

Commonwealth Law Ministers Meeting

Talking Points - Sam Muller, HiiL

Your Excellencies, Ladies and Gentlemen,

I am deeply honoured to be here, together with our Programme Director for East and West Africa, Theresa Smout. We consider it a great privilege to have been given the opportunity to share what HiiL, as part of a small but growing partnership, is learning. I thank the Secretariat for the trust bestowed.

Your Excellencies, Ladies and Gentlemen,

We are, in my view, at a turning-point-moment. I am sure you know these moments. Three things then come together. A deep crisis. An acute sense for action. And a promise: a credible, hopeful, way forward with which to respond. Turning point moments are rare, and they cannot be missed. That, your Excellencies, is perhaps the core of my message to you. To use the words of the Rt. Hon. Baroness Scotland: we need justice transformation.

Allow me to start by making ourselves a little uncomfortable.

Citizens and justice practitioners are increasingly demanding that justice systems deliver more. That is because they are not. As the UN Secretary-General says in his report Our Common Agenda:

The 2030 Agenda promises to promote the rule of law and provide access to justice for all [...], but many justice systems deliver only for the few.¹

The bridge to justice is, it turns out, only very partially built. For too many people, there is no bridge. When they have a conflict about a piece of land. Tough. When their employer does not pay. Tough. When something gets stolen. Tough. And this despite the fact that the law grants them rights and processes to invoke them.

What is the data telling us? In 2019 the Task Force on Justice worked out the size of the global access to justice gap: 5.1 billion people. But we can dig deeper.

What we generally see is that between half and two-thirds of the population over 18 years old has experienced one or more justice problems in the last 4 years. Slightly less than half get a resolution. Only around 6-10% of legal problems - many of them serious and impactful - end up at courts.

¹ Our Common Agenda (October 2021), page 24.

https://www.un.org/en/content/common-agenda-report/assets/pdf/Common_Agenda_Report_English.pdf

Country	% with a problem 4 yrs	% resolution 4 yrs	% courts & lawyers useful
Bangladesh	81%	39%	8%
Fiji	47%	43%	10%
Kenya	64%	46%	17%
Nigeria	73%	61%	8%
Uganda	84%	46%	5%

When you translate these percentages into numbers the size of the challenge becomes even more visible. Around 17.5 million Kenyan people have experienced one or more legal problems in the past four years. In Bangladesh 31 million people a year face a legal problem. Almost 13 million legal problems occur each year in Uganda and in Nigeria it is around 25 million problems.

Let me stress: I am referring to these countries because we have data on them. Not because they are a special problem. We know from many other surveys that these figures are more or less the norm. Half to two-thirds of the over 18 years olds have had a justice problem in the past 4 years. Only one third to half get a resolution. Between 5 to 10% get them through courts.

That data also clearly shows that, on the whole, users of the justice system are not that happy with it. It is seen as slow, complex, expensive, inaccessible, and in many countries trust levels are not all that high.

Your Excellencies, Ladies and Gentlemen,

Why does this matter that demand and supply don't match and satisfaction levels are low?

Because the consequences of this are significant. In his Our Common Agenda report the UN Secretary-General concludes:

There has been an overall breakdown in trust in major institutions worldwide due to both their real and perceived failures to deliver, be fair, transparent and inclusive, provide reliable information and make a difference in people's lives.

He includes justice systems in this. Justice Needs Surveys show that the consequences of having a legal problem are grave. More than 50% report extreme stress and mental health issues. Slightly less than half report losing a lot of time. Almost 30% report loss of income and serious damage to relationships. Consistent data shows that the vulnerable and poor are far more adversely affected than others.

The OECD has estimated that the annual costs of legal problems range from 0.5% to 3% of GDP.

More positively: a think tank in the Netherlands worked out for the Ministry of Justice that achieving 80% resolution rates for three of the most prevalent justice problems - separation, employment and access to public services - would lead to a 0.15% contribution to GDP through lower transaction costs, higher productivity, and a better business climate. Additional benefits,

not taken into account in this model, are societal: higher quality of life and saved costs, for example on health.

Your Excellencies, Ladies and Gentlemen,

The data shows two different worlds. On the one hand, a population and justice practitioners struggling with justice needs and the need for a wider view that goes from 'cases' to 'prevention and resolution'. To outcomes.

