

The Case to Fund and Protect Grassroots Justice Defenders

Recommendations for policymakers, donors, and multilateral institutions on how to finance and protect the grassroots justice defenders who provide essential legal support to communities.

Executive Summary

Citizens around the world are demanding that governments fulfil their promise to provide access to justice for all people by 2030, in accordance with the 2030 Agenda and Sustainable Development Goals (SDGs). This is a massive undertaking: currently an estimated 4 billion people are unable to access justice. Closing the justice gap will require coordinated action from a multitude of actors. Key to these efforts is ensuring that all people, everywhere, have access to the independent legal support needed to prevent and secure remedies to pervasive justice problems.

This brief offers recommendations for policymakers, donors, and multilateral institutions on how to finance and protect the grassroots justice defenders who provide essential legal support to communities. In every region of the world, these champions of legal empowerment—who mostly hail from civil society—are helping people to know, use, and shape the law. Grassroots justice defenders are vital to expanding access to justice, yet they are under-resourced and under threat. By pledging to invest in legal empowerment efforts and secure the safety of grassroots justice defenders, world leaders can take crucial steps toward achieving the 2030 Agenda’s commitments for people, planet, prosperity, and peace.

Grassroots Justice Defenders and Legal Empowerment

Grassroots justice defenders undertake the work of legal empowerment: they help vulnerable people to exercise their rights. They do so by equipping people to know, use, and shape the law. Justice defenders can be community paralegals, human rights activists, organisers, lawyers, or advocates for a variety of causes (including health, housing, equality, and more). Whatever their title, grassroots justice defenders are knowledgeable in law and policy. Many are skilled in negotiation, organising, and advocacy. Many engage formal and customary institutions alike. Ultimately, their goal is to help people overcome injustice.

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A woman discusses local rules for land governance with a member of her community in Uganda.
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The Justice Gap

Peace. Democracy. Sustainable development. Equality. To achieve each of these visions for a better world, we must be able to protect our basic rights and hold the powerful accountable. That is the purpose of law.

Evidence shows that when people are able to know, use, and shape the law—a process known as legal empowerment—they can access justice. With the law on their side, people can thrive, seek peaceful solutions, protect the lands and resources they depend on, and contribute to improvements in governance.¹

But the UN estimates that for 4 billion people, the promises of law are out of reach.² Many are unaware of laws that are meant to protect them. Others are unable to avail themselves of good rules or systems due to cost, dysfunction, corruption, or abuse of power. Often, the law itself is unjust.

As a result, injustice is the norm for most people on the planet.³ Justice problems are fuelling conflict, damaging livelihoods, and undermining the sacred compact between governments and their citizens.⁴ Illiterate farmers are putting their thumbprints on decades-long lease agreements, surrendering their land to multinational companies with no understanding of the terms.⁵ Women seeking recourse for sexual and gender-based violence are turned away by the justice institutions meant to serve them.⁶ Patients are losing access to life-saving treatments when health clinics demand unlawful bribes for their services.⁷

The 2030 Sustainable Development Agenda offers an unprecedented opportunity to change course. In designing the Agenda and the accompanying 17 Sustainable Development Goals (SDGs), world leaders promised to ‘take the bold and transformative steps which are urgently needed to shift the world onto a sustainable and resilient path’.⁸ Goal 16 commits to providing equal access to justice for all by 2030, and justice is a thread that runs through all 17 goals. Together, this wider group of justice-related targets is referred to as SDG16+.⁹

To achieve this ambitious agenda, all of us—governments, civil society, citizens, donors, international institutions, and the private sector—have a role to play. On the one hand, we must ensure that justice institutions such as police, courts, and administrative bodies are well-supported, sustainable, inclusive, and resilient. On the other hand, we must empower communities with the means and capacity to exercise their rights.

This brief focuses on the ‘demand side’ of the equation. The bottom-up work of legal empowerment—often led by civil society grassroots justice defenders—is crucial to ensuring that justice systems function fairly and effectively. Despite the importance of legal empowerment efforts to the 2030 Agenda, the grassroots justice defenders who take up this work remain under-resourced and under threat. We cannot let this continue.

To close the justice gap, we must seize this historic moment, invest in legal empowerment, and secure the safety of its champions.



Community paralegals with the Nubian Rights Forum.
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What's at Stake

If the global community fails to equip grassroots justice defenders with the resources and safeguards needed to take on the justice gap, serious consequences will result.

