

# FEATURE

## Access to Civil Justice in the 2019 Voluntary National Reviews

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### Introduction

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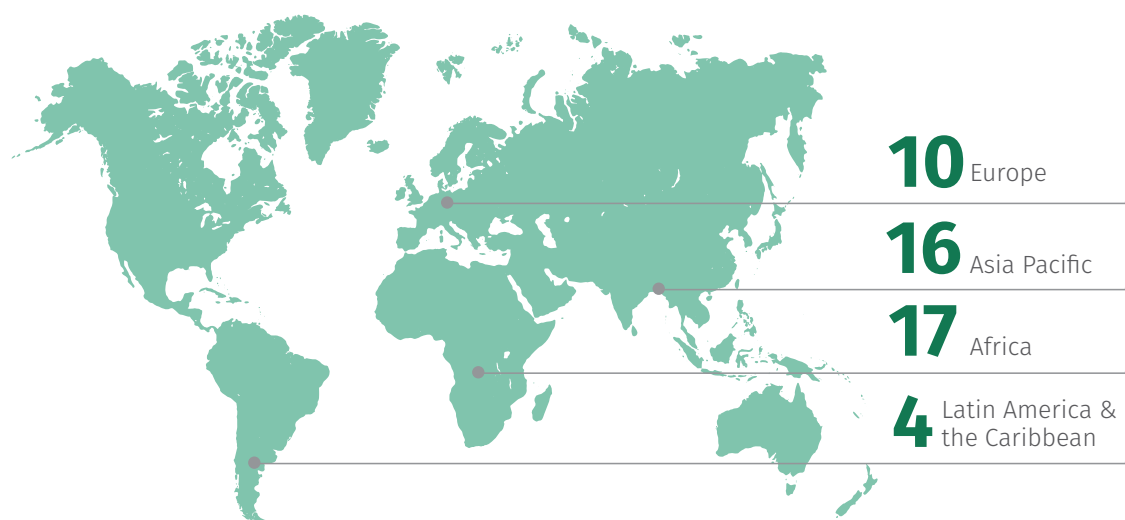
*The United Nations (UN) 2030 Agenda for Sustainable Development envisages a ‘just, equitable, tolerant, open and socially inclusive world in which the needs of the most vulnerable are met’. Nearly 5.1 billion people – two-thirds of the world’s population – lack meaningful access to justice (source). Justice advocates around the world see the inclusion of a justice goal (Goal 16) in the Sustainable Development Goals (SDGs) and a specific target to ‘ensure equal access to justice for all’ (SDGs 16.3) as an opportunity to advance justice as a developmental priority and strengthen the links between access to justice, inclusive development and open government. 2019 marked the fourth year of monitoring and reviewing the ambitious universal agenda, with 47 states having presented their reports at the High-Level Political Forum (HLPF) in July 2019 in New York.*



**...just, equitable, tolerant, open and socially inclusive world in which the needs of the most vulnerable are met**

This article examines 42 of the 47 voluntary national reviews (VNRs), publicly accessible in English, French and Spanish, that were submitted in 2019, doing so to understand key civil justice issues highlighted by member states, to analyse how countries deliberated on progress on access-to-justice targets, and to offer insight on transforming commitments to access to justice into meaningful action. This analysis of the 2019 VNRs focuses on their substantive content on access to justice, particularly civil justice.

## The voluntary national review process



Heads of state and government adopted the 2030 Agenda for Sustainable Development, containing the 17 Sustainable Development Goals (SDGs) and 169 targets, on 25 September 2015. As a follow-up and review mechanism, member states are requested to ‘conduct regular and inclusive reviews of progress at the national and sub-national levels, which are country-led and country-driven’ (2030 Sustainable Development Agenda: paragraphs 72 to 90).

