

Delivering Justice

Justice Susan Glazebrook¹

Opening remarks

In 2019, a high-level taskforce estimated that 5.1 billion people — two-thirds of the world's population — lack meaningful access to justice.² People in all countries are affected but the justice gap is not evenly distributed. Women and children find it hardest to access justice,³ as do other vulnerable groups, such as poor people, people with disabilities, and people from minority ethnic communities.⁴ While up-to-date figures are not available, it seems likely that, if anything, the numbers lacking meaningful access to justice have increased as a result of the COVID-19 pandemic.

The 2030 United Nations Agenda on Sustainable Development is based on a vision of “[a] just, equitable, tolerant, open and socially inclusive world in which the needs of the most vulnerable are met”.⁵ This vision cannot be achieved without proper access to justice for all.

In addition, not everyone enjoys the same legal rights. At least 67 countries have national laws criminalising same-sex relations between consenting adults,⁶ and, according to the World Bank, women in 2024 have less than two-thirds of the legal rights available to men.⁷ The gap is even wider in practice,⁸ and is not only unjust but is affecting the performance of the world's economies.⁹

¹ Judge of Te Kōti Mana Nui o Aotearoa | the Supreme Court of New Zealand and immediate past president of the International Association of Women Judges (IAWJ). These remarks were given as part of a webinar hosted by the IAWJ on 24 June 2024.

² World Justice Project *Measuring the Justice Gap: A People-Centered Assessment of Unmet Justice Needs Around the World* (2019) at 5.

³ As of 2019, “of the 40 million people living in modern slavery, more than 70 percent are women and girls”: at 21.

⁴ Vulnerable populations, “such as disabled persons, the elderly, indigenous persons, and children”, are those who are most likely to lack legal identity: at 18:

⁵ United Nations Sustainable Development Group “2030 Agenda and the Sustainable Development Goals: Universal Values” <unsdg.un.org>.

⁶ ILGA World *State-Sponsored Homophobia: Global Legislation Overview Update* (December 2020) at 25.

⁷ World Bank Group *Women, Business and the Law 2024* (2024) at xvii.

⁸ At xiii.

⁹ At 19.

We are not attempting in this webinar to offer solutions to these huge issues. Our aims are more modest. We are going to be discussing some strategies designed to ensure that our courts deliver justice to all those who come before them and that we hope will, in time, encourage previously excluded groups to be comfortable using our courts to seek justice.

In the past, judges and lawmakers were overwhelmingly male, heterosexual, able-bodied and privileged. Their backgrounds will have influenced both their law making and their judging. In many countries too their legal systems were sidelined by colonial powers in favour of the laws of the colonisers.¹⁰

The composition of courts around the world is changing. In Europe and the Americas, the proportion of women judges on average is around equal.¹¹ In other regions it is around a third.¹² But even in jurisdictions with high numbers of women judges they tend to be clustered in social rather than commercial courts and are underrepresented in the higher courts and in management roles.¹³ Many International Association of Women Judges (IAWJ) members were some of the very first women judges in their respective countries. Justice Eusebia Munuo, the IAWJ President from 2012–2014, reports that when she was about to graduate law school — one of two women in her class of 98 — a professor asked the prospective graduates to talk about their career aspirations. When she said she wanted to be a judge, the response was laughter. No one is laughing now.

Perhaps because of our history as an organisation founded by women pioneers, the IAWJ has always been interested in ensuring not just access to justice, but inclusive access to justice. Many of us know what it means to be excluded — and that knowledge leads to insight.

In the remarks that follow, I speak about Te Ao Mārama — literally the world of light. It is a judicial initiative intended to enhance justice for all people affected by the business of the family,

¹⁰ For example, in Aotearoa New Zealand the establishment of the Native Land Court in 1865 led to the widespread alienation of Māori land through the individuation of formerly collective land titles: Tanira Kingi “Ahuwhenua: Māori land and agriculture – Land ownership and Māori agriculture” (24 November 2008) Te Ara | The Encyclopedia of New Zealand <<https://teara.govt.nz/>>.

