

**TOWARDS PEOPLE-CENTRED JUSTICE PATHWAYS:
MAKING POLICY CHANGE HAPPEN**

Plenary session

27 March 2019

14.30 – 16.00

Reorienting the model of delivering justice for all in order to enable people-centred justice pathways calls for an efficient, effective and integrated system of legal and justice policies and services. This session will explore the institutional, policy and regulatory conditions necessary to make the change happen.

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Speakers:

- **Hazel Genn**, Professor of Socio-Legal Studies, UCL - remote
- **Laurie Wright**, Senior Assistant Deputy Minister, Canada
- **Diana Urbano**, Director for Justice, Defense and Governance, Department of National Planning, Colombia
- **Segolène Pasquier**, Deputy Chief, Access to Law Office, Ministry of Justice, France
- **Marta Santos Pais**, Special Representative of the Secretary-General on Violence against Children, UN
- **Sara Vassalo Amorim**, Policy Officer, Justice Policies and Rule of Law, Directorate-General for Justice and Consumers, European Commission

This session will address the following questions:

- What do people-centred justice pathways mean and how could they look like? What would constitute good and innovative country examples?
- How can we enable people-centred justice pathways (e.g., through policy changes, greater coordination, better measurement and understanding of people's legal needs and stronger accountability for results)?
- How can we overcome the remaining political and institutional barriers to deliver multidimensional inclusive justice outcomes?
- What are the interesting examples of institutional, policy and regulatory frameworks which enable putting people in the centre of justice and legal policies and services? What lessons can be learned from other sectors?
- How can we increase citizen, civil society and business participation to enable better, more people-centred and inclusive delivery of legal and public services?

1. ENVISAGING PEOPLE-CENTRED JUSTICE PATHWAYS

Making progress towards the SDG target 16.3 requires countries to move towards ensuring that all people and communities have access to legal and justice services that are high quality, appropriate, targeted, timely and cost-effective. Historically, many justice pathways have been designed from a provider perspective. Codes and procedures regulating litigation, for example, are still often written from the court's perspective. As a result, court practice and the provision of information to potential litigants is presented from the provider's perspective. *People-centred pathways* imply 1) understanding people's needs and 2) developing and implementing policies and services that meet those needs and remove barriers to access as part of a holistic vision for *people-centred justice ecosystem*. Such an ecosystem could include a wide range of services both for legal support and dispute resolution that are coordinated, holistic and coherent and revolve around and tailored to the needs of the person, while scaled appropriately to provide the most value for taxpayers resources.

People-centred justice may also mean rethinking the institutions, rules and cultures of dispute resolution starting from a perspective of a person/another actor (actual or potential user). Questions to be asked can include: What are the considerations of a user looking to solve a dispute using one of the various mechanisms of dispute resolution? Where would such a user look for information? What might stop the person from actually starting a procedure of dispute resolution? What guides the user's decision making while in the process of dispute resolution?

What is important is to find a way to go beyond actual users of justice services and not overlook the hidden world of many societal groups not participating in justice at all. Globally, according to the estimates by the World Justice Project, more than 5 billion people lack access to justice. It seems that certain groups, both citizens and businesses, do not even consider using courts or alternative dispute resolution to solve their disputes.

While little is known about why certain groups are not finding their way to the institutions of justice, the cumulative knowledge from legal needs surveys suggest that these groups face a *range of barriers*, such as cost, complexity, time, as well as group specific barriers, which may lead to discrimination and stigma. Barriers may also include unequal geographical and linguistic access to legal and justice services, insufficiency of justice workers and weak coordination. Justice also often remains too fragmented or of insufficient quality. Continuity of options for preventing,

anticipating, identifying and resolving legal problems and disputes is still underdeveloped in many jurisdictions, often owing to weak referral and triage systems. The focus on court- and litigation-based and self-contained “silo” models can further undermine the ability of justice systems to meet diverse dispute resolution needs of people and companies in a universal, equitable, high-quality and financially sustainable way.

2. ENABLING PEOPLE-CENTRED PATHWAYS

Experience from a wide range of sectors shows that achieving people-centricity requires interdependent strategies for justice and legal services to become more integrated, inclusive and focused on the needs of people. This will require efforts to put needs of people at the centre of justice services.

