

# ISSUES 2016 brief

Leveraging the SDGs  
for Inclusive Growth:  
Delivering Access to  
Justice for All



# TABLE OF CONTENTS

<b>WHY ACCESS TO JUSTICE?</b>	2
Link to The Sustainable Development Goals .....	3
Links to Inclusive Growth .....	5
<b>WHAT ARE THE BARRIERS TO ACCESSING JUSTICE? .....</b>	7
<b>HOW CAN PEOPLE-FOCUSED ACCESS TO JUSTICE BE IMPLEMENTED?.....</b>	9
Understanding and Measuring Legal Needs.....	9
Understanding Justice Pathways.....	11
Examples of People-focused innovations in Access to justice .....	12
<b>TYPES OF LEGAL EMPOWERMENT INTERVENTIONS .....</b>	13
Impact of selected legal empowerment initiatives.....	14
<b>KEY QUESTIONS FOR CONSIDERATION .....</b>	19
<b>BIBLIOGRAPHY .....</b>	20



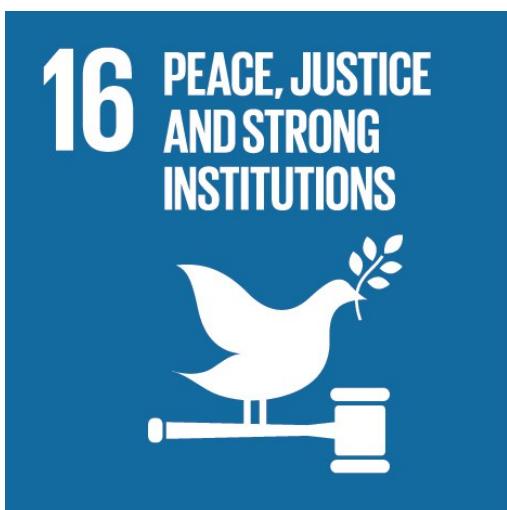
## WHY ACCESS TO JUSTICE?

Access to justice is integral to achieving the Sustainable Development Goals (SDGs) and inclusive growth. An estimated four billion people around the world live outside the protection of the law, mostly because they are poor or marginalized within their societies. They can be easily cheated by employers, driven from their land, preyed upon by the powerful and intimidated by violence. The lack of legal accountability allows local corruption to undermine economies, diverting resources from where they are needed the most. Lengthy delays in processing legal cases inhibit individual economic activity, while the inability to enforce contracts deters people from entering into them. Overcrowded prisons are full of poor people waiting months or even years for a first trial, forced to give up work opportunities and unable to support their families. Women, who often face multiple forms of discrimination, violence and sexual harassment, are particularly affected by legal exclusion. Addressing these legal challenges will be essential to enable the basic protection of human rights, from protection of property to legal identity and freedom from violence.

**“ 4 billion** people around the world live outside the protection of the law, mostly because they are poor or marginalized within their societies. ”

Legal empowerment—the ability of people to understand and use the law for themselves—enables even those who are most marginalized to achieve justice, meet their basic needs, hold authorities to account, protect their interests and participate in economic activities in an inclusive manner.

## LINK TO THE SUSTAINABLE DEVELOPMENT GOALS



Source : UN

In September 2015, member states of the United Nations made an important breakthrough by agreeing on a Sustainable Development Goal (SDG) 16.3: "Promote the rule of law at the national and international levels and ensure equal access to justice for all", which recognizes the intrinsic links between access to justice, poverty reduction and inclusive growth. The SDGs provide a unique opportunity to reflect on how national governments can ensure that economic growth, development, and poverty reduction strategies integrate equal access to justice and legal empowerment initiatives, as integral elements necessary to achieve these objectives.

