

# ACCESS TO JUSTICE IS GOOD FOR BUSINESS



## Policy Brief

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**NLADA**

National Legal Aid &  
Defender Association

[nlada.org](http://nlada.org)



## About NLADA

The National Legal Aid and Defender Association (NLADA) is the United States' oldest and largest nonprofit association devoted to excellence in the delivery of legal services to those who cannot afford counsel. For more than a century, we have pioneered access to justice at the national, state, and local levels in multiple ways: helping create many of the first public defense systems in the country and the Legal Services Corporation; developing nationally applicable standards for legal representation; and advocating for groundbreaking legislation. We serve as the collective voice for our country's civil legal aid and public defense providers and offer high-quality advocacy, training, and technical assistance. For more information about NLADA, please visit [www.nlada.org](http://www.nlada.org).

NLADA's Corporate Advisory Committee (CAC) was founded in 1992 under the leadership of former NLADA Board Member Jack Martin, Ford Motor Company vice president and general counsel. The CAC institutionalizes corporate America's dedication to the principle of equal justice under the law and explores the ways in which the corporate sector can help ensure the availability of legal representation to low-income people in the United States. For more information about the CAC, please visit <http://www.nlada.org/issues-and-initiatives/corporate-engagement>.

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# NLADA POLICY BRIEF: ACCESS TO JUSTICE IS GOOD FOR BUSINESS



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

– U.N. Sustainable Development Goals, Target 16.3

## I. Introduction

In 2019, the global access to justice community has a unique opportunity to highlight and elevate promising practices in access to justice through the United Nations' focus on Sustainable Development Goal 16 and its call for equal access to justice.<sup>1</sup> While progress on Goal 16 has been noted for governments and civil society, less focus has been placed on the role of the private sector in advancing this goal. In fact, according to the UN Global Compact's *2018 Progress Report*, only 28 percent of companies that responded to their survey on the Sustainable Development Goals (SDGs) reported that their activities target Goal 16.<sup>2</sup> From the start, however, the 2030 Agenda for Sustainable Development (2030 Agenda) was developed in a multi-stakeholder environment by governments *in partnership* with civil society, citizens, and the business community in recognition that the ambition behind the agenda required collaboration across society.<sup>3</sup> Indeed, the Task Force on Justice, a partnership of UN member states, international organizations, civil society, and the private sector working together to accelerate delivery of the 2030 Agenda's targets for peace, justice, and inclusion, has called on the private sector to "support the movement for justice for all in partnership with governments and civil society."<sup>4</sup>

This National Legal Aid and Defender Association (NLADA) policy brief endeavors to capture the ways in which the U.S. corporate community contributes to access to justice and how that work might be accelerated to help us better achieve Goal 16's mandate. NLADA has a long history of working with the business community through its Corporate Advisory Committee (CAC), founded in 1992 under the leadership of former NLADA Board Member Jack Martin, Ford Motor Company Vice President and General Counsel at the time. The CAC institutionalizes corporate America's dedication to the principle of equal justice under the law and explores the ways in which the corporate sector can help ensure the availability of legal representation to low-income people in our nation.

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## A. The Justice Gap

Unlike past global anti-poverty efforts, which primarily focused on developing countries, the 2030 Agenda applies to every country, no matter its level of development, including the United States. In fact, on the eve of the United Nations Sustainable Development Summit, President Obama issued a Presidential Memorandum formally committing the United States to implementing Goal 16 domestically.<sup>5</sup> But demonstrating the universality of the 2030 Agenda was not theoretical. It was borne out of a real (and ongoing) crisis of access to justice in the United States.

The majority of Americans with limited means face their civil justice problems without a lawyer, sometimes not even recognizing their need for legal assistance. The most recent statistics from the Legal Services Corporation (LSC) are startling. With more than 60 million Americans qualifying for federally funded civil legal aid:

86% of the civil legal problems reported by low-income Americans in the past year received inadequate or no legal help. In 2016, 71% of low-income households experienced at least one civil legal problem, including problems with domestic violence, veterans' benefits, disability access, housing conditions, and health care. Estimates are that in 2017, low-income Americans approached LSC-funded legal aid organizations for support with an estimated 1.7 million problems. They will receive only limited or no legal help for more than half of these problems because of a lack of resources.<sup>6</sup>

The reality in our criminal justice system – where a constitutional right to government-funded counsel for the poor exists – is no better. Public defender offices are underfunded and understaffed, often so severely that they cannot hope to provide their clients with effective representation, many shooting through the annual caseload ceiling recommendations set by the National Advisory Commission on Criminal Justice.<sup>7</sup>

Sadly, the global justice gap is just as shocking. According to a recent World Justice Project (WJP) report:

1.5 billion people cannot obtain justice for civil, administrative, or criminal justice problems. These are victims of crime and people with civil and administrative justice needs who may live in contexts with functioning institutions and justice systems, but who face obstacles to resolving their everyday justice issues.

