJ systems

coexist productively, with a focus then on helping people navigate the system(s) most likely to work for them. In addition, legal empowerment approaches can be appropriate in contexts where justice seekers struggle to access any form of adequate justice – formal or CIJ – or where all available providers exhibit serious limitations for rights protection, with a focus then on offering some degree of rights knowledge and protection. The current situation in Afghanistan and Myanmar are two such examples. In Afghanistan, for instance, the formal justice system is being replaced with Sharia-based religious law, and judges are being replaced with those qualified in Sharia law as decision-makers. While there is currently no appetite to engage with the Taliban and its justice system, millions of Afghans have no option but to use the systems available to them. Some international actors have thus opted to support justice users to know their rights and be supported by paralegals in a variety of legal fora to achieve the best possible outcome in a dire situation.⁸⁵

Empowering CIJ users can also be appropriate for particularly marginalized groups within a community – groups that are systemically discriminated against, such as religious or ethnic minorities, women, children, youth, LGBTQI persons, or persons with disabilities. This more targeted approach recognizes that not everyone experiences justice or justice providers in the same way and that some people will face greater difficulty in accessing justice from any provider. For those groups, being able to astutely navigate the best ways for them to pursue justice (if they choose to do so) may be especially important (see box 3 below on women and CIJ).



EXAMPLE ENTRY POINTS

Awareness-raising and education

In practice, empowering justice seekers can take different programming forms. It may involve raising awareness of rights, the law, available justice providers and referral pathways. This may be via trainings and community awareness raising, use of social media, radio and television programmes and other public announcements, as well as more innovative community dialogue methods (see box 4 on the “Let’s Talk” campaign in Myanmar). It might also involve the development of context-appropriate resources that visualize different “pathways to justice” and hotlines or text messaging services that provide advice and information to justice seekers that importantly focus beyond formal justice systems to also include CIJ.

Paralegals, community mediators and legal aid

Another common entry point under this approach involves supporting community-based paralegals, legal aid providers, mediators or other local support networks. Community-based paralegals (also known as grassroots legal advocates or “barefoot lawyers”) are individuals working within their communities (both paid and volunteer) who have received varying levels of training in rights, the law and mediation methods.⁸⁶ They combine this with their knowledge of the context and understanding of norms and power relations within their communities and thus have a granular understanding of justice options and experiences at the local level.⁸⁷ Most paralegals offer a range of services to their communities free of charge. In relation to this approach of empowering CIJ users, this can include informing people of their rights and options available, assisting people in navigating justice providers, and helping survivors of violence seek protection (see box 5 on Kituo Cha Sheria in Kenya). Paralegals are also often actively engaged in community-organizing and legal empowerment, supporting people to know their rights and use this knowledge to participate in shaping justice systems to be more just.⁸⁸ Similarly, community mediators are trained to help facilitate mutually agreed solutions to disputes between people at the community level and avoid escalation.

Legal aid can take a variety of forms but critically involves provision of free and confidential advice to justice seekers on their rights and potential pathways.

BOX 3

Women and CIJ

Women’s experiences of justice are diverse and different to men’s, and it is imperative that in leaving no one behind, women’s issues are centrally placed. Some of the most common justice concerns that women face – inheritance, family formation, divorce, property rights, land and debt disputes and even violence against women and girls – are frequently resolved or adjudicated through CIJ systems. CIJ mechanisms are therefore uniquely placed to potentially play a pivotal role in ensuring that justice for women becomes a lived reality. Yet CIJ systems are often skewed against women and girls, favouring male-dominated structures, patriarchal values and discriminatory and harmful outcomes. While it is important to recognize the significant challenges of CIJ systems, there are also models, lessons and approaches that can be shared to pursue engagement with the aim of expanding women’s access to justice. The need to engage is increasingly recognized by the Convention on the Elimination of Discrimination Against Women (CEDAW) Committee, with General Recommendation No. 35 in 2017 allowing violence against women to be adjudicated by alternative dispute resolution in some instances. The following entry points can expand gender equality and women’s access to justice through CIJ. The aim is to ensure that whichever justice system women choose for their purposes upholds women’s rights:

- Empower women to achieve justice by strengthening their knowledge of rights and the law, amplifying their voices, supporting women’s organizations and assisting women to navigate justice systems.
- Adopt and implement normative frameworks that benefit women and protect their rights by addressing gaps in legal protections, advocating for gender-responsive normative reforms and addressing implementation challenges.
- Pursue gender-sensitive reforms of CIJ through improved responsiveness to and representation of women.
- Build and expand alliances that support women’s human rights in CIJ systems.
- Strengthen research on women’s experiences with CIJ systems.

SOURCE: IDLO (2020) ‘Navigating Complex Pathways to Justice: Women and Customary and Informal Justice Systems’, Issue Brief, Rome: IDLO; UNWOMEN, UNDP, UNODC and OHCHR (2018) ‘A Practitioner’s Toolkit on Women’s Access to Justice Programming’, New York, NY: United Nations.

Restatements, ascertainment or articulation of customary law

A further entry point can include restatements, ascertainment or articulation of customary law which, sensitively done, can help legitimize CIJ as a valid form of justice knowable to justice seekers. Such efforts have a complicated history, and there is much debate on the utility and dangers of attempting to capture and write down customary law.⁸⁹ Earlier approaches focused on codification – which aimed to fix customary law so that it was knowable for justice seekers and justice adjudicators. Such approaches have been criticized for formalizing an inherently informal process, in which flexibility is incredibly important.⁹⁰ Codification processes are also challenging because they tend to reify interpretations of custom by the powerful, risking further marginalizing groups that are already vulnerable. These lessons should be heeded, and as a result codification is not recommended here. Ascertainment and restatements, however, have emerged as a softer form of documenting what customary norms entail and how they differ by context and community, and are more sensitive to the risks involved in fixing a living process.⁹¹ This entry point is included here as an example of empowering justice seekers so that it is approached as a means of giving people tools to deal with their justice problems – rather than as part of efforts to change customary law or fit it into formal justice systems. Processes of articulating customary law can be especially important in settler-colonial societies, or other contexts where there has been a rupturing of ties with ancestors, custom or past practices (see box 6 on articulating customary law in indigenous Canadian communities).

Important considerations

In empowering CIJ users, it is important to keep in mind that the information provided is genuinely people-centred and framed with them as the decision-maker. Information that pushes them to one justice provider or another risks continuing to impose an institutionally-driven approach that views some elements of the justice system as “better”. Here, the focus is on empowering justice seekers to make their own decisions by providing information and support.

This engagement approach should be cognizant of the risks of raising expectations of justice outcomes and then disappointing justice seekers who do not end up with a positive result, or a positive justice experience. It is important to consider that CIJ leaders may reject or push back on legal empowerment efforts, where they feel this may dilute their power or go against community norms that they are custodians of.⁹² Where this is the case, empowerment of CIJ users might need to be framed in non-confrontational ways, and relationship building will be required with a wide range of actors in the justice ecosystem, including CIJ actors. It might also be important to ensure that there is informal support available to CIJ users *after* seeking justice, as well as before. The relevance of this approach to a multitude of contexts means that it pairs well with other engagement approaches that are simultaneously trying to shape the justice ecosystem in ways that will deliver more just and accessible outcomes.

BOX 4

Let’s Talk campaign in Myanmar

Following decades of military rule in Myanmar (1964–2011), in 2018–19, the European Union’s MyJustice programme provoked a broad-based public conversation about what justice means and where it can be found. Using data and research the programme had collected about justice needs and perceptions, a large-scale social and mass media

campaign was launched to challenge injustice. The Let’s Talk campaign used a wide variety of communication tools to access and engage the population, ultimately reaching 23 million people. It used mass media, social media and community events to espouse a positive message and advocate for fairness and equality for all, especially ethnic minorities,

the Muslim population and the LGBTQI community. It also included talk shows, a graphic novel, a free rock concert, and featured a movie star who became a campaign ambassador. Participants were taught how strategic communications can complement community-based solutions to promote access to justice in a politically informed way.

SOURCE: World Justice Project (2019) ‘Scaling the Wall: Creative Communications to Overcome Silence about Injustice in Myanmar’, Available at: <https://worldjusticeproject.org/world-justice-forum-vi/scaling-wall-creative-communications-overcome-silence-about-injustice>, Accessed 17 May 2023.



