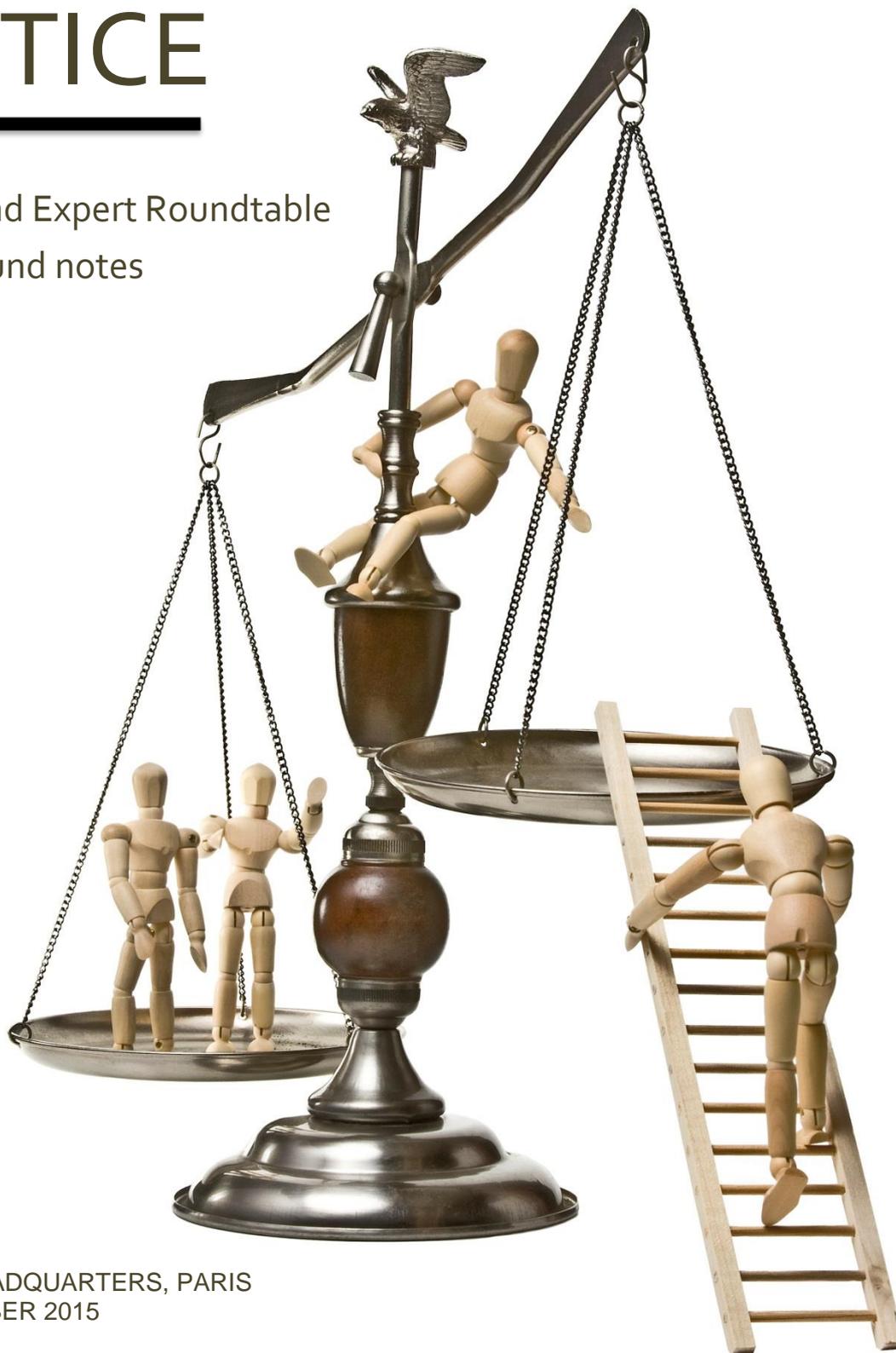


EQUAL ACCESS TO JUSTICE

OECD 2nd Expert Roundtable
Background notes



OECD HEADQUARTERS, PARIS
1 DECEMBER 2015

Following consultations with member countries, the OECD is organising a series of expert roundtables on Equal Access to Justice. These notes aim to support the discussion at the Second OECD Expert Roundtable on Equal Access to Justice to be held in Paris on 1 December 2015. The Second roundtable will build on the results of the First roundtable held on 7 October 2015 by highlighting specific country strategies and innovations used to improve the accessibility and responsiveness of justice services to citizens' legal needs, and looking at how to overcome the barriers to access (such as cost, time and complexity).

Achieving equal access to justice requires the implementation of a number of complementary strategies, especially in the context of tight finances. Discussions at the First Roundtable and recent reports and initiatives in Australia, Canada, the Netherlands and Scotland have emphasized the importance of taking a comprehensive and integrated approach to provision justice services to advance access to justice from a citizen's point of view.¹ Some of the identified strategies identified include:

- **Increasing the legal capabilities and resilience of all citizens:** enhancing legal capabilities of individuals and communities, increased access to legal information and knowledge, skills development and empowerment, expanding self-help resources, post-resolution support;
- **Strengthening the early resolution sector:** improving coordination of this often fragmented legal information and advice sector, enhanced capacity for diagnosis, triaging, and referral; developing multiple, diverse, and integrated access points and service responses: adapting entry points to the justice system to the needs of marginalised groups;
- **Making essential legal assistance and representation services available to everyone:** modernising legal aid, re-engineering legal practices, increasing pro bono efforts, increased access to legal insurance; unbundling of legal services (providing assistance for only some aspects of a legal problem or proceeding, e.g. drafting pleadings but not representing a client at a hearing), expanding the range of qualified legal service providers (e.g. paralegals, community-based advocates), team based approaches to service delivery, more holistic and integrated service delivery to meet a range of needs arising from or connected to legal problems;
- **Expanding the range of justice pathways:** expanding dispute resolution options within courts and tribunals and outside of them, making courts and tribunals multi-service centres, developing court, tribunal and/or community based triage systems;
- **Improving dispute resolution and hearing procedures:** simplifying proceedings, tailoring procedures to make them proportionate to types of matters, meeting the needs of unrepresented litigants, increased use of specialised procedures;
- **Strengthening justice sector capacity:** increased integration of technology, developing coordination and collaboration among organisations and institutions, expanded innovation capacity, improved data collection, measurement and research to support evidence-based policy making; reforming legal education; developing sustainable funding practices; investments in building human capabilities through vocational or in-service training; Enhancing mechanisms for effective interaction between local and central institutions and a sound and sustainable multi-level governance;
- **Facilitating a cultural shift:** greater focus on citizen-orientation (“putting people first”), more emphasis on prevention, outcomes, public communication and collaborative leadership.

The relevance and priority of individual strategies vary from country to country but there appears to be growing consensus that there is no single solution or quick fix to meet the gaps in access to justice (see Box 1 in the Session Notes for the First Expert Roundtable on Equal Access to Justice as a wicked policy issue).

Recent experience shows that citizen-centred modernisation efforts are key to ensuring equal access to justice, which requires the integration of citizen perspectives and experiences in the planning, operation, and evaluation of these efforts. The empirical legal needs literature, examined in the background notes for the First Roundtable provides an important evidence base for recognising and specifically addressing the legal and justice needs of citizens, including marginalised groups as a central strategy for achieving social inclusion. Meeting legal and justice needs is a distinct policy objective from the general modernisation goal of increased efficiency within the broader justice sector as a main mechanism for fostering access to justice.² It shifts attention away from the perspective of the justice system and the emphasis on courts, tribunals, ADRs, process, rules and structure and towards a citizen-based focus on everyday legal and justice problems, their connection with other problems and outcomes. One major aspect of this shift is an increased emphasis on meeting the “upstream” needs of individuals and SMEs for timely assistance with legal problems rather than on formal mechanisms for dispute resolution.³ One possible analogy is that the broader justice system currently provides an ambulance at the bottom of a cliff, whereas what often seems to be needed is a set of realistic, accessible low-cost resolution options, including a stronger barrier at the top of the cliff.⁴

Two sets of overarching strategies may respond to the legal needs research findings. One set of strategies aim at preventing legal problems and disputes by increasing the legal capabilities of individuals and through substantive law reform that resolves frequent legal problems on a systemic basis. Another set of strategies are aimed at improving the ways in which citizen legal and justice problems are addressed by ensuring the availability of effective and timely legal information and assistance services, the simplification of procedures, and the provision of appropriate, timely and tailored legal and justice services.

In this context and building on the results of the First Expert Roundtable, these Notes provide background information on the three priority strategies to improving access focused on meeting legal needs identified by the First OECD Expert Roundtable on Equal Access to Justice:

- modernising public legal aid services,
- harnessing the benefits of technology, and
- specialisation of justice services.

These strategies are aiming to address some of the specific barriers to access to justice identified during the First OECD Expert Roundtable discussion on Equal Access to Justice, such as cost, time and complexity.

SESSION 1. Business case for modernising public legal aid services: Fostering responsiveness to clients' needs?

Discussion questions

Impacts of legal aid services

- What is the business case for public legal aid? How can impacts of different types of legal aid (e.g., full representation, self-help materials) be assessed? What model works under which conditions? What impact does the lack of access to legal aid and hence to justice have on low-income groups? On communities, society and economy?
- What are the impacts of legal aid on poverty, health, education? Can access to legal aid support access to other services (health, education, social assistance) and improve outcomes in other policy areas?
- Do the current approaches to legal aid enable meeting legal and justice needs of citizens, especially in the low income groups? Help citizens resolve clusters of interconnected problems? How is it assessed? What are the biggest barriers for ensuring responsiveness to these needs?

Current context and country approaches to legal aid

- What are the current challenges and opportunities faced by public legal aid systems in the countries (e.g., increasing number of claims for public legal aid, growing number of self-represented litigants, fiscal pressures, quality of public legal representation)?
- What are the country approaches to enhancing responsiveness of legal aid services to needs of different groups of low-income citizens? What legal aid innovations are being introduced (e.g., types of assistance provided, legal matters covered, who can access (eligibility), at what stage, for which type of justice service (judicial and non-judicial))? Do they recognise multiple paths to justice and different legal needs?
- What are the country approaches and considerations in providing legal aid for accessing non-judicial mechanisms for meeting legal needs of citizens (e.g., early resolution system services, alternative dispute resolution)?
- Do governments have an obligation to provide legal aid or representation assistance? If so, is this obligation present only in criminal matters or also in civil matters? And if in civil matters, which kinds? Are there essential legal needs?
- What are the challenges faced by public legal representation services? How to ensure their quality and responsiveness to citizen and business needs? Consistency in the type and scope or amount of legal assistance provided (quality)? Cost effectiveness?

The business case for legal aid

Cost of accessing justice has been cited among the core barriers to access to justice.⁵ Public legal aid is provided by states to people who require legal assistance but cannot afford to pay for private legal services and do not otherwise have access to legal services, i.e. through legal expense insurance, union representation and so on.⁶ In OECD countries, legal aid is the primary public program for ensuring equal access to justice (e.g. in France, legal aid's budget will extend to €405 million in 2016 – out of €8 billion for justice's budget⁷). There is a wide range in per capita spending on legal aid among OECD countries.⁸ Yet, in the wake of current financial crises and budgetary pressures, many jurisdictions have undergone dramatic budget reductions for various types of legal aid, along with the cuts in other policy areas.

Laws shape and regulate most aspects of life and the relationships between citizens, businesses and governments and therefore law and the need for access to processes for the resolution of legal problems is an integral attribute of modern lives. There is growing evidence that inaccessible justice contributes to growing poverty and social exclusion and can undermine economic growth and

democracy.⁹ Studies also show that unresolved legal problems can be costly both to the individuals directly affected and to society as a whole,¹⁰ as problems and deprivations (legal, social, economic, health, etc.) tend to cluster and may reinforce each other (see Background notes for the First OECD Expert Roundtable on Equal Access to Justice).¹¹

The growing knowledge about the impact of unresolved legal needs across many OECD countries¹² should provide the basis for a broader justification for providing legal aid, particularly to members of marginalised groups. Studies indicate that legal aid may provide a range of public benefits beyond the justice system by promoting economic and social well-being.¹³ These impacts can occur at different levels such as individual, family, community or at the societal level as a whole (see Box 1).

