

REGIONAL FORUM
ALTERNATIVE DISPUTE RESOLUTION & CUSTOMARY AND INFORMAL JUSTICE
THEME: ADVANCING SDG-16 AND PATHWAYS TO JUSTICE

2-3 March 2020

Nairobi, Kenya

CONTEXT

The ability to access justice is a crucial component of securing peaceful, just, and inclusive societies where effective and accountable institutions govern at all levels, as recognized by Sustainable Development Goal (SDG) 16 and Agenda 2030. Yet, as noted in the recent report of the Task Force on Justice, a global justice gap affects 5.1 billion people and 4.5 billion are excluded from the social, economic, and political opportunities that the law provides, while 1.5 billion have a criminal, civil, or administrative justice problem that they cannot solve. Further, 253 million people live in extreme conditions of injustice, without any meaningful legal protections.¹

Countries in the East, Southern, and Horn of Africa are confronted by this justice gap and a key challenge for States in achieving the 2030 Agenda as well as the African Union's Agenda 2063, is to adopt and implement legal and policy frameworks that ensure equal access to justice for all. In 2019, the United Nations SDG Summit called for accelerated implementation of SDG 16 and key declarations such as the *Declaration on Equal Access to Justice for All by 2030*² and the *G7 Access to Justice for All in Conflict-Affected Countries Declaration and the Joint Action Plan*³ aim to help advance a Decade of Action. The Task Force on Justice made three key recommendations for accelerated action: (i) place justice at the heart of sustainable development; (ii) put people at the center of justice systems; and (iii) move from justice for a few to justice for all.

While the demand for justice is great, pathways to justice are diverse and there are many complex challenges in the architecture, supply, and financing of justice. As efforts advance to prioritize and accelerate action, the reality of justice services must meet international goals in a realistic context. There is need for greater awareness and exchange by those working to strengthen the justice sector of how to improve the quality, scale, and scope of a variety of justice actors through legitimate and inclusive means. While keeping in focus the essential role of courts and judiciaries for advancement of

¹ Task Force on Justice, *Justice for All – Final Report*. (New York: Center on International Cooperation, 2019), available at:

<https://www.justice.sdg16.plus/>. The World Justice Project (WJP) notes that countries in Africa often fall into the justice gap mainly because they are unreported victims of violent or non-violent crime, because they are employed in the informal economy, or because they lack legal identity and land or housing tenure. See: WJP, "Measuring the Justice Gap: A People-Centered Assessment of Unmet Justice Needs Around the World", 2019, p. 28.

² See: *Declaration on Equal Access to justice for All by 2030*, February 7, 2019, The Hague, available at: https://bf889554-6857-4cfe-8d55-8770007b8841.filesusr.com/ugd/6c192f_6dce6db9c17c472594ecaeb69f936cf5.pdf.

³ See: *Access to Justice for All in Conflict-affected Countries Declaration and Joint Action Plan*, 19-20 June, 2019, available at: <http://g7plus.org/wp-content/uploads/2019/07/Declaration-and-Joint-Action-Plan-SIGNED.pdf>.

the rule of law, it is important to consider the variety of justice actors and mechanisms that exist and are used by individuals and the various normative and legal frameworks of plural environments, at the local, regional and international levels.

In many countries, the use of alternative justice systems or dispute resolution mechanisms are important justice options. Many people also effectively access justice mainly or exclusively through indigenous and other customary or traditional justice systems. Such alternatives can provide critical pathways to justice, but come with distinct challenges and often receive insufficient attention from policy makers, justice sector professionals, practitioners and the international community.

Alternative dispute resolution (ADR) encompasses a variety of dispute resolution techniques and mechanisms that are alternative to full-scale court processes. In many instances in the African context, ADR reflects or continues traditional practices such as negotiation, mediation or other decision-making processes aimed at maintaining community harmony, including those typically associated with customary and informal systems of justice. ADR can be an efficient means to deliver cost-effective and timely justice services in appropriate circumstances, utilizing restorative or other non-adversarial techniques as an alternative to litigation or prosecution. Similarly, indigenous and other customary or traditional justice systems can function as alternatives to or as complementary forums to formal courts. In considering the role of such systems, as in the formal system, attention to human rights, quality, effectiveness and accountability is fundamental.

