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From the Global to the Local: Leveraging International Engagement to Advance Justice at Home

About the Author

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"As the United States works to advance human rights around the world, we must also recognize that our task begins here at home. My administration is committed to ensuring every person is free to flourish in a society that values and defends equal justice for all."

President-elect Joe Biden, Twitter, December 10, 2020, 9:30am

This policy paper sets out how the former U.S. Department of Justice's Office for Access to Justice leveraged international activity and mechanisms, including the UN's 2030 Agenda for Sustainable Development, to advance its domestic priorities. The strategy resulted in notable accomplishments and even protected a number of them after the office was closed in 2018. The paper recommends that the incoming Biden-Harris Administration reestablish the Office for Access to Justice, revitalize the White House Legal Aid Interagency Roundtable charged with implementing Goal 16 for the United States, link U.S. domestic priorities to all 17 Sustainable Development Goals, and prioritize the United States' role as a leader in the global movement for equal justice for all.

Introduction

Over 15 years ago, I had the extraordinary opportunity of working on a juvenile death penalty case when the U.S. Supreme Court ruled the practice unconstitutional in the 2005 decision of *Roper v. Simmons*. With our client's 28th birthday just days away, there was no better gift than to let him know that as a result of this decision, his life would be spared. The experience remains meaningful to me for many reasons, including the fact that the outcome was due in good measure to international law.

In reaching its decision, the Court stated that, "[i]t is proper that we acknowledge the overwhelming weight of international opinion against the juvenile death penalty." Using international law to secure human rights domestically was theoretical for me until that point, but was now a reality that I – or rather my client – benefited from directly. The experience confirmed for me the power of international law to create domestic change.

When I later served in the [U.S. Department of Justice's Office for Access to Justice](#), an office focused primarily on responding to the access to justice crisis within the United States, I had the opportunity to further explore how international engagement could improve access to justice at home. That work made clear that international levers, such as human rights treaty reporting and activity centered around the Sustainable Development Goals, can help advance access to justice policies inside the United States, sometimes more quickly than domestic activity alone.

This paper describes how this global-to-local strategy works and details its benefits:

- The first part describes how the Office for Access to Justice leveraged international mechanisms and processes to advance its domestic mission. This activity not only helped the office achieve its priorities – such as increasing resources for indigent defense providers and institutionalizing and elevating federal engagement on civil legal aid – it also helped to protect the work of the office after it was closed in 2018.
- The second part explains the benefits of international engagement for government, civil society, the public, and the private sector using efforts tied to improving access to justice as an example. Importantly, this strategy and its benefits are not reserved for access to justice, but can be employed to advance other human rights, anti-poverty priorities, and implementation of all the Sustainable Development Goals.
- It concludes with recommendations for the incoming Biden-Harris Administration to recommit the federal government to responding to the access to justice crisis and reengage with the international community to further its domestic policy agenda.

DOJ's Office for Access to Justice's Use of International Engagement

The Office for Access to Justice, launched in 2010 by Attorney General Eric Holder and closed in 2018 by Attorney General Jeff Sessions, was tasked with a substantial mission: to help the justice system efficiently deliver outcomes that are fair and accessible to all, irrespective of wealth and status. The primary office in the executive branch dedicated to improving and strengthening legal services for the poor and other underserved communities, the office found success in its ability to be creative and agile.

In addition to being the federal voice for access to justice through typical government functions such as drafting and commenting on proposed policy, legislation, and regulation, the office had a strong and somewhat unique convening authority given that it was neither a law enforcement agency nor a grantmaking one. It made the office freer to engage with civil society experts and organizations because there was little risk of sharing confidential investigative information with the public or creating conflicts of interest for potential grant recipients. The office also developed a statement of interest and amicus brief practice on the right to counsel in state and local systems and produced federal guidance on issues such as court fines and fees.

But perhaps a lesser-known strategy involved advancing the goals and objectives of the office through international engagement as the [U.S. Government's central authority on access to justice](#). This activity was built-in from the start – when the office was launched it was tasked with exchanging information on access to justice with other ministries and departments of justice – but its contours took shape over time.

The benefits of this strategy were numerous and included:

1. Elevating the work of the office across the federal government and increasing engagement between federal agencies and civil society organizations on civil and criminal access to justice issues.



Early on, the office included its activity in reports prepared for the United Nations monitoring of the United States' implementation of the International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination and Universal Periodic Review (UPR). This allowed for the

office's work to be lifted up within the federal government and to the international community.