Billions of people will be left behind. Disadvantaged groups face relatively more legal, social, and economic problems than others, yet are less likely to be able to access justice.¹⁰ To break the cycle of exclusion—and achieve the SDGs' vision to leave no one behind—all people must be legally empowered. Access to justice should be a right afforded to everyone, not just the privilege of a powerful few.

We destabilise our societies. Legal empowerment works to make institutions more equitable and responsive. When people feel that institutions are broken and unfixable, trust in government erodes. The resulting sense of powerlessness brews anger and alienation.¹¹

Development will be hindered. Efforts to expand opportunity and reduce poverty cannot succeed without a legally empowered citizenry.¹² Enhancing access to justice for communities is associated with higher incomes, greater financial security for women, and better enforcement of labour and environmental standards.¹³ All of these are critical to fair and sustainable development outcomes.

“Access to justice should be a right afforded to everyone, not just the privilege of a powerful few.”



Villagers who are signatories to a case brought against the chemical industry in Gujarat, India.
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B.T. Gouda, farmer and member of Bogribeil community.
© NAMATI, 2017



A Victory of the Common Man

The stone crushing unit operated 16 hours a day. For over two years, it covered the farming community of Bogribeil, India in a thick cloud of dust, threatening the villagers' health and destroying their crops. 'We used to earn INR 130,000 [US\$1,800] annually by farming', says B.T. Gouda, referring to his family, 'but the last two years we could only earn 50,000 a year'.

The community thought the company's actions were unfair, but it was not until paralegals from a joint Centre for Policy Research-Namati programme visited that they realised the company might also be breaking the law.

Gouda and a number of other community members began working on the case with the paralegals, researching laws, gathering evidence, and ultimately, filing a complaint. In 2017, the Pollution Control Board directed the company to comply with regulations and pay the community compensation.

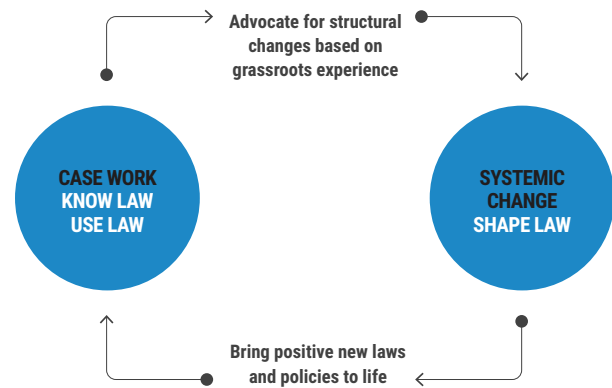
‘We are very happy with the outcome’, says B.T. Gouda. ‘It is a victory of the common man. ... I used to think that I will never be able to stand in front of a higher rank officer and speak, but the knowledge of law and clear evidence gave me the confidence to not only question the authorities but demand remedy courageously’.

What is Legal Empowerment?

Effective legal empowerment efforts share three core features:

- 1. Most legal empowerment work is led by civil society and undertaken by grassroots justice defenders, including lawyers and non-lawyers, who work directly with communities.**¹⁴ These justice defenders raise awareness of rights, laws, and policies; help clients to navigate legal and administrative processes in the pursuit of remedies; and support citizen engagement in law and policy reform. In countries where lawyers are too few, too expensive, too specialised, or too far away to serve the millions in need of assistance, a partnership between community-oriented lawyers and a broader frontline of non-lawyers (often called community paralegals) helps to resolve the imbalance between the supply of, and demand for, legal services.¹⁵
- 2. Effective legal empowerment efforts are independent.** Like the judiciary itself, legal empowerment efforts should be insulated from political influence and government control.¹⁶ Independence allows legal empowerment groups to put the needs of vulnerable people first and, when necessary, to hold institutions accountable, or advocate for reforms.
- 3. Legal empowerment can address specific grievances and advance systemic change.** Justice defenders help people find concrete solutions to injustices; they may help to reverse a land grab, secure a woman's freedom from an abusive relationship, or challenge an unlawful denial of wages. In the aggregate, this grassroots casework generates a map of how systems are working in practice. Justice defenders, alongside the communities they serve, are increasingly drawing on that case experience to advocate for improvements to law and policy: more equitable rules for land acquisition, for instance, or stronger protections for women's rights. This process forms a virtuous cycle by which ordinary people are equipped to know, use, and shape the law.¹⁷

THE LEGAL EMPOWERMENT CYCLE



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She Holds the Power



Hauwa, a rural Liberian mother of four, was struggling. Her husband had stopped supporting their children and she found herself unable to cover the cost of living. Many women in Hauwa's position forego a remedy. They are uncertain of their legal position, deterred by high court fees, and assume that men hold the upper hand in domestic disputes. But Hauwa persevered.

