

# OECD RIGA Global Access to Justice Roundtable 2022

## Session Notes

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# 2022 OECD GLOBAL ACCESS TO JUSTICE ROUNDTABLE

Since 2015 the OECD Global Roundtables on Access to Justice have been a forum for exchange of good practices and lessons learned to close gaps in accessibility, effectiveness and efficiency of justice. The 2022 edition aims to advance SDG 16's call to ensure equal access to justice for all, focusing in particular on making the people-centred justice transformation happen. Hosted jointly by the Government of Latvia and the OECD (under the purview of the OECD Public Governance Committee), the goal of the meeting is to increase efforts across OECD and partner countries to strengthen people-centricity and accessibility to their justice systems, reinforcing the rule of law and strengthening democratic values and trust in institutions.

The 2022 Roundtable aims to facilitate the implementation of the [OECD Framework and Good Practice Principles on People-centred Justice](#), with a view to support countries' efforts to:

- A. Increase the justice system's focus on the needs of **all** people, increasing people's engagement with the justice system and reinforcing the rule of law,
- B. Enhance the trust in, and accountability of, the justice system, contributing to democracy-enhancing efforts, and
- C. Facilitate the development of integrated and interdisciplinary justice responses to present and future global challenges, also in the context of economic uncertainty.

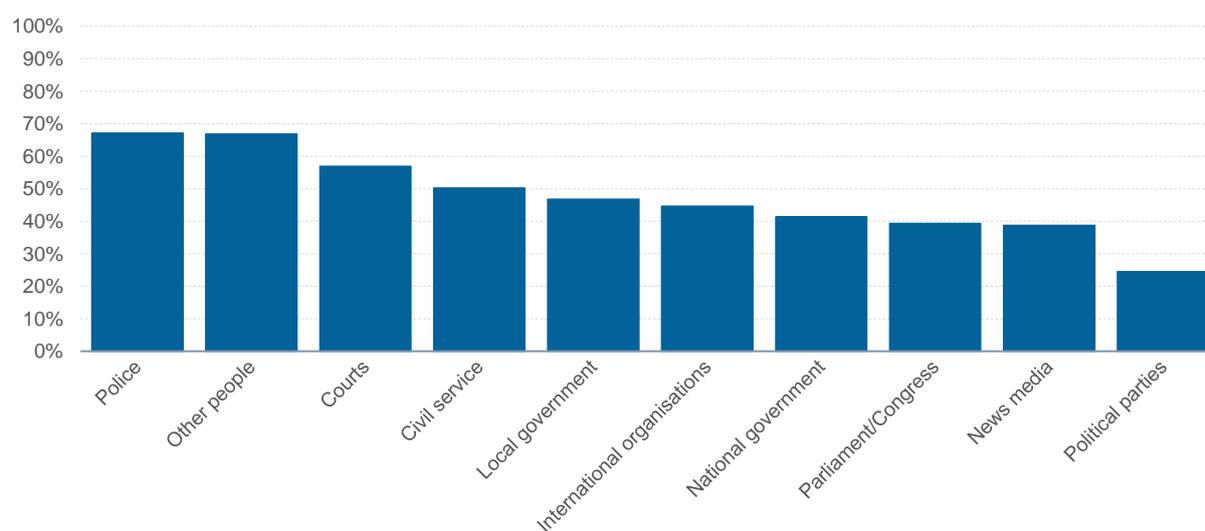
# High-level session: Reinforcing democracy and the rule of law through people-centred justice

While the world is emerging unevenly from the COVID-19 pandemic, countries are confronting new and emerging crises, including the rising cost of living, shortages in energy and food supply as well as supply chain vulnerabilities, exacerbated by the growing geopolitical polarisation, changing international context and strengthening concerns over climate change. These challenges risk further increasing inequalities, exacerbating polarisation and divides among people and reinforcing feelings of injustice and discontent. This highlights the need for governments to enhance their efforts to reinforce the social contract and strengthen democracy and the rule of law, which have already been put under pressure.

The 2022 OECD Report on [Building Trust to Reinforce Democracy](#), shows that while justice institutions (police, courts and legal system) enjoy higher levels of trust (67.1% for the police and 56.9% for courts and legal system) compared to the national governments (41.4%), a significant proportion of people still has low levels of trust in these institutions (Figure 1). Importantly, the report shows that perceived court independence is positively correlated with public trust in courts and the legal system (Figure 2) and is one of the most important levers<sup>1</sup> for broader trust in national government (OECD, 2022<sup>[2]</sup>). Moreover, there are generational, educational, income, gender and regional gaps in trust levels, with young people, low income groups and respondents with low education level reporting lower trust in government.

## Figure 1. Trust in public institutions

Share of respondents who report that they trust a given group or institution, unweighted OECD average, 2021



<sup>1</sup> The OECD Trust Survey found a strong statistical relationship between the dependent variable – trust – and a series of independent variables, such as perceived court independence from political influence. Source: OECD Trust Survey (<http://oe.cd/trust>) and (OECD, 2022<sup>[2]</sup>) 2022 OECD Report on *Building Trust to Reinforce Democracy*.

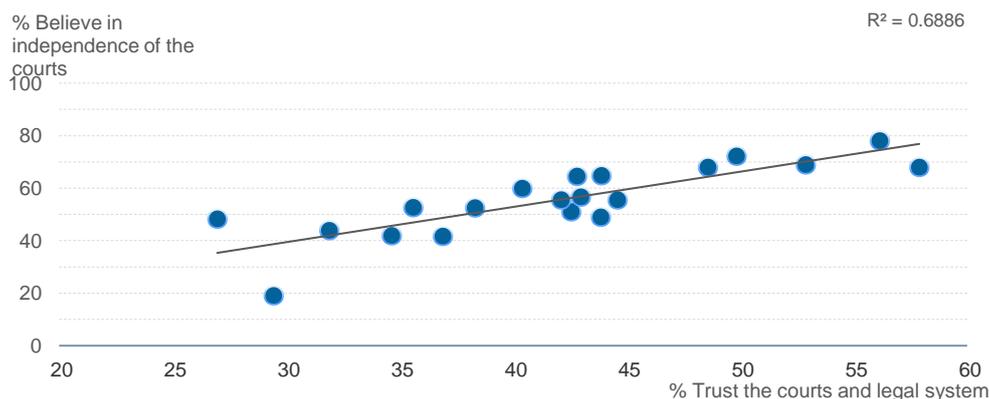
Note: Figure presents the OECD average of share of countries who reported they trust a given group or institution. Respondents were asked, “On a scale of 0 to 10, where 0 is not at all and 10 is completely, how much do you trust [insert name of institution]?” In this report, results 0-4 are grouped as not trusting; a result equal to 5 is considered neutral; and results 6-10 are grouped as trusting. Respondents could also choose the answer choice “Don’t know.” For more detailed information please find the survey method document at <http://oe.cd/trust>.  
Source: OECD Trust Survey (<http://oe.cd/trust>) and (OECD, 2022<sup>[2]</sup>) 2022 OECD Report on *Building Trust to Reinforce Democracy*.

The importance of building trust and countering mistrust between people and the institutions that serve them, including across legal and justice sectors, was already acknowledged during the Global Dialogue of Justice Leaders on 6 December 2021, itself in line with the **Our Common Agenda** report of the **UN Secretary General**. In this context, **Justice Leaders** endorsed an agenda (the ‘**Riga Justice Agenda**’) to transform justice systems in support of a vibrant social contract. In part the Riga Justice Agenda emphasised that:

- In order to strengthen society’s bonds, enable democracies to deliver on their people’s expectations, and to re-establish trust between people and governments, **countries should work towards transforming justice systems by putting people at the centre**.
- This **transformation of justice systems needs to be grounded in empirical data on people’s justice needs**, how they experience these needs, the pathways they follow, and what works to resolve and prevent such justice problems.
- **Countries should embed the open government principles of transparency, participation and accountability into justice policy design and delivery** as part of justice system transformation.
- **Countries should ensure work occurs collaboratively at local national and international levels, as well as with civil society and other stakeholders**, to learn from each other, measuring progress towards achieving justice for all and being accountable to the people.

## Figure 2. Trust in the courts and legal system is positively associated with perceptions of an independent judiciary

Share of respondents who trust the courts and legal system (y-axis) and share of respondents who believe a court in their country would make a decision free from political influence (x-axis), 2021



Note: This scatterplot presents the share of “trust” responses to the question “On a scale of 0 to 10, where 0 is not at all and 10 is completely, how much do you trust the courts and legal system?” on the y-axis. The x-axis presents the share of “likely” responses to the question “If a court were about to make a decision that could negatively impact the government’s image, how likely or unlikely do you think it is that the court would make the decision free from political influence?” Finland, Mexico and Norway are excluded as the data on judicial independence are not available. For more detailed information, please find the survey method document at <http://oe.cd/trust>.  
Source: Source: OECD Trust Survey (<http://oe.cd/trust>) and (OECD, 2022<sup>[2]</sup>) 2022 OECD Report on *Building Trust to Reinforce Democracy*.

As such, there is a strong need to revamp the governance mechanisms that underpin democratic institutions. The rule of law, justice systems and their ability to promote access to justice are a crucial to this. Regardless of income level, data shows that in all countries many are unable to access formal justice institutions, see their justice needs fulfilled, or even obtain appropriate counselling or assistance to help them understand their legal problems and take suitable steps to address them. Indeed recent waves of social movements across the globe revealed growing concerns over justice system's responsiveness and accessibility. In this context, policy responses aimed at increasing access to justice are necessary to bridge the current gap between people and institutions, bringing justice closer to the citizens and reducing bias in justice processes and procedures. This calls for placing people's needs at the centre of justice systems and building on empirical data on people's experiences and justice pathways (OECD et al., 2021<sup>[3]</sup>). This can, in turn, help design more efficient and effective justice responses, also in the context of potential tightening of governments' fiscal space. A specific focus is needed on vulnerable groups that face increased barriers in accessing the justice system and often see their legal needs unmet. For instance, tailored access to justice pathways can be put in place for Indigenous people, people with disabilities, women victims of violence or social-media targeting. A whole-of government, society and justice system approach is required.

In this context, the *OECD Framework and Good Practice Principles for People-Centred Justice* identify a series of elements for government-wide strategy for people-centred justice (see Box 1 and Figure 3).

### Box 1. Elements of OECD Framework on people-centred justice

the *OECD Framework and Good Practice Principles for People-Centred Justice* identify the following core elements of a government-wide strategy for people-centred justice:

- **Foundation: Ensuring leadership that is committed to a people-centred culture**, which can help all public institutions and levels of government to advance justice transformation with people at the centre.
- **Pillar 1: Designing justice responses based on an empirical understanding of people's legal and justice needs**, for example through legal needs surveys, including for most vulnerable groups.
- **Pillar 2: Empowering people to uphold their own rights**, which can take many forms, including fostering legal literacy and education for citizens.
- **Pillar 3: Developing governance arrangements for people-centred justice**. Such as sufficient capacity, clear roles and responsibilities from a whole of state and whole of society perspective, sound coordination mechanisms and appropriate use of technology in the justice sector. Technology in particular, has the potential to identify institutions' bottlenecks, reshape service delivery and embrace the user's perspective.
- **Pillar 4: Strengthening the role of data and evidence**, especially for planning, policy and decision-making purposes, with a view to creating a people-centred culture within justice systems. This calls for data availability, quality and comprehensiveness, developing a sound data ecosystem interoperable across all levels of the justice system, and sound monitoring and evaluation mechanisms.

The *Framework* underlines that a people-centred justice system aims to put people and their legal and justice needs at the centre of the justice system. This means that people-centred justice systems focus – as a priority – on understanding and meeting the legal and justice needs of all people as they experience them, whether or not they recognise those needs as having a legal dimension; and on generating fair outcomes and opportunities to contribute to the overall health and well-being of society,

inclusive growth, and the quality of democratic governance. This requires putting people at the centre of justice system reforms and transformations, and developing people-centred justice pathways to ensure that all members of society ultimately have equal access to justice services and legal information.

Implicitly, a people-centred justice system would be relevant to the people and trusted by the people, and therefore would have a high level of engagement by them. The more people-centred a justice system and access to justice arrangements are, the more responsive they will be to the lives of individuals. This should enable greater trust in the justice system and thus further participation and engagement. Thus, genuine equal access to justice for all – to ensure fair opportunities and fair outcomes for all – is fundamental to overcoming inequality, contributing to the overall health and well-being of society, inclusive growth, and the quality of democratic governance.

Putting people at the centre of justice also implies empowering people, wherever possible, to take responsibility for engaging with and acting in response to their legal issues, and, where possible, for their solutions. This calls for a comprehensive framework of dispute resolution options that provide a consistent level of access to justice services. People-centred justice may also mean rethinking the institutions, rules and cultures of dispute resolution, starting from the perspective of a person (actual or potential user).

Source: (OECD, 2021<sup>[1]</sup>) OECD Framework on People-centred Justice, <https://www.oecd.org/publications/oecd-framework-and-good-practice-principles-for-people-centred-justice-cdc3bde7-en.htm>

**Figure 3. Key elements of an OECD people-centred justice framework**



Source: (OECD, 2021<sup>[1]</sup>) OECD Framework on People-centred Justice, <https://www.oecd.org/publications/oecd-framework-and-good-practice-principles-for-people-centred-justice-cdc3bde7-en.htm>

Justice systems can help pave the way for greater participation of people, by identifying justice bottlenecks and providing solutions for more accessible justice. Governments need to foster legal capability of people, including their capacity to participate, and have a voice in the design and delivery of services. Legal and civic literacy, and access to legal information are initiatives that contribute to further empowering people to

participate and engage with justice systems and democracies more broadly (OHCHR, 2021<sup>[4]</sup>) (OECD, 2021<sup>[1]</sup>). Boosting participation of the most disadvantaged includes providing appropriate support mechanisms.