Approach 3

Support and protect rights-based organizations working alongside CIJ

RATIONALE

A third entry point involves supporting and protecting organizations, alliances and movements working for greater rights protection and justice. The logic here is to strengthen those organizations or movements, build connections among them and provide platforms for them to work with CIJ actors, where appropriate, to push for CIJ processes and outcomes that protect rights. This supports those who are already advocating for greater rights protection within the justice systems available to them. Alternatively, this approach can also extend to creating new organizations or supporting new community-innovated dispute resolution mechanisms that create alternative options to both formal and CIJ systems.⁹³ These may supplement or compete with CIJ (and other) systems, thereby driving greater service-orientation to justice seekers.⁹⁴ Supporting such groups or initiatives is with the aim of contributing to shifting the dial on prevailing social norms that underlie many CIJ systems. Importantly, such organizations and groups also

require protection – provided by governments and international funders – to enable them to do the sometimes risky work of challenging injustice.

WHEN THIS APPROACH MIGHT BE RELEVANT

This approach is likely to be suitable when CIJ systems are distrusted by justice seekers or do not uphold rights.⁹⁵ Supporting rights advocates might also be appropriate in contexts where there is strong recognition of CIJ systems but nonetheless particular groups (such as women) are systemically discriminated against.⁹⁶ In other cases, where reform of CIJ systems is seen to be too sensitive, complex or otherwise undesirable, the focus may be on providing alternative normative orders to provide more justice options.⁹⁷ This approach might also be relevant where donors are concerned about the risks of working more directly with CIJ providers themselves; or where donor relationships with partner governments preclude working with CIJ directly.

EXAMPLE ENTRY POINTS

Supporting human rights defenders and groups representing marginalized communities

In practice, this approach can take a range of forms. It might involve supporting organizations

that represent the rights of women, children, youth, LGBTQI persons or people living with disability, survivors of serious human rights violations, or human rights defenders that are focused on improving the justice experience of their constituents. Support might enable those organizations to undertake advocacy work, build relationships or alliances with other organizations, or share experiences and lessons. Alternatively, support might assist these organizations in building relationships with CIJ providers or other partners that influence CIJ. Importantly, those other partners might go beyond the “usual suspects” – such as religious authorities, councils of elders or chiefs, or secret societies – that are influential in shaping social norms and practices (see box 7 on women’s advocacy on indigenous justice in Latin America).

Establishing or supporting new informal justice providers

Another common form of this approach is to set up new organizations providing dispute resolution services, or support community-innovated dispute resolution processes.⁹⁸ These provide an additional option alongside existing CIJ or formal justice systems and are more strongly rooted in norms that recognize individual rights but are often balanced with collective and cultural rights that are important to identity.⁹⁹ Frequently, this takes the form of community-based paralegal organizations or community mediation (see box 8 on mediation in Bangladesh and box 9 on women’s Peace Huts in Liberia). Paralegals may provide their own dispute resolution services, they may act as court monitors overseeing CIJ proceedings, or they may assist CIJ providers in facilitating proceedings (for instance by advising on formal laws, collecting witness testimonies, etc).¹⁰⁰ These roles of working more directly with CIJ, of course, require a willingness on the part of CIJ leaders to engage with paralegals – which will not always be possible or appropriate depending on the context. Community mediators facilitate mutually agreed dispute resolution between parties and can help provide an alternative pathway for justice seekers not able or willing to use other CIJ or formal systems. Because community-based paralegals and mediators are from the community themselves, they offer an important understanding of local norms and power dynamics and how these shape justice experiences and outcomes.¹⁰¹ This can mean they are well placed to bring a stronger human rights angle to their work while being culturally attuned and thus more likely to gain traction with justice seekers. This enables them to “craft workable, socially legitimate and enforceable solutions” to people’s justice problems.¹⁰²

BOX 5

Grassroots legal aid service in Kenya

Kituo Cha Sheria (KITUO) is the oldest, most experienced legal aid-providing and human rights non-governmental organization in Kenya, and perhaps, across the East and Horn of Africa region. It exists to empower the poor and marginalized and to enhance equity and access to justice for all. KITUO was established in 1973 by law students in post-colonial Kenya. While Kenya adopted a progressive Constitution, the colonial laws and ordinances were not repealed or amended but were simply renamed Acts of Parliament. Most of these laws were inherently unjust because they discriminated on the basis of race, class and gender. In addition, illiteracy and lack of knowledge of the laws put many Kenyans at a great disadvantage. The lawyers available were too few, very expensive and far beyond the reach of poor Kenyans. When faced with legal and human rights issues such as rent disputes, the poor residents always found themselves at a disadvantage as they did not know how to safeguard their rights or effectively access justice. For a considerable time, it was only KITUO that provided pro bono legal services in Kenya.

Currently, KITUO has a full-time staff of over 40 and continues to provide free legal advice particularly related to land, labour and housing issues. Since 2015, it also works closely with customary justice providers at the local level to resolve disputes through alternative dispute resolution and uses community paralegals to support local area chiefs in resolving matters brought to them by providing knowledge of the law.

SOURCES: Interview with Annette Mbogoh, CEO, Kituo Cha Sheria, 27 April 2023; Namati (no date) ‘Kituo Cha Sheria – Legal Advice Centre’, Available at: <https://namati.org/network/organization/kituo-cha-sheria-the-centre-for-legal-empowerment/>, Accessed 17 May 2023.

Protect CIJ actors

In many places CIJ actors are under threat, especially when their work challenges existing power structures and historical injustice. This is all the more common as contractions in civic space are experienced in many countries. In 2021, 74 per cent of Legal Empowerment Network members reported struggling to do legal empowerment work in their political and social contexts and more than half said they or someone they knew had been threatened, arrested or harassed pursuing justice in the last year.¹⁰³ CIJ providers often do not have the same protections that exist for justice providers in formal systems, like judges and prosecutors. Supporting CIJ to

Articulating indigenous law in Canada

The Indigenous Law Research Unit at the University of Victoria partners with indigenous communities seeking to rearticulate their laws to address the challenges they face today. The Unit collaborates with communities by invitation and works with them on their own terms. The process of rearticulation involves:

- building a research partnership with communities
- drawing on the intellectual resources of indigenous communities through recorded law, oral narratives, language, maps and other resources communities consider important to outline preliminary legal principles

- facilitating conversations with communities about their laws, asking questions and clarifying
- drafting and validating a report that rearticulates the community's indigenous law
- presenting the final report back to the community for implementation.

This approach has been used to rearticulate indigenous law to deal with a wide range of contemporary challenges, related to watershed governance, community conflict, land, child safety and family law – among others.

SOURCE: Indigenous Law Research Unit website: <https://ilru.ca/research/>.



operate in challenging and insecure environments must thus be accompanied by an awareness of and willingness to take responsibility for the security of CIJ providers. This can include clear accountability for and non-tolerance of reprisals. It can also include funders accepting less detailed reporting from CIJ actors on activities to protect the safety and security of those involved. More broadly, governments and development partners can support civic space, reduce regulatory and administrative burdens on local civil society and take action against threatening or hostile behaviour.

IMPORTANT CONSIDERATIONS

There are important considerations in undertaking this approach. First, any support to local organizations needs to ensure it does not undermine their local credibility and legitimacy. Pushing local organizations to use international human rights discourse or materials may lead to backlash for those organizations, and they may be discredited and seen as mouthpieces for external actors. It is crucial that efforts to expand rights protection trust local organizations in navigating these issues, drawing on the expertise of local people in balancing different rights and identities, and support them with flexible resources.¹⁰⁴ This empowers local rights defenders and offers greater likelihood of gaining traction with CIJ leaders.

Where new organizations are created – or new processes supported – it is important to have considered how these will impact upon the wider justice ecosystem in both positive and negative

ways.¹⁰⁵ It is also important to remember that any new actor in the justice ecosystem will be subject to the same pressures of the socio-political and normative environment – thought should be given to how this will be managed. Finally, those utilizing this approach should ask whether a new provider carrying out dispute resolution or mediation is likely to address the underlying causes of inadequate access to justice.¹⁰⁶ In some instances, development partners favour the creation of new entities that they can badge and claim – when their support might have better been allocated to working with existing local processes.