Legal aid can therefore contribute to broader policy objectives relating to the improved status of citizens and groups living in situations of disadvantage in the economy and society as a whole hence improving inclusive growth, beyond the justice system. This broader view is consistent with public conceptions of access to justice as inclusive of substantive just outcomes and includes notions of promoting legal health, legal empowerment and social inclusion, also in support of the Sustainable Development Goals.¹⁴

Yet, while there is increasing evidence pointing towards potential impacts of legal aid, the understanding of the impacts of different models of legal aid (from information provision to partial legal advice to full representation) on different groups of the population across a wide range of civil, family, health, housing and other areas, both in terms of short-term outcomes (such as the ability to resolve legal and other related issues) and longer-term impact (e.g., ability of individuals to effectively contribute) still remains uneven, which also limits capacities to make a clear business case for legal aid. In fact, there are a number of studies pointing to the limited availability of credible evaluations of different legal aid models. These gaps seem to be particularly important as legal aid systems across OECD countries are under pressure to meet demand in the context of growing need and budgetary constraints.¹⁵ There is also a growing need for civil legal assistance, whether it concerns family issues, land and housing, employment, or neighbour problems in many countries, partly as a result of economic recession and rising economic inequality (for instance, the Legal Aid Society of Cleveland, United States, saw a 35% increase in calls requesting assistance in 2008 over the level observed in previous years).¹⁶

There is also limited evidence and information on the interactions of legal aid and other services and hence the broader public good assured through an effective and efficient legal aid system.¹⁷ For example, legal aid can enable access to housing through assistance with eviction proceedings, improved financial situations through debt advice,¹⁸ access to pensions, social benefits, and healthcare, access to financial support and division of property after a relationship breakdown, and assistance in escaping from domestic violence. While legal aid is not an end in itself but rather a means to meet basic needs and enjoy rights and entitlements, part of the challenge faced by countries in presenting a clear business case to legal aid is that government funding tends to be allocated in silos between departments and programmes and is often dependent on electoral cycles.¹⁹ An important part of the issue is that the impact of legal assistance and related human services may not become evident until many years later, and well after the next election. While expenditures may be in plain view, the benefits are intrinsically difficult to measure as they are often scattered across different policy areas: "Often it is a question of large avoided costs to individuals and the community through time, rather than an immediate, tangible benefit."²⁰

Box 1. Towards understanding the impact of legal aid

There is an emerging, although uneven, evidence from across a number of OECD and partner countries, that legal aid can assist individuals and families to resolve legal and social needs, obtain access to opportunities, and become full participants in the community and economy. As discussed during the first Expert Roundtable, it can contribute to reducing inequality by breaking down the cycle of dependency and increasing resilience by assisting *individuals* to address recurring patterns of problems in their lives and by interrupting the process of escalating problems, in such a diverse range of issues as health, housing, employment, violence, education and family.²¹ For example, research shows that receiving legal aid has a positive impact on patients' well-being and compliance with medical treatment.²² Furthermore, studies highlight that in the area of public housing legal representation can help to maintain housing arrangements in the face of eviction as compared with a situation of limited or no legal representation.²³ This in turn reduces the risks of homelessness, poverty, health problems and hence inequality in the longer run.

At the *community level*, the aggregate impacts of legal aid can contribute to social cohesion and social fabric of communities by promoting social mobility, reducing criminality and increasing business and economic opportunities.²⁴ Investment in legal aid services can lead to economic growth in the community by increasing jobs, reducing work days missed due to legal problems, creating more stable housing, resolving debt issues and stimulating business activity.²⁵ At the *societal level*, civil legal aid has been found to lead to a series of social benefits, which in turn benefit governments and societies economically²⁶ through reduced cost on social interventions that otherwise would be needed to address those specific challenges. There is increasing evidence that benefits of civil legal aid may range from a reduction in domestic violence, less time needed for children to spend in foster care, reduction in the need for safety-net programmes, reduction in evictions, protecting patients' health, and greater participation in public assistance programmes.²⁷ Studies have shown that providing civil legal aid can improve patients' health and save money on healthcare costs thus having an impact both at the personal and societal level.²⁸ At the aggregate and more general level, the rule of law showed an independent association with infant mortality rate, maternal mortality rate, life expectancy, and cardiovascular disease and diabetes mortality rate.²⁹

In the area of housing, a study showed that civil legal aid saved USD 116 million in shelter costs in 2009-2010 in New York State.³⁰ Another study from Massachusetts found that for every dollar spent providing representation to families and individuals in housing court, Massachusetts would save USD 2.69 in costs associated with providing other services.³¹ A broader assessment of the Impact of Massachusetts Legal Assistance Corporation revealed that new revenue at the state level for civil legal aid clients and cost savings totalled an estimated USD 53.2 million in FY2011, which included USD 27.7 million in new federal revenue, USD 15.1 million in potential savings for the state and USD 10.4 million in other revenue (while the state appropriation for legal aid was USD 9.5 million). The study also highlighted that low-income residents and the state as a whole benefited from legal aid assistance in the following ways³²:

- 9.7 million in unemployment compensation and 3.4 million in unemployment insurance to low-income workers
- 8.6 million in food stamps and 3.3 million in child support
- 8.7 million in disability benefits in the form of federal retroactive payments and first-year benefits to low-income citizens
- 558,527 in Medicare coverage of health care costs
- 415,992 in rent relief and household damage
- 11.3 million in potential savings due to preventing homelessness and 3.9 million in domestic violence prevention

In criminal justice, researchers from Florida University calculated that for each arrest avoided as a result of the impact of legal aid, the researchers calculated that society would save USD 9,368 in one location and USD 7,362 in the other by avoiding the need to pay the following costs: (1) in both locations, USD 483 in criminal justice system costs for police, judges, other court expenses, prosecutors, and defence attorneys; (2) juvenile detention centre costs of USD 3,673 in one location and USD 2,171 in the other; and (3) costs to victims of crimes of USD 5,212 in one location and USD 4,655 in the other.³³

In other countries, a PricewaterhouseCooper study found that every dollar spent on family law legal aid provided a USD 1.60 to USD 2.25 benefit to the overall justice system in Australia.³⁴ A UK Citizens' Advice Bureau Report found that for every pound of legal aid expenditures on housing advice, debt advice, employment benefits and benefits advice, the state potentially saves between 2.34 and 8.80 pounds.³⁵

Box 1, continued

Evidence on reforms in Indonesia's Islamic Court (which handles the largest number of cases in Indonesia, especially in family law) shows that the waiving of court fees for the poor resulted in ten-fold increase over two years. The increase was mainly due to women's ability to get a divorce through formal court decisions, which in turn allowed them to be legally classified as 'heads of household'. This in turn facilitated their access to the Indonesian government's social welfare program, including cash transfers, free health treatment, subsidised rice and state school enrolment.³⁶

Conversely, *lack of access* is associated with negative impacts at the individual, community and society. Unresolved legal problems and the requirement to navigate justice systems without appropriate assistance results in individuals bearing additional stress with an attendant impact on emotional and physical health, lost days of work and in some cases unemployment due, and negative impacts on parenting and other family relationships.³⁷ For example, a mother and children unable to get timely, effective assistance or an expedited court hearing to determine their right to support may eventually get the requested order and judgment, but that will not cure the deprivations or repercussions suffered in the meantime. Children can be secondarily affected if parents are not afforded the fair outcomes that they need. This may be obvious in child support or parenting cases, but is equally true when families with dependent children are at risk because of other unmet legal needs, such as those impacting housing or income issues. As noted during the First OECD Expert Roundtable on Equal Access to Justice, experiencing multiple problems (which is particularly the case for marginalised communities), not reaching satisfactory outcomes in resolving problems and having unresolved problems tend to aggravate and lead to a greater likelihood of health and social problems.³⁸ Similarly, findings of the "Health Inequality and Access to Justice: Young People, Mental Health and Legal Issues" report also indicate that the experience of social welfare related legal issues (and legal issues in the round) is associated with higher rates of mental illness, which was also in turn associated with social isolation for young adults.³⁹

At the *community* level, the inability to exercise legal rights can result in or reinforce social exclusion. Unequal access to justice also diminishes public confidence in the justice system which can further erode the social fabric.⁴⁰ Lack of access to justice has also been found to negatively influence poverty reduction programmes and democratic governance by undermining participation in the community, transparency and accountability.⁴¹

At a *societal* level these costs can include lower economic productivity and knock-on costs to public spending in other areas (employment insurance, social assistance, health). Recent Canadian research estimates these knock on costs are approximately 2.35 times greater than the annual direct service expenditures on legal aid.⁴² Studies also show that inadequate legal aid results in additional costs to other justice services, through for example longer and less efficient hearings. For example, an Australian study found that providing legal aid at the committal stage of a criminal procedure would save the equivalent of between 2.4 and 5 District Court judges per year.⁴³ Several US and Canadian studies document the impact of unrepresented litigants on court resources though it is difficult to quantify these costs.⁴⁴ A British study on the effectiveness of legal aid in the asylum (refugee) context found that restrictions on the quality of legal aid as a cost savings measure resulted in higher costs overall: "poor quality work costs much more in the longer term to the public purse and in human terms to individual asylum seeker applicants."⁴⁵

Legal aid models

There are a variety of models for legal aid across OECD countries, which also depend on the legal and historical context. These models range from those fully-funded by government and those which are mixed (e.g., where legal aid can be either provided by private legal firms through *pro bono* services, or can be submitted to a mandatory subscription to Legal Expenses Insurance system). In some countries legal aid services are provided through community-based clinics, some of which benefit from both public and private funding. These latter models of service delivery are designed to respond to the legal needs of members of the community and often have community members involved in their governance structure.⁴⁶ Some of the most common legal aid providers range from public defenders and private lawyers to *pro bono* schemes, bar associations and paralegals.

Traditionally, the focus of legal aid has been primarily or solely on providing legal representation to access courts and tribunals in order to ensure the proper functioning of the court system and the

principle of ensuring fair hearings.⁴⁷ Increasingly, there are discussions on modernising approaches to legal aid to respond to different pathways to justice and to different needs and capabilities of citizens. Currently, it seems possible to distinguish three broad types of legal aid provided across OECD member countries, which differ in character, availability and price. These include (a) information and advice (usually provided at pre-trial stages); (b) services that help to negotiate and interact with the other party (e.g. alternative dispute resolution (ADR) services aimed at settlement, such as mediation, conciliation and lawyer assisted negotiation); (c) adjudication, litigation and procedural assistance (which may include legal representation by a lawyer, and coaching of self-represented litigants).⁴⁸ In many OECD countries, legal aid covers services provided by others than lawyers helping to negotiate and interact with the other party, such as mediation to prevent judicial procedures or facilitate access to law or other ADRs (e.g., in Ireland mediation in family cases, the Netherlands, France, Portugal, Slovakia).

