

# Efforts to Identify National Indicators on Access to Justice

## White House Legal Aid Interagency Roundtable

### Working Group on Access to Justice Indicators & Data Collection



*"[W]e commit ourselves to new Sustainable Development Goals, including our goal of ending extreme poverty in our world. We do so understanding how difficult the task may be. We suffer no illusions of the challenges ahead. But we understand this is something that we must commit ourselves to. Because in doing so, we recognize that our most basic bond -- our common humanity -- compels us to act. ... That's why, today, I am committing the United States to achieving the Sustainable Development Goals."*

*~President Barack Obama, September 27, 2015  
United Nations Sustainable Development Summit*

### Sustainable Development Goal 16 and Access to Justice

In September 2015, the United Nations adopted the [2030 Agenda for Sustainable Development](#) – a historic agenda to end extreme poverty while taking action on climate change and inequality, setting forth 17 Goals and 169 associated targets to guide this ambitious task. Among the goals, Goal 16 – and specifically Target 16.3 – recognizes that access to justice is essential to promoting peaceful and inclusive societies for sustainable development.<sup>1</sup> Target 16.3 calls on countries to:

***Promote the rule of law at the national and international levels and ensure equal access to justice for all.***

Unlike past global anti-poverty efforts, which primarily focused on developing countries, the 2030 Agenda applies to every country, no matter its level of development – including the United States. That's why on the eve of the United Nations Sustainable Development Summit, President Obama issued a [Presidential Memorandum](#) formally establishing the [White House Legal Aid Interagency Roundtable](#) (WH-LAIR) and charged it with "assist[ing] the United States with implementation of Goal 16." The activities of WH-LAIR recognize that access to justice is necessary to end poverty within our nation's borders. As [Ambassador Power said](#) at the time of the 2030 Agenda's adoption, "it would be a serious mistake – and would run contrary to the universal character of the 2030 Agenda – to think that this goal [Goal 16] only applies to fragile or conflict-ridden countries ... all governments – including developed democracies, including mine and many of yours – must work at building more just, inclusive, and transparent societies."

While access to justice is a distinct goal in the 2030 Agenda, it is also necessary to realizing many of the other Sustainable Development Goals. The same is true for the work of WH-LAIR. Through integrating civil legal aid into federal programs that support vulnerable communities, not only is access to justice improved, federal programs that focus on poverty (Goal 1), hunger prevention (Goal 2), health (Goal 3), education (Goal 4), the empowerment of women (Goal 5), employment (Goal 8), inequality (Goal 10), and safety (Goal 11) are also strengthened.



## **Launch of WH-LAIR Working Group on Access to Justice Indicators and Data Collection**

The 2030 Agenda calls for the creation of international, regional, and national indicators for all of its goals to help track their progress.<sup>ii</sup> Thus, as the entity tasked with assisting the United States with implementing Goal 16, WH-LAIR identified indicator development on access to justice as a key priority. Moreover, the Presidential Memorandum also tasks WH-LAIR with “advanc[ing] relevant evidence-based research, data collection, and analysis of civil legal aid and indigent defense.”

These directives and ongoing WH-LAIR activity to advance civil legal aid research and data collection led to the launch of the **WH-LAIR Working Group on Access to Justice Indicators and Data Collection** to identify national indicators for Target 16.3.<sup>iii</sup> The Working Group is co-led by the U.S. Department of Justice’s Office for Access to Justice (ATJ) and Bureau of Justice Statistics (BJS) and [its launch was announced at a United Nations high level side-event in September 2016](#). That same month, the activity of the Working Group was included in the United States’ [update](#) to its Third National Action Plan for the Open Government Partnership as one of the United States’ commitments to open government.<sup>iv</sup>

## **Assessing Existing Data and Identifying National Indicators on Access to Justice**

Through the Working Group, WH-LAIR is identifying examples of existing federal efforts to collect or track access to justice data. These data may be useful in generating indicators of civil legal aid or indigent defense in support of Target 16.3. The Working Group also received valuable input on how it should accomplish this task from a [September 2016 Civil Society Consultation](#) attended by access to justice experts from across the country.

