

Open Government Partnership: Access to Justice

The law impacts nearly every aspect of life, including health, employment, education, housing, and public safety; however, opaque processes, unequal access, and discrimination create barriers for citizens to access justice.¹

Access to justice is defined as **the ability of people to seek and obtain a remedy through formal or informal institutions of justice for grievances**². It applies to civil, criminal, administrative, and human rights law. Access to justice should be predictable, transparent, effective, non-discriminatory, and accountable. Access to justice is both a goal in and of itself and a means to achieving or assuring other goals and rights, such as facilitating improved service delivery and anti-corruption or assuring or the right to information and participation.³

Open justice seeks to achieve greater governmental legitimacy and associated increases in public trust toward governmental institutions. Promoting open justice in solutions requires broader engagement with the justice community at the national level, such as Ministries of Justice and at the ground level, including court systems and legal assistance organizations. Open justice commitments include initiatives to make courts, law enforcement bodies, and corrections facilities fairer and more efficient by making their information, data, and processes more transparent.⁴

The twin principle aims of Open Justice⁵ are:

- Increase access to justice and to ensure fairness in application by promoting a universal rule of law in a manner consistent with the values of the majority;
- Safeguarding the rights of citizens especially the rights of the minority.

I. Thematic Priorities⁶

1. ACCESS TO JUSTICE

Promoting legal empowerment to ensure that all people and communities are able to understand, use and, ultimately, shape the law

2. TRANSPARENCY AND ACCOUNTABILITY

The opening of justice institutions by making justice institutions more transparent, accessible, and free of corruption.

II. OGP Recommendations

- **Develop and deploy legal needs assessments**
- **Build legal capability** by improving access to information
- **Strengthen resolution forums and processes**
- **Work to improve outcomes and reduce hardships**, especially for under-represented communities

¹ Taken from <https://www.opengovpartnership.org/policy-area/justice/#overview>

² UNDP definition from http://www.undp.org/content/dam/aplaws/publication/en/publications/democratic-governance/dg-publications-for-website/access-to-justice-practice-note/Justice_PN_En.pdf

³ Refer to https://www.opengovpartnership.org/wp-content/uploads/2018/07/opening_justice_working_draft_public_version.pdf

⁴ Taken from <https://www.opengovpartnership.org/policy-area/justice/#overview>

⁵ Refer to https://www.opengovpartnership.org/wp-content/uploads/2018/07/opening_justice_working_draft_public_version.pdf

⁶ Refer to https://www.opengovpartnership.org/wp-content/uploads/2018/07/opening_justice_working_draft_public_version.pdf

III. Benefits of Open Justice Reform for Citizens, Businesses and Civil Society Organizations⁷

Citizens

- **Gain understanding of relevant information:** As members of society desiring to inform themselves and engage in political action, citizens benefit from reforms that open up justice system data by presenting information regularly in understandable ways. As litigants, citizens benefit from reforms that create understandable, easy-to-use case management systems that can inform them of their rights at each stage of their case.
- **Empower citizens as valuable participants in collective action:** Reforms that create effective citizen feedback mechanisms help channel citizen input and interactions with government in constructive ways that lead to greater trust through creating better public policy. These reforms can change the dynamics between governments and their citizens from antagonistic to collaborative.

The Media, Civil Society Organizations, Law Firms, and Think Tanks

- **Gain access to crucial data sets:** Reforms that open up previously hidden or restricted justice system data, related, for instance, to arrest statistics and case dispositions, provide invaluable opportunities for researchers and advocates in civil society to inform themselves and refine their efforts. The ability to identify positive and problematic trends in the justice system can enable advocacy groups to use their resources more effectively to target issues of greater relevance backed by solid evidence.
- **Better represent and ensure justice for clients:** Robust case management systems that enable litigants and their counsel to track the progress of their case give law firms and advocacy organizations crucial tools to ensure their clients receive due process and appropriate relief.

Businesses

- **Face lower transaction costs:** Less indeterminacies in case disposition leads to more informed decision-making for businesses and a greater likelihood of profitable transactions.

All Justice System Stakeholders

- **Ensure judicial integrity and overall government accountability:** Reforms that increase scrutiny of judicial actors like judges, prosecutors, ombudsmen, and court administrators help ensure judicial integrity and overall accountability.
- **Create channels for more inclusive engagement across all sectors of society:** When reforms create mechanisms for scrutiny and feedback from previously disenfranchised groups (for example in matters such as police conduct or judicial bias) they permit more inclusive engagement of justice system stakeholders. Such inclusive mechanisms can take the form of greater democratic representation either in helping to determine the values and standards underlying a justice system or in monitoring “gaps” and addressing “loop-holes” in its implementation.
- **Foster greater social trust and economic activity among justice system stakeholders:** When reforms assure equal and consistent access to justice and the rule of law, all sectors of society are more on par to interact and transact with one another. This creates greater trust between all societal stakeholders with less resentment arising from perceived favoritism within the justice system. The economic and social benefits that arise from the greater trust and transactions can then accrue to all sectors of society as well.