Legal aid services could potentially be rationed in three main ways: types of legal matters covered (coverage); who can access services (eligibility); and the type, depth and quality of legal assistance provided, that is whether a client gets full or partial assistance (service delivery). Other rationing measures include financial contributions by clients and limited remuneration of service providers (e.g. below market rates for both staff and *judicare* lawyers, claw-backs, and partial payments).⁴⁹ There is a critical relationship between these elements and the strategic policy choices required to ensure meaningful access to justice. If considering types of common legal problems, there are diverging approaches to providing legal aid across OECD countries (which also results in variations in budgets spent on them per capita), with possible exception of legal aid for criminal defence. In many countries, most legal aid money is spent on criminal problems (e.g., Ireland and Scotland), although in some countries more money is spent on non-criminal legal aid (e.g., France, Belgium and the Netherlands), such as forced hospitalisation of psychiatric patients, immigration, family law problems, debt.⁵⁰

Enhancing responsiveness of legal aid services

Although traditionally a low innovation sector,⁵¹ countries are increasingly developing new approaches to the provision of legal aid services in the context of fiscal cuts and growing demand for legal aid and to ensure the delivery of citizen-oriented services integrating the growing evidence base on how individuals experience and respond to legal problems and the extent of unmet legal needs (e.g. the *Justicia Cotidiana* initiative in Mexico identified, through the testimonies of citizens, several daily justice dispute issues and presented a set of recommendations to the Government at a federal, state and local level)⁵². The main challenge is to enhance responsiveness and ensure that they are providing the 'right' mix of services, to the 'right' clients, in the 'right' areas of law and in the 'right' locations and at the 'right' time.⁵³

The broad trends in legal aid reforms (also in response to the reduced available funding) reflect the themes and approaches of today's access to justice agendas to respond to needs of citizens and businesses:

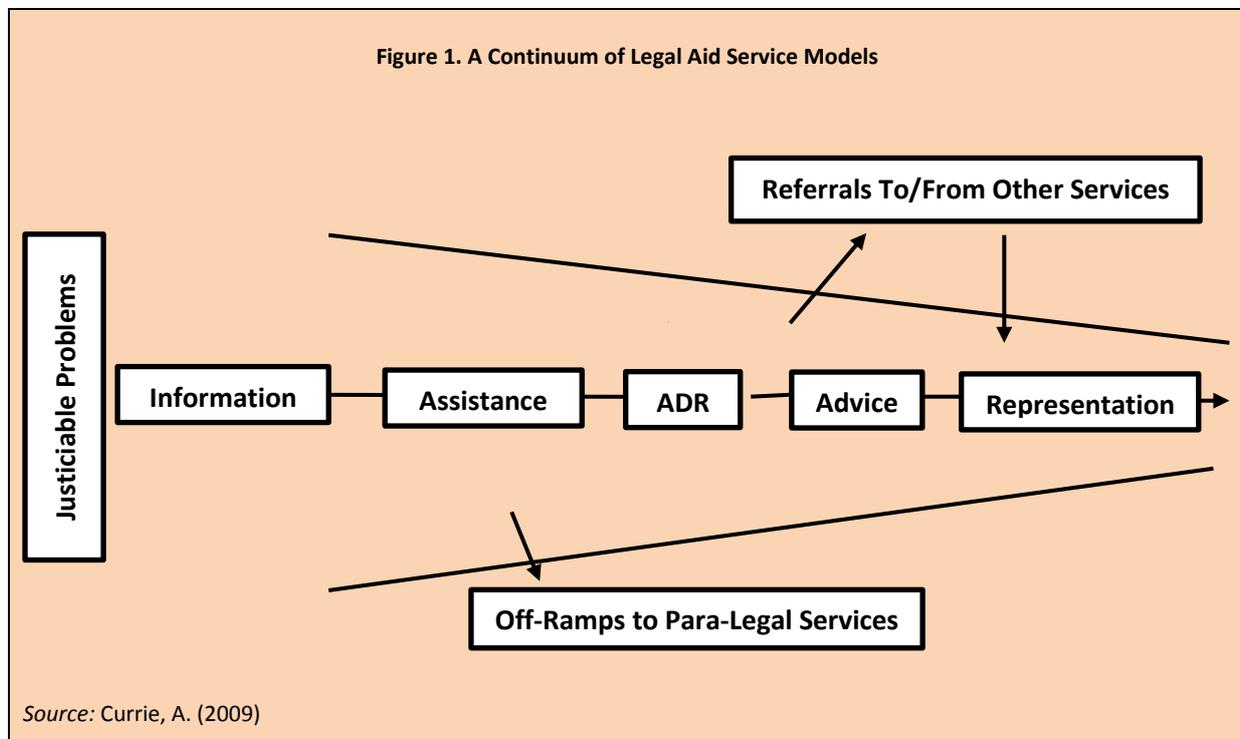
- Enhanced information and advice service through a range of channels (e.g. advicenow.org.uk in the United Kingdom or the *Maisons de Justice et du Droit* in France),
- Adjustments of eligibility areas (e.g., inclusion of new beneficiaries of legal aid such as victims of gender violence, terrorism and trafficking in human beings; minors and people with intellectual disabilities who have been abused; victims of accidents who suffer permanent disabilities and associations aimed to promote and defense the rights of victims of terrorism in Spain⁵⁴);

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- Integration of diagnostic tools, triage and referrals services;
- Increased emphasis on outreach, timely intervention and prevention;
- Making legal aid available for a range of dispute resolution processes;
- The development of hybrid and problem-solving services, mainly through specialised lawyers, paralegals and legal expenses insurers (e.g., a new mediation procedure in child custody cases in Finland provides the assistance to a judge by a psychologist and a social worker)
- Increased service delivery by non-lawyers (paralegals and community advocates), including changing regulations for legal profession;
- Increased provision of holistic and comprehensive services to address both legal and non-legal dimensions of people's problems;
- Increased integration of technology in the provision of services;
- Tailoring of services to meet the needs of marginalised communities;
- The simplification of legal procedures for specific types of disputes (e.g., simplified e-court procedure for cash benefits in Poland); and
- Increased service provider collaboration and coordination in such areas as health, housing and education to support the achievement of positive outcomes for clients.⁵⁵

This section focuses on three main trends, which seem to have some of the biggest impact on responsiveness of legal aid to citizen needs: the shift to delivery of legal aid through a continuum of services; increased capacity for comprehensive and holistic 'wrap around' services; and promotion of quality assurance, performance measures and standardisation.

Continuum of legal aid services



There is an emerging trend across countries to provide a continuum of legal aid services, including legal information, assistance and representation services to respond to different mixes of needs, capabilities and different justice pathways (Box 2). Innovation can be characterised by having a

greater mix of legal services to address citizen legal needs and bridge the gap between full legal representation and no representation, in a situation of scarce resources. The increasing range of legal assistance services aims to increasingly respond to the reality of multiple pathways to justice. It also responds to the evidence that the vast majority of legal problems are resolved without resorting to the formal legal system and that the majority of individuals living on low income or who are otherwise vulnerable tend not to seek resolution without an active offer of assistance. For instance, in 2000, the Dutch ministry of Security and Justice established *legal service counters* that offer legal advice to low income groups on various types of disputes, including labour, housing, consumer and family disputes⁵⁶.

The continuum of services can best be deployed through a systematic approach to diagnostic triage and tailoring of services by implementing standard tools and procedures to identify client need and capability.⁵⁷ In some cases, the continuum of service provision is connected to different types of legal needs. For example full representation may be provided for legal needs that are deemed 'essential' and more limited forms of assistance, such as legal information and advice, provided to address non-essential legal needs.

Yet in view of the current fiscal constraints and growing demand in some countries, the ability to provide full legal representation services is increasingly limited. Several approaches are emerging to meeting this service gap, including providing limited retainers to lawyers who deliver assistance for part of a legal claim ("unbundled services")⁵⁸ along with expanded court-based duty counsel services (which means other limited advice and representation services)⁵⁹.

Another increasing trend in many countries is to provide information and limited assistance, putting the onus on the individual to 'self-help', with various levels of support – particularly for self-represented litigants, including from middle-income groups.⁶⁰ Many initiatives aim to empower citizens in their relationship to legal service providers and to solve problems at an early stage. For example, many US legal aid providers operate "self-help units";⁶¹ there is also a Self-Represented Litigation Network (www.srln.org).

How services dovetail together in the continuum is very important in matching assistance with the needs and capabilities of clients. Dovetailing would ensure, for example, that legal advice is made available directly after community legal education or that outreach services have direct links to casework where additional assistance is required.⁶²

As highlighted during the First OECD Expert Roundtable on Equal Access to Justice, tailoring services and proportionality are key to the efficient and effective delivery of legal aid services. Greater understanding of differentiated legal need and capability is key: "Services will be more 'appropriate' and potentially more efficient from funder, service provider, and client perspectives, when sufficiently personalized to match legal need and capability."⁶³

The growing range of legal aid and assistance services requires an improved ability to measure and take into account individual personal and legal capabilities in the tailoring in service provision and developing stronger diagnostic and triage systems.⁶⁴ Service models need to be flexible and nuanced to be responsive to client needs and informed by mapping legal needs with the location of services.⁶⁵

A continuum of services allows a legal aid plan to be comprehensive and avoid gaps in meeting the legal aid needs of the communities served. Providing a range of services helps to ensure responses proportionate to need and that problems are identified and addressed early, when possible. However, the knowledge of what services work best for whom and in what situation is still fairly limited. More information is needed on the relative merits of the various service types in terms of

suitability, costs and outcomes.⁶⁶ In particular, there is also a growing recognition of the need to understand the impact of different models of legal aid services on meeting legal needs of different groups of citizens, including those with limited legal capabilities and in marginalised life circumstances.⁶⁷ Indeed, while information, education and minor assistance services can help many people address their legal issues and problems and resolve their disputes, research also shows that the most vulnerable are less likely than others to have the skills and psychological readiness to achieve legal resolution on their own or with minimal assistance.⁶⁸ As such these clients may need more intensive support in order to address their legal and related problems. For example, a comparative review of seven studies on the efficacy of legal aid telephone hotlines concluded: “The benefit of the hotline expands with the depth of services offered. The best results are obtained when the hotline is the ‘front end’ of a system that can extend through assistance to full representation.”⁶⁹

Box 2. Chile Atiende

In Chile, a public multiservice network seeks to link the benefits and services provided by public institutions with citizens, through different service channels: points of care throughout the country, an online portal with simple and direct access to information, and a call centre delivering orientations on public services.

Source: Chile Atiende website

Comprehensive and holistic ‘wrap around’ services

The second main trend in citizen-centred legal services is the provision of ‘wrap around’ legal aid services,⁷⁰ which no longer look at a citizen’s legal problem in isolation and are working closely with other social service agencies to address underlying issues, such as poverty, homelessness or addiction, that have an impact on a client’s legal problems and on the justice system (e.g., the Legal Aid Ontario Clinic program, Fir Square Combined Care Unit at BC Women’s Hospital). Recent research and reports emphasised the importance of comprehensive, holistic and integrated services to provide assistance with all aspects of an individual’s problems or situation.⁷¹ Comprehensiveness and a holistic approach address qualities of legal aid services while integration refers to legal services being connected to other social services.⁷² Wrap around services also highlight the shift from court-centred legal aid to citizen-centred legal aid and underline the notion of access to justice to one that is about the resolution of people’s legal problems rather than access to formal dispute resolution processes.⁷³

As highlighted in the First OECD Expert Roundtable, legal needs research has demonstrated that many citizens, particularly vulnerable people and those living in situations of disadvantage, tend to experience legal problems in clusters and with other related non-legal problems.⁷⁴ For example, a medical problem can lead to a cascading number of economic, social and legal problems. Citizen-focused legal aid service delivery responds to these realities through holistic and integrated services, which “focus on mitigating the total impact of legal problems on a person’s life, rather than considering each legal problem separately.”⁷⁵ Particularly vulnerable and needy populations (e.g., indigenous groups, homeless persons, immigrants and refugees, women and children) may also strongly benefit from specialised strategies and integrated approaches to service delivery (e.g., integrated justice, health and social service delivery), given that they are likely to face a set of related problems. Indeed 2015 OECD Report *“Integrating Social Services for Vulnerable Groups: Bridging Sectors For Better Service Delivery”* highlighted that “the co-ordination of policies for vulnerable groups reduces the likelihood of doubling-up services and spending on clients, generates economies of scale, and can also ensure that those with the highest need access the variety of services they need, in the right order. Integration also encourages the optimal take-up of available

services, as services users do not need to repeat their experiences to multiple providers, and they can be supported by professional case workers or service coordinators. When services are taken up by those that need them most, they are more likely to be effective, and appropriately evaluated.”⁷⁶

Integrated services flow from a citizen-centred approach and address the reality that many people experience problems that have both a legal and other dimensions (to this end, the Vermont Legal Aid Company in the United States provides citizens with legal advice in order to enable them to better understand their legal rights and to resolve their healthcare issues independently)⁷⁷. Research shows that addressing all facets of the problem leads to better and more lasting outcomes. Service integration also addresses difficulties that many individuals experience in navigating multiple paths to service, including delay, ‘referral fatigue’ and other obstacles that can lead to people giving up. From a public expenditure perspective, there is some evidence that integrated services can enjoy competitive and economic advantages.⁷⁸