4.5 billion people are excluded from the opportunities the law provides. These are people who lack legal tools – including identity documents, land or housing tenure, and formal work arrangements – that allow them to protect their assets and access economic opportunities or public services to which they have a right.

253 million people live in extreme conditions of injustice. This includes people who are stateless, victims of modern slavery, and people who live in fragile states with high levels of insecurity.<sup>8</sup>

On the whole, WJP found that 5.1 billion people around the world face one or more of these justice issues.<sup>9</sup>

NLADA is at the forefront of the fight to balance the justice system for low-income and vulnerable individuals in the United States. Founded in 1911, it is the oldest and largest national non-profit membership organization devoting all of its resources to advocating for equal access to justice for all Americans. NLADA champions effective legal assistance for people who cannot afford counsel, serves as the collective voice for civil legal aid providers, public defense offices, and the clients they serve, and provides a wide range of services and benefits to its individual and organizational members. With more than 700 civil and defender program members that collectively represent thousands of attorneys in the 50 states, the District of Columbia, American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands, NLADA has unmatched access to this community of justice leaders to leverage best practices and partnerships. NLADA has also been a key player in developing the equal justice infrastructure in the country, such as public defender and civil legal aid programs. An important partner in efforts to close the justice gap is the private bar, including private sector lawyers who work in corporations and law firms. In this vein, NLADA has employed strategies to enhance public-private partnerships out of a recognition that only through collaboration do we have a chance to create meaningful change.<sup>10</sup>

## B. The Business Community Can Help Close the Justice Gap

The domestic and global statistics that demonstrate a widening justice gap also confirm that legal aid and public defense lawyers cannot fix this crisis on their own. Leadership is needed from government, other parts of civil society, and – indeed – the business community. And that is the power of the SDG framework: a global agenda that acknowledges all sectors of society have a role in achieving progress to end extreme poverty.

In the business context, supporting access to justice is often viewed in terms of increasing resources through volunteering the time and skills of individual employees (i.e., pro bono legal work) or charitable giving (e.g., from the corporation or again its employees). And while these activities generate important and needed resources, corporate leaders' use of their influential standing in society has a potentially greater impact in achieving real change. This might occur through advocating for public policy reforms and proposed legislation or advancing internal business reforms. Part II of this policy brief describes these activities and provides examples of each.

But before we discuss the how, we have to broach the why. Why should corporations care about the justice gap and why should they work to close it?

### The Justice Gap is Expensive

A practical and rather straightforward reason for the corporate community to engage on access to justice is because the justice gap eats business profits. According to a recent Organisation for Economic Co-operation and Development report on access to justice:

Although data is limited and there is no common methodology to measure the impacts of legal (justiciable) problems, some studies show that these problems may have a negative knock-on [i.e., indirect] effect for businesses. Some of the most common negative impacts include loss of income, business disruption, the incurring of additional costs, damage to business relationships, loss of reputation and damage to employee relations. In extreme cases, legal problems were said to have led to businesses ceasing trading. Problems concerning trading and intellectual property were associated with loss of income, problems concerning tax and regulation with the incurring of additional costs, while issues concerning employment were more likely than others to impact on the capacity to work.<sup>11</sup>

Unmet legal needs not only translate into costs borne by business, but by society as a whole, including: "social costs, physical and mental health costs, lost productivity, reduced access to economic opportunities for individuals and business, and foregone education and employment opportunities."<sup>12</sup>

And in addition to these tangible costs, the justice gap tears at the rule of law, which also hurts businesses. Merck Chairman and CEO Ken Frazier, reflecting on the unrest following the fatal shooting death of Michael

Brown in Ferguson, Missouri, described this harm as follows:

There can be little doubt that the angry reaction of so many of Ferguson's citizens was a direct result of the perceived failure of the justice system to provide those citizens equal protection of justice. Although the consequences of this failure are most directly borne by black citizens, who have long suffered this unequal treatment, **the resulting damage to the credibility of the justice system is harmful to all citizens, including corporations.** Just ask the many companies in and around Ferguson that were unable to do business during this tense period about the business costs of such public unrest.<sup>13</sup>

The Task Force on Justice has similarly noted that, "The private sector in many countries has incentives to mobilize for improvements in the legal environment. Businesses are reliant on the rule of law and responsive justice institutions."<sup>14</sup>

### Corporate Citizenship Requires Action

For businesses that pursue corporate social responsibility (CSR) activities, access to justice is often a necessary component to achieving success in those activities. While access to justice could be the very essence of CSR work, it can also be viewed as an enabler of other CSR activities around issues such as labor and environmental justice. This concept of access to justice as a means of achieving other worthy goals is reflected in the 2030 Agenda and activities surrounding its implementation. Access to justice is recognized as an important goal in and of itself – as is evidence by the very fact that it is explicitly included in Goal 16 – and it is also necessary to achieving progress for the other SDGs.<sup>15</sup>

Likewise, CSR activities developed with an eye towards the UN Global Compact and its ten principles,<sup>16</sup> the *UN Guiding Principles on Business and Human Rights*,<sup>17</sup> or even a corporation's commitment to the values it espouses, provide opportunities for additional access to justice efforts by the corporate community.