⁷ For more information see https://www.opengovpartnership.org/wp-content/uploads/2001/01/opening_justice_working_draft_public_version.pdf

IV. Categories of Access to Justice⁸

Category	Description	Examples
Legal Problems	<ul style="list-style-type: none"> The types of legal problems most frequently encountered by the public; Developing, implementing, and publishing the results of legal needs surveys can identify the nature and impact of legal problems and identify paths to resolution; Carrying out legal needs assessments help decision and policy makers identify needed interventions. 	<ul style="list-style-type: none"> “Canada: Identifying Legal Need & Their Costs” as an open government approach to assessing legal needs
Legal Capacity	<ul style="list-style-type: none"> Citizens knowledge and ability to understand the law, seek help, and navigate justice processes; Includes ensuring adequate access to information about legal solutions. 	<ul style="list-style-type: none"> “Institutionalizing Community Paralegals: The South African Experience” “Ireland’s Efforts to Improve Access to Justice for Individuals with Limited Decision-Making Capacity.”
Access to Help	<ul style="list-style-type: none"> Citizen’s ability to get legal help, whether formal or informal; Quality of legal help available to citizens; Policies to improve access include: developing self-help resources, expanded legal assistance, and improving the services of justice offices. 	<ul style="list-style-type: none"> “Indonesia’s Effort to Increase the Availability and Quality of Legal Aid” “Diversifying Funding for Legal Aid in the United States.”
Justice Processes	<ul style="list-style-type: none"> The availability and quality of processes to meet the public’s legal needs; Policies to improve the quality of dispute resolution forums including, but not limited to, courts. 	<ul style="list-style-type: none"> Establishing Specialized Courts
Justice Outcomes	<ul style="list-style-type: none"> The outcome of justice processes; Includes: fairness, timeliness, cost, and downstream ill-effects (such as health effects). 	<ul style="list-style-type: none"> Monitoring and Evaluating Access to Justice

V. Increasing Access to Justice during COVID-19

ACCESS TO JUSTICE

- **Fund innovations that provide remote justice services**, including in courts and detention centres.
- **Expand helplines and other specialized justice and protection services** aimed at women and children, as well as members of the LGBTQIA+ communities and persons, and create more safe spaces for adults and children who need to escape their homes.
- **Create more channels for accessing justice** by challenging monopolies that block the entry of paralegals, low-cost mediators, and digital legal services, and by suspending regulations that limit smart working, flexible responses and non-lawyer legal assistance.

⁸ For more information see <https://www.opengovpartnership.org/wp-content/uploads/2019/09/Justice-Policy-Series-Access-to-Justice.pdf>

- **Draw on the experience of the private sector** and of alternative and community-based dispute resolution mechanisms.
- **Expand direct legal services**, particularly in the areas of evictions, property disputes, debt and bankruptcy, family law, wills, benefits, and elder law.
- **Maintain funding and services of online justice courts** and other helplines, as the additional capacity will help reduce the backlog.
- **Use technology to create materials to explain legal information** to individuals and families.

DATA COLLECTION

- **Gather and act on information from the justice frontline:** Specifically, examine interactions between police and people, people's experiences in accessing social benefits and coping with new COVID-19 containment measures, conditions in prisons and other high-risk environments, and challenges faced by grassroots justice defenders. Conflicts and attacks must be recorded and reported by human rights commissions or ombudsman offices.
- **Survey public experiences and perceptions**, watching for early signals of a decline in the legitimacy of the justice system, worsening perceptions of social or economic injustice or inequitable provision of services, or weakening trust in public health information.
- **Mine existing data sources**, especially legal needs surveys, to understand pre-existing justice problems and to identify those that are likely to be exacerbated by COVID-19. Ensure transparency

COLLABORATION AND PARTNERSHIPS

- **Establish a cross-sectorial pandemic task force under the Ministry of Justice**, with representation from all levels of government, to assess justice system needs and prioritize responses.
- **Convene a multi-stakeholder group** to provide input and coordinate effective responses to the crisis.

