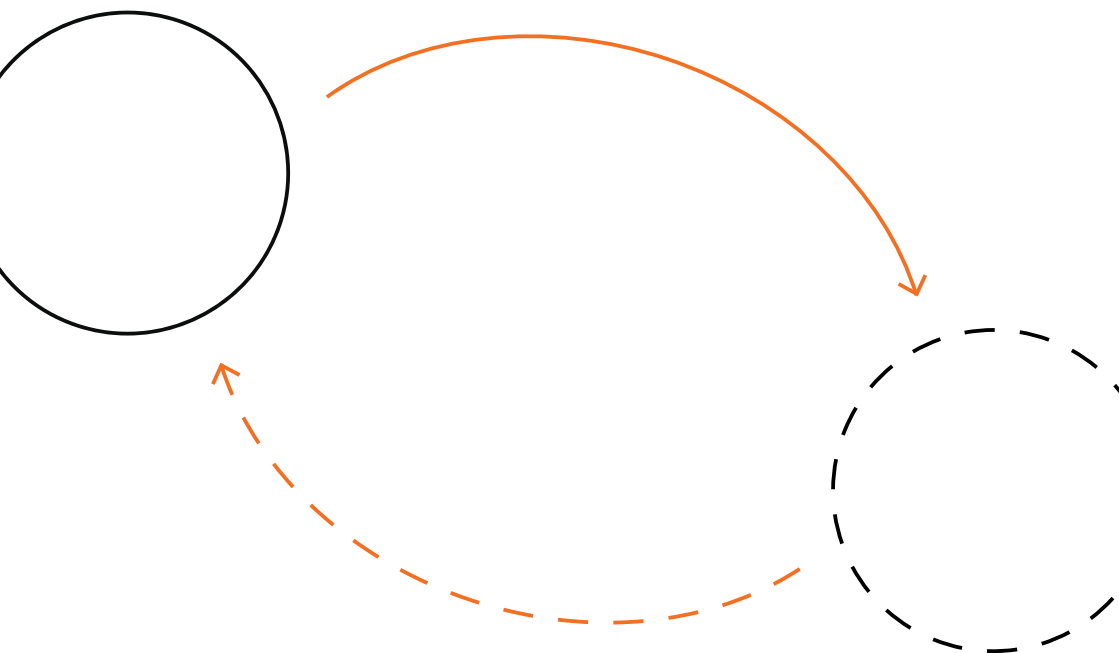


# CHARGING FOR JUSTICE

SDG 16.3 Trend Report 2020



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## SDG 16.3 Trend Report 2020

SDG16.3 Trend Reports are user-friendly and practice-oriented annual reports that track developments in the justice sector, focusing on access to justice. Their policy recommendations are based on comparative analyses of justice needs data, experiences with innovation, and efforts to bring justice innovation to scale.

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# OVERVIEW

This report outlines a radical new way of thinking about how to fund justice. Even before the coronavirus pandemic, the justice sector struggled to serve the broader population. In the pages that follow, we investigate how money flows in the justice sector and suggest ways to free up the resources needed to provide equal access to justice for all. Instead of being a cost or a burden on society, people-centred justice delivery can become a thriving sector of the economy, contributing to GDP and employment with scalable services that can be delivered sustainably. Justice can be delivered whilst observing physical distancing, with little burden on the environment. Effective justice services for all will strengthen relationships between people and help them to contribute to economic growth.

In every country, people seek solutions for conflicts in their family, at work, about land or housing, in their community or caused by crime. Billions of people still need proof of their identity, tenure security or the protections that come with a formal job. Some people live in unsafe places where there is hardly any legal protection.

This so-called justice gap must be closed by 2030 (UN Sustainable Development Goal 16). This requires new strategies and changes in how courts and legal services operate, as current policies are unlikely to bridge the gap. 2019 was a watershed year for justice. Organisations such as the OECD, the Task Force on Justice and The Elders recommended shifting the focus from institutions to fair and effective outcomes for people as the way forward. These organisations have called on courts and legal service providers to map current processes, redesign systems and procedures based on what works and monitor outcomes. In our own shorthand contribution to the field: user friendly justice.

Law is omnipresent to regulate what people do. But how can individual citizens who need the law be served in a better way? How can the justice sector attract more investment in innovation? Demand for justice is huge; citizens are willing to spend on fair solutions; politicians and private investors see the value of a fair, inclusive and peaceful society.

Gamechanging justice services that dramatically increase access to justice must take root in a sector that aims for stability, calm deliberation and incremental change. The sector needs to open up for innovation and mobilise new resources. This report focuses on the latter: how to fund investments in scalable, people-centred legal services and dramatically increase revenues (Chapter 1).

To further illustrate the opportunities to deliver universal justice care, we sketch the government budget allocation process. We describe the current revenue models of justice sector institutions and how services funded by agencies reach citizens with justice problems. The government budget for justice tends to be a fixed pie with police, courts, prisons, prosecution and legal aid competing for a slice. At the end of this competitive allocation process, the “products” of each justice sector organisation do not add up to fair and effective outcomes for citizens. This analysis suggests budgeting in the justice sector can be improved (Chapter 2). We stress the importance of safeguarding and funding justice as a public good, delivered by an independent third branch of government (Chapter 3). We also discuss the current financial models behind the private justice services upon which many people depend (Chapter 4).

On the demand side, we see individual citizens who get their solutions from a range of local judges, police officers, legal aid lawyers, NGOs, government legal advice centres, social workers, legal tech start-ups and providers of so-

called informal justice. In an average country, only 4% of problems are resolved by a decision in courts, arbitration, mediation or by another third party. Informal justice services are often small scale. Quality is varied. Few services have a sustainable business model. Justice services to individual citizens are not well connected. Neither are they strong in attracting government subsidies.