Holistic and integrated services often involve collaboration with health and social service agencies, which may be co-located and which would require breaking down silos and establishing new forms of collaboration between various governmental institutions, including the justice system and other government services.⁷⁹ This is sometimes referred to as ‘joined up’ services.⁸⁰

Proactive offers of assistance, outreach services, and collaborations with other providers of human services and trusted intermediaries are key to legal aid effectiveness in assisting marginalised groups.⁸¹ Legal aid providers are increasingly using health checklists and other diagnostic tools with demonstrated effectiveness.⁸² Collaboration among legal assistance service providers and other service providers is facilitated by best practices as regional legal assistance forums (e.g. legal health check produced by the Queensland Legal Assistance Forum to assist flood and cyclones victims)⁸³ and project-based collaborations (e.g. Cooperative Legal Service Delivery program in Australia as well)⁸⁴. These initiatives recognise multiple pathways to justice and assist in meeting citizens legal needs regardless of where or how they enter the justice system. For example, the New South Wales and Queensland Legal Assistance Forums and the Cooperative Legal Services Delivery Program help to ensure strategic deployment of resources and the development of best practices in providing legal assistance in specific areas such as housing law and domestic violence law.⁸⁵

Quality assurance, performance measures and standardisation

There is an increasing trend across a number of OECD countries to establish quality assurance systems among legal aid providers and to carry out regular evaluations of services including client satisfaction surveys (such as online surveys on quality and approach in service for practitioners both private and public who deliver legal assistance services) to ensure responsiveness to legal needs.⁸⁶ Some have also developed report on performance measures.⁸⁷ Formerly the fact of providing high quality service to ensure fair procedures was the key output for legal service providers. Citizen-focused services shift the attention away from the traditional prominence on process by justice system players to an emphasis on outcomes. Legal aid providers and their funders are beginning to grapple with the more difficult assessment of ‘what happened’ as a result of the legal assistance, although this is still largely a “brave new world.”⁸⁸ Outcome-based evaluations can include factors such as timeliness of interventions, avoidance of escalating problems, measures to minimise or prevent recurrence of legal issues, determining effectiveness relative to a broad range of outcomes and impacts extending well beyond a specific case outcome.⁸⁹ At present, few legal aid providers have the capacity to carry out these types of evaluations (one would be the Canadian evaluation of Public Legal Education and Information programs).⁹⁰

SESSION 2: Harnessing technology to enhance accessibility of justice services

Discussion questions

Role of technology in enabling access to justice

- Access to information: In what ways can technology facilitate access to legal information and legal awareness of citizens? What are the successful country examples? How can the governments foster trust in technology as a tool to access to justice services?
- Service delivery and communication: What are the examples of country initiatives and innovations in using technology to improve the delivery and hence access to justice and legal services (e.g., courts, tribunals, alternative mechanisms)? Communication with justice service providers? In remote communities (e.g., e-filing and e-courts)? For marginalised groups? Self-represented litigants (e.g., interactive court forms)? Can technology facilitate the delivery of justice services in all legal domains (or whether some areas are more prone to be addressed via traditional methods, such as criminal cases)?
- Seamless and integrated access: How can technology facilitate better triage of cases to identify the most suitable legal and justice services? Are there examples of online “one-stop shops” for dispute resolution services in various areas?

Identifying what works

- What are the pros and cons of online justice services? Are there examples of “hybrid” service delivery models (combining online and other service delivery channels)? What are the regulatory barriers to innovation and to the use of technology in promoting access to justice? What is required for successful use of technology in providing access to justice (e.g., special regulations, training of IT and legal experts)?

Information and Communications Technology (ICT) is increasingly seen as a key enabler for meeting legal needs and providing citizen-centred services by enhancing access to information, facilitating provision of legal and justice services and enabling integrated access to services in the justice sector. ICT is often being used to automate current processes and make them more efficient and accessible to citizens and businesses, create new pathways to justice, and provide direct access to justice services. After a slow start compared to other sectors, new tools and applications are now appearing at a rapid rate (e.g. the United Arab Emirates recently implemented a smart phone application allowing to follow judicial cases or to make an inquiry about a document)⁹¹. There is evidence that citizen-centred strategies employing telephone and audio-visual technology, the internet and software applications help to overcome some barriers to accessing justice and have the potential to create justice system efficiencies⁹² (e.g. “Chile Atiende” portal – see Box 2). Emerging use of technologies, such as online dispute resolution (ODR), social media, cloud computing, smart phones, mobile software applications and mobile computing are also showing good results⁹³ (Box 6). Adoption of ICT tools is sporadic, however, and their use is far from widespread, also linked to significant investments required for their implementation.

Yet ‘digital delivery’ revolution might not be universally accessible.⁹⁴ Careful planning is needed to prevent technological innovations from creating or reinforcing existing barriers to equal justice.. There is a risk that these reforms may raise the “spectre of a digital divide that institutionalises a two-tiered system incapable of delivering appropriate justice to low-income persons.”⁹⁵ Even with the dramatic rise in digital access across income levels, access to technology cannot be equated with “digital literacy and the capacity to identify best forms of assistance.”⁹⁶ Implementing technological solutions with a clear strategic purpose is essential as a risk of scarce resources being wasted is

possible Civic engagement can also provide important opportunities to co-design services to ensure effective service design and responsiveness.

Technology could have three main accesses to justice benefits, such as: enhancing access to information, facilitating provision of legal and justice services and enabling integrated access to services in the justice sector (see Figure 2).⁹⁷ Five specific developments can be identified:

- interactive web initiatives;
- integrated legal assistance services;
- online dispute resolution (ODR) and telephone-based ADR services;
- increased use of technology in courts and tribunals; and
- ‘one-stop shops’ for government services.⁹⁸

Examples of how ICT is being used to improve access to justice along with available evidence of effective practices are discussed in the next sections.

Figure 2. Access to Justice benefit



Source: Australian Government (2012)

Access to information and knowledge

Technology has been successfully employed to assist people to access and understand the law and information about how to resolve problems early and cost-effectively. Until relatively recently, web-based information was static and in some cases geared primarily to service providers rather than citizens with unmet legal needs. Portals that provide access to a range of information sources in a jurisdiction (e.g., a portal of mediators in Spain⁹⁹) or even across jurisdictions such as the European e-Justice and e-Codex projects, assist in removing barriers to legal information (see Box 4).

Today there are many examples of web-based sources designed to further inclusivity goals: legal information and referral websites,¹⁰⁰ online video instruction,¹⁰¹ interactive information services,¹⁰² and social media.¹⁰³ Effective ICT initiatives can do more than provide information, they can support building legal capabilities by building knowledge, skill, and ability.

Recognising that communication is a two-way street, there is increasing use of websites and Web 2.0 initiatives, such as blogs and social media, to both engage the public and gather information, for example, through polls, surveys and online consultations.¹⁰⁴ MIDLAS community legal centre in Western Australia has implemented a highly effective social media campaign to share relevant and up-to-date information and advocacy options with clients, while raising awareness about the plight of the disadvantaged, offering information and building stronger connections within networks. MIDLAS currently has six dedicated and integrated social media platforms.¹⁰⁵

Users must have a relatively high level of digital literacy to use these resources.¹⁰⁶ Vulnerable communities face hurdles when it comes to getting information and help in the justice sector, as it does in other sectors including health. Systemic approaches are required to overcome barriers faced by these communities in accessing information and assistance and much can be learned from recent health sector initiatives.¹⁰⁷

Box 3. Information Technology Centre for Korean Courts

This centre is the Korean Supreme Court's IT support centre for the Judiciary. It provides technological and professional support to the courts and the registration offices nationwide. Among other activities, the Centre provides an e-litigation system: **the Electronic Case Filing System (ECFS)**. This system allows litigants and their attorneys to file and manage cases, and allows access to court information and procedures electronically.

All court documents, documentary and digital evidence can be filed without visiting the courts. Thus, the parties will be able to use ECFS to promptly check the current status of the proceedings. Judges and clerks have also the possibility to check cases' status and to view case records. Moreover, they have access to an Integrated Case management.

Source: Information Technology Centre website

Access to legal assistance services

ICT is also being harnessed to improve access to legal assistance services both by private and public service providers. Virtual law firms can provide services in remote or rural areas and, in some cases, at a lower cost, since the need to travel is reduced or eliminated and often offer services low-cost deconstructed or unbundled services for fixed fees.¹⁰⁸ Some law firms also manage online communities such as divorce forums, which provide free information and have profit-generating mechanisms such as referrals or advertising.¹⁰⁹

Legal aid and assistance providers are also increasingly providing their services through digital means. Legal assistance websites operating on a jurisdiction-wide basis (national, regional, state, province or municipality) can be effective entry points for citizens navigating the justice system.¹¹⁰ Legal needs research has demonstrated that many people, particularly vulnerable populations, do not know where to seek legal help and these portals can address this initial barrier.¹¹¹ Australian national access to justice website, Foolkit (stands for free legal toolkit) version 7.0¹¹², would be a relevant example. One author concludes: "It is difficult to overestimate the importance of these state-wide Web sites as foundational building blocks for transformational delivery changes. These sites provide the Internet framework on which to hang new services and new approaches to

collaboration. Their authenticity and interface consistency make these sites viable platforms for information and service delivery innovation across the country.”¹¹³

Legal help hotlines have also been found to be effective access tools particularly where they are a ‘front end’ not ‘dead end’ service, integrated with full or partial legal assistance and representation services, and provide follow up.¹¹⁴ The value of hotlines expands with the depth of service offered (in New York, Legal Aid Society’s Pro Bono practice offers an “access to benefits” hotline to people in need of legal assistance to obtain government benefits).¹¹⁵ There are also examples of tailored approaches to specific groups of citizens. For example, Spain has launched a new service addressed to persons with hearing and speech disabilities. Users can download the application “Texmee”, available in the iOS and Android operating systems, which enables communication with the Ministry of Justice via text message in real time.

ICT is also being employed to provide online tools to assist people through:

- aggregating information from a range of websites;¹¹⁶
- providing comprehensive advice and referrals;¹¹⁷
- the diagnosis of legal problems and possible steps to take to address them;¹¹⁸
- guided interviews;¹¹⁹
- guided pathways leading the user interactively through difficult issues;¹²⁰
- guides to procedures before specific courts and tribunals;¹²¹
- programs that assist a user to build up court forms with a visual interface that fronts automated document assembly;¹²² and
- assisting with the presentation of evidence.¹²³

These tools are designed to meet the legal needs of self-represented litigants and by service providers assisting low- and middle-income clients. Many of these tools have been developed and are used by legal aid providers and pro bono organisations in the US, the Netherlands, Australia and Canada, allowing these providers to extend their services.¹²⁴ Others are developed and run by courts and tribunals.¹²⁵ Web-based information can only be effective where the information is accurate, easy to understand, and credible.¹²⁶ Digital delivery of legal services takes place within a context and is more advanced in countries with courts that have some degree of automation such as e-filing¹²⁷ (e.g. in Korea).

Technology facilitates the dissemination of legal information in a much greater range of formats and therefore has the potential to better match the legal needs of marginalised groups. Information can be made using more accessible language, multiple languages (e.g. Lawhelp in New York bilingual volunteers to staff its LiveHelp program, offering assistance to both English- and Spanish-speaking users), in audio and video formats rather than text (e.g. youtube videos on court procedures), and in interactive formats such as ‘livechat’ functions (e.g. in British Columbia, the Justice Education Society’s ‘Jes the avatar’ talks users through court procedures) and remote assistance (e.g. Minnesota courts’ Self-Help Centre provides remote assistance to unrepresented litigants using TeamViewer software - instead of trying to describe which links to click over the telephone or by instant message, a staff person can request permission to take remote control of a visitor’s computer and show her how to navigate the website.)