#### QUESTIONS FOR DISCUSSION:

- **Rebuilding trust in justice:** What role can people-centred justice play in re-establishing trust in legal institutions and beyond?
- **Grounded on evidence:** How to ensure that justice system reforms and modernisation efforts are meaningful to people? What evidence do countries need to ground these efforts upon, and what strategies should be used to obtain this evidence?
- **Collaboration:** How can we promote collaborative, whole of state and whole of society approaches to justice system transformation?
- **Rule of Law:** What are the implications of people-centred justice approaches for our understandings of the Rule of law? How to deepen a people-centred culture for the Rule of law?
- **Case for investment:** In view of the lower growth and higher inflation across countries, what could be the implications of the potential tightening of fiscal space for justice systems? How can we ensure that justice investments are well targeted? What adjustments could be needed in how legal and justice services are designed and delivered? How can the OECD best support countries in their efforts?

# Session 1: Justice, inclusive growth and business development

The Rule of Law and an effective and efficient justice system have long been recognised as essential to the functioning of liberal democracy and being crucial for economic growth and prosperity. To this end, this session will explore further the connection between effective justice systems, sound economies and business development, by discussing two related themes:

- The latest insights on the relationship between justice, the rule of law and inclusive economic growth *and*
- Services, principles and practices needed to be put in place to facilitate business development and effective dispute resolution by businesses, based on the (forthcoming) OECD Working Paper “*Supporting businesses through better access to justice: A focus on SMEs and Entrepreneurship*”.

## Justice, the rule of law and inclusive economic growth

The waves of recent health, economic, political and social crises, growing energy and food prices and high rates of inflation and uncertainty continuously increase pressures on individuals, families and economies, leading to subsequent growth in legal and justice needs. These include but not limited to problems with housing, employment, health and families. This has put additional pressures on the justice sector, which has been experiencing growing backlogs against the possibility of tightening fiscal constraints for many states, societies and individuals. Importantly, COVID-19, in particular, has shown light on and amplified all the problems that affect the various justice systems: growing disposition times, uneven consistency in decisions and limited accessibility of justice. The current wave of economic turmoil can further exacerbate pressures on the justice systems by increasing the legal needs, related to employment, housing and company closures.

Yet if an economic recovery is hampered by an inefficient justice system, it will not only be slower, it will also be more unequal and less inclusive of vulnerable populations. Indeed, an increasing body of evidence, underlines the importance of the rule of law, effective legal and justice institutions in supporting long-term economic outcomes, national well-being and social cohesion (Palumbo et al., 2013<sup>[5]</sup>) (Tiede, 2018, pp. 405-418<sup>[59]</sup>) (Barro, 2013, pp. 41-58<sup>[60]</sup>)<sup>2</sup> (see Box 2). For example, the consistency and predictability of the law and legal decisions, and the accessibility and timeliness of dispute resolution through the legal system are important elements in giving business confidence and encouraging investment that results in ongoing economic growth. These factors also contribute to improving people’s confidence in the justice system and therefore confidence in government and confidence in a country’s democratic institutions.

In this context, one of the main questions then is how to increase effectiveness and efficiency of justice systems, including their responsiveness to needs of different stakeholders, such as small and medium enterprises (SMEs), which constitute over 90% of all businesses in OECD countries. Indeed, the capacity of businesses to effectively address their legal needs significantly impact their efficiency and viability.

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<sup>2</sup> The research summarised here does not fully explain how the causation between effective justice systems and economic development works, but there is ample evidence that well-functioning justice systems, and in particular well-functioning courts matter for economic development (Tiede, 2018, pp. 405-418<sup>[59]</sup>) (Barro, 2013, pp. 41-58<sup>[60]</sup>)

Where legal services cannot be resolved or met through efficient means suitable to respective businesses, this will have a negative effect on business and society more generally.

## Box 2. Selected impacts of justice systems on economies and societies

A significant body of research over the past decades shows that functioning rule of law and sound justice systems contribute to a thriving business environment and longer-term investment decisions (see below). It supports contract enforcement, reduces transaction costs and creates a level playing field for market stakeholders by instilling confidence in “the rules of the game,” ensuring fair competition, protecting property rights and enabling economic actors to make longer-term investments and engage in trade (Acemoglu, 2005, pp. 386-472<sup>[5]</sup>). The **OECD Policy Framework for Investment** in turn suggests that when key elements of effective justice or rule of law are missing or result in inefficient (e.g. complex, costly, and lengthy) procedures, companies, including SMEs, would limit their activities. In addition, OECD economic surveys underline the importance of the rule of law and effective justice institutions for economic growth. For example, the 2019 Economic Survey of Slovakia highlighted that improving the rule of law would lead to increase GDP per capita by 3.4% in 10-years and by 8.9% in long-run effect (OECD, 2019<sup>[7]</sup>). Similarly, the last edition of the Economic Survey in Italy before the pandemic underlined the reform of public administration and justice system would have the largest impact on GDP growth, as they are key to strengthening the rule of law (OECD, 2019<sup>[8]</sup>).

More specific relationships between different aspects of justice performance and socio-economic outcomes are highlighted below:

- ✓ An effective justice system promotes contract enforcement by discouraging opportunistic behaviour and reducing transaction costs, thus incentivising economic actors to enter into business relationships. This has a positive impact on growth, advancing specialisation in more innovative industries, fostering competition, cultivating the creation of financial and credit markets and expediting firm growth (Johnson, 2002, pp. 221-277<sup>[11]</sup>)

Indeed the *OECD Investment Toolkit* suggests that:

*“the ability to make and enforce contracts and resolve disputes is fundamental if markets are to function properly. Good enforcement procedures enhance predictability in commercial relationships and reduce uncertainty by assuring investors that their contractual rights will be upheld promptly by local courts. When procedures for enforcing commercial transactions are bureaucratic and cumbersome or when contractual disputes cannot be resolved in a timely and cost effective manner, economies rely on less efficient commercial practices. Traders depend more heavily on personal and family contacts; banks reduce the amount of lending because they cannot be assured of the ability to collect on debts or obtain control of property pledged as collateral to secure loans; and transactions tend to be conducted on a cash-only basis. This limits the funding available for business expansion and slows down trade, investment, economic growth and development” .*

- ✓ Efficiency of debt enforcement is strongly correlated with per capita income and legal origin and predicts debt market development (Djankov, 2008<sup>[12]</sup>)
- ✓ The legal environment can affect financing and firm growth by increasing firms' use of external financing (Demirguc-Kunt and Maksimovic, 1998<sup>[13]</sup>)
- ✓ Creditor rights and the insolvency regime affect bank lending and its conditions (Laeven and Majnoni, 2005<sup>[14]</sup>).
- ✓ The functioning of judicial systems has effects on specific markets, such as the housing market. A poor-functioning judicial system incentivises individuals to own a house instead of renting one. This consequence hampers the development of a housing market. A poor-developed housing market affects mainly the poorer share of the population, which may not have enough income to purchase real estate (Casas-Arce, 2010<sup>[15]</sup>).

- ✓ Security of property rights strengthens incentives to save and invest, by protecting returns from these activities and enforcing rights, thus leading to better financial and economic outcomes (Asoni, 2008<sup>[16]</sup>).
- ✓ Accessibility and responsiveness of justice in turn can drive growth and recovery by:
  - reducing transaction costs for firms; (OECD & World Justice Project, 2019<sup>[16]</sup>)
  - supporting people, including vulnerable groups, to address their legal problems, and hence access public services and reduce inequalities, thus diminishing costs of health/employment impacts of legal problems for individuals. (OECD & World Justice Project, 2019<sup>[16]</sup>)
  - by providing significant benefits for societies and economies, e.g., by reducing the need for safety-net programs, domestic violence, imprisonment of child offenders, and has been shown to improve the health of beneficiaries. (Feelhaver, 2008<sup>[17]</sup>)
- ✓ Conversely, lengthy trials in turn can:
  - weaken the reliability of transactions and investment returns, and thrust significant costs on firms, such as the costs of accessing the judicial system. (OECD, 2013<sup>[9]</sup>).
  - lead to the lost investment income, either through unresolved cases or by delaying justice (Pearsall, 2012<sup>[10]</sup>)
  - and affect confidence in the justice system: OECD analyses on surveys of individuals in different countries suggest that a 10% increase in the average length of trials is associated with a decrease of around 2 percentage points in the probability to have confidence in the justice system (OECD, 2013<sup>[9]</sup>).

Source: (forthcoming) OECD Policy brief "Towards a business case for high quality justice"

Businesses have disputes throughout the course of everyday business, with the following parties (Bouchez and Karpf, 2006<sup>[19]</sup>):

- *Other businesses*: conflicts over performance or payments in contracts or breaches of other liabilities with commercial suppliers and other business partners. This category also concerns relations with vital service providers such as telecommunications and energy.
- *Commercial clients and consumers*: conflicts regarding contractual obligations with clients or customers, enforcing performance, in particular payment, or resolving issues under consumer protection laws.
- *Employees*: concerning remuneration and other benefits, recruitment, human resources complaints, termination of employment contracts. In some cases, employee disputes may be spurious or vexatious, causing significant reputational damage and materially affecting the culture of a business.
- *Financial institutions*: including conflicts over debt finance from banks or with institutional investors. Disputes with financial services are complicated for businesses to navigate and may be exceptionally disruptive to what should be a reliable, ongoing relationship.
- *State institutions*: various types of government-regulated requirements or processes. For example, these disputes may be about the (non)-issuing of permits or non-registration necessary for getting started or about taxation matters.

Yet the OECD country specific work shows that business also face a range of barriers in accessing legal and justice services, including vague information, long delays, complex legal language, financial cost and difficulties in accessing information. This may lead to businesses abstaining from resolving their disputes, which may affect their viability in the long run.

To this end, the forthcoming *OECD Working Paper on Supporting Business Through Better Access to Justice: a focus on SMEs and Entrepreneurship* aims to identify core pillars of the policy framework to support businesses through access to justice, which are highlighted in Box 3.

### Box 3. Selected elements of the forthcoming OECD Policy Framework to support businesses through access to justice

- **Promote people and user-centric design**, which implies that justice services should be designed with a view to responding to needs of people and users, not those offering them. Use plain and accessible language by legal and dispute resolution services, and the entities that provide them with a view to improving accessibility.
- **Think inclusive first** - vulnerable businesses, such as SMEs, with no or limited access to justice need to be included from the original design, including through structural changes to lower barriers to entry and greater participatory strategies for community engagement of SMEs as they lack the economies of scale. SME dispute resolution services seem to be less developed compared to consumer-oriented dispute resolution services. This could be resolved through SME-oriented ombud or conciliation schemes, for example. The focus could be on small claims services that provide tailored and fast-tracked procedures proportionate to the amount of money in dispute.
- **Promote effectiveness and efficiency** of legal and dispute resolution services through a sound understanding of the legal and justice needs of businesses (e.g., through legal needs surveys) and evaluating what works. The interests of businesses and government institutions are also served by maximising positive effects and minimising costs of access to justice, including through timely decisions (CEPEJ, 2022<sup>[20]</sup>).
- **Facilitate private justice services and ensure public back-ups** - Private and non-governmental actors could be facilitated and encouraged to offer legal services and dispute resolution services, including online legal services, legal tech products, and online dispute resolution platforms. At the same time, the state would need to retain the responsibility to provide ethical, regulatory and privacy protection guidelines (Graf von Pfeil, Gerard and van Beeman, 2018<sup>[21]</sup>) (The Law Society of New South Wales, 2017<sup>[22]</sup>). Enable private service providers to connect to public services, including through improving and standardising online personal identification and verification with a view to assisting the interoperability of public and private services.
- **Meet businesses where they are**. This may include **one-stop-shop entry points** for users, mobile access, integration of tools and services to remove practical and technological barriers to access and help find the right institution to resolve conflicts. **Cover the entire lifecycle** - For businesses and their cooperation relationships, this means the entire cycle from finding partners, over concluding, executing and monitoring contracts, up to enforcing agreements where the other party does not perform.
- **Increase adoption of digital services** with e-verification and e-identity, including through considering standardising electronic personal and business verifications and signatures. Put in place a common data protocol for all relevant services, to support the aims of efficient one-time data entry in the delivery of legal services. This would allow all legal services to facilitate one-stop-shop services and avoid businesses having to provide repeat data entries. Importantly, the use of technology should allow maximising high-value human skills in justice processes ('AI with a human face') (CEPEJ, 2019<sup>[23]</sup>).
- **Offer dispute resolution services that match the dispute needs of businesses**, in view of the diversity of business structures and interests, such as negotiation, mediation, arbitration, ombudsperson and conciliation services, in addition to contentious litigation in court (Steffek, F et al, 2013<sup>[24]</sup>). Provide options for **Online Dispute Resolution**, which can be more accessible than traditional dispute resolution mechanisms and could give businesses the potential to save both time and costs. Consider developing a '**Code of Dispute Resolution**' covering all dispute resolution mechanisms, for example civil litigation, arbitration, ombud schemes and mediation (Steffeck, 2016, pp. 43, 65<sup>[25]</sup>).
- **Seamless transfer between dispute resolution services and triage mechanisms** - Along the continuum of dispute resolution services, some systems and procedures better reflect the needs of parties

than others. Businesses may benefit from greater fluidity between dispute resolution mechanisms to allow an easy transfer of disputes from one dispute resolution service to another (e.g., from litigation to mediation) or clearer triaging mechanisms before formal proceedings commence.

