

EU Digital Justice Forum

Online, 12 October 2021, 14:10 - 14:30 | Sam Muller (HiiL)

Good afternoon, your excellencies, ladies and gentlemen,

It is a great honour for me to be able to address you at this important and very timely Digital Justice Forum.

I have been asked to share some thoughts with you about “the challenges and opportunities digital technologies have brought to justice systems, from the perspective of quality, efficiency, and facilitating access to justice.” But I want to start with a word. Because I think it is important that that word is visibly floating around in our virtual room before I reflect on digitalization. That word is transformation.

Transformation is not change. Change makes something better. Transformation makes a better something. Change is about modifying a practice. Transformation is about changing a system. Yes, a transformation requires change: many of them, that need to be aligned towards a clear transformational objective. But if you get stuck in change, you will not get to a better something.

Our justice systems need a transformation. To become a better something. That is the foundation from which I make my comments. The worst thing that could happen, in my view, is that we end up digitalizing the current justice systems. That would represent ‘change’, at best and would leave open a large access to justice gap, with serious consequences. Because that is what we are talking about: fairness that is out of reach for many and large numbers of frictions and conflicts that fester. Trust decreases, fragmentation increases, and the social contract withers. In his report Our Common Agenda, the UN Secretary General defines this as the challenge we face today.

And then I am not even talking about the negative economic effects. The OECD estimates that people with a legal problem lose an average of one month’s wages. It also worked out that the money people spend on solving a justice problem, the costs of dealing with health issues related to it, and the costs of missing out on work is around 1 percent of GDP. Justice systems that put people at the centre, not institutions (important as they are), address these issues. The outcome we should all be fighting for is digitalization that is part and parcel of making justice systems people centered. The data in front of us is quite clear. Justice systems are generally not.

The 2019 Task Force on Justice showed that, globally around 1.5 billion people - one eighth of the world population - have civil, administrative or crime-related problems they can’t resolve. On average, in the countries we surveyed at HiiL over the past years, we see resolution rates of around 30-40%. The 70-60% does not even try, drops out, or is still trying. Less than 5% of

people with problems use lawyers. NGO supported services serve only a small percentage of people.

Data from from the World Justice Project shows that of the 100 EU citizens:

- 60 had justice problems in the past 2 years, which, for 24 of them, caused hardship.
- 26 of them find satisfactory resolution (or are on track)
- 34 remain stuck or unsatisfied
- Only 2 obtain a court-like decision. Agreement is the most common way to resolve problems.
- 48 walk the road to resolution mostly by themselves, using the internet or booklets for information, getting some help from a single law practitioner or using the help of friends or family.
- Only 10 get full fledged lawyers help or help from a government legal aid office.

Imagine that this was schooling. Of the 100 students, 26 make the end-year exam, 34 need to do it again, and 24 of them are suffering hardship as a result. Much as we are trying, our justice systems don't really do enough in the area of prevention, they don't resolve enough, and they don't reach enough people.

Research shows that few people seek judgements that apportion blame. Most people want solutions, information, contact with the other party, and assistance procedures. Solutions in the form of agreements or understandings work best. Adversarial litigation focussing on sanctions does not provide very effective solutions. Judicial decisions are sometimes needed for protection, interventions, or stalemates. We also see that locally delivered solutions work best.

Digitalization of justice must be framed and anchored in the broader objective to transform justice systems to be more people centered: to do more on prevention, to help resolve more justice problems, for more people. If we move to tech without this broader perspective, we will be technologizing something that is not working well.

I must make clear that when I say 'justice system' I use it in a broad sense, just like the OECD does. A vibrant, multi-actor space, from courts and lawyers to mediators, online resolution of a dispute, social workers, and legal aid insurance.

That brings me to an observation. I am not sure I fully detect the deeper transformation in the "Toolbox of opportunities" described in the Communication from the Commission on Digitalization of Justice of December 2020. There are some references to "putting people first" but it is not really the point of departure. Much of the language talks about the formal justice system of courts, and similar bodies. It feels a bit like a basket full of changes. Not much more than that.

At Hiil, and with others like the Pathfinders for Justice, the OECD, the Justice Leaders, the World Justice Project, the Open Society Justice Initiative, we have worked to figure out what the elements of a justice system transformation programme to meet the needs described above would be. Framed in the context of this Forum: in which broader change programme

should digitalisation be anchored? Four integrated core components emerge: evidence based working, innovation, creating a better market place, and creating accountability.

Allow me to take you through them. As we spend money on justice, we need to know: Which justice problems should we focus on? Are people getting enough prevention and resolution for these problems? What do their journeys to justice look like? Where can they be improved? What justice treatments are working? Which justice delivery models are effective?

This is also a recommendation from the OECD. It is a good area in which to use technology. Justice systems, helped by the EU, could develop shared IT structures, protocols, best practices and applications to collect such data in all member states. They can build platforms on which to share the data and best practices.

The European institutions have some good beginnings, with the EU Justice Scoreboard, the Fundamental Rights Agency, and CEPEJ. But the data is still largely made up of data on outputs. What really matters is outcomes: are people and businesses getting enough prevention and resolution?