Access to justice, as well as being a central element of SDG 16, is crucial to implementing many of the other SDGs, such as *eradicating poverty and hunger* (SDG 1 and SDG 2). It gives farmers and other agrarian communities the tools they need to improve their tenure security, which has been shown to lead to more productive investment. Similarly, the ability to access and enforce regulatory frameworks helps to determine whether contracts and labor and environmental standards—critical for fair development outcomes—are respected in practice. In the Philippines, for example, survey results by the Asian Development Bank showed that in communities with legal support, regulatory reforms resulted in residents with higher levels of productivity, higher income, more disposable income, and more investment in their farms.

**“Women**, who often face multiple forms of discrimination, violence and sexual harassment, are particularly affected by **legal exclusion**. ”

## THE MULTI-DIMENSIONAL NATURE OF THE SDGS REQUIRES COORDINATION ACROSS POLICY AREAS



Source : Adapted from UN

Access to justice and legal empowerment help translate legal guarantees of *gender equality* into real improvements in the daily lives of women (SDG 5) by supporting women in protecting themselves from domestic violence, sharing in benefits from natural resources, retaining control over loans taken out in their name, and accessing inheritance or property upon divorce. In Bangladesh, providing access to justice for women reduced the illegal practice of dowry payment and increased women's cash savings for emergencies, compared to other communities without legal help, according to the Asian Development Bank.

Justice and governance can also help *preserve the environment* (SDG 14 and SDG 15). A global study in 2009 of 80 forest areas found a correlation between local rule-making about forest management and high carbon storage and other livelihood benefits, such as increased firewood, fodder, fertilizer, and timber available to meet basic subsistence needs of local users. According to the survey, when local users are insecure in their rights, they consume more forest products; but when their tenure rights are secure, they conserve biomass and use their forest commons in a more sustainable manner. Access to legal help can help communities to secure rights over common land, giving them more control over their livelihoods and greater incentives to preserve their environment. A number of OECD countries — for example, the United Kingdom, Australia, and New Zealand — seek to increase access to justice by clustering administrative tribunals on related subjects (e.g. environmental and land use planning); in providing “one window access”, they increase efficiencies as well as improve environmental outcomes.

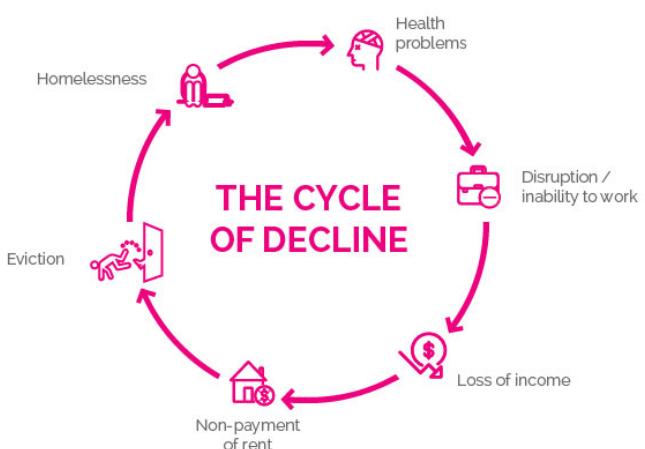


Source : Civil Service India (n.d.)

## LINKS TO INCLUSIVE GROWTH

The law underlies nearly every aspect of people's lives, including health, employment, education, housing, and entrepreneurship. In many countries, unequal access to and discrimination in these sectors create real barriers to economic participation, especially for traditionally marginalized populations (youth, the elderly, women, migrants). However, these sectors depend upon legal frameworks for their operations and legitimacy. Providing people access to justice enables them to tackle these inequalities, and to participate in legal processes that promote inclusive growth.

The inability to access legal and justice services can be both a result and a cause of poverty. People who are more vulnerable to social exclusion typically report more justice problems than other groups. Furthermore, as legal problems tend to trigger and cluster with other legal and non-legal problems, these same groups appear to experience an increased rate of non-legal challenges as well. Data show that legal problems spark other problems, thus contributing to a cycle of decline which inhibits economic productivity.