¹¹ *Independence of judges and lawyers note by the Secretary-General* UN Doc A/76/142 (25 July 2021) at [22]–[23].

¹² At [22]–[26].

¹³ *Interim report of the Special Rapporteur on the independence of judges and lawyers* UN Doc A/66/289 (10 August 2011) at [24].

youth and criminal jurisdictions of Aotearoa New Zealand’s busiest trial court, the District Court | Te Kōti ā Rohe o Aotearoa.¹⁴

Te Ao Mārama: the world of light

Tēnā koutou, tēnā koutou, tēnā tatou katoa

As is customary in my country I have greeted you in te reo Māori, the language of the indigenous people of Aotearoa New Zealand.

As indicated in my introduction, I will be speaking about Te Ao Mārama — the world of light. This is an ambitious project designed to transform New Zealand’s largest and busiest trial court — the District Court of New Zealand — into a solution-focused court in its criminal, family and youth jurisdictions.¹⁵ A solution-focused judging approach asks, “What has caused these people to come to court? What has happened to these people to bring them to this point in their lives?” Once those questions are answered, a response can be developed to address the causes.¹⁶ That is the underlying principle behind Te Ao Mārama. It builds on decades of experience with solution-focused judging in various specialist courts, like the Youth Court | Te Kōti Taihōi o Aotearoa, the Rangatahi Courts | Ngā Kōti Rangatahi, the Pasifika and Matariki Courts, and the homeless, drug and young adult courts.¹⁷

The Youth Court in Aotearoa | New Zealand has used a solution-focused approach since 1989. The Family Group Conference is a cornerstone of the process, allowing judges to engage directly with children and young people and their families. It also provides for the involvement of victims in restorative justice processes. The focus is on meeting the needs of the child or young person in

¹⁴ The other speakers were Judge Annah Tawana who discussed the IAWJ/BAWJ (Botswana Association of Women Judges) project on Inclusive Justice in Botswana, which focuses on the experiences of members of the LGBTQI+ community in her country and their interactions with the courts. Judge Patricia Broderick, Senior Judge, Washington DC Superior Court, who spoke of her experience as a judge and affected by disability and how she perceives her disability as having made her a better judge.

¹⁵ See Ministry of Justice | Te Tāhu o te Ture “Te Ao Mārama – Enhancing Justice for All” <<https://www.justice.govt.nz/>>.

¹⁶ District Court of New Zealand | Te Kōti-ā-Rohe o Aotearoa “Te Ao Mārama – Enhancing Justice for All: About Te Ao Mārama” <<https://www.districtcourts.govt.nz/>>.

¹⁷ Ministry of Justice | Te Kōti-ā-Rohe o Aotearoa, above n 15. The homeless, drug and young adult courts refer to, respectively: the New Beginnings Court | Te Kooti o Timatangi Hou; the Alcohol and Other Drug Treatment Court | Te Whare Whakapiki Wairua; and the Young Adult List Court initiative in Porirua.

a highly personalised way, by identifying and addressing the underlying causes of their offending.¹⁸

There have been various judicial initiatives in some areas of the country over the years that have incorporated solution-focused judging, including specialist courts to address issues related to drug and alcohol addiction and homelessness.¹⁹ Although all the specialist courts incorporate cultural elements, the driving force behind the Matariki, Rangatahi and Pasifika courts is cultural. Although the law applied is the same as in the mainstream courts, Rangitahi courts are held on marae (Māori meeting houses) and follow Māori cultural processes. Pasifika Courts are held in Pasifika churches or community centres and follow Pasifika cultural processes. These Courts are designed to help young Māori and Pasifika to engage in the youth justice process in a culturally appropriate manner, as well as to better engage Māori and Pasifika families and communities, including respected elders from the relevant communities.²⁰ Similar aims lie behind the Matariki Court, which covers adult offenders in the far north of the country.²¹

All the specialist courts have been successful in changing the lives of many who come before them, but there has been concern that they are only operating in certain areas and that therefore outcomes could be different depending on where you live. This led to the ambitious project to introduce solution-focused practices for the whole of the District Court throughout Aotearoa New Zealand.²²

A very important part of Te Ao Mārama is to bring the community into the courtroom. Community-based organisations have local knowledge which can help in tailoring solutions. They also offer social services and support for those who need them most, whether they are defendants, complainants, victims or family members.²³

¹⁸ District Court of New Zealand | Te Kōti-ā-Rohe o Aotearoa *Te Ao Mārama Best Practice Framework* (2023) at [8(c)(i)–(ii)].

