

# The Justice Innovation Approach

## How Justice Sector Leaders in Development Contexts Can Promote Innovation

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In September 2012, the UN General Assembly devoted its opening debate to the rule of law.<sup>1</sup> A clearer signal that the community of states attaches great importance to the development of the rule of law is hardly imaginable. In *Delivering Justice: Programme of Action to Strengthen the Rule of Law at the National and International Levels*, the secretary-general of the United Nations proposed a program called “delivering justice.” According to this report, the rule of law involves more than the state and its institutions: it “is at the heart of the social contract between *the State and individuals* under its jurisdiction, and ensures that justice permeates at *every level*.” The report continues: “responsibility for ensuring rule of law [...] lies with *member States and their citizens*.”<sup>2</sup> Clearly, the rule of law is about more than simply setting rules; it also involves mechanisms to ensure that rules and dispute resolution processes actually work. *Delivering Justice* contains sections about budgeting and planning, accountable and transparent delivery at the national level, monitoring, the role of civil society, and informal and traditional justice systems. Rather than encouraging states to enact more laws or ensuring that new rights are protected, the secretary-general proposes that states set goals for ensuring the rule of law, assume a monitoring role, measure effectiveness, perform benchmarking exercises, and report progress against indicators. In sum, the report encourages state actors to rethink their role in delivering justice.

This chapter develops this idea further. It shows how justice sector leaders—ministers of justice, secretaries-general of ministries, strategy departments of ministries, chief justices, and directors of public prosecution agencies—can help society deliver justice rather than simply provide justice themselves. The chapter assumes that the processes of delivering justice can be improved in a way similar to the delivery of health care, education, or electricity: through continuous innovation. It addresses the issue of how justice sector leaders can enable effective justice innovation.

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- 1 See UN General Assembly Resolution A/Res/66/102 (Jan. 13, 2012), available at <http://www.unrol.org/files/GA%20Resolution%202012.pdf>, paragraph 15 et seq.
  - 2 See *Delivering Justice: Programme of Action to Strengthen the Rule of Law at the National and International Levels*, Report of the Secretary-General 2, 6–8 (Mar. 16, 2012).

The analysis is written with the development context in mind. However, the suggested approach is relevant for all countries, albeit with different priorities and areas of emphasis.

This chapter first explains the meaning of justice innovation. Then it sets out what a strategic justice leader can do to stimulate and consolidate rule of law. The chapter ends by explaining exactly why the justice innovation approach is worth pursuing and how it can help deal with a number of challenges.

### What Is Justice Innovation?

Building on the Wikipedia definition, we say that justice innovation is the effort to create better or more effective justice products, processes, services, technologies, or ideas that are accepted by markets, governments, and society. Two concepts stand out in this definition: the emphasis on better or more effective justice products and the need to ensure that these products are actually used and liked by all stakeholders.

Rule of law assistance and justice sector budgets tend to fund the building or strengthening of existing state institutions. The image of basic rule of law institutions has not changed much in the last two hundred years. Courts, bar associations, law-making procedures, and parliaments are all founded on ideas developed during a period in Western history when empires and kings were being replaced by states and democracies. Until recently, justice sector leaders and the organizations that supply development funds felt responsible for training and resourcing judges, prosecutors, and police officers; building bar associations and national councils for the judiciary; developing constitutions and other laws modelled on Western standards; and setting up national gazettes in which to publish the laws.

However, most rule of law mechanisms emerged independent of state institutions. Informal justice systems—with communication, negotiation, mediation, and adjudication—tend to develop whenever groups of people live or work together and conflicts must be managed.<sup>3</sup> Protection of property rights is triggered by demand when people start investing in assets of a certain value that become scarce.<sup>4</sup> Often, the state incorporates successful innovations that were developed privately.

In line with this reality, and taking criminal justice as an example, the question at the core of the justice innovation approach should not be “how do

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3 Deborah Isser ed., *Customary Justice and Rule of Law in War Torn Societies* (United States Institute of Peace Press, 2011).