For private investors wanting returns and measurable social impact, people-centred justice services are not yet attractive. Only 2.8% of \$1 billion 2018 and 2019 legal tech investments went there. In Chapter 5, we analyse how private (social impact) investment can be mobilised. Investors need stable and predictable revenue streams, connected to services that can be scaled up to reach the entire target group. Crucially, they need outcomes in people’s lives to be clearly defined, so that they can be targeted and measured.

Research shows that people are willing to pay for preventing or resolving justice problems, either as taxpayers or as a fee for service. Effective interventions that bring peace of mind and repair their relationships are valuable to them. In Chapter 6, we look at fees and subsidies as sources of revenue. Smart fee systems can be developed that optimise who contributes to the costs and when. Gradually, a basic package of justice care can become free at the point of service.

Building on the emerging consensus, we find that courts and other “suppliers” in the justice sector will also benefit financially if they focus on outcomes. Fair solutions, positively impacting people’s lives, are what public funders and private investors want to see. What people seeking access to justice want most is to be able to go on with their lives.

We combine these insights with experiences from other essential sectors such as health care and water (Chapter 7). In order to achieve 100% access to justice, we look at how other sectors have developed new regulation models and stimulated innovation and public-private partnerships.

In Chapter 8, we apply these insights to four potential gamechangers. How can the service of criminal defence become more sustainable? Platforms delivering contracts and essential documents already have successful business models. The first examples of scalable, one-stop dispute resolution tribunals are emerging, supported online and by highly personal services. A breakthrough service model delivering high-quality, basic justice in local communities is still around the corner. It can be developed within the next few years, building on decades of experiences with paralegals, justices of the peace, houses of justice, legal aid lawyers and informal justice providers. The numbers suggest that each of these services can become sustainable and deliver fair, effective outcomes for most justice problems. Regulations that allow innovative services to replace new ones and fully integrate in the legal system are needed to make this happen.

We conclude in Chapter 9 that governments and civil society can increase money available for people-centred justice very substantially. This requires a well-timed, step-by-step approach that is sensitive to justice sector politics, including the need for checks and balances to uphold the rule of law in government.

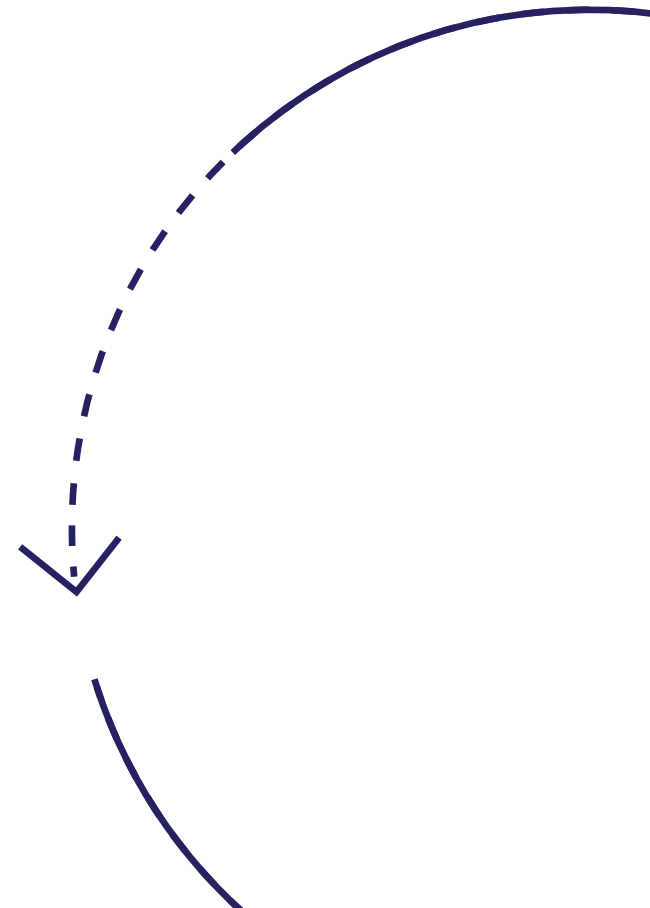
The following elements are key to sustainably financing people-centred justice and bringing gamechanging innovations to scale:

- 1 Setting an inspiring goal of 100% coverage of effective solutions for the most urgent and frequent justice problems.
- 2 Safeguarding core funding for the broad social goals of the justice system and introducing smart fees: increasing contributions by beneficiaries and government agencies for effective services, whilst decreasing general subsidies.
- 3 Allowing justice sector organisations to reinvest the extra revenues.
- 4 Regulatory space for developing well-defined, scalable, financially sustainable services for particular target groups. Courts, other current providers of services, and innovative newcomers should be allowed to develop gamechangers.
- 5 Attracting private and public investment by ensuring that evidence-based, scalable and financially sustainable services can become the default for particular categories of disputes and crimes. These services should observe value-based regulation.
- 6 Focusing on local delivery of solutions for the most urgent and frequent justice problems. Supporting local delivery with world-class know-how.
- 7 Investment (by the World Bank, OECD countries or major foundations) in basic technologies for delivering fair solutions that can be used worldwide.



1

THE JUSTICE GAP  
CAN BE BRIDGED



## The justice gap has now been quantified

An influential World Justice Project paper<sup>1</sup> quantified the justice gap and is now broadly accepted as a baseline. The paper details the number of people who suffer from particular justice problems, ranging from living in a country without any rule of law to not having access to formal employment or business opportunities. In the graph that follows, we visualise the justice gap as progress towards 100% access to justice.

### 100% access to justice and universal basic justice coverage

In this report, we use “100% access to justice” to mean universal access to high-quality justice mechanisms that enable people to prevent or resolve their justice problems. This does not necessarily mean that every problem is prevented or resolved in a satisfactory way. It means that effective resolution mechanisms can be applied and the opportunities the law provides are accessible.

We use “universal basic justice coverage” to mean a narrow, universal basic package of services that is available to all with no user fees. This would cover high-quality, locally-delivered services for a limited number of frequent and urgent justice problems. Developing a basic justice package that is free at the point of service is an important step towards 100% access to justice, but will only be possible once economies of scale kick in.”