This activity was also a good fit for the office because the obligation to engage with civil society through the human rights reporting processes was business as usual for the office. Indeed, the ease of collaboration with non-governmental organizations resulted in the [first U.S. Government-Civil Society Consultation](#) specifically on access to justice held in 2014 and the inclusion of access to justice issues in a number of civil society shadow reports. Importantly, the consultation led to ongoing dialogue between civil society experts and federal agency representatives.

2. Increasing resources for indigent defense providers.



International engagement by the office also benefited the U.S. indigent defense community. When the United Nations Commission on Crime Prevention and Criminal Justice (UN Crime Commission) advanced the first international standards on indigent defense in 2012, the [United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems](#), the Department of State invited the Office for Access to Justice to lead the U.S. negotiations around them at that year's UN Crime Commission. The successful negotiations ultimately resulted in the United States co-sponsoring the [resolutions](#) passed by that body and the UN General Assembly.

In later years, the Office for Access to Justice continued to provide input and expertise on indigent defense in activity connected to the UN Crime Commission, UN Crime Congress, and the UN Office on Drugs and Crime. This culminated in the United States introducing a [resolution](#) at the 2016 UN Crime Commission promoting access to indigent defense, including through the creation of a global network of indigent defense providers - also known as criminal legal aid providers.

Since that time, the network has been in development under the name of the International Legal Aid Network and has been taking form through biennial international legal aid conferences. The conferences facilitate training and peer-to-peer exchange of criminal legal aid providers from across the globe, including from the United States. They have also advanced the goal of further strengthening the network to develop into the complementary body of the International Association of Prosecutors.

3. Institutionalizing and elevating federal engagement on civil legal aid.



Such international engagement meant that the office could step in to support and then leverage the inclusion of Goal 16 and its call for equal access to justice for all in the [United Nations 2030 Agenda for Sustainable Development](#) (2030 Agenda or SDGs). This meant that the office was able to connect its work directly to the SDGs, which in turn cemented White House support of its activities. Indeed, on the eve of the 2030 Agenda's adoption, President Obama issued a [Presidential Memorandum](#) formally establishing the White House Legal Aid Interagency Roundtable (LAIR), conceived of and staffed by the Office for Access to Justice, to raise federal agencies' awareness of how civil

legal aid can help advance a wide range of federal objectives. Importantly, President Obama charged the office with “assist[ing] the United States with implementation of Goal 16 of the United Nation’s 2030 Agenda for Sustainable Development.”

At the same time, the White House connected the Office for Access to Justice and the newly elevated LAIR to the U.S. Government’s [Third National Action Plan](#) for the [Open Government Partnership \(OGP\)](#) – an endeavor established in 2011 by government representatives and civil society advocates, including from the United States, to promote accountable, responsive, and inclusive governance. In particular, the OGP commitment tasked LAIR and its federal members to seek input from civil society on activities tied to improving access to justice, such as federal policy development, law enforcement activity, and resource development.

Linking LAIR to Goal 16 also meant that it remained at the center of the United States activity on the SDGs and served as a reminder of the universality of them. As a result, the Office for Access to Justice was invited to join the initial meetings of the Pathfinders for Peaceful, Just and Inclusive Societies to share the work of LAIR as a testament to the universal nature of the SDGs when the Pathfinders’ SDG 16+ framework was launched.

4. Improving the collection of access to justice data by the federal government and supporting the development of the business case for investing in legal aid.



With the mandate to help implement Goal 16 through LAIR, the office focused on the opportunity to develop national-level indicators on access to justice as called for by the 2030 Agenda. While federal data on access to justice could be improved across the board, the absence of any regularized method of collecting civil justice data at the federal level made an opening to explore it critical.

Thus, the office began to connect the SDGs call for national indicators with the work of the 22-federal members of LAIR. And when in September 2016, the United States supplemented its Third National Action Plan for OGP and included new commitments with a particular focus on data, the office found yet another opportunity to advance its work through the global partnership by launching the [LAIR Working Group on Access to Justice Indicators and Data Collection](#) as a new open government commitment.

Led by the office and the Department of Justice’s Bureau of Justice Statistics (BJS), the goal of the working group was to identify national-level indicators for Goal 16 (and specifically target 16.3). By tying the activity to OGP with its emphasis on civic engagement, the working group actively sought the input of civil society experts, including through a [consultation](#) with access to justice experts held in September 2016.