**Shareholders Demand Action:** In recent years, shareholders have increasingly pushed environmental and social (E&S) topics to the center of boardroom discussions. In 2019, "[f]or a third consecutive year, E&S issues account for a majority of all shareholder proposals filed, outpacing those related to governance and compensation."<sup>18</sup> And based on recent trends, these proposals are seriously entertained by the company's management or voted

on by shareholders, thus demonstrating that they can create positive pressure on E&S issues.

**Employees Demand Action:** In addition to shareholders, employees also drive their company's CSR practices. For example, in 2016, in response to greater media coverage around racial disparities in policing, employees at Microsoft raised the racial inequities in the justice system with their leaders prompting corporate engagement around reform efforts. Former Microsoft Chief Executive Officer Jeff Raikes reported that, "[Microsoft] began working with partners in Washington State and around the country to develop tools providing transparency to sentencing; improve de-escalation training for the police; and ensure technologies like artificial intelligence and facial recognition do not further exacerbate bias."<sup>20</sup> And with today's debates around social justice issues becoming more heated, employee activism continues to rise.<sup>21</sup>

**Consumers Demand Action:** If corporations do not speak out on social justice issues on their own, consumers have begun to demand that they do so in order to continue earning their business. The 2019 Global Strategy Group's report, "Doing Business in an Activist World," found that 92 percent of respondents believed it was "important that companies take positions on issues that are in line with their values as a company."<sup>11</sup> The report emphasizes that "consumers continue to believe that companies should take action ... and that companies have the power to influence change."<sup>23</sup> This reality has meant that consumers are increasingly looking for business to lead and reflect the values they espouse.

And businesses are responding – recognizing that it makes "business sense" to do so. As the Task Force on Justice found, "Larger corporations may be interested in the justice needs of their employees and customers, recognizing the need to build trust within the marketplace and the potential for greater legal inclusion to create new business opportunities."<sup>24</sup>



It takes determination by business leaders and their employees alike to dedicate resources and efforts to shrink the justice gap. And many have already launched such efforts, working alongside public interest organizations like NLADA and its members.

## II. Moving the Needle Together

The 2030 Agenda explicitly recognizes that its implementation and success must employ a multi-stakeholder approach, including business. In fact, the 2030 Agenda includes a call to the business community to assist with implementation:

67. Private business activity, investment and innovation are major drivers of productivity, inclusive economic growth and job creation. We acknowledge the diversity of the private sector, ranging from micro-enterprises to cooperatives to multinationals. **We call upon all businesses to apply their creativity and innovation to solving sustainable development challenges.** We will foster a dynamic and well-functioning business sector, while protecting labour rights and environmental and health standards in accordance with relevant international standards and agreements and other ongoing initiatives in this regard, such as the Guiding Principles on Business and Human Rights and the labour standards of the International Labour Organization, the Convention on the Rights of the Child and key multilateral environmental agreements, for parties to those agreements.<sup>25</sup>

This call applies to the entire agenda, including Goal 16, where business can innovate and develop new solutions.<sup>26</sup>

We have many examples of the private sector in action furthering Goal 16 and access to justice through contributing resources, advancing public policy and legal reform, and implementing sound business practices.

### A. Contributing Resources to the Access to Justice Community

To date, the business community has focused much of its access to justice activities in increasing resources for the larger justice community both in the form of pro bono legal services and charitable giving. Led by their chief legal officers or general counsel offices, many businesses have responded to the call to serve the legal needs of less fortunate community members.

**Launching Pro Bono Programs:** In recent years, many corporate legal departments have launched their own pro bono programs. These activities are often supported

by expert organizations like the Pro Bono Institute's Corporate Pro Bono Program and the Association of Corporate Counsel and result in a variety of program designs. Some programs allow corporate lawyers to select opportunities from a menu of options, intended to attract a wide range of interests and skill sets, and others focus on a specific issue or category of cases to create in-house expertise. Some corporate programs have even set out recommended annual targets for all lawyers and staff. Regardless of the program's form, each endeavors to enhance and expand the services provided by access to justice organizations across the country and globally.