## Substantial steps towards 100% access have been made

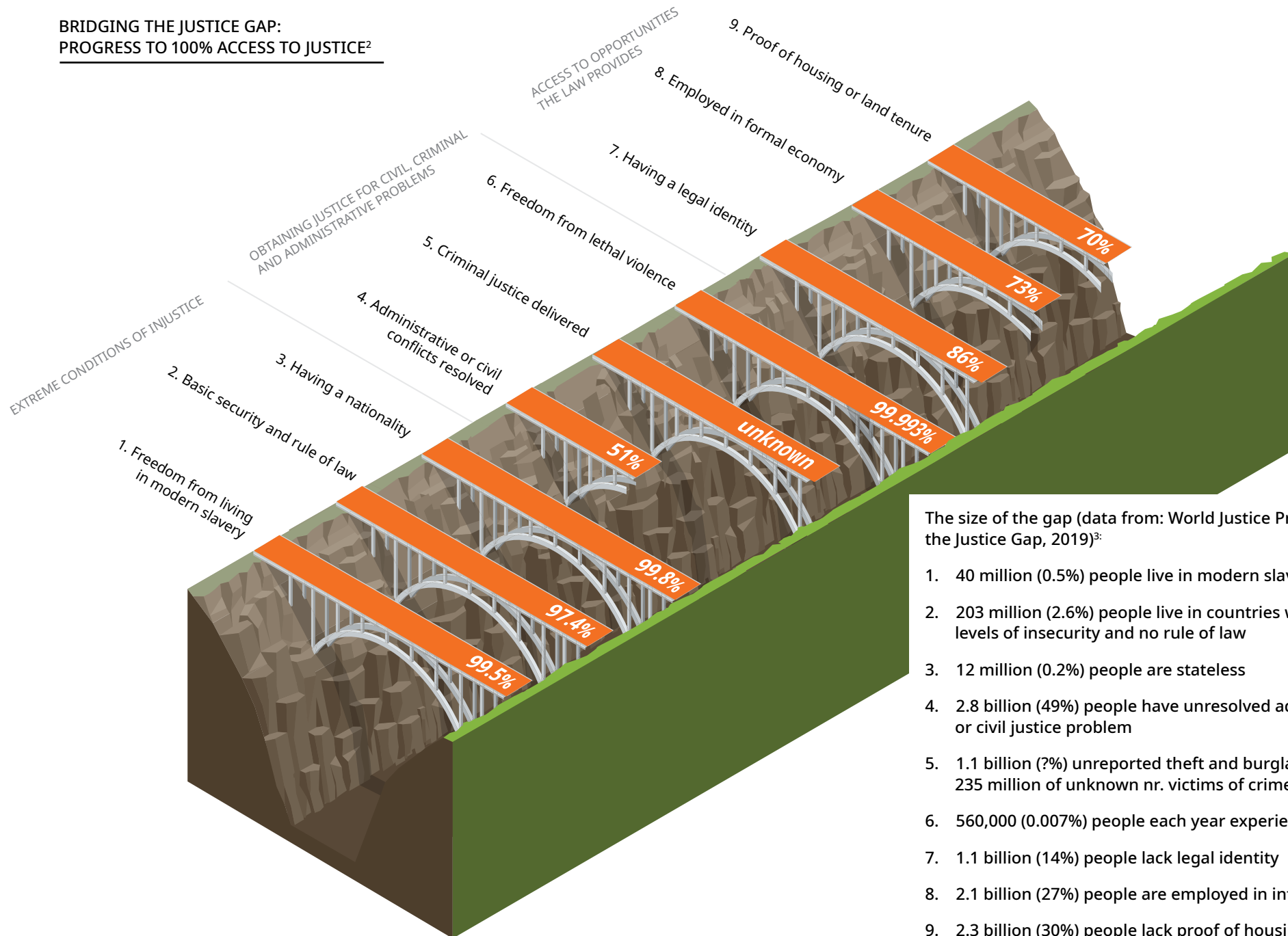
The good news is that 99.5% of people are not living in modern slavery. 99.8% have a nationality. Most people can prove their identity in a reliable way. A large majority of people now have their basic economic and social rights secured and do not have to be afraid to lose their house or land overnight.

Still, billions want better access to the benefits of the formal economy. They need to be accepted as citizens, as employees, as users of land and as owners of small businesses. They need to be respected by banks, employers and their partners in transactions of everyday life. Government agencies need to protect them. They need the justice sector to help provide such outcomes, through documents, registrations or contractual arrangements that protect these vital interests. This is an area where the world is rapidly catching up, through major steps such as the Adhaar program in India, where 100s of millions obtained a more reliable means of proving their identity.

## Fair resolution of conflicts and effective responses to crime are needed

The world is behind in providing access to civil justice and criminal justice. Only half of all problems related to family, employment, housing, land, neighbours, debt, or access to public services are solved. For criminal justice, reliable statistics indicating the degree of closure do not yet exist for most countries. We know, however, that many crimes go unreported, suggesting that a significant number of people do not find a solution through the justice sector or do not find a solution at all.