OPEN AND ACCOUNTABLE JUSTICE

- **Publish laws and regulations in publicly accessible places** and online, making them available rapidly.
- **Ensure transparency on implementation of emergency measures**, including on police action, sanctions imposed, and court processes. Transparency should also apply to quarantine measures, travel restrictions, and border controls.
- **Ensure technology use, particularly for surveillance, respects the privacy** and rights of grassroots justice defenders and their clients. Any such emergency measures must be non-intrusive, limited in time and purpose, and abide by international human rights standards.
- **Publish updated statistics about crime and people's justice problems**, particularly on domestic violence. Proactively share information on resolution and resources on assistance.
- **Make courts' deliberations and decisions available, online or through radio or television**, with plain language explanations of court decisions and motivations.
- **Empower accountability institutions, such as ombuds-institutes**, national human rights institutions, and parliamentary committees to scrutinize new policies and hold political leaders to account.
- **Support grassroots justice actors to monitor and report on the delivery of public services**, to help ensure those most in need receive treatment, and to identify and respond to abuses by security services.
- **Create new forms of institutional oversight**, such as community score cards that verify whether allocated funds have reached their targets to monitor health and stimulus spending.

- **Ensure that attacks on justice defenders are investigated** and those responsible are prosecuted under due process.
- **Publish documents related to decision-making about emergency measures** and how they will be ratcheted down to reassure the public that there is a clear pathway towards normalization.
- **Proactively encourage the use of complaint mechanisms** as a place for people to turn if they experience problems with local authorities and misuse of measures during the recovery phase.

VI. Legal Problems in Albania⁹

Type of Legal Problem	Indicator	Occurrence in Albania
1. Legal Problems	The percentage of those surveyed who experienced a legal problem in the last two years. Profiles show the incidence of legal problems overall and by category of legal problem.	<ul style="list-style-type: none"> • 22% experienced a legal problem in the past two years • Consumer issues, land issues, public services, money and debt, house and community and natural resources were the most frequently cited legal problem
2. Legal Capability	Of those who experienced a legal problem in the last two years, the percentage who knew where to get advice and information, could obtain expert help, and were confident they could achieve a fair outcome	<ul style="list-style-type: none"> • 48% do not know where to get advice and information • 64% did not feel they could get all the expert help they wanted • 39% were not confident they could achieve a fair outcome
3. Sources of Help	Of those who experienced a legal problem in the last two years, the percentage who reported obtaining information, advice, or representation, and the type of advisor contacted.	<ul style="list-style-type: none"> • Only 18% were able to access help • Of those who access helped most received advice from friends, family or lawyers or professional advice services
4. Problem Status	Of those who experienced a legal problem in the last two years, the percentage of respondents whose legal problem is done and fully resolved, or whose problem persists but they have given up any action to resolve it further.	<ul style="list-style-type: none"> • 52% said the problem wasn't fully resolved • 17% gave up any action to resolve the problem further
5. Process	Assessment of the timeliness, fairness, and cost of the resolution process for respondents whose problem is done, either because it is fully resolved or because the respondent has given up any action to resolve it further.	<ul style="list-style-type: none"> • 52% did not feel the process followed was fair • On average it took over 2 years or 28 months to resolve the problem • 38% said it was difficult or nearly impossible to find the money require to solve the problem
6. Hardship	The percentage who reported experiencing any kind of hardship as a result of their legal problem, and the percentage who experienced specific hardships, including physical or stress-related ill health, the breakdown of a relationship, loss of employment or the need to relocate, and problems with alcohol or drugs.	<ul style="list-style-type: none"> • 43% Experienced a hardship • 31% Experienced a physical or stress-related illness • 28% experienced loss of income, employment or the need to relocate • 4% experienced a relationship breakdown or damage to a family relationship

⁹ World Justice Project, 2018 General Population Poll survey module on legal needs and access to justice. Data collected by IDRA Research & Consulting using a nationally representative probability sample of 1000 respondents in the country <https://worldjusticeproject.org/sites/default/files/documents/Albania.pdf>

VII. Examples of Open Justice Ideas from Other Countries¹⁰:

Improving Justice Sector Information through LegalApp

COLOMBIA (2015)

Colombia's Ministry of Justice introduced the online platform LegalApp to improve public access to information about judicial services. The app includes a directory of judicial institutions, a glossary of commonly-used legal terms, and a portal to schedule meetings at various legal offices, among other features. Since its launch, the system has had more than 4.5 million users, bringing the judiciary closer to the citizens it serves.

Increasing the Quantity and Quality of Legal Aid Services

INDONESIA (2018)

Indonesia committed to creating regulations that guarantee funding for legal aid organizations, allowing them to expand their reach to more remote and poorer communities. The government will also begin a civic education campaign to teach citizens how to identify violations of their rights and how legal aid providers can help them win justice for their grievances.

Ensuring Compliance of the Freedom of Information Act (FOIA)

NIGERIA (2017)

Nigeria's Ministry of Justice (MOJ) led an effort to improve annual reporting of FOIA requests. Nigeria's Freedom of Information Act went into force in 2011 thanks to a collaboration among the government and civil society and enables greater access to information with strict response and reporting requirements. But so far, few government agencies have portals for citizens to log requests and staffing shortages cause delayed official responses. The MOJ seeks to ensure better compliance by conducting trainings for FOIA officers and ensuring that every agency has an online FOIA portal and proactively publishes compliant information.