A key driver of success for these efforts is the ability to develop pro bono initiatives and programs in collaboration with the public interest bar. In a recent survey, NLADA asked leaders from twenty civil legal aid programs to describe their experiences working with in-house lawyers providing pro bono services. The programs reported that, "Law firms and corporations often rely on legal services organizations to make their pro bono efforts possible. Legal-aid programs extend access to clients, offer guidance on the types of pro bono work needed, and provide substantive expertise, supervision, and training to ensure effective service."<sup>27</sup>

In addition to enhancing representation for the client population that are served by individual civil legal aid and public defender offices, corporate pro bono can also provide critical legal services directly to these offices. Often they need assistance in non-profit management, such as finalizing contracts, resolving tax queries, or resolving employment disputes. And assisting non-profits with business-related issues can in some instances be easier to place with private sector lawyers than the legal issues that low-income and vulnerable individuals face. As NLADA's President & CEO Jo-Ann Wallace has stated,

Almost without exception, corporate pro bono efforts come with other resources that strengthen or add capacity to the business functions of a legal-aid program. Companies that apply their legal expertise such as in corporate or contracts law, or other nonlegal assets such as business process, marketing, or IT expertise, have successfully expanded the impact of their pro bono hours by improving the functioning and operations of legal-aid programs themselves. Examples include providing nonprofit clients with assistance in governance and management, in-kind specialized contributions in real estate matters or cybersecurity issues, as well as traditional financial support.<sup>28</sup>

These activities enhance access to justice by strengthening the programs that are established to provide direct services.

**Making Charitable Contributions:** In addition to offering pro bono legal services, corporations also provide vital financial support to public interest organizations. Such contributions can sustain non-profit legal services providers, many of which operate under constrained budgets.<sup>29</sup> They can be made to an organization's general operating funds throughout the year or during fundraising drives. They can also fund special projects or fellows to support targeted work. For example, corporations and law firms – like Raytheon together with Kirkland & Ellis – regularly sponsor Equal Justice Works fellows to carry out specialized projects with public interest organizations around issues such as responding to the legal needs of veterans.<sup>30</sup>

In some instances, a corporation may use its resources to create separate, non-profit organizations to respond to justice challenges – as Microsoft Corporation did with Angelina Jolie when they launched Kids in Need of Defense, the legal services organizations dedicated to the legal protection of unaccompanied and separated children.

In addition, many corporations or corporate leaders have directed their charitable foundations to fund access to justice activities, such as the Koch Foundation funding pretrial reform, sixth amendment activities, and bail reform or Chan Zuckerberg Initiative funding criminal justice reform, housing affordability initiatives, and immigration reform.



Regardless of the type of resources – pro bono legal services or charitable giving – by injecting additional support into the access to justice community, corporations help to serve more neighbors in need. Importantly, this support comes with an added benefit – it demonstrates to others, including policymakers, that the need is credible and worthy of attention.

## **B. Advancing Public Policy and Legal Reform on Access to Justice**

In addition to increasing capacity for access to justice organizations, corporations can also use their standing in society to speak out on issues of access to justice at the local level, national level, and even across borders. This might be translated into corporate leaders' speaking out in favor of reform efforts in the press or at public events, more direct lobbying of governments on proposed laws or regulatory action, or the filing of amicus briefs on behalf of shared interests.

**Lobbying Legislators and Administrative Authorities:** For example, since 2017, first under the leadership of John Schultz, Executive Vice President, Chief Legal and Administrative Officer, and Corporate Secretary of Hewlett Packard Enterprise and Immediate Past Chair of NLADA's CAC, "General counsel from nearly two hundred top American corporations joined together in a letter to members of Congress that favored increased funding [of the Legal Services Corporation]. They described how their companies worked to support access to justice for all with 'countless hours of pro bono representation provided by corporate legal departments and in-house attorneys.'"<sup>31</sup> And the general counsel support has only continued to grow in each successive year with support by the CAC's current chair Max Laun, Vice President and General Counsel of Arconic, and nearly 270 signatories as of the spring of 2019.<sup>32</sup> These actions are particularly important because many civil legal aid offices are restricted from directly lobbying government and cannot make the case themselves.<sup>33</sup>

Such lobbying is just as necessary at the state and local levels. For example, thanks to Amazon's broader corporate focus on alleviating homelessness, the corporation has launched a variety of service projects to tackle the problem – from building homeless shelters on its downtown campus to providing pro bono legal services to the individuals staying in those shelters. These activities gave Amazon's legal team more visibility into Washington state's eviction laws. When the state legislature began to consider reforms to these laws, Amazon's Senior Vice President, General Counsel, and Secretary David Zapolsky, reported that he "partnered with general counsel and chief legal officers from some of the state's most important employers, including Starbucks, Microsoft, Alaska Airlines, and Expedia, to successfully encourage common sense reforms of Washington's eviction code. The package of reforms, which among other factors extended the eviction notice deadline to 14 days, was signed into law in May."<sup>34</sup>

Using corporate leadership to enhance access to justice can also cross borders. Until June 2013, Brazilian bar regulations prohibited private sector pro bono practice. Ford Motor Company, working with law firm partners, corporate partners, and the Sao Paulo Bar Association, helped to reform local bar rules to permit private sector pro bono practice.<sup>35</sup>