Hauwa approached Mary, a community paralegal working with the Community Justice Advisor programme of the Justice and Peace Commission. Mary explained the options available to Hauwa under Liberia's dual legal framework, from pursuing a case in court to mediation by a civil society organisation or appealing to traditional leadership. Hauwa asked for mediation.

Mary then explained to Hauwa's partner his legal responsibilities concerning child support. She emphasised the seriousness of a charge of "persistent non-support" in the courts—something they could resort to if the parties were unable to come to an equitable agreement. The husband agreed to resume support for his children and now provides food and enough money for the children's education, transforming the quality of the family members' lives.

What the Evidence Says

A growing body of evidence recognises the significance and potential of legal empowerment. While no single study reveals a secret recipe for success, research is helping to shed light on the critical role that legal empowerment plays in fostering peace, prosperity, inclusion, and good governance.

1. Legal empowerment improves **LIVELIHOODS**.

The impacts of legal empowerment on people's ability to secure their basic needs are well-documented and diverse. In the Philippines, farmers in communities with paralegals trained to support agrarian reform saw higher levels of productivity, higher farm incomes, and more investment in their farms.¹⁸ In Liberia, families assisted by community paralegals experienced large increases in household and child food security.¹⁹ In Ecuador, female legal aid clients were 10% more likely to receive child support than non-clients; payments were also 20-50% higher than average.²⁰



2. Legal empowerment strengthens the delivery of essential **SERVICES**.

When people are able to monitor, report on, and influence public service delivery, they help governments to enhance the availability and quality of these services.²¹ In Argentina, where community lawyers guided shantytown residents through legal and administrative actions, communities secured access to potable water, electricity, sanitation, and medical services.²² In Mozambique, grassroots health advocates, who raise awareness of health policy and resolve grievances, reduced delays in initiating drug treatment for HIV and tuberculosis patients, brought health workers to isolated rural areas, expanded services at clinical sites, and improved hospital infrastructure.²³ In the United Kingdom, citizen advocates helped people to understand and access basic welfare benefits, increasing participation in public entitlements and improving the living standards and mental health of their clients.²⁴



3. Legal empowerment addresses the root causes of **CONFLICT**.

Injustice, inequality, and corruption are common drivers of conflict.²⁵ By resolving justice problems, legal empowerment can be key to reducing violence. Studies have documented positive impacts of legal empowerment efforts on the reduction of gender-based violence and the satisfactory resolution of conflicts, particularly those involving women's rights, intra-community disagreements, natural resource rights, and family disputes.²⁶ In Tunisia, Sierra Leone, and Liberia, researchers recognise strong linkages between the work of community paralegals and the reduction of factors that have historically led to war and violence, including social and economic inequalities, maladministration of justice, and conflict over land.²⁷



4. Legal empowerment reduces **INEQUALITY**.

Legal empowerment interventions are able to tackle bad laws, target power asymmetries, and reduce social, cultural, financial, and systemic barriers that sustain social inequalities.²⁸ In the United States, due in part to imbalances of power between landlords and tenants, one in nine non-payment of rent cases in New York City leads to eviction. The presence of non-lawyer ‘access to justice navigators’ evens the playing field considerably. In a review of 150 cases where navigators assisted tenants, researchers found no evictions at all.²⁹ In Mozambique, a study found that, despite facing intense gender discrimination, almost every dispossessed widow or divorced woman with access to a community paralegal asserted her land claim. Where cases stalled at the community level, paralegals were able to bring them to formal court, where decisions are more often in a woman’s favour.³⁰



5. Legal empowerment combats environmental **DESTRUCTION**.

Legal empowerment enables communities to address the causes and consequences of climate change and deforestation. In China, where violations of environmental laws remain a pervasive problem, legally empowered citizens have played an important role in pressuring firms into compliance. Methods range from lodging formal complaints and demanding enforcement action from environmental authorities, to petitioning local and national government institutions, suing companies operating illegally, and organising mass demonstrations.³¹ Likewise, in India, paralegals in four states worked with local communities to document and report illicit industrial activities affecting their health and livelihoods. Paralegals followed up and cooperated with regulators, succeeding in enforcing regulations in dozens of cases dealing with industrial pollution.³²



