



ACCESS TO JUSTICE

POSITION PAPER





The Elders at their October 2018 Board Meeting in London.

THE ELDERS

The Elders are a group of independent leaders, brought together by Nelson Mandela in 2007, who use their collective experience and influence for peace, justice and human rights worldwide.

Front cover: Mary Robinson and Hina Jilani join civil society to walk for Justice for All in February 2018, in Buenos Aires, Argentina.

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Kofi Annan (1938-2018) was a founding member of The Elders and served as Chair from 2013-2018.





A PeaceMaker, trained as a paralegal and counsellor by *My Choices Foundation*, provides counselling, rights education and basic legal aid to victims of domestic violence in India. (Photo: My Choices Foundation)

RECOMMENDATIONS FROM THE ELDERS ON ACCESS TO JUSTICE:

1

Delivering access to justice is critical to the full implementation of SDG 16 and the wider 2030 Development Agenda;

2

Legal systems must be reformed and modernised so they are responsive, innovative, inclusive, people-centred and uphold human rights;

3

Independent legal support, such as community-based paralegals, should be supported to help citizens navigate systems and find practical, timely solutions;

4

Violence against women and girls must be addressed urgently as a profound global injustice, by political, traditional and religious leaders.



Access to justice for all is an important human right. It is integral to the responsibility of states explicit in all core human rights instruments. States have a duty to ensure that this right is available to all within their jurisdictions, on the basis of equality and without any discrimination.

More than a decade on from a landmark report¹ that revealed four billion people live outside the protection of the law, not enough progress has been made to extend the provision of justice to the people who need it most, especially women, people living in poverty and minority groups.

States must exercise more diligence in ensuring that access to justice is guaranteed to the more marginalised, vulnerable and oppressed groups through laws, policies and processes attuned to their needs.

When justice and security is only available to the rich and the powerful, when there is impunity for those who break laws and abuse rights, this weakens states and their capacity to preserve the rule of law and to pursue development, social justice and economic growth.

In 2015, states recognised this responsibility when they signed up to the Sustainable Development Goals (SDGs), which include a commitment to deliver justice for all and to promote peaceful, just and inclusive societies.

Governments must do more to create effective means for the legal and social empowerment of the people.

Real progress in achieving the goals to which governments have committed can only be achieved with the full participation of civil society actors, and where measures are adopted to enable independent institutions and civil society to hold governments accountable and free from corruption.

Being committed to promoting human rights as a foundation for freedom, justice and peace, The Elders are launching a new initiative on Access to Justice, to amplify the voices of grassroots activists and civil society, and engage with heads of state and policymakers to help drive development, social justice and economic growth.

1. Report of the Commission on Legal Empowerment of the Poor, 2008.

JUSTICE AND THE SDGS

Justice is at the heart of the UN’s 2030 Development Agenda, which envisages a “just, equitable, tolerant, open and socially inclusive world in which the needs of the most vulnerable are met”.

While justice is enshrined in SDG 16, it cuts across most of the other goals too.

Access to justice can help in **eradicating poverty and hunger** (SDG 1 and SDG 2) – for example, surveys in the Philippines show access to legal services can help farmers improve their tenure security, leading to more productive investment and higher incomes.

Access to legal services is also needed to **preserve the environment** (SDG 14 and SDG 15), as legal services help communities to secure rights over common land, giving them greater incentives to preserve their environment.

Access to justice is also central to **gender equality** (SDG 5), as without the ability to enforce rights to property, to end marriages, and to punish violence, patriarchal economic and power hierarchies will remain entrenched and women will remain repressed and victims of discrimination.





“

What counts in life is not the mere fact that we have lived. It is what difference we have made to the lives of others...”

Nelson Mandela, Founder of The Elders



RECOMMENDATIONS FROM THE ELDERS ON ACCESS TO JUSTICE

1

DELIVERING ACCESS TO JUSTICE IS CRITICAL TO THE FULL IMPLEMENTATION OF SDG 16 AND THE WIDER 2030 DEVELOPMENT AGENDA

In 2015, world leaders included access to justice in the SDGs – because they recognised that justice is essential in all countries for economic growth, human wellbeing, and development. They now have to be held to their word.

Societies at every level of income and development are failing to ensure that everyone has equal access to justice regardless of income, gender, race or sexual orientation.

In 2008, the report of the Commission on Legal Empowerment of the Poor found that more than four billion people lived outside the protection of the law, meaning that they did not have effective access to legal systems when they need them, resulting in a continuing denial of the basic right to an effective remedy under the law.

More recent studies indicate that there are approximately 1 billion legal cases every year; that 35 percent of people in both low- and high-income countries have legal problems in any one year; and that 60-70 percent of these people have no resolution within four years.

The scale of the justice gap remains enormous, and can have a devastating impact on individual lives, families, communities and the wider social fabric. Lack of justice undermines state legitimacy, threatening social peace and stability. All of this makes it harder to deliver the wider 2030 Development Agenda that is so critical to ensuring a liveable planet for future generations.

