DIVERSE PATHWAYS TO JUSTICE FOR ALL:
SUPPORTING EVERYDAY JUSTICE PROVIDERS TO ACHIEVE SDG16.3

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This research was made possible by generous support from the Dutch Ministry of Foreign Affairs through the Capacitating Change Strategic Partnership 2015-2020.

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Design & layout: Haagsblauw
Cover photo: A woman and man face the Bashingatanhe, Burundi’s customary justice providers.
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2. Supporting justice seekers to know their rights and the law

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ACKNOWLEDGEMENTS

The authors are indebted to the Cordaid staff and partners in Afghanistan, Burundi, Central African Republic, Democratic Republic of the Congo, South Sudan and at headquarters for taking the time to speak with us about their work. We also benefitted from the opportunity to test out ideas with an Expert Group Meeting on diverse pathways to everyday justice organised by Cordaid and ODI in The Hague in April 2019. This work would not have been possible without funding from the Dutch Ministry of Foreign Affairs. We would also like to thank Pilar Domingo, Rachel Sieder and Michael James Warren for helpful comments on an earlier version of this paper, and Clare Price for copy editing. All errors and omissions are, of course, our own.
<table>
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<tr>
<td>ADALAT</td>
<td>Assistance for the Development of Afghan Legal Access and Transparency</td>
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<td>ADEPAE</td>
<td>Action pour le Développement et la Paix endogènes</td>
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<td>AIPJ2</td>
<td>Australia-Indonesia Justice Partnership 2</td>
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<td>CAR</td>
<td>Central African Republic</td>
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<td>CSAs</td>
<td>Community Security Architects</td>
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<td>CSO</td>
<td>Civil Society Organisation</td>
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<td>FOCHI</td>
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<td>GIZ</td>
<td>Deutsche Gesellschaft für Internationale Zusammenarbeit</td>
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<td>HiiL</td>
<td>Hague Institute for Innovation of Law</td>
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<td>International Commission of Jurists</td>
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<td>IDLO</td>
<td>International Development Law Organisation</td>
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<td>ILO</td>
<td>International Labour Organisation</td>
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<tr>
<td>LGBT</td>
<td>Lesbian, gay, bisexual, transsexual</td>
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<tr>
<td>M&amp;E</td>
<td>Monitoring and evaluation</td>
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<td>MoWA</td>
<td>Ministry of Women's Affairs</td>
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<td>NATO</td>
<td>North Atlantic Treaty Organization</td>
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<td>NWO</td>
<td>Netherlands Organization for Scientific Research</td>
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<td>NGO</td>
<td>Non-government organisation</td>
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<td>ODI</td>
<td>Overseas Development Institute</td>
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<td>OHCHR</td>
<td>Office of the United Nations High Commissioner for Human Rights</td>
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<tr>
<td>SDG</td>
<td>Sustainable Development Goal</td>
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<td>TLO</td>
<td>The Liaison Office</td>
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<td>TOC</td>
<td>Theory of change</td>
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<td>UNAMA</td>
<td>United Nations Assistance Mission in Afghanistan</td>
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<td>UNDP</td>
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<td>UNODC</td>
<td>United Nations Office on Drugs and Crime</td>
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<td>USAID</td>
<td>United States Agency for International Development</td>
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<tr>
<td>VAW</td>
<td>Violence against women and girls</td>
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<td>VVI</td>
<td>Van Vollenhoven Institute</td>
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The global justice community is stepping up efforts to achieve justice for all by 2030 – the deadline of the Sustainable Development Goals (SDGs). Yet its efforts to do so risk overlooking the diverse ways in which the majority of people resolve disputes and seek redress. This is especially true in fragile and conflict-affected contexts but also in middle- and high-income countries where indigenous peoples are calling for recognition of their own legal institutions.

This paper draws attention to the fundamental role played by everyday justice providers – the array of providers that people regularly rely on to resolve disputes and seek redress. Everyday justice providers span statutory legal systems in some contexts, customary or religious leaders, community associations, paralegals and community-based dispute resolution services in others. For SDG 16.3 to meaningfully deliver on improving access to justice, the global justice community must recognise and engage with this reality of everyday justice.

Everyday justice providers are widely used and fill an important gap given the shortcomings of many statutory legal systems. Moreover, everyday justice providers also have important strengths in their own right that often make them preferred avenues to resolve disputes and seek redress. If justice assistance overlooks these providers, it risks being of limited relevance to those it seeks to support.

This is not to suggest that everyday justice providers are unproblematic. All justice providers – in statutory legal systems or more broadly – are steeped in prevailing political, social and economic dynamics, and carry with them inequalities and biases. This shapes how justice is delivered, and it is precisely these factors that make improving justice outcomes so challenging. Everyday justice providers present no lesser and no greater a challenge than courts, judges and lawyers (with which international justice assistance is accustomed to working).

This paper aims to shift SDG 16.3 debates toward recognition of more diverse pathways to justice that reflect the ways in which people seek to resolve disputes and grievances. In order to do so, it sets out:

- Methods for bringing everyday justice providers to light to inform planning of justice support programmes
- Seven potential entry points to engage with everyday justice providers, with a range of practical strategies and considerations covered in each:
  - Undertaking research on, and dialogue with, everyday justice providers
  - Supporting justice seekers to know their rights and the law
  - Supporting justice seekers to navigate everyday justice providers
  - Improving the interface and coherence between justice providers
  - Supporting the establishment of new justice providers
  - Supporting reform of everyday justice providers
  - Choosing not to engage
- What it takes for international organisations to work with everyday justice providers including:
  - Clarity of objectives
  - Deep understanding of context
  - Securing relevant expertise and partners
  - Creating space for flexibility and adaptiveness
  - Accepting risk

To deliver justice for all, we must take account of and work with the diverse ways in which people actually seek justice. This is how we will achieve SDG 16.3.
INTRODUCTION

The Sustainable Development Goals (SDGs) commit UN Member States to ensuring equal access to justice for all by 2030 under Goal 16.3. Yet orthodox approaches to expanding access to justice have thus far taken a primarily state-centric approach. This approach frequently fails to acknowledge that the majority of justice seekers in poor and fragile contexts – and in many other contexts – resolve their problems through a diverse range of everyday dispute resolution and justice mechanisms. Justice seekers rely on customary, indigenous, religious, informal, and other popular institutions and procedures, often understood collectively as legal pluralism. For SDG 16.3 to meaningfully deliver on improving access to justice, it is essential that those supporting its achievement recognise and engage with this reality of ‘everyday justice’ (see Box 1).

By focusing international aid and other assistance on only the statutory legal systems, development agencies risk missing out on building important connections with the wider array of local actors who, in practice, people rely on to resolve disputes and seek redress for grievances. This means that development assistance may have limited impact on the justice needs of those they seek to support.

This paper aims to shift SDG 16.3 debates toward recognition and accommodation of more diverse pathways to justice used by people when seeking to resolve disputes and grievances. Only by taking account of, and working with, the ways in which people actually seek justice will it be conceivable to deliver on the ambition of SDG 16.3. Cordaid has, like many other organisations, sought to grapple with the empirical reality of diverse justice pathways, with varying degrees of success. Efforts to achieve SDG 16.3 will benefit from the learning and expertise of such organisations. In this paper we draw on Cordaid’s programming experience, along with examples and cases studies from other organisations and donors undertaking similar work.

1 SDG 16.3 calls on the international community to ‘promote the rule of law at the national and international levels, and ensure equal access to justice for all’.
Box 1: Defining everyday justice
A wide range of terminology is used to refer to the diverse providers of justice that people rely on to resolve disputes and seek redress for grievances. Most often they are categorised in two ways: 1) ‘formal,’ referring to statutory justice bodies associated with the state, such as magistrates and higher courts, or 2) ‘informal,’ ‘non-state,’ ‘customary,’ ‘community,’ ‘primary,’ ‘religious,’ or ‘traditional,’ referring to an eclectic grouping of justice providers operating outside of, or alongside, formal justice systems (IDLO 2019a: 8). There is no universally agreed terminology to refer to these diverse providers.

The above terminology has been critiqued for reinforcing unhelpful and empirically inaccurate binaries between providers (Harper 2011; Kyed 2011: 10). Often there are not discrete ‘formal’ or ‘informal’ justice providers. Rather, there exist a more complex and overlapping array of providers that people navigate that draw on a range of sources of legitimacy, authority and rules (Jackson and Albrecht 2019:37-8). For this reason, it has become increasingly common to speak of ‘hybridity’ (MacGinty 2010). Hybridity also captures the interactive nature of how different justice providers relate to each other – at times referring cases between themselves, cooperating, or specifying jurisdictional boundaries (although these may not be enforced in practice) (Denney 2014). Yet the language of hybridity has remained largely academic and is not well understood in policy or wider circles. It can also create confusion within the legal community, where hybridity has a number of specific meanings in relation to comparative constitutional law, regulation and international criminal law (Wilson 2017: 285).

Therefore, for the purposes of this paper, we use the term ‘everyday justice providers’ to capture the full range of justice actors that provide people with diverse pathways to resolve disputes and seek redress for grievances. We borrow here from Blundo and Le Meur’s concept of ‘everyday governance,’ which recognises ‘the transformation of traditional centres of power, on the one hand, and the emergence of original configurations which render obsolete and inoperative – if they ever were relevant in the first place – the distinctions between state and civil society or the public and private sphere, on the other’ (2009: 14). Everyday justice – like everyday governance – aims to reveal ‘different terrains’ and the ‘multiplicity of actors involved’ in delivering justice in ways that ‘rupture some of the categories of analysis’ commonly relied on in understanding societies, governance and law (Blundo and Le Meur 2009: 15).

In some cases, everyday justice providers may include the statutory legal system or courts if they are widely used. In many cases, however it will refer to religious authorities, tribal elders, customary chiefs, paralegals, alternative dispute resolution mechanisms, or elected officials. In some contexts, these everyday providers exist in competition with the statutory legal system of the country in which they operate; in others they are constitutionally recognised as part of the country’s legal system. Providers often work together in an interactive ecosystem. Even where the statutory legal system ‘works,’ it may still refer matters to other justice providers, particularly cases related to family matters. Similarly, justice providers operating at the community level might refer more serious cases to the formal justice system.

Using the terminology of everyday justice providers is an attempt to move away from judgments about the institutional capacity or legitimacy of justice providers to simply a recognition of their empirical use by people (Sieder and McNeish 2013). Everyday justice providers are those providers that people use, for a variety of reasons, to seek justice. The term ‘everyday justice provider’s aims to overcome the limitations of some terminology that obscures, rather than opens up, the complex hybridity of justice systems.
This paper is intended for policymakers and practitioners working in the justice space. It first sets out the case for why engagement with everyday justice providers is critical to the achievement of SDG 16.3. We argue that realism about the strengths and weaknesses of various justice providers encourages a move away from a purely state-centric view of how to deliver justice for all, while not discounting the importance of state-centred reforms in some contexts. Second, the paper explores how different justice pathways are shaped by the prevailing political, social and economic dynamics in society that cannot be ignored. Third, we set out methods and tools for bringing everyday justice providers into clearer focus, to ensure they are recognised as a key part of the justice ecosystem at the outset of programming. Fourth, the paper explores a range of potential entry points that can be used to engage with and support everyday justice providers, highlighting practical examples of strategies that Cordaid and other organisations rely on. Finally, we explore what it takes for international actors to engage with everyday justice providers, recognising that partnerships are not merely about whether a local counterpart is a good fit, but also whether international actors are ably equipped to partner themselves.

The Task Force on Justice, an initiative of the Pathfinders Group for Peaceful, Just and Inclusive Societies, has declared 2019 to be the “Year of Justice”. As the international community reflects on progress to date in achieving SDG 16.3, the challenges that lay ahead and how best to meet them, this paper aims to ensure justice for all is understood in ways most meaningful to how people seek to resolve disputes and find redress for grievances. This is not solely – or even most often – through courts and lawyers but through a range of wider everyday resolution mechanisms that are more used and, often, more trusted. This is how we achieve justice for all – by beginning with a recognition that justice can mean quite different things in different times and places, and that to resonate with the people the SDGs were intended to give voice to, we must begin with the justice mechanisms they use.