- **Consider the creation of specialised courts and tracks** to resolve commercial and economic issues, which could increase efficiency, effectiveness and responsiveness to the legal needs of businesses. They can also enhance uniformity and predictability, and improve the quality of judicial decision making.

Sources: (forthcoming) *OECD Working Paper on Supporting Business Through Better Access to Justice: a focus on SMEs and Entrepreneurship*; (CEPEJ, 2022<sub>[20]</sub>). Council of Europe, 'Council of Europe European Commission for the Efficiency of Justice (CEPEJ)', *European Commission for the Efficiency of Justice (CEPEJ)* (n.d.) <https://www.coe.int/en/web/cepej/home>; Rupprecht Graf von Pfeil, Gerard Tanja and Robert van Beeman, 'Legal Tech and Digital Transformation: Competitive Positioning and Business Models of Law Firms' (Globe Law & Business, 2018); The Law Society of New South Wales, 'The Future of Law and Innovation in the Profession' (Law Society of New South Wales, 2017) 100 <https://www.lawsociety.com.au/sites/default/files/2018-03/1272952.pdf>.

## QUESTIONS FOR DISCUSSION:

- **Links between justice, rule of law and growth:** What is the latest evidence on the links between justice systems, rule of law and inclusive growth?
- **Investment climate and competition:** In what ways justice systems can promote positive investment climate? How can justice systems and rule of law support sound competition? What are the good practices and lessons learned? What mechanisms and practices need to be put in place?
- **User-experiences and good practices:** What are the business experiences in accessing justice? What are the good practice principles and practices to improve responsiveness of justice systems to needs of business? What are the examples of user-oriented pathways and of what works for responding to legal and justice needs of businesses?

## Session 2: Designing and implementing people-centred justice

This session will focus on evidence, data, knowledge, structural environment and tools needed to ground justice system transformation in people-centred approaches. In particular, the discussion will focus on the ways, good practices, challenges (including establishing appropriate regulatory and funding environments) and opportunities in the implementation of the OECD *People-centred Justice Framework* (OECD, 2021<sup>[1]</sup>). The *Framework* highlights some of the key components for the effective designing and delivery of people-centred justice services:

- **Identifying and locating legal and justice needs** - How can countries practically and effectively identify and understand the legal and justice needs of **all** of their community from the people's perspective? Legal Need Surveys (LNS) have been identified as a key tool in moving towards a people-centred justice system (OECD, 2019<sup>[13]</sup>). The OECD, alongside its partners, has developed a series of tools to support justice systems in measuring legal and justice needs globally.<sup>3</sup> LNSs can be complemented by service delivery (administrative) data from a range of justice and related service providers, which can provide insight into understanding disadvantage and help connect knowledge across human services to better identify legal and justice needs and report on the implementation of the Sustainable Development Goal and related indicator 16.3.3. Furthermore, essential to most efficiently and effectively targeting services is to locate legal need geographically and demographically. Small area modelling, such as using census data with insights from LNS can be effective (see notes for session 6 for further discussion).
- **Knowing what works** - People-centred justice services are those that are most appropriate for the particular person to address the problem or problems they face in their particular circumstances, and are cost-effective and sustainable. Implicit in designing cost-effective and effective services for the particular context is the need to have sound knowledge in relation to **what strategies, interventions and services are most effective and efficient** at addressing particular legal and justice needs. Identifying “what works” needs to take into account people, circumstances and emotions – how people experience legal and justice problems, and how they engage available pathways to address them. The existing evidence base on what works (and what does not, and why) in meeting the legal and justice needs remains limited and uneven. **There could be an opportunity to develop a comprehensive, co-ordinated evidence base on what works in achieving access to justice** (see notes for session 7 for further discussion).
- **Availability of services along a continuum** - A people-centred justice system aims to provide a range of justice and related services over a continuum from the most local and informal through to formal judicial processes, and these should be provided sufficiently accessible to those experiencing legal need to help them resolve their problem. This could also help ensure cost-effectiveness of justice responses and services (e.g., emphasising prevention, “rightsizing” just services to the level and type of legal needs), in view of the budgetary constraints and citizen expectations. There is not one type of dispute resolution that is better than the others for addressing all problems for all people in all circumstances. To be effective, services may need to have the following characteristics:
  - **Appropriate services for people and their particular capabilities** - A people-centred justice system would have services appropriate to the different levels of capability of the people

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<sup>3</sup> See, for example, OECD/Open Society Foundations (2019), *Legal Needs Surveys and Access to Justice*, OECD Publishing, Paris, <https://doi.org/10.1787/g2g9a36c-en>.

- experiencing legal problems. The challenge for governments is to provide not just a wide range of service options, but also options that are particularly appropriate to the needs of each group.
- **Targeted services** - Few people experiencing a legal issue attempt to resolve it in the courts, whether because of cost, time, complexity, or lack of legal literacy. There is growing recognition that justice services need to be proactive in reaching the community.
  - **Co-ordination, triage, referral and prevention** - Simply providing the people of a jurisdiction with a wide range of options for sourcing legal advice and assistance is not always the most appropriate strategy. A “no wrong door” approach seeks to ensure that through sound co-ordination and triage, people with legal issues can be directed quickly to the service most appropriate for them.
  - **Promotion of non-governmental services** - while the public sector has an important role to play in responding to legal and justice needs and in providing key justice services, (such as a well-functioning court system), non-governmental (NGO) and private sector providers can also enable people-centred justice through provision of a wide range of legal, justice and related services in an innovative and cost-effective manner. Governments can stimulate the availability and accessibility of non-governmental and private services through appropriate financing, investment, and the enabling infrastructure and environment for private sector development, including promoting NGOs’ growth. In some cases, this also could involve public financing and investment and subsidising of private intervention in order to support or scale up private sector efforts to align with public priorities and goals. Governments can also ensure the appropriate safeguards and regulatory frameworks to mitigate the risks associated with non-governmental and private sector service provision. Appropriate regulation enables governments to maintain the proper stewardship role while encouraging innovation and services that contribute to their social objectives. This includes regulation aiming to manage costs and funding, regulation towards ensuring adequate and accessible levels of services, and regulation that seeks to improve the system as a whole through data-driven interventions.

In other words, there are key leadership and resourcing roles for government in establishing and maintaining the appropriate structural environment – regulation, policy, funding, governance frameworks and cross-sector collaboration – to implement people-centred justice.

#### QUESTIONS FOR DISCUSSION:

- **Evidence needs and what works:** What evidence is needed to design and deliver effective, responsive and people-centred justice, including to understand the legal and justice needs of the people from their perspective (also in the context of reporting on the implementation of SDG 16.3.3)?
- **People-centred services:** What are the examples of people-centred legal and justice services and initiatives? Examples of service transformation towards people-centricity – in both legal and justice systems and other sectors?
- **Regulatory, institutional and funding environment:** What is needed in terms of facilitating non-government/private legal and justice services in order to better meet needs of people and economic actors, such as regulatory reform, funding etc., to empower people-centred justice? What are the governance issues that need to be addressed in order to implement effective people-centred justice? What are the effective country practices in this regard?
- **Support, tools and learning from other sectors:** How can OECD support countries in designing policy and services based on evidence and centred on people? What tools may provide useful assistance to countries, also to deepen evidence on what works? What can be learned from other sectors in this area? What can we learn from other sectors in understanding and acting on people’s needs?

## Session 3: Interagency coordination for access to justice

In highlighting the key findings of almost two decades of legal need surveys, the OECD's "*Equal Access to Justice for Inclusive Growth*" report noted that legal needs arise frequently, touch upon fundamental and every day issues, and form a pervasive presence in the lives of many people. Importantly, legal problems experienced by people are interconnected with a range of other issues and problems in other areas of their lives, such as in health, social welfare, employment, education and economic well-being. Given the pervasive nature of the law throughout a citizen's life, evidence shows that legal problems and their resolution are interconnected with those other fundamental areas of life, and impact active participation in society and human flourishing.

In this context, there is a growing recognition is that the resolution of people's legal needs requires whole of government responses, including integrated and coordinated services (legal and non-legal) to deal with the inter-twined legal and non-legal problems. In particular, this multi-disciplinary approach to resolving problems will require the coordinated working of a range of different agencies (justice and non-justice) across government portfolios and, especially in the case of Federal jurisdictions, across different levels of government. More broadly, the following layers of collaboration could be relevant to respond to the multi-faceted and interconnected nature of justice and related problems:

- **A whole of society approach.** An approach that incorporates the public and private sectors, engages communities, recognising that the whole 'society' has a role to play to solve the multiple, inter-twined problems as they are experienced.
- **A whole of the state approach.** Laws, legal systems and their institutions and processes are controlled by the state. A whole of state approach seeks to ensure that health, education, employment, economic and other sectors are coordinated with justice sector elements.
- **The whole of justice system approach.** Similarly, all elements of the justice system itself would need to work together to transform from what are commonly 'ad hoc' origins towards a coordination that ensures a people-centred approach.

The *OECD Framework on People-centred justice* aimed to identify key insights and guidance in relation to necessary interagency coordination, including:

**Clear roles and responsibilities** - people-centred justice requires the creation of adequate systems, leadership and governance structures that can implement a people-centred approach at different levels. Achievement of a people-centred purpose would require joint leadership from judiciaries, justice ministries, parliamentarians, central government, and other institutions (NGOs, communities, etc.). After identifying the state actors and partnerships that people-centred justice needs in order to be implemented, it is crucial to then identify and define the role and responsibility of each relevant actor. Moreover, it is key to align their approaches and service delivery strategies to create integrated responses, possibly around specific needs. Access to justice and prevention of legal issues should increasingly be understood as a matter for all parts of state and society.

**Processes and protocols for coordinated and people-centred services** - it is important to establish processes and protocols to facilitate the working together of different government departments, including those from different levels of government, and for governments to work together with non-government community service organisations and other NGOs to deliver whole-of-government and government supported services. This may often involve a range of actions, including:

- **Establishing and maintaining interdepartmental and inter-governmental co-ordinating teams** focusing on particular legal and justice needs or priority groups. A feature of a people-centred justice system would be stronger co-ordination across sectors such as health, social services, education, employment, migration, housing, the private sector and law enforcement.
- **Establishing appropriate financial and resource-sharing mechanisms and facilitating processes** to ensure the most appropriate mix of services can be delivered to the person to suit their particular legal and justice needs, capabilities, circumstances and location. These financial distribution and sharing processes would rarely be easy to develop, and would vary from country to country to fit with jurisdictional accounting and other practices. Central governments and treasury departments may need to take the lead in developing these mechanisms.
- **Establishing and maintaining collaborative planning mechanisms** to allow services to plan together – incorporating government and community service organisations – to achieve a co-ordinated approach.
- **Creating mechanisms to facilitate the seamless sharing of appropriate information** to ensure efficient (and not repetitive) needs assessment, triage, referral and service provision for the person concerned. There is also scope to develop mechanisms and guidelines for seamless transfer of disputes from one resolution mechanism to another.
- **Establishing, where appropriate, integrated and co-ordinated services**, such as health-justice partnerships (the integration of legal assistance services with health service providers), social housing-justice partnerships, and similar arrangements.
- **Ensuring technological, IT and data-sharing mechanisms are in place** to facilitate whole-of-government approaches and remove barriers to access for all in the community.

In many of these areas, the responsibilities lie principally with government. Governments have the ultimate role in facilitating better partnership and co-ordination in relation to the delivery of publicly funded services, and the coordination of services to meet the needs of the people within their jurisdiction generally.

#### QUESTIONS FOR DISCUSSION:

- **Impact of justice systems on life outcomes:** In what ways can justice systems support the achievement of broader improvements and life outcomes for people and businesses (e.g., health, housing, access to benefits, public safety, and consumer protection)?
- **Institutional, policy and coordination mechanisms:** What institutional, policy and coordination mechanisms need to be put in place to ensure robust cross-sectoral collaboration? What are the recent examples of country approaches and lessons learned to promote collaboration across sectors and branches of power?
- **Examples:** What are the examples of cross-sectoral collaboration at the policy level resulting in concrete integrated service delivery, improved access to legal support and better outcomes? How to measure the impact of access to justice on other areas / outcomes (e.g., reduction in unlawful evictions, or consumer protection)?

## Session 4: People Empowerment and Legal Capability

**Legal capability** can be defined as the personal characteristics or competencies necessary for an individual to resolve legal problems effectively (Coumarelos et al., 2012<sup>[14]</sup>). It could generally include capabilities across different domains, such as knowledge, skills, and psychological readiness to act. It was found that people who were unable to take action for their legal problems had 'low levels of capability in terms of education, income, confidence, verbal skill, literacy skill and emotional fortitude' (Genn and Paterson, 2001, p. 260<sup>[15]</sup>), thus pointing to the multi-dimensional nature of legal capability (Collard et al., 2011<sup>[17]</sup>) (McDonald and People, 2014<sup>[18]</sup>)<sup>4</sup>.