Source : Adapted from Tyler T. et al. (2011)



## WHAT ARE THE BARRIERS TO ACCESSING JUSTICE?

Many economic, structural, and institutional factors hinder access to justice, including the complexity and cost of legal processes, time, and geographical and physical constraints. Importantly, many people — especially those in vulnerable and marginalized groups — neither recognize their problems as legal ones, nor identify the potential legal remedies for those problems. Cost, including opportunity cost, and trust in the justice system are also important factors in determining whether or not people seek legal assistance, or take action at all, to resolve their legal problems.

## BARRIERS TO ACCESSING JUSTICE

### GEOGRAPHY

Physical location and/or an inability to reach services

#### TRANSPORT & INFRASTRUCTURE CHALLENGES



### SOCIAL RELATIONS OF PLACE

The way the interactions and the actions of residents in rural and remote communities influence help-seeking behavior

#### COMMUNITY INTERACTIONS OF THE FLOW OF INFORMATION



#### CONFLICTS OF INTEREST

Not enough legal professionals to represent opposing clients with conflicting issues

### COSTS

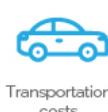
High costs and the perceived high cost of accessing legal services

#### DIRECT COSTS

Costs of obtaining legal representation



#### INDIRECT COSTS



### SHORTAGES IN SERVICE DELIVERY

Fewer legal professionals reside in and operate practices in rural and remote settings compared with urban areas

#### CAREER & ECONOMIC CHALLENGES



#### LACK OF DIVERSITY IN SPECIALIZATION

Difficulties getting specific types of advice  
Difficulties obtaining legal counsel

### DIGITAL DIVIDE

The level of access that rural and remote communities have to communication technologies and the comfort level using those technologies to obtain info about legal issues

#### BARRIERS TO PHYSICALLY ACCESS SERVICES



#### GAPS IN ONLINE ACTIVITY



#### SOCIO-ECONOMIC FACTORS



#### CONNECTIVITY VIA SOCIAL NETWORKS



Source : Adapted from Community Advocacy & Legal Centre



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## IMPLEMENTING People-focused Access to Justice

### HOW CAN PEOPLE-FOCUSED ACCESS TO JUSTICE BE IMPLEMENTED?

#### UNDERSTANDING AND MEASURING LEGAL NEEDS

To design appropriate solutions to local justice problems, governments must start with an effective understanding of its population's legal needs and experiences in accessing justice. Understanding these legal needs requires a focus on outcomes – i.e., the ability of people to address their legal needs in a fair, cost efficient, timely and effective manner. Today, more than 37 countries rely on national legal needs surveys to determine baseline data for understanding their people's legal problems. By 2017, the World Justice Project will conduct legal needs surveys in more than 100 countries. The data gathered through this type of approach will be invaluable in mapping the gaps in delivering justice so that governments can plan and implement national development strategies that meet national needs.

As the majority of injustices faced by people today involve civil rather than criminal matters, national measurements of justice must go beyond criminal justice. In Colombia, a 2013 survey established that approximately 40% of the population had had a legal issue in the preceding four years, with fraud, theft, access to public services, and housing the most common problems. In the United States, an ABA study of low- and moderate-income households revealed that nearly half of all households had had at least one legal need in the preceding 12 months, with the most common issues

**“By 2017, the World Justice Project will conduct legal needs surveys in more than 100 countries.”**

personal finance, consumer issues, and housing and property. Legal needs surveys also demonstrate how people typically seek to solve their justice problems without relying on formal justice systems.

In Ukraine, a 2010 survey found that

respondents with a legal problem most commonly first pursued direct negotiation with the other party, and then sought resolution with government authorities. Only nine percent actively sought a remedy in court. As such, effective measurement of progress on SDG 16.3 must look at people's experiences of resolving a justice dispute, rather than administrative data on cases processed.