Approach 4

Foster coherence and collaboration in the justice ecosystem

RATIONALE

This strategy for engaging with CIJ takes a systemwide approach to justice and aims to make that system operate more collaboratively in the

interests of justice seekers. It is imperative that such approaches do not aim to formalize CIJ systems or focus on making them institutionally more legible – this is an outdated approach that has been significantly criticized (see below). Rather, the aim is – from a people-centred perspective – to make available and navigable multiple pathways to justice, and to foster dialogue among various justice providers on making justice (both procedurally and substantively) more accessible for all. Many people spend a lot of time, money and effort trying to find viable justice pathways, tracking back and forth between different mechanism types or using multiple simultaneously, trying to leverage the best outcomes offered by all. Given the high levels of community demand for justice and the finite capacities for resolving disputes across both State and CIJ mechanisms, in some contexts creating the most effective justice ecosystem may involve improving coherence and collaboration among all available justice mechanisms.¹⁰⁷ By better leveraging each provider’s contribution towards meeting community justice needs, justice seekers can more easily reach the best available forum for resolving their problem. It is especially incumbent on State justice systems to foster mutual understanding, cooperation and collaboration among the various components of the justice ecosystem to better deliver equal access to justice that upholds human rights.¹⁰⁸

BOX 7

The Statute of Buena Convivencia (“good living”) in Cotacachi, Ecuador

Developed by indigenous women, with the support of the Integrated Center for Women’s Aid (Centro de Atención Integral de la Mujer), the Statute of Buena Convivencia aims to address high rates of intra-familial violence in Cotacachi – a multi-ethnic canton with large mestiza and indigenous kichwa populations. The Center was established as part of the government response to Law 103, which criminalized violence against women in Ecuador and is tasked with training formal justice officials in rural areas. The high incidence of intra-familial violence in the communities led to the development of a community statute to try and make gender justice more accessible within indigenous justice processes. The new statute has been supported by the indigenous

mayorality, and the 43 communities that make up the peasant union UNORCAC are also committed to developing similar community statutes. The statute on good living and good treatment – reglamento de la buena convivencia y el buen trato or Sumak Kawsaipa Katikamachik in kichwa (2008) – aims to regulate family and community life and establishes a series of sanctions, which are increased whenever a person re-offends, thus recovering the custom of tougher sanctions for recidivists. It respects the principles of indigenous justice to the extent that it seeks to repair damage, but it also seeks to achieve a union between “ancestral” practices and human rights. It respects the jurisdiction of the State for particularly serious crimes, such as

rape. Different types of violence that are condemned in the statute include physical, psychological and sexual violence, rape, forced marriage, gossip, infidelity and the prevention of women from participating in public affairs or economic activities. These are identified as the main kinds of behaviour that affect women and “good living” within the family and the community. In this way, the statute aims to promote a process of cultural change that confronts naturalized ideas about violence and aims to create new forms of behaviour based on respect between women and men [T]he mere emergence of the statute is testament to the enormous efforts of indigenous women through their organizations to confront these problems.

SOURCE: R. Sieder and M.T. Sierra (2010) ‘Indigenous Women’s Access to Justice in Latin America’, Working Paper 2010: 2, Bergen: Chr. Michelsen Institute, p. 30-31.

WHEN THIS APPROACH MIGHT BE RELEVANT

This approach must be highly context-specific as a wide range of typologies characterize formal justice system-CIJ system relationships: combative, competitive, cooperative and complementary – to name a few.¹⁰⁹ There will be no universal “best practice” beyond ensuring that any efforts to support collaboration and coherence are appropriately tailored to context and do no harm. In many cases, interaction between CIJ and formal justice systems are often much greater than assumed, even where CIJ mechanisms are not formally recognized by the State. In these instances, such interactions may provide useful entry points for building collaboration and coherence. In other contexts, however, CIJ systems may be much more separate from formal justice systems or the State, and a stronger relationship with formal bodies may erode the very legitimacy of CIJ. This is especially pertinent for indigenous justice systems or other CIJ systems that cater to communities that are not well-served by the State.¹¹⁰ There is thus a balance to be struck with some situations in which “too much” linkage stifles or suppresses the full potential of CIJ contributions to the justice ecosystem,



BOX 8

NGO-Shalish mediation using the Maduripur model in Bangladesh

In response to difficulties faced by poor and marginalized groups accessing the formal legal system and negative practices of traditional shalish (customary mediation), the Maduripur Legal Aid Association (MLAA), a Bangladeshi NGO, established a multi-tiered structure of village mediation committees. The methodology employed is an adaptation of Bangladeshi customary mediation, shalish, but modified to better address the needs of users. In each village where the programme operates an 8- to 10-person mediation committee, reflecting the gender and ethnic composition of the community, is selected in consultation with local powerholders and elites (including elected officials, teachers and other influential persons). The committees meet twice a month to mediate disputes free of charge. Oversight is provided by a mediation worker trained by MLAA. Most disputes

involve marital or property issues; domestic violence is the principal complaint of women clients. Criminal cases, including rape and murder, as well as complex land cases are referred to the formal legal system, and MLAA provides assistance when required. Where mediation is successful, the agreement is recorded and signed by the parties. If mediation is not successful, the dispute is referred to a higher level in the mediation structure. Disputes that still cannot be resolved are referred to the courts, again with legal aid assistance if required.

MLAA mediates approximately 5,000 disputes annually across 487 committees. Of these disputes, between 66 and 88 per cent are said to be successfully settled without going to court. Although mediation is voluntary, and decisions are not enforceable, rates of compliance

are high. This may be due to perceptions of officialdom and authority attached to NGO-mediated and/or written decisions, post-agreement monitoring of the decision, or parties' knowledge that if an agreement is not reached or abided by, the complainant has a very real option of litigation. Building on the MLAA Maduripur model, several NGOs in Bangladesh now operate similar mediation schemes, together providing a sizeable alternative to both formal and traditional shalish justice.

SOURCE: E. Harper (2011) 'Customary Justice: From Program Design to Impact Evaluation', Rome: IDLO, p. 63; London College of Legal Studies South (n.d.) 'Community-based Mediation in Bangladesh', Available at: <https://lcls-south.com/community-based-mediation-in-bangladesh/>.



and others where a lack of recognition or a lack of regulation acts as a major constraint, such as in the case of paralegals who may not have an enabling regulatory environment for their work. In some contexts it has been noted, for instance, that enforcement of CIJ outcomes based on social pressure or stigma for non-compliance is weakening as a result of commercialization of rural land and forest land, which enables people (especially elites) to bypass CIJ systems and ensure enforcement of their rights through the formal justice system.¹¹¹ In such cases, CIJ systems can benefit from explicit recognition by the State to strengthen their authority and make their outcomes more effective. In some conflict-affected settings, CIJ practices that were not designed to address political violence or atrocities may do so in practice, while the authorities leading such practices may have lost credibility or capacity as a result of conflict dynamics; in such contexts, the nature of relations between formal justice and CIJ systems may be complicated and in need of coherence.

EXAMPLE ENTRY POINTS

Constitutional recognition of CIJ

In practice, this approach takes many forms, ranging from more formal to less formal

BOX 9

Women's Peace Huts in Liberia pursuing justice for women

Following Liberia's two civil wars from 1989–1997 and 1999–2003, rates of sexual and gender-based violence have been incredibly high, with estimates that 40 per cent of rape victims are under twelve years of age. While the Government of Liberia and international development partners have focused on strengthening the formal justice system, its effectiveness remains limited with huge case backlogs and few arrests or convictions for cases involving violence against women. This is especially true in rural areas, where access to the formal justice system remains a challenge. Liberian women's groups have stepped in to fill this gap, establishing "Peace Huts". These groups of women follow cases that are taken to the formal justice system and push for them to be prosecuted. When the police say there is no evidence, the women mobilize to assist in finding it. The women also mediate cases at the Peace Huts that women in their communities bring to them, such as domestic violence and abandonment. After hearing the woman's concerns, the Peace Hut women bring the accused and hear from both parties before reaching a verdict and asking both parties to sign an agreement (such as payment of compensation or a commitment not to reoffend). Their power comes from their sheer numbers and persistence: the men listen because they know that the women of the community will keep pursuing them if they do not maintain their commitment. If the men reoffend, the Peace Hut women take them to the police. There are now 38 Peace Huts across Liberia that stand as a grassroots example of women forging their own informal justice system when both formal and customary systems do not meet their needs.

SOURCE: United Nations TV (2012) '(4) Liberia: Peace Huts - YouTube'; UNWOMEN (2019) 'Statement: Peace Hut Women of Liberia wins 2019 UN Population Award', Available at: <https://www.unwomen.org/en/news/stories/2019/6/statement-ed-phumzile-peace-hut-women-of-liberia-wins-2019-un-population-award>, Accessed 14 July 2023.