Furthermore, legal systems and formal legal institutions can be difficult to navigate, and in some cases be intimidating for ordinary people. At the same time, in the modern environment, digital transformation and organisational rethinking often provide opportunities for people to seek access to justice via digital and simplified channels, which would in turn require the appropriate skills and capabilities. Therefore, empowering people to engage with the various parts of the justice system that they need to enforce their rights and resolve their problems is multifaceted and a key challenge when seeking to establish and maintain a people-centred justice system.

In addition, the *OECD People-centred Justice Framework* emphasises that people centred justice needs enhanced capabilities across the board: not just for people experiencing legal needs, but also for justice institutions and their employees. Justice sector actors require robust skills and attitudes to deliver effectively modern and people-centred services. The forthcoming *OECD framework on skills for modern and people-centred justice*, in turn, aims to identify the types of skills and competencies necessary for modern, resilient and people-centred justice system, focusing on the following groups of stakeholders:

- Direct providers of legal and justice services (such as judges, mediators and lawyers)
- People that are operating within justice institutions in leadership or support roles (e.g., court presidents or law clerks)
- People who have responsibilities in the governance of legal services and justice policies (e.g., administration of courts, justice, mediators, community services)

A key skill dimension is the capability for those working within the justice system, or with responsibility for its governance or policies, to actually understand the context and perspective of the person experiencing a legal and/justice need. Skills to effectively engage with (and deliver services to; design understandable legal information for, etc) people with cultural and linguistic differences, to effectively understand the experience of Indigenous people, people with disabilities, and people across the range of education levels, economic status and social conditions, may, in most cases, require a 'reframing' of current training and professional development approaches. Different stakeholders in the system may also require different types of skills and competencies. For example, judges are expected to ensure a fair, inclusive, and user-oriented approach in their communicative acts, contribute to the management, and participate in a data-oriented approach to governance. Clerks and judicial assistants would need to be qualified and trained to

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<sup>4</sup> See also: **(a)** Hugh McDonald and Zhigang Wei, **Updating Justice No. 56**, *Resolving legal problems: the role of disadvantage*, Law and Justice Foundation of NSW, June 2018; **(b)** Pleasence, P, Coumarelos, C, Forell, S & McDonald, HM 2014, *Reshaping legal assistance services: building on the evidence base: a discussion paper*, Law and Justice Foundation of NSW, Sydney; **(c)** Nheu, N & McDonald, HM 2010, *By the people, for the people? Community participation in law reform*, Law and Justice Foundation of NSW, Sydney; **(d)** <https://victorialawfoundation.org.au/research/measuring-legal-capability/> ;

lift up the highest level of digitalization and to learn how to work on team-based patterns – together with judges. Lawyers should also handle new skills, ranging from digital competence to communicative and psychological skills. Justice institutions designers and regulators need to integrate with their organizational and administrative units, information and technology competencies, inclusive capacity, and a broad sense of participative policy design, regular monitoring and modern management. More broadly, skills and capability building is a long-running commitment. Empowering justice institutions' stakeholders with new expertise, know-how and professionalism needs a strong engagement, a framework to organise training and development policies, and a tool for self-assessment and mutual learning methodology.

#### QUESTIONS FOR DISCUSSION:

- **Legal capability and empowerment:** What is legal capability and empowerment? What are the good practices and lessons learned that promote legal empowerment? How do we know what works?
- **Skills, engagement and leadership:** What skills and capabilities are needed by individuals to participate effectively and proactively in the justice system? What skills and capabilities do justice system employees need to implement effectively people-centred justice? How to support employee engagement and leadership across the justice sector? What can be learned from other sectors?

## Session 5: Enhancing responsiveness of justice systems via digital transformation

The digital transformation of justice services holds vast potential to enhance access to justice for people and businesses globally. With the COVID-19 pandemic people and businesses have shown impressive flexibility and willingness to accept technological change in justice services during the pandemic. Indeed the upcoming OECD working paper on *Digital and Data Transformation for Access to Justice* shows that countries, which responded to the 2020 OECD survey on the use of digital technology and data, are putting in place a range of ongoing initiatives to use technology and data to improve the provision of legal and dispute resolution services. For example, as shown on Figure 4, some initiatives - such as creating options to serve court documents electronically, instituting one-stop-shop structures for justice services, establishing digital platforms supplying certified legal documents and providing platforms referring users to relevant digital services - are already widely implemented or close to implementation across countries.<sup>5</sup> In addition, many countries reported to have implemented online dispute resolution or are currently considering such implementation (Figure 5 and Box 4). In addition, some countries have drafted relevant rules or are considering one stop-shop websites for dispute resolution, video-based dispute resolution mechanisms or telephone-based dispute resolution.

At the same time, the survey<sup>6</sup> revealed that other approaches - such as digital initiatives to understanding legal needs of people, simplification of procedures and laws to remove barriers concerning technology and data - are yet to be implemented in the majority of the responding countries (see Figure 4). In addition, digital technology is currently only used by a small minority to triage disputes to the best suited dispute resolution mechanism (Figure 5).<sup>7</sup> These trends show that there is still a scope to increase the use of technology and data across the countries to fundamentally transform the way justice is delivered.

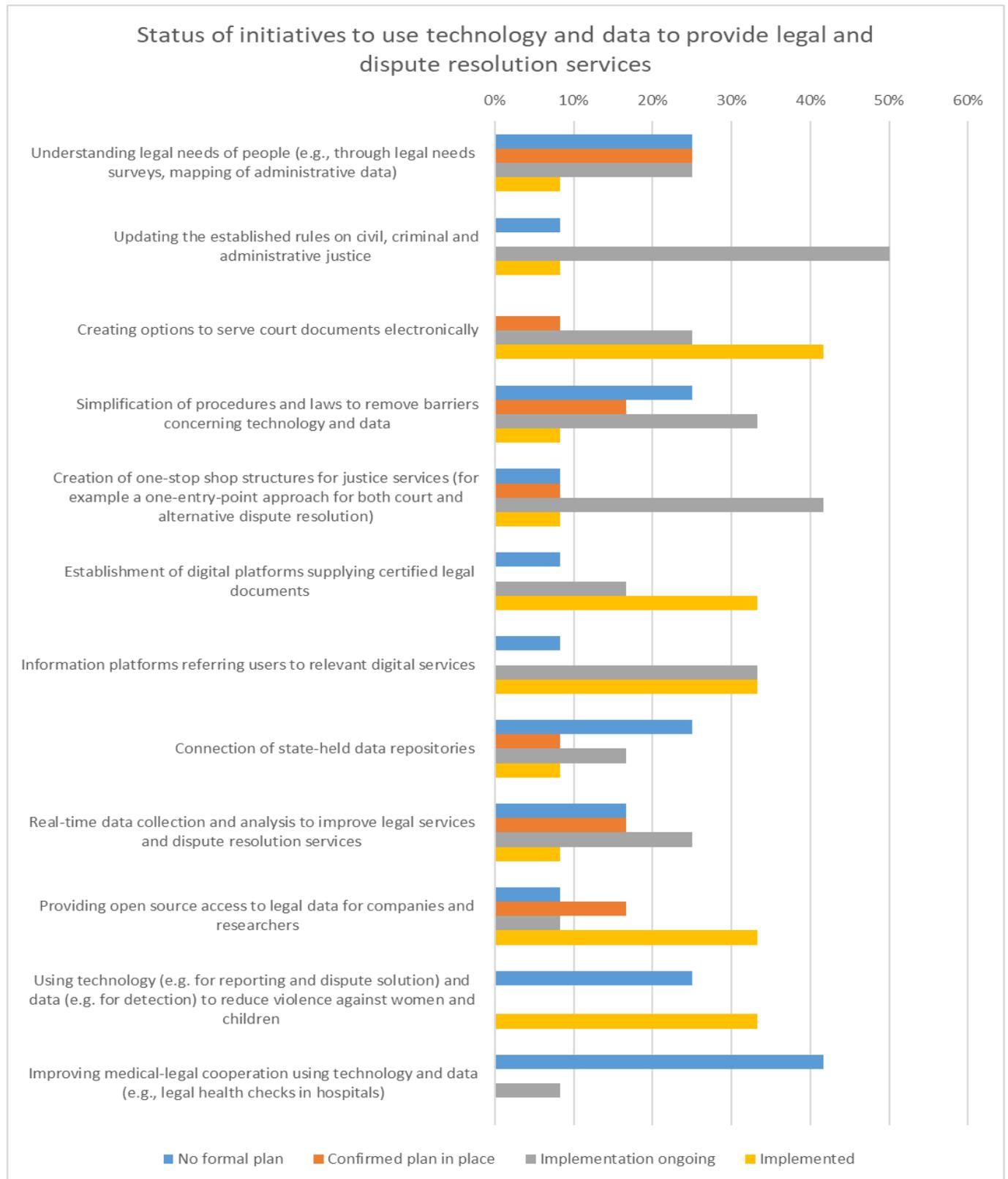
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5 These are the items where the sum of 'implemented' and 'implementation ongoing' is 50% or greater.

6 Similarly, European Commission, Digitalisation of Justice in the European Union: A Toolbox of Opportunities, COM(2020) 710 final, 3, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0710&from=EN>.

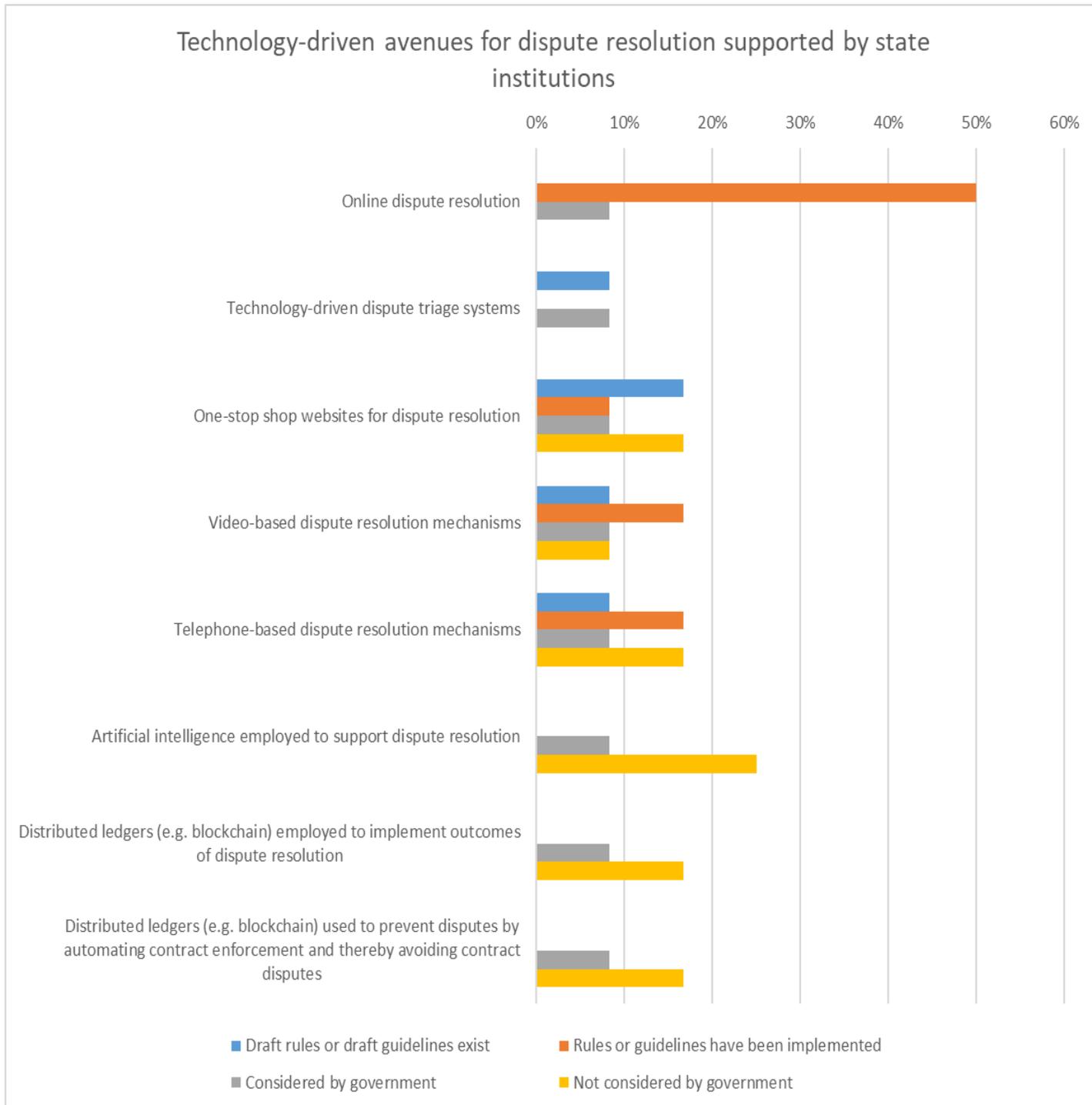
7 These are the items where the sum of 'implemented' and 'implementation ongoing' is 30% or greater, but smaller than 50%.