On the other, ministries of justice and judiciaries struggling with procedures, funding, and caseloads, caught in a more narrow definition of service delivery.

On the one hand, justice systems seen as a cost that must be controlled. On the other, justice systems seen as providing a benefit to economies and society.

I spoke of a turning point moment we are in, with the three elements: crisis, action, and promise. We have talked enough about the crisis. What about action and promise?

With the Colombo Declaration on Equal Access to Justice you have expressed a clear need for action. The Declaration commits to a broad understanding of access to justice, focussing on outcomes. It expresses the need to collect more data about justice needs. It advocates people-friendly approaches. And it stresses the importance of providing collective leadership.

This call for action has been reinforced by the Justice Action Coalition at its most recent ministerial meeting in May. The Coalition is a network of 17 countries (including, from the Commonwealth, Canada, Solomon Islands, and Sierra Leone) and 10 partners (including HiiL, the OECD, IDLO, the World Bank, WJP, OGP, UNDP, and UN Women) all championing justice for all and working to close the global justice gap. In May it launched the 2023 Justice Appeal. With it, the Coalition members challenged themselves and others to come to the 2023 SDG Summit with concrete examples of the pivot towards people centred justice. It challenges justice practitioners to stop waiting and start making the move. It calls on international organisations, regional bodies, donors and philanthropists to support this. It calls on you.

The need for this change was highlighted again at the Global Access to Justice Round Table organised by the OECD in Latvia, in September this year.²

Your Excellencies, Ladies and Gentlemen,

The ship is turning. There is action. I now come to the promise: people-centred justice programming.

People centred justice programming puts people, their needs and experiences at the centre. Not the institutions. Much like the health sector started building health around people instead of asking people to come to hospitals. It is not an approach against institutions. To the contrary. It considers them crucial.

² See OECD Riga Global Access to Justice Roundtable 2022, 21-23 September 2022 - Riga, Latvia, <https://www.oecd.org/governance/global-roundtables-access-to-justice/>

People centred justice programming is directed at both system change and concrete results. Improving for the future and improving for now.

It is based on five integrated foundations. Elements of this approach are already being put into practice in some countries. By putting together programmes, policies, strategies, and budgets that bring these five elements together effectively, change will happen. Allow me to set them out for you, after which I will conclude.

Data is the crucial starting point. We sometimes call it justice epidemiology. Just like in the health sector, it is important to know what the most prevalent and serious justice problems are, who has them, what their journey to justice looks like, the rate at which problems are prevented or resolved and outcomes achieved, and the impact all this has on people, communities and the economy. Such data allows governments to more effectively prioritise efforts and resources. As I said: it is starting to happen. Uganda has conducted two nation wide surveys in the past 5 years and is gearing up for a third. Kenya is getting ready for a second one. Canada has an impressive track record of collecting such data. But much more is needed. The Colombo Declaration lays the foundation. Capacity to do such surveys and to connect them to policy-making must be developed.

Secondly, and connected with the data, a shift to more evidence based working has to be made. Just like in the health- and education sectors - best practices need to be collected and shared. What works best to resolve land problems? What works best to reduce violence? What works best to resolve employment disputes? Such practices can be found - both at the national and international level. They can relate to both formal and informal modes of prevention or resolution. Prevention and resolution rates will improve if the treatments found to be most effective become known and are shared. Here too, capacity needs to be built.

The third element is innovation. This is about finding ways to get the interventions that work best to as many people as possible, when they need it, based on sustainable funding models. We saw in the data shared earlier that there is a need for delivery models beyond courts and law firms. A list of such models that have the potential to deliver this on the basis of sustainable funding models is emerging. We call them game changers. Examples include various forms of community justice centres, user friendly contracts, one-stop-shop tribunals, and online information and advice.³ We are working with justice entrepreneurs in some of your countries to develop these. Capacity and space to develop such game changers is badly needed. With tools like Innovation Labs and Innovation Challenges. Through partnerships with experts, universities, funders, and with law firms and other businesses.