The reviews are meant to be voluntary, state-led and a collaborative effort by multiple stakeholders. They are

presented at the HLPF, which meets annually under the auspices of the UN Economic and Social Council and once every four years under the auspices of the General Assembly (UN General Assembly, Resolution 67/290). The first HLPF since the adoption of the 2030 Agenda was in 2016, at which point 22 VNRs were under review (HLPF: 2016). Each annual HLPF has its own theme and, since 2017, these occasions have focused on five or six of the SDGs, with SDG 17 being under review every year (see the accompanying table).

YEAR	THEME	GOALS
2016	‘Ensuring that no one is left behind’	N.A.
2017	‘Eradicating poverty and promoting prosperity in a changing world’	1, 2, 3, 5, 9, 14 (and 17)
2018	‘Transformation towards sustainable and resilient societies’	6, 7, 11, 12, 15 (and 17)
2019	‘Empowering people and ensuring inclusiveness and equality’	4, 8, 10, 13, 16 (and 17)

**Table 1:** HLPF themes (2016-2019)

Over time, member states have shown an increasing interest in the VNR process: 22 countries presented VNRs in the first year (2016) of implementation, while 43 presented in 2017 and 46 in 2018; in 2019, 47 presented. Of the 47 countries, six presented for the second time (Azerbaijan, Chile, Guatemala, Indonesia, Philippines and Sierra Leone). The process has also generated interest among stakeholders.

## 2019: Truly the year of justice?

Although SDG 16 was not the main focus of the review in previous years, countries could still highlight their efforts in regard to justice in their VNRs. Of 64 VNRs from 2016 and 2017, only 41 mentioned SDG 16 and, of these, only 16 VNRs discussed it in at least one paragraph or more. In contrast to 2016 and 2017, the VNR reports were generally more extensive and detailed in 2018. In 2018, most countries referred to SDG 16 to some extent.

The 2019 VNRs are, overall, more substantial than those in previous years. Most VNRs are longer than a hundred pages, with some even longer than 400 pages. This added level of detail and analysis also applies to SDG 16. Although certain VNRs are still fairly weak and do not deviate much from the official indicators, a significant number of reports refer to civil justice, with a focus on legal aid, within their description of SDG 16. Civil justice is also prevalent in other sections of the VNRs under other SDGs.

Given that SDG 16 was under review in 2019, almost all VNRs referred to justice. Pakistan was a glaring exception, as its VNR made no mention at all of SDG 16. However, a few countries stood out by placing justice as the centre of their account of their SDG implementation. For instance, Sierra Leone identified ‘SDG4 (education) and SDG16 (justice) as accelerators for pursuing its developmental agenda, based on estimations that both goals are particularly central in the country’s transformational aspirations’.

Various VNRs referred to access to justice in connection to certain vulnerable groups, particularly women, people with disability or illnesses, LGBTIQ+, children, and marginalised populations. Particularly striking is how Côte d’Ivoire addressed the issue of the extreme relevance of access to justice to people with HIV.