As with all justice services, recognition of alternative and customary and informal justice systems by States must be grounded in a legal framework that promotes effective services and accessible justice for all. Some States have adopted or recognized customary law through inclusion in the constitution or by legislation to expressly provide for customary justice practices. At the global and regional level, a range of international standards provide a framework for and guidance to States and other stakeholders in engaging with indigenous and other traditional or customary justice systems and alternative mechanisms more generally.⁴

Countries in the East, Southern, and Horn of Africa are making important strides to strengthen the policy and legal framework around ADR and customary justice systems, which can exist through choice, convenience, or at times due to a lack of a fully functioning state system. Importantly, there is history and tradition to ADR and customary justice mechanisms that pre-date modern instruments and the focus of SDG 16 and engagement within the justice sector is evolving from an institutional focus to both an institutional and individual focus, with successful justice strategies rooted in the needs of justice seekers and service delivery. At the heart of the individual experience with justice is resolution of

⁴ See: IDLO, *Policy and Issue Brief: Engagement with Customary and Informal Justice Systems*, 2019, available at: <https://www.idlo.int/publications/policy-and-issue-brief-engagement-customary-and-informal-justice-systems>; IDLO, *Practitioner Brief: Engagement with Customary and Informal Justice Systems*, 2019, available at: <https://www.idlo.int/publications/practitioner-brief-engagement-customary-and-informal-justice-systems>; ICJ, *Indigenous and other Traditional or Customary Justice Systems: Selected International Sources*, 2019, available at: <https://www.icj.org/traditional-customary-justice-systems-updated-and-expanded-icj-compilation-of-standards-launched/>; and ICJ, Reports of the 2017 and 2018 Geneva Forum of Judges and Lawyers, available at: <https://www.icj.org/gf2018/>.



conflict, realization of rights, and redress for violation of rights, regardless of justice mechanism. The value of different systems and approaches must be recognized, while finding ways to align with modern justice standards.

OBJECTIVES

It is against this background that the **International Development Law Organization (IDLO)** and the **International Commission of Jurists (ICJ)** are convening a Regional Forum themed “*Advancing SDG 16 and Pathways to Justice*” under the auspices of the **Judiciary of Kenya**⁵ and in cooperation with **ICJ Kenya** in Nairobi, from 2-3 March 2020.

The Forum will provide a platform to allow for a deeper reflection on access to justice through ADR and indigenous and other traditional or customary justice systems, providing greater insight into local realities, concerns and approaches and exploring existing lessons, illustrations, and good practices. The Forum will also facilitate the identification of culturally appropriate, people-centered, sustainable and effective paths for policy and programming that reduce existing justice gaps as well as address challenges in diverse contexts.

Invited justice champions from national governments, the formal and informal justice sectors, and civil society will share insights on ongoing justice sector reforms and policy development that aim to provide alternatives to or complement formal courts, curb rights-abrogating practices, and contribute to inclusive and peaceful societies.

The specific objectives of the Forum include:

- Share experiences and discuss what works to reduce justice gaps in the East, Southern and Horn of Africa;
- Reflect on justice seeker experiences and barriers to access justice, with emphasis on the most marginalized and their unmet justice needs;
- Assess the potential role of formal and informal ADR and customary mechanisms as alternative or complementary justice paths;
- Identify ongoing risks, challenges and necessary safeguards to develop appropriate legal, policy, and implementation frameworks, taking into account international and regional standards on human rights and the rule of law; and
- Detail emerging opportunities to advance access to justice in the context of SDG 16.

⁵ In 2016, the Kenyan Judiciary established an Alternative Justice System (AJS) Taskforce to advance policy and mainstreaming into the formal justice system of traditional and other informal mechanisms used to access justice in Kenya. This includes the constitutionally recognized promotion of alternative forms of dispute resolution including reconciliation, mediation, arbitration, and traditional dispute resolution mechanisms, provided there is not contravention of the Bill of Rights, repugnancy to justice or morality in results or outcomes, or inconsistency with the Constitution or any written law.



Expected outcomes of the Forum include:

- Enhanced understanding of how ADR and indigenous or other customary or informal justice mechanisms support the realization of rights and access to justice for the poor and most marginalized;
- Strengthened appreciation for relevant normative and institutional frameworks under international and regional rule of law and human rights instruments; and
- Conceptualization of a framework at the regional level to monitor the use of customary and informal justice systems and ADR towards the attainment of SDG 16.

The Regional Forum is made possible with support from the Government of the Netherlands and the Canton of Geneva.



Ministry of Foreign Affairs of the Netherlands