**Figure 4. Status of current digital transformation initiatives; based on responses from 12 countries**



Source: Responses to the 2020 OECD survey, (forthcoming) OECD Draft Working Paper: Digital and Data Transformation for Access to Justice – Towards a People-centred Justice System

**Figure 5. Technology-driven avenues for dispute resolution supported by state institutions; based on responses from 12 countries**



Source: Responses to the 2020 OECD Survey, (forthcoming) OECD Draft Working Paper: Digital and Data Transformation for Access to Justice – Towards a People-centred Justice System

#### Box 4. Online Dispute Resolution

Countries increasingly are adopting online dispute resolution (ODR), as an approach to promote efficiency and to achieve better dispute resolution using fewer resources (for certain types of cases). Parties, for example, need to provide information only once and by entering it in online forms the dispute resolution platform used need not spend further costs on having someone transfer the data from an email or letter into a database. The efficiency argument also has moral value as more efficient dispute resolution potentially allows dispute resolution services to be provided to more people. Other arguments include that information and communication technology allow service providers to offer new and better-quality dispute resolution services, such as through audio-visual technology and improved data management. ODR can also fit the socio-economic reality of many citizens and businesses, which is increasingly pervaded by information and communication technology. For example, the EU Regulation on Consumer Online Dispute Resolution highlights: ‘ODR offers a simple, efficient, fast and low-cost out-of-court solution to disputes arising from online transactions.’ There are many examples of publicly provided ODR (see below an example of an ODR platform). Whether it be by the digitalisation of some elements of court procedures at one end of the continuum, through to online arbitration, mediation, ombud schemes and, in some cases, full civil litigation, progress is occurring in many countries<sup>8</sup>. Thus ODR can represent strong potential for a cost effective but also convenient, people-centred pathway for the resolution of many disputes for many people, although it requires putting in place appropriate safeguards to ensure protection of fundamental rights. But it also provides challenges for regulation and the incorporation within coherent, people centred national justice systems<sup>9</sup>.

##### The B2B and B2C Belgian online platform “Belmed”

Since 2011, the Belgian Federal Public Service Economy (FPS Economy) has provided an online platform, called Belmed, through which an independent mediator can settle commercial out-of-court disputes between consumers and traders or between traders themselves, via Internet. The material scope of cases for which Belmed can be used is broad: it concerns all commercial disputes, including the sale of consumer goods and the provision of services (insurance, banking, construction, energy, travel, etc.). For the territorial scope, both cross-border disputes as well as domestic disputes can be resolved through Belmed. Belmed processes business-to-business (B2B) or business-to-consumer (B2C) cases, but not consumer-to-consumer cases (C2C). The consumer must further reside in the European Union and companies must be registered with the Belgian Crossroads Bank for Enterprises. If the seller/business entity is not registered with the Belgian Crossroads Bank for Enterprises, the platform cannot be used. In addition to the criteria mentioned above, Belmed provides the following requirements for using the platform: the applicant shall be at least 18 years of age, the applicant shall be directly involved in the dispute (or must represent someone who is directly involved in the dispute), and he/she shall act in good faith, which implies a willingness to resolve the conflict amicably. Furthermore, before submitting the application, the applicant must have contacted the other party and tried to resolve the dispute amicably, and the dispute for which resolution is sought must not be pending before a court. If this is nevertheless the case, the applicant may request the stay of the legal proceedings, with a view to an amicable settlement of the dispute.

Source : <https://economie.fgov.be/en/themes/online/belmed-online-mediation/alternative-dispute-resolution/frequently-asked-questions>

<sup>8</sup> (forthcoming) OECD Draft Working Paper: Digital Transformation for Access to Justice – Towards a People-centred Justice System.

<sup>9</sup> (forthcoming) OECD Preliminary Conceptual Framework on Online Dispute Resolution.

An additional challenge concerns disparities *within* countries, with only some areas benefiting from innovation and the types of digital technologies implemented. Countries tend to focus first on more traditional services (e.g. courts) and technology (e.g. email and web services), while more recent services (e.g. alternative dispute resolution) and emerging technology (e.g. artificial intelligence and distributed ledgers) are considered later.

More generally, many responding countries to the OECD survey acknowledged that developing and implementing a technology strategy for legal and dispute resolution services remain a challenge, with some of the main barriers related to funding, direction and human resources (see Box 5).

### Box 5. Barriers to digital transformation of justice in OECD countries

The 2020 OECD Survey aimed to identify the obstacles across countries to promote the digital transformation for better access to justice. The most relevant barriers reported by the responding countries include:

1. **Lack of funding and limitations of human resources**, including lack of skills, challenges of change management, lack of awareness of the value of technology and data to improve access to justice, reservations to embrace innovation.
2. **Lack of direction**, including uncertainty as regards the content of the strategies to be developed (in particular, high complexity, being both technology neutral and specific at the same time), and lack of guidance documents by international organisations and others.
3. **Technology and data barriers, including:**
  - Lack of connectivity between state institutions both vertically and horizontally,
  - Lack of common data protocols and other interoperability problems,
  - Missing interfaces between public bodies and private service providers,
  - Lack of open legal data,
  - Unavailability of artificial intelligence solutions for certain languages, and
  - Challenge to set up new structures while the old structures need to maintain day-to-day operations.
4. **Governance challenges** including problems of defining new governance structures, dispersed competences and the challenges to coordinate these competences.
5. **Imperfections of existing services and laws including:**
  - Service channels are dispersed and not streamlined enough such that they can be shifted to online platforms,
  - Existing legislation is outdated (prohibiting, for example, the provision of legal services based on technology by persons not qualified as lawyers and the cooperation of lawyers and technological service providers), and
  - Lack of trust and interest on the side of users and advisors, including private legal service market has no incentives to embrace technology, cultural reservations, lack of trust in technological solutions.
6. **Implementation challenges caused by the COVID-19 pandemic.**

Source: 2020 OECD survey, (forthcoming) OECD Draft Working Paper: Digital and Data Transformation for Access to Justice – Towards a People-centred Justice System.

Importantly, the fundamental challenges associated with digital transformation of justice systems require government strategies to manage this evolution in a way that fosters inclusive growth and advances the efficiency and effectiveness of systems. Avoiding the creation of a new vulnerable group of people who do not have the necessary digital access or skills should remain a priority.

**QUESTIONS FOR DISCUSSION:**

- **Opportunities:** What are the opportunities to accelerate the implementation of people-centred justice arising from digital advances? What are the problems or challenges?
- **Strategic approaches:** What are the examples of strategic approaches to digital transformation of justice systems to support people-centric approaches? What are the opportunities and challenges?
- **Dispute resolution:** What are the specific opportunities and challenges for increasing the use of technologies in dispute prevention and containment? What are the successful examples of implementing online dispute resolution? What lessons can be learned?
- **Pathways:** How can technology be employed to improve and grow 'access' pathways to support people-centred justice? What is the role of online resolution of disputes? What can be learned from other sectors?

## Session 6: Measurement and data strategies for people-centred justice: Towards a data ecosystem

Allocating limited resources in the most efficient way and making the most effective evidence-based decisions in the justice sector both require good data. Moreover, better access to justice data can assist governments and justice systems in recognising new patterns and anticipating new vulnerabilities. It could also help develop foresight capabilities for people-centred justice and broader people-centred public institutions over time.

Collecting and utilising more and better data to support the most effective and affordable delivery of justice to the community would also be important for governments to make progress in their global commitments, such as the SDGs, SDG 16.3. Improving data quality will likely involve increased emphasis on:

- identification of variables needed to answer the key justice questions and relevant sources of data
- more consistent measurement and reporting of these variables
- using appropriate people-centred justice indicators to help governments, justice systems and civil society monitor and evaluate system effectiveness and facilitate ongoing improvement.

While there has been a major effort to improve data availability and collection related to judicial statistics, including at the international level, (OECD, 2021<sup>[1]</sup>) there is scope to strengthen existing data systems in most countries to be able to provide the full range of information necessary to support mature people-centred justice systems. The recent [Praia City Group Handbook on Governance Statistics](#) provides a solid basis for identifying key dimensions and a wide range of data needs for people-centred management of justice systems (See Table 1). Yet there is still little agreement on the more granular dimensions of measurement frameworks and the sources of data in this area (some indications of possible data dimensions and sources are available in Box 6).

Furthermore, the recent discussion paper “Grasping the Justice Gap” (Chapman, Peter et al., 2021<sup>[34]</sup>) co-produced with Pathfinders, the World Justice Project and OECD, proposes three data priorities to strengthen people-centred justice:

- **Understand the scope, nature, and impact of justice problems.** To advance access to justice for all, justice actors need to understand who has justice needs, what those needs are, where and when they are experienced, their underlying causes, and their impacts and costs.
- **Design and deliver people-centred justice strategies.** Justice actors need administrative and survey data to strengthen legal capability, prevent problems, and correct systemic injustices, thus ensuring that justice strategies are connected to the needs and capabilities of people.
- **Measure what works, then learn and adapt.** The justice sector in many places lags behind other sectors in evaluating what works. Effective and appropriate evaluation of access to justice efforts is key to adapting strategies, allocating resources, and advancing justice for all.

Table 1. Sub dimensions of access to justice

Domain	Primary Sub-dimension	Secondary Sub-dimension		Examples and areas of interest
Structure	Environment	Favourability (i.e. factors outside system impacting on experience/outcomes)		IT and transport infrastructure, security, structural inequalities, etc.
		Legal frameworks		Conformity (e.g. with international human rights standards, free of discrimination, etc.)
	Capability	Population	Legal issues	Incidence, nature, seriousness, individual/collective, etc.
			Legal capability and empowerment	Awareness of rights/rights violations/services, confidence, etc.
	Legal assistance (including representation)	Public legal education resources		Government/civil society/community, funding, staffing, etc.
		State legal aid schemes		Type (lawyer/paralegal, government/independent), level/form of funding (incl. pro bono), level of staffing, level of experience/expertise, coverage, eligibility criteria/level, integration in other services, geographical accessibility, security (of staff, buildings, etc.), etc.
		Independent legal assistance		
	Community level legal advice, assistance and empowerment			
	Justice institutions	Police/prosecutorial authorities		
		Formal courts, quasi-judicial bodies, etc.		
Complementary bodies (Ombudsman schemes, human rights commissions, community-based monitoring systems, etc.) (see, for example, Begiraj, Garahan and Shuttleworth, 2018)				
Traditional / religious / non-formal dispute resolution mechanisms				
Process	Capability	Empowerment		Quality, independence, accessibility, efficiency, etc.
		Public legal education practice		
	Legal assistance (including representation)	Legal aid functioning		Caseload, quality (process, etc.), independence, timeliness, accessibility (legal issue, cost, language, etc.), unmet need, perception (trust, etc.), efficiency, protection of staff, monitoring, etc.
		Other service functioning		
	Justice institutions	Police/prosecutorial authorities		Caseload, quality (procedural, interpersonal, informational - see, for example, Klaming and Giesen, 2008), overall fairness, independence, duration, accessibility (cost, language, etc.), perception (trust, etc.), efficiency, protection of staff, monitoring, etc.
		Formal courts, etc.		
		Community institutions, traditional bodies, etc.		
	Other paths to justice	Individual		Volume, quality, duration, accessibility (cost, language, etc.), perception (trust, etc.), efficiency, alignment with other mechanisms, proximity, etc.
		Community		
	Detention (pretrial, etc.)	Frequency, legitimacy, etc.		
Outcome	Form	Resolved, ongoing, etc.		
	Quality	Case	Form	Retributive, restorative, distributive, etc.
			Transparency	Reasoning, public record, etc.
			Functionality	Attrition, compliance, enforcement, delay, etc.
	Perception	System		Effectiveness, etc.
				Accessibility/ reach of legal assistance and dispute resolution mechanisms, etc.
	Impact	Trust, fairness, confidence, satisfaction, etc.		
	Impact	Individual outcomes		Conclusion, empowerment, social, economic, health, well-being, etc.
Systemic outcomes		Change in law, process, policy, etc.		
Broader outcomes (community, etc.)		Empowerment, economic, social, health, well-being, etc.		

Source: Praia City Group Handbook on Governance Statistics: <https://paris21.org/sites/default/files/2021-12/PRAIA%20Handbook%20final%20WEB-REVISED2021.pdf>, page 105.

## Box 6. Potential dimensions and sources of people-centred justice data

- **What are the legal and justice needs of the different groups of people?**
  - Survey data from a well-conducted legal needs survey (LNS) can help obtain a representative picture of the legal and justice needs of the community.
  - Targeted data from deep, ongoing engagement with disadvantaged communities can aid understanding of the legal and justice needs of these communities.
  - Criminal court data – When available and well collected, criminal court finalisation or similar data can provide good indicators of criminal law needs.
  - Service delivery data (administrative data) can complement understandings of legal need, especially at the local level, where adequate services exist.
- **Where are the legal and justice needs located?**
  - Service delivery data (administrative data) – They can provide insight into local demand for particular services for particular legal and justice needs.
  - Official data – Insights from LNS can be applied to official census and other population-level datasets to provide insights into the location/distribution of likely legal and justice needs.
  - Data from community service organisations and NGOs – Data from CSOs and NGOs with long-term service and support relationships with targeted disadvantaged communities can provide useful insight.
- **How can legal capability be recognised and understood?**
  - A range of official data sources, such as anonymised (census) data, provide disaggregated population-level information on key characteristics and skills, such as education level, health status, etc can provide insight on legal capability.
- **“What works” to address legal and justice needs for different parts of the community?**
  - Using the quality literature – Rigorous research and evaluations can provide guidance in relation to what works to address particular legal and justice needs.
  - Conducting quality evaluations – Targeted and strategic can add to the evidence base about what works, for whom, in what circumstances, and at what cost.
  - Service delivery data (administrative data) – When collected as part of an appropriate methodology, service delivery data can have a key role.
- **Matching service delivery data with legal and justice needs data**
  - Countries wishing to identify gaps in service delivery and monitor the delivery of relevant services to address particular needs may consider mapping service delivery data against legal/justice needs data.
- **What data are needed for monitoring, evaluating and planning?**
  - Data from some or all of the above sources can be relevant to the monitoring, evaluation and planning for delivery of justice services.
  - Bespoke research and evaluation are necessary, but need to be strategically co-ordinated to address priority knowledge gaps and minimise cost and duplication.
  - Other court and tribunal data – Service delivery data collected daily will contribute valuable insights and facilitate appropriate decision making and service planning.