Methodology
This paper draws on a review of relevant academic and grey literature on justice pathways, identified through our own knowledge, expert suggestions and snowballing. This literature review was supplemented with a review of internal Cordaid programme documents and interviews with Cordaid staff at headquarters and in five country offices that are involved directly in working with everyday justice providers: Afghanistan, Burundi, Central African Republic (CAR), the Democratic Republic of Congo (DRC), and South Sudan. We conducted a week-long field mission to Afghanistan in April 2019, and undertook telephone and Skype interviews with Cordaid staff and partners in the remaining countries, with a strong focus on DRC and South Sudan given the relevance of activities there to this paper.

Through interviews, we spoke to a range of Cordaid personnel and partners, as well as with a broad range of justice providers; community members and programme beneficiaries; government representatives; local academics, researchers, and policy analysts; and representatives from other bilateral and multilateral donors. Preliminary findings were shared at an Expert Group Meeting and panel discussion linked to the World Justice Forum VI in The Hague in April 2019. This gave us the benefit of additional expert insight to test our assumptions and develop our conclusions.
1. WHY EVERYDAY JUSTICE MATTERS

The primary way that people in many parts of the world – especially fragile and conflict-affected settings – resolve their disputes is through a wide array of everyday justice providers – not just statutory legal systems. While there is no robust global level data, it is widely recognised that in fragile and low-income settings the vast majority of disputes are dealt with outside of statutory legal systems (Albrecht and Kyed 2011: 3; Lund 2006; Janse 2013). The figure of 80 per cent is routinely cited but its origins are uncertain. This high level of use is due, in part, to weaknesses with statutory legal systems, but also to the strengths of everyday justice providers. Everyday justice providers also deal with some of the most common justice problems that people experience. The Hague Institute for Innovation of Law estimates that disputes related to family matters, land, housing, neighbours and money constitute approximately 65 per cent of all disputes in Bangladesh; 62 per cent in Uganda; 58 per cent in Mali; and 37.5 per cent in Indonesia (HiiL 2019). Everyday justice providers are primarily occupied with these matters. Everyday justice providers are therefore central to people’s experiences of justice, despite often being obscured in the reports of donors and international organisations that work in the justice field.

While diverse justice pathways are a particularly dominant feature of the justice ecosystem in fragile and low-income settings, their relevance extends more widely. The experience of indigenous and first nations people in countries including Australia, Canada, New Zealand and the United States, as well as in parts of Latin America, point to the ongoing importance of customary law in middle and high-income countries. This suggests everyday justice providers are a universal concern. Indeed, the rights of indigenous and tribal peoples’ to maintain their own legal institutions has been recognised in international declarations including in the 1989 Convention 169 of the International Labour Organisation (ILO), and the 2007 United Nations Declaration on the Rights of Indigenous Peoples (IDLO 2019a: 10). While everyday justice providers might, therefore, be especially relevant to fragile and low-income settings where the formal state apparatus is seen to be lacking, the term has a much wider applicability.

Why statutory legal systems are not enough

There are a range of weaknesses within many statutory legal systems that make them poorly equipped to be the sole vehicle for achieving universal access to justice. These include:

- **Gaps in the legislative framework that do not afford protections to vulnerable groups**, such as women and girls, lesbian, gay, bisexual, transsexual (LGBT) persons, persons with a disability and religious and ethnic minorities.

- **Insufficient justice personnel, such as judges and lawyers, to hear cases.** In South Sudan, there are 124 judges for 12.5 million people, or one judge for 100,000 people (although in practice, ‘entire regions of the country are deprived of any statutory judicial presence’ (ICJ 2013: 4)).

- **Poorly equipped or insufficient court buildings.** In Timor-Leste, after the violence following the 1999 independence referendum, over 70 per cent of all public buildings had been looted and destroyed, including most court buildings in the country (World Bank 1999: 4).

- **Case backlogs are often overwhelming.** On any given day, globally, there are 2.5 million people in pre-trial detention awaiting trial (Walmsley 2017: 2). In Africa, pre-trial detainees constitute over 40 per cent of the prison population, some of whom have been detained for in excess of fifteen years awaiting trial (Walmsley 2017: 2; Open Society Justice Initiative 2011: 17). In the Americas, rates of pre-trial rose to over 60 per cent (PRI 2019: 12).

- **Lengthy proceedings.** In many places court procedures are excessively long with case backlogs, long adjournments when witnesses and parties do not attend hearings, resulting in a delay of justice.

- **Costly procedures.** The costs of going to court are often prohibitive, especially for the poor and marginalised. They involve not only legal fees but also travel expenses for the disputing parties and any witnesses to court, as well as lost earnings for time spent away from work.

- **Linguistically and culturally inaccessible** with formal justice systems frequently operating in formal languages not spoken by many in the country, and using unfamiliar practices.

- **Decisions are not enforced.** In fragile and conflict-affected settings like Afghanistan, the ability of the statutory courts to enforce their rulings is highly circumscribed due to large areas of the country being outside government control (Coburn 2015). And indeed, many middle-income countries similarly struggle to ensure compliance with court rulings.

- **Formal courts are seen as more susceptible to corruption and politicisation** than other forms of dispute resolution in some countries.
Baker and Scheye (2009: 178-9) describe how this conflation of weaknesses is experienced in Sudan, for instance:

...courts are difficult to reach, particularly in rural areas where there is no or limited transport. The cost of filing fees can be higher. Then there are procedural difficulties in a case being initiated by the policy, or by a woman’s husband; or the court staff being unable to compel the respondent to attend court proceedings. Complainants also have difficulty in presenting information to the court, as the legal process is unfamiliar and can be quite harrowing, often further exacerbated by language difficulties. It is also common that there are difficulties in enforcing judgments, if the respondent is armed and likely to resist the judgment. Equally importantly, the courts often fail to establish, as local culture requires, reconciliation and compensation in a way that restores local relationships. Finally, state courts do not have a reputation for integrity and do not operate as an independent branch of government.

What is more, in contexts of conflict, fragility, and/or authoritarian rule, citizen trust in statutory legal systems can be low and the outcomes they provide not seen as legitimate. In such situations, there can be a danger that people who fail to get satisfactory justice then seek revenge against individuals, or against the system by joining armed groups and undermining security.

None of this is to suggest that statutory legal systems are unimportant. There are many issues statutory systems are uniquely placed to address – constitutional review, enforcing limits on government power and serious criminal matters, for instance. Moreover, the deficiencies with statutory legal systems are not a list of reasons not to engage with them. Quite the opposite – much legal assistance occurs on the very basis of these deficiencies and with the intention of rectifying them. Yet addressing these shortcomings is a long-term endeavour – courts must be built, laws passed and judges and lawyers trained. More fundamentally, a shared understanding of justice must be developed between citizens and the state, and trust in statutory systems must be strengthened. This will not happen over years, but decades, if it is to happen at all.

Considering the inability of statutory legal systems to afford legal protections to the poorest and most vulnerable in high income, democratic countries with a strong rule of law tradition, there is little reason to think this can be achieved universally by 2030. More broadly, states must accept that their statutory legal systems are unlikely to ever be the sole justice provider. As we discuss below, everyday justice providers are not popular solely due to the shortcomings of statutory legal systems and are unlikely to simply disappear.

The potential contribution of wider everyday justice providers

Everyday justice providers are widely used because they have strengths in their own right. These include:

- Being geographically accessible
- Being more affordable
- Quickly delivering a result
- Being linguistically and culturally accessible
- They are presented as being more in line with social norms regarding what is considered just or fair
- Often focus on non-adversarial restorative justice (rather than retributive) reconciliation and facilitating community harmony

This is not to romanticise everyday justice providers. The conceptions of justice that they rely on can raise important concerns related to procedural safeguards (including for appeals), accountability, respect for human rights and evidentiary standards, corruption, and equity. As with statutory legal systems, the social norms that many everyday justice systems build on represent the interests of the powerful and can reinforce exclusion. Customary systems can apply rules inconsistently to different groups in the same situation, meaning the decisions reached may be arbitrary or discriminatory (Harper 2011). And while the quicker pace by which cases tend to be resolved through everyday justice providers is often cited as an advantage, it can also be a result of a rushed and insufficiently diligent approach to procedures around evidence gathering, cross-examination, or appeals procedures.
Yet just as the weaknesses of statutory legal systems are the very basis for supporting reform, so too should the deficiencies of wider justice providers be seen as a reason for engaging, not disengaging. As a Cordaid staff member in Burundi notes: ‘If you want to bring changes you won’t do that through [not engaging]. It’s the time rather to invest. If things were brilliant, there’s no reason to be here. We act where there are problems.’ This sentiment should be applied to all justice providers, regardless of their institutional home.

Viewing statutory legal systems and everyday justice providers as discrete and competitive overlooks how everyday justice operates in many cases. While it is often assumed there is a competitive relationship, this is not always the case. Often more accommodating relationships already exist, even where there may be lack of clear enforcement of jurisdictional boundaries. In Kenya, for example, the 2010 Constitution recognises customary justice alongside statutory pathways, but it qualifies the scope of both by reference to constitutional and human rights, including women’s rights (Domingo et al. 2016). Box 2 below describes similarly accommodating arrangements in Afghanistan and South Sudan.

**Box 2: Relationships between statutory legal systems and everyday justice, Afghanistan and South Sudan**

In Afghanistan, the state’s formal legal code acknowledges the fact of legal pluralism, and efforts have been made to codify and regulate different justice pathways (Coburn 2015: 9). Since 2009, the national parliament has been considering a draft national conciliation law that would strengthen links between different justice pathways. Among other provisions, the law would formalise the role of the huquq (the government directorate responsible for mediating civil dispute) in reviewing decisions made in community jirgas and shuras, to ensure they comply with Islamic law, Afghan constitutional law, and international human rights standards.

South Sudan’s judicial system also mixes statutory and customary legal systems, with customary law constitutionally recognised. The A, B and C courts, presided over by customary chiefs, are established under the Local Government Act, while State courts oversee their execution of judicial power and accept appeals from those courts (Baker and Scheye, 2009).

What is often referred to as “informal” justice, is, in many instances, actually highly formalised. For example, tribal laws in Afghanistan, particularly among Pashtuns, have strict rules about compensation and punishments based upon the context of the dispute. Similarly, many of the decisions made in shura and jirga meetings, even in rural areas of Afghanistan with low literacy rates, are recorded on contracts that closely resemble court documents.

Everyday justice therefore matters for a range of reasons – because statutory legal systems are not able to deliver access to justice for all on their own; because everyday justice providers have important strengths that should be built on; and because justice systems are already diverse and interactive, combining a range of providers that cut across institutional affiliations. Efforts to provide access to justice for all should work with all providers that can play a productive role, rather than favouring particular institutional arrangements that are familiar to, or suit the interests of, international organisations.
2. UNDERSTANDING THE POLITICS OF EVERYDAY JUSTICE PROVIDERS

All justice systems reflect particular power dynamics, and are the product of a complex set of interacting factors that include politics, ecology, socio-economics, conflict, culture and religion. The form and prevalence of different justice pathways in places where Cordaid works, for instance, cannot be properly understood without an appreciation of how protracted conflict and long-term fragility has greatly limited the reach of statutory legal bodies, and levels of citizen trust in government. Similarly, inequitable power relations between men and women have meant that women face greater difficulty in accessing justice across all justice providers in these contexts. In other places not affected by conflict or fragility, factors such as an ongoing connection to land, ancestry and culture, may mean that people view customary justice providers as more relevant than statutory legal systems.