## INCREASING ACCESS TO JUSTICE



Source : Adapted from Community Advocacy & Legal Centre (2016)

## UNDERSTANDING JUSTICE PATHWAYS

Although courts in formal justice systems are critical for access to justice and the rule of law, relatively few legal problems are resolved through the court system or even through formal alternative dispute resolution processes. When faced with legal problems, people will often turn to non-court based processes, and even non-legal services. Income, distance, personal capability and the manner in which services are made available are key factors that influence people's use of legal and other services.

In the area of criminal justice, some countries with few qualified lawyers have placed paralegals in communities to educate rural populations about their rights when a family or community member has been arrested and imprisoned. Paralegals offer free basic legal advice to vulnerable groups and help the latter navigate the complexities of the criminal justice system. Without the intervention of paralegals, people would stand a much higher risk of being wrongfully imprisoned, often for extended periods of time, or exposed to ill-treatment by police or to corruption before their case is resolved. Furthermore, formalizing paralegalism in such places is a low-cost way for justice ministries to provide access to justice for economically marginalized groups. Globally, the use of pre-trial detention, and its impact on economic prospects for individuals and communities.

### “ Formalizing paralegalism

is a low-cost way for justice ministries to provide access to justice for economically marginalized groups.”

## ACCESS TO JUSTICE & LEGAL ASSISTANCE



Source : OECD (2016)

## EXAMPLES OF PEOPLE-FOCUSED INNOVATIONS IN ACCESS TO JUSTICE

In the broader context, many countries are modernizing approaches to providing legal assistance and justice services to respond to a range of day-to-day legal needs:

- **Legal empowerment interventions.** Legal empowerment is designed to give people the power to know and use the law, and is one of the most effective and responsive methods for achieving access to justice. Legally empowered, even poor and marginalized people are able to make the law work in their own interests, achieving meaningful solutions to concrete injustices. It emphasizes a people-centric approach to justice by highlighting the priorities of individuals and communities in using the law to advance and protect their interests. Often this involves a combination of lawyers and paralegals, formal and informal justice systems, information sharing and community-driven participation.

**“ Legal empowerment** is designed to give people the power to know and use the law, and is one of the most effective and responsive methods for achieving access to justice.”

## TYPES OF LEGAL EMPOWERMENT INTERVENTIONS

The Asian Development Bank identifies three orders of legal empowerment interventions:

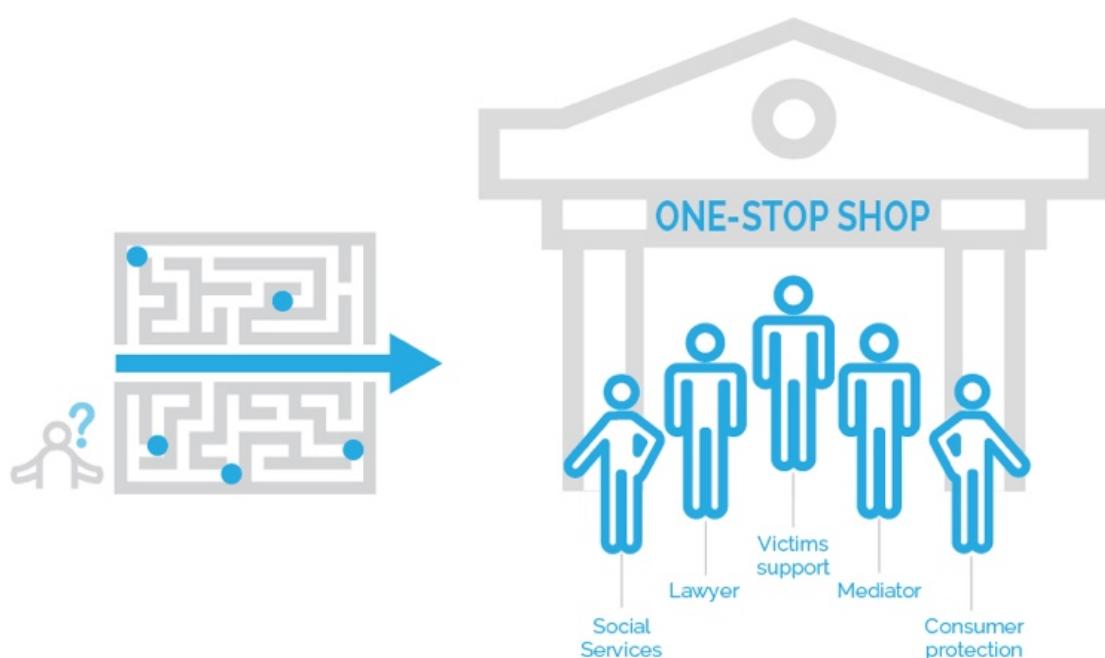
- **First-order interventions** include basic legal awareness-raising, or “legal literacy” work to educate the public about legal rights and obligations, institutional structures of the legal system, and specific mechanisms that marginalized groups can use to advance their interests. This can include print, broadcast and internet media, informational flyers, pamphlets and posters, radio and TV outreach, dramatic performances and digital tools.
- **Second-order interventions** focus on resolving legal problems and administrative challenges that are faced by marginalized groups. Interventions are community-driven and provide both formal and informal legal services, including mediation. Paralegals are a key mechanism for implementation at this level, as they are able to address informal/formal divides, understand local context, are cost-effective and responsive to local community needs.
- **Third-order interventions** are designed to affect policy constraints and systemic factors that shape the circumstances in which legal problems arise. They target persisting inequitable power relations that continually marginalize the poor. Activities include public interest litigation, policy and law reform advocacy, legislation drafting, administrative advocacy, justice system reform and corruption monitoring.

## IMPACT OF SELECTED LEGAL EMPOWERMENT INITIATIVES

A legal empowerment approach to access to justice has resulted in well-targeted and effective outcomes in a range of geographies:

- **In Indonesia**, a local NGO used female paralegals to expand understanding about rights and entitlements in female-headed households. Alongside international partners, the NGO supported government reforms of state and religious justice institutions by raising awareness and assisting with women's cases, contributing to a fourfold increase in the number of women able to access circuit courts the following year.
- **In Ecuador**, the World Bank evaluated five legal service centers focused on enforcing child support payments for poor women and reducing domestic violence. The study found that the centers' clients seeking child support were 20% more likely to succeed than those without access to legal aid. They were also 17% less likely to experience physical violence after separation from their partners.
- **In India**, filing claims under the Right to Information Act (RTIA) has helped New Delhi's slum dwellers to obtain ration cards for subsidized foodstuffs. A Yale University study found that 94% of ration card applicants who filed RTIA inquiries into the status of their application received their cards within a year. Only 21% of those who did not file a claim received their cards.
- **In Sierra Leone**, extended or unlawful pretrial detention damages the prosperity and health of prisoners and their families. An Oxford University study showed that a program placing paralegals in prisons to provide free legal services has reduced the numbers of prisoners held on remand by 20% and increased the percentage gaining access to bail by 13%. Moreover, only two paralegals placed at each police station managed to provide basic legal advice to 70% of detainees.

- Facilitating a continuum of legal assistance and justice services. Many countries are shifting strategies toward access to legal services and justice as a continuum of services: access to understandable legal information, to legal representation, to appropriate non-legal support, and support to participate in alternative, cost-effective mechanisms as well as to formal hearings in courts and tribunals. To facilitate navigation across multiple justice pathways and overcome the fragmentation of legal services, some countries are developing frontline of community paralegals and community justice centers or one-stop shops (e.g., Family justice centres, le service d'accueil unique des justiciables in France; scaling community based paralegals to be deployed in all chiefdoms in Sierra Leone) in order to overcome the fragmentation of legal services. The recent Strategic Technology Summits organised by the US Legal Services Corporation highlighted case triage as one of the top six priorities for enhancing access to justice in the United States. While still limited, many countries are expanding the scope of coverage of legal aid to civil and administrative cases (Estonia, France, Ukraine, Georgia, Indonesia), as well as for cases considered outside of courts by alternative mechanisms to resolve disputes (Armenia, Germany, France, Lithuania, Switzerland and Sierra Leone).