Existing or new CIJ practices can operate at the local level in accordance with local understandings of justice but be integrated with and adhere to formal justice principles



approaches to coherence and collaboration. More formal approaches include constitutional or legal recognition of legal pluralism. This recognition of the legitimacy of CIJ systems opens opportunities to strengthen relationships between formal and CIJ systems, as well as for external actors to engage with CIJ systems as a recognized part of the justice ecosystem. Colombia's landmark 1991 Constitution, for instance, explicitly recognizes indigenous peoples as having collective rights that are protected by a Special Indigenous Jurisdiction, which grants significant jurisdictional autonomy from the national legal system.¹¹² Constitutional recognition, however, does not always mean that formal and CIJ systems are, or should be, closely linked. In Latin America, for instance, where there is strong constitutional recognition of CIJ and some highly integrated approaches (such as community mediators working alongside public defenders in Argentina), efforts to bring the systems closer together are sometimes resisted by indigenous groups who see this as weakening the credibility of CIJ systems.¹¹³ Moreover, aside from legal recognition of CIJ, laws and constitutions can provide important qualifications in regard to the bounds of CIJ, often exempting them from other legal or constitutional guarantees, such as gender equality.¹¹⁴ In other cases – such as the 2010 Kenyan Constitution – the CIJ's jurisdiction and practices are bound by a commitment to human rights principles, including gender equality.¹¹⁵

Clarifying jurisdiction, referral and appeal pathways

Coherence and collaboration approaches might also focus on delineating clear jurisdictional boundaries

among different justice providers, making it clear to justice seekers which system deals with which justice problems, and ensuring (at least in theory) procedural standards and rights protections for more serious matters. Referral pathways and appeal processes can also be put in place, providing clarity on the steps in the justice process and enabling the right to appeal if initial justice mechanisms do not deliver.¹¹⁶ Efforts to clarify referral pathways are aimed at “directing the traffic” by guiding justice seekers to the dispute resolution forum that seems best suited to their problem type. These models aim at more clearly articulating justice pathways, often by seeking the cooperation of CIJ authorities to refer relevant case types to police or other State justice authorities, including serious crimes, sexual offences and family violence, rather than resolving them within family or CIJ mechanisms.¹¹⁷ This strategy may be accompanied by coordinated public information from State government and judicial actors, communicating expectations regarding which case types can be dealt with by CIJs and which should come before a court. While referral and appeals chains are important, in practice it is important to remember that few justice seekers are able to pursue cases beyond the initial justice forum; and people's decision-making about which justice provider to take a matter to is informed by a wide range of considerations, which clarifying referral pathways alone will not address.

Bridging formal State and CIJ systems

In other cases, CIJ mechanisms can act as a bridge between systems, particularly where formal, State justice systems are inaccessible or where indigenous or other CIJ systems are

particularly resonant. In these cases, existing or new CIJ practices can operate at the local level in accordance with local understandings of justice but be integrated with and adhere to formal justice principles (see box 10 on the use of indigenous mediation in Mexico). Complementarity between justice systems is not always straightforward but where it can be achieved can offer the best of both worlds – rules-based, rights respecting justice, delivered through locally trusted and accessible providers that are more culturally resonant.

Facilitating dialogue among the justice ecosystem

A less formal approach to coherence and collaboration is to build relationships, dialogue and trust between formal justice and CIJ actors, as well as among diverse CIJ actors themselves. This may involve coordination fora, where there are case referrals to discuss between justice systems. But it may also involve less structured dialogues and exposure visits between justice systems to better understand other justice pathways and norms, promote learning and discuss topical issues (see box 11 on mobile courts in South Sudan and the Democratic Republic of the Congo).¹¹⁸ Other productive approaches include engaging bar associations, lawyers, law students and universities in efforts to build knowledge, exchange and mutual respect with CIJ systems, as well as integrating teaching on customary and religious law into law degrees (see box 12 on training judges in indigenous law in Guatemala). Such approaches are not only relevant to building positive relationships between formal justice and CIJ actors, but also among different CIJ providers. Multifaith leaders pointed to the importance of interfaith dialogues to promote dialogue and collaboration.¹¹⁹

IMPORTANT CONSIDERATIONS

While some strategies for strengthening coherence and collaboration between CIJ systems and the wider justice ecosystem offer the potential to improve people-centred justice, what will be appropriate in any given place will be highly context dependent. More formal linkages may be effective in some contexts, but experience has also demonstrated that linkage may not deliver the intended result. Some common strategies of State co-option, codification or formalization of CIJ systems can undermine the qualities that make them beneficial to the people using them, including their accessibility and flexibility to adapt justice outcomes or evolve to meet current needs.¹²⁰ The result can be the “worst of both worlds”, where CIJ systems become rigid and more distant from people, while applying entrenched discriminatory norms but without effective oversight, thus becoming much less capable of meeting the justice needs of people. Efforts

BOX 10

Indigenous mediation in Mexico, bringing justice closer

The Alternative Justice Center (AJC) of the State Judiciary of the State of Hidalgo, Mexico, provides mediation services to indigenous communities across the State via three mediation centres that cover the predominant ethnic groups: nahuatl, hnahñu and tepehua. Hidalgo’s model began in 2007, and it was quickly foreseen that the mediators, including those who were indigenous, would benefit from training and certification by the State judiciary. Indigenous mediators do not need to have a legal background but are required to be knowledgeable about community norms and practices, language and culture.

Indigenous mediators in Hidalgo have strong links with their communities. A hundred per cent of the indigenous mediators belong to an indigenous community, 80 per cent of mediators speak the native language and many have been active in their communities. Community authorities refer cases to the AJC mediators and provide a space to conduct in situ mediations. While being strongly rooted in their communities, indigenous mediators are also part of the State judiciary. They are paid as public servants and are bound by principles that govern the judiciary such as impartiality, neutrality and by human rights acknowledged in the Mexican Constitution.

Hidalgo’s model has gained institutional acknowledgement and community endorsement. Flexible and low-cost procedures, paired with linguistic accessibility are key attributes that improve access for marginalized and low-income communities, especially women, who are more likely to bring disputes to the indigenous mediation service than men. The model is delivering results – based on AJC’s statistical records, 8 out of 10 people who use indigenous mediation have reached agreement. Hidalgo’s model has become a reference point for other States seeking alternatives to address indigenous communities’ everyday legal needs.

SOURCE: The World Justice Project (2021) ‘Mediación Indígena: Acercando la Justicia’, Available at: <https://worldjusticeproject.mx/wp-content/uploads/2021/11/Reporte-Mediacion-Indigena.pdf>, pp. 8-9.



BOX 11

Mobile courts in DRC and South Sudan

Cordaid partners in the Democratic Republic of the Congo (DRC) and South Sudan organize mobile clinics that take paralegals, lawyers, magistrates and judges to remote communities to meet community leaders, provide legal training and advice, and conduct hearings on matters that are beyond the jurisdiction of local CIJ providers. Through the mobile court visits, closer

alignment is encouraged among different justice pathways.

While the mobile courts inform people about the existence and workings of the formal justice system, they also engage with communities, village leaders, chiefs and elders to ask them how they normally deal with legal issues and conflicts. Cordaid partner staff emphasize the high

degree of acceptance of the clinics by traditional authorities, and a lack of conflict between different justice providers. They also emphasized that local chiefs and community leaders played an important role in ensuring that the rulings from mobile courts were implemented, and in maintaining or restoring good relations across the community after a ruling had been reached.

SOURCE: L. Denney and E. Laws (2019) 'Diverse Pathways to Everyday Justice: Supporting everyday justice providers to achieve SDG16.3', The Hague: Cordaid and ODI p. 24.

to improve coherence and collaboration must therefore be nationally or locally led and socially inclusive to achieve improvements in access to justice that protect rights, as the relationship between formal justice and CIJ systems are highly complex and contextually sensitive in nature.

Approach 5

Strengthen CIJ practice

RATIONALE

The final approach to engaging with CIJ is to work more directly with CIJ actors to strengthen or improve their services. This might be by partnering with CIJ providers themselves, or with partners who work directly with CIJ systems. This approach recognizes the important role that CIJ systems play in delivering people-centred justice and aims to support them in so doing, including through context-sensitive reform. It can also include efforts to actively work to address human rights concerns related to CIJ practice.

WHEN THIS APPROACH MIGHT BE APPROPRIATE

This approach will be most relevant in contexts where CIJ systems are widely used and accepted. In many cases they may be recognized (either de

jure or de facto) by the government. In other cases of contested statehood, however, CIJ systems might not be recognized but instead provide an alternative source of authority and access to justice (for instance, in Myanmar). Human rights concerns might be present, but these will be seen as a reason to engage with CIJ actors, not as a reason to reject them. Here, the focus would be on addressing rights violations to improve the quality of justice that people have access to.

