The Justice Innovation Approach: How Justice Sector Leaders in Development Contexts Can Promote Innovation

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Summary
Justice sector strategies in development contexts tend to build on the implicit assumption that the rule of law should be implemented by enacting laws and ensuring service delivery by the state (such as court procedures, policing, corrections and legal aid). Increasingly, however, policymakers recognize the contribution of civil society, informal justice mechanisms, companies, and the legal services industry. These actors also set norms, help to ensure compliance, and resolve disputes.

In line with this, leaders in the justice sector need to adjust their strategies. In this paper, we look at enhancing the rule of law as setting up and managing processes in which existing practices are continuously innovated so that they perform in a better way. We show how the justice sector leadership can stimulate and consolidate these justice innovation processes.

1. Justice innovation

In September, the UN General Assembly will devote its opening debate to the rule law. A clearer signal that the community of states attaches great importance to rule of law development is hardly imaginable. In his report of 16 March the Secretary-General of the UN suggests a program called ‘Delivering justice’. He sees rule of law as something that 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”. He continues to say: “responsibility for ensuring rule of law […] lies with member States and their citizens”. So the rule of law is about more than setting the right type of rules, but also about mechanisms to ensure that rules and dispute resolution processes actually work. The report has sections about budgeting and planning, accountable and transparent delivery at the national level, monitoring, the role of civil society and one on 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, assume a monitoring role, measure effectiveness, do benchmarking exercises and report progress against indicators. In sum, he encourages state actors to rethink their role in delivering justice.

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2 See UN General Assembly Resolution A/Res/66/102 of 13 January 2012 (http://www.unrol.org/files/GA%20Resolution%202012.pdf), in particular paragraph 15 and further.

3 See ‘Delivering justice: programme of action to strengthen the rule of law at the national and international levels’, Report of the Secretary-General, 16 March 2012, at pages 2, and 6-8.
In this article, we follow up on this challenge and try to develop this idea further. We show how justice sector leaders – ministers of justice, secretaries-general of ministries, strategy departments of ministries, chief justices or directors of public prosecution agencies – can assume this role of facilitating society to deliver justice rather than providing justice themselves. We even take this analysis one step further, assuming that the processes of delivering justice can be improved in a similar way as the delivery of health care, education or electricity: through continuous innovation. So we ask ourselves: how can justice sector leaders enable effective justice innovation?

Our analysis is mainly written with the development context in mind. However, we think the approach we suggest is also quite relevant for higher income countries, albeit with different priorities and areas of emphasis.

This article is built up as follows: we first explain what we mean with justice innovation. After that, we set out what a strategic justice leader like a minister can do to stimulate and consolidate it. We end by asking ‘why bother?’, and set out why the justice innovation approach is very much worth pursuing.

2. What is justice innovation?

Building on the Wikipedia definition of innovation, we say justice innovation is the effort to create of better or more effective justice products, processes, services, technologies, or ideas that are accepted by markets, governments, and society. Two things stand out: (i) the emphasis on better or more effective justice products; and (ii) the need to ensure that they are actually used and liked by all stakeholders.

Rule of law assistance and justice sector budgets tend to go to building or strengthening existing state institutions. Our image of the basic rule of law institutions has not changed much in the last 200 years. Our courts, bar associations, law making procedures, and parliaments are all based on ideas that were developed during a special period in Western history when empires and kings were replaced by states and democracies. So, until recently, justice sector leaders in development and the ones supplying their funds felt responsible for training and resourcing judges, prosecutors, and policemen, building bar associations and national councils for the judiciary, developing constitutions and other laws modelled to Western standards, and setting up national gazettes in which to publish them.

This perspective is not very realistic. In a historical perspective, 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 have to be managed. Protection of property rights is triggered by demand if people start investing in assets of a certain

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4 Harper, Isser CHECK
value that become scarce.\(^5\) Often, the State incorporated successful innovations that were developed privately.