## BRIDGING THE JUSTICE GAP: PROGRESS TO 100% ACCESS TO JUSTICE<sup>2</sup>



The size of the gap (data from: World Justice Project, Measuring the Justice Gap, 2019)<sup>3</sup>:

1. 40 million (0.5%) people live in modern slavery
2. 203 million (2.6%) people live in countries with high levels of insecurity and no rule of law
3. 12 million (0.2%) people are stateless
4. 2.8 billion (49%) people have unresolved administrative or civil justice problem
5. 1.1 billion (?) unreported theft and burglary/ assault, 235 million of unknown nr. victims of crime
6. 560,000 (0.007%) people each year experience lethal violence
7. 1.1 billion (14%) people lack legal identity
8. 2.1 billion (27%) people are employed in informal economy
9. 2.3 billion (30%) people lack proof of housing or land tenure

## Balancing competing social goals without sacrificing the ultimate beneficiary

The delivery of justice also ensures effective implementation and enforcement of state policy, and prevents tyranny by securing proper checks and balances on governmental action. It is more than providing an efficient system to resolve disputes among citizens and companies. In many cases, the goal of facilitating dispute resolution and these broader societal interests are mutually reinforcing. In other instances, however, one or more of these goals of justice compete for resources and attention with other goals. This report focuses on the delivery of justice to the ultimate beneficiaries: the individuals who have been involved in a crime or dispute and need access to a fair and efficient resolution process in order to move on with their lives. The report also acknowledges the need to strike a balance between potentially competing goals of justice in society: this will be discussed further in [Chapter 3](#).

## Bridging the justice gap with people-centred services

The data show that delivering just outcomes is possible. It is not a hopeless uphill battle against an incurable disease. Bringing basic security and statehood to 240 million more people will be hard. New approaches and political will may be needed, next to what worked to protect the majority of people who already obtained this form of justice.

***The data show that delivering just outcomes is possible. It is not a hopeless uphill battle against an incurable disease.***

## Gamechangers delivering fair outcomes are needed

For civil and criminal justice, the data suggest that we should look for gamechangers. This term may seem inappropriate for a justice system that is supposed to deliver calm deliberation and stability. The words follow from the data, however. If equal access to justice for all by 2030 is the goal, hundreds of millions more justice problems need to be solved each year. This is a challenge everywhere, in countries rich and poor. In many countries, the justice systems are under stress. In our 2019 report, *Understanding Justice Needs: The Elephant in the Courtroom*, we invited the reader to look for nine signals, including backlogs, files exploding in size and citizens avoiding the institutions that are supposed to deliver justice. In most countries, these signals are so strong that they suggest a need for fundamental change in the way we deliver fair solutions. Rapid scaling up of legal services is also needed to give billions of people in lower income countries access to legally secure livelihoods and the opportunities of the formal economy.

## A strengthened access to justice movement sets the stage

In 2019, UN Sustainable Development Goal 16 inspired a movement to bridge the justice gap in a truly ambitious way. The Task Force on Justice, The Elders and the OECD have delivered landmark reports.<sup>4</sup> Ministers, governments and experts jointly made the case for a people-centred approach to justice. A powerful coalition of organisations formed behind the goal of Justice for All. This approach aims to first understand people's justice needs and desired outcomes and then design solutions to respond to them.

## ORGANISATIONS WORKING TOGETHER IN THE TASK FORCE ON JUSTICE:



## Outcomes first: begin with the end in mind







Based on 5 years of consultations with experts on access to justice and governance, the OECD, produced a landmark report on legal needs and access to justice. Chapters 3 to 6 of this report set out a detailed strategy:<sup>5</sup>

1. Start from needs: investigate and prioritise the problems people experience and the outcomes they require.
2. Map the current journey(s): all stages, steps and interactions with others the users of justice services currently use to achieve the outcomes.
3. Redesign based on what works: focusing on outcomes and impacts for people, applying service design methods and working evidence-based.
4. Planning and monitoring delivery: where, when and how are the outcome-focused and evidence-based services delivered, and reaching the population.

HiiL is part of this broader movement. In 2019 year's trend report, we also adopted an outcome focus: begin with the end in mind. We noted that most access to justice processes have agreements or some other form of coordinated response as an outcome. As is clear from the data cited below, judgments and formal court procedures, although highly visible, are an exceptional path to solutions. This strongly suggests that the justice system is already changing gears.

## Promising approaches are available

We investigated what kind of services are needed and which technologies can provide quality and scalability.<sup>6</sup> New data and analysis have become available. The table below summarises what is known about the delivery of and opportunities for gamechangers.

STAGE OF THE PROCESS		CURRENT SUPPLY <sup>7</sup>	PROMISING APPROACHES AND TECHNOLOGIES <sup>8</sup>
Fact-finding		Police; private investigators	Open-source investigation
Seeking information and advice		Friends/family; lawyers; other professionals; justice workers; civil society organisations; internet; books	User-centred re-design of existing approaches One-stop shop services Informal justice providers who are empowered to integrate with the formal system and deliver justice at scale
Reaching an agreement		Lawyers; paralegals; facilitators; mediators	Online platforms that provide information, support resolution process, and facilitate case-management "What works" guidelines that provide actionable recommendations based on evidence-based practice and practice-based evidence
Resolving with the help of a third party		Mediators; arbitrators; formal court authorities; other adjudicators	Accelerated, simplified and alternative pathways Monitoring progress towards clearly defined, measurable outcomes
Proving status through documents and registration		Government agencies; informal providers; religious authorities	Paralegals; user-centred forms available online; services that support filing; smart registration technologies (blockchain and others)
Stabilising relationships through contracts		Private attorneys; notaries; online platforms; civil society organisations	Certified and standardised contracts; user-centred contracts (visual and in everyday language); tailored online and offline contract support

By and large, the world knows where to look for gamechangers, and how to develop them. As we will show in [Chapter 8](#), these gamechangers rely on existing knowledge and technology. We do not have to wait for AI or blockchain to deliver justice to all. Psychological and social science research has given us important insights into how people choose, what brings people to the table, and what works to prevent and resolve conflict. We can increase access to justice by leveraging these insights to develop and improve upon online forms, court practices, apps, dispute resolution methods and therapeutic interventions. These approaches have been tested in many places and already belong to the toolkit of justice workers. We just have to make them work at quality and scale.

## Resources are a main constraint

Delivering justice is mostly a matter of resources. We have to mobilise knowledge, human resources and money. The paradigm of people-centred justice delivery, focusing on outcomes, also influences financing models. New options for funding delivery and investments emerge. The Task Force report (page 96-97) urges the sector “to increase the resources available for lower-cost models able to respond to unmet justice needs at scale.”