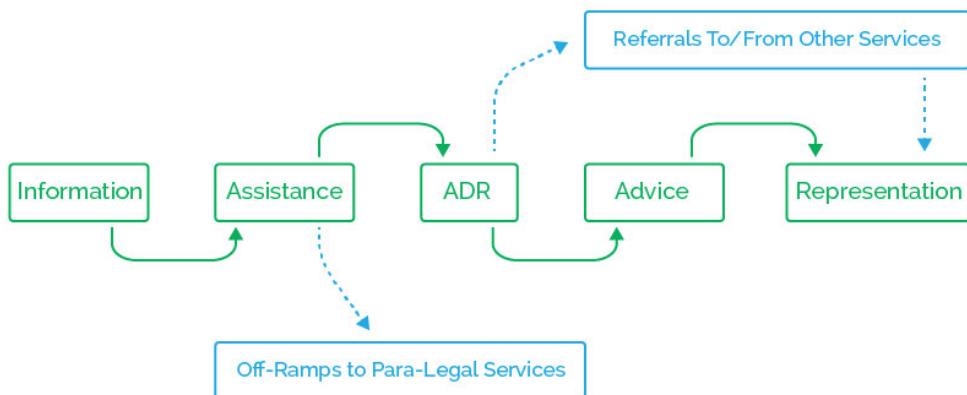
Source : Adapted from Finix Technologies (n.d.) and Open Law Library (2015)

- Providing targeted, timely and appropriate legal assistance services. Targeted services aim to ensure limited public funds are first used to assist those facing the most severe problems and least able to otherwise access help, thus maximising social return on investment. Targeted services also require recognition that justice and legal needs are tied to an individual's life circumstances (e.g., problem solving courts dealing with drug, alcohol abuse and domestic abuse). The US Government's Legal Aid Interagency Roundtable, established in 2015, is a good example of targeting national government support for justice where it is most needed.
- Another tailored option to civil justice needs of people, used by the private and public sector, is to "unbundle" legal services (breaking legal services down into defined and affordable parts allowing the client to pick and choose which parts to purchase) and provide partial legal representation or assistance, with the client doing much of the work themselves (e.g., "self-help units" of US legal aid providers and an online Unbundling Resource Center of the American Bar Association).
- Legal problems left unaddressed can bring about and exacerbate other legal and non-legal problems, and entrench social disadvantage. To prevent problems occurring or escalating, early intervention is needed, and often entails building a robust early resolution services system and promoting basic legal skills training. The mode of service delivery, location and level of assistance of legal services should reflect client capability and support efficiencies by migrating users to the least expensive services that adequately meet their needs. For example the Intereach Neighbourhood Centre in Deniliquin, New South Wales, Australia brings together different public agencies and private offices with the intention to reach out collectively to people in need in a determined geographic area, which also helps to overcome geographical barriers (broadband network initiative Australia).

**“ Legal problems left unaddressed**

can bring about and exacerbate other legal and non-legal problems, and entrench social disadvantage.”

## A CONTINUUM OF LEGAL AID SERVICE MODELS



Source : Adapted from Currie A. (2009)

- New developments in technology may revolutionize legal services over the next few decades. Many governments are increasingly putting their judicial services online, such as Rechtwijzer 2.0 in the Netherlands, where entire cases are initiated and decided online. The UK and Australia are also embracing online technology. Private online dispute resolution systems such as that used by eBay (which settles 60 million disputes each year) can facilitate solutions to small problems efficiently. Technology has also introduced automated pathways, providing simple information to clients who answer a series of standard questions, to reduce costs and winnow out simple cases. Despite the widespread use of 3G phones in low and middle income countries, there is considerable under-development of mobile applications in this area, while high income countries are moving swiftly ahead.

