

How to Achieve a Level Playing Field for Innovation: A Dialogue on Regulating Legal Services in the 21st Century

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To bridge the justice gap, innovation is needed, yet the regulation of legal services and procedural rules create obstacles. The Innovation Working Group of the Task Force on Justice has called for a “level playing field.” Representatives of the access to justice movement and organized bars will consider case studies from South Africa, the United States and elsewhere and engage in constructive dialogue. What does a level playing field look like? What are the impediments to reform? Are there win-win solutions?

This Issue Paper has been prepared by HiiL (Maurits Barendrecht) with input from the Dutch Ministry of Justice and Security on Issue 1

Issue 1: How to regulate high quality justice journeys that lead to fair solutions? A government perspective.

SDG 16.3 | The Ministry of Justice and Security of the Netherlands and many other ministries in the world are working on their access to justice agendas. They are inspired by the trends reflected in the report '[Equal Access to Justice for Inclusive Growth: Putting People at the Centre](#)', by the Organisation for Economic Cooperation and Development..

Complex pathways | The report indicates that justice systems are made up of a series of complex pathways or 'justice chains'. It provides guidance on how to effectively measure and address people's legal needs and incorporate people-centred perspectives when designing and planning responsive and integrated legal and justice services.

Towards people-centred design and delivery | As recognized in the report, good practices on a more people-centred service delivery are emerging, but limited. Data necessary to measure access to justice in a holistic manner does not yet exist. This complicates assessing the effectiveness of justice and legal interventions.

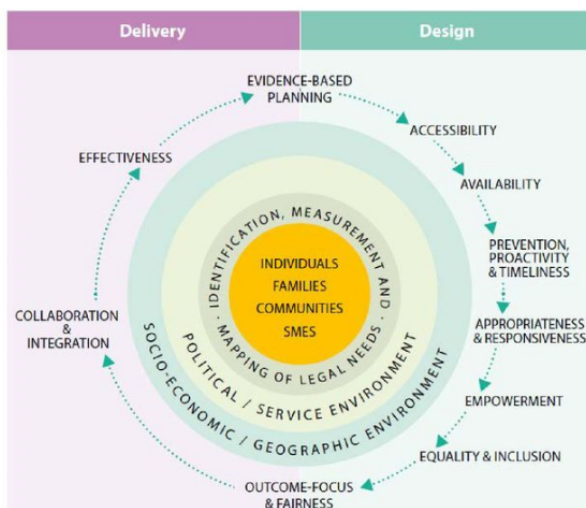
Regulating professionals is current approach | The Minister of Legal Protection of the Netherlands is responsible for the functioning of the national formal justice system, including ADR. The current institutional frameworks are aimed at effective delivery of services by professionals. The quality of these services is guaranteed by rules and regulations aimed at amongst others upholding the high standard of the legal professions, such as bailiffs, notaries, and lawyers: a profession-centred perspective.

How to ensure quality of people-centred delivery ? | Recognizing that the rule of law is not the exclusive domain of law professionals only, and keen to further explore a more people-centred service delivery in the justice sector, the ministry would be interested in learning from experts how to rethink the traditional approaches to delivering legal and justice services, as advocated in the report, by focusing first and foremost on responding to people’s needs and to personalize services.

Which indicators? The ministry is particularly interested to learn:

- How to ensure the quality of legal services delivered, when adopting a more people-centred service delivery in the justice sector
- How to incorporate the traditional core values of the rule of law, such as accountability, impartiality, fairness, and legality.

Figure 6.8. Criteria for people-centred legal and justice services



- The report mentioned seven people-centred design criteria, that could (additionally?) be used to measure the quality of services: 1) accessibility, 2) availability, 3) prevention, proactivity and timeliness, 4) appropriateness and responsiveness, 5) empowerment, 6) equality and inclusion, and 7) outcome-focus and fairness.

- How to operationalize these criteria?
- Could lessons be learned from the OECD healthcare quality indicators (box 5.3)?
- As the report states, ‘People’s needs and experiences are key to identifying

innovation potential in and provide the rationale for reflecting on the delivery of legal and justice services’. The ministry is open to learn how a more people-centred legal service approach has enabled innovators to deliver top-notch innovative legal services to the public, while maintaining the traditional core values for the quality of the rule of law.

Issue 2: What should be focus of regulation and deregulation efforts?

Different levels of regulation can be relied on:

- **Regulation of professions** | In many countries, the legal profession has worked with government to regulate the professions. This is usually combined with reserved activities: only certain qualified professionals can give legal advice, assist people in court procedures or execute certain transactions for them. In other countries, no or only few reserved activities exist (Finland, countries in Eastern Europe).
- **Regulation of entities** | Regulation can also focus on entities (firms, companies) rather than individual professionals.
- **Regulation of procedures** | Court procedures, and other (administrative) procedures giving access to solutions, can be regulated along the lines of general principles or in a more detailed way.
- **Regulation of activities** | The regulation can also focus on how to perform a certain activity.

Who regulates? | Regulation can be left to the professions, to the courts, or to an independent regulator. Germany and England have professional regulators that are independent of the profession (the bar). The 2018 [review](#) of legal services regulation in Scotland suggests one independent regulator for all professions, entities and activities. For procedures, the courts (and other providers of procedures) themselves may determine the rules of procedure. Their activities may be supervised by another body. Rules of procedure can also be codified in formal legislation.

Issue 3: How to create a level playing field?

Traditional providers (courts, legal professions, providers of informal justice) struggle to serve individuals in a scalable way. This market is shrinking in some countries (see Henderson, [Legal Market Landscape Report](#), Commissioned by the State Bar of California, 2018). A variety of start ups, NGOs, mediators, ADR platforms, experts and innovators offer new types of services. The most promising innovations are often linked to traditional court processes and legal services. So innovations need to comply with regulation for professions and rules of procedure. This creates tensions and barriers to innovation (Innovation Working Group of the Task Force on Justice, [Innovating Justice: Needed & possible](#), 2019).

One example is the model of [community paralegals](#). In many countries this model is restricted by rules not allowing paralegals to charge a fee for their services, or prohibiting

them to give legal advice (see Noleen Leach, [The Paralegal and the Right of Access to Justice in South Africa](#), 2018).

On the other hand, courts and the legal profession are also restricted in what they can offer to the users of their services. Rules of procedure make it difficult to innovate court interventions. Tendering rules do not allow courts to implement useful innovations such as off the shelf case-management systems. Rules regarding ownership of law firms make it difficult to attract outside capital and relevant know how. Lawyers working for individuals do not have access to business models that are available to other providers of consumer services (Hadfield and Rhode, [How to Regulate Legal Services to Promote Access, Innovation, and the Quality of Lawyering](#), 2015).

What can be a strategy to gradually create a more level playing field for all providers of justice services?