Sound evidence

Designing people-centred pathways involves gathering primary data on people’s needs, interests and challenges, considering how they think and act and involving them in projects.ⁱ It will also require effective and systematic data collection processes, not only in courts, but also other channels for resolving disputes, both on the types, costs, disposition time and complexity of cases, to facilitate effective triage and case management.ⁱⁱ One of the best way to understand the experiences, expectations and barriers facing these groups is through the legal needs surveys (Box 1), as they do not appear in questionnaires directed at those who have experienced certain dispute resolution mechanisms. Other evidence can include administrative data (including from both justice and other sectors), and user satisfaction surveys, including mapping of use experiences.

Box 1. OECD-OSJI Legal Needs Surveys Guidance

The guide on ‘Legal Needs Surveys and Access to Justice’ seeks to assist planners, statisticians, policymakers and advocates to develop, administer and use legal needs surveys in more effective ways. Such surveys are designed differently in different jurisdictions, but there are common methodological elements which can be articulated and refined. At their core, legal needs surveys address shared research questions concerning peoples’ experience of justiciable problems, the support they obtain, the processes that are involved in resolving problems, and problem outcomes. The Guide answers common questions in developing, deploying and using legal needs surveys:

- What are the essential elements of legal needs survey methodologies?
- How should justiciable problems be defined, and what problems should surveys include?
- What period of time should surveys cover?
- How can we capture the types of legal and social support that people do (or do not) seek and receive?
- How can the processes and institutions involved in resolving problems be best identified?
- What forms of outcome and impact associated with legal issues should be measured?
- Are there common elements that can be used in surveys across jurisdictions and in different contexts?
- How can surveys contribute to create indicators to measure progress on access to justice?

Source: OECD and Open Society Justice Initiative (2018), Legal Needs Surveys and Access to Justice, 18p.

Another example is research commissioned by the German Ministry of Justice on the reality of consumer conciliation.ⁱⁱⁱ The research methodology uses questionnaires exploring how consumers and traders perceive the conciliation. This user-centric perspective may lead to results that differ significantly from objective, provider-oriented research. Take the example of the duration of the conflict and its solution. From the provider's perspective, the conflict starts with the first application and it ends with the final decision. From the user's perspective, the conflict often developed many months, if not years, before the formal application. It may also continue beyond the last decision of the provider. The solution needs to be implemented and this may take time and give rise to further complications for the users.

Leadership, governance and accountability

The achievement of the SDG aspirations to leave no one behind will also require the development of a *compelling vision* which would enable all people to have equal access to and co-produce quality legal and justice services in a way that meets their life course needs, are coordinated across the continuum of dispute resolution channels, and are comprehensive, safe, effective, timely, efficient and acceptable". This vision and accompanying strategy for providing justice to all should involve all justice stakeholders and levels of government, be based on sound consultation process and extend beyond electoral cycles (Box 1). It should also be enabled by *leadership from and clear roles and mandates* of judiciaries, justice ministries, centres of government (which often have a whole of government overview of all sectors and are responsible for coordinating SDG agendas across the country), other institutions (ADRs, communities etc.).

At the heart of dispute resolution are the people who are party to and affected by the dispute. Most often and with appropriate legal capability, these individuals know their legal problems, needs and interests best. Hence, they should be the starting point and focus of designing dispute resolution mechanisms. Against this background, there could scope for regulation of dispute resolution processes, based on clear principles. This approach could provide more and better choices for individuals and better outcomes for society as a whole. Diversity in the regulation and practice and regulation of dispute resolution mechanisms should not necessarily mean that an effective regulation of dispute resolution, based on sound and clear principles, cannot be achieved. Good dispute resolution systems could also allow for transfer from one mechanism to another and make clear what the rules and effects of such transfer are.

Designing people centred justice ecosystem

The challenge is to provide the responsive legal and justice service care that matches the needs of their people, in response to the available evidence. Over the past years, the OECD has developed a set of criteria for designing and delivering people-centred and accessible justice services, which can provide the guiding principles for developing a framework for identifying policy and institutional responses needed to ensure people-centred and inclusive justice ecosystems (Annex 1).

Designing people-centred pathways also requires understanding the constraints of the users in terms of information, decision-making and resources. When experts design access to justice and institutions of justice the outcome may work well for experts with perfect information, flawless decision-making and endless resources. However, behavioural research has provided us with many examples showing the limits of parties as regards information acquisition and decision-making. User-centred justice pathways anticipate these limitations and incorporate them into their institutional design. The challenge is to identify the right mechanism for the many constraints

users experience in the reality of their disputes. User-centric justice would usually aim to empower the users rather than to mandate their decisions. However, when users continuously act against their own interests and softer approaches do not work, the question may arise whether a heavier regulatory hand is needed.