***Delivering justice is mostly a matter of resources. We have to mobilise knowledge, human resources and money.***

## Investments in better solutions are required

The Task Force report also recommends that governments invest in better solutions. “Governments might allocate a proportion of national justice budgets to financing high and low-tech innovations and they could explore blended finance models where their funds are used to leverage other investment.”

## Quantifying the costs of basic justice is beginning to happen

An ODI report published in 2019 offers the first estimate of the costs of providing access to justice to everyone.<sup>9</sup> The report estimates that universal basic justice to address people’s everyday justice needs costs \$20 per person a year in a typical low-income country, \$64 in a middle-income country, \$190-230 in high-income countries. These figures rely on costing current delivery models. An earlier report looked at financially sustainable, scalable basic legal service models. It arrived at lower estimates, based on a portfolio of innovative services, which yet have to scale.<sup>10</sup> The basic message is clear, however, revenues from people centred justice services need to increase very substantially — at least by a factor 2 or 4.

## Public and private services require hybrid funding

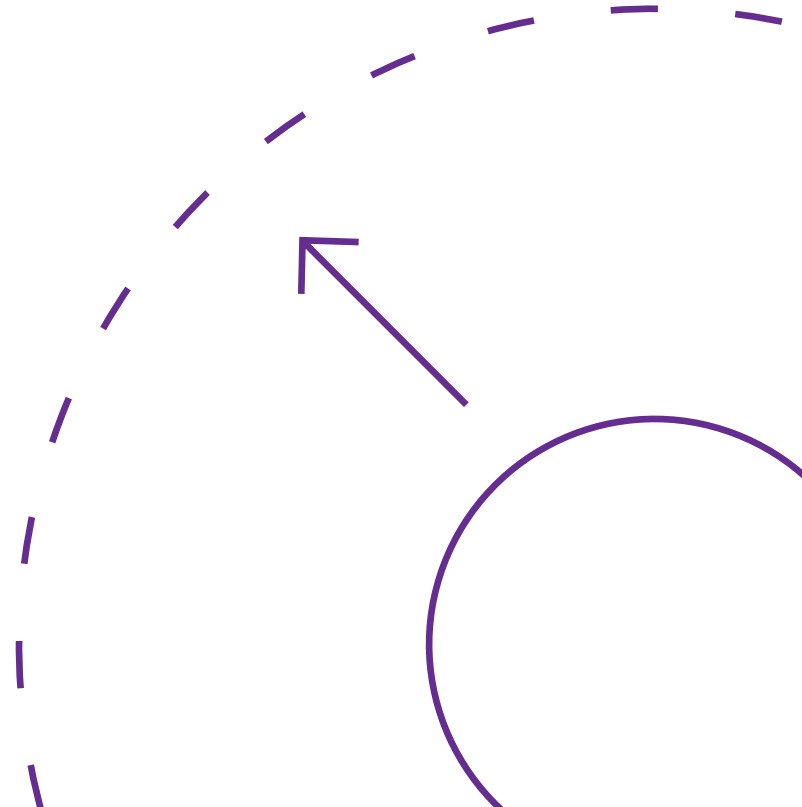
Delivery models are likely to be a combination of private, public, hybrid and volunteer services. As we will see, justice is already delivered by a broad array of (law) firms, courts, government services, NGOs and community members, with most revenues coming from private contributions. Justice is a public and a private good, for which people are already accustomed to pay for. Their willingness to contribute is closely related to the ability of service-providers to deliver outcomes effectively. The next chapters show this is also a major concern for those having to fund justice services.

## References

- 1 World Justice Project, [Measuring the Justice Gap: A People-Centered Assessment of Unmet Justice Needs Around the World](#), 2019
- 2 The estimates of injustices are made by the World Justice Project, [Measuring the Justice Gap, A People-Centered Assessment of Unmet Justice Needs Around the World](#), 2019.
- 3 Figures on the bridges represent the % of people in the world not experiencing this injustice (based on 7.7 billion global population) or the unresolved rate multiplied by the occurrence rate of the problem. United Nations Department of Economic and Social Affairs, [World Population 2019](#), 2019.
- 4 Pathfinders for Peaceful, Just and Inclusive Societies, [Justice for All: Report on the Task Force on Justice](#), 2019.  
The Elders, [Access to Justice](#), 2019.  
OECD, [Equal Access to Justice for Inclusive Growth: Putting People at the Centre](#), 2019.
- 5 OECD, [Equal Access to Justice for Inclusive Growth: Putting People at the Centre](#), 2019.
- 6 HiIL, [Understanding Justice Needs: The Elephant in the Courtroom](#), 2018.  
Innovation Working Group of the Task Force on Justice, [Innovating Justice: Needed and Possible](#), 2019.
- 7 Data from WJP, [Global Insights on Access to Justice 2019](#), average country scores.
- 8 Combining the recommended approaches from: HiIL, [Understanding Justice Needs](#), 2018, p. 76-121; OECD, [Equal Access to Justice for Inclusive Growth: Putting People at the Centre](#), 2019; Pathfinders for Peaceful, Just and Inclusive Societies, [Justice for All](#), 2019, p. 60-91.
- 9 Marcus Manuel, Clare Manuel and Harsh Desai, [Universal Access to Basic Justice: Costing Sustainable Development Goal 16.3](#), ODI, 2019.
- 10 IDRC, [Leaving no one behind on justice: New report provides paths for sustainably scaling up access to justice](#), 2016.

# 2

JUSTICE BUDGETS CAN  
GROW WITH CROSS-  
DISCIPLINARY DESIGN  
AND BETTER OUTCOMES



## Justice sector budgets are a “black box”

The funding mechanisms for the justice system operate in the background. Few experts fully grasp how funding systems work and what effects they may have on the delivery of justice. Funding is complicated because many organisations are involved. Each contributes to outcomes that are not easy to define, such as security on the streets or solutions for land conflicts. Many organisations such as courts, police and prosecution are overburdened and understaffed, competing for money from a handful of sources. A lack of mechanisms to communicate, coordinate, and share resources across organisations makes it difficult to align institutional incentives around common justice goals.