Often, justice providers that sit outside of the statutory legal system are presented as more problematic because of their basis in social norms and culture. Yet formal, statutory law similarly reflects the history and socio-political dynamics of a given context, including the legacies of state formation and the dominance of particular groups. For example, there are different ideas of what justice and the law mean in authoritarian or closed political contexts – where law is often seen as a tool of control, discipline and punishment – as opposed to more open, democratic settings, where the law is more likely to be seen as offering protections of rights.

It is important to note that when we talk about the influence of politics and other power dynamics on everyday justice providers, we refer both to the realm of formal political systems, as well as the informal politics and power relations that play out at community and household levels. Women, youth, people with disabilities, the LGBT community, ethnic and religious minorities and the poor are all disadvantaged by power inequalities. This means that they face an uphill battle in achieving justice, regardless of which justice providers they use. It is also important to recognise intersectionality, and how different people within these groups will experience these power inequalities differently. In Afghanistan, women can be particularly disadvantaged in community-level jirgas and shuras by typically having no right to represent themselves. This is exacerbated when women are from an ethnic minority or are also poor. In DRC, the combination of illiteracy and poverty are two primary factors that restrict the access of many citizens to the statutory legal system, and which help account for the greater popularity of community-based resolution. Perhaps the greatest difficulty in improving access to justice for marginalised groups across justice providers, is that those in power – who control and administer justice – often benefit from sustaining the inequitable norms and power relations on which the law is based (Harper 2011: 18).

If we recognise that all legal systems are based on contingent power relations, we can see the potential to contest those relations and re-shape the way systems operate.
3. BRINGING EVERYDAY JUSTICE PROVIDERS TO LIGHT

Working with everyday justice providers means being able to see them as part of the justice ecosystem. Often, international organisations map the justice sector as if it were made up of statutory justice providers and their accoutrements – judges, prosecutors, robes, lawyers and court buildings. This misses the more diverse ways in which people seek resolution and redress. Even if it is unintentional, international organisations and advisors bring with them particular worldviews and they tend to see those justice providers that are familiar to them and the justice systems from which they come. This can lead to privileging certain providers and overlooking others based on external ideas about who provides justice, rather than taking the perspectives of those who live in the country in question. What is needed at the outset of any programme or policy engagement, is a better frame for capturing the diversity of pathways to justice that people use.

There are a number of strategies to do this. First, is the adoption of a people-led or end-user perspective, that begins with the perspectives of people or justice seekers. Earlier rule of law assistance often took an institutional approach, focused on supporting justice institutions that were presumed responsible for delivering justice services. This approach has been widely critiqued, not least because it fundamentally misunderstood how many people access justice, which may or may not be through formal state institutions. In response to the failure of such institutionalist approaches to lead to improved justice outcomes for many people, rule of law assistance has moved towards focusing more centrally on the needs and preferences of the users of justice systems. ‘Employing terms such as “access to justice” and “legal empowerment,” donors now aimed to base programming on the poor’s needs and preferences.’ (Ubink 2018: 933).

Beginning with people, rather than institutions, can help to acknowledge and make visible the range of providers that people rely on to seek justice.

Beginning with people, rather than institutions, can help to acknowledge and make visible the range of providers that people rely on to seek justice (Luckham and Kirk 2012). Of course, when starting with a people-centred approach, it is critical to consider how to capture the many different ways in which people experience the full breadth of the justice ecosystem. It is also important to consider whose views are being consulted, who is excluded, and what biases this may bring to findings. Rather than assuming that people’s justice seeking behaviour mirrors the institutional organograms developed by governments and international organisations, a genuinely people-led approach should begin with asking a representative sample of people how they go about resolving disputes or grievances and why. And consideration should also be given to those who are administering the surveys and asking the questions.
Box 3: Cordaid’s people-focused needs assessments

Cordaid undertakes regular needs-assessments to guide their programme choices. These assessments are focused on what people tell them they need, and – in the area of justice – how people are accessing justice in practice. The organisation has developed specific instruments to help communities (and vulnerable people within communities) identify their own needs and priorities, and at the same time empower them to engage with stakeholders to create, implement and monitor solutions.

The main tool that Cordaid has developed is the Women, Peace and Security Barometer. This is a collective consultation process where local women are invited to define what security and justice means for them, what obstacles they face in realising it, and how to overcome them (whether at the level of collective action, institutional reform, or policy change). Using participatory techniques, Cordaid facilitates local women’s collectives and networks in gathering the voices of local women on these issues, and on the kinds of indicators they think can usefully measure whether progress is being achieved. The information is conveyed and analysed partly through narratives and storytelling. This evidence-base provides a foundation to support lobbying and advocacy, the outcomes of which are fed back to local women.

How the Barometer works in practice is, of course, specific to countries and communities. In South Sudan, for example, the Barometer has helped create dialogue around women’s security. Women’s stories of insecurity in Western Bahr al Ghazal state have been documented and analysed, and have been used for policy advocacy and a series of community radio programmes (Cordaid 2015a). In Afghanistan, Cordaid worked with partners to use the Barometer to gather evidence about the security situation of women during the transition period in 2014. NATO has drawn on these results as a baseline in its review of United Nations Security Council Resolution 1325 implementation (Cordaid 2015b).

Cordaid has also developed an initiative called ‘Community Security Architects (CSAs)’. These are individuals appointed by their communities who, together with community members, identify and prioritise security and justice needs and develop locally-led action plans to address them. These action plans are shared with relevant authorities, such as local government, police and judicial actors. Cordaid establishes monitoring committees consisting of representatives from government, Cordaid staff and implementing partners, and community members, to oversee the CSAs and delivery of the action plans.

This is crucial information to assist in shaping programme strategy and adaptations it may require. In South Sudan, for instance, in earlier programming Cordaid was working with the formal courts but found that, with re-emerging conflict, people were turning to customary justice providers. In part, this was due to reduced trust in the state, but ‘the conflict also led to a huge number of judges resigning, making the formal justice system even less accessible’ (Interview with South Sudan Cordaid staff member). This led Cordaid to shift its focus towards working with the customary justice system to ensure the programme was keeping pace with the changing justice seeking behaviour of people and serving their needs.

In addition to these technical tools, Cordaid’s overall programming approach is also fundamentally people-focused. As we discuss in more detail in section 5, partners are selected partly on the basis of being rooted in local communities, and thus able to shape programming in response to a fine-grained understanding of the needs of ordinary people.

Second, researchers working in contexts of deeply plural legal systems point to the value of following disputes or grievances themselves. Such an approach ‘reveals the way that many cases move through a series of venues and include a multitude of actors’ (Coburn 2015: 8-9). This approach captures the reality of how people endeavour to access justice, rather than how they explain accessing justice in theory. Often, when asked hypothetically how people would deal with a dispute or grievance, they indicate a remarkably clear process of starting with the most proximate justice providers (such as chiefs, religious or other community leaders), then escalating to higher level providers with statutory justice providers sometimes mentioned as a last
resort. Yet, when people are faced with a dispute or grievance, their process for seeking justice is often different and far more circuitous. Following particular cases offers the opportunity to understand this reality, as well as the diversity of pathways people may follow depending on their identity, the nature of their dispute, and so on. Such an approach also opens up the possibility of exploring how people’s differing justice experiences vary depending on intersecting inequalities. This is key for ensuring that efforts to improve justice leave no one behind. (See, for instance, the Everyday Justice and Security in the Myanmar Transition (EverJust) Project, funded by the Danish Foreign Ministry. This project involved a longitudinal ethnographic study of dispute resolution processes across 12 sites in Mon and Karen states to follow how crimes, disputes and grievances are dealt with in practice (Kyed 2017)). This approach was also used, albeit on a smaller scale, in a research partnership between Cordaid and the Van Vollenhoven Institute (VVI) at Leiden University (see Box 4).

Third, frameworks such as justice chains – as have been used by UN Agencies (UN Women 2011; UN Women, UNDP, UNODC and OHCHR 2018), the Christian Michelsen Institute (Gloppen 2006) and the Overseas Development Institute (ODI) (Denney and Domingo 2013; Domingo and Denney 2013) – aim to map the broad range of pathways that people might opt to take in seeking redress or resolution of disputes. Importantly, these ‘chains’ or pathways often intersect, highlighting the interactive nature of justice providers and opening up opportunities for collaboration. Justice chains have been used as part of political economy analysis to help identify blockages across different ‘chains’ in the justice system that might be hampering access to, or the quality of, justice (see for instance, Domingo and Sudaryono 2016). The chains aim to prompt thinking about how people access and experience justice providers in practice, rather than how we think justice should ideally be delivered.

Figure 1: Example use of justice chains showing everyday justice providers and referrals between them
4. POTENTIAL ENTRY POINTS TO WORKING WITH EVERYDAY JUSTICE PROVIDERS

While the prevalence of diverse justice providers has been acknowledged for some time – since at least the 1960s – it is only more recently that such actors have been seen as legitimate partners for the international development community. As Meagher et al note:

The idea that there are forms of order beyond the state is nothing new … What is new is the move from state-based ideals of post-colonial order to a more practical emphasis on local non-state arrangements already operating on the ground in fragile areas … This signals a paradigm shift from the ‘good governance’ agenda of neo-liberal state building to a focus on ‘arrangements that work.’ (Meagher et al. 2014: 2).

As we noted above, from an overwhelmingly state-centric approach up until the mid-2000s, justice programming has undergone a shift towards ‘a focus on the users of justice systems rather than legal institutions’ (Ubink 2018: 933). While the overwhelming majority of justice funding still flows for statutory legal systems, this shift has nonetheless opened up the possibility for a more legally pluralist position. Most multilateral and bilateral donor agencies now recognise the need to work with everyday justice providers beyond the state, although in practice there is often a cyclical ‘rediscovering’ of legal pluralism (Kyed 2011: 5-6). This begs the question of what engaging with everyday justice providers looks like.

Organisations like Cordaid and others, such as the International Development Law Organisation (IDLO) and the International Commission of Jurists (ICJ) have been leaders in this regard, working with the diversity of justice providers that people seek out on an everyday basis, including in some of the most conflict-affected parts of the world. This section sets out seven potential entry points for engaging with everyday justice providers, drawing mostly on Cordaid’s programming experience, but also on our discussions with other organisations and our review of secondary literature. These entry points range from minimal to more extensive engagement.

1. UNDERTAKING RESEARCH ON AND DIALOGUE WITH EVERYDAY JUSTICE PROVIDERS

Undertaking research may seem a mundane form of engagement. But it can be a strategic way to test the waters, improve a development agency’s understanding of everyday justice providers, build relationships and identify potential future opportunities for engagement (or non-engagement). Long-term investment in research can also involve embedded or accompaniment learning work. This involves researchers and technical advisors being attached to a particular programme or initiative for a period of time, documenting practice, feeding information back into the project, and contributing to wider learning about how change happens.

Beginning with research is a relatively low risk form of engagement. It prioritises getting to grips with the complexity and politics of how justice is experienced in the context in question. Any later engagement can also benefit from the knowledge accrued through the research and provide a public good to inform others who are working in the same context. IDLO has been at the forefront of regularly publishing on everyday justice providers – which they refer to as customary and informal justice actors, providing an invaluable resource for other actors looking to engage in this space (see, for instance, Harper 2011; IDLO 2019a; IDLO 2019b).
Of course, research with or on everyday justice providers must be done sensitively – all the more so when research is undertaken as a potential entry point to further engagement. In particular, efforts should be made to avoid essentialising providers – especially where they are religious or customary authorities. All providers exist and are used because they respond in different ways to the contemporary needs or circumstances of people.

Research should attempt to understand everyday justice providers on their own terms. This means not just describing the procedures and processes at play but also understanding the underlying logic of justice that differs markedly from place to place and across justice providers. It is these normative understandings of justice that are critical to unpack as international justice assistance can risk assuming a more shared, universalist understanding of justice than in fact exists. By understanding how justice is interpreted locally (including at sub-national levels), international efforts will be better placed to shape their assistance in ways that meet or connect with local needs. It may be useful at times to focus on what is working well, rather than relying purely on a deficit lens that emphasises what is lacking. Such an approach might also reveal positive outliers – instances where particular everyday justice providers are working well in a given location, or in relation to a given crime or dispute. This can highlight potential entry points to support the spread of things that work well.