This diversity of integrating ICT into legal assistance services can be tailored to the identified citizens needs in a given area and, ideally, in consultation with other organisations that serve specific communities (e.g. United States). For example, work is currently being carried out on the next generation of guided interview software, which will deal with overlapping legal issues in recognition that many problems faced by low income people involve multiple issues.¹²⁸ Collaboration among

legal service providers on technological solutions resulted in increased integration of services and a transformative, citizen-oriented model for delivering information and services.¹²⁹

Enhanced delivery of justice services

Courts, tribunals and ADR providers are also increasingly turning to ICT to enhance the delivery of justice services. Justice systems devoting a larger share of the justice budget to information technologies seem to display, on average, shorter trial lengths, as well as higher productivity of judges¹³⁰. Dutch's KEI program – Quality and Innovation Program – was created to reduce the overall duration of the proceedings and the operational costs of the courts¹³¹. Two of the drivers of technological initiatives could be increased efficiency and the rise of unrepresented litigants in many courts and tribunals.

Tools such as videoconferencing and e-court services (e.g. e-filing and e-lodgement, online transaction services) allegedly increase access to justice by saving time, eliminating some steps in litigation, reducing the need for formal correspondence and simplifying procedures¹³². In some cases, ICT even allowed enforcement procedures to be better implemented through e-filing of parties' applications and statements, or e-service of judicial documents to attorneys, bailiffs and notaries (e.g. Spain's "LexNet" allows the secure exchange of information between Courts and lawyers, which in 2014 processed 46 million notifications resulting in savings of 94 million euros). These services allegedly simplified and reduced legal work (e.g. Maribor District Court, Slovenia). Some progress has also been made for formal submissions, directions and other orders in pre-trial matters to be conducted by telephone, videoconferencing or online. Many court applications of ICT are geared more toward efficiency with only incidental access impacts (e.g. the movement toward integrated court management systems to provide all courts and tribunals with a single, integrated technology platform and set of applications, rather than having them work across different systems). There are a number of unresolved issues raised by these e-justice initiatives and a number of unsuccessful projects that argue for caution and the need to start small and scale up.¹³³ More citizen-oriented services a user-friendly case management system such as the My Court Case website developed by the Contra Costa Superior Court, which allows litigants to easily access information about their cases.

Box 4 . Online judicial assistance services

In France¹³⁴, the "Portalis" Internet portal is currently being implemented through the "Justice 21" reform. It will not only work as an information portal, but will also allow citizens to follow their judicial procedures on Internet and be informed of their hearing dates. Moreover, Portalis will facilitate and extend e-communication with legal professionals, enable citizens to file online legal aid demand and make information on decisions by national jurisdictions publicly available.

In Germany¹³⁵, since March 2007, eJusticeSOA is operated by the Hessian State Data Centre and currently supports the judicial prosecution of traffic offenses. CSC's eJusticeSOA solution offers a completely paperless, multi-agency process for the judicial proceeding of law violations from their initiation in enforcement agencies through prosecution offices to litigation in court. It claims that "for the first time in Europe, legal authorities have a digital alternative to time - consuming paperwork and inefficient inter-agency communication."

The European Union has established the e-CODEX website, with the objective is to improve access by European citizens and businesses to legal resources across borders (for example, small claims procedures: civil and commercial claims not exceeding 2000 euros). This pilot will enable EU residents, companies or their legal representatives to access and send digitally to the competent court the forms related to the small claims procedure. Answers from the court will also be sent digitally. The only prerequisites are an electronic signature or eID solution and internet access.¹³⁶

Some types of legal problems and disputes may be amenable to ODR or telephone-based ADR without any face-to-face contact. ODR can be either an alternative to going to court or an adjunct to courts processes. Similar to ADR, the main forms of ODR are negotiation, mediation and arbitration (Box 5). The only difference between these two forms of dispute resolution being that in ODR all communication occurs online. Private sector examples such as E-Bay and PayPal's online Resolution Centres and private full service platforms such as Modria have led the way.¹³⁷ Some private mediation providers are now offering ODR in divorce cases¹³⁸ as does the Dutch Legal Aid Board to screened clients.¹³⁹

Box 5. Online dispute resolution (ODR) platforms in Europe, United Kingdom, and United States

To facilitate access to justice for citizens for settling disputes with a low financial value, in consumer disputes and other types of conflicts more and more countries are introducing ODR platforms. For example in the United Kingdom a [claims portal](#) has been developed as an electronic tool to process low value personal injury claims in road traffic accidents and low value personal injury cases claims (employers liability and public liability). With the use of this portal citizens who have for example been injured caused by a car accident can submit their claim for financial compensation through the claims portal.

In the field of consumer disputes the ODR mechanism introduced by [eBay](#) can be found as one of the most successful best-practice examples. The ODR solution of eBay offers two types of services for solving a dispute between the buyer and the seller of a product: a free web-based forum which allows users to attempt to resolve their differences on their own and a solution where a mediator is requested.

At the level of the European Union an [EU directive](#) have been introduced for solving cross-border consumer disputes through the introduction of [ADR and ODR platforms](#). As the result of this European citizens with a consumer problem (e.g. concerning the guarantee of a product) can settle their disputes through a network of [European Consumer Centres](#).

A different form of ODR concerns the use of [video conferencing solutions by mediators](#) in settling disputes between parties. Instead of a situation where parties are visiting an office of a mediator, they can have access to a mediator with the use of online tools. The most simple and low-cost solution for online mediation is the use of Skype for mediation sessions, whilst there are also mediators which are applying more advanced videoconferencing tools to interact with parties.

There is evidence that ODR is an effective strategy for increasing access as long as it is appropriately targeted and user evaluations have given ODR positive ratings both in terms of process and outcome.¹⁴⁰ The main advantage of ODR is simplicity and the potential to save both time and monetary costs. ODR may also reduce stress and negative emotions associated with face-to-face resolution processes.¹⁴¹ These services are also increasingly being used in by courts and tribunals in commercial and consumer matters.¹⁴² For example, Consumer Protection BC has a self-help online tool for consumers to settle disputes with businesses. This is a relatively simple form of ODR that is delivered by email.¹⁴³ One of the benefits of ODR is that the platforms offer a guided opportunity to prepare for the mediation process through the intake forms. Research has demonstrated that parties to employment disputes who use this function on the Juripax platform are better prepared for mediation, are more likely to engage on a more level playing field, feel more empowered to make decisions on their own, engage in a more resolution-focused mindset, and achieve time and costs savings of up to thirty percent.¹⁴⁴

In Poland, the XVth Civil Division of the Lublin Regional Court (now the VIth Civil Division of the Lublin-West Regional Court) was inaugurated on 4 January 2010. It is known as the “**electronic court (e-court) and considers cases under electronic writ of payment proceedings**”. It covers “the whole territory of Poland regardless of the defendant’s domicile or seat” and is “competent to examine civil pecuniary claims (including commercial and labour claims)”. It lacks competence over non-pecuniary claims and family law claims. As of October 1st 2011, 2 million lawsuits were lodged in the e-court, and in some 1 600 000 cases payment orders have been issued¹⁴⁵. Fees for online reviewed cases are allegedly three times lower than for traditional court room proceedings¹⁴⁶. This system also exists in Germany¹⁴⁷, Austria¹⁴⁸ and in the United Kingdom.¹⁴⁹

Source: UK Civil Justice Council (2015); Association of Conflict Resolution (2013)

Box 6. Mobile apps for access to justice (US and Europe)

Under the influence of a growing use of mobile and smart phones there will be new possibilities created for improving access to justice. To serve an increased number of low-income people who have only access to websites using cell phone a number of countries (including the United States) developed mobile versions of their websites. For example in 2011 the Legal Services of Delaware (US) launched its first mobile website that is easy readable on various devices such as mobile phones and tablets.

In addition to an improved use of legal and judicial websites suitable for mobile phones and tables there is a growing market for mobile apps that can be used for legal services or for receiving information about judicial proceedings. One of the first mobile apps in the US on legal aid was developed by the Illinois Legal Aid board online. In 2011 the [Illinois Legal Aid app](#) and the *Illinois Pro Bono app* was made available for Android, IOS and as a web app. The Illinois Legal Aid app was designed for lower-income groups who needs legal assistance. It provides legal information and referrals to courthouse legal self-help centers and legal aid agencies. The Pro Bono app offers legal professionals a search tool that can be used for finding upcoming legal events and can be used as a resource guide for common pro bono practice areas.

Other examples of mobile apps that can fill the gap on access to justice are: Ask a lawyer app, Citizenships works app, My Attorney app, expungement app, etc. The [Ask a lawyer app](#) can be used by American citizens when they have a legal question. Moreover, it contains a chat function and a search possibility to find an appropriate lawyer. The my [citizenships works app](#) is meant for foreign citizens who wants to apply for citizenship in the United States. Also the app gives an explanation of the US citizenship procedure. The [my attorney app](#) can be used by citizens who need direct access to the phone number of their lawyer, and includes the possibility to store information about their cases, witness information and photographs related to the case on their mobile phone or tablet. For juvenile justice there will be an app developed by the [the Mikva Juvenile Justice Council](#) explaining the expungement legal process (expungement is a first time offender of a prior criminal conviction seeks that the records of that earlier process be sealed, thereby making the records unavailable through the state or Federal repositories).

In Europe a dedicated app ([ECC travel app](#)) have been developed by the European Consumers Centers to inform European citizens about their legal rights during traveling, renting a car, hotels, buying goods in other countries, etc.

In Spain, the “Mobile Justice” Project launched by the Ministry of Justice enables communications via SMS to citizens involved in judicial proceedings. From September 23rd 2015, citizens receive the date, time and place where the judicial proceedings shall take through their mobile phone.

Source: Dysart, J. (2015); Cabral *et al.* (2012); Information provided by Government of Spain (2015)

Enhanced service integration

ICT is also being used to support integration among government agencies and increasingly in the justice sector between service providers. Whole-of-government portals operate through websites, kiosks, toll free telephone lines, one-stop access mobile vans and one-stop access locations. These initiatives seem to expand the reach and effectiveness of government services, ensure better information sharing and collaboration between service providers, and can help citizens to find the assistance they need. Integrated web and telephone assistance services, telephone and audio-visual technology, social media and mobile software applications could all be recruited to minimise barriers to justice including ‘referral fatigue’.¹⁵⁰

Within the justice sector, one-stop shops bring together a range of legal and justice services and help to overcome barriers to services (e.g. France’s “Justice 21” reform – See Session 1) by, among others, providing a ‘no wrong door approach’ for entry into the civil justice system and integrating

the delivery of services across agencies. Many of these centres are designed to meet the needs of litigants who do not have legal representation. These initiatives also tend to be established for the same types of issues as problem-solving courts, particularly domestic violence and juvenile justice.

Some Justice Access Centres (e.g., Canada, France, Colombia) bring together a range of agencies and services to assist with family and civil matters by providing self-help and information services, dispute resolution and mediation options along with legal advice services.¹⁵¹ Some services providers are located in the JAC. The JAC can also refer users to other agencies providing services. Evaluation of the JACs found a high degree of overall client satisfaction and a reduction in court use and justice processes by JAC clients by comparison with other court users.¹⁵²

The Bronx Family Court Help Centre is described as a “one stop shop access to justice dream” where a citizen seeking a domestic violence protection order can file a petition, meet with a Judge and get a temporary order and court date within 15 minutes – all in the court based Help Centre.¹⁵³ The Centre provides: a bilingual greeter to answer basic questions and navigate people to the right area expeditiously, information in written and video form, computers for their use, the services of volunteer lawyers who provide advice, assistance with filing court documents and scheduling of court appearances, and a court employee who liaises with the parties involved. Pilot projects with family justice centres started in 2013 in Europe with the financial support of the European Union in five other countries: the Netherlands (Mutsaers Foundation Venlo, Domestic Violence support Centre Midden-Brabant), Belgium (Client-oriented organisation with three partners: police-court, care-justice house, city-PWC province), Germany (BIG Koordinierung), Poland (Fundacja Centrum Praw Kobiet: Centre for women’s rights) and Italy (Guzetti Foundation).