6. Legal empowerment promotes citizen **ENGAGEMENT**.

Legal empowerment efforts open up opportunities for people to both participate in and shape institutions that affect their lives. A study of paralegal-led community land protection efforts in Uganda, Liberia, and Mozambique found that their work strengthened the rules and structures for governing community lands. This resulted in more inclusive local governing bodies, enhancing in particular the voices of women and youth in decision making around land and natural resources.³³ In India, when legal information campaigns raised awareness of benefits to which students were entitled, as well as rights to information and complaint procedures, more parents took part in oversight committees about school quality.³⁴



Two Key Challenges

The promise of legal empowerment is compelling, yet two challenges hinder this important work: financing and protection.³⁵

Investment

Despite some promising steps taken by a small number of governments and donors,³⁶ present levels of expenditure are inadequate to deliver on SDG 16 and related justice targets.³⁷ Governments have not embraced their role in guaranteeing universal access to legal services, as they do with other public goods like health or education. In developed and developing countries alike, the amount of domestic funding allocated to legal assistance typically pales in comparison to the need.³⁸ Even then, legal aid budgets are being cut in many leading economies.³⁹

At the same time, international aid for access to justice is inadequate.⁴⁰ As a proportion of total aid flows over the past ten years, funding for justice accounts for 1.8% on average, compared with 13% and 8% for the health and education sectors respectively.⁴¹ In conflict-affected states, where the justice gap is greatest and countries are least able to fund core government services on their own, just 3% of development assistance is spent on justice.⁴² This is a significant imbalance, especially given that the proportion of aid dedicated to justice by donor countries is drastically lower than relative spending on justice in their own countries.⁴³ Yet, despite mounting need, aid funding for justice has decreased by 40% in the past 4 years.⁴⁴

Of the funding that does exist for the justice sector, the vast majority goes to top-down solutions rather than grassroots legal empowerment.⁴⁵ This is a serious oversight, given the cost-effectiveness and impact of legal empowerment efforts to date, and the essential role that bottom-up approaches play in ensuring inclusive, responsive justice systems.

“Yet, despite mounting need, aid funding for justice has decreased by 40% in the past 4 years.”

Legal empowerment efforts are surprisingly affordable for the impact that they have on advancing access to justice and sustainable development. One study estimated the costs for nationwide delivery of 17 basic legal services programmes, most of which included community paralegals. They ranged from \$0.1 USD to \$1.3 USD per capita in less developed countries, and from \$3 USD to \$6 USD per capita in highly developed countries.⁴⁶ In Sierra Leone, Namati estimates that it would cost \$2 million USD per year to provide paralegal services throughout the country. That is three tenths of a percent of the total 2013 national budget and 3% of what the Sierra Leone government allocated to healthcare in 2013.⁴⁷

The SDGs should have shifted the financing landscape for access to justice work. Major financial commitments accompanied the launch of 2030 Sustainable Development Agenda: \$956 million USD from the Gates Foundation and the UK government for nutrition; \$25 billion USD in public and private financing for a global strategy to improve healthcare for women and children. But there were no financial commitments made to access to justice.⁴⁸

As a result, a lack of sustainable financing remains one of the biggest issues facing the legal empowerment community today. In 2017, a Global Legal Empowerment Network survey found that 67% of members would have to make cuts or would not be able to operate in the coming year due to funding sustainability concerns.⁴⁹ This does not bode well for fulfilment of the SDGs. Unleashing the potential of legal empowerment groups requires dedicated investment on the part of governments and international donors.

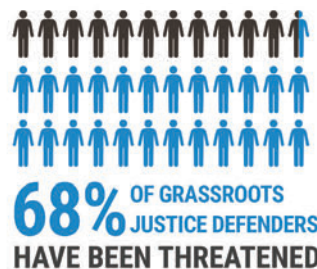
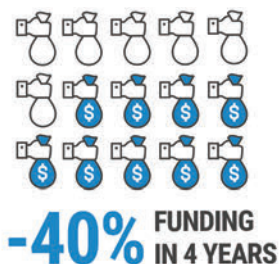


Attacks on Grassroots Justice Defenders

Unfortunately, the uptake of the 2030 Agenda has coincided with the reduction of civil society space in many countries across the world. Governments are increasingly changing the spaces and institutions through which citizens engage. Legal barriers are being erected to limit the activities of civil society organisations, restrict their ability to receive funding, and reduce their autonomy from the state.⁵⁰ Some governments, rather than constrain civil society through law or policy explicitly, do so by fostering mistrust of organisations and portraying them as ‘agents of external forces and corrupt entities’.⁵¹ This leaves little space for civil society organisations to engage with SDG16+, and may actually increase their chances of being harassed for such engagement.⁵² The closing of civil society spaces has put grassroots justice defenders increasingly at risk.