Research might also take a problem-centred approach, rather than an institutional or provider-based approach. That is, rather than attempting to ‘map’ the wide array of everyday justice providers, research may focus on a particular issue – such as gender based violence, property rights, or debt disputes - and explore the variety of everyday justice providers relied upon in relation to such issues. This can provide a more targeted approach but does risk focusing on ‘hot topics’ that are potentially more sensitive, and thus overlooking potential areas for engagement on less sensitive areas that might hold more promise for change. For instance, in Myanmar, research on the most commonly experienced disputes and how they were resolved found that while land disputes were indeed a pertinent issue, so too were debt and labour disputes, which were less sensitive and therefore potentially better entry points for new programmes (Denney, Bennett and Khin 2016: 49).

Box 4: Cordaid and Leiden University Research on primary justice in Afghanistan and South Sudan

From 2014-2016, Cordaid and Van Vollenhoven Institute (VVI) at Leiden University partnered to undertake research on experiences of primary justice in Afghanistan and South Sudan, combining their respective practitioner and academic skills. The research project was part of the applied research programme ‘Embedding Justice in Power and Politics’ funded by the Netherlands Organization for Scientific Research (NWO) and supported by the Knowledge Platform Security & Rule of Law of the Dutch Ministry of Foreign Affairs. It aimed to ‘co-create practicable methodologies and knowledge products that can directly feed into development efforts aimed at facilitating the emergence, building and strengthening of accessible justice at district/county level, in which complementary statutory and customary justice mechanisms have a place.’ (Cordaid 2016: 5). Cordaid staff point to this research as having shaped the organisation’s programming approach and partner selection in Afghanistan and South Sudan, including the focus on everyday justice providers.
2. SUPPORTING JUSTICE SEEKERS TO KNOW THEIR RIGHTS AND THE LAW

One entry point to support improved justice outcomes for people across a range of everyday justice providers is to expand the legal awareness of justice seekers. This may involve raising awareness of rights or strengthening legal literacy by promoting understanding of the content of the law, or indeed – prompting advocacy efforts to change the content of the law. It may be with the community at large, with particular, marginalised groups, or with everyday justice providers themselves. Mediums include community dialogues, training or awareness raising campaigns (including via radio, print and other media).

This is a soft entry point into working on improving the quality of justice received through everyday justice providers, without explicitly working with everyday justice providers themselves. This entry point focuses on what is commonly referred to as the ‘demand’ side of justice provision. It is premised on the idea that more informed justice seekers will ultimately lead to pressure on justice providers to deliver better quality justice. This assumption may not hold in all contexts. In practice, we know that knowledge is rarely sufficient on its own to change behaviour. It is all well and good for a Rohingya person in Myanmar, a gay man in Zimbabwe, or a woman in Papua New Guinea to know their rights – but how does that knowledge get translated into improved justice provision? The strategy, therefore, needs to be explicit about how this improved knowledge is anticipated to influence the provision of everyday justice. As IDLO (2019a: 28) point out: ‘the key factor impeding access to justice for the disadvantaged is that those with decision- and change-making power have very little to gain and much to lose from a more inclusive, egalitarian and rule-based system. It is important to acknowledge the limitations of training and awareness in overcoming such interests, and to devise more strategic solutions that directly cater to political context and power relations.’

This entry point works best when paired alongside other entry points that support the meaningful application of knowledge – be that through peer support and advocacy groups to increase pressure, assistance to justice seekers to navigate available providers and work with everyday justice providers themselves to encourage a more receptive audience to citizens. It is important that awareness raising efforts are sensitive to the political and social context in which they are taking place. Loud calls for human rights are not always useful or the most strategic way to advance discussions about rights and justice in contexts where this may be divisive or highly politicised (see Boxes 5 and 6 below on Cordaid’s community dialogues and how conversations about justice have been sensitively supported in Myanmar).

Box 5: Community dialogue and awareness raising as a first step to change

Through its local partners, Cordaid undertakes legal awareness raising and community dialogues on rights and the law in a range of countries, including Burundi, CAR, DRC and South Sudan. Awareness raising of rights and the law is particularly important in CAR, given the impunity with which many crimes have been committed during and after the conflict, and due to the ongoing displacement of large parts of the population.

In this context, the absence of justice processes is so profound that raising awareness of rights, the law and justice is key not just for citizens, but also for civil society organisations to collect evidence and advocate for victims, as well as for justice providers and the government – so that they can ensure justice systems are rebuilt in ways that are victim-oriented in their justice delivery. Of course, it should not be assumed that awareness raising will be transformative on its own. However, in contexts such as CAR, it can play a particularly important role as an early entry point to working on everyday justice pathways.
Box 6: Getting people talking about justice in Myanmar

MyJustice, funded by the European Union and implemented by British Council in Myanmar has been sensitively approaching awareness raising on justice in innovative ways. Beginning with significant investments in qualitative research to understand common disputes, grievances and resolution mechanisms in the country, followed by the largest statistically significant survey on justice issues undertaken in Myanmar, MyJustice developed Pyaw Kya Mal, or “Let’s Talk.” “Let’s Talk” is an integrated media campaign that invites people to talk about justice issues and solutions, building on evidence-based messages – including recognition of the diverse range of everyday justice providers that people rely on.

The campaign has been promoted through multiple channels – including billboards, TV and radio advertisements and talk shows, Facebook and community platforms. A ‘We Rock for Justice’ concert featuring leading Myanmar bands was held in January 2019. Community theatre has also been used, with community dialogues held to draft scripts around common justice problems, and how those problems can be resolved. A television drama ‘The Sun, The Moon and the Truth’, set in a Justice Centre, also supported by MyJustice, has also been developed featuring well-known Myanmar celebrities. The campaign has magnified its reach through bringing on board a famous Myanmar movie star, and building relationships with other celebrities and social influencers who help to spread the message.

Monitoring revealed that 22 million people have been reached by the campaign, 52 per cent of respondents recognised the campaign brand, and that those exposed to the campaign are more likely to have higher levels of rights awareness than those who have not. While an awareness raising campaign is, of course, only one small step in improving the justice that the people of Myanmar can access, the campaign has been a strategic step to opening up conversations about justice and rights in a context where these have been largely taboo. Moreover, in a difficult political environment, the high profile campaign was formulated in such a way as to touch on issues that require change while maintaining the support of the government.

(MyJustice 2018; 2019).

3. SUPPORTING JUSTICE SEEKERS TO NAVIGATE EVERYDAY JUSTICE PROVIDERS

A step on from supporting justice seekers to know their rights and the law is to actually assist justice seekers in navigating the providers available to them. In part, this is about knowing the options available, their pros and cons, and how to go about approaching them. It can extend to supporting justice seekers to negotiate the power and social networks involved in seeking justice (Kyed 2011: 10). This speaks to the role of individuals’ identities and the inequalities and biases that are built into the law that make identity important in a person’s experience of seeking justice. Vulnerable people can, for example, be even more disadvantaged if they seek but do not receive a satisfactory solution from statutory courts, and then face recriminations or social sanctions within their community (Harper et al 2011: 177).

This entry point is less about supporting explicit changes or reforms in the justice pathways available, and more about supporting people to make the most informed choices possible, and support those choices, in the context as it stands. Of course, this can itself be transformative if people’s access to support in navigating everyday justice providers leads to changes in the ways they seek justice, thereby leading justice providers to change their approach. This is not guaranteed, and it is important that any support efforts are clear about the objectives they are seeking to achieve.
Practically, this entry point can involve a range of interventions. When trained in both statutory and customary law and procedures, paralegals can assist people in understanding the justice options available to them and refer cases to the most suitable venue, serving as a link between different pathways (Harper et al, 2011: 179). As we discuss in more detail below, Cordaid partners in DRC and South Sudan have been involved in bringing trained paralegals into remote communities to provide free legal advice to community members.

Community legal centres or citizen’s advice bureaus can also act as centralised resources for people to contact for advice about how best to deal with a grievance or dispute. Often, these services have existing relationships with paralegals, lawyers, legal aid and other support services that can help connect people directly to services. In CAR, Cordaid is supporting listening centres in both Christian and Muslim communities. These are spaces where people can bring their cases to be documented, and connected with psychosocial and other support, as well as provide information to people about their rights and the law. Presently, the listening centres are not progressing cases through the justice system but are attempting to build a culture of reporting of injustices and compiling cases so that they can be progressed in future.

More targeted interventions can focus on marginalised groups, such as the use of gender focal points in Afghanistan to help women navigate diverse justice providers in a manner that best meets their needs and interests (see Box 7).

Box 7: Gender focal points help women to navigate justice providers in Afghanistan

In Balkh and Badakhshan Provinces in Afghanistan, GIZ has supported the creation of 22 gender focal points in local communities. These are local women who have a respected social standing in their community, who are given basic legal training to provide support and advice to other women who are seeking justice. In particular, gender focal points are trained to refer cases concerning women’s rights to the relevant institutions given the nature of the dispute or grievance. In the case of family disputes for example, they can guide women on their rights, on whether there may be financial or other support available to them, which courts or councils would be the most suitable venue given their particular circumstances, and so on.

The focal points provide an important resource to women in a context where many other resources are male dominated and therefore more difficult for women to independently access. They also enable quicker access to justice by helping women navigate the multiple justice providers available to ensure the appropriate avenue is accessed, avoiding unnecessary delays caused by first going through non-responsible institutions. Officials from the Ministry of Women’s Affairs (MoWA) in Afghanistan have welcomed the focal points as a way of addressing the absence of MoWA sub-offices at district level.

(GIZ, no date).

4. IMPROVING THE INTERFACE AND COHERENCE BETWEEN JUSTICE PROVIDERS

While it is often assumed that different justice pathways operate in contestation or competition with each other, as noted in Box 2, the relationship between pathways and providers can in fact take a number of different and often more complementary forms, reflecting close links and overlap. This interaction between justice pathways opens up the possibility of working on the interface between them in ways that can potentially improve accessibility and quality of justice for justice seekers, and encourage learning and understanding across justice providers.

The goal of efforts under this entry point is to create a more harmonised justice system that provides multiple avenues for seeking justice, but in ways that also encourage jurisdictional clarity, procedural fairness and rights protection. Fostering improved links between justice
providers can also harness the common ‘pull’ factors of everyday justice systems (for example geographic accessibility, local legitimacy, affordability, etc) while also leveraging some of the benefits that statutory courts have the potential to provide (for example, greater procedural safeguards and human rights protections).

This entry point may involve developing clearer jurisdictional boundaries between justice providers where this is not in place, is contested or confused. This can help to provide greater certainty for justice providers and justice seekers about the appropriate fora for dealing with different disputes. In practice, however, this is of course a difficult and sensitive issue. Often lucrative dispute resolution services are at stake if certain matters are found not to be in the jurisdictional remit of some justice providers. Similarly, justice seekers can be frustrated that they are not able to resolve their dispute with their preferred provider. In Sierra Leone, for instance, some community members complained when chiefs referred their complaints to the police on the basis that the police would take much longer to deal with the matter and likely do nothing (Denney 2014: 1).

In addition to clearly delineating jurisdictions, clarifying referral processes can also help to better link justice providers and provide avenues for oversight of decisions and appeal (see entry point 5).

A third strategy to improve the interface between providers involves exposing them to different justice fora and facilitating interaction and mutual learning. For example, bringing tribal elders, village chiefs and other community authority figures together with statutory justice providers, or taking magistrates, judges and lawyers into remote communities that are isolated from the statutory system to provide legal advice and support, or to conduct hearings.