## The task of delivering justice is assigned to multiple parties

The organisational structure of the justice sector varies widely around the globe. In most countries, justice is delivered by multiple public and private actors, including ministries of justice, public prosecutors, courts, and prisons, and a number of other entities.

These include, but are not limited to:

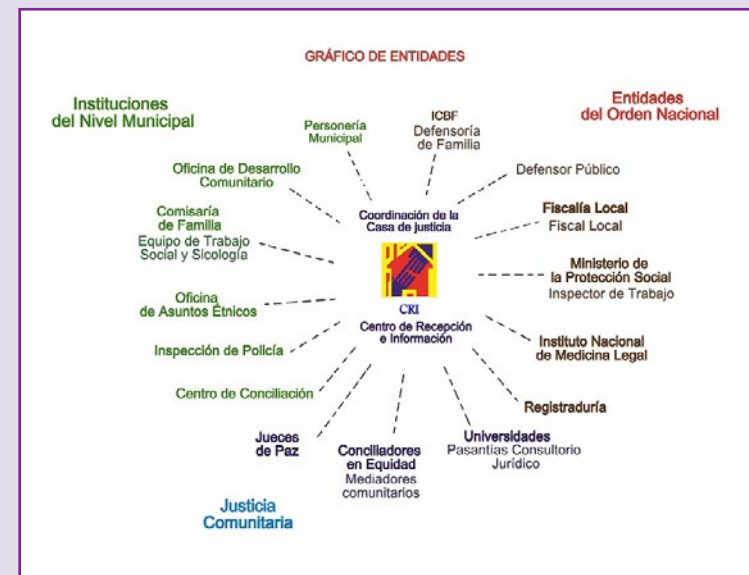
- Independent Councils of the Judiciary or other judicial administration bodies
- Legal aid offices
- Probation services
- Judicial discipline agencies
- Prosecution and judicial training agencies
- Ombudsperson agencies
- Enforcement services
- Forensic services
- Family commissioners
- Juvenile justice agencies
- Landlord-tenant commissions
- Land registration bureaus
- Immigration services
- Refugee and asylum agencies
- Notariat
- Private civil and commercial arbitration services
- Other alternative dispute resolution mechanisms
- Customary justice authorities; ethnic courts
- Other local justice delivery agencies

These entities may belong to various departments at the national, federal or local levels, the courts at various levels, the prosecution agencies, the prison system, or they may be fully independent. In most countries, this diversity of agencies – many of which belong to independent branches of government – means that the chain of command and accountability system for the justice sector is very complex.

## Coordination is hard, but not impossible

In 1995 the Colombian national government joined forces with the Bogota city government to set up the first “House of Justice” in the country. It was located in ‘Ciudad Bolivar,’ a low-income neighborhood in the south of the city. This House of Justice started as a pilot project and has remained in operation for 25 years.

In the Colombian Houses of Justice model, representatives of 17 national and local government agencies and private actors coordinate and work together under one roof to deliver justice services to a specific population. The six national government agencies include: child protection services; human rights ombudsperson; prosecutor; labor inspector; crime forensics; and public registry. The six local entities include: the human rights officer; community development agency; family (social services) agency; ethnic affairs office (for ethnic minorities); police inspector; and conciliation center. The three community justice agencies include: justices of the peace; community mediators; and local university legal clinics. The House of Justice also offers two additional services: a coordination office and an information center. The latter operates like the triage desk in any hospital emergency room, doing a preliminary assessment of the nature of the problem and re-directing the user to the appropriate desk for assistance. While none of the Houses of Justice that are currently in operation across Colombia provide all services, the overall model of inter-agency coordination remains constant.



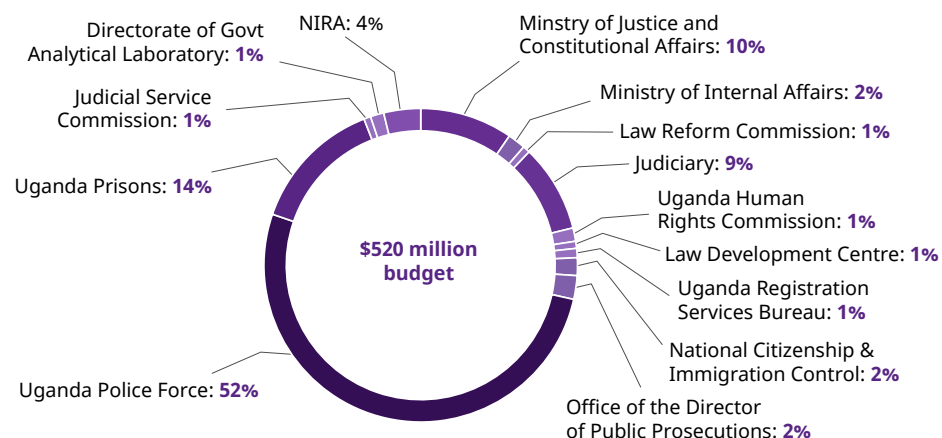
Source: [Casasdejusticia.gov.co](http://Casasdejusticia.gov.co)

At the House of Justice in Ciudad Bolivar for example, two small claims courts operate in the same building and in close coordination with local and national administrative agencies and private actors. While community satisfaction and ownership of this House of Justice remain high, long-term sustainability is an ongoing challenge due to the complexities of inter-agency coordination of responsibilities and funding across multiple branches and levels of government. A practical example illustrates these complexities: at this House, a local agency may be in charge of providing coffee, while a national agency may be tasked with the sugar. Sometimes, there is coffee and no sugar; other times, there is sugar and no coffee.