There is also a strong potential to integrate new dispute resolution mechanisms into the existing fabric of access to justice, especially for vulnerable groups. Today, mediation is often an essential element of dispute resolution as are conciliation and ombud schemes. The introduction of new mechanisms, however, saw a different up-take in practice. Sometimes the number of mediations taking place was disappointing. In other jurisdictions, the numbers of applications to ombud schemes outperformed expectations. As a result, many governments are trying to understand the factors of access to different types of dispute resolution and what drives the users' choice in practice.

Partnerships, coordination and delivery of services

Partnerships and coordination across the full set of legal and dispute resolution services in order to provide a seamless experience around individual's needs. Coordination of legal assistance and dispute resolution options may require a series of different strategies that can help provide better continuity of dispute resolution, particularly when certain types of disputes will need to transfer between different resolution channels. The focus could be on the continuity of support to the individual, with services, advice and information coordinated around their needs. This would require

- *Closing the administrative, informational and funding gaps*, involvement of regulators, legal profession, IT teams exploring the potential of big data and improving provider networks to prevent, anticipate, identify and address legal needs.
- Greater *integration and close cooperation* (e.g., through improved interoperability of data systems, information exchange and harmonisation of processes and platforms) among different providers of legal aid, advice and dispute resolution services, strengthening of referral systems and networks and the creation of links with other sectors (e.g., health, social, employment). It could encompass community level action and engagement of the private sector. One-stop show approaches to dispute resolution could reduce complexity and facilitate finding a solution more timely.
- *Stronger coordinating across sectors*, such sectors as health, social services, education, employment, migration, housing, the private sector and law enforcement, among others. This should include coordination of intersectoral action, including for anticipation, prevention, early detection and rapid response to legal problems.
- *Reorganising courts and other dispute resolution channels*, along with legal aid and legal assistance to put the needs of users first. This may require unpacking, examining, and possibly redefining the existing dispute resolution processes and legal support in order to fit the type, nature and complexity of dispute and capabilities of parties.
- Providing *clear and transparent information about the types of dispute resolution options* and when they are appropriate, their cost, duration and likelihood of winning. This could be done through a single portal, which could help triage cases and guide litigants to the most appropriate options for resolving their disputes. Creating a system of appropriate referrals from multiple (legal and other) organisations could facilitate the introduction of a principle of “no wrong door”.
- Ensuring *effective enforcement* procedures to ensure sound outcomes of dispute resolution processes.

- Strengthening the *mindset of continuous learning and innovation* across courts and other dispute resolution channels for improve customer experiences and identify cost efficiencies

Empowering users and communities

Activating self-interest among people in solving their disputes can also facilitate more timely resolution of problems. At times, regulation and state action has led users to forget their own interest in dispute resolution and perceive it as an obligation imposed by the state. Consumer dispute resolution is a good example. The emergence of consumer protection and the associated consumer/trader dispute resolution has led many traders to perceive the solution of conflicts with consumers as a burden. Associated information duties and specific consumer dispute resolution are seen as a cost imposed by governments. This perception has stopped businesses investigating their own genuine interest in efficient dispute resolution. Many businesses, for example, do not seem to be aware of all effects conflicts have on their costs, profits, consumer retention etc. For governments the question arises, how citizens and businesses can discover their own interest in resolving disputes.

Achieving this vision will require overcoming obstacles related to sources of funding, independent and often stove-piped mandates of different agencies and levels of government, which are resistant to change. It will also require providing full market information to litigants about the available to them options, and associated cost, time and effort implications, as well as the likelihood of success. This often involves certain resistance from various professionals inside the system, including the legal profession.

3. LEARNING FROM OTHER SECTORS

Can we learn from other sectors how to create people-centred justice pathways and how to make policy chance happen? A promising source of knowledge is consumer protection. Consumer protection is based on the insight that consumers suffer from lack of information and suboptimal decision-making. Consumer protection attempts to reverse such information and decision deficits. People-centred justice pathways may also need to respect informational and decisional challenges of those dealing with conflict. Hence, consumer protection theory and law can offer a wealth of inspiration to implement policy chance as regards access to justice. Empirical research on consumer decision making has revealed insights on how consumers access and digest information and how much information consumers can manage. Such insights can help improve the way the institutions of justice convey information.