In line with this, and taking criminal justice as an example, the question at the core of the justice innovation approach is not “how do we build a good prosecution service?” but rather “how do we empower and stimulate the stakeholders in the criminal justice system – judges, prosecutors, policemen, victim support services, civil servants, legal aid lawyers, psychologists working with drug offenders, academics, correction services, and social entrepreneurs – to constantly improve criminal justice mechanisms? And, as we said, in this article, we ask how strategic justice leaders can contribute to that innovation process so that it delivers more justice.

3. **What strategic justice leaders can do**

The literature on innovation shows that successful innovation processes cannot be forced by following a simple set of prescriptions. It is a matter of doing many things well and many unknown factors.\(^6\) One survey of empirical studies on innovation found no less than 40 factors that are associated with successful innovation. In a model for justice sector innovation processes, borrowed from the literature on public sector innovation, we distinguish 27 such factors. From these factors, many are related to what happens on the ground, when professionals improve their processes step by step and through trial and error. But our research also shows that there are quite a few things that the justice sector leadership can do to create a space where justice innovation can thrive.\(^7\) Below, we list a number of things that a minister of justice or other justice leader at the strategic level can do to ensure that the justice delivers ever more value for money.

3.1 **Generating possibilities**

In the initiation phase, where possibilities for innovation are created, the literature lists 9 factors. It recommends focusing on users of rule of law mechanisms and the people directly serving them. They know best what is needed and what can work. Innovation can also be stimulated by working in a setting with diverse views, people and backgrounds. Time and space is needed, as well as clear goals for the innovation process. There are three particular factors in this phase that a minister of justice can influence.

*Articulate a clear vision*
Innovation can be stimulated by a clear vision, which shows political commitment and a desire to redirect resources in a particular area. This is a critical factor because innovating – for instance, the way employment conflicts are dealt with – is likely to

\(^5\) See Francis Fukuyama; Lee J. Alston and Bernardo Mueller Property Rights and the State, in: Ménard and Shirley, Handbook of New Institutional Economics, 2008, p. 573. [CHECK]

\(^6\) Article Economist literacy/KENYA.. CHECK

\(^7\) See the Innovation Model, XXXX, developed on the basis of factors that have been found to support innovation in the public sector.
require efforts from 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 have to be inspired and they have to see that the others in the supply chain are making moves that require them to adapt.

Politicians are subject to many pressures and, unknowingly, can sow confusion. A minister can make a speech one day in which he states that access to justice should be improved. The next day he can argue before a different audience that courts are overburdened and that people should do more to resolve their own conflicts. Visions should be realistic: in many post-conflict 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 hugely unrealistic timelines. This makes it hard for potential innovators to coalesce around a common agenda.

A vision has to be (1) as concrete as possible, (2) couched in plain language, (3) ambitious but doable, and (4) consistent, not changing with every new administration. The Millennium Development Goals are an excellent example expressing a clear, concrete, ambitious, doable, and consistent vision. Examples of justice innovation visions could be: “to increase the number of people living on land and in houses with tenure security by 20% in the next year”, “to get a judge available to every village of over 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 that hard 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.

Allow breaking the rules
Innovation means doing different things than before and doing things in new ways. So the innovation literature urges innovators to challenge every single existing rule of the game: the way things are currently done. For professionals in the justice sector, this creates a major 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 they have been applied. So everywhere in the world we see professional judges, lawyers and others waiting for the rules to change instead of taking initiatives to improve procedures.

Leaders in the justice sector can help to address this dilemma by allowing experiments, provided that they are clearly motivated by goals such as decreasing costs, preventing

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8 Reference: EXAMPLE Afghanistan: rule of law in 4 years; Bonn Agreement FIND
9 If you do not believe this is doable, please consult www.innovationjustice.com or contact us for information about places where this has been achieved.
10 See also Basic Justice Care, http://www.hii.org/publication/strategies-towards-basic-justice-care.
error, increasing procedural justice or speeding up trials. Instead of stressing formal barriers to new solutions themselves, they 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.