The working group both evaluated existing federal data and considered new opportunities to collect relevant data. This led to BJS announcing a civil justice supplement to the ongoing National Crime Victimization Survey. After the Trump Administration took office, however, this activity stalled.

Goal 16 also cemented other international and multilateral organizations’ engagement on access to justice, like the Organisation for Economic Co-operation and Development (OECD). This meant that the United States domestic experience – and specifically the activities of the Office for Access to Justice – could be included in the [OECD’s framing of access to justice for inclusive growth](#). As a result, the OECD’s contributions to the evidence-base on access to justice, including through the development of the [business case for investing in access to justice](#), can be used as a new tool by domestic policymakers.

While the office used this strategy in additional ways, the examples above demonstrate how it worked. Importantly, some of this activity has outlived the office, in some instances secured by the same international engagement that launched it. For example, the Presidential Memorandum that was released on the eve of the SDG Summit that made LAIR permanent remains in effect and LAIR [continues](#) to meet, even if less frequently.

But in addition to the practical results this strategy produced for the office, there are other benefits to international engagement, including ones grounded in the belief that there is value in the global community.

The Benefits of International Engagement

The benefits of international engagement on human rights and the SDGs is shared by all stakeholders – government, civil society, the public, and the private sector – however, success hinges not just on a willingness to participate, but to do so with honesty about the problems in the domestic experience. Genuine dialogue on human rights and anti-poverty efforts requires transparency and openness. Only then can sectors work together and peers learn from each other.

For Government

As demonstrated by the examples from the Office for Access to Justice, global engagement can help policymakers find new levers to accomplish their domestic agenda. For governments committed to engaging with international mechanisms and processes, this activity will come with new ways of considering old problems and new obligations to report and measure progress – such as through the UN’s human rights reporting process, the SDG indicator tracking, and the OGP’s independent reporting mechanism.

In addition, participating in these processes creates goodwill across the globe. Not only does such engagement provide opportunities to showcase domestic successes and best practices, it can create genuine dialogue when government representatives speak candidly and share the difficulties they encounter in addressing needs. In the same way that human rights and the SDGs are universal, solutions to ensure that they are protected and implemented should also be seen as universal and adapted across borders when appropriate.

In the area of justice, opportunities to collaborate and exchange successes are real. The international [Task Force on Justice](#), its [report](#), and the [ongoing global activity](#) led by the Pathfinders for Peaceful, Just and Inclusive Societies create opportunities for peer-to-peer exchanges on solutions to common justice problems. Similarly, the newly launched [OGP Coalition on Justice](#) provides a space for OGP members, civil society organizations, international and multilateral organizations, and private sector actors to learn from each other and unite to advance shared priorities around [justice](#).

For Civil Society

Civil society also benefits from engaging in international activity both as a way to push government counterparts in new ways and build community with peers in other countries. For example, the OGP co-creation process encourages governments to collaborate with civil society when developing commitments to open government, including those around [justice](#). And through its recently launched [Coalition on Justice](#), described in the section above, OGP can facilitate collaboration not just among governments, but with and among civil society organizations through global, regional, and national dialogue to advance justice reform.

Furthermore, depending on a country’s membership in international bodies and tribunals, civil society can expose human rights violations or inconsistencies in official government statements by bringing complaints or issuing shadow reports. Such activity, even when it does not trigger strong enforcement measures, can be effective advocacy tools with countries that care about their reputation on the world stage. Relatedly, for countries that have committed to implementing the SDGs or rely on them when seeking developmental assistance, civil society framing advocacy requests through an SDG lens can entice governments to try new things or collaborate in new ways.

In addition, civil society can find opportunities to engage with their government counterparts outside of the usual course of business by organizing or participating in consultations, global meetings, or side-events. While under normal circumstances such activity might require expensive international travel, COVID-19 has forced meetings to go virtual. As a consequence, smaller organizations can now participate in international activity more frequently, which can be especially beneficial to connect with peers in other countries developing creative solutions to shared problems.

For the Public

The beneficiaries of human rights and anti-poverty policies – the public – benefit from their development through the pressure cooker of global engagement. And like government and civil society counterparts, individuals working to improve human rights or fight poverty on behalf of their communities who connect with allies in other countries can learn new ways of fighting old problems.