That brings me to the fourth component: an enabling environment. We have learned that without this, change will be limited, not attract enough funding, and will certainly not scale. In such an enabling environment there is what Chief Justice Koome of Kenya calls “shared leadership”. Increasing prevention and resolution cannot only be done by one justice institution. In fact, it also takes actors outside the justice sector: national planning and statistics agencies, ministries of finance, ministries of local government, relevant NGOs, and the private sector. Such an enabling environment sets outcome based targets in all its strategies and budgets and

³ For the list of gamechangers and more background, see <https://dashboard.hiil.org/the-gamechangers>

manages towards these outcomes. The funding in such an enabling environment comes from governments but also from non-state actors: philanthropy and business. And lastly, and this is more challenging, such an enabling environment opens up the justice sector to other service providers besides courts and lawyers, while assuring quality and access for all. Promising examples of how to regulate this are emerging, for example, regulatory sandboxes.

The final element of people centred justice programming is what we are doing here. Building a movement to sustain the change.

Your Excellencies, Ladies and Gentlemen,

You may be a little worried by now. At this time of serious economic challenges: how can this be funded? The good news: people centred justice programming does not require new funding. It only asks that current funding is used better.

Because it is more data-driven and evidence based, this way of working can be planned, budgeted, and measured in a much better way than current approaches. The degree to which outcomes are being achieved can be monitored closely. Pivots can be made when needed, making this way of working much more adaptable and agile.

This is hopefully reassuring. You will, however, also have realised that working in this way will require some changes in the way the justice sector is funded. Government funding should continue to be ensured, but linked more to outcomes. How to do that? A discussion about asking users to pay may be needed, guaranteeing that there is access for all and high quality. Finally, we can ask how investing in the justice system can be made more interesting for social impact investors and other investors.

Your Excellencies, Ladies and Gentlemen,

Last week I spoke on rule of law and access to justice at the World Bank and the European Commission. There too, I detected this 'turning point' feeling. That is being done has not been terribly successful. That delivery is lacking. That a new approach is needed. That the elements of it are before us. That we now need to work out a way to *do* it.

Your Excellencies, Ladies and Gentlemen,

The Commonwealth of Nations is uniquely placed to lead. It is founded on strong values. It includes many nations, the Global North and the Global South. The Colombo Declaration and its Plan of Action are a strong foundation. By embracing the data driven, evidence based, innovation-focussed, and participatory approach of people centred justice programming you can significantly contribute to increasing the chance that we can make a hard push in the remaining seven years of the 2030 Agenda to achieving SDG16 and the target access to justice for all.

Thank you for your kind attention.

More information

- Delivering Justice, Rigorously: a guide to people-centred justice programming (Hiil, 2022):
https://www.hiil.org/wp-content/uploads/2021/02/HiiL-trend-report-Delivering-Justice-Rigorously_web.pdf
- Policy Brief on people-centred justice programming (Hiil, 2021).
https://www.hiil.org/wp-content/uploads/2021/02/HiiL-trend-report-Delivering-Justice-Rigorously_web.pdf
- Charging for Justice, (Hiil, 2020):
<https://www.hiil.org/wp-content/uploads/2020/04/HiiL-report-Charging-for-Justice-3.pdf>
- Hiil Justice Dashboard, with data from more than 25 countries:
<https://dashboard.hiil.org/>
- Outcome document of the ministerial meeting of the Justice Action Coalition of 30 June 2022, launching the 2023 Justice Appeal:
https://www.justice.sdg16.plus/files/ugd/6c192f_4dd74865956d4aa0863240c54f333baf.pdf
- The Benefits of Access to Justice for Economies, Societies, and the Social Contract: A Literature Review (OGP and Pathfinders, 2022):
<https://www.opengovpartnership.org/wp-content/uploads/2022/05/The-Benefits-of-Access-to-Justice-for-Economies-Societies-and-the-Social-Contract-A-Literature-Review.pdf>
- Report of the Task Force on Justice (Pathfinders, 2019), launching people centred justice.
<https://www.justice.sdg16.plus/report>
- OECD Framework and Good Practice Principles for People-Centred Justice (OECD, 2021):
<https://www.oecd.org/publications/oecd-framework-and-good-practice-principles-for-people-centred-justice-cdc3bde7-en.htm>
- On regulatory change: David Freeman Engstrom, Lucy Ricca, Graham Ambrose, and Maddie Walsh, Legal Innovation After Reform: Evidence from regulatory change, Stanford Law School (September 2022):
<https://law.stanford.edu/publications/legal-innovation-after-reform-evidence-from-regulatory-change/>