2

LEGAL SYSTEMS MUST BE REFORMED AND MODERNISED SO THEY ARE RESPONSIVE, INNOVATIVE, INCLUSIVE, PEOPLE-CENTRED AND UPHOLD HUMAN RIGHTS

Most legal systems still function today as they did in the nineteenth century – burdened down with lengthy, expensive, confrontational procedures that can appear intimidating and inaccessible.

Many court systems have failed to adapt to meet the needs of today's vastly increased populations, and increasingly legalised societies, and still operate in silos as exclusive and closed communities. New and innovative approaches are needed to make justice effective and inclusive in the 21st century.

These need to incorporate empowerment of ordinary people to access the rights to which they are entitled, and to ensure that equality before the law is made a reality. Only in this way can human rights be respected, protected, and fulfilled.

Currently, not everyone uses formal systems to solve legal disputes. Many instead use alternatives

such as traditional dispute resolution, alternative contemporary approaches such as paralegals, or simply doing nothing and putting up with the problem.

While some of these other solutions may show positive trends and may meet people's needs better than the formal state system, in many cases, resorting to informal systems that have no legal validity results in unjust decisions that are both arbitrary and unguided.

Informal structures can perpetuate patriarchal power and oppression and deny justice in any meaningful sense to women and marginalised groups.

States have a responsibility to regulate the justice system, to ensure coherence and consistency, and to protect people from abuse, manipulation or corruption.



Hina Jilani takes part in a panel discussion at The Elders' event: "Justice 2030: Time for Action" in September 2018 in New York. Co-hosted by the Open Society Foundation Justice Initiative and the Task Force on Justice, the event marked the tenth anniversary of the report of the Commission on the Legal Empowerment of the Poor.

The current *ad hoc* approach, with many states effectively abandoning their responsibilities and leaving it up to individuals to find avenues to solve their legal problems, is unacceptable.

It perpetuates structural discrimination, leaves billions of people unable to access what is rightfully theirs and to participate fully in society, hinders economic growth, and can lead to distrust in the State, disaffection, and even instability.

It is imperative that governments meet their fundamental responsibilities and take a much more pro-active role to ensure justice is accessible and meets ordinary peoples' needs.

Above all, governments, the legal community, business, civil society and other providers must embrace innovation, technology and learning to deliver scaled-up justice services, as a key way of making them financially viable. New developments in technology could revolutionise 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. Governments from the UK to Indonesia are embracing online technology for basic government services.

New financing models also need to be explored such as low-cost legal insurance (as in South Africa), cooperatives and social enterprise models, and the use of endowments. This potentially huge market for innovative legal services is significantly underexploited, and incentives should be provided through government regulatory reforms.





3

INDEPENDENT LEGAL SUPPORT, SUCH AS COMMUNITY-BASED PARALEGALS, SHOULD BE SUPPORTED TO HELP CITIZENS NAVIGATE SYSTEMS AND FIND PRACTICAL, TIMELY SOLUTIONS

Traditionally, court structures have focused on experts deciding on people's problems for them. Now there is a growing consensus that it is important for ordinary people to understand more about the law, and be able to play an active role in finding concrete solutions to their problems.

This can include paralegals, legal literacy, community organising and assistance, legal aid services, and dispute resolution forums, through to interventions addressing systemic issues strategically such as policy reform.

To date this legal support has not been substantially publicly funded: in most countries, only a tiny fraction is reserved for non-criminal defence legal support, and services that exist tend to focus on paying lawyers to undertake litigation.

While still limited, some countries are expanding the scope of coverage of legal support for dispute resolution for everyday problems which can, within the permissible limits of the law, be settled outside of courts.

For example, Argentina has over 80 centres providing comprehensive legal and community services to disadvantaged communities, comprising a team of lawyers, psychologists, social workers and mediators, and access to social protection services.

In Sierra Leone, the 2012 Legal Aid Act recognised paralegals, backed by lawyers where needed, as providers of justice services and subsequent implementation plans have sought to establish their reach across the country. These hybrid services need to be legally recognised, or they risk providing low-quality services or being shut down.

Both government and independent providers can provide such services, and often NGOs are well placed to do so effectively and efficiently at a local level, but this may require funding and regulation by the government, as well as a pro-active approach by government to seek out such partnerships.

Entrenched and vested interests in the justice sector that oppose innovation and legal services provision by others need to be overcome, and their representatives should be encouraged to support reforms to expand access.

4

VIOLENCE AGAINST WOMEN AND GIRLS MUST BE ADDRESSED URGENTLY AS A PROFOUND GLOBAL INJUSTICE, BY POLITICAL, TRADITIONAL AND RELIGIOUS LEADERS

In many countries, women face structural and cultural barriers to accessing justice – poor literacy, lack of resources or time to participate in justice processes because of family responsibilities, cultural stigma about taking matters outside the family, and in some places independent travel is impossible.