EXAMPLE ENTRY POINTS

Train CIJ actors

There are many entry points under this approach that have been trialled in a wide range of contexts. Training of CIJ providers is frequently used as a modality for educating CIJ actors on the content of the law, international legal obligations including human rights, due process and jurisdictional boundaries and referral pathways. It may also focus on mediation and adjudication techniques, or how to deal with specific matters that are brought to CIJ fora.¹²¹ As in all trainings, the messenger and the messaging are important. Trainings that are one-off, are perceived as externally imposed or are highly theoretical are unlikely to gain traction. Where possible, working with trusted local experts and leaders to engage in sustained dialogue or mentoring of CIJ actors about the content of their day-to-day work is likely to be more meaningful and effective. Trainings are often supplemented by guidance and handbooks, as useful resources for CIJ actors to refer to in their work.



Introduce or strengthen procedures and safeguards

A second entry point is the strengthening of procedures and safeguards around CIJ practice to ensure transparency, accountability and due process. This might include introducing record-keeping protocols, codes of conduct or putting in place procedural standards (such as on privacy for some victim testimony, admissibility of evidence and sentencing guidelines).¹²² These approaches aim to ensure that the process of CIJ is fair and equitable (see box 13 on working with customary justice in Timor-Leste). Introducing record-keeping has been a common strategy for strengthening legal certainty for justice seekers, particularly where copies are provided to the justice-users, as well as retained by CIJ actors for future reference.¹²³ Such records can also be useful for appeals processes, and they can provide valuable insight and evidence on where injustices lie and how they might be addressed.¹²⁴ However, it is important to consider how such approaches may constrain or distort the flexibility of customary law – often considered valuable for enabling people to strategically expand their rights – as well as how realistic such approaches are given literacy and writing skills and available resources.¹²⁵

Practical manuals and guidelines setting out procedures and safeguards can also be useful for a range of CIJ actors, although consideration must be given to language, literacy levels and useability.¹²⁶ In some countries, customary leaders will have a national-level representative body and these can play important roles in helping to develop standards, safeguards and procedures.¹²⁷ Depending on the context, working with such leaders may also give legitimacy to the procedures and guidelines introduced. In Colombia, for instance, the USAID Inclusive Justice Program supports local chambers of commerce to train NGOs and civil society organizations on alternative dispute resolution, who in turn train and support CIJ actors to develop their own guidelines and procedures.¹²⁸

Strengthen monitoring and accountability

Monitoring of CIJ proceedings might be introduced to improve accountability for justice processes and outcomes. Such monitoring can be undertaken through regular review of court records and judgments by the formal justice system, government or civil society, or through observation of proceedings. In Uganda, for example, the

BOX 12

Integrating Indigenous law into legal training

In Guatemala, USAID and the National Autonomous University of Mexico supported the development of an advanced degree programme in indigenous law. The programme was aimed at depoliticizing Guatemalan indigenous policies and overcoming prejudices and misunderstanding of indigenous and traditional systems through empirical and comparative studies, thus building a cadre of attorneys able to understand and function in both systems.

SOURCE: USAID (2019) 'Non-State Justice System Programming: A Practitioners' Guide', Washington, DC: USAID, p. 11.

BOX 13

Strengthening CIJ practice in Timor-Leste

The Asia Foundation has been working with CIJ in Timor-Leste since 2011. This has taken a range of forms, from supporting new CIJ institutions, through community policing committees, to working with Xefe Sucos (village leaders) and Lia Nain (spiritual leaders – literally “keeper of the word”).

Working in partnership with a local justice NGO, the Judicial System Monitoring Program, community officers are observing customary justice procedures to build knowledge about what takes place, as much of the understanding is based on outdated research, generalizations and assumptions. Communities included in the project were selected based on having Xefe Sucos and Lia Nain who were open to reviewing tara bandu to align with the Timorese constitution and human rights. Tara bandu is one component of customary law in Timor-Leste that conventionally relates to land agreements but has expanded in more recent times to include a range of community rules. Through these engagements, people-centred improvements are being achieved. For instance, payments made by parties to CIJ leaders to “roll out the mat” (the sitting fee) and “roll up the mat” (reach resolution) has been reduced to \$50. In some cases previously, this had risen to nearly \$1,000. A range of cultural exchanges occur in addition (such as the exchanging of tais, or cloth), which is considered important in retaining the prestige of the process.

SOURCE: The Asia Foundation

Magistrates Court reviews all resolutions by the Local Council Court (a CIJ provider that emphasizes indigenous values of communal harmony, cooperation, compromise and conciliation)¹²⁹ where the compensation issued exceeds a certain threshold and is intended to prevent extorting of excessive financial punishments or unfair compensation claims.¹³⁰ Making outcomes or records of court procedures publicly available can also contribute to improving accountability, as well as supporting enforcement of outcomes.¹³¹ There are also important opportunities to involve communities in these accountability processes, for instance by supporting community-based monitoring of CIJ proceedings, or by creating dialogue forums where the findings of regular monitoring are discussed with an inclusive group of community members to determine whether CIJ systems are meeting their needs.

Diversify participation in and responsiveness of CIJ

Diversifying participation in CIJ is a strategy to improve justice procedures and outcomes for marginalized groups, as well as to contribute to more inclusive societies. This entry point recognizes that CIJ systems often reflect wider social norms and power inequities, meaning that women, youth, children, people living with disability and other marginalized groups are often not well-represented among CIJ decision-makers.¹³² Often, it is older men who dominate decision-making in CIJ fora. This denies other groups the right to participate fully in public life, and it means that justice outcomes are less likely to meet their needs and interests. Efforts may focus on how to make CIJ more responsive to the needs of particular groups, including by enabling expanded participation in proceedings (see box 14 on the introduction of women CIJ decision-makers in Namibia and box 15 on children in customary justice processes). Of course, it cannot be assumed that more women CIJ decision-makers, for instance, will lead to better justice outcomes for women but improved representation and diversity of CIJ providers is nonetheless thought to be a route to supporting improved access to justice for all.¹³³ It is also important that if marginalized groups do take on CIJ decision-making roles, they are supported to succeed in these roles with ongoing mentoring of them and of the older, male decision-makers they sit alongside.

In some contexts, newly instated CIJ decision-makers may be viewed as illegitimate by existing CIJ decision-makers or by communities. Pushing CIJ systems to adapt too quickly, if out of pace with wider social

BOX 14

Women's roles in CIJ in Northern Namibia

In Namibia, CIJ is highly established, valued and trusted by most of the population – all the more so given the lack of access to the formal justice system. However, CIJ systems have often denied women's human rights, exemplified by practices of “widow chasing”, where widows are evicted from their property, which is grabbed by male relatives, or are forced to pay fees to stay on the land. Women have struggled to obtain justice for such practices, in part due to the lack of female participation and representation in CIJ systems.

However, CIJ leaders in Uukwambi, a Traditional Authority in Owambo in the Northern region of Namibia, made a commitment in 1993 to work towards greater gender inclusion, participation and representation. With support from the Namibian government and development partners, this has seen impressive results. Customary leaders made unified decisions to empower women to participate and be leaders, along with abolishing customary practices like widow chasing. Each village in Uukwambi appointed a woman deputy chief, and ongoing dialogues on empowerment were held with women and customary leaders.

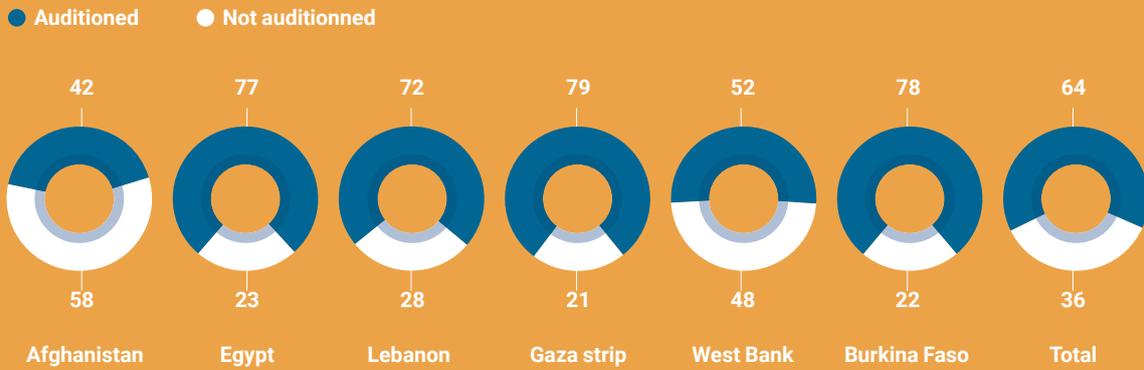
As a result of having women in leadership positions, more women felt comfortable participating in CIJ and actively engaging in proceedings. Women were given authority to be judges and act as witnesses, bringing their own issues to the fore to be heard and addressed. Seventy-two per cent of women surveyed in Uukwambi felt they could actively participate given that there were head-women in customary courts. In addition, 6 of the 12 Traditional Authorities in Owambo collectively created laws against widow chasing and land grabbing.