**Filing Amicus Curiae Briefs in Courts:** In addition to using their standing in society to advocate for such change, legal departments have a more traditional tool they can

use: the filing of amicus curiae briefs in cases where they have a shared interest with the access to justice community in the outcome of a case. For example, last Supreme Court term in *Timbs v. Indiana*, the U.S. Chamber of Commerce filed amicus curiae briefs in support of the petitioner on the issue of excessive fines. The case considered whether the State of Indiana violated the U.S. Constitution's Eighth Amendment's Excessive Fines Clause when it seized a criminal defendant's car, valued at four times the maximum fine that the state could impose, after he pleaded guilty.<sup>36</sup> In stating its interest in the case, the Chamber explained that, "The Chamber and its members have a strong interest in ensuring a fair and predictable legal environment across the United States. Unfortunately, and with increasing frequency, state and local legislatures are authorizing – and executive officials are seeking – excessive fines and forfeitures for relatively modest violations of the law by businesses and individuals."<sup>37</sup>



Simply put, business leaders' use of their standing in society – especially vis-à-vis government decisionmakers – to counteract how justice is restricted can produce quicker outcomes than the public interest bar responding to these issues alone.

### C. Implementing Sound Business Practices to Further Access to Justice

While supporting access to justice efforts performed by civil legal aid and public defense providers is crucial, businesses can also advance access to justice by critically reviewing their own practices. Whether it be in establishing hiring practices, drafting employee contracts or user agreements, or assessing how their products or platforms are being used, businesses can advance access to justice for the individuals they touch.

**Establishing Fairer Hiring Practices:** In recent years, many businesses have committed to improving their hiring practices so as to not unnecessarily filter out applicants with prior criminal convictions. Recognizing that qualified candidates were not advancing beyond the initial stage of the hiring process because they had "checked the box" on the job application asking whether they had been formerly convicted of a crime, businesses have implemented policies that "ban the box" (i.e., removed that question from the initial application). Businesses have further pledged not to inquire into prior criminal convictions until the applicant had advanced beyond a certain stage. These activities have been



championed by corporations like Ben & Jerry's, which has participated in reform efforts in the state of Vermont.<sup>38</sup> It has also translated into campaigns like the *Getting Talent Back to Work* initiative led by SHRM, in partnership with Koch Industries, which recruits corporations, trade associations, and non-profits to commit to more inclusive hiring practices for persons with criminal histories.<sup>39</sup>

*Revising Employee Contracts and User Agreements:* The *UN Guiding Principles on Business and Human Rights* sets out principles for governments and business to protect, respect, and remedy human rights violations in the business context.<sup>40</sup> The principles state, "Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved."<sup>41</sup> The third pillar of these guiding principles calls on governments to provide access to remedies for victims of business-related abuses. And businesses can do the same. In fact, some corporations are reforming their own corporate policies to ensure that employees and consumers have a level playing field in pursuing their rights vis-à-vis the corporation.

One of the most notable examples of late concerns mandatory arbitration clauses in employee contracts and user agreements. While arbitration may be the preferred method to resolve disputes between parties in many instances, mandating that it be the only forum to resolve a dispute before one even arises – such as when allegations of sexual harassment or sexual assault are raised – can lead to imbalances between parties. Thus, in December 2017, when evaluating whether to support federal legislation to end forced arbitration of sexual harassment (an example of a corporation supporting legal reform on access to justice as described in the previous section), Microsoft announced, "[W]e should not have a contractual requirement for our own employees that would obligate them to arbitrate sexual harassment claims. And we should act immediately and not wait for a new law to be passed. For this reason, effective immediately, we are waiving the contractual requirement for arbitration of sexual harassment claims in our own arbitration agreements for the limited number of employees who have this requirement."<sup>42</sup>

Following Microsoft's determination and in response to lawsuits challenging forced arbitration clauses for Uber riders, in May 2018, Uber announced:

First, we will no longer require mandatory arbitration for individual claims of sexual assault or sexual harassment by Uber riders, drivers or employees. ... So moving forward, survivors will be free to choose to resolve their individual claims in the venue they prefer: in a mediation where they can choose confidentiality; in arbitration, where they can choose to maintain their privacy while pursuing their case; or in open court.... Second, survivors will now have the option to settle their claims with Uber without a confidentiality provision that prevents them from speaking about the facts of the sexual assault or sexual harassment they suffered. ... Third, we commit to publishing a safety transparency report that will include data on sexual assaults and other incidents that occur on the Uber platform.<sup>43</sup>

Lyft followed suit and announced, "We agree with [Uber's] ... changes and have removed the confidentiality requirement for sexual assault victims, as well as ended mandatory arbitration for those individuals so that they can choose which venue is best for them. This policy extends to passengers, drivers and Lyft employees."<sup>44</sup> Google, Facebook, and Airbnb then also ended forced arbitration for sexual harassment by employees. In fact, Airbnb even extended this position for employees "in cases involving discrimination, which includes racial, gender, religious and age inequity."<sup>45</sup> And the American Bar Association's House of Delegates also spoke out on these issues and adopted a resolution urging "legal employers not to require that, before a dispute arises, employees agree to mandatory arbitration of claims of unlawful discrimination, harassment or retaliation based upon race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity or expression, marital status, genetic information, or status as a victim of domestic or sexual violence."<sup>46</sup>

The ripple effect in this instance is clear and should not be viewed as an anomaly. When businesses lead on issues of justice, they have an opportunity to create similar change across an industry.