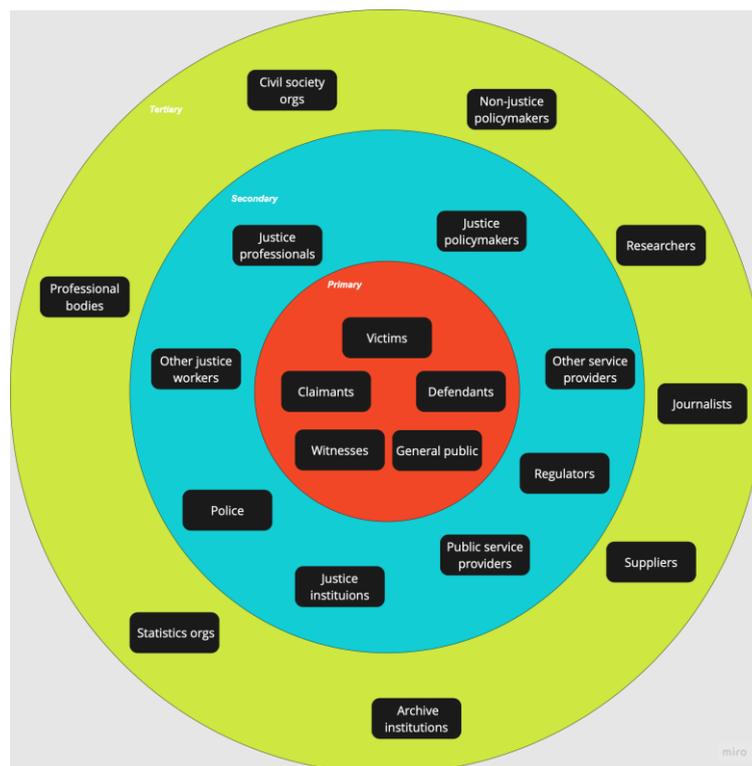
Source: (OECD, 2021<sup>[1]</sup>) OECD Framework and Good Practice Principles for People-Centred Justice, <https://www.oecd.org/publications/oecd-framework-and-good-practice-principles-for-people-centred-justice-cdc3bde7-en.htm>

### Towards governance of justice data<sup>10</sup>

Importantly, the responsibility and capacity for developing and providing the different data sources will be distributed across a range of government and non-government actors, which could be grouped as follows (see Figure 6):

- **Primary** - the primary stakeholders in a people-centred justice system are service users: defendants, victims, witnesses, claimants and the general public
- **Secondary** - in the secondary priority are justice professionals (for example judges and lawyers who are members of and subject to professional bodies), other justice staff (for example court clerks), police, justice institutions (for example courts and legal aid institutions), public service providers (for example a government Court service), regulators (both for data and justice), non-public service providers (for example an alternative dispute resolution service, a cloud storage company, or a data visualisation tool), and justice policymakers (for example a national Ministry of Justice, or a federal attorney general)
- **Tertiary** - in the tertiary priority grouping are professional bodies (for example bar associations), official statistics authorities, archive institutions, suppliers to the justice system service providers (for example digital service developers), journalists, researchers, non-justice policymakers and civil society organisations

**Figure 6. People-centred justice data governance stakeholder map**

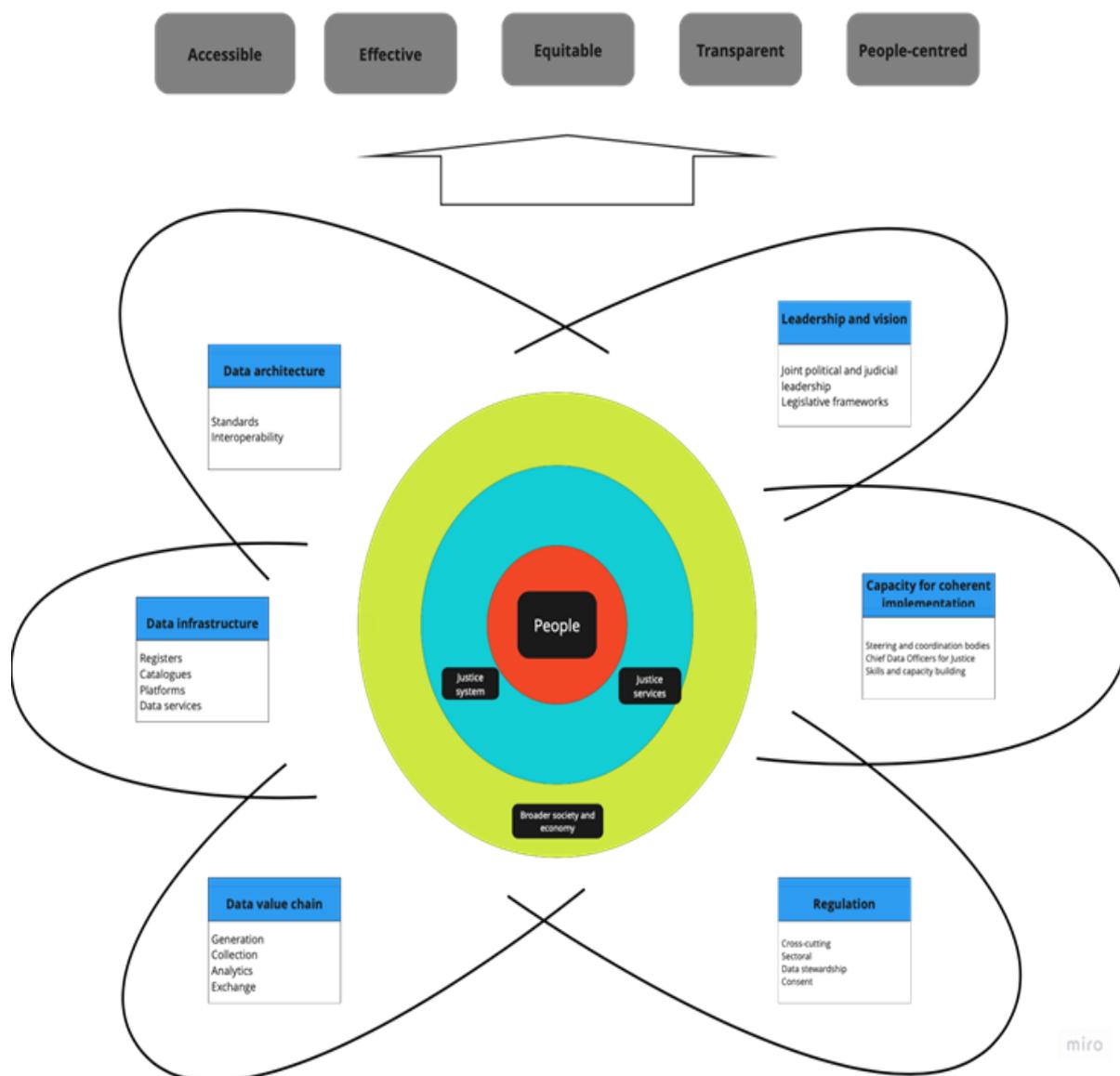


Source: OECD and the Legal Foundation (LEF), Towards an OECD Framework for Justice Data Governance (forthcoming).

<sup>10</sup> This section is based on the paper by OECD and the Legal Foundation (LEF), Towards an OECD Framework for Justice Data Governance (forthcoming).

The multiplicity of stakeholders will require sound data governance frameworks and data ecosystem. In recent years, several OECD reports (OECD, 2020<sup>[35]</sup>) have provided guidance and support to enable countries to improve data governance to mitigate risks and secure the benefits of this transition. For the justice sector, it could be relevant to reflect on the following data governance dimensions, as highlighted in Figure 7 and Box 7.

**Figure 7. Preliminary elements of governance framework for justice data**



Source: OECD and the Legal Foundation (LEF), Towards an OECD Framework for Justice Data Governance (forthcoming).

## Box 7. Selected justice data governance dimensions

- **Leadership and vision** - strong leadership in service of a clear vision is an essential feature of all successful data governance frameworks. Clear leadership is particularly vital when delivering the goals of data use which requires coordinating actors across the public and private sector at a national or sectoral level. It is especially important in the specific context of justice data governance, where relevant data is held across a complex network of public and private actors, each with their own incentives, systems, culture, policies and practices. Determining whose responsibility it is to demonstrate leadership on justice data could be complicated by the constitutional issues that are potentially implicated in the sharing and linking of data across the different branches of government. In practice, joint leadership between the judiciary and executive, as part of a shared vision for the role of justice data would more likely to lead to better outcomes and sustainable change.
- **Capacity for coherent implementation** - Inter-institutional coordination bodies can play an important role in supporting actors across the justice system to collect, use, share and maintain justice data to deliver accessible, effective, equitable, transparent and people centred justice systems and services, and highlights examples of existing coordination bodies. The responsibility of inter-institutional bodies can include advising on budget priorities for data management and use, and ensuring that data strategies and projects. One example of such a body in the justice space is the shadow Senior Data Governance Panel, created in England and Wales to advise the Lord Chancellor and Lord Chief Justice on novel or contentious issues arising from applications to access, share, link or use data from the courts and tribunals. In addition to political and judicial leadership, **investment in administrative leadership and capacity** would be important to delivering effective data governance for justice data.
- **Regulation** - A people-centred justice system will operate within an environment of cross-cutting regulation and sectoral regulation. New cross-cutting regulation is emerging around data and AI/automated decision making that will have an impact on justice data governance. It is not yet clear what future sectoral regulation may be required for the use of data within justice systems, for example by lawtech services. However, any data governance framework adopted for justice data will need to include robust monitoring and evaluation frameworks and implement controls and safeguards around use. This would also need to include robust lines of accountability, accessible mechanisms for redress in the case of harm and could include accreditation of products and services to demonstrate that they meet national standard.
- **Data value chain** - The data value chain within the justice system will be federated with multiple organisations collecting, storing, sharing and using data, which may exist in different legal jurisdictions. This would need to include arrangements for data generation, analysis, and exchange (such as packaging and visualisation of data).
- **Data infrastructure** - data infrastructure could include, among others:
  - Registers - authoritative lists that people can trust
  - Catalogues and discoverability - ways to make data discoverable so that people can use it
  - Platforms - shared APIs, components, research repositories, and identity systems
  - Data services - providing data as an ongoing service to data users

Each of these elements could be suitable to be deployed as public infrastructure, or a digital public good (Global Data Justice Project, 2022<sup>[36]</sup>), as well as a range of other business models.

- **Data architecture** - data architecture could involve standards and interoperability. Standards could make it easier for organisations to public, access, share and use quality data but need to be developed in a way that is inclusive, supports our desired outcomes and leads to adoption. Interoperability can support data analysis and research as well as the need for justice system users to be able to move, or switch, between service providers. Interoperability is based on standards. In other sectors regulators are mandating service interoperability to increase competition between private sector service providers (Global Data Justice Project, 2022<sup>[39]</sup>).

Note: This definition stems from Joan Lopez Solano, Aaron Martin, Siddharth de Souza and Linnet Taylor of the Global Data Justice project (2022) "Governing data and artificial intelligence for all" (Global Data Justice Project, 2022<sup>[36]</sup>).

Source: OECD and the Legal Foundation (LEF), Towards an OECD Framework for Justice Data Governance (forthcoming); (Global Data Justice Project, 2022<sup>[36]</sup>); European Parliament (2022), Governing data and artificial intelligence for all, see: [https://www.europarl.europa.eu/RegData/etudes/STUD/2022/729533/EPRS\\_STU\(2022\)729533\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2022/729533/EPRS_STU(2022)729533_EN.pdf).

## QUESTIONS FOR DISCUSSION:

- **Strategic approaches:** What are the examples of effective data strategies for justice institutions? What are the opportunities and challenges for designing and implementing whole-of state data approaches?
- **Data requirements:** What are the key data requirements underpinning people-centred and modern justice? What do we know about the needs, and use of data for justice (e.g., planning, design and delivery of services; forecast, foresight, monitor and evaluation of justice services/performance)?
- **Measurement frameworks:** What are the examples of sound measurement frameworks for service delivery in the justice sector? Justice sector performance?
- **Data governance and communication:** What are the key elements and examples of sound data ecosystem and infrastructure, including soft and hard instruments (laws, guidelines, standards, sandboxes, coordination mechanisms)? What are the challenges and good practices in data production, processing and dissemination in the justice sector? What are the effective strategies to communicate the justice data to increase trust in justice?
- **Lessons learned:** What lessons can be learned in collecting the right data and putting in place the right data governance elements from other sectors? What is the applicability to justice systems?