**Create 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. It is rather messy, chaotic place, where smart ideas compete with other smart ideas for funding. Where duplication is not frowned upon, and the shared assumption is that the best idea will in the end. What is ‘best’, is measured by sales figures, demand by clients, and willingness of venture capitalist to invest. Organisation is limited: it is aimed at creating one of the best places in the world where IT innovators can meet other innovators and where people who are interested in funding IT start-ups can find the best ones. What then happens is the magic of the market place and innovation.

Can this be transposed to world of order, norms and justice? Not if you see delivering justice as applying the one and only master program emanating from the state’s constitution. But in the real world, delivering justice is a rather messy process as well, as every practicing lawyer will testify. There are many ways to bring about solutions to 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).\(^\text{11}\)

Creating more competition in the justice sector can be part of a ministerial innovation policy. It would put the minister less in the position of the ‘holder of power’ who ‘acts’, but more in the role of creating a level playing field to make sure that the most fair, effective, fast, and low cost solutions survive.

Take the service of providing fair and efficient dispute settlement processes for employment conflicts or coping with the aftermath of large scale violence. Competition could take place between various civil and criminal public court offering different procedures (national, international), industry tribunals, truth and reconciliation commissions (local or national), commissions establishing adequate compensation, semi-binding mediation services based on existing informal justice mechanisms, online

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\(^{11}\) See *Non State Security and Justice in Fragile States*, Overseas Development Institute Briefing Paper 73 (April 2012), which also lists some useful rules of engagement in respect of non-state actors, at [http://www.odi.org.uk/resources/docs/7640.pdf](http://www.odi.org.uk/resources/docs/7640.pdf)
dispute resolution platforms or whatever a social entrepreneur may be able to
develop.\textsuperscript{12}

In The Netherlands an innovative group set up E-Court; a court that 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 even the ministry of
justice who all saw the existing way of doing things threatened instead of welcoming a
new supplier of fair and speedy solutions.\textsuperscript{13} At the same time, it made courts rethink
their own ways of dealing with similar claims, seeing that the income for the state
justice sector from money claims was no longer guaranteed. Would leaving space for
competition enhance the performance and effectiveness of state courts and private
sector dispute resolution? It would require 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 as well. In theory, it should be
possible, as a standard process, to send all users of a justice process a brief email or sms
on their mobile phone, asking him to assess a court process they have just gone
through based on a number of criteria.\textsuperscript{14} These perceptions 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.

In short: a minister of justice should foster competition by making performance of
justice services more measureable and transparent and by avoiding general monopolies
and instead allowing differentiation and specialization.

3.2 Developing innovations
Once the stage has been set, the most fruitful ideas have to be selected for the actual
innovation process. This requires a place where people with a positive attitude and with
sufficient resources can nurture an innovation. Partnerships between public services
providers and private sector organizations can be very fruitful: legal expenses insurance
companies can help to ensure access to legal aid; online dispute resolution platforms
can be integrated in court procedures. In the world of today these are no longer rich
world options. Building a prototype early on is recommended, as well as involving end
users in the process. Again, there are specific factors that a minister of justice can
influence.

Good risk management
Once the developing process starts (the ‘transpiration phase’), a safe environment to
build, allowing for trial and error, is important. In an environment that is not ‘safe’ and

\textsuperscript{12} See, for example, David Pimentel, Rule of Law Reform Without Cultural Imperialism? Reinforcing
Customary Justice Through Collateral Review in Southern Sudan, Hague Journal on the Rule of Law, (2010),
2 at 1-28.
\textsuperscript{13} See http://www.innovatingjustice.com/innovations/e-court-the-first-online-private-court
\textsuperscript{14} See, for example, the Measuring access to justice tool at
http://www.innovatingjustice.com/innovations/measuring-the-costs-and-quality-of-access-to-justice
where failure is immediately linked to blame and consequences for one’s career prospects, innovation tends to be difficult. The appetite of the public for trial and error in the justice sector may not be that big, though. 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 spaces for experiments requires good risk management. ‘Upwards’, the minister must build it politically within the cabinet, vis à vis his prime minister/president and in respect of parliament. He must also have a smart media strategy. ‘Downwards’, he must project a strong commitment to gradual innovation processes allowing for trial and error to the work floor level where the innovations need to come from. Quick wins are likely to be important here: concrete improvements that show that creating an 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.