In several countries, Cordaid has been actively involved in organising these kinds of ‘exposure visits’ for different justice providers (see Box 8). The objective of these visits is to help different justice providers develop a better understanding of other pathways and norms, including jurisdictional boundaries. In both DRC and Afghanistan, for example, customary and tribal authorities have some recognised authority over civil cases, whilst criminal matters are supposed to be handled through statutory courts. However, in practice there can be confusion or disagreement over where the boundaries lie, which can lead to customary courts taking on serious criminal cases. At times, this can result in punishments involving egregious violations of human rights. For example, BAO in Afghanistan, where girls or women are given to an aggrieved family as compensation.

Exposure visits and exchanges can be particularly useful in clarifying the boundaries between different justice pathways and providers. Clearly defining the jurisdiction of customary justice systems and state courts has the potential to regulate the power of both state and local customary actors, and may offer better protection to disputants. However, it should be noted that limiting the jurisdiction of one justice pathway without ensuring access to another can create a problematic vacuum. This might result in vigilantism or further compound injustice if crimes or disputes go unresolved (Harper et al 2011: 180). This underscores a key advantage of the mobile legal hearings (often known as itinerant or mobile courts), which involves judges, magistrates and lawyers travelling to remote communities to hold hearings. These mobile hearings address some of the prohibiting factors that make statutory courts unattractive (related to high cost, long duration and distance) and importantly, they increase the justice avenues available to people. As long as they are conducted in consultation with local justice providers, with a view to strengthening linkages between providers – rather than undercutting each other – they can assist in expanding the scope of justice available to people and facilitate learning across justice providers.

At the same time, it is important to recognise that ‘clarifying boundaries,’ ‘harmonising,’ or ‘integrating’ also comes with significant power dynamics that frequently mean the state and its statutory legal system end up defining these terms. In some cases, that may be appropriate. But in others, particularly where indigenous groups are demanding broader jurisdiction or autonomy rights, supporting such strategies may serve to strengthen the state’s ability to enforce its own interests over others. That is certainly not in all cases desirable.
Box 8: Improving the interface between statutory and customary justice providers

In Afghanistan, Cordaid partners organise exchange programmes where religious or tribal elders are brought to state courts to observe how cases are dealt with. Cordaid has documented some outcome-level results through this project in line with the objective of clarifying jurisdictional boundaries. Although resolving criminal cases through community jirgas or shuras is forbidden according to Afghan law, many criminal cases are still dealt with through these channels.

In 2019, shura and jirga members in Parwan province were given training and technical assistance by Cordaid partners on linking the statutory legal system and wider everyday justice providers, and on clarifying the jurisdictional boundaries between them. This was followed by a visit to the Parwan Court of Appeal to observe a hearing and to meet with judges. Following the training and court visit, Cordaid documented a commitment from participants to refer criminal cases to the state courts rather than handling them through customary pathways.

While the exposure visits in Afghanistan involve traditional elders being brought to the formal courts, several of Cordaid’s partner organisations in DRC and South Sudan organise mobile clinics that take paralegals, lawyers, magistrates and judges to remote communities that are isolated from the statutory courts. The objective here is to provide legal training and advice on security and justice matters and to conduct hearings that are beyond the jurisdiction of local justice providers. Partners see this as encouraging closer alignment between different justice pathways, although some also expressed a hope that by building people’s understandings of and confidence in the statutory legal system they would be discouraged from relying on community based resolution practices.

While the mobile judicial clinics inform people about the existence and workings of the formal system, they also engage with members of the community (including village leaders, chiefs and elders) to ask them how they normally deal with legal issues and conflicts. To prepare the groundwork for the visits, Cordaid partner staff in DRC and South Sudan make contact with chiefs and elders in the relevant communities. They explain the purpose of their work, how the application of statutory law works (or is imagined to work), and the benefits of conducting hearings and clinics. During interviews, Cordaid partner staff emphasised the high degree of acceptance that the clinics had been met with by traditional authorities, and a lack of conflict between different justice providers. They also emphasised that local chiefs and community leaders played an important role in ensuring that the rulings from mobile courts were implemented properly, and in maintaining or restoring good relations across the community after a ruling had been reached.

5. SUPPORTING THE ESTABLISHMENT OF NEW JUSTICE PROVIDERS

This entry point may be suitable when there is limited access to, or pervasive distrust in, everyday justice providers – be they the statutory legal system or otherwise, irreconcilable disagreement between different parts of the community over the most appropriate justice pathways, or where everyday justice mechanisms have otherwise eroded.

As noted above, paralegals can play a role in providing advice and support in navigating different justice pathways. They can also play a more direct role in mediating disputes themselves. Sometimes referred to as ‘grassroots legal advocates’, or ‘barefoot lawyers,’ these paralegals use their training in basic law and skills like mediation, organisation, education, and advocacy, to offer solutions to disputes. Their primary role is not to assist lawyers or to provide advice on legal procedures and pathways, but rather to work directly with communities to address justice needs (Namati 2015). A number of organisations – such as Namati, BRAC and the Paralegal Advisory
Service Institute, work to establish, support and connect these kinds of legal advocates. This includes through running peer-exchange programs, compiling resources such as training materials, or directly running programmes to support legal empowerment.

Alternatively, some organisations have focused on supporting new providers through a more community-based approach, particularly in circumstances where justice disputes are bound up with inter-communal conflict. For example, one of Cordaid’s partners in DRC, Action pour le Développement et la Paix endogènes (ADEPAE), runs a conflict transformation initiative in Uvira, South Kivu, where there are tensions between tribal communities across borders and migration routes. ADEPAE sets up community mediation panels to help communities address these conflict dynamics, including gender-specific sub-committees to address issues specific to women. Another CSO based in South Kivu, Foundation Chirezi (FOCHI), has worked to restore the system of ‘Barazas,’ which are semi-formal traditional community groups whose members mediate and settle disputes, including through customary mediation mechanisms. The organisation has reportedly found this initiative effective in resolving a range of disputes, and it has been adopted successfully in 38 villages in the region (Peace Direct 2019: 49).

Of course, establishing new everyday justice providers is not straightforward and there are important considerations that must be thought through. There is a danger that external actors favour the approach of setting up new justice providers as if the reason for inadequate justice provision to date is simply the absence of some new model or provider. In practice, inadequate justice provision is rarely about the nature of the providers available and more about the relationships of power, interests and incentives that shape how justice is understood.

Moreover, any new provider will not be impervious to the norms, biases and culture that influence other everyday justice providers in a given context. While it may be possible to insulate new justice providers from some forms of politicisation or co-option, they will be a part of the society and culture in which they work in much the same way as other providers. It is important to think about how precisely a new provider is going to fare in such an environment and what kind of justice they will realistically be capable of delivering.

Finally, consideration should also be given to how a new justice provider will impact upon the wider ecosystem of justice provision. Setting up a new provider is likely to affect this wider ecosystem in a number of ways. In Sierra Leone, anecdotal evidence suggests that the emergence of paralegals in rural settings led to fewer women seeking justice for domestic violence from the Local Courts. Chiefs, who ran these courts, then lowered their fees to encourage women justice seekers to return. In this case, it appears the presence of a new justice provider may have prompted improvements in another provider – resulting in better access to justice for women. In other instances, however, there may be backlash from existing everyday justice providers, or other potential impacts that must be considered.

6. SUPPORTING REFORM OF EVERYDAY JUSTICE PROVIDERS

Supporting reform of everyday justice providers is possible in much the same way that it is possible to support reform of statutory legal systems. But efforts to change the ways that justice providers function need to be cautious. The ability of external actors to influence local practices is always limited. There is a need for realism about the long-term impact of training, workshops and sensitisations. It is also easy to jump to solutions about how justice should be provided differently, without first understanding why justice is currently provided in the way that it is. This is rarely – if ever – simply due to a lack of knowledge or awareness, or a contempt for human rights. Rather, it is often intrinsically linked to the socio-cultural, political, historical and economic dynamics discussed in section 2 that shape how the role of justice is understood and delivered.

This is not to suggest that change is not possible – contestation and change is continually playing out in ways that are not always visible to outsiders. Where efforts to reform everyday justice providers can build on existing local movements for change, they are likely to be more successful and more attuned to the needs of justice seekers. Furthermore, launching
Within this entry point, a range of strategies for reforming everyday justice providers are set out. These will not all be relevant in all times and contexts, but nonetheless provide a sample of the kinds of strategies that might be pursued.

**Improving accountability and oversight**

Establishing monitoring and oversight mechanisms can assist in improving the compliance of everyday justice providers with national law, procedural and jurisdictional rules and with human rights standards. A potentially less sensitive place to start in improving accountability and oversight of everyday justice providers is by encouraging the recording and publication of decisions. Recording decisions is often not common practice for everyday justice providers. This can mean that the application of laws varies considerably from one case to another. While that may be justified by the specifics of the case at hand, having decisions recorded provides the basis for comparison of cases over time, as well as the build-up of a body of precedent that enables justice seekers to feel more confident about the content of the laws that apply to them (as these are not always written). Recorded decisions are also useful in an appeals process, providing a clearer basis for decisions making for an appellate adjudicator (IDLO 2019b: 23).

If it is possible to go one step further and for recorded decisions to be published, this opens up further possibility for oversight and accountability, with civil society and other actors able to conduct their own review and analysis of the justice provided (see Box 9). Published decisions can be formally registered with local government, the judiciary or police, providing an authorised version on file.

**Box 9: Using recorded decisions to reveal gender bias in Indonesia**

In Indonesia, the publication of judicial decisions by the Supreme Court enabled a local organisation, MaPPI, supported by the Australia-Indonesia Justice Partnership, to conduct a review of 297 decisions in sexual violence cases to detect judicial bias. Their analysis found that judges routinely issued more lenient punishments to perpetrators in cases where female victims were wearing what was considered provocative clothing, engaging in “immoral behaviour”, or even walking alone at night. Judges were also more inclined to issue lighter sentences where the victim was deemed sexually experienced. This information formed the basis for lobbying efforts to improve judicial treatment of women in the courts, and contributed to the issuing of a Supreme Court Regulation on treatment of women in contact with the law. This regulation provides judges with guidance on how to ensure women are treated fairly and with respect in court proceedings. Additional review of judicial decisions is now being carried out to determine the impact of the regulation.

(AIPJ2 2016).

In addition to recording and publishing decisions made by everyday justice providers, monitoring of proceedings can also be undertaken by local civil society groups or trained paralegals (provided their security can be guaranteed) – akin to trial observation. Monitoring proceedings can assist in documenting biases, procedural problems, jurisdictional overstep, or an undermining of rights. Such documentation can then be used in lobbying or advocacy efforts to counteract unfavourable power dynamics and assist in preventing abuses of power (intentional or not). Monitoring may also help to ensure that justice providers respect minimum rights standards, particularly those concerning minorities and women. In this way, external scrutiny has the potential to promote more equitable dispute resolution and strengthen the overall accountability of justice providers (Harper et al 2011).

Encouraging the adoption of procedural standards around use of evidence, mediation or adjudication proceedings, sentencing and minimum rights protections can assist in improving the safeguards in place to ensure a fair justice process. These are most effective when developed in close consultation with relevant justice providers and may need to adopt an incremental, ‘good enough’ approach to the standards enforced if they are to be effective in practice.
Grievance or complaints mechanisms can also be set up within everyday justice providers to give justice seekers an opportunity to voice their concerns. How these mechanisms are managed is key, as they can be undermined if they are not seen to be responded to or taken seriously. Some degree of independent involvement in reviewing and actioning responses to complaints is needed, but must be developed in consultation with everyday justice providers to ensure effectiveness.