Another valuable source is the creating of people-centred health services. The World Health Organization have developed guidance to make reality the vision in which ‘all people have equal access to quality health services that are co-produced in a way that meets their life course needs, are coordinated across the continuum of care, and are comprehensive, safe, effective, timely, efficient and acceptable; and all carers are motivated, skilled and operate in a supportive environment.’^{iv} The World Health Organisation suggests the following five interdependent strategies:^v

1. Empowering and engaging people and communities;
2. Strengthening governance and accountability;
3. Reorienting the model of care;
4. Coordinating services within and across sectors; and
5. Creating an enabling environment.

Box 2. A Code of Good Conflict Management for Businesses

There is ample evidence that businesses do not manage conflicts according to their interests. Empirical research shows that businesses prefer those dispute resolution mechanisms, which provide them with more control.^{vi} Accordingly, negotiation ranks highest, followed by mediation, conciliation, arbitration and litigation. In practice, however, negotiation prevails, followed by litigation, arbitration, conciliation and mediation. Hence, businesses only act according to their interests when choosing negotiation. Otherwise, their actions do not reflect their preferences. It seems, then, that there is also a justice gap affecting those who are often considered to be rational and strong players. If this is true, then businesses do not reach their potential in conflict management. This affects their performance, their contribution to the general welfare of society and their partners in conflict, both businesses and consumers.

How can this justice gap affecting businesses be closed? What could new and innovative approaches look like? One possible way forward could be to stimulate businesses' self-interest in good dispute resolution. If businesses were more aware of the impact of disputes on their profitability, they might engage in better practices.

An example of a recent initiative of a Code of Good Conflict Management for Businesses could offer relevant insights.^{vii} The Code could contain the best practice of internal and external conflict management. The principles could cover organisational practices, such as information, incentives, costing and decision making as regards conflict management. Further principles could propose best practices as regards conflict prevention, contract design, choice of dispute resolution mechanisms and measures to be taken while and after conflicts are solved. Addressees of such a Code could be either all businesses or specific types of businesses. The Code would not be binding or carry any force of law. Instead, the visibility and leadership of the Commission and the Code would ensure that businesses would look to the Code and start comparing their practice with the recommendations made. Where the practice of a business deviates from the Code, shareholders might ask management to explain why this is the case. After all, the Code would contain suggestions on how conflict management can best contribute to a firm's success. Hence, shareholders might want to know why their firm does not follow best practice. Similarly, advisers might pledge to follow the Code with a view to providing state-of-the-art advice. Such a Code could be built on the successful introduction of Corporate Governance Codes promoting good corporate practice.^{viii}

Such Codes could be developed by commissions, supported by governments, while consisting mainly of representatives of the business world, academia and further stakeholder groups, for example a representative of a consumer association and a union.

Annex 1. Criteria for people-centred legal and justice services: Good practices

Evidence-based planning. People-centred legal and justice services are based on and respond to an empirical understanding of legal needs and legal capabilities of those who require or seek assistance.

Good practice example: legal needs assessments, mapping of legal and justice services relative to need, individual capabilities assessment by service providers, screening tools.

Accessibility. People-centred legal and justice services are accessible and designed to actively overcome the range of barriers to the assistance they require.

Good practice example: sensitive use of information and communications technology (ICT), programmes to overcome accessibility barriers faced by at-risk groups, simplification of legal language and procedures, reform of the substantive law to facilitate legal clarity, civic engagement and co-design of services.

Availability. People-centred legal and justice services are available across the justice chain and provided in a range of formats, programme and services types.

Good practice example: range of services provided along the continuum of legal assistance services and the spectrum of justice services, strategies deployment of these services.

Prevention, proactivity and timeliness. People-centred legal and justice services are proactive and contribute to the prevention of legal problems and a timely resolution. Recurring legal problems are addressed on a systemic basis to address underlying causes thereby preventing reoccurrences.

Good practice example: proactive outreach, hospital-based legal advice programmes (medical-legal partnerships), improving co ordination of services in legal information and advice sector, adapting entry points to the justice system to the needs of marginalised groups (i.e. using trusted intermediaries in community), enhanced capacity for diagnosis, triaging and referral, problem-solving courts, systemic advocacy, justice institutions with systemic/preventative mandates.