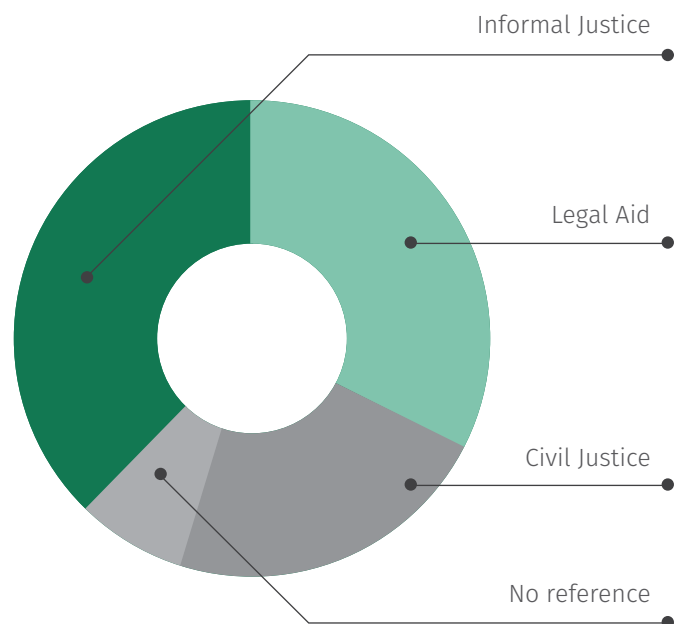


Figure 1: References to civil justice in the 2019 VNRs

## SDGs 16.3 and access to civil justice

There is no official indicator on access to civil justice in the SDGs, particularly for SDGs 16.3. It is thus not surprising that 22 states do not focus on demonstrating progress on access to civil justice. However, it is noteworthy that a significant number of reports take a broader approach to SDG 16 by making direct mention of civil justice (13 countries), legal aid (19 countries) or informal justice systems (four countries).

Some VNRs refer to SDG 16.3 only in terms of the official indicators, namely the 'proportion of victims of violence in the previous 12 months who reported their victimization to competent authorities or other officially recognized conflict resolution mechanisms' (SDG 16.3.1) and 'unsentenced detainees as a proportion of overall prison population (16.3.2)'. However, nearly half of the reports take a broader approach to SDG 16 and make direct mention of civil justice.

Common references include:

- introduction of civil, administrative, commercial, family and labor courts, or divisions in existent courts;
- development of new civil procedure legislation;
- introduction of new case management systems to facilitate the settlement of civil cases (for example, Rwanda's 'Unique Integrated Electronic Case Management System'); and
- establishment of alternative dispute resolution or mediation services.

Another indirect mention of civil justice is the reference to legal aid or availability of legal services for the poor. These references reflect a broader understanding of justice and access to justice. At least 19 VNRs mention legal aid. Countries often emphasise the relevance of legal aid in their VNRs. For example, Turkey refers to legal aid as 'one of the important means of access to justice'. Sierra Leone describes the Legal Aid Board as 'one of the major successes of the Government on goal 16 ... especially serving the indigent and rural population'. In this case, the connection to civil justice is made clear, seeing that the VNR continues by explaining that the Legal Aid Board 'facilitated legal representations covering issues ranging from child protection and land disputes, to criminal cases, domestic violence, rape, defilement and juvenile offences'.

One of the most thorough VNRs on legal aid is South Africa's. The country highlights the relevance of legal aid to addressing lack of access to justice and declares its aim to have a 'world class legal aid system, able to provide legal aid services in criminal and civil matters as well as legal advice services'. South Africa emphasises the relevance of legal aid to civil justice by stating that '[l]egal aid has also made great progress in providing civil legal assistance and legal advice focusing on protecting and defending the rights enshrined in the Constitution ...'. The country also recognises the challenge of the 'data gap in meeting the demand for civil legal aid services and reaching all people who require civil legal aid'.



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Figure 2: Interlinkages between 6 goals in the 2019 VNRs

## Civil justice beyond SDG 16.3

Countries highlighted key civil justice issues across several goals in their VNRs, indicating the clear interconnection between access to civil justice and the realisation of the other SDGs. Civil justice problems related to property rights, family disputes and consumer rights were raised as important areas of progress under different SDGs (for example SDGs 1, 5, 8).

Below are the main examples:

- Birth registration: Most states discussed the SDG 16.9 target and challenges in reaching out to the most marginalised populations.
- The most common issue raised across the VNRs is women’s property rights.
- Rules on business registration.
- Social insurance and workers’ rights.
- Difficulties in combining formal with informal justice systems.
- Family law and child protection, which are often interconnected with domestic violence.
- Disability rights.