Future applications

In most countries, the justice system remains the least automated government sector. There are many more potential future applications of ICT to increase access to justice, particularly the redesign of justice processes with more extensive integration of technologies. These, among others, may include:

- triage systems that diagnose legal problems and guide individuals and SMEs to appropriate services and processes;¹⁵⁴
- holistic approaches to web-based legal assistance that incorporates skill training and emotional support;¹⁵⁵
- holistic approaches that take a user through from initial contact to resolution of a problem, either within one website or a linked series;¹⁵⁶
- automated court scheduling and reminders;¹⁵⁷
- e-courts that utilise comprehensive ICT process and provide comprehensive ICT services (e.g. electronic court file technology, electronic trial technology and case flow management systems),¹⁵⁸ and
- use of computer intelligence systems with capacity to manage and access data, solve problems, and draw conclusions.¹⁵⁹

Barriers to ICT use and hybrid services

The civil justice sector has been slower than others in developing policies and strategies around the use of ICT delaying the uptake of these initiatives. Lack of justice system resources is a key factor but there are other roadblocks (Box 7). These include: the interconnection between technology initiatives and technical and information management issues relating to confidentiality, privacy, identity security, record keeping and storage of information,¹⁶⁰ unresolved ethical issues and the

potential for conflict of interest;¹⁶¹ and lack of guiding principles.¹⁶² Another systemic concern is that technological initiatives tend to be siloed with various justice institutions and service providers ‘reinventing the wheel’ and potentially developing incompatible systems.¹⁶³

Yet, country experience highlights that implementing technology on a large scale (in governments, courts, etc) must be designed very carefully – keeping in mind the business needs, security issues, groups accessing the technology and other partners. ICT solutions also require significant investments hence often calling for multiple testing and verification. Increasing use of technology, especially in courts, also presents privacy and reputational risks which would carefully need to be managed.

Box 7. Potential barriers to adopting effective technology strategy for improving access to justice

- Lack of uniformity, standardisation and simplification;
- Perception that using technology is not full justice;
- Resistance to change and planning for usability and quality;
- Lack of top leadership support and impediments in large programs;
- Lack of adequate and appropriately targeted funding;
- Lack of guidelines for making technology decisions;
- Rigid software market regulation, inadequate IT systems and infrastructure
- Lack of adequate policy framework and unauthorised practice of law; and
- Fragmentation of the delivery system and lack of national support mechanisms.

Many of these barriers overlap or interrelate. For example, being able to make good technology decisions may be negatively affected, not only by a lack of guidelines but also by resistance to change, inadequate executive-level support for using technology or a fragmented delivery system with too few common systems to maximise resources.

Source: Cabral et al. (2012)

Technological solutions raise further questions from an equal justice perspective as they may not provide effective access to individuals from marginalised communities who tend to have complex legal needs and, often, a lower legal capability to resolve legal problems without active offers of assistance, a trust relationship with a service provider and extensive service. Web-based programs are meant to address the knowledge, skill and capability ‘deficits’ experienced by unrepresented litigants.¹⁶⁴ Yet, “Even ‘smart’ programs with built-in ratings/assessments/feedback features cannot reach or help people who for whatever reason will not use it to begin with, or try it once or twice but then give up.”¹⁶⁵ For service or information providers, one of the greatest challenges to using technological solutions to increase access to justice is the lack of personal contact with an individual, contact that allows the provider to better gear what is offered to the needs of that particular individual. Personal contact can be the key for successfully navigating either informal or formal justice sectors, pursuing a process through to a satisfactory conclusion and achieving a just outcome.

The move to increased use of ICT also raises concerns over the ‘dehumanisation’ of the justice system and the concern that technology can result in decreased access to justice for some groups of citizens. For some, legal and justice services delivered by ICT become an isolating, disempowering and ultimately unsuccessful experience.¹⁶⁶ Specific barriers to ICT use include: unequal access to high speed internet particularly in rural areas (though this is mitigated somewhat by dramatically increased cellular access); low literacy; the self-directed nature of online services; requirement of high level of legal capability; the need for personal contact and an intermediary in navigating justice systems; and some disabilities which make web-based tools unusable.¹⁶⁷ ICT may have a

disproportionately adverse impact on vulnerable persons and those living in situations of disadvantage who currently experience the harsh costs of unequal access to justice.¹⁶⁸

The question of inclusive design can be addressed in the early phases of planning and development, rather than left to the implementation stage. For example, software developers and web designers must recognise that features making an application ‘friendly’ for unsophisticated users may make it ‘unfriendly’ for those who use the application more frequently. In some cases, two or more versions of an application may best meet the reasonable needs of both types of users.¹⁶⁹

ICT does not replace traditional legal services or justice processes but it can reduce demand and reshape them.¹⁷⁰ Harnessing the benefits of ICT to enhance equal access to justice requires ensuring the necessary capacities and conditions of their use and finding ways to balance virtual services with more traditional, face to face, channels of service provision. Evaluations of successful ICT access initiatives underscore the importance of a commitment to complementary off-line services.¹⁷¹ The main way to overcome these concerns is through a commitment to hybrid services that integrate human and automated assistance which may be required by half of low income populations.¹⁷² For example, legal help hotlines are most effective when they are combined with referrals to in person assistance where required.¹⁷³ Similarly, Legal Genie, a service provided by Legal Aid Society of Orange County California, connects the unrepresented litigant who completed court documents using this web-based service to a lawyer who reviews the documents and offers legal advice before he or she prints the completed documents.¹⁷⁴

SESSION 3: Impacts of specialised justice services on access to justice?

Discussion questions

- What are the country practices in establishing specialised justice and legal services (e.g., specialised courts, tribunals, ADRs, specialised processes within regular courts)?
- What is the business case and impact of specialised justice services? What are the country approaches to assess costs and benefits of specialisation? What impacts may specialisation have on access to justice? On inclusive growth? On meeting citizen needs? Under which conditions is specialisation effective and may promote accessibility of justice services, and under which may it hinder it?
- What are the countries' considerations in specialisation of justice services? What are the pros and cons of specialisation? Country specific lessons learned? For example, what are the country experiences with the kinds of procedures that may be used in specialised courts? Which mechanisms could enable procedural simplicity in those courts? What are the examples of enabling access to specialised justice services in remote areas?
- What are the examples of areas and subjects which could benefit from specialised consideration? Are there successful country examples to developing specialised approaches to court adjudication and dispute resolution which respond to citizen / business needs (as opposed to legal issues)?

Specialisation of justice services is a rapidly growing trend in OECD countries.¹⁷⁵ Specialised and differentiated justice services have been demonstrated to contribute to efficiency and quality of decision-making,¹⁷⁶ but have also been found to require important investments.¹⁷⁷ The drive to greater specialisation in the justice sector has mostly been the result of increased complexity in the law and specialisation of lawyers and prosecutors.¹⁷⁸ Specialisation can also be utilised as a citizen-oriented response to the legal needs of individuals and businesses, particularly where it leads to service integration responding to specific problems.

Specialisation may take a number of forms including: alternatives to the courts such as specialised ADRs and ODRs (e.g. EU countries) or various administrative tribunals (e.g. United Kingdom and United States), specialised mechanisms for resolving disputes and judicial specialisation and problem-solving courts and approaches (e.g. Belgium, France, Poland, United Kingdom and United States). One common element among these efforts is the idea that specialised justice services might better address the contextual nature of a dispute because of the judges' or dispute resolvers' experience and familiarity with the underlying issues.

There is increasing evidence that specialised justice services may contribute to a more flexible and responsive justice system.¹⁷⁹ These initiatives move away from traditional one-size-fits-all general purpose procedures for civil and criminal matters and toward "justice made to measure" with institutions and processes tailored to categories of disputes or disputants. Tailoring is key to meeting the legal needs of citizens and businesses. Specialisation is closely tied to two main overarching access to justice trends: simplification of processes including in the court system and integration of legal and justice services with other social services. Simplification of procedures can enhance direct access by individuals and SMEs while specialised justice services are increasingly geared toward parties without legal representation. In addition, specialisation has a potential to reduce jurisdictional fragmentation and differentiation in specific legal areas.

Specialisation may create advantages through a division of labour, honing of expertise, as well as greater flexibility and simplification of procedures.¹⁸⁰ Specialisation goes hand in hand with innovation. The focus on specific categories of legal problems or needs of a particular and vulnerable group in many OECD countries (e.g. women, indigenous –Box 8) creates the scope for implementing tailored, proportional justice services and greater responsiveness to users.¹⁸¹

Specialised procedures may work better than general civil or criminal procedures in certain circumstances and specialisation “may be a preferred way to innovate towards excellent procedures.”¹⁸² Dutch research confirmed that specialised procedures for patent conflicts, business conflicts, agricultural land lease and competition law are much appreciated by stakeholders.¹⁸³ In Scotland, a holistic approach to justice sector reform is now being tried where the development of specialised procedures and courts are seen as key to this initiative.¹⁸⁴ Moreover, the benefits of specialisation seem to be greatest when they are combined with achieving economics of scale.

Yet, specialisation may also present a number of challenges, including an inherent tension with citizen-centred service delivery (e.g., integration of various services). As noted by the Australian Law Reform Commission, one concern with specialised services is that the (significant) resources they require, may only reach a certain segment of the population, leaving some others (especially in remote areas)—no better off.¹⁸⁵ Specialisation may thus inhibit geographic access outside of major centres, although the geographic reach of specialised justice services can be enhanced through the effective employment of technology such as videoconferencing or online dispute resolution. Generalist courts can be more effective in deploying both personnel and facilities to an ever-shifting caseload. Over-specialisation can create additional access barriers if it results in litigants having to seek relief in more than one forum. Other concerns include that judicial or quasi-judicial decision-makers have the potential for developing tunnel vision will be unduly influenced by interest groups who are frequent users of their services¹⁸⁶ or lead to siloed or fragmented justice services¹⁸⁷. It reduces the potential for judges or other to benefit from knowledge “spillover” across areas.¹⁸⁸ In some jurisdictions, judges may resist specialisation because of concerns of isolation and removal from the mainstream of legal thought, although research has shown that in some jurisdictions judges specialise spontaneously where given the opportunity.¹⁸⁹

Empirical data to support or refute whether specialised courts and justice services improve access to justice is still lacking.¹⁹⁰ Part of the difficulty is that wide range of types of and approaches to specialised courts hamper comparative analysis and evaluation. An OECD study found that specialisation at commercial courts is related to shorter trial length.¹⁹¹ There is stronger evidence that quality of process and the effectiveness of outcomes are achieved by some specialised courts measured.¹⁹² Equal access to justice encompasses concerns about the delivery of high quality justice procedures and effective outcomes as measured from the perspective of both the individuals involved and society as a whole.

Specialised alternatives to courts

Some OECD countries have established specialised tribunals and ADR mechanisms aimed at settling a dispute more effectively without resorting to a court decision and requiring specific expertise due to its complexity. Administrative tribunals are designed to be convenient, easy to navigate forums relieving generalist courts of some of their caseload. They are widely used by certain OECD member countries for a broad range of matters, particularly for administrative matters, i.e. disputes between public authorities and private persons or firms regarding decisions by the public administration, such as a dispute on a building license, an authorisation to run a business or a tax assessment note.¹⁹³ For instance, in 2013, two Administrative Collegial Courts specialised in Economic Competition, Broadcasting and Telecommunications were created in Mexico¹⁹⁴. In some cases, specialised tribunals have also been established to deal with disputes between private persons or businesses, including personal injury, patent and technology, and employment matters.¹⁹⁵ These latter areas have traditionally been seen as within the purview of courts of general jurisdiction and occasionally there is a concurrent jurisdiction between a tribunal and a court on a given matter.