*Evaluating How Products and Services are Used:* Some businesses have also taken action to limit the ways in which their products might impede access to justice. For example, in May 2018, Google banned ads by bail bond services that targeted low-income individuals. In announcing the new policy to prohibit these ads,

Google explained its decision stating, “Studies show that for-profit bail bond providers make most of their revenue from communities of color and low-income neighborhoods when they are at their most vulnerable, including through opaque financing offers that can keep people in debt for months or years.”<sup>47</sup>



These are but a few examples of how businesses have worked to advance access to justice using different strategies. The diversity of these approaches demonstrates that for those corporations that recognize that the private sector has a role to play in helping close the justice gap, there are real opportunities to do so.

### III. Where Do We Go From Here?

A new approach is needed to advance access to justice. The national and global justice gap will not close with a business as usual approach. Instead, heeding the 2030 Agenda’s call to action, we need all sectors of society – including the private sector – to work collectively to create change.

The opportunity provided to us by the global focus on justice and Goal 16 is not self-executing. Simply because we are all determined to make meaningful advances to ensure equal access to justice does not mean it will simply happen. In fact, we need to commit to advancing justice by acknowledging what we each bring to the table and how much more we can accomplish when we stand in partnership with one other.

This new approach also requires new thinking. The reality is that there are no fully integrated access to justice systems in our nation, the result of a divided approach to criminal and civil justice. Most often efforts are fragmented and uncoordinated without unified capacity to problem-solve at a national level to overcome barriers in access to justice. Nor is there sufficient capacity to consistently promote innovation or identify, evaluate, and scale promising models.

NLADA has started to explore ways to take action with our private sector partners. For example, a few years ago, NLADA, its CAC and corporate partners like Bank of America and North Carolina Railroad, and North Carolina partners responded to a huge backlog of veterans disability claims in North Carolina – so immense

that the floor literally caved in from the weight of the files. The pilot project led to the formation of the North Carolina Veterans Pro Bono Network,<sup>48</sup> which cleared the backlog and now aims to provide representation to all of the state’s low-income and disabled veterans, servicemembers, and their families.<sup>49</sup> The success of this collaboration demonstrates that collective impact can make a difference. But more must be done to ensure that such successes are common.

First, resources must be better coordinated. Civil legal aid and public defender offices often inadvertently learn about the myriad corporate resources that can strengthen their organizations or help clients beyond traditional pro bono legal volunteering. In fact, the potential of businesses to connect their access to justice activities to their corporate social responsibility priorities – like the Amazon example where responding to homelessness has ranged from building shelters to lobbying the legislature to reform eviction law – can make dramatic results in a short time.

Second, efforts to advance public policy and legal reform must move more quickly. While the General Counsel letter in support of LSC had a tremendous impact, no entity is devoted to thinking about the many other ways in which the corporate community could come together to impact other policies that would significantly close the justice gap. And while there is great work happening in pockets across the country, including organizations and entities that are doing exactly that at a local level, there is no one place that is focused on consistently measuring how much of the gap those efforts are closing or replicating successes in a systematic, efficient manner across jurisdictions or nationally.

Third, as the marketplace and workplace demand greater alignment between business and social justice, businesses will need more access to justice experts in non-adversarial settings. Corporate legal departments need brokers who can help them find experts to explore how their business practices might be modified to enhance access to justice for employees and consumers without the threat of having those conversations lead to a negative public relations campaign or even litigation.

It is in response to these observations and Goal 16’s call to the private sector that in the coming months, NLADA and its CAC will be launching new activities that will take measurable steps towards access to justice for all.