In the justice context, legal empowerment practitioners – grassroots organizers who help their community to understand, use, and shape the law – benefit greatly from the Namati-led [Legal Empowerment Network](#). This online network facilitates problem-solving, the sharing of best practices and innovation, training (including in-person), and even funding opportunities to support these communities from across the globe.

For the Private Sector

The private sector's role in protecting human rights and aiding anti-poverty initiatives has been rapidly growing over the past 20 years. And with growing expectations from all parts of society for corporations to respond to all stakeholders – not just shareholders – and speak out against injustice especially in the aftermath of the murder of George Floyd, the private sector has an increasingly important role to play in creating more just and fair societies. By connecting their efforts to improve the communities they serve to international activity, private sector actors can increase their impact and inspire peers to do the same.

The SDGs provide such an opportunity. Developed in a [multi-stakeholder environment](#) by governments in partnership with civil society, citizens, and the business community, the SDGs reflect the recognition that the ambition behind the agenda requires collaboration across society. But while businesses have embraced the agenda and many of its goals, [Goal 16 has largely been overlooked](#) until recently.

In 2019, when Goal 16 was reviewed for the first time by the United Nations, private sector engagement tied to the goal began to accelerate. For example, in the United States, the National Legal Aid & Defender Association working with its longstanding [Corporate Advisory Committee](#) launched a new public-private collaboration to advocate for access to justice policy reform before executive branch agencies and courts at all levels of government. This successful partnership resulted in [letters to Congress](#) from the corporate community advocating for increased funding for both civil legal aid and public defense, especially in the wake of COVID-19. Connecting this existing collaboration to the SDGs has [prompted creative approaches](#) by corporate legal departments to support the access to justice community in the United States beyond pro bono assistance. In addition, the Pathfinders for Peaceful, Just and Inclusive Societies' new [Business Leaders for Justice Coalition](#) is creating a space for businesses from across the globe to share their solutions to justice challenges, while encouraging others to do more.

Conclusion

While this policy paper focuses on the ways international engagement can advance domestic objectives to improve access to justice, these strategies can be replicated for any human rights or SDG priority. In fact, although LAIR was among the only U.S. domestic activities connected to the 2030 Agenda for Sustainable Development, there were certainly many other innovative and successful U.S. federal activities that could have been directly linked to the other goals.

But this requires a willingness to engage with the global community and belief in the value of doing so. Instead, in recent years the United States pulled back from international cooperation in crucial areas, such as protecting the climate, our health, and our security, and its leadership role in the global movement on justice.

The opportunity for a reset is at hand. The Biden-Harris Administration can ensure that the United States once again works to fulfill our nation's promise of justice for all by working with all.

Recommendations to the incoming Biden-Harris Administration:

- Reestablish the [Office for Access to Justice](#) in the U.S. Department of Justice so it can resume its mission of addressing the crisis in access to justice in the civil and criminal justice systems and its role as the U.S. central authority on access to justice. In the wake of both the pandemic and a heightened awareness of the racial disparities that run through the justice system, it is critical to resurrect this office to advance solutions to the legal needs these crises create.
- Revitalize the White House Legal Aid Interagency Roundtable to ensure federal programs and policies – including those responding to the pandemic – address civil and criminal justice problems. LAIR should reconnect with its mandate to help the United States implement Goal 16 and recommit to identifying national access to justice indicators for target 16.3.
- Link U.S. domestic priorities to all 17 SDGs. The appointment of Ambassador Susan Rice – former U.S. Ambassador to the United Nations and National Security Advisor during the Obama-Biden Administration – to head the White House Domestic Policy Council creates an unprecedented opportunity to better connect the administration’s domestic agenda to its international one.
- Prioritize the United States’ role as a leader in the global movement on equal justice for all by reengaging in justice-related activity tied to Goal 16 at the United Nations, the Open Government Partnership, the Organisation for Economic Co-operation and Development, the Organization of American States, the International Legal Aid Group, and the Justice Alliance borne out of the activity of the Task Force on Justice. This should be matched with a commitment to speak with honesty about the challenges to securing justice for all within the United States.

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The Pathfinders for Peaceful, Just and Inclusive Societies is a group of countries, international organizations, global partnerships, civil society, and the private sector that work to accelerate the delivery of the SDG targets for peace, justice and inclusion (SDG16+). Pathfinders is hosted by the NYU Center on International Cooperation.

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