One of the main policy goals achieved by administrative tribunals is increased access to justice through simplified and tailored procedures. Common features include less formal hearing procedures and more efficient evidence-gathering procedures. In some cases, tribunals provide legal services to parties, which can be highly effective in ensuring access especially to disadvantaged groups. For example, many human rights tribunals are connected to institutions that provide specialised legal services to parties.¹⁹⁶ In other cases, tribunals have the explicit goal of making their procedures readily accessible to unrepresented parties, which is becoming increasingly important in light of the rise in unrepresented parties. The culture of tribunals can make them more accessible and attuned to the needs of parties, for example through “special communication skills” or “special behavioural attitude”.¹⁹⁷

Over time, however, many tribunals have faced access problems comparable to courts as their procedures have become more complex and costly and subject to excessive delay. The diversity in procedures and rules among tribunals means individuals have to learn to navigate different systems for different legal problems. Generally-speaking tribunals have been more nimble than courts in addressing these challenges and have been on the leading edge of reforms including the use of technology, developing responsive adjudication models such as active collaboration adjudication, and integrating dispute resolution options.¹⁹⁸ The responsive adjudication model provides the judge or other dispute resolver to be flexible in their dealings with individual parties, providing a higher level of assistance to ensure that he or she has all of the information needed to present his or her case and to work toward the best outcome. This responsiveness addresses the needs of individuals and SMEs who may find it difficult to navigate the formal, rule-bound processes. For example, the Ontario Human Rights Tribunal has developed a model of active adjudication that meets these goals.¹⁹⁹

A number of OECD countries seek to improve efficiency and increase access through the clustering of administrative tribunals on related subject matters with the aim to capture intersections in tribunals’ logistical, procedural, and substantive adjudicatory features and to reinforce links between constituencies of tribunal users (e.g. environmental and land use planning) (e.g., UK, Australia, New Zealand and Canada). These initiatives can better meet citizens’ needs by providing ‘one window access’ for related legal problems. To date, there is no evidence to date that these streamlining moves have improved access to justice though there is clearly the potential to do so by, for example, using standard practices and procedures across tribunals, increased sharing of successful design features remove access barriers, and sharing resources for accessibility measures (e.g. a common pool for translation and interpretation services).²⁰⁰

In terms of specialised ADRs, they tend to focus on substantive areas of disputes that citizens often face, such as labour conflicts, consumer law and family law. Public, private and/or industry-specific institutions offer ADR procedures. They cover civil, commercial, administrative and criminal justice. More specifically, non-commercial ADRs exist for public sector complaints and civil disputes in a variety of areas including family law (e.g. National Family Mediation in the UK), employment (e.g. Labor Commission or Tribunal in Japan), health (ADR Division in Department of Health and Human Services in the US), housing and environmental issues. Commercial ADR are available in cases related to business, insolvency or competition disputes as well as in consumer redress, in general. Country initiatives include Financial Services Ombudsman (Ireland), National Board for Consumer Disputes (Sweden), Insurance Ombudsman (Poland) or *Service de médiation pour le secteur postal* (Belgium).²⁰¹ Specialised ADRs are considered an effective extrajudicial settlement mechanism because of the gain of time and costs it entailed, along with the flexibility and confidentiality.

In Canada, the Aboriginal Justice Strategy (AJS) provides alternatives to mainstream justice processes under certain circumstances, by assisting Aboriginal people to assume greater responsibility for the administration of justice in their communities, or by reflecting and including Aboriginal values within the justice system²⁰².

Specialised court processes

Access to justice can be enhanced through the redesign or re-engineering of courts processes for specific categories of cases without the need to establish separate justice institutions. Many European countries, including Germany and France, have an extensive array of specialised courts working alongside courts of general jurisdiction. One of the most common examples of specialised divisions or processes are those designed for small claims, defined by the amount in issue in a particular cases. In the some civil cases can be lodged at small claims courts or through processes (Canada²⁰³, Korea, United Kingdom²⁰⁴, and United States²⁰⁵), depending on the monetary value of the claim. Small claims procedures focused on reducing the procedural steps available to litigants as a way of achieving proportionality, matching the process to the amount in dispute and have demonstrated to increase access and meet the legal needs of citizens and SMEs.²⁰⁶ There is general trend to greater creativity in tailoring processes to smaller economic disputes and much innovation occurs for this category of claims first including greater use of technology, judicial settlement procedures and court-based mediation.²⁰⁷

Much can be achieved through innovative rulemaking that is less rigid, integrates problem-solving methods and results in less complex, flexible or permissive guidelines that enhance procedural justice.²⁰⁸ In many countries, judges have taken a leadership role in developing these new procedures. For example, a group of Dutch judges participated in a pilot project to develop a new problem-solving procedure for neighbour disputes that is online and “brings the judge into the homes and gardens of the disputants.”²⁰⁹ This initiative enhances access through the use of an informal, on-site, outcome-based problem solving process, a type of personalised process that overcomes numerous barriers to justice.

Practice directions for different areas of law can achieve the objectives of increased access through specialisation without selecting, training, or assigning judges to specific courts thereby maintaining flexibility in meeting a shifting caseload. Courts can develop separate chambers or lists to deal with specific types of civil case such as commercial matters and class actions. In some circumstances, generalist courts have implemented novel procedures to deal with a single very large case or series of cases arising from a common incident (such as a natural disaster).²¹⁰

Access to justice can also be enhanced through court specialisation in the form of unifying courts to create a single court able to address all aspects of a legal situation. For example, in Canada, the US, and Australia, some common legal problems are often split between different court jurisdictions, requiring litigants or defendants to undertake separate procedures to get full relief to their related legal problems. Court unification enables a single court to deal with, for example, all legal aspects of marital breakdown or the criminal and civil aspects of domestic violence cases. In some cases, unified courts also work together with other agencies or can refer litigants to other services connected to their legal problems. For example the Family Violence Court in Victoria, Australia “employs a ‘one stop shop’ model, which deals with all related matters within the jurisdiction of the Magistrates’ Court”.²¹¹ An evaluation found that “There appear to be considerable benefits, from the perspectives of victims and families, in enabling specialised courts to address issues across different legal frameworks.”²¹² The Australian Productivity Commission recommends the extension of this practice so all family violence courts deal with both criminal proceedings and protection orders in relation to family violence and provide related services to meet legal and related needs.²¹³

Box 8. Specialised justice services for indigenous communities

Indigenous people are known to be among the most disadvantaged people globally²¹⁴ and they tend to experience a high prevalence of multiple legal problems coupled with a range of social and economic problems. In Australia, the prevalence of indigenous people experiencing a legal problem is 1.3 times as high as that of non-Indigenous people. They are also less likely than the general population to find a solution to their legal problems, leading to negative socio-economic consequences at a personal and community level.²¹⁵

OECD countries with important indigenous communities implemented different kinds of measures to respond to these legal needs. In **Chile**, the Defensoria Penal Publica²¹⁶ (“Public Criminal Advocacy Office”) is one of the few organisms in the region providing public legal counselling to indigenous people in their own language. It includes one specialised advocacy office (for Mapuche). In **Canada**, the Access to Justice Services Agreements (AJA) are funding arrangements between the federal government and Canada’s three territories (Yukon, the Northwest Territories and Nunavut). They are the means by which the government of Canada financially supports the delivery of access to justice services in northern communities, including: legal aid (both criminal and civil), Aboriginal courtwork services and public legal education and information.²¹⁷ There are 25 Indian Legal Services offices in the **United States** (collectively known as the National Association of Indian Legal Services – NAILS) that serve Native Americans both inside and outside of Indian Country.²¹⁸

These countries also adopted specialised judicial mechanisms and courts that take into consideration these particular legal situations. In **Chile**, a conciliation mechanism for land disputes may be set up where one of the party is indigenous²¹⁹. In the **United States**, there are three general categories of Indian tribal courts which are the tribal courts that are often modeled on an adversarial, Western system and operated by the tribes themselves, a handful of Courts of Indian Offences (often called CFR courts because they are governed by federal regulations), and the “traditional” or “customary courts”.²²⁰ Access to justice for Indian tribes was notably improved by the creation of a joint Navajo Nation Supreme Court and a Navajo Technical University project (that establishes a bilingual court reporter system providing transcripts both in English and Diné, for appellate proceedings).²²¹ Importantly, many tribes operate hybrid courts that include aspects of both an adversarial system and traditional indigenous process²²². Lastly, in **New Zealand**, the Maori Land Court has jurisdiction to hear matters relating to Maori land including successions, title improvements, Maori land sales, and the administration of Maori land trusts and Incorporations.²²³

Access to justice can also be increased through functional specialisation in the form of making a greater range of processes available to litigants. Some courts are providing more tailored dispute resolution processes by making available a greater range of approaches to timely settlement particularly through judges specialising in a range of mediation processes. Judicial Dispute Resolution is a relatively new trend to meet citizen needs which is being used in Canada, Australia, the Netherlands and China.²²⁴ Research undertaken in respect of the efficacy of one specific program suggests that approximately 80% of the cases subject to judicial dispute resolution settle in whole or part.²²⁵

Enhancing equal access to justice can also be achieved through an expansion of traditional conceptions of the judicial function. Many of the forms of specialisation discussed above integrate judicial dispute resolution, more active case management, and more active adjudication in adversarial justice systems. This more expansive role is particularly important and difficult in countries faced with a steep rise in unrepresented litigants. Many US courts have developed guides and tools to assist judges to move toward more responsive adjudication in dealing with self-represented litigants to ensure this needed citizen-orientation.

Problem-Solving courts and approaches

Most OECD countries have streamlined problem-solving principles in certain fields of justice (e.g. juvenile in France) while some countries have established problem-solving courts (e.g. Drug courts in

Belgium, US; Family courts innovation in Korea). These community-based justice models and integrated support systems assist people in a more holistic and collaborative way by addressing the underlying issues related to the legal problems at stake with the goal of reaching lasting outcomes. Problem solving courts and processes respond in a focused way to the recognition that legal needs go hand in hand with other (socio-economic or health) problems and provide a type of one-stop-shop similar to the justice access centres described above. Problem-solving solutions are also citizen-oriented in that they provide post-resolution follow up and monitoring to assist in breaking cycles of legal problems. They are the closest model to “custom justice”²²⁶ (Box 9).

Problem-solving approaches acknowledge and address that many people, particularly members of marginalised communities, experience clusters of legal problems and related social, health and economic problems (e.g. some indigenous communities in Australia, Canada, Chile, New Zealand and US - Box 8). Problem-solving courts originated in the criminal law field to address large volume relatively minor offences and the intersection between citizens or facing particular challenges, such as drug addiction or mental illness, and minor crime.²²⁷ In the civil context, specialisation and holistic approaches have mainly been developed in the family law and employment law areas.²²⁸ As noted above, some specialised courts, including domestic violence courts, deal with overlapping criminal and civil matters. Others focus on a particular group, rather than an area of law.²²⁹ For example, in Australia Indigenous courts aim “to make court processes more culturally appropriate, to engender greater trust between Indigenous communities and judicial officers, and to permit a more informal and open exchange of information about defendants and their cases.”²³⁰ This approach to specialised judicial services acknowledges that access to justice involves systemic issues that engage other public sectors such as health, education, and social welfare, and is not simply about how individuals can handle legal problems.

Problem-solving processes enhance access to justice through the application of strong case management techniques and a focus on long term outcomes, referred to as “therapeutic jurisprudence.”²³¹ For example, where a traditional court will focus on average time spent from arraignment to disposition whereas the alternative will focus on how long a defendant will remain arrest and drug free. These goals again may contribute to a decrease in criminal activity, which in turn reduces the pressures on the criminal justice system. Problem-solving justice services work collaboratively with social service and community organisations and, in courts, most provide integrated services to the parties and, in some cases, their families. Judges are more active in supervising cases and monitoring outcomes and employ less formal procedures and in less formal settings. One of the benefits of problem-solving courts is “humanising judges”²³², similar to a procedural justice approach.

Box 9. Towards understanding impacts of problem-solving courts²³³

Problem-solving courts are considered as a decisive way to enhance access to justice and yet, the research on their real impact remains scarce. Problem-solving courts appear to have a substantial impact on recidivism reduction. Australian and US studies on drug courts show that recidivism decreases among graduates if the program is completed (even though recidivism remains high). Moreover, mental health courts and community courts are also found to reduce recidivism, although the methodology is still being refined. In addition, studies show that problem-solving courts can also be cost-effective, mainly due to reduced costs for incarceration and detention. Indeed, studies on US drug courts that serve high-risk offenders showed a 50% greater cost benefits return to the courts’ communities than those serving low-risk offenders. This cost-saving effect for the justice system is allegedly coupled with positive outcomes in other sectors in socio-economic areas. Nevertheless, although most problem-solving courts seem to be cost-effective, United States and Canadian examples show that they require substantial upfront investments, whether it concerns drug courts or other kind of problem-solving jurisdictions.