Finally, improving the oversight and accountability of everyday justice providers can be pursued through formal oversight performed by the statutory legal system. This provides what is often referred to as a ‘state as regulator’ role – in which everyday justice providers are granted scope to operate but under the overarching framework of the state (Kotter 2012). In Uganda, for example, there is a system of checks and balances with the Magistrates Court charged with reviewing all resolutions where the compensation issued by the Local Council Court exceeds a certain threshold. This reportedly prevents local actors from extorting excessive financial punishments or unfair compensation claims (Harper et al 2011). In Afghanistan, efforts to formalise the role of huquq (the government directorate responsible for mediating civil disputes) in reviewing decisions made in community jirgas and shuras, are similarly attempting to ensure that decisions of these everyday justice providers comply with Islamic law, Afghan constitutional law, and international human rights standards. However, while these kinds of monitoring and oversight mechanisms may add value as corrective mechanisms, they can also create delays and increase costs, which threaten to undermine two of the most commonly reported advantages of everyday justice providers (Harper et al 2011). In cases where everyday justice providers are also indigenous people, these kinds of mechanisms may be misused in ways that reflect structural biases against them.

Improving the procedures of everyday justice providers

A potential strategy to reform everyday justice providers that avoids engaging directly on sensitive issues is to work to improve their efficiency. Everyday justice providers, like many justice actors, experience case backlogs and delays, encounter information gaps and legal quandaries. Working with everyday justice providers to assist them in delivering more efficient services can be a stepping stone to engaging on more sensitive or challenging areas.

Work in this area often includes training of everyday justice providers. Training may focus on the content of statutory laws, mediation and adjudication techniques, procedural matters – such as managing evidence, witnesses and so forth – or hone in on how to deal with specific crimes or matters. Here, warnings about the pitfalls of training as a tool for change are relevant (see for instance, Denney and Valters 2016: 27-8). For instance, more sustained, ongoing training that includes mentoring or other on-the-job support is likely to be more effective than one-off training.

Courses delivered by locally respected trainers in relevant local languages are also likely to gain greater traction. In Cordaid’s work in South Sudan, for instance, chiefs who preside over the customary courts are enlisted as trainers of other chiefs so that the information is delivered peer-to-peer, rather than from outside voices. In Afghanistan, USAID funds the ADALAT project (which means “justice” in Dari and Pashto), part of which involves targeted legal awareness workshops. To ensure messages resonate with local justice providers and the public, USAID uses trainers with a high level of social standing, who can frame the subject matter from an Afghan law and Sharia perspective. The implementers of the USAID programme further capitalise on the potential for training as a tool for more sustainable and ‘bottom-up’ change by recruiting people who excel during the legal training workshops to volunteer as community legal awareness mentors. Aside from training, advisory support can be provided to everyday justice providers (see Box 10). Here, building trusting relationships between advisors and justice providers is key. This requires the advisors to be respectful and understand the boundaries of their role in acting as a resource for the decision maker. The remit of the advisor may vary depending on the context and can include advising on the content of statutory laws, adherence to procedural or human rights standards, a gender or disability lens to proceedings involving women, members of the LGBT community, or people with disabilities.
Cordaid’s partner, the South Sudan Law Society, trains volunteer paralegals – often young people with some legal training – in the legal system of South Sudan, the content of the law and alternative dispute resolution methods. This training enables paralegals to mediate minor cases and refer cases from their communities appropriately based on which justice providers have jurisdiction. The paralegals also sit within the customary courts, adjudicated by local chiefs, to advise on the content of the law.

While the chiefs are expert in local customs and by-laws, the paralegals have become a valued resource to the chiefs in informing them about the changing content of South Sudan’s statutory laws. Chiefs were reportedly first resistant to paralegals sitting within their courts but have gradually accepted their role. Some chiefs now even delay proceedings until the paralegal is present. Rooting such mechanisms takes time, and the personalities of the individuals (chiefs and paralegals) are important factors that contribute to success or failure. Careful planning of these interventions, how resistance will be dealt with, and how it may be overcome through the selection of the ‘right’ people is required.

Reducing rights abrogating practices
One of the greatest concerns about everyday justice providers is the rights abrogating practices that they can be involved with, particularly through punishments they administer. This is especially important given that it is marginalised groups who most often experience these rights abrogating practices – such as women, people with disabilities, LGBT people and ethnic minorities. For this reason, a focus on ending rights abrogating practices is an attractive entry point and goes to the heart of the ‘leave no one behind’ agenda.

It is also, however, often deeply sensitive. Efforts must be made to ensure that local communities and justice seekers are the driving force behind reform efforts, rather than change being imposed from outside. Locally led efforts to promote change can be sensitively supported and are likely to gain greater traction (see, for instance, Box 12 on how exchanges between chiefs were used to end the use of human compensation in customary courts in South Sudan). Similarly, women’s, disabled people’s and LGBT organisations, as well as indigenous groups, can all provide a powerful empirical lens through which to document rights abrogating practices, their impact on those involved, and processes of contestation to end them. Here, the focus is on providing platforms for the best placed messengers to carry the call for change.

Community dialogues can also be used as a way to open up conversations about harmful or rights abrogating practices. These dialogues should be inclusive and participatory and involve hearing from victims of harmful practices themselves. Fruitful avenues for discussion can also involve ascertainment of customary laws or religious doctrine to highlight inconsistencies, or norms that contradict the use of harmful practices. Such dialogues have been widely used in efforts to eliminate female genital mutilation for girls under 18 years of age, leading to some customary and religious leaders to sign declarations or commitments to ban the practice (UN Women 2018).

Training programmes, workshops or technical assistance are also provided with a view to sensitising everyday justice providers to international human rights, the national legal framework and jurisdictional boundaries. However, supporting changes in the way that everyday justice providers operate is rarely a simple process of improving knowledge and understanding, or transferring technical information. At the very least, training programmes for everyday justice providers need to think creatively about strategies to engage with the underlying norms and incentives that shape behaviour and likely need to be paired with other entry points to be effective (see example in Box 11).

Legal or constitutional change is also a potential avenue to define (or redefine) rights and how these are to be integrated into the practices of everyday justice providers. On the whole, however, there is often misplaced focus on the extent to which statutory laws will change long-standing behaviour on its own. Legal change can, however, set an important standard by which to hang other entry points for reducing rights abrogating practices.
Box 11: Drafting and signing pledges to adhere to human rights standards

Other strategies to improve the human rights performance of everyday justice providers can involve training, but this usually requires additional support to deliver meaningful results. In Afghanistan, one of Cordaid’s local partners, The Liaison Office (TLO) has experimented with giving customary officials and tribal elders an opportunity to draft and sign pledges after they have completed human rights training or workshops on family law, on commitments made during discussion sessions. These pledges commit the elders to issuing rulings in accordance with human rights and the Afghan constitution, respecting jurisdictional boundaries, and preventing corruption. Pledges are not legally binding, and their practical impact remains untested. However, the elders reportedly often have the pledges framed and displayed in the mediation halls that provide the venue for jirga meetings or other forms of dispute resolution. This suggests that they hold some symbolic value at the very least and are a source of pride. However, their broader impact on everyday justice practice requires further investigation.

Box 12: Using chief exchange to end human compensation in South Sudan

In South Sudan, Cordaid supports local partners STEWARDWOMEN, the South Sudan Law Society and the Justice and Peace Commission to facilitate exchanges of chiefs to facilitate learning across communities. Chiefs from one community are transported to another community, especially when there is a case that is settled in a different way in another community. The partners bring the chiefs together so they can see how other chiefs resolve the same issue, giving them ideas for how to do things differently. The chiefs then take these ideas back to their own community and discuss how their own approaches could change. As a South Sudanese Cordaid staff member explained: ‘Each community learns from the other – every community has its weakness in different parts of justice.’

The exchange programme was used to address the issue of human compensation. In some communities in Torit County, a punishment for serious crimes, such as murder, involved a girl child being given by the perpetrator’s family to the victim’s family as compensation. This form of human compensation is illegal in South Sudan and had largely been abandoned by most communities. Its persistence in Torit led Cordaid’s partners to facilitate an exchange of chiefs from Torit to other communities where the practice had been replaced with other forms of punishment and compensation. When the chiefs realised it was only their community still practicing human compensation, they were motivated to change. Reportedly, human compensation has now ceased in Torit.

Importantly, seeing the possibility for change within their own cultural context was important, as change was not being imposed by outsiders but rather had been undertaken by their peers living and providing justice in similar contexts. This made the learning more relevant for the chiefs. Cordaid is now interested in extending its chief exchange visits outside of South Sudan to other countries so that chiefs can see how other customary actors operate.

Improving treatment of marginalised groups

Building on the above entry point to end rights abrogating practices, a final entry point discussed here relates to improving the treatment of marginalised groups. Given that everyday justice providers embody the norms and power inequalities embedded within society more broadly, marginalised groups commonly receive biased or discriminatory treatment by justice providers, or are deterred from seeking justice at all. Efforts to achieve justice for all by 2030 will need to doubly focus on ensuring that these groups are not left behind.

In order to do that, tailored interventions can focus on improving the treatment of marginalised groups in particular. Cordaid, for instance, have a strong focus on improving access to justice for women and girls across all their country programmes (see Box 13 for an example of this work in South Sudan). This focus might also include the poor, LGBT people, ethnic and religious minorities or people with disabilities.
Strategies may include:

- sensitising everyday justice providers to the rights of marginalised groups and the discrimination they face
- lobbying for laws or by-laws that protect the rights of marginalised groups
- providing feedback mechanisms for marginalised groups
- targeted support for marginalised groups through legal awareness raising and advocacy
- facilitating the inclusion of marginalised groups in the decision making processes of justice providers; for instance, in Afghanistan, Cordaid has provided training for female magistrates on inheritance and family law in an effort to improve outcomes for women
- supporting dialogue with customary or religious leaders to draw on local custom or religious doctrine to support the rights of marginalised people; for instance, in Bangladesh, The Asia Foundation has worked with Islamic scholars to develop a network of religious leaders who promote social justice for women within an Islamic framework (Asia Foundation 2012)

Strategies need to be developed in close consultation with marginalised groups themselves to understand their needs and priorities, and ensure that well-intentioned support does not have unintended negative consequences. Raising the profile of marginalised groups can expose them to greater harm.

It is also important to consider how resistance to affording equal rights to marginalised people by everyday justice providers will be dealt with. Providing technical training on the content of the law or international human rights principles is unlikely to be sufficient, because discriminatory treatment is typically connected to prevailing norms and power structures. Addressing resistance might include relying on local custom or religious texts to find support for better treatment of marginalised groups (see example above from the Asia Foundation). Or it may be about creating spaces for ideas to be shared and contested, recognising that change will take time but that enabling room for debate can itself be productive. In addition, it is important to consider who is delivering messages. Thought should be given to who might be best placed to influence everyday justice providers and working through them to deliver challenging messages.
**Box 13: Improving access to justice for women in South Sudan through dedicated Family Courts**

In 2014, Cordaid’s partner in South Sudan, STEWARDWOMEN, undertook research in the East of the country on women’s experiences of gender-based violence and access to justice. This research pointed to women’s inability to progress cases of divorce or adultery through customary courts, the courts overstepping of jurisdiction, biases against women on the part of chiefs adjudicating VAW cases and arbitrary fees charged to women by the customary courts that prevented them accessing justice.

These concerns led STEWARDWOMEN to work with chiefs in seven communities in Magwi County in order to dedicate one day per week of the customary court to women’s issues. These dedicated days were called ‘Family Courts,’ because women’s legal issues centre so much on the family. Communities have their own names for them – including ‘a court being brought home,’ because of their operation at the ‘boma’ or lowest administrative level in South Sudan to improve accessibility.

The Family Courts involved a five-day training for a nine-person panel in each community to act as adjudicators – including chiefs, elders and women leaders (six men and three women). This ensured, for the first time, that women would always be present in hearing matters involving women. STEWARDWOMEN provided the training on selected statutory laws, international commitments, alternative dispute resolution mechanisms, jurisdictional limits and civil and criminal procedures. Following the training, STEWARDWOMEN and the Family Courts signed a Memorandum of Understanding setting out obligations of each party. STEWARDWOMEN would provide a small monthly allowance for the Family Courts to function, as well as administrative supplies; while the Family Courts agreed to not charge fees to women seeking justice and to administer justice according to the law and jurisdictional limits. STEWARDWOMEN also trained community paralegals to monitor the Family Courts.