*Fostering innovation champions*

People are important. In our assessment of justice sector innovations, we found that almost all successful innovations are linked to a key person who devoted many 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 sector is stressing 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 worked for many years on improving procedures or systems of rules. Attaching people’s names to innovations can be done easily and we should never underestimate the effects of simple and consistent praise for good achievements.\(^\text{15}\)

*Create space for funding of early development*

Many innovations in the justice sector – good as they are – trip over two money-wires. The first is funding for early development. The second is funding for a successfully developed innovation for a sustained period of time. In this paragraph we look at the first. In paragraph 3.3 about ‘Replicating and scaling up’ we look at the second.

The justice sector tends to be funded in a very rigid way. The budget and planning cycle is generally quite short. The budgets are structured around fixed deliverables, which rarely if ever include money to spend on systematic research and development that gives a foreseeable return on investment in the future. Courts cannot invest money now which they can recoup in the next years by cost savings or by an increase in court fees for better services or more plaintiffs bringing them cases. Donors in the justice sector may be interested to try new procedures, but they tend also to want concrete

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\(^{15}\) An excellent example: the Prosecutor of the ICC relationship with 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 Prosecutor hugely stimulates the partners in this innovative network. See http://www.legal-tools.org/en/what-are-the-icc-legal-tools/
deliverables: so many judges trained, so many courts and prisons built, a bar association set up, and so forth. The situation is slightly different in the legal services industry, where research and development budgets from suppliers to law firms have created certain innovations in specific areas, such as software to help with e-discovery.

A minister of justice can make sure that there are research and development budgets and ways to recoup initial investments. He/she can do that within his own ministry but he can also initiate public-private partnerships with donors that provide initial 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, in fact, start leading the way here.

3.3 Replicating and scaling 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 the civil justice sectors of 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.

Improve 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 that are willing to adopt an innovation can be 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 developed by specialized private sector companies, or by colleagues from the public sector. If a worldwide market for justice sector technologies would develop, the rule of law could be enhanced substantially and many cost savings would be possible. A recent, fairly new contextual feature: a minister of justice from a developing country has more choice than ever. Tanzania need not look only at things that worked in Germany, the UK, or France; it can now also look at innovations from, for example, Brazil, India, South Africa, Ethiopia, and Rwanda.

Disruptive innovations
A strategic justice leader should also be aware of the possibilities of disruptive innovations. Online services, such as the assembling of legal documents offered by Legal Zoom,16 are currently disrupting the market for lawyers and for notaries public in civil law countries. The latter are likely to protect their markets by sticking to legislation that has been designed without the new possibilities in mind, such as the prohibition of legal

16 See http://www.legalzoom.com/
advice by non-lawyers or the monopolies of notaries public. Disruptive innovations can make basic justice care available to groups that were unable to get any legal assistance in the past, so there is every reason to create a level playing field for such new technologies. The paralegal programme Timap for Justice has had a disruptive effect on the legal services market in Sierra Leone.17

Think long-term business models
As indicated above, assuring longer term funding for successful justice innovations after the R&D phase is often very challenging. One of the reasons for this is that thinking about it tends to start only once an innovation has been developed. Management and budgeting of research and development processes should however include thinking about this right from the start.18

3.4 Analysing and learning
Innovation cannot exist without critical reflection. Monitoring mechanisms should be in place, and new insights should be implemented in improved versions immediately (real time learning).

Invest in measuring
One of the reasons why the health care sector is so innovative is that it is rather easy to establish whether a new treatment works or not: symptoms disappear, the patient feels better and does not return with the same complaints. If similar metrics can be developed for the justice sector, this can greatly enhance innovation processes. Lower costs, timelier decisions, higher satisfaction of users (procedural justice, outcome justice) can provide such metrics.

