

Justice Dialogue

Barriers to Justice Innovation

Peace Palace, 7 December 2017



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Executive Summary

On 7 December a Justice Dialogue on *Barriers to Justice Innovation* was organised by Hiil and the Justice Leadership Group. The Justice Dialogue is a specially developed format that provides for an informal, closed-door conversation between a diversity of justice leaders. In this case, the group included leaders from the highest political levels, from countries with different levels of development, and from the public and the private sector.

This report contains the main conclusions from the dialogue, and the content can be shared publicly.

The dialogue was motivated by the following three key questions related to the topic of barriers to justice innovation:

How to know your innovation priorities?

Some needs are more acute than others. Budgets are not endless. Organisational capacity has limits. What works?

- Data is essential, especially data about the needs and experiences of users of justice systems.
- Use data on the 'justice gap' to drive innovation strategies that respond to the 'top 5 to 10 problems' – problem-driven innovation, but with systematised knowledge based on what works.
- Use innovation as a driver of a shift from response to prevention. Focus on innovation that can make prevention possible, visible, fundable, and cost effective, and that will drive and animate broader partnerships for prevention.

What roles and partnerships are needed?

Designing and implementing innovating justice solutions requires the coordination of many efforts. Which ones, and how do they work together?

- Massively increase the ambition in terms of innovations that can deliver the justice outcomes needed for SDG16. This requires the necessary vision, leadership, management and partnerships.
- Designing and implementing innovating justice solutions requires new forms of partnerships. The private sector needs to be more involved.
- The user of the justice system should always be central. People who seek legal assistance should be treated as customers, not like clients.

Where do you get funding for justice innovation?

Innovation needs funding. Scaling up needs funding. Where are the innovation funds?

- There is little investment in justice and almost zero budget for innovation.
- Promote justice innovation as a favourable government investment by presenting data on the cost-efficiency of innovations, and how innovations can boost foreign investment by reducing risk factors such as corruption.
- Develop and use more iterative working methods: Short and sharp time-limited plans, with real-time data – fix a problem and move on.

1. Barriers to justice: what's the problem?

Over the past 5 years, Hiil has surveyed people in 12 countries about their experience with seeking justice at an individual level. The findings suggest a set of systemic failures that result in severe impacts upon their well-being. Large numbers of people experience stress, violence, income loss, and damage to relationships as consequences of the often-unredressed injustices they suffered.

We found that 60% of the unfairness incidents we looked at involved 5 problems, which we call “common justice issues”: family disputes, neighbour disputes, employment disputes, crime and land disputes. Globally, that amounts to 1 billion legal problems. Many of these involve violence.

A little under 30% do not even take action to deal with these problems because they think it has no use. Around 70% do not find a satisfactory resolution. A high percentage of those who do achieve a good result find it outside the formal justice system. The non-resolution is predominantly assessed as having a ‘very severe’ or ‘severe’ impact on people’s lives, and includes health deterioration, broken relationships, and loss of livelihood.

So justice systems appear not to be delivering. There is a shocking amount of unresolved unfairness. What would we say if a health system did not cure 70% of health problems? Or if a school system largely missed 70% of the children? The innovation urgency is obvious.

In 2012, the [Trend Report on Basic Justice Care for Everyone](#) highlighted five innovation directions as most needed and most promising. These were the ones that our research and the experts we consulted thought had the potential to deliver the most justice where most needed:

- Dashboards to collect and share information about the needs and experiences of the users of the justice system.
- Immediate and available legal and practical information, offered online or via hybrid services.
- Programmes of lawyers, paralegals or facilitators integrating advocacy and mediation skills.
- Evidence-based guidelines for resolving the most difficult issues.
- Specialised (problem-solving) processes at courts and informal tribunals.
- Online platforms supporting dispute resolution.

Innovation progress in this area has been minimal. There is no absence of innovation ideas and initiatives. Yet, the number of people positively impacted by all the projects we’ve tracked are tiny, around 1.4 million people, compared to the scale of people in need.

What causes this mismatch between demand and supply? Why is basic health care now available for 90% of the world’s citizens and justice care only served to the happy few? In a potential market of 1 billion customers and an estimated size of 3 billion USD, why are innovations failing to scale up and replicate across larger sectors of the market? **What are the barriers to justice innovation?**

A Justice Dialogue has the following five components:

It focuses on justice leadership challenges

It is a conversation about what *really* matters: the strategic and the personal

It focuses on better understanding, connecting, supporting and sharing

It is result driven and leads to concrete action

It is confidential and safe: what is shared between the participants remains between the participants

2. Participants

Hon. Justice Katureebe is the Chief Justice of Uganda, a position which he has held since 2015. He has over 40 years experience in the legal profession, both in the public sector and as a private legal practitioner. *“You start with a clear idea of what you need and build and execute a plan around that.”*