**“ New developments in technology may revolutionize legal services over the next few decades. ”**

## ICT BENEFITS FOR ACCESS TO JUSTICE

	Providing access to information	Supporting the delivery of services	Providing seamless & integrated services
How does technology support this?	<ul style="list-style-type: none"> <li>Assisting people to access and understand the law and information about how to resolve problems early and cost-effectively</li> </ul>	<ul style="list-style-type: none"> <li>Improving access to other third party support and assistance such as ADR, court services and tribunals</li> <li>Improving the efficiency and scope of service delivery to the public on a cost effective basis</li> </ul>	<ul style="list-style-type: none"> <li>Providing a "no wrong door approach" for entry into the civil justice system</li> <li>Integrating delivery of services across agencies/organisations</li> </ul>
Examples of technology initiatives	<ul style="list-style-type: none"> <li>Legal information and referral websites</li> <li>Apps</li> <li>Social Media</li> </ul>	<ul style="list-style-type: none"> <li>Video-conferencing</li> <li>Online Dispute resolution</li> <li>E-court services such as e-filing and e-lodgement</li> <li>Online transaction services</li> </ul>	<ul style="list-style-type: none"> <li>Whole of government web portals</li> <li>Integrated information systems that share information e.g. between government agencies</li> </ul>

Source : Adapted from Australian Government (2012)

- New financing models, such as low-cost legal insurance (e.g. US legal services, or Legalwise South Africa) taken out by people renting a property, or to help with family problems. In South Africa, for example, one package offered is 84R per month (\$6USD), for use of a lawyer up to 84,000R (\$6,000) per case. Cooperatives, owned by members, offer another option for low cost fixed fee services (e.g. in the UK) or social enterprise models to self-fund basic legal services and use of endowments.

## PEOPLE-FOCUSED INNOVATIONS IN ACCESS TO JUSTICE



Source : OECD (2016)



## KEY QUESTIONS FOR CONSIDERATION

- How can access to justice and legal empowerment be fully integrated into national development and inclusive growth strategies?
- How can governments shift from the more traditional focus on internal processes of justice institutions towards helping people access justice, in order to support effective implementation of the SDG 16.3 to “ensure equal access to justice for all”?
- What are good practices in providing people-focused, targeted and timely legal and justice services, including legal empowerment?
- How can we take better advantage of new technology and other justice innovations for the delivery of legal and justice services in low, middle and high income countries?
- How can effective and credible *basic* justice services be delivered at scale in a sustainable manner?
- What are innovative financing approaches in support of access to justice? How can the private sector be better engaged, including in investing in low cost legal services?

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# Leveraging the SDGs for Inclusive Growth: Delivering Access to Justice for All

On the occasion of the first anniversary of the UN Sustainable Development Summit, the OECD and Open Society Foundations aim to highlight the role of access to justice as an enabler of inclusive growth and sustainable development. Achieving inclusive growth and sustainable development requires fair and equal access to justice to protect citizen rights and to address any legal disputes that may arise due to disparities in access to health, employment, education, and entrepreneurship. This calls for focused understanding of citizen legal needs, legal empowerment and tools that can help lead to better informed, more balanced decisions and policies in supporting accessibility of justice.

The OECD and Open Society Foundations stand ready to support national implementation of Sustainable Development Goal #16 on inclusive institutions and access to justice as part of the OECD Inclusive Growth Agenda and the Open Society Foundations' Legal Empowerment Initiative.

**More information at**  
<http://www.oecd.org/gov/access-to-justice.htm>

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