## The budgetary process for justice is usually a zero-sum game of multiple agencies competing for limited resources

Like the task of delivering justice, the budget for justice is divided among many agencies. Police, prisons, prosecution, courts, legal aid lawyers and all other justice services compete for a slice of this budget.<sup>1</sup> Below is an example from Uganda, which has a \$520 million justice, law and order budget for a population of 43 million. Justice sector development plans of other low and middle-income countries often have similar allocations.

CENTRAL GOVERNMENT VS LOCAL GOVERNMENT  
ALLOCATIONS BY ADMINISTRATION AND PROGRAMME FY 2019/20  
(% OF JLOS SECTOR BUDGET)



Instead of co-designing budgets in line with shared goals and outcomes for justice's ultimate intended user (the people), these many agencies usually compete for pieces of the budget pie among them, each one focusing on doing its own limited task, without full awareness of how each piece fits in the whole machinery of justice.

## Institutions set their own priorities

Once they receive their budget, each agency will set its own priorities. The chief justice or the council of the judiciary distributes the court budget between local courts, appeals courts and specialised courts. The police and prosecution allocate money to their local units. Each government agency delivering access to justice has its own accountability mechanism. Increasingly, the budget holders have to show how many products they delivered: reported crimes, solved crimes, prosecuted cases, conviction rates, judgments or citizens provided with legal aid. However, this practice of performance-based budgeting (see box) is not yet widespread.

## Performance-based budgeting: A neglected area of research

“Follow the money” may be a leading investigative principle, but it is not often applied to legal institutions themselves. A few papers by consultants and experts from the World Bank are available.<sup>2</sup> These papers tend to list general models for funding government agencies. Organisations supporting courts have developed policy documents regarding the funding needs of courts.<sup>3</sup>

Line item budgets detail what courts or other institutions can spend on housing, paper, salaries or video-screens. In countries where corruption is a major risk to manage, this enables accountants to track in detail where the money flows.

Much of the literature about funding now focuses on performance-based budgeting. Performance-based models tie budgets to the number of outputs, such as the number of judgments, or outcomes such as recidivism or the level of crime.

This way of budgeting is gradually replacing budgets based on historical costs and line items. Smart indicators are needed – incentive-oriented, focused on impact rather than outcome, and carefully balanced across competing priorities<sup>4</sup>.

Performance-based models require a calculation of the resources needed to produce certain outputs.<sup>5</sup> Calculations can be based on historical data or on norms of how many resources should be spent on a certain judgment, settlement or other final product of a court procedure. The relationship between performance information and the funds can be loose or tight (see table on the next page<sup>6</sup>).

## PERFORMANCE-BASED BUDGETING MECHANISMS

	Purposes	Performance information	Link between Performance information and funding
Program budgeting	Allocative efficiency through expenditure prioritization	Output (and outcomes) achieved by programs, resources used to achieve results	Loose. Budget is mainly allocated about the program activities
Zero-based budgeting	Allocative efficiency through marginal prioritization techniques	Marginal cost and marginal benefits of decision packages	Loose. Budget is mainly allocated about the program activities
Budget-linked performance targets	Allocative and technical efficiency and effectiveness through target setting	Outputs and outcomes	Loose. Targets describe the level of performance expected at any given amount of money
Agency – level budgetary performance incentives	Better performance through incentives	Agencies' output and/or outcome	Medium. Future funding is related to past performance, but not through a formula
Formula funding	Improve performance and allocative efficiency through a direct link between performance and funding	Output measures	Tight. Expected results are related to funding through an algebraic formula
Purchaser-provider model	Technical efficiency and performance through incentives (payment for results)	Output and cost measures	Very tight. The formula is $P \times Q$ (price per quantity of output) and it is related to actual results

Reviews of budgets and spending are sometimes available. The World Bank (funding programs in low-income countries) and national audit offices produce such reports. Similar reports may be produced by consultancies and civil society.<sup>7</sup> CEPEJ collects data about budgets, inputs and outputs of (public) justice systems in European countries.

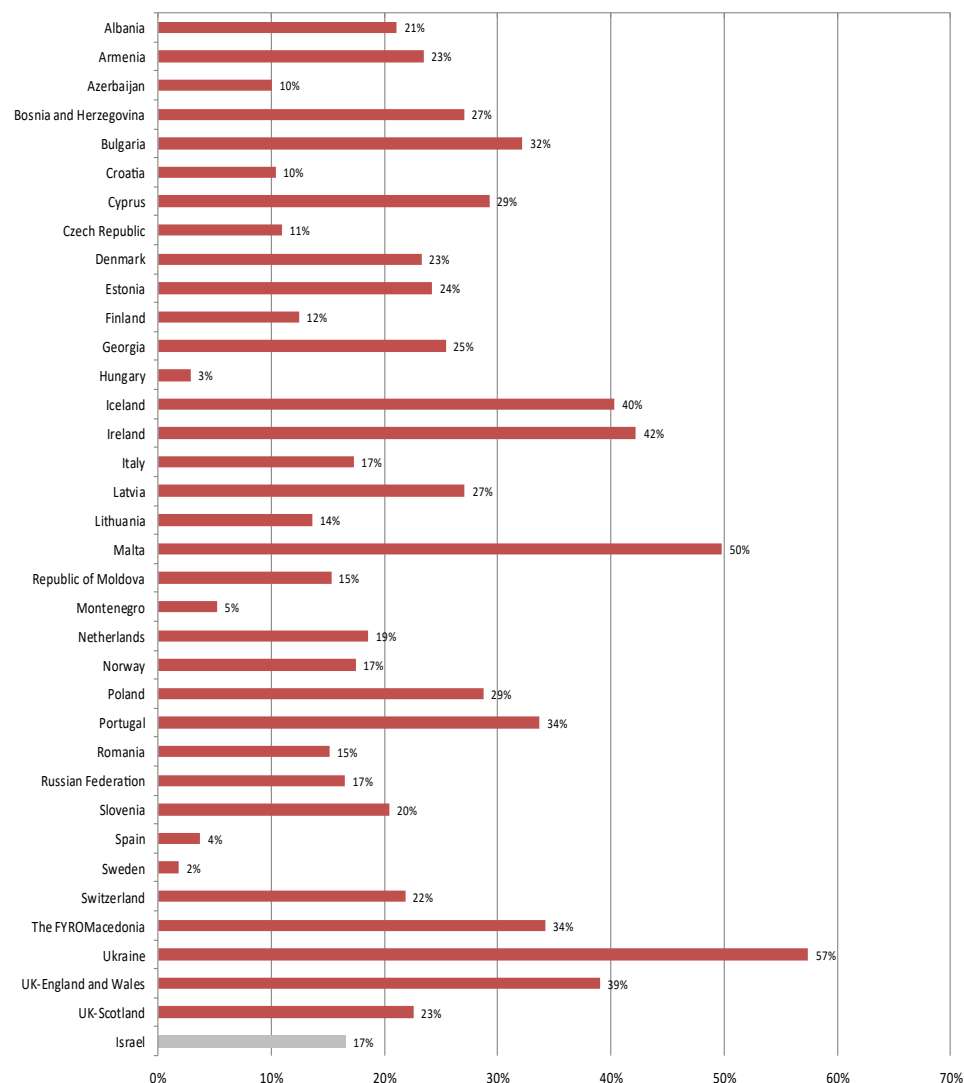
## Court fees are an important source of income for justice systems