Hon. Mr. Al-Majid is the Assistant Minister and Chief Innovation Officer of the Ministry of Justice of the United Arab Emirates, where he is responsible for formulating strategies and driving the Ministry of Justice in efforts to implement e-justice governance. *“Justice is not about the state, it’s about the people. It is about happiness for the people.”*

Hon. Maarten Feteris is President of the Supreme Court of The Netherlands. Before his current tenure, Hon. Feteris served as a Justice of the Supreme Court. He is specialised in tax law. *“When you are working to improve the justice system with IT, it is important to take an iterative approach that uses the expertise of the professionals in the system. Big, all-in-one projects are rarely successful.”*

Mr. Mamadou Konaté is the former Minister of Justice and Human Rights of the Republic of Mali. Mr. Konaté is a lawyer by training, and has developed recognised expertise in the fields of commercial law, company law, labor law and international arbitration law. *“The citizen must always be at the heart of what we do. When someone is declared innocent after a long case, that person’s life is still ruined. Who will be held accountable for this?”*

Dr. Willy Mutunga is the former Chief Justice of Kenya and founding member of the Justice Leadership Group. He recently served as the Commonwealth Special Envoy to the Maldives. *“I would like a national vision that says ‘this is the way we are going’.”*

Prof.dr. Michiel Scheltema is one of the founders of Hiil and a current member of its Supervisory Board. He has previously held the position of State Secretary of Justice, and is an expert on constitutional and administrative law. *“It is often difficult to get the private sector to see what the public sector is doing, and vice versa. There is not much cooperation, even though that is essential for providing better justice for citizens.”*

David Steven is a Senior Fellow and Associate Director at New York University’s Center on International Cooperation, where he supports the Pathfinders for Peaceful, Just and Inclusive Societies. *“Justice leaders are leading much more than just a sector.”*

Dr. Jin Ho Verdonschot is Senior Manager of the online legal services of DAS Legal Services. He is also a member of the Supervisory Board of the Justice Leadership Group. *“The success of legal protection insurance shows that financially sustainable access to justice innovation is possible when we think beyond traditional processes, roles and bar associations.”*

Harm Bavinck is a Dutch entrepreneur and founder of the software company Effects. He now works for Wolters Kluwer. He has been working on legal technology since 2002, and is specialised in helping startups and research projects to advance the frontiers of legal tech. *“What is the business case for investment? That is what we need to make clear!”*

Marieke Wierda is the current Rule of Law Coordinator for the Dutch Ministry of Foreign Affairs and the former Director of the International Center for Transitional Justice (ICTJ)’s Prosecutions Program. *“For us, SDG16.3 is a priority. We support the need to innovation and what you are doing to make it happen.”*

Chas Rampenthal works as a General Counsel at LegalZoom, where he leads the business’ initiative for legal, government relations and corporate development and provides oversight for the company’s portfolio of legal products. *“Data is the currency of the future of justice innovation.”*

Boniface Wamala is the Private Legal Secretary of the Chief Justice of Uganda, Justice Bart Katureebe. He holds an LLM in International Human Rights, and has worked several years as a Chief Magistrate.

Sam Muller is the founding director of Hiil. He is currently working on justice strategy and innovation, connecting knowledge about needs and what works with justice change processes that make a difference. *“We are simply not going to meet the SDG16.3 target if we rely on state capacity alone.”*

Tobijn de Graauw is the current Director of the Justice Leadership Group. She has a background in Political Philosophy and International Affairs, and has worked with different political institutions and centres in the Netherlands. *“We should stop talking and start listening deeply. To the users of justice systems. And then to each other when we work to make them more effective.”*

3. The agenda that emerged – three questions

1. **How to know your innovation priorities?** Some needs are more acute than others. Budgets are not endless. Organisational capacity has limits. What works?
2. **What roles and partnerships are needed?** Designing and implementing innovating justice solutions requires the coordination of many efforts. Which ones, and how do they work together?
3. **Where do you get funding for justice innovation?** Innovation needs funding. Scaling up needs funding. Where are the innovation funds?