Source: OECD (2015b)

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- ¹ Attorney-General’s Department (2009); Australian Government Productivity Commission (2014); Action Committee on Civil and Family Matters (2013); CBA (2013a); Dutch KEI Programme; Scottish Government (2012).
- ² Efficiency goals remain important to justice system operation and can assist in meeting the access needs of middle income earners, who are experiencing greater barriers to the justice system than in the past in some countries and all other individuals and entities requiring justice services.
- ³ Currie, A. (2015a).
- ⁴ Susskin, R. *in* Currie, A. (2015a).
- ⁵ OECD (2015b).
- ⁶ Barendrech, M. *et al* (2014)
- ⁷ French Ministry of Justice, Budget 2016
- ⁸ HiiL (2014); In some federal countries that is a wide range in per capita legal aid expenditures among the jurisdictions within the country (states or provinces). See for example (CBA 2013).
- ⁹ OECD (2015b).
- ¹⁰ *Ibid.*
- ¹¹ *Ibid.*
- ¹² *Ibid.*
- ¹³ Abel, L. K. and Vignola, S. (2010); Abel, L.K. (2012); CBA (2013b); Pleasence, P. *et al.* (2015)
- ¹⁴ CBA (2013a and b).
- ¹⁵ Barendrecht, M. *et al.* (2014)
- ¹⁶ Greenberg M. and McGovern, G. (2012)
- ¹⁷ See for example Department of Justice (2014); Pleasence, P. *et al.* (2014).
- ¹⁸ Examples of legal aid programmes/services towards this end exist in many OECD countries end; see for example Pleasence, P. *et al.* (2007).
- ¹⁹ Pleasence P. *et al* (2014).
- ²⁰ Australian Government Productivity Commission (2014).
- ²¹ Doust, L. (2011), Pleasance, P. *et al* (2014).
- ²² Abel L.K. and Vignola, S. (2010) citing Retkin, R. *et al.* (2007); See Boyle, J. and Chiu, A, (2007).
- ²³ Greiner, J. *et al.* (2012); Seron C. *et al.* (2001).
- ²⁴ In the UK, the government’s impact assessment of legal aid cuts indicated that “the reforms could generate knock-on costs including reduced social cohesion, increased criminality, reduced business and economic efficiency, increased resource costs to other departments, and increased transfer payments from other departments.” Cookson, G. D. (2011).
- ²⁵ The Perryman Group (2009).
- ²⁶ ABA (2012).
- ²⁷ Abel, L.K. (2012).
- ²⁸ Pleasence, P. *et al.* (2008); Pleasence, P. *et al.* (2015),
- ²⁹ Pinzon-Rondon, A.M. *et al* (2015)
- ³⁰ Task Force to Expand Access to Civil Legal Services in New York (2011)
- ³¹ Brescia, R. (2014).
- ³² *Ibid.*
- ³³ Abel, L.K. and Vignola, S. (2010).
- ³⁴ PwC (2009).
- ³⁵ Citizen’s Advice Bureau (2011), July 2010
- ³⁶ Summer, C. and Lindsey, T. (2010).
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- ³⁷ CFCJ (2008). Pleasance, P. *et al.* (2007).
- ³⁸ Currie, A. and Commissioner Doust in CBA (2013c); Pleasance *et al.* (2014); Pleasance, P. *et al.* (2007).
- ³⁹ Pleasance, P. *et al.* (2015).
- ⁴⁰ CBA (2013).
- ⁴¹ Carboni, N. (2014).
- ⁴² See also CFCJ (2015).
- ⁴³ Eyland, A *et al.* (2001).
- ⁴⁴ Russell Engler, R. (1999); Birnbaum, R. *et al.* (2013); Macfarlane, J. (2013).
- ⁴⁵ Trude, A. and Gibbs, J. (2010).
- ⁴⁶ See Ontario Community Legal Clinics; Australian Community Legal Clinics; Fox, C. *et al.* (2010); Buck, A. *et al.* (2010 a and b); Smith, M. and Patel, A. (2010)
- ⁴⁷ Buckley, M. (2012).
- ⁴⁸ Barendrecht, M. *et al.* (2014).
- ⁴⁹ *Ibid.*
- ⁵⁰ *Ibid.*
- ⁵¹ NESTA (2007).
- ⁵² CIDE (2015).
- ⁵³ Australian Government Productivity Commission (2014).
- ⁵⁴ Ley 42/2015, de 5 de octubre, de reforma de la Ley 1/2000, de 7 de enero, de Enjuiciamiento Civil Real Decreto-ley 3/2013, de 22 de febrero
- ⁵⁵ Buckley, M. (2012); Pleasance, P. *et al* (2014); CBA (2013c).
- ⁵⁶ Legal services counter in the Netherlands, <https://www.juridischloket.nl/>
- ⁵⁷ Pleasance, P. *et al* (2014).
- ⁵⁸ Steinberg, J.K. (2011).
- ⁵⁹ Prairie Research Associates Inc. (2002), Focus Consultants (2004 and 2010).
- ⁶⁰ Buckley, M. (2013)
- ⁶¹ Many US legal aid providers include self-help units. See for example, <http://www.mtlsa.org/2011/05/mlsas-law-unit-empowering-clients-advocate/>
- ⁶² Currie, A. (2015); Pleasance, P. *et al* (2014).
- ⁶³ Pleasance, P. *et al* (2014).
- ⁶⁴ Pleasance, P. *et al* (2015).
- ⁶⁵ Pleasance, P. *et al* (2014).
- ⁶⁶ CLEO (2013).
- ⁶⁷ Engler, R. (2009 and 2010); Abel, L.K., (2010); Rhode, D. (2004).
- ⁶⁸ Australian Government Productivity Commission (2014)
- ⁶⁹ Smith, R. (2013), this draft discussion paper compares the findings of studies on hotlines from the US, Australia, the UK, and British Columbia.
- ⁷⁰ This approach to service delivery was pioneered in the provision of assistance to victims of crime but is now being employed in civil matters such as family law and housing.
- ⁷¹ CBA (2013); Pleasance, P. *et al* (2014); Buckley, M. (2012).
- ⁷² Currie, A. (2015).
- ⁷³ Action Committee on Access to Justice in Civil and Family Matters (2012).
- ⁷⁴ OECD (2015b).
- ⁷⁵ Allen Group 2014)
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- ⁷⁶ OECD (2015a)
- ⁷⁷ Vermont Legal Aid, Health Care Advocate Project.
- ⁷⁸ Chang, Y.S. (*forthcoming*).
- ⁷⁹ CBA (2013).
- ⁸⁰ Pleasence, P. *et al* (2014).
- ⁸¹ Currie, A. (2015).
- ⁸² *Ibid*,
- ⁸³ Pleasence, P. *et al*. (2014).
- ⁸⁴ *Ibid*.
- ⁸⁵ *Ibid*.
- ⁸⁶ Buckley, M. (2013).
- ⁸⁷ Legal Services Society (2012).
- ⁸⁸ Buckley, M. (2013).
- ⁸⁹ Albiston, C. and Sandefur, R. (2013); Digiusto, E. (2012); Curran, L. (2012); Goldberg, J. and Predeoux, S. (2009); Trude, A. and Gibbs, J. (2010).
- ⁹⁰ Buckley, M. (2013).
- ⁹¹ [Government of Dubai, Dubai's Courts' SmartPhone Applications](#)
- ⁹² Smith, R. (2014a); Staudt, R. (2009); Australian Government Productivity Commission (2014) For example, there is international evidence to suggest that total cost and time savings from the use of electronic trial technology are in the vicinity of 25-30 % in larger matters (Jackson, 2008). The benefits of electronic trial technology have also been shown to be particularly significant in the context of large and complex litigation in Australia. Savings are not restricted to large and complex cases — a United States report suggests minimum savings from the use of evidence presentation technologies of about 10%, even in a short, one hour case with only a few documents (Lederer, 2003).
- ⁹³ Wolf (2012); Chavan, A. *in* Cabral, J.E. *et al*. (2012).
- ⁹⁴ Smith (2014a).
- ⁹⁵ Hough, B.R. *in* Cabral, J.E. *et al* (2012).
- ⁹⁶ Smith, R. (2014a).
- ⁹⁷ Australian Government (2012).
- ⁹⁸ Australian Government (2012).
- ⁹⁹ <http://remediabuscador.mjusticia.gob.es/remediabuscador/RegistroMediador>
- ¹⁰⁰ Clicklaw Wikibooks is an example of a project using a wiki structure to make available a detailed book or pamphlet-sized description of the law that allows users to print, copy and re-use the resource as long it is for non-commercial purposes.
- ¹⁰¹ Pro Bono Law Alberta and the CBA-Alberta Branch: Youtube videos for unrepresented clients going to court www.pbla.ca/news/http://www.pbla.ca/news/
- ¹⁰² Lawhelp.org New York's live help program.
- ¹⁰³ Midland Information Debt and Legal Advocacy Service (MIDLAS).
- ¹⁰⁴ Australian Government Productivity Commission (2014).
- ¹⁰⁵ See Pleasence, P *et al*. (2014); Midland Information Debt and Legal Advocacy Service (MIDLAS).
- ¹⁰⁶ Smith, R. (2014a).
- ¹⁰⁷ CLEO (2015).
- ¹⁰⁸ Smith, R. (2014a). For example: divorceonline.co.uk; VirtualLaw Office.
- ¹⁰⁹ For example wikivorce.com ; legalbeagles.info.
- ¹¹⁰ Ribadeneyra, J. *in* Cabral, J.E. *et al*. (2012); lawaccessnsw.gov.au; lawaccess.govnt.nz;
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- ¹¹¹ Legal Services Commission (2013).
- ¹¹² <http://www.foolkit.com.au/>
- ¹¹³ Staudt, R. (2009).
- ¹¹⁴ Smith, R. (2013 and 2014). See also: Erlich, S. *et al.* (2006), Pearson, J. and Davis, L. (2002).
- ¹¹⁵ See The Legal Aid Society website.
- ¹¹⁶ For example: Lawaccess.nsw.gov.au; clicklaw.bc.ca; advicenow.org.uk.
- ¹¹⁷ For example: illinoisonline.org; yourlegalrights.on.ca; educaloi.qc.ca.
- ¹¹⁸ For example: rechtwijzer.com; Public legal help tool (lawhelp.org); Legal Aid Society of Orange County California, legalgenie.com
- ¹¹⁹ A2J author is an “interview builder” designed to help authors simplify diagnostic interviews, document preparation and guided instructions delivered over the Web to self-represented litigants. See Staudt, R. (2009).
- ¹²⁰ For example: rechtwijzer.com ;Also developed by for profit legal services providers (roadtrafficepresentation.com)
- ¹²¹ For example: LawAssist <http://www.lawaccess.nsw.gov.au/Pages/representing/Representing-yourself.aspx>
- ¹²² A2J Author, Hotdocs and others discussed in Staudt, R (2009). In the US there is a national document assembly server, the National Public Automated Documents Online (npado.org).
- ¹²³ Through electronic trial technology. Australian Government Productivity Commission (2012).
- ¹²⁴ For example: Advocacy tool: probono.net
- ¹²⁵ For example: California online self-help centre: courts.ca.gov/selfhelp.htm?genpubtab;SupremeCourtBC.ca; smallclaims, New South Wales CourtAssist; in England and Wales the Royal Courts of Justice CAB is developing its CourtNav programme.
- ¹²⁶ Examples of failures identified by Smith, R (2014a) include the United Kingdom’s “Sorting Out Separation” website and moneyadviceservice.org.uk.
- ¹²⁷ Smith, R. (2014a)
- ¹²⁸ Staudt, R. (2009).
- ¹²⁹ Staudt, R. (2009). See also Smith, R. (2014a).
- ¹³⁰ OECD (2013).
- ¹³¹ [Government of the Netherlands, KEI program \(Quality and innovation program\)](#)
- ¹³² Australian Government Productivity Commission (2012).
- ¹³³ Vermeys, N.W. and Benyekhlef, K. (2013).
- ¹³⁴ France (2015).
- ¹³⁵ CSC (2009).
- ¹³⁶ <http://www.e-codex.eu/pilots/small-claims.html>
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