## Challenges in achieving SDG 16.3

It is important to consider the main obstacles to access to justice identified by the countries themselves in the review process. Since most countries focused on the supply side of the access to justice, the challenges highlighted below also focus on the supply side problems. Below are some of the main challenges mentioned in the VNRs:

- Delayed justice, or backlog of cases.
- Physical access to justice – the distance of justice institutions from the general population and the low number of courts, particularly in the case of rural populations.
- Lack of awareness of existing legislation and regulations.
- Lack of independence and influence from politics.
- Lack of trained lawyers and justice providers.
- Poor court and institutional infrastructure.
- The need to strengthen court processes and management systems.
- Lack of resources among legal aid organisations, coupled with the inexistent structures for or recognition of paralegalism.
- Challenges connected to new technology, such as the need for cybersecurity, the existence of and fake news, and abuse of social media.
- Lack of coordination between different sections of government and between government and civil society organisations.
- Discrimination against minority groups, such as the LGBTIQ+ community, migrants, and people with disabilities.
- Gaps in collecting and assessing justice data.

South Africa took a comprehensive approach to thinking about the challenges on SDG 16. Its VNR included a list of challenges, among them the following:

- Lack of adequate resources to support and fund efforts by civil society and community-based organisations to improve access to justice for vulnerable and marginalised groups.
- The need for formal recognition of the activities of paralegals.
- Removing barriers to justice for vulnerable and marginalised groups in informal settlements or rural areas.
- Gaps in meeting the demand for civil legal aid services and reaching all people who require civil legal aid.
- A disconnection between what legislation says and how it is implemented.
- Racism and other forms of discrimination.
- Excessive bureaucracy.



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## Where is the access-to-justice data?

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Most VNRs do not provide relevant data on access to justice, more particularly on civil justice matters, and, when they do, take different approaches to presenting it. A common approach to demonstrating commitment is to calculate the number of citizens or individuals who have benefited from legal aid services or publicly funded legal services.

An example is found in Sierra Leone's VNR: 'Since May 2015, when the [Legal Aid] Board was established, about 215,000 less privileged persons have benefited from legal representation, advice and education: 25,000 during May-December 2015; 83,000 in 2017; and 107,000 in 2018. About 14 percent of these were females and 19 percent children. Females and children accounted for most of the beneficiaries of Alternative Dispute Resolution Mechanism, at 80 percent'.

A few countries highlight a bolder approach – Indonesia, for example (see below).

## Case study: Indonesia's Access to Justice Index

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The Indonesian report emphasises the importance of measurement and adopts an approach of 'what can be measured, can be done'. On access to justice, it discusses at length the country's efforts to develop and implement a national 'access to justice index'.

As the VNR notes, 'The interesting thing is, the development of this index has also involved some both civil society and state actors and is supported by the Ministry of National Development Planning, Ministry of Law and Human Rights, and Central Bureau of Statistics. This collaboration is a sign that there are new opportunities for government and non-government actors to partner in developing meaningful measures of progress on access to justice.'

## From commitment to action

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It is difficult to determine from a textual analysis alone whether the statements and commitments by member states have changed things on the ground and if states have directed significant resources to identify and respond to the justice gap. The VNRs talk about their commitment to access to justice mainly in aspirational terminology and without specifying its application in practice and in policy-making.

However, a few countries do refer in their VNRs to measures that have been taken to implement stronger access to justice initiatives following the adoption of the SDGs. A number of examples, such as Chile, Mauritius and Rwanda, were mentioned above under the civil justice section. Common implementation measures across the various VNRs include:

- developing new courts or court chambers of civil, commercial and administrative law;
- increasing the number of courts and jurisdictions in the country;
- digitalising the judicial system;
- establishing mobile courts;
- improving free legal aid services;
- investing in alternative dispute resolution mechanisms;
- undertaking general reform of the justice system; and
- providing training to justice providers.

When the SDGs were adopted in 2015, 193 countries made a commitment to ensure equal access to justice for all, though for years progress has been slow. The VNRs are an innovative approach to reviewing progress, but lack information on explicit strategies to identify the scale of the access-to-justice needs and on initiatives to apply the principle of 'leaving no one behind'.