## Session 7: What works in people-centred justice services?

People-centred justice services are those that are most appropriate for the particular person to address the problem or problems they face in their circumstances. These include services that are timely and delivered in a manner most useful to the person in need. Importantly, they will also be cost-effective and sustainable to ensure their long-term availability and usefulness. Implicit in designing cost-effective and effective services for the particular context is the need to have sound knowledge in relation to what strategies, interventions and services are most effective and cost-effective at addressing particular legal and justice needs. This in turn implies understanding what works in any circumstance, including for those people with multiple disadvantages and experiencing multiple problems who may not act in the rational way that legal systems may expect them to. In other words, identifying “what works” would need to take into account people, circumstances and emotions; pathways to resolution and support must be informed by how people experience legal and justice problems, and how they engage available pathways to address them.

While there are important advancements in some countries, OECD work has identified that the existing evidence base on what works (and equally what does not, and why) in meeting the legal and justice needs is still limited and uneven, has been rather slow to develop, and faces a number of challenges (OECD, 2021<sup>[11]</sup>). How do justice services know if different justice solutions are being implemented in appropriate circumstances? How can rigorous measurement of the impact of these initiatives be promoted?

Further, there are currently no comprehensive<sup>11</sup> repositories of curated, quality analyses of existing research and evaluation – even of ‘good practice’ examples identified by legal services and governments through practical experience. Various deficiencies exist in knowing ‘what works’ and in successfully making the business case for access to justice services.

This situation is aggravated by the absence of common terminology, taxonomies, data protocols, and analytical methodologies. Data collection and analysis have rarely been seen as providing insight into a single, coherent access to justice (A2J) ‘system’.

There appears to be a clear need to address the absence of a comprehensive, coordinated evidence base on access to justice. The challenge is to progressively address the gaps in the comparative knowledge by:

- identifying, collecting, assessing and making accessible, evidence of ‘what works’ at what cost, in what circumstances and in what contexts;
- identifying the key ‘gaps’ in the existing knowledge base; and
- systematically seeking to address the evidence gaps through establishing partnerships among the community of access to justice actors (including legal assistance and access to justice providers) for continued engagement and research in areas in which knowledge of ‘what works’ is scarce.

In this context and in view of the increasing expectations to deliver the most value for public resources, it is important for a people-centred justice system to conduct appropriate monitoring and evaluation of the different initiatives to determine what strategies and processes work best – again, in what circumstances, for which people, and at what cost. In turn, this should inform decisions about which of the new processes might be retained, which further adapted and reformed, and which rejected. Thus, as justice systems undertake the necessary process of reflection on the suitability and people-responsiveness of its existing

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<sup>11</sup> There are some specific issue collections and ‘clearinghouses’ in certain jurisdictions, especially in criminal justice. These are not comprehensive and are scarce in civil and family justice areas.

and new processes, there is scope to systematically introduce a people-centred lens to impact assessments of justice system processes, and to create a more rigorous evaluation culture to apply to justice and legal initiatives (OECD, 2021<sup>[1]</sup>).

#### QUESTIONS FOR DISCUSSION:

- **Good practices:** What are the recent good practice examples of identifying what works in meeting legal needs? What could be effective approaches to scale them up?
- **Systematic approaches:** What are the enablers and challenges in identifying what works and evaluating impacts of justice initiatives? What is needed to develop a systematic approach to learning what works at the country level? International level?
- **Country support:** How to go about filling the knowledge gaps around what works? What are the priority gaps? How can OECD assist countries to monitor what works?

## Session 8: Towards justice for all - 2 Parallel break-outs

There is growing knowledge that legal needs and justice problems are not equally shared across different groups of people and economic stakeholders, with vulnerable communities often facing higher rates of problems and being generally less able to satisfactorily resolve them. This calls for service design and delivery strategies, which are targeted to specific communities, appropriate to their particular needs and capabilities, and coordinated with other services essential for them.

This session will consist of two parallel breakout sessions focusing on implementing people-centred justice approaches for two separate groups:

- Children and young people
- Indigenous, minority communities and people with disabilities

Specific attention will be paid to the gender dimensions in all sessions.

### Session A. Towards child-centred justice

Everyday millions of children globally experience legal needs. Many children therefore come in contact with the justice system, and do so in a range of different ways:

- **As victims:** of crime or violence.
- **As witnesses:** often as witnesses of violence, and sometimes in family violence situations.
- **As alleged offenders:** as alleged offenders in criminal law matters.
- **As parties in civil, family and administrative law matters:** children are likely to be exposed to the justice system due to divorce, migration, violence and have particular needs and circumstances; children may also face specific barriers to accessing justice (New York: Center on International Cooperation, 2019<sup>[24]</sup>).

However, while many children do have contact with the justice system, it is likely many more children do not access justice at all for a range of reasons, including a lack of legal capability (including lack of awareness of rights and the maturity and confidence to take action), the lack of specialised and child sensitive justice system procedures, the lack of or difficulties in obtaining appropriate legal and non-legal support and assistance, societal disapproval, lack of privacy, distrust in justice processes or a lack of information (New York: Center on International Cooperation, 2019<sup>[37]</sup>). Other difficulties include intimidating settings, lack of age-appropriate information and explanations, long proceedings, as well as long waiting times to obtain a resolution (Council of Europe, 2022<sup>[38]</sup>). When seeking to enforce their rights, and especially when victims of a crime, children can be significantly disadvantaged because they may sometimes be restricted by having to rely on consent or support from their abusers (Davidson et al., 2019<sup>[39]</sup>) and their views and experiences may not be given adequate weight. Further, as international experience makes clear, (af Ursin and Haanpää, 2017<sup>[40]</sup>) children and their families often have very little knowledge and understanding about the rights of a child and where and whether to seek help in specific situations.

Yet accessing justice for children is essential for combating poverty and exclusion, protecting children from violence, abuse, exploitation and discrimination and for strengthening the rights of children in social protection, education and health care systems. It is also particularly important for vulnerable children from disadvantaged families and those often most excluded such as children from minority groups, children

involved in refugee or migration situations, children with disabilities, children in detention and in residential institutions, or children living in remote rural areas, as they are likely to experience combined challenges and needs. A lack of access to justice is also associated with leaving behind the most vulnerable groups of children and contributing to perpetual cycles of poverty and exposure to violence (OECD/Open Society Foundations, 2019<sup>[41]</sup>).

For children, access to justice should involve the ability to seek and obtain just, timely and effective remedies for violations of rights as provided for by international, regional and national legal frameworks. More broadly, it should provide children with access to appropriate information, advice and assistance to support and empower them to participate and engage in a range of issues they will confront that are legal issues but that may not reach a stage of formal resolution. Effective access to justice should also imply a multi-disciplinary approach and covers children's appropriate involvement with criminal, civil and administrative justice systems, international and regional jurisdictions, and alternative dispute resolution mechanisms (UN, 2013<sup>[42]</sup>), from prevention to post-resolution. To this end, the forthcoming OECD **Child-friendly Justice Framework** aims to support countries to implement and invest in child - friendly policies and initiatives in order to focus people-centred approaches, reforms and initiatives on a key vulnerable group – children and young people (See Box 8 for more information).

### Box 8. Towards an Child Friendly Justice Framework: highlights

The preliminary Child-friendly justice framework seeks to build upon the OECD People-Centred Justice Framework, deepening and elaborating on the specific elements for children and young people. In particular, it proposes some of the following characteristics for a child-friendly 'culture' within the justice system:

- **Understanding legal and justice needs of children from their perspective** – A crucial first step is to regularly identify the legal and justice needs of children as they experience them. Doing so requires taking into consideration all children and their particular circumstances, and look beyond the formal institutions to identify legal and justice needs as children and their families experience them.
- **Seeking to create and maintain child-appropriate legal, policy and institutional frameworks** - the Convention on the Rights the Child, the three optional protocols associated with the Convention, and a host of other international covenants and standards provide a good practice basis for guiding country internal legal, policy and institutional reforms and frameworks. Constantly referring back to and testing various laws, policies and institutional structures against these internationally accepted standards is likely to be a feature of a child friendly culture.
- **Promoting the legal empowerment of children** - a crucial element of providing access to justice is empowering people to participate in and manage their own affairs, and have a voice in the design and delivery of processes and services that affect them. For children, this requires dedicated arrangements to ensure that the information, assistance and support provided reflects their age, maturity and unique circumstances. A child friendly culture will seek to provide for such appropriate empowerment.
- **Committing to learning what works from the child's perspective** – The culture must include a commitment to learn – through rigorous evaluation, deep community engagement and data monitoring – what strategies and pathways are most effective, sustainable and appropriate for meeting the legal and justice needs of children, and using this knowledge in policy and service development.
- **Ensuring child-friendly arrangements are prioritised** for all stages along relevant pathways – Services and processes impacting children need to be designed to be appropriate for them.
- **Promoting a whole-of-government and whole-of-state approach** – While children may often have fewer legal issues than adults, even they will have inter-twined legal issues (family, civil, criminal), as well as needs inter-twined with non-legal needs. The resolution of these legal and justice needs may only be

possible with the resolution of other service problems. All parts of government and non-government agencies working together to resolve holistically the problems experienced by children is essential.

- **Ensuring appropriate capability development for actors involved in providing justice services** – Children confront the justice system and face legal problems at a unique disadvantage by virtue of age, capacity and maturity limitations. They must engage with many individuals, organisations and actors at all levels involved in providing justice services to children. These people and organisations have an important impact on children seeking to enforce their rights and to resolve legal problems, and must have appropriate training and development to deliver child-friendly services.
- **Ensuring effective and sufficient resourcing, while promoting efficiency and innovation** – Ensuring the capacity of the actors involved in addressing legal and justice needs for children also requires securing a sufficient level of staffing, expertise, skills, tools, equipment, and other resources, which in turn requires adequate programme funding. For justice institutions at all levels, it is critical that sufficient appropriately trained staff and resources be allocated to ensure meeting the legal and justice needs of children as efficiently and effectively as is appropriate.

Source: (OECD, 2022<sup>[43]</sup>) (forthcoming) OECD Framework for Child-friendly Justice

The intention of the framework is to propose a comprehensive, holistic and child-centred approach to children's access to justice ensuring that the justice pathways and services are responsive to children's legal needs.

#### QUESTIONS FOR DISCUSSION:

- **Tools:** What methodologies and tools can be used to understand child and young people needs and experiences with the justice systems?
- **Strategies:** What policy and practice strategies should countries consider as a means to implementing people-centred justice for children and young people? What are the elements of child-centred justice?
- **Good practices:** What are the examples of good practices in responding to the needs of children and young people and child-friendly justice services/systems?

## Session B. Indigenous and minority communities and people with disabilities

Effective access to justice also implies understanding the needs and tailoring justice responses to the most vulnerable groups, including indigenous groups, minority communities and people with disabilities. For these groups, access to justice can be specially hampered by intersectional vulnerabilities, misunderstanding of their specific legal needs, discrimination and complexity of justice institutional set up - that obstacles the access to other public services (health, education, etc.).

**Indigenous people** represent some of the most disadvantaged communities, and disadvantaged in the face of justice systems in particular. There are [between 370 and 500 million Indigenous peoples worldwide](#), in over 90 countries **39.5 million of them live in 14 OECD countries**.<sup>12</sup> While they represent about 5% of the world's population, they comprise 15% of the world's extreme poor and 33% of the rural poor. They are also more **concentrated in rural areas** than non-Indigenous populations. Many of these communities experience overcrowded and multigenerational housing, and poorer health outcomes, with limited access to health services and infrastructure. Indigenous people are usually grossly over-represented in criminal justice and prison systems. Indigenous people are also generally over-represented as victims of crime (Justice Canada, n.d.<sup>[31]</sup>). This calls for strengthening the understanding between the state justice and indigenous jurisdictions, and coordination between formal and informal justice service including addressing potential conflict of jurisdiction where relevant, to ensure equal access to justice for all. Indigenous rights are often left un-implemented for the lack of adapted regulatory frameworks, conflicts of interests, and lack of specified justice channels.

**Minority communities** including racial, ethnic, religious or migrant groups share many of the same vulnerabilities as indigenous communities – with higher poverty and incarceration rates, and lower life expectancies and social and economic outcomes. The recent movements have reflected the too-slow reforms made in many countries towards ensuring that the institutions of state, and justice institutions in particular, adopt unbiased, equitable and fair policies and practices.

People from minority groups suffer significant structural and cultural barriers to achieving fair outcomes and access to justice from their perspective due, notably, to disadvantages (e.g. socio-economic) or discrimination.

Conscious or unconscious bias especially in decision-making processes can plague many parts of the system: from policing or prosecution to witness reporting and jury selection, to rates of conviction and lengths of sentencing and the amount of lower damages awards. While it is easier to notice explicit biases, it is more difficult to acknowledge implicit biases, which often occur unintentionally (Greenwald and Krieger, 2006<sup>[32]</sup>). Thus, it is more challenging to develop practices to eliminate bias the system overall.

The resulting lack of trust in, or negative previous experience with, the justice system may lead people to under-report (dark figure of crime), not seek legal advice or redress or not cooperate either as victims and claimants or as witnesses. In turn, it may exacerbate inequalities.

Countries are well aware of the issue and are increasing their efforts to address systemic biases by: improving accessibility (e.g. support in defence agencies or legal aid) or procedural fairness; representativeness (recruitment); implementing data collection and racial impact assessment or jury diversity policies. Some argued that exposing judges to stereotype-incongruent models, developing testing and training, auditing, altering courtroom practices, encouraging judges to consider alternative cases and perspective taking, creating diversity and constructive courtroom environment and reminding them of the importance of professional norms could be ways to deal directly with implicit biases (Wistrich and Rachlinski, 2017<sup>[33]</sup>).

