



LEAVING NO ONE BEHIND: ENGAGING WITH CUSTOMARY AND INFORMAL JUSTICE SYSTEMS TO PROVIDE JUSTICE FOR ALL

*A dialogue organized by IDLO and OHCHR on the side of the Rome Conference on SDG 16
Tuesday 28 May 2019 | 12:30 - 14:00 | Room: Aldo Moro*

Background

Customary and informal justice systems are critical pathways in the complex journey to justice for many people, but receive insufficient attention from policy makers, practitioners and the international community. While precise data is difficult to discern, recurring estimates suggest 80 to 90 percent of legal disputes in developing, fragile and post-conflict states are resolved using customary and informal justice systems.

Realization of access to justice for all and the development of peaceful and inclusive societies where effective and accountable institutions govern at all levels, requires in-depth and contextualized exploration of the opportunities and challenges posed by customary and informal justice systems. To improve the scope and quality of justice and ensure no one is left behind, it is important to understand the variety of justice avenues that exist and are used by individuals, including dispute resolution outside formal courts. Alternative fora or out-of-court settlements are prevalent in many jurisdictions and fulfil a large percentage of justice needs.

As exemplified by Agenda 2030, there is a trend towards more integrated sector-wide approaches that acknowledge common justice challenges and the need for quality services to ensure equitable access to justice for all.¹ Customary and informal justice systems exhibit different characteristics from their formal state counterparts, including an emphasis on restorative justice, flexible rules and procedures, and consent-based negotiated solutions that are culturally relevant. These characteristics can be advantageous, but also create tension with normative notions of justice and its delivery, including rule-based decision-making, consistency and predictability in the application of the law, sentencing and due process standards, access to representation, substantive equality, and procedural safeguards.

Additionally, there are significant human rights violations within many customary and informal justice systems, rooted in traditional, community or religious values that are at odds with international human rights standards and the rule of law, with severe consequences for women, children, and minority populations in particular.

¹ See: IDLO, 'Navigating Complex Pathways to Justice: Engagement with Customary and Informal Justice Systems' (2019), a publication series distilling lessons from programming and research. A Policy/Issue Brief and Practitioner Brief are available online: <https://www.idlo.int/news/highlights/idlo-launches-global-consultations-customary-and-informal-justice-systems>.

It is essential to understand the context in which justice mechanisms operate and focus on improved justice outcomes and delivery for justice seekers. It is also important to carefully assess risks and opportunities in context, understand justice gaps, vested interests, and existing discrimination and rights abrogating practices. Additionally, the complexity of customary and informal justice systems, their distinct value and public legitimacy are important considerations as are negative consequences of pluralism for marginalized populations.

This side event offers opportunity to explore ways of addressing the needs of justice seekers while ensuring respect for human rights.

Guiding Questions

The session will explore pathways to arriving at sustainable reforms, drawing from existing lessons, illustrations, and good practice. National government, civil society, and practitioner experiences will be highlighted, including what works to reduce justice gaps and curb rights abrogating practices while contributing to political stabilization efforts through a variety of dispute resolution mechanisms. Guiding questions for discussion and exchange include:

- What are existing justice gaps and what role do customary and informal justice systems fill for justice seekers?
- What is the value-added of customary and informal justice systems?
- What are the primary challenges and risks of customary and informal justice systems?
- How can we ensure women, children, and minority populations receive fair justice outcomes and have their human rights respected, protected, and fulfilled within customary and informal justice systems?

Moderator

- *Irene Khan*, Director-General, International Development Law Organization (IDLO)

Welcome Remarks

- *Peggy Hicks*, Director, Thematic Engagement, Special Procedures and Right to Development Division, Office of the High Commissioner for Human Rights (OHCHR)

Panelists

- *H.E. Hassan Haji*, Minister of Justice, Somalia
- *Dr. Priscilla Schwartz*, Minister of Justice and Attorney General, Sierra Leone
- *Sultana Kamal*, former Executive Director, Ain o Salish Kendra, Bangladesh
- *Dr. Sima Samar*, Head, Independent Human Rights Commission, Afghanistan
- *Michael Warren*, Security and Justice Expert, Cordaid International