4 See Francis Fukuyama, *The Origins of Political Order, From Prehuman Times to the French Revolution*, (Farrar, Straus and Giroux 2011) p. 247 (“Of all the components of contemporary states, effective legal institutions are perhaps the most difficult to construct.”) Lee J. Alston, & Bernardo Mueller, *Property Rights and the State*, in Claude Ménard & Mary M. Shirley, *Handbook of New Institutional Economics* 573 (Berlin: Springer Verlag 2008).

we build a good prosecution service?” but rather “how do we empower and stimulate the stakeholders in the criminal justice system—judges, prosecutors, police officers, victim support services, civil servants, legal aid lawyers, psychologists working with drug offenders, academics, correction services, and social entrepreneurs—to continuously improve criminal justice mechanisms?” In other words, how can strategic justice leaders contribute to the innovation process so that more justice is delivered?

### **What Can Justice Sector Leaders Do to Foster Innovation?**

The literature on innovation shows that successful innovation processes cannot be forced by following a simple set of prescriptions. Innovation is a matter of doing many things well and involves many factors.<sup>5</sup> One survey found no less than forty factors associated with successful innovation.<sup>6</sup> Many are related to what happens on the ground, as justice sector professionals improve their processes step by step and through trial and error. But there are quite a few things that justice sector leaders can do to help justice innovation thrive.<sup>7</sup>

#### ***Generate Possibilities***

In the innovation initiation phase, the literature lists nine factors associated with innovation. Innovation is stimulated by creating a setting with diverse views, people, and backgrounds. Practitioners should focus on users of rule of law mechanisms and the people directly serving them. They know best what is needed and what might work. Time and space are required for innovation, as are clear goals for the innovation process. A justice sector leader can take several actions in this phase.

#### ***Articulate a Clear Vision***

Innovation can be inspired by a clear vision that shows political commitment and a desire to redirect resources in a particular area. This is a critical factor because innovation—for instance, when dealing with employment conflicts—will require efforts from a wide variety of actors—for instance, employers, lawyers, trade unions, lawmakers, and courts. Typically, the organizations in the justice supply chain are independent and cannot be managed in one common direction. They must be inspired, and they must see that others in the supply chain are adapting to change.

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5 See *The Best Story in Development*, *The Economist*, [19 May 2012], available at <http://www.economist.com/node/21555571>, which cites a study of the many things that contribute to a significant drop in child mortality.

6 Nizar Becheikh, Réjéan Landry and Nabil Amara, Lessons from innovation empirical studies in the manufacturing sector: a systematic review of the literature from 1993-2003, *Technovation* 26 (2006), p. 644-664.

7 See the Innovation Model, available at <http://www.innovatingjustice.com/innovationlab/innovation-assistance/innovation-model/?subcategoryID=15535>, developed on the basis of factors that have been found to support innovation in the public sector.

Politicians are subject to many pressures and can unknowingly sow confusion. A minister may make a speech one day in which he (or she) states that access to justice should be improved. The next day he might argue before a different audience that courts are overburdened and that people should do more to resolve their own conflicts. The visions of justice sector leaders should be realistic: in many postconflict contexts, donors demand the articulation of a national rule of law plan. (Interestingly, the donor states that demand such national rule of law plans rarely have one themselves.) Those plans are often very wide in scope (they are, after all, “national”), they rarely clearly prioritize, and they often contain unrealistic timelines,<sup>8</sup> making it hard for potential innovators to coalesce around a common agenda.

To be realized, a vision must be as specific as possible, couched in plain language, ambitious but doable, and consistent, not changing with every new administration. The Millennium Development Goals are an excellent example of a clear, concrete, ambitious, doable, and consistent vision. Other examples of justice innovation visions are “to increase the number of people living on land and in houses with tenure security by 20 percent in the next year,” “to make a judge available to every village of more than 500 people within the next two years,” and “to ensure that employers and employees get a solution within two months after filing a claim.” It would not be difficult to list a number of priorities for justice sector innovation based on an assessment of the most frequent and urgent justiciable problems the population experiences; such surveys have been done before.<sup>9</sup>

### *Break the Rules*

Innovation means doing things in new ways. The innovation literature urges innovators to challenge every rule of the game. For justice sector professionals, this directive creates a dilemma, because their legitimacy is built on following the rules, not breaking them. Changing procedures in a relevant way almost always requires a change in the rules or at least in the way rules are applied. So everywhere in the world, professional judges, lawyers, and others are more likely waiting for the rules to change than taking initiatives to improve procedures.