Grassroots justice defenders are routinely harassed and even killed during the course of their work by private individuals, companies, and governments.⁵³ In 2018 alone, Front Line Defenders documented the murder of 321 defenders in 27 countries. Of the victims, 77% were defending land, environmental, and indigenous peoples’ rights, often in the context of large industrial projects.⁵⁴ In 49% of killings, the defender had previously received a death threat, and in another 43%, general threats had been made to defenders in the area, indicating that preventative action might have averted much of the violence.⁵⁵ Two-thirds of members of the Global Legal Empowerment Network report that carrying out their work is difficult due to political or social conditions.⁵⁶ Half say that the political environment in their country has worsened in the last year.⁵⁷ To achieve justice for all, those entrusted with serving communities’ justice needs must be able to work in an environment free of coercion and bodily harm.

NOW IS THE TIME TO FUND & PROTECT GRASSROOTS JUSTICE DEFENDERS!



Musa Ndamba.
© NAMATI, 2016

Musa: A Grassroots Justice Defender

As a grassroots justice defender, Musa helps vulnerable communities in Cameroon to protect their land rights. On May 11, 2018, Musa was sentenced to six months in prison and a fine of 1 million CFA (\$1,000 USD). His imprisonment came after over five years of judicial harassment based on unsubstantiated allegations of defamation, during which time the court adjourned his hearings over 60 times.⁵⁸ The protracted case has caused significant damage to Musa’s reputation and has led to anxiety, financial burdens, and deterioration of his health.

He was released on bail on June 12, 2018, after significant advocacy by justice defenders around the world. The case is ongoing and the outcome remains uncertain. The baseless allegations against Musa, and years of judicial harassment, are emblematic of the threats and persecution faced by grassroots justice defenders who are addressing the most pressing justice issues of our time.

Policy Recommendations

Rising inequality and environmental degradation are pushing the limits of our democracies and ecosystems. The challenges are daunting, but a number of concrete measures can help legal empowerment initiatives reach their full potential and reverse the global epidemic of injustice.

Finance civil society efforts that advance access to justice

1 RECOMMENDATION: Increase domestic investment in legal empowerment efforts, particularly those undertaken by civil society.⁵⁹

i) In national budgets, scale up investment for grassroots groups undertaking legal empowerment and access to justice work.⁶⁰

Dedicated and sustainable funding mechanisms should be established for legal empowerment work, with budget allocations commensurate with the needs of grassroots justice defenders.⁶¹ Both human and financial resources should be extended as necessary. At the local level, consider local and municipal funding strategies, including those that take advantage of in-kind contributions, like shared facilities.⁶² In South Africa, the City of Johannesburg in Gauteng Province pays rent and utilities for its local community advice office.⁶³ In Ukraine, local municipalities and donors fund Community Law Centers run by civil society.⁶⁴

New investments at all levels should be included when states report on SDG progress through Voluntary National Reviews at the UN High Level Political Forum.



Justice defenders at a global learning exchange in Argentina.

© ASOCIACIÓN CIVIL POR LA IGUALDAD Y LA JUSTICIA, 2017

ii) Integrate civil society in planning and budgeting conversations on access to justice and the SDGs.

To ensure smarter investment decisions, it is important to spend time analysing justice issues in a given country: what they are, why they exist, and how to address them. Legal empowerment groups can provide policy makers with vital insight into the legal needs of marginalised populations, and how to overcome challenges.

Civil society should be consulted during the development of government financing mechanisms, so that they work for the groups who will be accessing them. In 2016, such a multi-stakeholder consultative and planning process was initiated in Kenya by civil society, the professional bar, and parliamentarians. Their collaboration produced a Legal Aid Act that called for a fund for legal aid providers, including community paralegals.⁶⁵

The Open Government Partnership (OGP) also supports government and civil society in creating National Action Plans. Where relevant, this can be a useful mechanism for co-designing access to justice reforms.⁶⁶

iii) Ensure that investments in legal empowerment do not curtail the independence of those efforts.