¹⁹ See District Court of New Zealand | Te Kōti-ā-Rohe o Aotearoa “Alcohol and Other Drug Treatment Court: Te Whare Whakapiki Wairua” <<https://www.districtcourts.govt.nz/>>; and District Court of New Zealand | Te Kōti-ā-Rohe o Aotearoa “New Beginnings Court: Te Kooti o Timatanga Hou” <<https://www.districtcourts.govt.nz/>>.

²⁰ Youth Court of New Zealand | Te Kōti Taiohi o Aotearoa “About Youth Court: Rangatahi Courts & Pasifika Courts” <<https://www.youthcourt.govt.nz/home-2/>>.

²¹ District Court of New Zealand | Te Kōti-ā-Rohe o Aotearoa “Criminal Court: Te Kōti Taihara – Matariki Court” <<https://www.districtcourts.govt.nz/>>.

²² See Heemi Taumaunu, Chief District Court Judge “... mai te pō ki te ao mārama ... the transition from night to the enlightened world ... Calls for transformative change and the District Court response” (Norris Ward McKinnon Annual Lecture 2020) at 23.

²³ *Te Ao Mārama Best Practice Framework*, above n 18, at [5(1)(a)].

Te Ao Mārama also recognises the importance of input from all those affected by the matters before the Court. It aims to ensure that all court participants, including the parties in family cases, defendants in criminal cases, complainants, victims and their family members, feel seen, heard, understood and able to participate meaningfully in matters that affect them. It is recognised that victims of sexual and family violence in particular should be treated with respect and sensitivity because of the trauma they have experienced.²⁴

Judicial officers and court staff are encouraged to make eye contact and use other non-verbal active listening cues, where they would be well received. Greeting participants and their family members by their preferred names, pronouncing those names correctly and using the correct pronouns is part of showing respect and making participants more comfortable in what will for most be a stressful and alien environment.²⁵

Where appropriate, at the start of a court hearing or conference, judicial officers can invite Family Court parties, defendants, complainants, victims, family members and other people present to introduce themselves. This empowers parties to have direct engagement and participation in the proceedings that relate to them.²⁶

To make it easier to engage with participants, alternative courtroom layouts can be used, like round tables or horseshoe formations, where it is safe to do so.²⁷ In addition, although the dignity and solemnity of the court must be maintained, formalities can be a barrier to participation. Under Te Ao Mārama, judicial officers can agree with court staff, lawyers, relevant justice sector agencies and service providers on a consistent approach to toned-down formalities.²⁸

Finally, a very important part of Te Ao Mārama is to ensure that all participants in the process understand what is communicated to them by the judicial officers and court staff. The language traditionally used in court is often complicated and can be meaningless to those unfamiliar with it. Many people appearing in court will have at least one form of neurodiversity that will mean they have unique communication requirements. Plain language will help,²⁹ although in some

²⁴ At [3(a)–(d)].

²⁵ At [4(a)(i)–(ii)].

²⁶ At [7(b)].

²⁷ At [5(a)].

²⁸ At [7(a)].

²⁹ At [6(a)–(c)].

circumstances professional communication assistance tailored to the person and their needs will be necessary.

I finish by saying that it is early days, but hopes are high that Te Ao Mārama will make a real difference to people's lives.

Based on experience in our own and overseas specialist courts, the impacts of Te Ao Mārama will include:³⁰

- reduced offending, reoffending and seriousness of reoffending;
- increased wellbeing of court participants and their communities, including improved cultural identity, social and family connections, and social cohesion;
- reduced disproportionate representation of Māori in the criminal justice system; and
- increased trust and confidence in the justice system.

³⁰ “Te Ao Mārama – Enhancing Justice for All: About Te Ao Mārama”, above n 16.