## ENDNOTES

1. G.A. Res. 70/1, *Transforming our world: the 2030 Agenda for Sustainable Development*, at 14 (Sept. 25, 2015), available at [https://www.un.org/ga/search/view\\_doc.asp?symbol=A/RES/70/1&Lang=E](https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E).
2. UN Global Compact, *Progress Report 2018*, at 7 (2018), available at <https://www.unglobalcompact.org/library/5637>. Importantly, the UN. Global Compact has launched the *Action Platform for Peace, Justice and Strong Institutions* to develop and promote global business standards on Goal 16. Also, it should be noted that the SDG Fund published a report on *Business and SDG 16 Contributing to Peaceful, Just and Inclusive Societies* in 2017, but the report focused on other aspects of Goal 16 rather than access to justice, available at [http://www.sdgfund.org/sites/default/files/Report\\_Business\\_And\\_SDG16.pdf](http://www.sdgfund.org/sites/default/files/Report_Business_And_SDG16.pdf).
3. See UN Global Compact, *SDGs Explained for Business*, <https://www.unglobalcompact.org/sdgs/about>.
4. The Task Force on Justice, *Justice for All: The report of the Task Force on Justice* 104 (2019), available at [https://docs.wixstatic.com/ugd/6c192f\\_f1e29f70bfed4f0580d6943332e377d0.pdf](https://docs.wixstatic.com/ugd/6c192f_f1e29f70bfed4f0580d6943332e377d0.pdf). For more information about the Task Force and its activities, visit <https://www.sdg16.plus/>.
5. See Memorandum on Establishment of the White House Legal Aid Interagency Roundtable, 2015 Daily Comp. Pres. Doc. 643 (Sept. 24, 2015) (President Obama issued a Presidential Memorandum, available at <https://www.justice.gov/olp/presidential-memorandum>, formally establishing the White House Legal Aid Interagency Roundtable (LAIR) and charged it with “assist[ing] the United States with implementation of Goal 16.”).
6. Legal Services Corporation, *The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-income Americans* (2017), available at <https://www.lsc.gov/sites/default/files/images/TheJusticeGap-FullReport.pdf>.
7. The National Advisory Commission on Criminal Justice, Standard 13.12 Workload of Public Defenders states: The caseload of a public defender office should not exceed the following: felonies per attorney per year: not more than 150; misdemeanors (excluding traffic) per attorney per year: not more than 400; juvenile court cases per attorney per year: not more than 200; Mental Health Act cases per attorney per year: not more than 200; and appeals per attorney per year: not more than 25.
8. World Justice Project, *Measuring the Justice Gap* 5 (2019), available at [https://worldjusticeproject.org/sites/default/files/documents/WJP\\_Measuring%20the%20Justice%20Gap\\_final\\_20Jun2019.pdf](https://worldjusticeproject.org/sites/default/files/documents/WJP_Measuring%20the%20Justice%20Gap_final_20Jun2019.pdf).
9. *Id.*
10. See John Kania & Mark Kramer, *Collective Impact*, *Stanford Social Innovation Review*, Winter 2011, at 5 (“No single organization is responsible for any major social problem, nor can any single organization cure it.”).
11. Organisation for Economic Co-operation and Development, *Equal Access to Justice for Inclusive Growth: Putting People at the Centre* 35 (2019).
12. *Id.* at 46. For a discussion around the costs to business and the private sector associated with racial inequality, see FSG and Policy Link, *The Competitive Advantage of Racial Equity* (Oct. 2017), available at <https://www.fsg.org/publications/competitive-advantage-racial-equity#download-area>.
13. Kenneth C. Frazier, *Why Big Business Should Support Legal Aid*, 148 *Daedalus* 150, 155 (2019) (emphasis added).
14. See also *The Report of the Task Force on Justice* at 93.
15. *The Report of the Task Force on Justice* at 23.
16. The UN Global Compact was launched to encourage businesses to adopt sustainable and socially responsible business practices by aligning their strategies and operations with Ten Principles on human rights, labor, environment and anti-corruption. To read the Ten Principles of the UN Global Compact, visit <https://www.unglobalcompact.org/what-is-gc/mission/principles>.
17. A/HRC/RES/17/4, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework* (July 6, 2011). Developed by Special Representative of the Secretary-General John Ruggie, these principles implement the United Nations ‘Protect, Respect and Remedy’ framework on this issue of human rights and transnational corporations and other business enterprises.
18. Shirley Westcott, *2019 Proxy Season Preview*, *Harvard Law School Forum on Corporate Governance and Financial Regulation* (Apr. 15, 2019), <https://corpgov.law.harvard.edu/2019/04/15/2019-proxy-season-preview-2/>.
19. *Id.*
20. Jeff Raikes, *We Need Corporate America in the Fight for Justice*, *The Chronicle of Philanthropy* (Sept. 5, 2018), <https://www.philanthropy.com/article/Opinion-We-Need-Corporate/244398>.
21. Lauren Coleman, *Why is Employee Activism on the Rise?*, *Forbes* (May 30, 2019), <https://www.forbes.com/sites/laurencoulman/2019/05/30/why-is-employee-activism-on-the-rise/#22f504da74b1>.
22. Global Strategy Group, *Doing Business in an Activist World: 6th Annual Business & Politics Study* 14 (2019), available at [http://www.globalstrategygroup.com/wp-content/uploads/2019/02/GSG-2019\\_Doing-Business-in-an-Activist-World\\_Business-and-Politics.pdf](http://www.globalstrategygroup.com/wp-content/uploads/2019/02/GSG-2019_Doing-Business-in-an-Activist-World_Business-and-Politics.pdf).
23. *Id.* at 6.
24. *The Report of the Task Force on Justice* at 93.
25. *2030 Agenda for Sustainable Development* at 29 (emphasis added).
26. The private sector can also help countries fulfil Goal 16 targets related to inclusive decision-making and community engagement. *Business and SDG 16 Contributing to Peaceful, Just and Inclusive Societies*, at 7.
27. Jo-Ann Wallace, *Corporate Support for Legal Services*, 148 *Daedalus* 136, 137 (Winter 2019).
28. *Id.* at 138 (describing the Pro Bono Partnership as illustrative of this approach, <https://www.probonopartner.org/>: “The Pro Bono Partnership, an innovative corporate initiative that seeks to maximize corporate assets, was founded in 1997 by GE, IBM, Pepsi, and other corporations in Fairfield