According to the UN Principles and Guidelines on Criminal Legal Aid and the Special Rapporteur on the independence of judges and lawyers, governments should not interfere with the independence of legal aid providers.⁶⁷ Without independence, justice defenders cannot effectively represent the needs of vulnerable communities, hold public institutions accountable, or advocate for systemic change.⁶⁸ Governments should entrust independent bodies (such as legal aid boards, ombudsman offices, or human rights commissions not managed by the executive branch) with the oversight and administration of public financing to legal empowerment groups.⁶⁹ In Ontario, Canada, for example, community legal clinics receive public funding that is administered and monitored by a body that operates independently from government.⁷⁰ Each community legal clinic is also governed by independent boards of directors composed of representatives of the communities in which they serve.⁷¹ Such arrangements protect grassroots justice defenders from political interference while ensuring that funding mechanisms support the core work of legal empowerment organisations.

iv) Tap into sector-specific sources of funding to better utilise existing public funds.

Access to justice is an urgent need in many domains—health, labour, housing, education, environment, and more. Acknowledging this, ministries and departments beyond the justice sector should assess how legal empowerment can assist them in pursuing their goals, then commit to financing these efforts. In Mozambique, for example, the Ministry of Health recognises civil society paralegals whose work improves the effectiveness of healthcare services.⁷² With the ministry’s support, major health donors like the Centers for Disease Control and Prevention and The Global Fund to Fight AIDS, Tuberculosis and Malaria have stepped in to finance a scale-up of these paralegals.⁷³ Rallying other sectors to finance legal empowerment efforts alleviates pressure on the traditional justice sector, where legal aid financing has typically centred.⁷⁴

To avoid duplicative efforts, governments can adopt a ‘whole government’ approach to coordinate responsibilities and funding from multiple agencies. The Legal Aid Interagency Roundtable in the United States raised federal agencies’ awareness of how civil legal aid could help advance a wide range of federal objectives including employment, family stability, housing, consumer protection, and public safety. In total, 23 government agencies committed to funding civil legal aid. Coordination at senior levels helped each agency ensure that they were mutually reinforcing each other’s efforts.⁷⁵

v) Require companies to contribute to the cost of legal empowerment for communities affected by their investments.

When companies support responsible land rights practices, they help to prevent problems that may arise when negotiating with under-informed parties.⁷⁶ With basic legal support, communities can protect against land grabs, negotiate equitable terms when investment is welcome, and seek enforcement if companies violate the law.⁷⁷ To avoid a conflict of interest, private sector funding would need to be administered by an independent body (see above). Sierra Leone’s National Land Policy, for example, requires firms interested in leasing land to pay into a basket fund that would finance legal support via paralegals for landowning communities.⁷⁸

2 RECOMMENDATION: Increase global aid flows to grassroots legal empowerment groups.

i) Scale up Overseas Development Assistance (ODA) commitments to fund civil society legal empowerment groups.

Overseas development assistance tends to overlook the financial needs of civil society organisations providing direct legal services.⁷⁹ Donors should explore mechanisms for financing these groups without exposing them to political interference. To help with donor coordination, donors should report on the percentage of justice-related funding dedicated to support civil society, increasing transparency as they have done in other sectors.⁸⁰

ii) Establish mechanisms to ensure more money flows to grassroots efforts.

Getting the right size of grants to those at the frontline is a problem faced by many sectors, in spite of growing recognition that local engagement is critical to the achievement of lasting change.⁸¹ Donors should test methods for providing flexible financial and technical resources to meet the needs of grassroots justice defenders on the ground and to adapt quickly to shifting local contexts. The Fund for Global Human Rights is an example of a successful model. To date, they have distributed nearly \$84 million USD in grants to more than 680 on-the-ground human rights groups.⁸² Donors can also learn from governments who are testing new mechanisms for financing work at the grassroots. For example, the Indonesian government is exploring ways to ease the process for registration of legal aid providers, simplify reimbursement procedures, and address the cumbersome criteria required to be eligible for funding.⁸³

Policy Recommendations - CONTINUED

iii) Existing global funds and multilateral banks should invest in legal empowerment initiatives.

As with domestic spending, the international community should tap into sector-specific funding sources to support legal empowerment. Global funds dedicated to specific marginalised communities or thematic issue areas, such as the United Nations Democracy Fund, the International Finance Facility for Education, and the Global Partnership for Social Accountability, are natural allies for legal empowerment efforts.⁸⁴ The Global Fund to Fight AIDS, TB and Malaria, for instance, has made the removal of human rights-related barriers to health services a strategic objective. In 20 countries, they are investing in the scale up of programmes that, among other things, increase legal literacy of patients' rights, improve access to legal services that prevent and challenge human rights violations, and train healthcare workers on principles of medical ethics, law, and policy.⁸⁵

For their part, multilateral banks should agree on a policy of dedicating a percentage of total spending to finance independent legal support for communities affected by their investments.⁸⁶

iv) Integrate civil society in designing financing mechanisms for legal empowerment.