STEWARDWOMEN report improvements in access to justice for women in the seven communities. The Family Courts have encouraged more women to seek justice. They have granted divorces, which were previously thrown out of the customary courts. The Family Courts are also referring cases of sexual violence and rape to the formal system.

**7. CHOOSING NOT TO ENGAGE**

While this paper argues for the importance of working with everyday justice providers in achieving universal access to justice for all, it is important that international organisations also consider the option of not engaging. This might be for a range of reasons – limited knowledge, insufficient resources (people and knowledge, more than financial), an unwilling donor, political, conflict or human rights dynamics that make engagement problematic. In making these decisions, it is crucial that not engaging is a conscious strategy – rather than an oversight. Deciding not to engage with everyday justice providers for a range of sensible reasons is, of course, acceptable, albeit accompanied by a set of risks itself. Not engaging because of a lack of awareness or acknowledgement of everyday justice providers, is not.
5. WHAT DOES IT TAKE TO ENGAGE WITH EVERYDAY JUSTICE PROVIDERS?

This paper has made the case for why engagement with everyday justice providers is needed; how such providers can be made visible; and set out seven practical entry points for engaging with them. This penultimate section looks at what it takes to work with everyday justice providers on the part of the engaging organisation – be it an international agency or local NGO. Very often the focus is on the viability of partners, rather than considering the aptitude of our own organisations for working with those partners. Here, we attempt to capture what has been learnt in regards to effectively working with everyday justice providers, including clarity of objectives; a deep understanding of context; securing relevant expertise and partners; building in flexibility and adaptiveness; and accepting risk. While these are key features that enable more effective programming across a range of fields, they also raise particular challenges in the justice field that need to be grappled with.

Clarity of objectives
As the entry points in section four make clear, there is a wide variety of objectives that can be pursued when engaging with everyday justice providers. Indeed, there is sometimes fundamental disagreement about why justice programming is undertaken. Among other things, justice programming may aim to improve stability by providing non-violent avenues for dispute resolution and redress; strengthen economic growth by making the investment climate more attractive; put in place effective checks and accountability mechanisms for government; or protect the rights of individuals (Carothers 2006). Even in relation to the entry points set out in section four, some aim to improve the interface between statutory legal systems and everyday justice providers; others aim to put in place checks on the power of justice providers; and still others aim to improve the justice treatment that marginalised groups receive.

This diversity of objectives underlines the highly contested nature of what ‘improving justice’ means to different audiences, the normative assumptions embedded within different objectives, and perhaps most fundamentally, what justice is. This is especially important to note as the global justice community gathers in 2019 to amplify efforts to improve access to justice for all. It is important that the diversity of views as to what justice is and how it is best achieved is not suppressed by the desire for ‘arriving at a single, coherent organising purpose of … justice programming’ (Denney and Domingo 2014: 5). Rather, those working in the justice field need to critically engage with these multiple – and at times competing – objectives and be explicit about the objective that they choose to pursue.

Deep understanding of context
Whatever objectives are ultimately agreed upon, these must be selected due to their relevance to the context in question. The importance of understanding the specificity of context and how local politics shape the space for change is widely recognised across all fields of development assistance. It is, perhaps, especially relevant to justice programming, given its unique features. First, the justice field is inherently political – representing the rules of society and how power, rights and resources are accessed and regulated. Because such issues are intimately connected to wider social norms and the political settlement (as set out in section two), understanding the justice ecosystem in a given place requires deep local knowledge. Second, the justice ecosystem is complex and is constituted by a range of actors that can span the statutory legal system, customary or religious providers, paralegals and community-based dispute resolution mechanisms, and so on. Understanding these diverse systems and how they both compete and cooperate thus requires good contextual knowledge. If we accept that achieving change in everyday justice provision is fundamentally about addressing interest structures, incentives and power inequalities, then making strategic decisions about which objectives to pursue requires a deep understanding of the specificities of context.
This emphasis on understanding context has led to significant investments in political economy analyses to understand complex local dynamics and how these are likely to shape the space for change. However, such analyses are often undertaken by external consultants at the outset of programming and ‘are often disconnected from the practical dynamics of programming choices and implementation. A clear challenge, therefore, lies in giving life to [political economy analysis] ... so it can be meaningful and a living analytical tool rather than a static descriptive report’ (Denney and Domingo 2015: 6). For those wanting to work with everyday justice providers, this means finding ways to ensure that understanding and reflecting on the local political economy is built into the work of staff on an ongoing basis. This provides the best change for local realities to drive decisions about objectives and activities, rather than objectives and activities being selected and retrofitted to the context.

**Securing relevant expertise and partners**

Despite the recognition of the importance of local knowledge to navigate the context, a continued emphasis on technical expertise and donor familiarity is apparent in the recruitment for much justice assistance work. In many ways, this reflects the continued supply-driven nature of justice support – with a sense that formal legal expertise is required in order to deliver a justice programme, even if the majority of the people in the country in question do not use a legal system that involves this kind of expertise. While technical legal knowledge is not unimportant – it provides useful understanding of the intricacies of the sector and can open doors into work with peers that may otherwise be hard to prise open – it remains overemphasised. Just as important are staff with good local knowledge of the context who have the networks and understanding to navigate the complexities of the everyday justice ecosystem (see Box 14).

As noted in Denney and Domingo (2014: 8):

*If we accept that ... [justice reform] is not about exogenous large-scale social engineering and rather about facilitating and supporting locally led processes of change within a country that is itself grappling with a variety of competing incentives for how power is to be handled, then it is essentially all about the local political context. The question, then, is what technical and managerial knowledge can be injected to assist in this process as opportunities present themselves within the political landscape.*

This local knowledge needs to go beyond the national or capital city-centric level to the sub-national level, to incorporate local languages and variations in customs and culture. In Afghanistan, for instance, Cordaid staff’s familiarity with Islamic jurisprudence, is critical for engaging credibly with everyday justice providers. In South Sudan, it is knowing how local laws vary from one community to another so that programming can sensitively navigate these differences. As one South Sudan Cordaid staff member noted:

*It’s delicate ... Working with chiefs needs a lot of attention and carefulness because their laws are embedded in their cultures and when you come and you want to change things in a day, it’s really, really difficult. It involves lots of visits and a slow approach so they can get to know you and see how changes have happened elsewhere.*

This granular local level knowledge is key to being able to translate donor language that ‘would not have much impact on the chiefs’, into something locally meaningful and relevant. It also enables staff to understand the local political dynamics that drive everyday justice systems that are so crucial to effective reform efforts (Kyed 2011). And yet, it is often not well captured in recruitment processes.

In addition to local knowledge and relationships, an ability to work flexibly and adaptively is key. This is because of the rapidly changing contexts in which much justice work happens, as well as the intransigence of some of the problems being tackled, which may require testing multiple approaches to achieve change (see the following sub-section).

While it is important to have much of this expertise on staff, it is perhaps even more important to have such expertise within local partners, who are given the space to put their knowledge and networks to work. Working with everyday justice providers can sometimes be difficult due to their lack of formal legal standing or registration in the countries they operate, and unfamiliarity with donor reporting and accounting practices. This means that international organisations usually engage with these actors through a local civil society organisation partner. All of Cordaid’s work with everyday justice providers, for instance, occurs through local partners, rather than direct implementation. This means that the identification and selection of partners
5. WHAT DOES IT TAKE TO ENGAGE WITH EVERYDAY JUSTICE PROVIDERS?

Box 14: Cordaid’s approach to staff and partner expertise

Cordaid staff note the usefulness of having some staff with formal legal qualifications – primarily to interact credibly with lawyers and judges in the countries they work in. Beyond this, however, granular local knowledge is deemed far more important to their work. The emphasis in interviews with staff was on ‘people who operate well and have good local knowledge,’ those ‘who know the communities and the justice system,’ people or partners ‘with local knowledge and networks’ and those who ‘know the community and their norms ... and language’ (Cordaid country office interviews, 2019).

Caps in knowledge around issues such as donor reporting or finance were seen as being able to be addressed through training or through back stop support from the country office or headquarters. Indeed, part of the value a large headquarters is seen to bring to country programmes is the ability to ease some of the administrative and reporting burden, which can often be pushed onto country offices and programmes. By contrast, building the capacity of staff or partners to understand local culture, or build local networks is much harder and these skills therefore need to be prioritised in recruitment – especially of partners doing the frontline work.

– as well as the criteria used for selecting them – is crucial to effective programming. Moreover, it means that a programme or organisation’s own staff must have the skills to build effective partnerships. This requires a willingness to adopt a low key, behind the scenes approach that focuses on providing platforms to, and support for, local voices to lead reform movements. This is especially important in the justice field where external interventions can be viewed with a legitimate degree of suspicion by local actors.

Those supporting justice programmes thus need to secure the diversity of skillsets required for effective programming – across technical, managerial, political and contextual knowledge. In addition, they require the necessary softer skills to build and maintain effective partnerships with those organisations likely to be delivering frontline work.

Creating space for flexibility and adaptation

Improving access to justice by working with everyday justice providers is highly complex and unpredictable, in at least two fundamental and related ways. First, much of this work is concentrated in fragile and conflict-affected settings. This means there is a significant amount of contextual complexity: circumstances can change in rapid and unpredictable ways, and can easily disrupt plans and programme delivery.

Second, there is a significant degree of causal complexity, in as much as there are few well-evidenced solutions on how to achieve progress in improving access to and quality outcomes within everyday justice pathways (Valters et al 2016). Work with everyday justice providers involves tackling particularly intransigent challenges with little certainty as to what change pathways will be most successful. This is partly because these pathways are bound up in human systems that consist of many actors with a range of beliefs, incentives and power relations, interacting repeatedly with their circumstances and each other, and ultimately generating outcomes that cannot be anticipated with certainty.

The complex nature of working with everyday justice providers means there are no obvious solutions that can be identified in advance, and the work is not amenable to pre-planned programmes. There is a growing consensus (see, for example, Andrews et al. 2013; Faustino and Booth 2014; Burns and Worsley 2015; Green 2016; Andrews et al., 2017; Kirsch et al. 2017) that interventions are more likely to make a positive difference in highly complex situations if they can be flexible (i.e. able to adjust spending, alter activities or partners, usually in response to implementation challenges) and adaptive (i.e. able to learn by trial and error, testing initial approaches and adjusting strategies for change as programmes learn by doing). It is important to note that adaptation involves more than a general commitment to working without a detailed set of pre-planned activities. It requires regular, frank reflection on whether current ways of working are making progress towards the desired change and, if not, having the freedom to
change them – not merely at the activity level but at the strategic level in terms of how to achieve change. However, conventional programme tools are rarely used in ways that facilitate these ways of working. For example, logframes are a commonly used tool in international development practice. In essence, they are a way of visualising the link between inputs (staff time, resources, etc), outputs (activities and deliverables), outcomes (results), and impact (the overall transformative change that is being targeted).

In light of the complexity of work with everyday justice providers, there are two core problems with the way logframes are commonly used. First, they encourage a linear approach which assumes that pathways to change can be plotted precisely at the outset of a programme (Piotukh and Wilson 2009:4). This can disincentivise experimentation and adaptation by narrowing the space for teams to adapt their approach as circumstances on the ground change or as new information comes to light.

Second, logframes can contribute to excessive optimism about the degree to which change is possible. Logframes tend to concentrate minds on reporting on results that match pre-determined outcomes, ‘rather than to celebrate what might be less tangible but perhaps more realistic and more effective (in the long-term) change processes their actions might be contributing to’ (Denney and Domingo 2014: 11). This can render justice programming ‘misleadingly optimistic about the prospects for change’, in part because it underplays the political and normative shifts that achieving outcomes would require but over which programmes have little control (Egnell and Halden 2009: 28).