Justice sector leaders can address this dilemma by allowing experiments, provided that the experiments are clearly motivated by goals such as decreasing costs, preventing error, increasing procedural justice, or speeding up

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8 One of the more extreme examples is the Afghanistan Compact, agreed to between Afghanistan and the international community, in London in 2006, which provides as benchmarks: “By end-2010, the legal framework required under the constitution, including civil, criminal and commercial law, will be put in place, distributed to all judicial and legislative institutions and made available to the public” and “By end-2010, functioning institutions of justice will be fully operational in each province of Afghanistan, and the average time to resolve contract disputes will be reduced as much as possible.”

9 See Basic Justice Care, available at <http://www.hiil.org/publication/strategies-towards-basic-justice-care>, which lists some basic justice needs.

trials. Instead of stressing formal barriers to new solutions, justice sector leaders can urge stakeholders to develop, try, and test new procedures and to ask for changes in the rules if necessary. Procedures for experimental treatments in the health care sector may be a source of inspiration.

### *Foster Competition*

Innovation is hardly conceivable without competition. Innovation in an environment like Silicon Valley is not based on monopolies and rigid agreements between players as to who will deliver what to the exclusion of others. Such incubators are messy, chaotic places where smart ideas compete with other smart ideas for funding, duplication is not frowned upon, and the shared assumption is that the best idea will win out in the end. What is “best” is measured by sales figures, demand by clients, and the willingness of venture capitalist to invest. Organization is limited: it is aimed at creating a place where innovators can meet other innovators and where people who are interested in funding start-ups can find the best ones. What happens next is thanks to the magic of the marketplace and innovation.

Can this concept be transposed to the world of order, norms, and justice? Not if one perceives the delivery of justice as the application of a master program emanating from a state’s constitution. In the real world, delivering justice is a messy process, as every practicing lawyer will testify. There are many ways to solve conflicts and many rule makers (national, international, local, formal, informal, public, private) work on the same problems. Justice sector innovators should be able to develop the best approaches in an attractive, competitive environment in which there are a few generally accepted ways to measure potential success of innovations (such as satisfaction of all types of users).<sup>10</sup>

Fostering competition in the justice sector can be part of a ministerial innovation policy. This policy would put the minister less in the position of the holder of power who acts, and more in the role of creating a level playing field to make sure that the fairest, most effective, fastest, and lowest-cost solutions survive.

For example, take the provision of fair and efficient dispute settlement processes for employment conflicts or coping with the aftermath of large-scale violence. Various civil and criminal public courts might offer different procedures (national, international), industry tribunals, truth and reconciliation commissions (local or national), commissions establishing adequate compensation, semibinding mediation services based on existing informal justice mechanisms, or online dispute resolution platforms.<sup>11</sup>

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10 See *Non State Security and Justice in Fragile States*, Overseas Development Institute Briefing Paper 73 (Apr. 2012), which also lists some useful rules of engagement in respect to nonstate actors, available at <http://www.odi.org.uk/resources/docs/7640.pdf>.

11 See, for example, David Pimentel, *Rule of Law Reform Without Cultural Imperialism? Reinforcing Customary Justice Through Collateral Review in Southern Sudan*, 2 Hague J. on the Rule of L.1–28 (2010).

In the Netherlands, E-Court promises its clients quick and cheap awards by arbitrators for money claims. Its initiators tell a story of many obstacles based on resistance from bailiffs, state courts, and the ministry of justice, who all saw the existing way of doing things threatened by the concept of E-Court rather than welcoming a new supplier of fair and speedy solutions.<sup>12</sup> Yet, this innovation forced the courts to rethink their ways of dealing with similar claims, seeing that the income for the state justice sector from money claims was no longer guaranteed. Did fostering competition enhance the performance and effectiveness of state courts and private sector dispute resolution?