4. Innovation priorities

What was shared

- Data on justice needs is crucial, but only data is not enough. It needs to be presented in a way that allows stakeholders to build an agenda and strategy around it. This means: smart dashboards and other ways to make the data actionable.
- There is need for a push for open sources and public access to data to increase dissemination of data evidence to all levels of society. Just like epidemiological data is widely shared in the health sector, data relating to SDG 16 should also be shared.
- Don't strive to boil the ocean. The collection focus should be on data that relates to the needs and experiences of the users of the justice system. Can we create a guideline for the data that is most needed?
- Both the public and the private sector are needed to collect the right data.
- In addition to data, you need evidence of what works.
- Use data on the 'justice gap' to drive innovation strategies that respond to the 'top 5-10 problems' – problem-driven innovation, but with systematised knowledge based on what works.
- Use a cascading approach: identify the problem, e.g. case backlogs, then the scope of the problem, e.g. how many cases are delayed, then the more specific type of problem, e.g. what kind of cases.
- Make justice innovation a government priority by showing all the benefits of better access to justice and dispute resolutions.
- Use innovation as a driver of a shift from response to prevention. This means, for instance: crime prevention, prevention of human rights abuses, and a shift to earlier intervention in civil disputes, leading to just outcomes before complex and expensive injustices have had chance to become entrenched.
- Focus on innovation that can make prevention possible, visible, fundable, cost effective etc. and that will drive and animate broader partnerships for prevention.
- Develop standards and benchmarks that allow tracking of rates of improvement – e.g. x% of divorces settled amicably; y% of people with legal needs have access to online legal services of acceptable level of quality, etc.

Best practices

- The UAE operates with an open-access data hub.
- The UAE is able to collect a lot of data through digital case management systems.
- Legal Zoom, DAS and similar companies also have a lot of valuable data. This is granular data that the state often does not have. Such companies can be stimulated to share it.
- In Mali, work is underway to set up an independent National Observatory. This will be an independent body, established by law, that collects data about the experiences of the customers of the justice system. It will provide an annual 'report card' on how things are going.

- The Dutch judiciary: has learned not to roll out big IT projects in one go, but to use data to test assumptions, ideas and innovations before implementing them on a large scale.
- Use data to come up with effective innovation strategies. Base what you do on what evidence has shown to work – guidance protocols:
 - Keeping prisoners in jails closer to their families increases the chances of successful reintegration into society.
 - Noting down the name/identity of detainees within the first 30 minutes reduces the risk for torture during detention.
 - Reducing violence against children, based on the 7-step [INSPIRE](#) programme.¹

What was decided

- ***Under the framework of the Task Force on Justice, an initiative of the Pathfinders for Peaceful, Just and Inclusive Societies, form two working groups that will generate evidence and recommendations for the Task Force' report:***
 - *A Justice Gap Working Group that:*
 - Develops terms of the reference for which data should be collected for SDG16.3.
 - Synthesizes and/or bring together existing data source.
 - Develops plans and strategies on how to collect the data that is needed but that is not there yet.
 - “We can’t collect all the data about all aspects of justice. Let’s develop terms of reference for the type of data that is essential and how it can best be collected. We can then focus efforts on that.” For example: data about needs, data about outcomes, data about the 5 most pressing justice problems, data about experiences of women and vulnerable groups, data about the informal justice system, etc.
 - Benchmarks for tracking improvement.
 - Evidence of what works.
 - *An Innovation Working Group that:*
 - Develops the case for innovation; both prevention and response to urgent justice needs.
 - Develops the innovation business case. Typologies of justice problems – investment need and opportunities. Typologies of countries – by investment opportunities and types of finance.
 - This could also be organised as one working group.
 - Results of this work would flow back into the Task Force decision making. Results could be brought to the next Hiil Innovating Justice Forum, to be held in the UAE in December. The working groups will meet beforehand, possibly in the UAE.

¹ http://www.who.int/violence_injury_prevention/violence/inspire/en/

- **Set up a SDG 16.3 Data Alliance** (attached as Annex 1).
 - Trust Fund of 5 million euros a year, for 5 years, with which to:
 - Collect data about the justice needs and experience in the 25–30 lowest income countries.
 - Publish relevant and actionable data via a Justice Dashboard for each country.
- **Focus:**
 - Use data on the ‘justice gap’ to drive innovation strategies that respond to the ‘top 5–10 problems’ – problem-driven innovation, but with systematised knowledge based on what works.