The reports also do not sufficiently recognise the important role of civil society actors in ensuring access to justice for all. The shadow report of the Chilean environmental NGO, FIMA, for instance, notes this significant absence:

*As for the initiatives of non-governmental actors working on issues of access to justice, the Report does not contain any information in this regard. For example, the report does not contain data that reflect an examination of the work carried out by universities, through Legal Clinics, where law students are allowed to attend cases of low-income people and represent them judicially. There is also no data on civil society organizations dedicated to train and work for the legal empowerment of communities or providing free legal advice or assistance.*

One of the reasons for the lack of acknowledgment stems from a failure to engage meaningfully with CSOs from the justice sector during the process of drafting the VNRs.

While focusing on their achievements, countries also seldom discuss failed initiatives or serious challenges in implementing the justice agenda. In many cases, countries take advantage of the VNR process for political propaganda in the international arena. This is the case with Azerbaijan, which had presented VNRs twice yet did not reflect on its closing civil space and lack of engagement with civil society actors. Shadow reports from the different countries drew attention to the disconnect between the VNR reports and reality. In South Africa, Puselto Maile of African Monitor notes that ‘there were ... omissions in respect of highlighting the unsafe environment for [the] functioning of CSOs, human rights defenders, trade unionists and journalists at community level’.

Overall, it is clear that the reports overemphasise efforts at addressing the goals without providing a balanced account about the challenges to achieving them on the institutional, policy, financing and implementation fronts. Moreover, the VNRs do not recognise alternative sources of data. Most of them refer to only governmentally produced data, which might not depict the whole picture and which are often inconsistent.

A shadow report on the South African VNR commented precisely on this point, explaining that ‘it has become clear that disaggregated data, as well as targets that affect the bottom 40 per cent, are wholly inadequate or even missing’. Similarly, the shadow report of the Indonesian Legal Aid Foundation notes that their organisation, alongside other legal aid CSOs, has been providing legal aid for the poor and victims of human rights abuses long before the Indonesia government, yet such efforts are not adequately highlighted in the reports.

Furthermore, some of the data alluded to are outdated. For example, Indicator 16.3.1 in Chile’s VNR contains data only for the years 2015 and 2016. The data reported appears to be obscure and unclear across different contexts – for example, Rwanda’s VNR points to how ‘access to justice has been subject to a decline followed by a stable rating since 2014 (80.25%) to 76.4% in 2016 and 77% in 2018’, yet does not explain how these numbers were arrived at.



**This collaboration is a sign that there are new opportunities for government and non-government actors to partner in developing meaningful measures of progress on access to justice.**



## Conclusion

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In 2019, there was a significant improvement in the quality of the VNRs compared to previous reporting years, particularly so on the issue of advancing justice as a development priority. While this article focused only on SDG 16.3 and, within that, on the specific issue of civil justice which is not yet included in the official UN indicators, it is important to note that meaningful engagement with civil society actors and other partners is essential for the realisation of the entire SDG agenda. Our reading of the VNRs also reveals that the current set of official indicators is insufficient to address the most prevalent justice issues impacting marginalised populations.

Apart from a few exceptions, the 2019 VNR reporting countries did not limit themselves to the indicators 16.3.1 or 16.3.2, nor to only criminal justice matters – nevertheless, the absence of official access to civil justice indicators inhibits focused discussion on implementation challenges and progress. It is worth highlighting that countries struggling with serious criminal justice problems consider access to civil justice a priority issue and are keen to respond to the problems as a global community.

Access to civil justice is also considered important in advancing gender equality, strengthening child protection, advancing workers' rights and addressing economic inequality. However, more robust evidence is needed at national, regional and global levels to enable better understanding of and response to the civil justice problems that impact on poor and marginalised populations.

The 2030 Agenda and the SDGs provide a universal framework but recognise that countries differ in their challenges and resources. Countries are therefore called upon to develop their nationally specific agendas. We recognise that the VNRs are not a comprehensive assessment of national approaches.

However, it is important that governments are honest in their reports and focus as much on challenges and lesson learnt in advancing implementation as

on achievements and commitment. This would help ensure that VNRs do lead in fact to an exchange of knowledge and ideas between governments and civil society actors that assists in finding actual solutions to complex problems – such as ensuring access to justice for all in a sustainable manner.

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