Competition requires a level playing field based on transparency of quality and costs so that clients seeking access to justice can make informed choices and defendants are protected against unfair procedures. In theory, it should be possible, for example, to send all users of a justice process a brief email or text message on their mobile phones asking them to assess a court process they have just gone through based on a number of criteria.<sup>13</sup> Their responses could be aggregated and fed into a website for all to see. And based on that, justice clients, justice providers, and ministry officials could see what works best.

Justice sector leaders can foster competition by making the performance of justice services more measureable and transparent, by avoiding general monopolies, and by allowing differentiation and specialization.

### ***Develop Innovations***

Once the innovators are at work, the most fruitful ideas must be selected for the actual innovation process. This requires a situation where people with a positive attitude and sufficient resources can nurture the innovative concept. Partnerships between public services providers and private sector organizations can be very fruitful: legal expenses insurance companies can help ensure access to legal aid; online dispute resolution platforms can be integrated in court procedures. In today's world, these are no longer rich country options. Building a prototype early on is recommended, as well as involving end users in the development process. Again, a justice sector leader can take specific actions.

### ***Manage Risk***

Once the developing process starts, a safe environment in which to develop a new concept, allowing for trial and error, is important. In an environment that is not "safe," where failure is immediately linked to blame and consequences, innovation tends to be difficult. The appetite of the public for trial and error in the justice sector may not be big, however. A minister of justice may be genuinely committed to creating more room for such an approach, but he too is subject to cabinet, parliamentary, and media scrutiny. So creating safe

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12 See <http://www.innovatingjustice.com/innovations/e-court-the-first-online-private-court>.

13 See, for example, the measuring access to justice tool at <http://www.innovatingjustice.com/innovations/measuring-the-costs-and-quality-of-access-to-justice>.

spaces for experiments requires risk management. The minister must build it upward within the cabinet, vis à vis the prime minister or president and with respect for parliament. The minister of justice must also have a smart media strategy. The minister of justice must project a strong commitment to gradual innovation processes, allowing for trial and error at the ground level, where the innovations need to come from. Quick wins are likely to be important here—specific improvements that show that the innovation climate is producing results, such as savings in the budget, a higher level of satisfaction from victims, more efficient court hearings, less recidivism, or decreasing juvenile delinquency.

### *Reward Innovation Champions*

People are important. Almost all successful innovations are linked to a key person who devoted years of hard work to making a dream come true. The justice sector is not very good at rewarding such innovation champions. Making substantial money from innovation is hard, and one of the strengths (and weaknesses) of the justice sector is stressing the professional roles of judges and civil servants rather than personal qualities and strong personalities. A minister of justice is in a unique position to reward people who have worked for many years on improving procedures or systems of rules. Attaching people's names to innovations can be done easily; one should never underestimate the effect of simple and consistent praise for good achievements.<sup>14</sup>

### *Fund Early Development*

Many innovations in the justice sector—good as they are—trip over two wires: funding for early development and funding for a sustained period of time.

The justice sector tends to be funded in a rigid way. The budget and planning cycle is generally quite short. Budgets are structured around fixed deliverables, which rarely if ever include money for systematic research and development. Courts cannot invest money now that they can recoup in the next years by cost savings or by an increase in court fees for better services or more plaintiffs bringing cases. Justice sector donors may be interested in trying new procedures, but they tend to want specific deliverables: so many judges trained, so many courts and prisons built, a bar association set up. The situation is slightly different in the legal services industry, where research and development budgets from suppliers to law firms have created innovations in specific areas, such as software to help with e-discovery.