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<sup>12</sup> UNDP (2022), [10 things to know about indigenous peoples by United Nations Development Programme| UNDP - Exposure](#).

Finally, the increased vulnerabilities related to environmental challenges faced by both indigenous and minority communities and the crucial role of indigenous communities in addressing them brings the attention to the importance of people-centred justice systems for environmental inequalities and for the justice needs of vulnerable and socially disadvantaged groups (e.g. climate change; water pollution; floods or droughts; urban heat islands).

**Disability** refers to the difficulties experienced by individuals in their day-to-day functioning due to health conditions (WHO & World Bank, 2011<sup>[47]</sup>). While these health conditions could result in physical impairments and prevent body functioning and movement, they could also limit individual activity, cognitive ability and restrict or prevent participation in many areas of life (WHO, 2001<sup>[48]</sup>) including access to justice. This group has consistently appeared in legal need survey findings with one of the highest levels of vulnerability to experiencing legal problems and the less well equipped to deal with those problems (Mulherin, 2016<sup>[49]</sup>). People with different types of disabilities face a number of challenges in their dealings with justice systems depending on their disability. Among the most prominent are; the mismatch between the specific legal needs of the disabled person and the existing justice services, lack of guidelines and procedures equalising access to justice systems, lack of trained staff to deliver effective access and intersectional vulnerabilities (see Box 9). This is despite the fact that since 2006 the International Convention on the Rights of Persons with Disabilities (CRPD) lays out specific guidelines for countries, including:

- **Article 13 – Access to justice**
  1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.
  2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.

### **Box 9. Barriers in the Justice system and disability: The Australian Human Rights Commission**

The Australian Human Rights Commission (AHRC) has found that people with disabilities “are at increased risk of being disrespected and disbelieved. If a victim, their disability may be seen to mitigate the offender’s guilt; if a perpetrator, their disability makes incarceration more likely” (AHRC, 2022<sup>[50]</sup>). The barriers identified by the AHRC – principally focused on criminal justice, but likely relevant for civil and family law matters as well included:

- Community support, programs and assistance to prevent violence and disadvantage and address a range of health and social risk factors may not be available to some people with disabilities.
- People with disabilities may not receive the support, adjustments or aids they need to access protections, to begin or defend criminal matters, or to participate in criminal justice processes.
- Negative attitudes and assumptions about people with disabilities often result in people with disabilities being viewed as unreliable, not credible or not capable of giving evidence, making legal decisions or participating in legal proceedings.
- Specialist support, accommodation and programs may not be provided to people with disabilities when they are considered unable to understand or respond to criminal charges made against them (‘unfit to plead’).

- Support, adjustments and aids may not be provided to prisoners with disabilities so that they can meet basic human needs and participate in prison life.

Source: Australian Human Rights Commission (AHRC) <https://humanrights.gov.au/>

A people-centred justice system that seeks to identify and address justice needs from the perspective of the person with disabilities will seek to address structural deficiencies (Box 9) – such as through providing appropriate supports at each stage of legal and justice processes and through the development of appropriate capabilities among justice system actors and staff to avoid inappropriate perceptions, attitudes or discrimination.

## QUESTIONS FOR DISCUSSION:

- **What will ‘success’ look like?** What will ‘people-centred justice’ look like for Indigenous people (recognising differences between groups)? What additional strategies/resources/approaches will be required to implement successfully people-centred justice in countries in relation to indigenous groups?
- **Indigenous women:** What are the particular challenges experienced by Indigenous women in particular? What strategies have been shown to work in terms of empowering Indigenous women to achieve access to justice?
- **Minority communities:** The experience of many minority communities in the justice system is one of disadvantage, discrimination and poor outcomes. How can this reality be reversed? How to eliminate implicit and explicit biases from justice systems? What strategies are needed, and how can they be embedded on a society-wide implementation of people-centred justice?
- **People with disabilities:** How to ensure that justice systems are appropriate and responsive to the needs of people with different types of disabilities? What are the good practices and latest developments in this regard? What can be learned from other sectors?

# Session 9: Responsive and effective justice systems for a changing world

## Thematic Focus: Role of justice in people-centred green transition

### Transnational justice issues

The rise of global challenges, such as transboundary criminal networks (e.g. cybercrime, human trafficking, theft of intellectual property, money laundering), health, migration and climate and biodiversity crises calls for the increasing role of justice institutions. Governments and communities will increasingly be challenged by things beyond their individual control. Calls for stronger guarantees of global justice consistency and the ability to respond beyond borders will grow. This is reinforced by the multiplication of international treaties to tackle global issues, the need and capacity to secure the enforcement of transnational agreements such as environmental targets, balancing current and emerging rights, where justice institutions play a critical enforcement and accountability role, thus helping maintain citizens' trust in governments' ability to handle effectively challenges at global scale.

Indeed, increasingly, justice systems are experiencing a growing demand for transnational cases (several landmark cases have recently awarded victories on climate litigation – see Box 9). In this context, stronger guarantees for global commitments and greater capacities to respond to global challenges through the justice system require **rethinking** of required accessibility, organization and capacities at the local/national level.

Factors under consideration by countries and justice systems include:

- the clarification of justice pathways for transnational disputes or crimes
- how national legislation and regulatory frameworks can be aligned with global commitments and treaties
- how national justice systems can effectively respond to global challenges
- how investment in digital technologies can be helpful to enhancing the efficiency and effectiveness of justice in this new environment
- how data collection can be leveraged to enhance responsiveness of the justice system
- how global justice data can be made more effective and available
- how to strengthen global dispute resolution mechanisms and services

### Special Focus: Promoting people-centred green transition

The issue of climate change and the rapid growth in public interest in addressing environmental issues is, perhaps, the key example of both the changes in what people demand of their democratic governments, as well as demonstrating the place justice systems have in reinforcing democracy.

Several decades ago, in many countries environmental justice was a 'niche' law discipline from which individuals were often excluded by traditional justice rules. Regulating and enforcing environmental protections were generally regarded as the 'province' of governments and companies. Individual citizens faced rejection of their 'standing' by courts and tribunals when they tried to intervene in many environmental matters.

Yet, in a relatively short period, environmental justice has become a global concern, particularly for vulnerable groups, and justice systems and governments have been rapidly re-assessing access to environmental justice. The fundamental right to a healthy or quality environment can now be found in the constitutions of over 100 countries, and thousands of environmental treaties (multilateral and bilateral) exist among countries (International Environmental Agreements Database, 2021<sup>[51]</sup>). To deal with the growing justice demand stemming from these legal provisions, many countries have established specialised environmental courts. In the OECD, examples include the New South Wales, Australia, Land and Environment Court; and Chilean environmental courts. UNEP deems this “explosion” of environmental courts to be the most remarkable change to environmental justice in the 21<sup>st</sup> century (UNEP, 2016<sup>[52]</sup>).

The growing number of national and international environmental commitments, their global and transboundary impact as well as the increasing public call for environmental justice, can only be answered by responsive justice institutions (constitutional, administrative, civil and criminal) that are able to hold governments and companies accountable for environmental regulations and protect fundamental rights to a quality environment. These cases are already reaching countries’ highest courts, and a number of landmark cases have recently awarded victories for climate public litigation (See Box 10 below).

In this rapidly changing justice environment, there are:

- new types of cases dealing with new and emerging environmental issues not argued judicially before
- rising concerns over the genuineness of environment protection mechanisms, and potential ‘greenwashing’
- governments and justice systems trying to ‘come to grips’ with balancing economic demands and pressures, and guaranteeing adequate energy supplies in a volatile world, with the very real concerns of fighting climate change and safeguarding the future environment.

People-centred justice systems can have an important role to play to address fairness in the climate change policies and redress environmental inequalities and justice needs particularly affecting vulnerable groups including children and youth, women, low-income population and indigenous and local communities. There is an increasing global recognition of intergenerational concerns posed by climate change in legal judgements (OECD, 2020<sup>[53]</sup>). Moreover justice pathways can remain unclear with lengthy procedures and high cost and difficulty access to environmental data and information.

Balancing the different interests in various environmental cases, which are likely to multiply, and providing effective and timely remedies for citizens, vulnerable groups and businesses who seek to protect their right to a quality environment, require increasingly efficient and effective justice systems able to channel claims in a timely manner to sustain citizen trust in the effective enforcement of the green agenda. In order to achieve this, some areas for improvement could include:

- **Promote specialisation and training of judges in environmental matters.** Judicial specialisation and specialised trainings have shown to be beneficial to efficiency and to coherence in rulings in many areas (Council of Europe, 2012<sup>[54]</sup>). The majority of judges currently have not been trained in international and national environmental laws. Judicial training is particularly needed to keep up with a growing international and national environmental case law and dealing with complex technical cases on the basis of current climate science
- **Invest in the overall efficiency and effectiveness of the justice system.** The growing demand for effective case resolution in the area of environmental justice in the different justice branches makes it pressing to invest in the capacity of the system to respond adequately, as well as the need to remove barriers to access justice.
- **Enhance accessibility and people-centricity of the justice system.** Maintaining citizen trust in public institutions to deal with the climate emergency will also depend on preserving access justice concerning environmental law (OECD, 2019<sup>[26]</sup>) including understanding legal and justice needs

and environmental justice pathways, enhancing legal capabilities and standing; exploring the value of ADR mechanisms.

But other than ensuring easier pathways for citizens to have ‘standing’ to pursue environmental justice, how will people-centred justice facilitate increasing access to environmental justice? And what tools and mechanisms are needed to achieve success in this?

### Box 10. Landmark cases on environmental justice

#### France

In July 2021, the highest administrative court in France (Conseil d’État) rendered its first decision related to environmental commitments of the Government under the Paris Agreement. Prompted by the commune of Grande-Synthe (Nord), a coastal town that could be severely affected by rising sea levels, and several climate action organisations (Oxfam France, Greenpeace France, Notre Affaire A Tous, Fondation Nicolas Hulot), the Council ordered Government "to take all necessary measures to curb the curve of greenhouse gas emissions (...) in order to ensure its compatibility with the objectives" of France by March 31, 2022. Given the current levels, this would require to reduce gas emissions by 40% in the following 9 months.

#### The Netherlands

The Urgenda Foundation v. the Netherlands (2019) case became a landmark environmental case when the Dutch Supreme Court ruled that by failing to reduce greenhouse gas emissions by at least 25% by 2020, the Dutch government would be acting unlawfully under Articles 2 and 8 of the European Charter of Human Rights. In response, the Dutch government vowed to reduce the capacity of its remaining coal-fired power stations by 75% and implement a €3 billion package of measures to reduce Dutch emissions by 2020. This case has provided a growing impetus to legal arguments based on human rights in climate litigation procedures.

More recently on 26 May 2021, The Hague District Court made a ground-breaking judgment against Royal Dutch Shell plc ordering the company to reduce its worldwide CO2 emissions by 45% by 2030 to support the targets set out in the UN Paris Agreement. This was the first time any court in the world had imposed a duty on a company to do its share to prevent climate change, in this case, due to a “best-efforts” obligation to reduce emissions stemming from its business activities. The ruling is not final and is most likely to be appealed by Shell, but striving for compliance is mandatory in the meantime.

Note: These highlights are by no means exhaustive of the existing cases of relevance in the field of environmental law. For further information, see for instance: Grantham Research Institute on Climate Change and the Environment and Centre for Climate Change Economics and Policy, London School of Economics and Political Science. (2020) Global trends in climate change litigation: 2020 snapshot. Sources: Sharma by her litigation representative Sister Marie Brigid Arthur v Minister for the Environment [2021] FCA 560, available at [fedcourt.gov.au](https://www.fedcourt.gov.au); Urgenda Foundation v. the Netherlands (2019) ECLI:NL:HR:2019:2006 (available here); Le Conseil d’Etat statuant au contentieux (Section du contentieux, 6 ème et 5ème chambres réunies) N° 427301 (judgment available at: <https://www.conseil-etat.fr/en/news/greenhouse-gas-emissions-the-government-must-justify-within-3-months-that-the-reduction-path-to-2030-can-be-achieved>); The Hague District Court, Milieudefensie et al. v Royal Dutch Shell plc, NL:RBDHA:2021:5339 (26 May 2021) (available here) and Cleary Gottlieb Case Study.

### QUESTIONS FOR DISCUSSION:

- **Good practices:** What are the country examples and approaches to respond to the justice demand on environmental and climate change issues (e.g., environmental courts, specialisation)? What are the challenges, opportunities and good practices?

- **Access to justice:** What are the considerations in accessing justice? How can justice systems have responsive and effective pathways for people to claim their rights and / address any transboundary disputes in relation to environment?
- **Right balance:** How to balance rights, interests and 'standing' issues?
- **User pathways:** How to clarify user pathways for transnational disputes or crimes (if the conflict or crime has been committed in another country, e.g. in the field of environmental law or terrorism)? How to develop integrated and seamless justice pathways, also for vulnerable groups?
- **Justice system capabilities:** What are the challenges, opportunities and implications for justice institutions of the growing number of multilateral agreements and the global impact of international challenges? What capabilities, skills, data and technologies are needed for justice institutions to respond effectively to global challenges, such as climate change?

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