5. Roles and partnerships

What was shared

- There is a need to massively increase the ambition in terms of innovations that can deliver the justice outcomes needed for SDG16. This requires the necessary vision, leadership, management and partnerships.
- Designing and implementing innovating justice solutions requires partnerships. A Ministry of Justice, a Chief justice, a Chief Prosecutor cannot do it alone.
- Many roles need to be filled: vision-givers, challengers, designers, measurers, communicators, scalers, champions, funders, leaders, managers and legitimacy-givers, and more.
- Ownership is a key challenge: who is the proverbial CEO of family, employment, crime, neighbour or land justice problems? Successful implementation requires a ‘CEO’ of a justice problem. Such a ‘CEO’ is seldom one person, it is generally a group of people/institutions.
- On leadership: change leadership and incentives – not sectoral leaders (managing courts) but justice leaders (responsible for, for instance, divorce and all its consequences). Bring people from outside of law into law and send lawyers and judicial officers out into society.
- Key actors and stakeholders in the judicial system must rethink their view on partnerships, not only with regards to who to partner with, but also how to find new partners.
- Private sector is largely absent and, in fact, often not welcome. This is detrimental for SDG16.3. Make it interesting for the private sector to develop and invest, just like in the health sector.
- How can new forms of public-private partnerships (PPPs) be used in the justice sector? This requires new thinking within government and most ministries of justice. There are good examples to learn from in the health and education sectors.
- In principle, almost everything can be outsourced. What counts is meeting most pressing justice needs.
- Do not forget the most important role: the user. The user of the justice system should be central. Treat people who seek legal assistance like customers, not like clients. We need to know who they are, not act based on what we think their motivations are.

Best practices

- The models of of SDGs and the Paris Climate Agreement can be used to bring different actors together to solve a problem:
 - SDGs: widely proclaim concrete data based targets.
 - Climate Agreement: develop a '2 degrees Celsius' norm that everybody knows about.
 - In The Netherlands the ministry of justice issued a 'Divorce Challenge': a call for innovative approaches to deal with the rise of seriously conflictual divorces.
 - The UAE has a clear and ambitious national strategy for the whole country, with many innovation targets. Ideally, national innovation strategies in the justice domain should be part of an overarching, national strategy.
- In Mali: working together with political leaders from different ministries to work on ways to deal with land rights issues. Also: legal profession(al)s encouraged to work together on a legal campaign to increase awareness of rights.
- In Tunisia: an attempt at a similar approach on employment justice – bringing together the ministries of justice, labour and social affairs.
- The ministry of justice of the UAE:
 - Has the formal position of a Chief Innovation Officer. In fact, all ministries have such a position.
 - There is a lot of experience with outsourcing to third parties (around, for instance, technology), and working on justice goals in partnerships with third parties and other ministries.
 - Video conferences in family justice and divorce cases.
 - Create a system for land documents to keep track of ownership and titles.
 - An easy-to-use website where you can get almost all notarised documents.

What was decided

- Some kind of joint effort to develop generic political arguments why innovation is needed, what it can deliver and why it does not have to be risky. This can be disseminated for wider use. The data may differ per country, the core of the argument will be similar.
- Some kind of joint effort to develop models for good PPPs in the justice domain, which can be disseminated for wider use. We can outsource a lot more to private parties.
- There is need for a Chief Innovation Officer in every ministry of justice. Develop a generic job description.

6. Funding

What was shared

- In general, ministries of justice have zero budget for innovation.
- To get the political leadership on board, there must be solid data available on type of justice need and how many it affects, along with a good argument for why not solving the specific justice need is bad for the economy and social harmony.
- Most of the available investment funding is donor based. However, the available money is neither enough nor the right kind for scaling up. There is hardly any investment in justice. That needs to change; tax payers money and donors do not suffice. . A 'justice market' needs to emerge, one that makes (impact) investment worthwhile.
- Data and good evidence of what works is essential for funding.
- It is necessary to develop and use more iterative working methods: Short, sharp time-limited plans, with real-time data – fix a problem and move on.

Best practices

- DAS: set up companies in those countries where investors are easier to find and the system is more open for innovative ideas.
- Legal Zoom: Rethink budget and sustainable models, e.g. bringing together 10 different companies that are expert on different things.
- Collectively argue for a less regulated legal services market: creating space for legal innovation would save money. More and better innovations would increase people's access to justice, which would decrease governmental costs. Can this fit in the Pathfinders SDG16 process?
- UAE: secured budget for video conferencing by referring to a study which showed a breakdown of all the costs associated with a divorce settlement: the use of the car to move around, gas, parking, loss of work hours, etc. This breakdown was compared to the cost of video conferences, and the better choice was obvious.
- Increase foreign investment by reducing the risk factors such as corruption. Justice innovations could help reduce corruption, thus it is favorable for governments to invest in these innovations.
- Scout and reward business models that have a pathway to scale (they reduce costs, bring new sources of funding into play, create financing vehicles that re-align incentives – social impact bonds, etc.) and create increased opportunities to invest (money follows results).

What was decided

- Use Justice Taskforce of the Pathfinders initiative and other forms of international cooperation to showcase justice as a key element in post-conflict reconstruction, as a key element for economic prosperity and a necessary element for general country progress.

- Some kind of joint effort to develop the argument for investors to fund justice innovations. Make a complete case to a new generation of philanthropists and foundations, for example by comparing a \$14 billion in IDA replenishment with a 5% target for health expenditure to achieve UHC..
- Convince people that the 'next generation of Bill Gates' will be in the justice sector.