A minister of justice can make sure that research and development budgets exist and that there are ways to recoup initial investments. He can do that within his own ministry, and he can initiate public-private partnerships with

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14 An excellent example is the relationship between the International Criminal Court and the partners of the Legal Tools database and Case Matrix Network. The partners carry the costs of their contribution to the network but are also part of the innovation team. Signs of appreciation and commitment by the Court stimulate the partners in this innovative network. See <http://www.legal-tools.org/en/what-are-the-icc-legal-tools/>.

donors that provide investments in justice innovation with a commitment, for example, that the ministry will take over responsibility for funding the services once an innovation has been successfully developed. Developing states can lead the way here.

### ***Replicate and Scale Up***

Once an innovation is up and running, its potential for replication and scaling up should be exploited. Models for interactive court hearings developed for civil justice courts can be adapted to administrative law or criminal justice. What has been developed in one court may be useful for similar courts in other countries, but standardizing new practices too early may stifle innovation. Change management is necessary as well.

### ***Create Incentives***

A minister of justice can create incentives for justice leaders to try out well-tested innovations that have been developed elsewhere. Allocating extra budgets to those who are willing to adopt an innovation is one method. One factor inhibiting justice sector innovation is that each court in each country tends to develop its own working methods, without relying on external suppliers of procedures, supporting software, or protocols for dealing with certain types of crime. A minister of justice can urge justice sector organizations to consider buying tools that are readily available, either those developed by specialized private sector companies or those developed by colleagues in the public sector. If a worldwide market for justice sector technologies were to evolve, the rule of law could be enhanced substantially and many cost savings would be possible. Ministers of justice from developing country have more choice than ever. Tanzania need not look only at things that worked in Germany, the United Kingdom, or France; it can also look at innovations from, for example, Brazil, India, South Africa, Ethiopia, and Rwanda.

### ***Be Aware of Disruptive Innovations***

Justice sector leaders should be aware of the possibilities of disruptive innovations. Online services, such as those offered by Legal Zoom,<sup>15</sup> disrupt the market for lawyers and notaries in civil law countries, who are likely to protect their markets by favoring legislation that has been designed without new possibilities in mind, such as the prohibition of legal advice by nonlawyers or the monopolies of notaries public. Because innovations can make basic justice care available to groups that were unable to get any legal assistance in the past, there is every reason to create a level playing field for such new technologies. The paralegal program Timap for Justice has had a disruptive effect on the legal services market in Sierra Leone.<sup>16</sup>

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15 See <http://www.legalzoom.com/>.

16 See <http://www.timapforjustice.org/>.

### *Consider Long-Term Business Models*

Assuring longer term funding for successful justice innovations after the research and development phase is often challenging. One of the reasons for this is that consideration of such fund tends to start only once an innovation has been developed. Justice sector leaders should be thinking about the management and budgeting of research and development processes right from the start of any justice innovation initiative.<sup>17</sup>

### **Analyze and Learn**

Innovation cannot exist without critical reflection. Justice sector leaders should ensure that monitoring mechanisms are in place and that new insights can be implemented in improved versions immediately (real-time learning).

One reason why the health care sector is so innovative is because benchmarks for new treatments are easy to establish: symptoms disappear and the patient feels better and does not return with the same complaints. Similar metrics for the justice sector would greatly enhance innovation processes, for example, lower costs, timelier decisions, and higher satisfaction of users (procedural justice, outcome justice).

A minister of justice can ensure that a segment of the core budget is reserved for developing such measurement tools and for applying them to the processes and procedures of the system. This is an area par excellence where the minister can enlist civil society organizations, academic networks, and external donors. Civil society organizations can be stimulated to play a role in assessing elements of the justice system and showing where improvements are needed. Outcomes measurement could interest donors; and more and more academic institutions are developing rule of law measuring tools.<sup>18</sup> What the minister cannot outsource is working with senior civil servants to build a culture in which the challenges that measuring makes visible are harnessed toward justice innovation.

### **Challenges and Benefits of a Justice Innovation Approach**

The best way to make the case for a new role for justice sector leaders is to provide an example. Tunisia will go down in history as the spark that set off a forest fire in the Arab world. After President Ben Ali fled, a transitional government organized rather effective and open elections, on the basis of which a constitutional assembly worked on a new constitution; as of July 2012, a provisional government was running the country. Ambitions and expectations are high, also relating to the rule of law. There is a general yearning for a better justice system. However, the challenges are tremendous, and there are

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17 A very useful tool for this is <http://www.businessmodelgeneration.com>.