Appropriateness and responsiveness. People-centred legal and justice services are appropriate and responsive to the individual, the issues they face and their situation. They are tailored, proportionate and efficient and flexible to accommodate local circumstances.

Good practice example: simplifying proceedings, tailoring procedures to make them proportionate to types of matters, increased use of specialised procedures, expanding dispute resolution options within courts and tribunals and outside of them, making courts and tribunals multi-service centres, developing court, tribunal and/or community based triage systems, matching level of legal assistance/representation to individual capacity and situation, use of ICT to deliver legal and justice services, localised flexibility.

Empowerment. People-centred legal and justice services are empowering, enable people's meaningful participation in the justice system and build people's legal capabilities.

Good practice example: making legal information available in a range of formats, using ICT to deliver legal information and skills, legal awareness initiatives, building legal literacy and legal capabilities through self-help and guided help, employing legal health strategies that encourage people to manage their legal affairs to prevent problems, legal health checklists, simplifying justice services to make them more "user friendly," culturally appropriate services, post-resolution support and follow up that builds resilience.

Equality and inclusion. People-centred legal and justice services are inclusive and targeted at those most in need, responsive to specific access needs of particular groups likely to suffer from social and economic disadvantage or are otherwise marginalised or vulnerable and those with complex needs. They are designed to contribute to equality, poverty reduction and social inclusion.

Good practice example: priority-setting based on needs assessments of vulnerable groups, outreach services, culturally appropriate services, and legal and justice resources available in a range of accessible formats.

Outcome focus and fairness. People-focused legal and justice services contribute to fair process and fair outcomes and to better and more sustainable procedural, substantive and systemic outcomes, including increased trust and confidence in the justice system and better justice system performance, and to the attainment of societal objectives such as socio-economic inclusion.

Good practice example: development of fairness standards, client evaluation of fairness of procedures, evaluation of processes and outcomes on an individual and systemic basis (e.g. result of how legal and justice services work together), outcome objectives are set for individual legal and justice services and for integrated services, services are evaluated according to these objectives, long-term follow up studies of client/user outcomes.

Collaboration and integration. People-centred legal and justice services are part of a coherent system that provide seamless referrals and integrated services through collaboration among legal, justice and other human service providers. People get access to all the services they need to solve the legal and related non-legal aspects of their problems holistically, regardless of the entry point for assistance.

Good practice example: developing multiple, diverse and integrated access points and service responses, seamless referral systems, one-stop shops, problem-solving courts, holistic approaches to service delivery, holistic practices, team delivery of services (including non-legal service providers), collaborative governance structures to facilitate co ordination between legal and justice service providers (including client/user representatives).

Effectiveness. People-focused legal and justice services are effective and continually improved through evaluation, evidence-based learning and the development and sharing of best practices.

Good practice example: involvement of clients/users in planning and evaluation, integrate “plan-do-study” cycle, sharing of good practices, standardisation of tools, development of quality standards/matrices.

Source: OECD (2019), Equal Access to Justice: Putting People at the Centre.

ⁱ OECD (2017), Core skills for Public Sector Innovation, OECD Publishing, Paris, p. 14.

ⁱⁱ Significant parts of this discussion are based on Flango V. & Thomas C. (2014), Reimagining Courts: A design for the Twenty First Century.

ⁱⁱⁱ See the recently published interim report under <dipbt.bundestag.de/dip21/btd/19/068/1906890.pdf>.

^{iv} World Health Organization (2016), Framework on integrated, people-centred health services, A69/39, p. 4.

^v World Health Organization (2016), Framework on integrated, people-centred health services, A69/39, p. 4.

^{vi} PricewaterhouseCoopers/Europa-Universität Viadrina (2005), Commercial Dispute Resolution, p. 7, 16 et seqq.; see there for empirical evidence on the following.

^{vii} Steffek F. (2019), ‘Der Deutsche Konfliktmanagementkodex (DKMK)’, Zeitschrift für Konfliktmanagement, p. 4

^{viii} See, for example, the UK Corporate Governance Code: <www.frc.org.uk/directors/corporate-governance-and-stewardship/uk-corporate-governance-code> and the Corporate Governance Codes in the United States: <gettingthedealthrough.com/area/8/jurisdiction/23/corporate-governance-2018-united-states>.