In assessing existing information and data systems, the Working Group has focused on three key questions:

- (1) How are individuals’ needs for legal services (demand) currently measured?
- (2) What information is available on the range of legal services (supply) being provided to meet individuals’ needs?
- (3) What information is available on the end results (outcomes) of the justice process?

Federal agencies participating in the Working Group shared information on what they collect at an initial Working Group meeting. BJS and ATJ staff followed up over a 3-month period by conducting more in-depth, one-on-one discussions with key service providers, to better understand the scope and coverage of existing data. Once this information has been assembled and reviewed, the Working Group plans to issue a factsheet that assesses the current capacity of federal agencies to support access to civil justice national indicators.

In addition to assessing existing data, the Working Group’s effort is bolstered by BJS’s newly announced civil justice survey initiative, which holds promise for developing national indicators on access to civil justice. To further build a statistical infrastructure in the United States that addresses key civil access to justice questions that are not currently answered, BJS will undertake a multi-year effort to develop, test, and implement a person-based survey of legal needs, services, and outcomes. The survey will augment the limited administrative data currently collected by the federal agencies. Work will begin in March/April 2017, with a goal of fielding a supplement to the ongoing National Crime Victimization Survey (NCVS) at the earliest feasible time (January to June 2019 or later) The civil justice supplement will be administered over 6 months in more than 70,000 households to a randomly selected adult in each household. Prior to data collection, BJS will develop the instrumentation, draw on the expertise of ATJ and Working Group stakeholders, develop data collection protocols, conduct cognitive tests of proposed measures, and complete a full pilot test.

On the criminal side, BJS maintains approximately 50 data collections related to crime and the criminal justice system’s response. At each stage and decision point in the system, victims and offenders encounter a need for



legal aid. Access to legal counsel by criminal defendants in state and federal courts is tracked through recurring BJS surveys.<sup>v</sup> As part of its ongoing efforts, BJS is assessing its capacity to collect and report such data consistently over time to determine if national indicators on access to criminal justice can be developed.

### **Global Efforts to Support Identification of National Indicators on Access to Justice**

The United States' efforts to identify national indicators fit into parallel efforts happening across the globe. As countries respond to the United Nations' call to develop national indicators reflecting their own justice systems and data collection abilities, a recognition that countries can benefit from exchanging information on their efforts has taken root in a number of multilateral settings:

- At the 2016 UN Commission on Crime Prevention and Criminal Justice (CCPCJ), [Resolution 25/2: Promoting Legal Aid, Including through a Network of Legal Aid Providers](#) was adopted by consensus and, among other things, “Encourages Member States ... to share expertise on the development of national-level indicators for target 16.3 of the Sustainable Development Goals.” The United States authored this resolution and was one of the 17 co-sponsors.
- The CCPCJ resolution encouraged member states to participate in the Second International Conference on Access to Legal Aid in Criminal Justice Systems in Buenos Aires, Argentina in November 2016. At the conclusion of the conference, participants adopted [The Buenos Aires Declaration on the Implementation of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, November 15-17, 2016](#), which recalls Goal 16 and Target 16.3 and calls upon states, the international community, and conference participants to support efforts to implement Goal 16 and identify national indicators for Target 16.3. A joint Justice Department – State Department delegation represented the United States at this conference.
- The Praia Group on Governance Statistics, established in 2015 by the UN Statistical Commission to encourage countries to produce governance statistics based on sound and documented methodologies, has formed a Goal 16 Working Group to support the development of indicators, including those at the regional and national levels. BJS is a member of the Praia Group.
- During the 2016 Open Government Partnership Summit in Paris, France, governments and civil society organizations had the opportunity to join collective actions to support open government. The United States proposed a [collective action item on justice and measurement](#), which was included in the Summit's outcome document, called the Paris Declaration.<sup>vi</sup> The collective action calls for governments and civil society organizations to work together to accelerate implementation of Goal 16 through sharing best practices on data collection and measurement on access to justice.
- In October and December 2015, the Organisation for Economic Co-Operation and Development's (OECD) Secretariat under the auspices of its Public Governance Committee organized two expert roundtables on Equal Access to Justice. This led to a November 2016, expert roundtable on justice and measurement organized by the OECD Secretariat and the Open Society Foundations. The United States participated in all three roundtables.