On the one hand, the minister can ensure that a segment of the core budget is reserved for developing such measurement tools and for applying them on the processes and procedures of the system. One the other hand, this is an area par excellence where he can enlist civil society organisations, academic networks, and external donors. Civil society organisations can be stimulated to play a role in assessing elements of the justice system and showing where improvements are needed. This is an area that could quickly interest donors. And there is a growing field of academic institutions that work on developing rule of law measuring tools.19 What the minister cannot outsource: working with his senior civil servants to build a culture in which the challenges that measuring makes visible are not seen as failure but are harnessed towards justice innovation.

4. Why bother?

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17 http://www.timapforjustice.org/
18 A very useful tool for this, which we often use, is www.businessmodelgeneration.com
19 For a good overview, see Hague Journal on the Rule of Law, Special Issue on measuring rule of law, Vol 3, Issue 2 (September 2011).
Let us now make the case for this new role for justice sector leaders with the help of a concrete 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 organised rather effective and open elections, on the basis of which a constitutional assembly is now (July 2012) working on a new constitution and a provisional government is 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 no easy answers.\(^{20}\) Stimulating gradual innovation processes around practical problems, showing quick wins, may be the most promising way forward.

*Lack of trust*

A new social contract is being put in place in the midst of a difficult economic and social context. Trust in the state is reportedly low.\(^{21}\) For many citizens the state institutions are linked to capricious behaviour by people in positions with authority. So the state institutions are something most people avoid getting in touch with and the idea that law protects and can work for people still needs selling. State institutions are not automatically viewed as legitimate.

Trust has to be regained. The World Development Report (WDR) 2011 convincingly argued that legitimate institutions are the best immuniser against internal and external stresses such as the ones Tunisia is facing.\(^{22}\) The WDR shows that legitimacy comes with responsiveness of institutions and that “capacity, inclusion, and accountability” are needed.\(^{23}\) In many developing countries, state institutions have limited capacity, are not seen as fully inclusive, and there is little accountability. To build legitimate institutions, the WDR argues, working bottom-up, with ‘good enough coalitions’, to create quick and visible wins that show that rule of law works, is essential. The justice innovation approach does this.

Any minister of justice can build on processes that do work in a country. Looking at informal justice systems for medium level crime, rule making processes in specific industries, or court procedures giving quite effective protection against eviction, the minister of justice can stimulate the people involved to further innovate and extend

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\(^{20}\) 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 this year a dispute arose between the government and the association of judges after 81 judges had been fired for alleged corruption: [http://www.tunisia-live.net/2012/05/31/judges-strike-lifted-following-agreement-with-ministry-of-justice/](http://www.tunisia-live.net/2012/05/31/judges-strike-lifted-following-agreement-with-ministry-of-justice/).

\(^{21}\) See, for example, a recent survey by the World Justice Project according to which 51% of Tunisians believe that the police forces are the most corrupt institution in Tunisian society. [http://www.tunisia-live.net/2012/05/29/according-to-poll-80-of-tunisians-feel-free-to-express-themselves/](http://www.tunisia-live.net/2012/05/29/according-to-poll-80-of-tunisians-feel-free-to-express-themselves/). Also, remarks by the head of the national anti corruption agency during a HiiL seminar held in Tunis, in April 2011, on record with the authors.

\(^{22}\) World Development Report 2011: Conflict, Security and Development, (the World Bank, 2011), at 74 and further.

\(^{23}\) Id, at 84.
these services to the most urgent justice problems the state has to solve. Coalitions can
be built to nurture these processes and to shield them against attempts to corrupt them.

Lack of funds
Unemployment, especially under the youth, is very high in Tunisia, making investments
in labor-intensive industries a clear priority among the very many other economic
challenges. In 2009 the Tunisian GDP stood at around 40 billion US dollars; around 8,000
US dollars per head. This is 3 to 5 times less than GDP in Euro zone countries, making it
inconceivable that Tunisia will be able to invest heavily in court infrastructure and
expensive professionals with a masters degree in law for delivering 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 more justice for money.