A range of programming tools have been developed to capture more complex and unpredictable change processes that are relevant to work with everyday justice providers. For example, it is increasingly common to use theories of change (TOC). TOC outline a tentative set of assumptions about how change might happen, which are then revisited and revised as programming gets underway. Of course, in practice, TOC can end up simply replacing logframes and falling into the same linear logic if they are not treated as a set of assumptions or best guesses to be reflected on, revisited and changed where necessary.

Similarly, many conventional monitoring and evaluation (M&E) frameworks pre-define a programme’s activities and focus on measuring pre-specified outcomes. This incentivises teams to deliver pre-determined outputs, rather than adjusting to changes in the context, or responding to new insights on how change might happen. Tools such as outcome mapping are increasingly used to support adaptive M&E, including by Cordaid (see Box 15). As a monitoring approach, outcome mapping involves collectively mapping the wide range of outcomes that have been seen over a specific time period, then working backwards through the intermediate steps that were thought to have led to those results, identifying whether and how the programme has made a contribution.

Outcome mapping is a way of trying to capture ‘the richness of learning-by-doing and documenting what works and what does not’ (Denney and Domingo 2014: 12). It typically involves a greater focus on qualitative stories of change rather than quantitative data. This is appropriate given that change in the complex political, economic and social processes of everyday justice provision is often hard to describe and measure through numbers alone.

Moreover, there is clear evidence that taking an overly narrow and quantitative approach to results-based performance management can create incentives to deliver programmes in ways that run counter to effective development practice (Wild et al 2017). For example, we heard reports about donors in Afghanistan funding large-scale training and capacity building sessions for tribal elders on issues such as human rights that are scored primarily in relation to the number of participants. It is therefore not unusual to have upwards of 100 people attending individual sessions. This means the likelihood of the training contributing to sustainable change is low, because the principal aim is to reach as many participants as possible, rather than to understand how the norms and beliefs that underlie rights-violating behaviour can be shifted. At the same time, numbers will always be valued for providing clear evidence and there is certainly a role for quantitative indicators, where these are appropriate and tell a meaningful story.

Too often, M&E remains focused on serving an accountability function – reporting on how activities are being delivered and contribute to planned outcomes. But the real value of M&E lies
Box 15: Cordaid’s use of theories of change and outcome mapping to learn about pathways to change

Cordaid staff work with local partners to develop theories of change by first articulating a set of outcomes they would like to achieve and which seem feasible in the context (for example, changing the attitudes of certain village chiefs towards women). Potential pathways towards that outcome are then sketched out – which might involve capacity development of CSOs who can work with the chiefs, or working directly with local communities to better understand what drives understandings around gender. Arranging these pathways and the steps involved in a visual diagram helps to make explicit how the teams think change will happen.

Partners are encouraged by Cordaid not to see these pathways as inflexible plans to which they will be held accountable, but as a provisional roadmap that will likely need to be adjusted once programming gets under way. Involving the partners in these TOC discussions is crucial both to draw on their more detailed knowledge of the context, as well as to ensure that they are on board with the approach being undertaken, and are engaged in thinking critically about it.

Outcome mapping then takes place during biannual learning sessions in each country, and in quarterly meetings with individual partners, to assess progress in each of the pathways and whether the identified pathways remain the most likely ways to achieve intended outcomes. During these sessions, partner organisations and country office staff discuss basic questions in relation to their work:

- Who/what/where/when has changed?: changes in context, changes in actors, changes in outcomes
- To what extent do these changes influence the programme, and to what extent has the programme contributed to these changes?
- Are we going in the right direction?
- Are we doing the right things to achieve the changes we want to see?
- What else needs to be happening to support the changes we wish to see?
- What are the main lessons learned for this period?
- Based on the changed context and the main lessons learned: what needs to be adapted in our theories of change to achieve the desired outcomes?
in its contribution to learning about how change can be achieved in relation to a given challenge, and enabling a programme to respond to that learning by adapting. M&E can also serve a useful function by bringing to bear the voices of local stakeholders – ideally justice seekers themselves – to encourage accountability not merely to funders, but to those that programming is ultimately intended to benefit. A learning approach to the M&E of everyday justice programming should not only help a given programme adapt and remain responsive and relevant, but also contribute to wider learning in the justice field about how change happens.

However, programming tools and monitoring frameworks will only support learning if partners, implementing teams and their donors are open to reflecting honestly upon their setbacks and challenges. In practice, adaptive programming runs into the difficulty that few development organisations are willing to admit failure, primarily due to concerns about future funding. Programming that genuinely seeks to learn about what works in engaging with everyday justice providers therefore requires a funder who is open to the unpredictable results that this may deliver. Larger programmes or organisations may try to manage this by balancing their portfolio of work across more predictable pathways of change that can be relied upon to deliver positive results, with less predictable pathways where outcomes are uncertain.

**Accepting risk**

A range of risks can be involved in working with everyday justice providers that need to be considered and managed.

First, and often most pressing in the minds of international organisations, are the reputational risks of working with actors that are implicated in committing human rights violations or upholding rights abrogating norms and practices. This might include, for instance, everyday justice providers who use girl children as compensation for crimes, solve rape cases by encouraging a survivor to marry her attacker, or impose forms of interrogation or punishment that involve torture. This risk needs to be managed on a case by case basis. There will be instances in which organisations may calculate that a particular actor is beyond reform, or that the time for reform is not yet ripe.

More broadly, organisations need to consider how their proposed support seeks to respond to or address the human rights concerns in question. The human rights shortcomings of everyday justice providers – state or otherwise – combined with the high levels of reliance on these providers, can be the very reason to engage with them. Development assistance routinely works with dysfunctional or problematic institutions or services to support their improvement and reform. The same logic is at play here. At the same time, there may be novel ways to address such problems that focus on positive outliers. For instance, within the context of rights abrogating justice providers, there may be examples of providers who do not rely on such practices. Engaging with them to understand why this is the case and how they might share their alternative ways of working with others can be a fruitful way to build on existing good practice.

Yet even if organisations themselves are willing to manage this risk, their funders may provide limited space for them to do so. Funders too may have low risk tolerance due to the same concerns. Newspaper headlines decrying irresponsibly spent aid are a genuine concern, particularly in domestic political environments that are increasingly challenging for international development.

Work to improve justice outcomes, especially for the poor and marginalised, does not lend itself to simple messaging. It is not the kind of development assistance where clear inputs result in clear outcomes. To carve out the political space for this work, donors need to engage in a more honest conversation with home publics about how change is likely to happen – in all its complexity. This involves explaining why this work is important, and how change is possible. Research suggests that domestic audiences are open to having these more complex discussions about aid (Glennie et al 2012).

If these conversations are not possible, then work with everyday justice providers may need to be done in more behind the scenes ways. This may mean donors working at arms-length (Booth 2013). It may mean that highly visible communications strategies or advertising are not appropriate for this kind of work. Within a wider portfolio of donor programming, work with everyday justice providers might not be the front page of annual reports.
A second risk relates to negative impacts on an organisation's relationships with partner governments if its support is seen to be channelled to everyday justice providers. This risk may be particularly pronounced in contexts where the everyday justice providers being supported are not recognised by the government. In such cases, organisations must make judgments about the legitimacy of their work and whether it can be conducted in ways that avoid government concerns, including through working with recognised local partners who act as intermediaries. More commonly, however, given that everyday justice providers are frequently working in some degree of collaboration with the statutory legal system, this risk might be more about whether government feels it is getting an adequate slice of the pie. Cordaid staff in some country offices note that government can be 'jealous' of support that is directed towards civil society or everyday justice providers. In this case, the risk might be managed either by engaging government in the planning of programmes so that they feel invested in the work, or balancing programming activities in such a way that keep government on side, while protecting space to work with everyday justice providers.

Third, work with everyday justice providers can expose staff, partners and community members involved in programming to high levels of personal risk. Often this work is undertaken in conflict-affected countries and on sensitive issues. Cordaid staff in Afghanistan, DRC and South Sudan all noted the very real risks to staff that this work can entail. In Afghanistan, for instance, gender focal points helping women to navigate the justice system have been threatened by the Taliban. Plans therefore need to be put in place to decide what level of risk is acceptable for the organisation given the security and support procedures it has in place. These plans then need to be discussed honestly with staff, partners and community members so that they are able to make informed choices about their own involvement. Particularly in designing activities that community members will themselves be engaged in, consideration must be given to potential unintended consequences and do no harm principles should be core to the work. This is easy to write but not always easy to implement. Ultimately, those living in the context in question will be best placed to make judgments about the level of risk involved and whether they are willing to take them on.

These risks are not insubstantial. But they can be managed. Moreover, not engaging with everyday justice providers presents its own risks that organisations need to weigh. These include that the assistance provided is likely to be less relevant to people than it could otherwise be and that even successes achieved may not touch on the justice experiences that most people have access to.
6. RECOMMENDATIONS

The ambitious goal of achieving access to justice by all for 2030 cannot be achieved without working with the range of everyday justice providers that people rely on all over the world – but especially in fragile and conflict-affected contexts – to resolve their disputes and grievances. Those providers are not without their flaws and challenges – but neither are many of the statutory legal systems that governments and the international community readily engage with.

This paper has made the case for why everyday justice actors need to be a part of SDG 16.3 efforts. It has suggested approaches for making these providers more visible through research and scoping, a range of practical entry points, and what such engagements require on the part of those looking to engage. Below a number of key recommendations are made to ensure that international support marshalled around SDG 16.3 is aligned with how the majority of the world accesses justice.

1. Ensure that discussions of justice in policy and programming do not default to a focus purely on statutory legal systems that are often most familiar to justice experts. Rather, the focus should be on the many ways in which people around the world access dispute resolution and seek redress for grievances.

2. Engagement with any part of the justice ecosystem should explore the prevailing notions of justice, and wider social norms and power inequalities that inform these, that exist in a given time and place. Particular attention should be paid to how this impacts the poor and marginalised. This is essential to achieving relevant programming that is explicit about the diversity of understandings of justice at play.

3. Those seeking to improve justice outcomes should institutionalise tools or methods at the outset of programming that seek to uncover the diversity of everyday justice providers that people use. This will ensure that programming is as relevant to justice seekers as possible, and is cognisant of how their programming may impact the wider ecosystem.

4. Development agencies and practitioners should consider a range of potential entry points for engaging with everyday justice providers (see section four of this report), with due reference to what is politically feasible in the context in question; what approaches already have local traction; and where the agency or practitioners have requisite knowledge and expertise in order to avoid negative unintended consequences or doing harm. Deciding not to engage should also be an option, but one that is strategically considered, rather than defaulted to.

5. To deliver effective programming with everyday justice providers, development agencies or organisations should: ensure they have clarity about their objectives; have a deep knowledge of the local context; secure requisite expertise and partners; encourage flexibility and adaptiveness; and manage risk (see section five of this report).

6. Programmes working with everyday justice providers should invest in learning processes or partnerships that document close-up learning about whether and how change happens, to contribute to the emerging evidence base on how to support change in this field.
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Generose Wenga – Dynamique des Femmes Juristes, DRC
Tribal elder and jirga decision-maker – Nangarhar, Afghanistan
Tribal elder – Nangarhar, Afghanistan
Employee of Huqqooq department – Nangarhar, Afghanistan
Tribal elder and religious scholar – Khost, Afghanistan
Tribal elder and religious scholar – Khost, Afghanistan


ABOUT CORDAID

Cordaid works to end poverty and exclusion. We do this in the world's most fragile and conflict-affected areas as well as in the Netherlands. We engage communities to rebuild trust and resilience and increase people's self-reliance.

Our professionals provide humanitarian assistance and create opportunities to improve security, health care and education and stimulate inclusive economic growth.

We are supported by nearly 300,000 private donors in the Netherlands and by a world-wide partner network. Cordaid is a founding member of Caritas Internationalis and CIDSE.

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