As with government funding, consulting and involving civil society at all stages of design will help to ensure that ODA mechanisms function smoothly and are not burdensome or impractical for their intended beneficiaries.



A nurse addresses concerns raised by community members in Sierra Leone.

© NAMATI, 2015

3 RECOMMENDATION: Increase multi-stakeholder coordination around financing for legal empowerment.

i) Increase coordination in financing for legal empowerment, potentially through a global fund or a coordinated strategy.

Donors, governments, and civil society each have their own theories as to how change happens, but many share a common commitment to extending access to justice. By bringing together different actors in the justice and legal empowerment movements, developing a coordinated strategy, and aligning resources, data, and leadership, concrete gains can be made to reduce the justice gap. Multi-stakeholder spaces, such as the OGP, G20, and Organisation for Economic Co-operation and Development (OECD), offer forums where governments and civil society can learn from each other and build consensus around financing for justice.⁸⁷ This coordination would also reinforce the partnership commitments made by governments for SDG 17.

The Pathfinders Task Force on Justice provides an excellent platform to launch and initially house a new donor group on legal empowerment.⁸⁸ Such a group would be well placed to coordinate collective action when governments report on progress toward SDG 16 at the 2019 High-level Political Forum on Sustainable Development.

The donor group could consider emulating the model of the Transparency and Accountability Initiative, which has helped donors to collaborate and improve grant making practices.⁸⁹ The group could also examine the possibility of establishing a new global fund for justice⁹⁰ or promoting greater action at the national level. South Africa and Indonesia offer blueprints for multi-stakeholder coordination; in both countries, philanthropic and government actors are working together to explore models for financing basic legal services nationwide.⁹¹

Protect grassroots justice defenders from intimidation, harassment, and murder.

4

**RECOMMENDATION:
End all attacks on grassroots
justice defenders.**

i) Create an enabling environment for grassroots justice defenders and ensure that civil society space is protected.

During the course of their work, grassroots justice defenders continue to be rebuffed, harassed, and accused of acting illegitimately. While many countries formally recognise, either in law or policy,⁹² the role that grassroots justice defenders play in providing basic justice services, this is not a guarantee of safety. States must fulfil their commitment to protect civil society space and ‘create and maintain, in law and in practice, a safe and enabling environment in which civil society can operate free from hindrance and insecurity’, in line with the 2016 UN Human Rights Council Resolution on Civil Society Space.⁹³

ii) Document and report on violations against grassroots justice defenders.

A lack of evidence and reporting on violations against grassroots justice defenders limits understanding of the scale of the problem and how best to curtail it. Through the SDGs, governments and civil society have committed to generating evidence on the scale of the justice problem. Many countries are investing in legal needs surveys and household surveys. The Pathfinders Task Force on Justice has a work stream dedicated to ‘strengthening justice data’.⁹⁴ These mechanisms must better document attacks on grassroots justice defenders. Murders and harassment of justice defenders should be monitored by National Human Rights Institutions and grassroots organisations should be encouraged to report violations to local contact points or offices.⁹⁵ Figures on harassment and murder should feed into the Universal Periodic Review process and SDG Voluntary National Reviews. Governments should solicit input from civil society for these reports, to verify information on violations and identify ways to improve.

iii) Build international consensus on the importance of protecting justice defenders through multilateral agreements.

Multilateral agreements present an opportunity to catalyse domestic commitments and create collective mechanisms for accountability. Consider the Escazú Agreement, the world’s first binding instrument for the protection of human rights defenders in environmental matters. Signatory governments to the Escazú Agreement commit to guaranteeing a safe and enabling environment for justice defenders and taking effective measures to prevent, investigate, and punish attacks, threats, or intimidations aimed at them. The agreement was ratified by 15 countries from the region in September 2018, and has been met with great optimism by justice defenders across the globe.⁹⁶

Ljutvia Demerova.

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Ending the Wait

Ljutvia Demerova is the mother of a large family that is part of the Roma community of Delcevo, Macedonia. Like many Roma families in the region, her children lacked proper birth certificates, which in turn made it harder for them to access healthcare and other public services. Then she attended a workshop run by KHAM, a local Roma group providing free legal services.

‘My eldest daughter was seven years old, and she still had no identity documents. I gave them her personal details but they wouldn’t issue a birth certificate; they told me to wait. For one, two, three years. But then the legal services people helped a lot; we got the certificate in one day. Now I want to get health record booklet for her and her brothers and sisters’.