SOURCES: J.M. Ubink (2011) 'Gender Equality on the Horizon? The Case of Uukwambi Traditional Authority, Northern Namibia', in E. Harper (ed.) *Enhancing Legal Empowerment through Engagement with Customary Justice Systems*, Rome: IDLO, pp. 51–71; J.M. Ubink and B. van Rooij (2011) 'Towards Customary Legal Empowerment: An Introduction', in J.M. Ubink (ed.) *Customary Justice: Perspectives on Legal Empowerment*, Rome: IDLO, pp. 7–27; J.M. Ubink (2018) 'Customary Legal Empowerment in Namibia and Ghana? Lessons about Access, Power and Participation in Non-state Justice Systems', *Development and Change*, 49: 930-950.

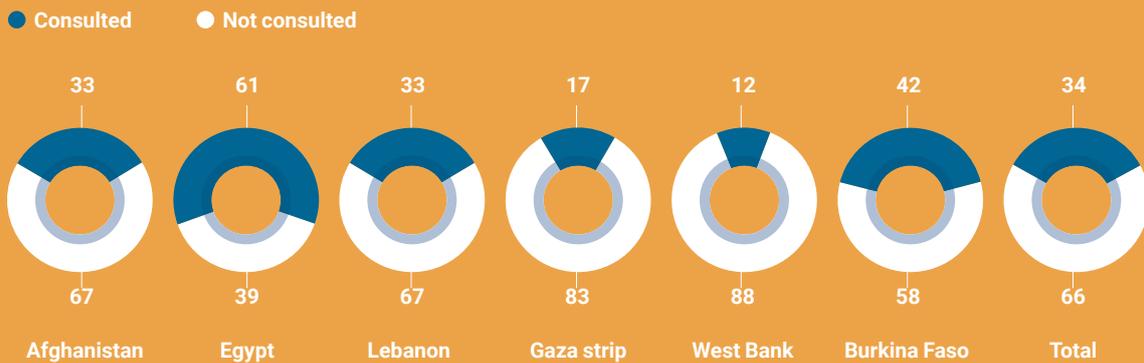
Customary justice systems and children’s right to express their opinion in practice

Article 12 of the United Nations Convention on the Rights of the Child states that children have a right to be heard in all matters that concern them and that their views must be seriously considered. This includes the right to participate in any judicial proceeding. In the literature, one of the elements that appears most often is the lack of participation on the part of children: “they are almost never consulted, their opinion is not sought”. A study done by the Terre des hommes Foundation based on 3,341 cases through interviews with customary actors examines child participation in the customary processes of Afghanistan, Burkina Faso, Egypt, Lebanon, the West Bank and the Gaza Strip. It analyses two dimensions of child participation: the right of children to have a say in matters that affect them, and to express their opinion on the outcome of their cases.

PROPORTION OF CHILDREN INTERVIEWED DURING THE CONFLICT MANAGEMENT PROCESS (%)



PROPORTION OF CHILDREN CONSULTED ON THE OUTCOME OF THE CONFLICT MANAGEMENT PROCESS (%)



The results show, according to the customary actor, that in 64 per cent of cases, children were heard by the customary authorities during the conflict management process. By contrast, in 66 per cent of cases, the children were not consulted and had no say in the outcome of the proceedings. While the number of children interviewed as part of CIJ processes is generally positive and qualifies pre-established ideas, there is significant room for improvement to better consider article 12 of the Convention. The variation among countries, moreover, highlights that it is important not to generalize CIJ practices and to contextualize them.

SOURCE: Terre des Hommes

norms, can create backlash and do harm.¹³⁴ In some cases, the participation of marginalized groups might focus on other roles, such as advisors on matters pertaining to the group they represent. For instance, women or young people might be included as paralegals who advise CIJ decision-makers on formal laws, or on matters relating to women or youth. Or, in places where women or other groups are not allowed to attend CIJ proceedings, a first step may be allowing these groups to attend.¹³⁵ In Lebanon, for instance, the use of intergenerational dialogues has facilitated discussions between youth and elders to open spaces for youth to take on greater leadership in CIJ.¹³⁶ And in Liberia, youth are reportedly increasingly consulted in CIJ fora on the development of new laws, with some chiefs elected on the basis of their consultative practices.¹³⁷

Eliminate harmful practices

The final entry point under this approach to improving CIJ is to eliminate harmful and rights-abrogating practices based on tradition, culture, religion or superstition. Some of the most serious concerns with CIJ systems is that they may use harmful procedures as part of the justice process or may deliver harmful outcomes that contravene human rights. This can include, in some contexts, the use of torture to extract confessions, honour crimes and forced marriage of survivors of sexual violence as a remedy, or the use of human compensation for some crimes and disputes. Often, such practices affect marginalized groups in particular, including children, women, LGBTQI persons, and people with disabilities. These practices clearly prevent CIJ from delivering people-centred justice. This entry point focuses on such practices with the aim of eliminating them and arriving at alternative processes and outcomes that uphold human rights. Examples include efforts to end female genital mutilation through community dialogues and sensitive processes of ascertaining customary law to demonstrate differences in application across communities or historically, leading some customary and religious leaders to ban the practice.¹³⁸ In a similar vein, Islamic scholars have been brought together to articulate interpretations of Islamic doctrine that are supportive of the rights of women and girls.¹³⁹

IMPORTANT CONSIDERATIONS

Entry points focused on eliminating harmful practices must ensure sensitivity to local context given the risks of doing harm, such as supporting those involved

It is especially incumbent on State justice systems to foster mutual understanding, cooperation and collaboration among the various components of the justice ecosystem to better deliver equal access to justice that upholds human rights

in rights abrogating practices. Working alongside community organizations and particularly groups representing marginalized peoples will be important in ensuring their perspectives, concerns and experiences are prioritized. Change is likely to be incremental, and stages might include documenting experiences, creating community dialogues or engaging with formal justice system actors where appropriate to leverage relevant protections that may exist in legislation or other commitments.

It is important to see the potential for CIJ leaders to be part of the solution to these problems, as well as the benefit of their endorsement of change. CIJ leaders can play a role in shifting community norms towards greater rights protection. In some cases, more progressive CIJ leaders can be supported to expand good practice, drawing on positive outliers that already exist (see box 16 on ending human compensation in South Sudan). CIJ systems can also play a role in responding to human rights challenges more broadly (see box 17 on sorcery accusation-related violence in Papua New Guinea).

This final approach to engaging with CIJ – by working to improve the quality of justice they deliver – offers a set of rich entry points for harnessing CIJ’s potential. Yet this approach can risk defaulting to a “fix it” mindset, where development partners seek to change elements of CIJ without sufficiently understanding these systems and why they operate in the ways they do.¹⁴⁰ The risks of quashing the very attributes that make CIJ trusted and valued are real and efforts that push reforms too quickly,

CIJ leaders can play a role in shifting community norms towards greater rights protection; in some cases, more progressive CIJ leaders can be supported to expand good practice



or that seek to formalize CIJ, are likely to delegitimize CIJ providers and break their connection to the social norms that underpin them. This risks leading to less people-centred justice, rather than more. In all places, there are local leaders, organizations and movements pushing for more people-centred justice – identifying and supporting those offers the best potential for strengthening the quality of justice that CIJ delivers.

The five approaches set out above are presented as options for engagement, based on productive experience with CIJ systems by governments and development partners in a range of contexts to date. It is left to governments and donors to decide what is most relevant in a given context. While there is no standard formula for what approaches will work to deliver people-centred justice in all places, it is important to consider how work with CIJ will be integrated and add up to more than a series of small-scale interventions to be able to close the justice gap. A sequenced approach with well-thought through monitoring is required. This might begin with investing in (or drawing on existing) research and data on the nature of the justice ecosystem in a given context, as well as the justice needs, preferences and satisfaction of local populations. Such data, combined with a nuanced understanding of the political economy, can inform which approaches for working with CIJ (or its empirical reality) will be appropriate; how approaches will be combined (or not), including with work on formal justice systems; and with what broader theory of change about how this will close the justice gap. Building in monitoring and learning systems to then track the impact of approaches is also important to being able to tell a robust story of change.