Innovative ways to deliver justice at low cost can be found throughout the world and a
transition such as the one in Tunisia is a window of opportunity to adopt and adapt
them to the local setting. Can court processes can be organized in such a way that more
solutions are delivered per judge? They managed in Nicaragua, where the Facilitadores
Judiciales programme equipped a judge with a team of facilitadores, who live in the
villages that are further away from the courthouse. They mediate under his supervision,
and assist with bringing the cases to court that do not settle. 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, that will also be needed in Tunisia, expert evidence is
often key. Increasing the reliability of this fact-finding process and decreasing the costs
of dealing with expertise, was the goal of a new procedure for a dialogue between
experts at a court hearing developed in Australia. Online dispute resolution now
resolves 60 million disputes between buyers and sellers on eBay, holding a big promise
for dealing with large numbers of disputes anywhere in the world.

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 very quickly gets
 politicized.

Stimulating justice innovation approaches can be a way to reform without political
turmoil. It is less about big principles (which is not to say they don’t count) and more
about little steps that help to deal with concrete problems. Gradual, but deliberate
improvement of employment complaint procedures can be organized bottom up,

24 The Economist, World in Figures (App store; version 2012).
25 http://www.innovatingjustice.com/innovations/concurrent-expert-evidence
26 Website ref
working from targets for more voice for both parties at hearings, speedier resolution, more settlement, lower costs, more clear criteria for remedies and more clear reasons in judgments. This is likely to be more effective than a heated discussion about the independence of courts or whether employees should have protection against dismissal. Innovation would include developing transparent monitoring mechanisms that show to what extent the clients of the courts experienced a neutral procedure with equal opportunities for both parties.

In Indonesia, there are even 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 (the heavily disputed corporal punishment in criminal law are seldom applied in practice in most countries that have sharia law). Indonesian couples wanting a divorce can choose between formal courts and religious courts and overwhelmingly vote with their feet for the religious ones. Interestingly, the latter are the most open to innovation, working in close cooperation with Australian courts to improve their services.

**Transitional justice**

Amidst all this, Tunisia is also a place in which ‘transition’ is the air you breathe every day. 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, performance mechanisms to hold judges accountable, effective ways to distribute budgets, the question of specialization versus generalisation, and how IT can support courts. There is huge challenge around law making. The country is about to embark on a fundamental re-design: how to ensure the quality and coherence of laws? Both judges and clients of the justice system need much better access to legal information. The justice infrastructure – courthouses, published and available laws – is in bad shape. For a minister of justice, all these issues are fraught with hard choices for which it will be difficult to build support within the courts and the institutions involved in law making. And all that when little extra rule of law is very likely to result in a fair amount of badly needed extra GDP.

A strategy based on creating a level playing field for justice innovation assumes that innovators in the justice sector take initiatives to start improving services. Organization then follows the ways to create needs for higher quality, more trustworthy services and lower cost delivery. If a group of judges starts taking on land problems because this is an urgent priority and they propose terms of reference for a new procedure including transparency of criteria for allocating land and compensation, the problems of specialization and court independence will be solved on the way. They do not become matters for entrenched debates. The government is less the structure that is supposed to solve ‘it’, but rather a place where strategy leaders work to empower those closest to the problems to creatively resolve concrete, close to the ground issues.

4. **Conclusion**
Improving the rule of law can be done by strategies incorporating the justice innovation approach. Because such an approach enlists the private sector, benefits from best practices and technologies developed abroad, and unleashes the knowledge from those working on problems already, it can deliver more value and justice with less money. However, organising 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 can make a huge difference. Our research into and experience with justice innovation processes has shown that legal systems have their own dynamics, but tend to move slowly. The WDR estimated that, historically, it takes between 17 and 41 years to establish a basic trust in the rule of law. 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.

We have provided an overview of what a leader can do to create and manage justice innovation space. There is certainly risk involved, but the potential gains are huge.

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27 WDR 2011, at 11.