Policy Recommendations - CONTINUED

iv) Involve civil society in drafting and implementing domestic laws, policies, and mechanisms that guarantee the safety of grassroots justice defenders.

Past experience with law and policy reforms establishing greater protections for rights defenders has been mixed. There is no universally applicable template for protective laws and policies, as they must respond to local needs and context.⁹⁷ However, in cases where laws and policies have experienced some level of success, civil society has participated at all stages, from design to implementation and evaluation.⁹⁸

v) Pay special attention to the unique challenges faced by female justice defenders and those working to advance the rights of marginalised populations.

Donors and governments should build in safeguards that account for the special circumstances faced by justice defenders who promote and protect marginalised communities' rights. Working with these populations can bring additional risk, as the assertion of these rights can be perceived as a threat to, and disruptive of, cultural, religious, and social norms. For instance, over 150 countries have at least one law that impedes women's economic activities, and more than 45 countries lack laws protecting women from domestic violence.⁹⁹ Female defenders may face abuse not only due to their status as justice defenders, but also because they are challenging gender-based expectations about their position and role in society.



Union member Antonio speaks about issues facing migrant workers in the United States.

© CAMPAIGN FOR MIGRANT WORKER JUSTICE

5

RECOMMENDATION: End the criminalisation and litigious harassment of grassroots justice defenders.

i) Prohibit lawsuits whose main purpose is to harass grassroots justice defenders.

Such lawsuits, also known as SLAPPs (strategic lawsuit against public participation), use mounting legal costs or fear of incarceration to intimidate a justice defender into silence. A number of countries have passed legislation or rules of procedure denouncing and prohibiting such lawsuits. For example, in the Philippines, an environmental justice defender who is the target of a civil or criminal case can get it dismissed on the grounds that the case is a SLAPP. In civil cases, the dismissal of a SLAPP may be accompanied by an award in favour of the justice defender for damages, attorney's fees, and other legal costs.¹⁰⁰ Such protections should be adopted in more countries and applied to justice defenders working in all issue areas.

ii) End persecution and harassment of civil society for engaging with the Universal Periodic Review.

Civil society organisations can submit information to the Universal Periodic Review (UPR) process, which undertakes a comprehensive examination of the human rights record of UN member states. The UPR often makes recommendations relating to the safety and freedom of human rights defenders. While compliance with recommendations varies widely from state to state, overall 48% of recommendations have been implemented since the last cycle.¹⁰¹ The UPR is thus seen by many as the world's most effective instrument for promoting the interests of human rights defenders. Yet, many governments take an adversarial stance toward civil society groups engaging in the UPR process, often casting them as enemies of the state, declaring their activities unlawful, or preventing them from meeting or operating effectively.¹⁰² Civil society must be permitted to participate in the UPR without fear of persecution.

6 RECOMMENDATION: Support independent bodies that advance investigations and prosecutions relating to attacks on grassroots justice defenders.

i) End the culture of impunity related to attacks.

Among the hundreds of murders of grassroots justice defenders documented in 2017, a mere 12% resulted in the arrest of suspects.¹⁰³ Impunity for acts of violence against grassroots justice defenders encourages further attacks and killings. Governments must take steps to reverse this trend and to fully investigate and prosecute the perpetrators of these crimes.

ii) Establish or strengthen National Human Rights Institutions.

National Human Rights Institutions (NHRIs) take many forms - human rights commissions, ombudsmen, or other hybrid institutions. Core to their mission is the protection of human rights defenders, as well as receiving, investigating, and resolving complaints relating to rights violations. Acting as an independent liaison between civil society and government,

NHRIs have the power to draw public attention to the value of human rights and the safety of justice defenders, investigate threats or attacks on defenders, recommend that criminal prosecutions be initiated based on their own investigations, and monitor follow-up on their recommendations.¹⁰⁴

iii) Seek technical assistance for prosecutions from an independent international source.

In countries struggling with particularly pervasive corruption, cooperative efforts with international actors can succeed in enforcing accountability where purely domestic efforts might fail. For example, the International Commission Against Impunity in Guatemala (CICIG) is an independent body with investigative and prosecutorial powers set up by the United Nations and the government of Guatemala. It cooperates with local prosecutors and has brought cases against high-level political figures for extrajudicial killings and other crimes, and has advanced key criminal justice reforms. Based on CICIG's positive results,¹⁰⁵ Honduras has since established a similar commission, and Panama is looking to follow suit.



Justice Defender Sinazo Makhoyana speaks with Nondo Nobel Bwami and others during a convening in South Africa.

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Endnotes

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