What also needs more work concerns the collection of best practices. Things that, based on research and the work of justice practitioners, clearly prevent and resolve specific justice problems, like those related to employment, housing, family, and crime.

A justice transformation programme, either of the EU or a specific country, could develop and operate such a data and best practice foundation. The OECD has developed good guidelines for this. If data and best practices come together effectively, judges, lawyers, social workers, therapists, prosecutors and providers of justice tech can be more effective. Digital systems and tools are a very important part of making that happen.

Based on such data, justice leaders can come together to develop ambitious outcome based and people centered justice targets, which are hung above the justice sector. Just like the heads of state and government did for sustainable development with the 17 point SDG agenda. Or as they did in Canada, with the Task Force on Access to Justice. Processes to set such overarching goals can be organised. We are now doing so in several countries.

If you have data about needs and what works, and you have used that to set ambitious outcome based goals, your justice innovation programme can shift to improving the delivery of justice. Innovation.

For this you need spaces. Literal, physical spaces. But also stimulation, incentives, capacity and skills. That gets little attention in the justice sector. In our work at Hiil we set up Justice Innovation Labs to develop investable opportunities - for government bodies, international organisations, NGO's or the private sector - sometimes even in a combination.

In other sectors we see moonshot prizes, innovation awards and 10% innovation and R&D budgets. Our people centered justice programme could help build these spaces. Not everything needs to be invented from scratch. Our research has shown us seven justice delivery models that can scale on the basis of a sustainable funding model. We call them game changers. Let me quickly run you through them.

Community justice services that help people with a simpler way to resolve problems, close to where they live, combining informal and formal justice. User-friendly contracts that make work relationships more fair and secure for people and SMEs. One stop shop tribunals for neighbor disputes, family justice and more. Problem-solving courts as a promising way to deal with the most common types of crime. Claiming platforms that help people access vital government services such as welfare or utilities. Prevention programmes that protect people from theft, fraud and violence and make them feel safer. Online information and advice that empowers people with self-help and representation.

Different forms of these game changers are emerging. More can be done to develop them. For each of these game changers, IT plays a very important role. That could be strengthened by, for example, building more interoperability so that digital tools can be plugged into wider systems, just like apps are.

The third element is a market place. No, I am not calling for the privatization of justice systems. But we have to realize that the current justice marketplace is a largely dysfunctional one, that makes the transformation and scale that is needed for people centered justice very difficult, if not impossible. Incentives are not aligned with needs. The current market place misses huge opportunities.

It is defined narrowly with essentially only two types of service providers, judges and lawyers. It is full of complex rules and regulations and there is limited public accountability for outcomes. A people centered justice programme would work to build a justice innovation enabling environment. The data shows that the potential for better justice services is huge. Court fees and expensive lawyers are less of a problem than the quality of the services.

The EU was ahead of the rest of the world in the 2000s when it promoted free movement of professional services, including legal services. Silicon Valley did not contribute to justice innovation, because in the US it was against the law to give legal advice unless you passed the bar exam. This is now changing. The EU risks staying behind.

Other bottlenecks in the justice marketplace include:

- Laws and regulations and the often complex adversarial procedures they codify.
- Regulation that makes it hard to implement innovations with attractive revenue and operational models.
- The financial arrangements in the justice sector, from budgeting processes to fees and subsidies, and the lack of investment room.
- Procurement rules which make it difficult for courts and governments to implement innovations that are developed by innovators.

National justice ministries need to become less the top-down organiser, but more the unleasher of innovation potential, the quality assurer, the facilitator and connector, and, where needed, the bearer of financial risks that the private sector cannot yet carry alone. All with that one goal: more prevention, more resolution, for more people.

The good news: examples of changing this are gradually emerging. Regulatory sandboxes, room for new kinds of partnerships, and new ways to come together as justice leaders to work on this.

If there is one thing that the EU is known for, is good at, and has leveraging power for, it is the creation of markets. I encourage the EU to use it in the justice area. Such a more functional marketplace will unleash digitalization. New ways of working that lead to more prevention and resolution of justice problems for more people, supported by new digital tools.

The last component of a justice innovation programme that needs to be in place is accountability. With that I come full circle. If you set ambitious goals in an ambitious people centered justice programme, you need to account for whether the goals are being met. Especially in the conservative justice sector. It needs to be kept sharp, awake and focussed on people, not institutions and rules. Some kind of observatory that produces annual scorecards is needed. Parliamentary debates about value for money and realising justice outcomes. Europe has some good examples I mentioned before: EU Justice Scoreboard, the Fundamental Rights Agency, and CEPEJ.

Can more be done to help EU members build such accountability mechanisms? Here too, the digital component is essential.

Your excellencies, ladies and gentlemen, I have come to a close. Transformation. That is what is needed. Digitalization of the justice sector must be part of this transformation. It could be an enabler of it, integrated into broader programmes that bring together the four elements I referred to: evidence based working, innovation, creating a better market place, and creating accountability.

I was encouraged to be provocative. So I leave you with a question. What if the EU tried to increase resolution rates with 80% by 2025, especially for lower and middle income groups and SME's? If it built a people centered justice programme around that, using all the digital power that is present?

I wish you a productive rest of the meeting. Thank you.