18 For a good overview, see Special Issue on Measuring Rule of Law, 3(2) Hague J. on the Rule of L. (Sep. 2011).

no easy answers.<sup>19</sup> Stimulating gradual innovation processes around practical problems and showing quick wins may be the most promising way forward.

However, justice sectors leaders in Tunisia and other countries in transition face the following challenges.

### ***Lack of Trust***

In Tunisia, a new social contract is being put in place in the midst of a difficult economic and social context. Trust in the state is low.<sup>20</sup> For many citizens, state institutions are linked to capricious behavior by people in positions with authority. So most people avoid getting in touch with the state institutions; the idea that law protects and can work for people needs to be sold. State institutions are not automatically viewed as legitimate.

Trust must be regained. The *World Development Report 2011* (WDR) convincingly argues that legitimate institutions are the best immunizer against internal and external stresses such as the ones Tunisia faces.<sup>21</sup> The WDR shows that legitimacy comes with the responsiveness of institutions and that “capacity, inclusion, and accountability” are needed.<sup>22</sup> In many developing countries, state institutions have limited capacity, are not seen as fully inclusive, and face little accountability. To build legitimate institutions, the WDR argues, justice sector leaders must work from the bottom up, with “good enough coalitions” to create quick and visible wins that show that rule of law is essential.

Any minister of justice can build on processes that work in a country. By examining at informal justice systems for medium-level crime, rule-making processes in specific industries, or court procedures giving effective protection against eviction, the minister of justice can stimulate the people involved to innovate and extend these services to the more urgent justice problems the state faces. Coalitions can be built to nurture these processes and to shield them against attempts to corrupt them.

### ***Lack of Funds***

Unemployment, especially in youth, is very high in Tunisia, making investments in labor-intensive industries a priority among the many other economic

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19 To name a few: budgets are limited, ideas of justice differ, trust in public officials in the justice sector is limited, and expectations are high. In May 2012, a dispute arose between the government and the association of judges after eighty-one judges were fired for alleged corruption; see <http://www.tunisia-live.net/2012/05/31/judges-strike-lifted-following-agreement-with-ministry-of-justice/>.

20 See, for example, a survey by the World Justice Project according to which 51 percent of Tunisians believe that the police forces are the most corrupt institution in Tunisian society, available at <http://www.tunisia-live.net/2012/05/29/according-to-poll-80-of-tunisians-feel-free-to-express-themselves/>. See also remarks by the head of the national anticorruption agency during a HiiL seminar held in Tunis (Apr. 2011), on record with the authors.

21 *World Development Report 2011: Conflict, Security and Development* 74 et seq. (World Bank 2011).

22 *Id.*, at 84.

challenges. In 2009, the Tunisian GDP stood at around US\$40 billion, or US\$8 per person.<sup>23</sup> This is three to five times less than the GDP in Euro zone countries, making it inconceivable that Tunisia will be able to invest heavily in court infrastructure and expensive professionals to deliver justice sector services. But Tunisian citizens do not want less “justice” than European ones, nor should they be asked to accept less. So a country like Tunisia has every interest in stimulating innovation in the justice sector so that it can deliver better justice for its money.

Innovative ways to deliver justice at low cost can be found throughout the world; a transitioning country such as Tunisia presents a window of opportunity to adopt and adapt these innovations to a local setting. Can court processes be organized in such a way that more solutions are delivered per judge? In Nicaragua, the *Facilitadores Judiciales* program equipped a judge with a team of *facilitadores*, who live in villages far away from the courthouse. They mediate under the judge’s supervision and assist with bringing the cases that do not settle to court. Sierra Leone and South Africa pioneered the use of paralegals at a fraction of the cost of training judges and lawyers. In large-scale litigation, which will also occur in Tunisia, expert evidence is often key. Increasing the reliability of the fact-finding process and decreasing the costs of dealing with expertise was the goal of a procedure for a dialogue between experts at a court hearing developed in Australia.<sup>24</sup> Online dispute resolution now resolves 60 million disputes between buyers and sellers on eBay, holding promise for dealing with large numbers of disputes anywhere in the world.<sup>25</sup>

### *Power Relations*

Influence on justice sector institutions is always part of a broader struggle for power, especially in situations of transition. Military versus civilian power brokers. Landowners versus landless. Employers versus employees. Dominant ethnic groups versus groups that feel oppressed. Secular versus religious norms. Rule of law gets politicized quickly.