BOX 16

Ending human compensation in South Sudan

Until recently, customary courts in some communities of Torit Country in South Sudan used human compensation as a punishment for serious crimes, such as murder. The perpetrator's family would compensate the victim's family by gifting them a person – often a female child. Though illegal under formal law, the practice persisted. For many years, three local civil society organizations – STEWARDWOMEN, the South Sudan Law Society and the Justice and Peace Commission – worked with customary authorities and courts, developing strong relationships with local leaders and a deep understanding of how customary justice worked across different communities. With support from Cordaid, these partners addressed the problem of human compensation.

Working with more progressive customary leaders, the organizations facilitated chief exchanges from communities where human compensation was still being used, to those where the punishment had been replaced with alternatives. Importantly, this approach allowed chiefs to see how ending the use of human compensation did not erode the value or strength of customary law. When the chiefs realized it was only their communities still practising human compensation, they were motivated to change. Human compensation has reportedly now ceased in Torit County.

SOURCE: L. Denney and E. Laws (2019) 'Diverse Pathways to Everyday Justice: Supporting everyday justice providers to achieve SDG16.3', The Hague: Cordaid and ODI, p. 29.



CIJ systems may use harmful procedures as part of the justice process or may deliver harmful outcomes that contravene human rights, preventing them from delivering people-centred justice

BOX 17

Ending sorcery accusation-related violence (SARV) in Papua New Guinea (PNG)

In PNG, SARV has resulted in the torture and deaths of men, women and children accused of being “witches” or sorcerers, and family members of those accused have been stigmatized and forced from their homes. Those accused of sorcery are believed to have caused harm to others in the community through supernatural or occult means; with sorcery a way of rationalizing misfortune such as sickness, death, drought or business failure. SARV has proved a challenge for CIJ and formal justice systems in PNG to address. In some cases, people are scared to come forward with information about cases for fear that they will be accused; in other cases, justice actors are fearful to act or uncertain of how to handle such cases.

CIJ actors are developing promising strategies to address this human rights challenge. Some village courts require accusers to pay compensation for defamation to deter accusations, while others

have issued preventative orders where accusations have been made but violence has not yet occurred, using mediation and restorative justice to resolve the matter. In other places, local neighbourhood committees, peace agreement courts and other initiatives similarly avert violence by using their convening power to bring people together to discuss what “evidence” really exists about an accusation. Yet another initiative is the creation of community laws to prevent accusations across provinces, which has led to reductions in sorcery accusations and killings. An advantage of these CIJ responses is that they are often closer to the community and can, in some cases, sequence community forums and breaks in between to control community tensions. CIJ responses also approach cases in a communal way rather than focusing on individual perpetrators, such as by ordering entire clans to pay compensation. This enrolls the entire clan in taking responsibility for SARV.

SOURCE: M. Forsyth, P. Gibbs, F. Hukula, J. Putt, L. Munau and I. Losoncz (2019) ‘Ten preliminary findings concerning sorcery accusation-related violence in Papua New Guinea’, Discussion Paper 80, Canberra: Development Policy Centre, Australian National University.



Mobilizing financing to support CIJ

Despite CIJ being the dominant provider of justice to most of the world's population and the availability of a range of engagement approaches outlined above, justice financing by both governments and development partners remains grossly inadequate. A step change is required if SDG 16.3 is to be met by 2030 and if the opportunities afforded by CIJ to deliver cost-effective people-centred justice are to be realized. Recently produced data on justice financing points to the need for a dramatic increase in justice funding and the potential return on investment. The data produced underlines the challenges of what gets counted as “justice” spend and how CIJ and people-centred justice is accounted for. But beyond this, three challenges emerge. First, the justice sector as a whole receives little funding relative to other sectors. Second, justice spending by donors is not directed at the poorest countries where it is most needed. Third, the justice funding currently available from both governments and donors is overwhelmingly spent on formal justice systems.

Justice an under-funded sector

Independent analysis of justice sector funding¹⁴¹ found that total global support for justice stands at \$2.9 billion a year (2020), compared with \$15 billion for education and \$29 billion for health. Just 1.5 per cent of aid goes to the justice sector, falling from 2.4 per cent seven years ago – a drop of almost one-third.¹⁴² Similarly low support for justice aid is also reflected within SDG funds, with SDG 16 attracting just 11 per cent of total SDG foundation giving, including global foundation giving.¹⁴³

Justice aid not allocated to the poorest countries

Most of the limited justice aid available is targeted at middle-income countries, rather than low-income countries, burdening the poorest governments with higher justice costs. Only 10 per cent of justice aid targets low-income countries (total \$240 million¹⁴⁴) amounting to 30 cents per person per year, versus \$4 for education and \$11 for health. Yet unit costs for justice are calculated to be six times lower in low-income versus middle-income countries. This means that six times more people could be assisted with the same funds if they were directed to low-income countries – an important perspective for donors seeking to maximize the number of people that benefit from aid spending. This under-financing of justice in low-income countries means that governments in these countries spend 72 per cent more as a proportion of their GDP on justice, than middle- or higher-income countries.¹⁴⁵ This leaves the poorest governments with the burden of providing justice services to populations that are most in danger of being left behind in meeting justice for all targets.

Justice funding available does not target CIJ

Of the limited justice funding available from bilateral development partners and government budgets, most is still allocated to formal, State justice systems, with CIJ systems either recognized and supported by the State or

otherwise neglected.¹⁴⁶ Much of this funding is allocated towards cost-heavy technical support, such as infrastructure and training of court staff, which have largely failed to demonstrate results, rather than towards improvement of people-centred justice delivery and outcomes.

A new financing approach

So, what is needed to turn this lack of financing around and enable CIJ systems to effectively contribute to achieving SDG 16.3? Evidence shows that funding access to justice – including but not only via CIJ – is cost effective with high returns on investment. The *Pathways to Peace* report found a return of \$16 for every dollar invested in access to justice due to reduced conflict risk.¹⁴⁷ The World Bank conducted a study of 50 cost benefit analysis studies of legal aid and concluded that the “benefits of legal aid overwhelmingly outweigh the costs: for the individual involved, the community, the justice sector, as well as the economy and the society”.¹⁴⁸ Development partner evaluations of justice investments similarly show that even in countries with poor overall rule of law, it is still possible to improve justice service delivery by tackling it from the community side. Other studies have shown the cost effectiveness of paralegal interventions.¹⁴⁹

Costings to finance the justice gap are also increasingly available. It has been calculated that providing free, universal basic justice care in a typical low-income country would cost as little as \$20 per person per year (compared to \$41 for universal primary and secondary education and \$76 for essential universal health care) and \$64 in middle-income countries.¹⁵⁰ Yet 53 countries (34 low-income and 19 middle-income, covering 2 billion people) cannot afford even half of the \$20 per person per year needed for “basic justice care”.¹⁵¹ To fill the gap, \$13 billion is needed per year.¹⁵²

So far, committed resources are insufficient to achieve SDG 16.3. There have been widespread calls to increase justice funding. The Taskforce on Justice urged the sector “to increase the resources available for lower-cost models able to respond to unmet justice needs”.¹⁵³ The Summit for Democracy called for more financing and more diversified funders in its Joint Statement.¹⁵⁴ To capitalize on the potential of CIJ to assist in closing the justice gap, increased funding is needed from governments, bilateral and multilateral development partners, philanthropies and the private sector;¹⁵⁵ funds for justice from related programming areas (such as health, climate, gender, indigenous peoples rights, protection) should be leveraged; and pooled funds could be established. In addition to supporting formal justice systems, such funding can be allocated across the five approaches laid out earlier in this paper, spanning the justice ecosystem:

- building and sharing knowledge, data and evidence on CIJ
- empowering CIJ users
- supporting and protecting rights-based organizations working alongside CIJ
- fostering coherence and collaboration in justice ecosystems
- strengthening CIJ practice.

While more funding to support the contribution of CIJ to justice for all through the five approaches outlined above is vitally important, so too is delivering funding in ways that will best support the achievement of people-centred justice. This entails, for instance, making sure that funding reaches those organizations best placed to engage with CIJ. Very often, this will be grassroots organizations that know the context and have the relationships to engage effectively, as well as national and regional civil society organizations that play a supporting and coordinating role. Supporting such organizations requires assistance that is attentive to the risks of funder project cycles (and the funding cliffs that can come in between) and recognizes the importance of core organizational support, which is often left out of project-based funding. These smaller organizations are often left out of funding because of development partner preferences to disburse money in large programme tranches that concentrates resources in the hands of larger multilateral entities and international non-governmental organizations that have grant management, financial reporting and monitoring, evaluation and learning capacity. It is also important to ensure national funding reaches these smaller organizations and is considered as a more sustainable funding source than donor agencies.