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For more information, see Principal Deputy Associate Attorney General Bill Baer's blogpost [The White House Legal Aid Interagency Roundtable and Goal 16 - One Year On](#) and WH-LAIR's First Annual Report to the President, [Expanding Access to Justice, Strengthening Federal Programs](#).



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<sup>i</sup> The 2030 Sustainable Development Agenda’s Goal 16 and its 12 targets read:

**Goal 16. Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels**

16.1 Significantly reduce all forms of violence and related death rates everywhere

16.2 End abuse, exploitation, trafficking and all forms of violence against and torture of children

**16.3 Promote the rule of law at the national and international levels and ensure equal access to justice for all**

16.4 By 2030, significantly reduce illicit financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organized crime

16.5 Substantially reduce corruption and bribery in all their forms

16.6 Develop effective, accountable and transparent institutions at all levels

16.7 Ensure responsive, inclusive, participatory and representative decision-making at all levels

16.8 Broaden and strengthen the participation of developing countries in the institutions of global governance

16.9 By 2030, provide legal identity for all, including birth registration

16.10 Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements

16.a Strengthen relevant national institutions, including through international cooperation, for building capacity at all levels, in particular in developing countries, to prevent violence and combat terrorism and crime

16.b Promote and enforce non-discriminatory laws and policies for sustainable development

<sup>ii</sup> While there is no agreed upon definition of “indicator,” one definition states:

An indicator is a named collection of rank-ordered data that purports to represent past projected performance of different units. The data are generated through a process that simplifies raw data about a complex social phenomenon. The data, in this simplified and processed form, are capable of being used to compare particular units of analysis (such as countries or institutions or corporations), synchronically or over time, and to evaluate the performance by reference to one or more standards.

Kevin E. Davis, Benedict Kingsbury & Sally Engle Merry, *Introduction: Global Governance by Indicators*, in GOVERNANCE BY INDICATORS: GLOBAL POWER THROUGH QUANTIFICATION AND RANKINGS 6 (Oxford Scholarship Online 2012).

<sup>iii</sup> WH-LAIR, Expanding Access to Justice, Strengthening Federal Programs: First Annual Report of the White House Legal Aid Interagency Roundtable at 15-16 (Nov. 2016), available at <https://www.justice.gov/ati/page/file/913981/download>.

<sup>iv</sup> For more information about the Open Government Partnership and access to justice, *see id.* at 17.

<sup>v</sup> For example, BJS recently completed the National Survey of Indigent Defense Systems, 2013, (available at <https://www.bjs.gov/index.cfm?ty=dcdetail&iid=468>), which collected data on the number of criminal, civil, and juvenile cases handled by public defenders, assigned counsel, and contract attorneys. The survey also collected data on standards and guidelines for indigent defense, the number of litigating attorneys, criteria for eligibility, and costs and fees for representation. Other BJS surveys obtain information directly from persons involved in the system. Past prison and jail inmate surveys document the experience of inmates with private lawyers or public defenders, the extent of their interaction with legal counsel prior to, during, and after their appearance in court, and the nature of their sentence.

<sup>vi</sup> The collective action item proposed by the United States and included in the Paris Declaration is:

13. Supporting Justice for All through a focus on measurement and data collection

Partners joining will accelerate implementation of Goal 16 through sharing best practices on data collection and measurement on access to justice that can strengthen the justice sector and lay the foundation for wider collaboration on the use of open government to support the rule of law and access to justice. This responds to the call to “Ensure equal access to justice for all,” in Target 16.3 of the 2030 Agenda for Sustainable Development, and will require access to reliable data and the ability to measure the impact of justice interventions by governments and civil society on various populations over time as well as OGP’s Joint [Declaration on Open Government for the Implementation of the 2030 Agenda for Sustainable Development](#).