County, Connecticut, and Westchester County, New York. The concept was to use corporate funds to hire independent staff lawyers experienced in working with the underrepresented. These attorneys would learn the critical legal issues facing nonprofit social-service agencies in those counties and find lawyers with requisite expertise inside the participating corporations to provide pro bono services to address them. The issues covered a wide range of key operating problems for nonprofits: employment and human resources, taxes, corporate law, governance, nonprofit mergers and consolidations, contracts and leases, and more. These pro bono legal services addressed prominent day-to-day problems of the agencies and saved substantial expenditures that could instead be used for the community. The Partnership met the desire of corporate lawyers who wanted to provide pro bono services but could not easily find pro bono clients from corporate headquarters. In the first year of its operation, the Partnership assisted 81 clients on 130 matters with the assistance of 186 volunteer corporate lawyers. By 2017, it assisted 800 clients on 1,772 matters. In its twenty year history, the Partnership has assisted 2,800 nonprofits on more than 13,000 legal matters with 5,000 volunteers. It has spawned partnerships in Atlanta, Georgia, and Cincinnati, Ohio. In addition, the original Partnership expanded to use lawyers from major New York-area law firms, not just corporations.") For a variation of this model that is broader than legal services, see Taproot Foundation's efforts described here: <https://taprootfoundation.org/>.

29. *Id.*

30. Their current fellow works with a medical-legal partnership with the West Los Angeles Veterans Affairs (VA) Medical Center to provide chronically homeless veterans with legal services focused on obtaining VA benefits for income and housing stability. In 2016, their fellow's work focused on representing central North Carolina veterans in their discharge upgrade applications and VA benefit appeals. In 2014, their fellow's work focused on the unmet legal needs of veterans who have Post-Traumatic Stress Disorder or other mental health conditions due to military sexual trauma. To read more about these projects, visit [https://www.equaljusticeworks.org/fellows/?s=fellow\\_sponsor=raytheon](https://www.equaljusticeworks.org/fellows/?s=fellow_sponsor=raytheon).

31. Wallace at 136; John F. Shultz et al., *Letter to All Members of Congress*, *The Wall Street Journal* (March 28, 2017), <http://online.wsj.com/public/resources/documents/CorporateCounselLSCLetter.pdf>.

32. See NLADA, *Corporate Community Support for Full Funding of the Legal Services Corporation* (Apr. 29, 2019), available at <http://www.nlada.org/node/24426>; see also the 2018 Letter available at <http://www.nlada.org/corporate-leaders-show-support-legal-services-corporation>.

33. See *Restrictions on Lobbying and Certain Other Activities*, 45 C.F.R. § 1612 (2018).

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35. Corporate Pro Bono, *In-House Pro Bono in Practice Profile: Ford Motor Company* (April 2017), available at <http://www.cpbo.org/wp-content/uploads/2017/05/Ford-Final-Profile.pdf>.

36. To view the Chamber of Commerce's documents related to this case, visit <https://www.chamberlitigation.com/cases/timbs-v-indiana>.

37. Brief for the Chamber of Commerce as Amicus Curiae, at 1, *Timbs v. Indiana*, 586 U.S. \_\_\_ (2019), [https://www.supremecourt.gov/DocketPDF/17/17-1091/63343/20180911150331743\\_17-1091%20tsac%20Chamber.pdf](https://www.supremecourt.gov/DocketPDF/17/17-1091/63343/20180911150331743_17-1091%20tsac%20Chamber.pdf).

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39. For more information about the Getting Back to Work Initiative, visit <https://www.gettingtalentbacktowork.org/>.

40. See *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework* at 13.

41. *Id.* at 13.

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48. For more information about the North Carolina Veterans Pro Bono Network, visit <http://ncvetslegal.org/about-us/>.

49. NLADA Proudly Stands with Our Veterans, <https://myemail.constantcontact.com/NLADA-proudly-stands-with-our-veterans.html?soid=1100344842266&aid=TRdnsxuB5Lo>.





# ACCESS TO JUSTICE IS GOOD FOR BUSINESS

Policy Brief

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