Achieving people-centred justice also requires working at scale – CIJ can help achieve this but requires different modes of funding. Work with CIJ systems is necessarily context-specific and what is an appropriate intervention will differ from place to place. Even within a particular country, the nature of customary law can differ – in the small country of Timor-Leste, for instance, at least 63 forms of customary justice have been identified.¹⁵⁶ This means “working at scale” will not necessarily be through single, replicable interventions delivered by one implementer. However, while any intervention must be tailored to context and work through those with deep knowledge of the context, some CIJ modalities do lend themselves to scaling. Legal aid and paralegal services, such as those provided by Sierra Leone’s Legal Aid Board and Namati’s paralegal network in Kenya, demonstrate that CIJ can deliver cost effective national-scale models.¹⁵⁷ Where customary justice providers already deliver “at scale”, interventions focusing on improving the quality of justice can achieve impact at scale. Delivering at scale through CIJ therefore is possible but will require working with a higher number of partners who have the credibility to support people-centred justice delivery in the many ways that it manifests.

Recommendations and call to action

Achieving the goal of access to justice for all in seven years is not possible by continuing to address the challenge via existing approaches to justice support. An urgent step-change and a people-centred approach to the challenge is needed. CIJ offers an opportunity to capitalize on and learn from existing people-centred solutions. CIJ systems are the global population's main justice providers – recognizing the roles they play and, where appropriate, supporting them can help expand justice services and make real improvements in people's lives. Many positive examples of how this can be done already exist and can be drawn upon and expanded. CIJ is not without its challenges – and its diversity across contexts means that how providers can best be engaged will vary. Governments and development partners working to expand people-centred justice will need to be savvy to those contextual variations and draw on deep understandings of the local context to make those decisions. Further action is needed to adopt a justice ecosystems approach, deliver expanded CIJ engagement, empower justice seekers, protect the rights of women and girls, address development partner constraints and mobilize financing.

The recommendations below will enable governments and development partners to accelerate progress toward achieving the goal of people-centred justice by 2030.

1. Adopt a justice ecosystems approach to understand the diversity of justice providers and shape reform plans

It is essential that the empirical reality of CIJ is integrated into all justice and SDG 16.3 discussions so that it is routinely factored into thinking and planning to ensure the relevance of any reform efforts to justice seekers' realities. This can help avoid default to formal justice systems alone. Partnerships bringing together diverse stakeholders across the justice ecosystem should inform justice-related discussions, policymaking and programme planning. Strengthening and investing in research, data and evidence also plays an important role. Legal needs surveys should be regularly conducted and countries likely to have the greatest unmet justice needs should receive targeted support from the international community to collect data.

2. Deliver a step-change in justice support through expanded CIJ engagement to achieve justice for all by 2030

Existing approaches to achieving justice for all are not sufficiently delivering. Expanded engagement with CIJ systems must be trialled in context-appropriate ways and with a human rights lens, drawing on the spectrum of engagement options. Impact and learning from such engagements should be documented using innovative and locally owned monitoring and evaluation approaches to accelerate generation of robust CIJ knowledge. South-South learning on CIJ should be encouraged and supported. Collaborations among communities, governments, universities, innovation centres and development partners can further refine approaches and tools, accelerating knowledge.

3. Empower justice seekers, especially marginalized groups, to participate in and benefit from CIJ systems

A people-centred approach to justice demands that justice seekers are the primary focus, not justice institutions or providers. Governments and donors must deepen efforts to support justice seekers to know their rights and the law and to navigate the justice options available to them, paying particular attention to marginalized groups that are most at risk of being left behind. Justice programming that supports marginalized groups will benefit communities as a whole. States have a responsibility to ensure that all justice seekers, including those seeking justice through customary or informal means, can do so without threat of retaliation or violence.

4. Advance women and girls' participation and leadership, and ensure the protection of their rights, in CIJ systems

CIJ systems that are committed to improving women's rights and their access to justice – or CIJ actors that have the potential to

do so – should be engaged as part of making justice more inclusive and equitable. Ensuring that women’s human rights are recognized as central and indispensable to engagement with CIJ systems and focusing on empowering women to make informed decisions when seeking justice through CIJ processes are essential preconditions for advancing people-centred justice. Working in context-appropriate ways to expand the participation and leadership of women in CIJ mechanisms, and supporting women’s human rights defenders to organize around and within those mechanisms, will improve justice processes and outcomes.

5. Share or create tools and processes needed by development partners to engage with CIJ in delivering people-centred justice

Securing stronger action on people-centred justice through CIJ requires that development partners overcome obstacles to greater engagement. Support for this can include convening dialogues among development partners to share positive experiences of CIJ engagement and what has enabled engagement in some organizations, in some contexts. Risk mitigation tools should be developed to assist development partners in reframing and addressing risk concerns in a manner that is attuned to the nuances of CIJ. Importantly, this should consider (1) the risks of *not* engaging, as well as the risks of engaging; and (2) the risks for justice users, as well as risks for the programme/organization. Development partners should consider the most appropriate and strategic terminology in their own organizations and in particular contexts to garner stronger support for CIJ engagement.

6. Increase investment in people-centred justice, including CIJ systems

Donors should increase their justice financing to match estimated needs, including through existing global funds. Support from philanthropic trusts and foundations, including through innovation funds, should also be grown. Partner governments committed to working with CIJ systems as integral components of justice ecosystems should increase their

A people-centred approach to justice demands that justice seekers are the primary focus, not justice institutions or providers; governments and donors must deepen efforts to support justice seekers to know their rights and the law

own investments in CIJ, where possible, and increase demands for development partners to support expanded CIJ engagement. Increased investment can target proven approaches for expanding access to justice, including through CIJ engagement approaches outlined in this paper. Grassroots civil society organizations with strong local knowledge and relationships to work with CIJ should be especially supported. The establishment of a new global fund prioritizing innovative, evidence-based and locally led approaches to people-centred justice should be explored. Such a fund could also provide support to governments in greatest need of expanded access to justice committed to working with CIJ mechanisms as integral actors within their justice ecosystems. Further research examining user-pay, co-contribution, cross-subsidization and other models can help identify sustainable financing for CIJ.

Annex: 2023 stakeholder consultations

- *UNDP Country Programme Teams Roundtable* (8 February), hosted by UNDP; 10 participants from Algeria, Liberia, Nepal, Pakistan, Palestine, Somalia, South Sudan, Syria, Timor-Leste, Yemen
- *Global Focal Point for the Rule of Law Roundtable* (16 February), hosted by UNDP; 11 participants
- *Stakeholder consultation with bilateral donor agencies* (8 March), hosted by DCAF; 21 participants from France, Germany, Sweden and the United Kingdom, among others
- *Consulta sobre justicia propia, comunitaria y noformal y el ODS16+ en América Latina* (28 March), co-hosted by the Ibero-American Alliance for Access to Justice and Pathfinders; 23 participants from Argentina, Chile, Colombia, Guatemala, Mexico, Peru, Uruguay and the United States, among others
- *Stakeholder consultation on the role of customary justice in bringing about people-centred justice and working towards the SDG 16 goal of access to justice for all* (29 March), co-hosted by the Embassy of Sweden in Liberia and Folke Bernadotte Academy; 20 participants
- *Consultation on customary and informal justice and SDG16+: Legal aid and paralegal service providers* (5 April), co-hosted by IDLO and the International Legal Aid Consortium; 28 participants
- *Multi-religious consultation on customary and informal justice and SDG16+* (27 April), co-hosted by IDLO and the International Partnership on Religion and Sustainable Development; 15 participants from Afghanistan, Albania, Australia, Guyana, Italy, Kenya, Lebanon and Mali, among others
- *Consultation on youth leadership in customary and informal justice systems* (10 May), co-hosted by IDLO, Pathfinders, and the Young Justice Leaders; 17 participants from Cameroon, the Gambia, Kenya, Lebanon, Myanmar, Nigeria and Zimbabwe
- *Consultation on customary and informal pathways to transitional justice* (7 June), co-hosted by IDLO and the International Center for Transitional Justice; 78 participants from Afghanistan, Canada, Colombia, Iraq, Mozambique, the Netherlands, South Sudan, Timor-Leste and Uganda, among others
- *Regional consultation on African alternative justice systems and SDG16+* (18 July), co-hosted by African Centre of Excellence for Access to Justice, Grassroots Justice Network, and Kituo Cha Sheria; 37 participants from Benin, Ghana, Kenya, Malawi, Somalia, South Africa, Uganda and Zimbabwe, among others

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