Legal Needs Assessments

CANADA

Between 2011 and 2018, a multi-stakeholder group examined the social and economic costs of the justice system to better understand gaps.

Institutionalisation of Community Advice Offices as Part of the Wider Justice Network

SOUTH AFRICA (2016 Action Plan)

The main objective of this project is to contribute to the long-term development and sustainability of the community advice office sector in South Africa through the creation of a system of lower-cost professional legal assistance through a network of paralegals.

Improve Access to Justice: Framework to Assist Vulnerable Persons

IRELAND (2016-2018 Action Plan)

Introduce a new statutory framework to assist vulnerable persons and individuals with decision-making capacity difficulties to exercise their legal capacity. The new framework will replace the out-dated "Wards of Court" system and establish a modern statutory framework to support decision-making by adults with capacity difficulties. The aim is to safeguard the person's autonomy to the greatest extent possible by offering a continuum of decision support options most appropriate to the person's needs.

¹⁰ For more information on the examples please see: <https://www.opengovpartnership.org/wp-content/uploads/2019/05/Fiscal-Openness-Fact-Sheet-May-2019.pdf>

Courts to Address Violence against Women (VaW)

[AFGHANISTAN](#) (2017-2019 Action Plan)

Committed to establish 12 more VaW special courts in 12 provinces of the country in collaboration with CSOs. Established special courts to address VaW crimes are expected to increase women's access to justice in the mentioned provinces, address and reduce VaW crimes.

Improvements to Legal Aid

[INDONESIA](#) (2018-2020 Action Plan)

Expand and increase the quantity and quality of legal aid services that target the entire community, including the poor. The commitment aims to expand legal aid access for the community through policies and also through education initiatives to the community and LAO. Provision of regulations that guarantee the government to support access to legal aid will provide the basis for legal aid organization to be able to provide legal assistance to the community.

Problem Solving Courts

[BULGARIA](#) (2014-2016 Action Plan)

Developing an evidence-based methodology for the work of judges with vulnerable social groups based on empirical research and know how provided by American experts/judges following the model of the problem solving courts in the US.

*****ADDITIONAL IDEAS RELATED TO COVID-19*****

EXPANDING ACCESS TO JUSTICE THROUGH TECHNOLOGY

Mobile App and Web Portal for Access to COVID-19 Relief Programs

[INDIA](#)

In cooperation with governments, civil society, and corporate partners, empowerment organisation Haqdarshak developed a mobile app and web portal that helps citizens understand and access COVID-19 relief programs offering basic rations, food, and loans.

Mobile App and Web Portal for Access to COVID-19 Relief Programs

[BUENOS AIRES. ARGENTINA](#)

The city's judicial branch is modelling flexible and accountable ways of administering effective justice through the use of technology.

REMOTE AND RAPID LEGAL ADVICE

Legal Hotline

[SOUTH AFRICA](#)

A new Legal Hotline has been set up for those who need legal help and advice during the country's lockdown.

Remote, Rapid-Response Legal Rights Outreach

[USA](#)

Pro Bono Net and its legal aid partners now conduct remote, rapid-response legal rights outreach to educate people about frequent changes to the policy environment around workers' rights and evictions.

Online Legal Counselling

[PHILIPPINES](#)

Ateneo Human Rights Centre offers online legal counselling for questions about arrests related to curfew, discrimination to health care workers, and more.

Legal and Psycho-Social Support for Women in Prison

[SIERRA LEONE](#)

AdvocAid adapted strategies to continue legal and psycho-social support for women in prison, by increasing for example communication and legal empowerment sessions with detainees by phone.

ACCESS TO INFORMATION ABOUT JUSTICE RELATED SERVICES

Webpage for Justice Services during Lockdown

[PORTUGAL](#)

Specialized webpage that compiles resources for citizens needing a variety of services, including information about the functions of courts and justice institutions during the lockdown.

Information on Family Support Legalities during COVID-19

[CANADA](#)

Frequently Asked Questions page designed by the Department of Justice with information on family support obligations during COVID-19 to address questions regarding child and family support and other family law matters during COVID-19.

ADVOCACY

Housing Initiative for the Homeless during Lockdown

[ARGENTINA](#)

Asociación Civil por la Igualdad y Justicia (ACIJ) and other grassroots organizations lobbied local government to secure adequate housing for the homeless while a lockdown was in effect. ACIJ also distributed short materials and videos throughout poor neighbourhoods with information about their rights.

COORDINATION

Court-Specific Health and Safety Guidelines

[CANADA](#)

The Department of Justice and the Supreme Court established an “Action Committee on Court Operations” which develops court-specific health and safety guidelines that can be adapted to the needs of individual courts and communities, in order to ensure safe and accessible justice services for citizens