The stimulation of justice innovation can be a road to reform without political turmoil. It is less about big principles (which is not to say they do not count) and more about little steps that deal with specific problems. Gradual but deliberate improvement of employment complaint procedures can be organized from the bottom up: targets can include more voice for parties at hearings, speedier resolution, more settlement, lower costs, clearer criteria for remedies, and clearer reasons in judgments. This approach is likely to be more effective than a heated discussion about the independence of courts or whether employees should have protection against dismissal. Innovation includes developing transparent monitoring mechanisms that show the extent

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23 The Economist, *World in Figures* (App store 2012).

24 See <http://www.innovatingjustice.com/innovations/concurrent-expert-evidence>.

25 See <http://pages.ebay.com/coverage/index.html>.

to which the clients of the courts experienced a neutral procedure with equal opportunities for both parties.

Indonesia has found interesting ways to cope with the sharia versus secular dilemma. The area of family relationships is perhaps the foremost area where sharia law has impact (corporal punishment in criminal law is seldom applied in practice in most countries that have sharia law). Facing a choice between formal courts and religious courts, Indonesian couples wanting a divorce overwhelmingly choose religious ones. Religious courts are more open to innovation, working in close cooperation with Australian courts to improve their services.

### ***Transitional Justice***

Tunisia is a place where the concept of transition permeates. The judicial organization needs fundamental reorganizing: some judges too closely linked to the former regime may have to go, a role for council for the judiciary must be found, performance mechanisms to hold judges accountable and effective ways to distribute budgets must be developed, the question of specialization versus generalisation is on the table, as is the question how it can support courts. There is huge challenge around law making. The country is embarking on a fundamental redesign, facing the task of ensuring the quality and coherence of laws. Both the judges and the clients of the justice system need better access to legal information. Key elements of the “hard” justice infrastructure—courthouses and published and available laws—is in bad shape. For a minister of justice, these issues are fraught with choices for which it will be difficult to build support within the courts and the institutions involved in law making.

A strategy based on creating a level playing field for justice innovation assumes that justice sector innovators take initiatives to start improving services. Organization then follows the ways to create needs for higher quality, more trustworthy services, and lower-cost delivery. For example, if a group of judges decides that disputes over land is an urgent priority and they propose terms of reference for a new procedure, such as transparency of criteria for allocating land and compensation, the problems of specialization and court independence may be solved on the way. The goal is for the government to be less the structure that is supposed to solve a problem and more a place where leaders work to empower those closest to the problem to creatively resolve concrete, close-to-the ground issues.

### **Conclusion**

Justice sector leaders can improve the rule of law by incorporating the justice innovation approach. Because this approach enlists the whole of society (justice users and providers), benefits from best practices and technologies developed in other countries, and harnesses the knowledge of those working on problems already, it can deliver more value and justice with less money than

other approaches. However, organizing the necessary space for justice innovation is not easy in any context, and is even more challenging in the context of a developing state.

Good justice sector leadership is a key component of the effort. Legal systems have their own dynamics, and tend to move slowly. The WDR estimates that it takes seventeen to forty-one years to establish basic trust in the rule of law.<sup>26</sup> The attitude of expecting central, top-down coordination is very strong in the justice sector, and many very good ideas now wait until a new constitution is enacted, the law of procedure is changed, or a budget is cleared. However, there are many opportunities for a justice sector leader to create and manage justice innovation in the meantime. There is certainly risk involved in doing so, but the potential benefits are huge.

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26 *Supra* note 20, at 11.