Violence against women and girls is one of the most widespread abuses of human rights globally.

It is estimated that 35% of women worldwide – 1.3 billion people, equivalent to the entire populations of North America and Europe combined – have experienced intimate partner violence or sexual violence by a non-partner at some point in their lives. In some countries it is as high as 70%, and certain groups are more vulnerable – for example women with disabilities experience between twice and four times as much abuse.

Violence against women also has important economic consequences that impede wider development goals, costing between 1 and 4% of GDP. The financial costs to private businesses have been found to be as high as 3.7% of GDP in Peru and 6.5% of GDP in Bolivia. In the US, the cost of intimate partner violence exceeds \$8.3 billion per year.

Violence against women encourages children to commit violence in future, and there is an evidential link between violence in the home and violence in society, suggesting it can bring crime and instability to the country by endorsing violence as a means of control and assertion of power.

This profound global injustice can be stopped. It is not an inherent and unchanging part of any culture: it can be reduced if there is sufficient political will to educate populations, especially men and boys, and reform traditional structures, institutions and practices.

Governments need to end the cultural acceptability of violence through work with communities and schools to change the way disputes are resolved and question traditional hierarchies and gender stereotypes. Women must be given key roles in the justice system to help speed the process of change: as judges, police officers, lawyers, paralegals etc.

In developing countries, the donor community also bears an important responsibility to put gender equality and anti-violence strategies at the centre of their aid programmes, and to provide resources to state and NGO initiatives in this field.

By improving access to justice and introducing and enforcing legislation that prohibits violence and discrimination, governments have a real chance of improving women's economic position and reducing violence.

None of this will happen without genuine and committed leadership from the top. Women will never be able to access justice for violence if the justice system itself accepts such violence. Political leaders, and leaders of all justice institutions, must take it upon themselves to prioritise violence against women throughout their efforts to improve justice for their whole populations.



A rural health advocate advises a mother on health rights in Mozambique, a project by Namati - an Elders' *Spark of Hope*. (Photo: Namati)

All sectors in society need to step up and take responsibility to deliver access to justice to the most vulnerable members of our societies.

OUR RECOMMENDATIONS: WHAT REFORM SHOULD LOOK LIKE



Governments and justice sector institutions:

- o **Must report on equal access to justice for all.** Governments have pledged to provide access to justice under the SDGs. July 2019 is the first time they will be reporting on access to justice under the SDGs. It is crucial that governments demonstrate what reforms they have initiated, and what ambitious plans they have for the future, going beyond the narrowly defined SDG indicators, to provide examples of what is possible and encourage others.
- o Must focus reforms **on solving people's everyday justice needs**, and to do this, governments need to demonstrate how they will improve understanding of those needs through **better data**, and show real commitment to opening up the legal services market to make innovation viable and delivery at scale cost effective and high quality.
- o Must **increase investment in services most needed by citizens**, including improved low-cost dispute resolution and legal information and assistance using a combination of lawyers and paralegals, funded through independent structures.
- o Should explore **partnerships with civil society and business** to deliver innovative and accessible services.
- o Must review current efforts to **reduce violence against women**, report on this in July 2019, introduce policies that have been shown to **change behaviour** on violence, and **invest in emergency support** measures for survivors.

Legal community:

- o Needs to challenge peers who place their own interests above those of ordinary citizens in need of justice, supporting efforts to restructure legal services to provide support to those most in need.

Civil society:

- o Need to continue to develop models that work to deliver effective, inclusive, people-centred legal services at scale, ensuring services are delivered to a high standard and help anchor the rule of law in marginalised communities.



Indigenous Guatemalan women and girls attending a women's rights education session run by *Women's Justice Initiative*. (Photo: Women's Justice Initiative)

These are some of The Elders' *Sparks of Hope* - grassroots organisations that embody the change we want to see in the world. These organisations were brought together to honour the 100th anniversary of The Elders' founder, Nelson Mandela in 2018. The Elders continue to amplify their amazing work as shining examples of the values Madiba held dear.

Find out more: theElders.org/sparks-of-hope





An indigenous activist defends their land rights. *IMPACT* works with local communities in Kenya to prevent the exploitation of resources. (Photo: *IMPACT*)



A community paralegal runs a small clinic on land rights in Myanmar, a project by *Namati* - an Elders' *Spark of Hope*. (Photo: *Namati*)



Anthony Ray Hinton, who was wrongly incarcerated and spent 30 years on death row, with his lawyer Bryan Stevenson of *Equal Justice Initiative*. (Photo: Bernard Troncale)

“ **The Elders can speak freely and boldly,
working both publicly and behind the scenes.**

**They will reach out to those who most need
their help.**

**They will support courage where there is fear,
foster agreement where there is conflict and
inspire hope where there is despair.**

Nelson Mandela, 2007, Founder of The Elders

The Elders are grateful to the individuals, trusts and foundations on their Advisory Council, whose support and advice allows them to carry out their work. Further information is available on The Elders' website.



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