Besides government budgets, justice systems can also generate income from court fees. Austria, Germany, Turkey, Ukraine and the UK are among a handful of countries that cover between 40% and 100% of their court costs by raising fees from users.<sup>8</sup> Germany and Austria are special, because courts in these countries are also responsible for the registrations of companies and can cross-subsidise adjudication from these fees. Other European countries tend to recover anywhere between 0-40% of their court costs from fees (see table). France and Spain have principled policies to not levy court fees. In the US, courts have different degrees of dependency on court fees. Why and how fees are set for which interventions is mostly unclear. Given the importance of this source of funding, an international standard for fair and effective (court) fees might be helpful.

## Justice sector development plans may be supported by donors

Many low and middle-income countries also rely on outside funding. Donor money is added to the sums provided by government contributions from taxes. While donor funding may help to align incentives across agencies, caution is required to avoid imposing foreign priorities over local needs.

PART OF THE TAXES AND COURT FEES IN THE COURT BUDGET  
(Q6, Q9, Q12, Q13)



## Some funding may be available from other ministries

Services rendered by courts are sometimes paid for by other ministries. A ministry responsible for work may fund an employment tribunal. Traffic courts may fall under the ministry responsible for infrastructure and road safety. Administrative tribunals are sometimes funded by the ministry of internal affairs or by local governments.

## Billing other agencies for adjudication under their rules has been tried

Reports sometimes recommend that the costs of court or legal aid should be billed to other departments. Rules on social benefits, for instance, may be written in such a way that many conflicts end up in courts. Until now, this has not led to major increases in justice sector budgets. One of the reasons may be that many of the conflicts that end up in courts are governed by rules from different sources.<sup>9</sup> So should these costs instead be billed to the national government, the state, the county, to Brussels, to Washington, or perhaps to the group of judges who designed a formula for severance pay after dismissal?

## Increased budgets are not correlated with higher performance

If citizens need more justice, an obvious first thought is to increase the budgets for justice sector institutions. Politicians are tempted to promise more policemen on the streets. Courts are notoriously overburdened in most countries and an increase in funding of courts seems to be a good response. Unfortunately, increased budgets are not correlated with higher performance under normal conditions. Studies consistently show that increased budgets

*Studies consistently show that increased budgets for courts are not correlated with greater output.*

for courts are not correlated with greater output.<sup>10</sup> This is different in severe cases of underfunding, which are by now exceptional. Experts also note that police and courts sometimes have difficulties to actually spend the budgets allocated to them. Ministries of finance are then tempted to assume they do not really need — or will not be able to manage — extra budget in the future.

## Higher courts getting priority?

When allocating budgets, court administrators may feel obliged to prioritize the higher courts above courts that serve the broader population directly. This may be linked to higher courts delivering more of the social goals described in [Chapter 3](#). Peer pressure may also contribute to this, because appeal courts offer career opportunities and better paid jobs for judges.

A government expenditure review regarding Burundi in 2007 shows an extreme example. At this moment, Burundi had 521 judicial functionaries at the higher courts. There were 803 lower court judges.<sup>11</sup> In Europe, 73% of professional judges are in first instance courts serving the population directly, 21% in appeal courts and 5% in supreme courts.<sup>12</sup> In budgetary terms, the share of higher courts is likely to be bigger than 26%, because of higher salaries and more costly buildings.

The actual number of judges available for frequent disputes and crimes also depends on the use of “non-professional” judges and neutrals. European data show big differences in how countries rely on this additional workforce (see also [Chapter 8](#)).<sup>13</sup>

## It is not just a matter of more judges and court personnel

While extreme understaffing may hamper justice delivery, there does not seem to be an optimal ratio of judges or court personnel per population for all countries, or by income level. According to CEPEJ, the number of judges per 100,000 inhabitants varies widely across developed nations (from 35 in Germany to 3 in England and Wales), and across developing nations alike. Rates of court personnel to population show similar variation. This suggests that the number of judges and court personnel per population are not, per se, key determinants of the quality of service.

## Reduction of the number of courts has been tried

The high costs of maintaining local court buildings and operating small independent courts that deal with a huge variety of cases have contributed to a decline in the number of courts per country. Early studies suggest that the trend towards centralising and scaling courts is not improving performance.<sup>14</sup>

While the absence of courts in geographical proximity to users may be a barrier to accessing justice, evidence on the tradeoff between access and cost is inconclusive. The number of courts per 100,000 inhabitants varies widely across developed nations (from close to 5 in Croatia to 0.2 in the Netherlands), which suggests that the number of courts is generally not a major determinant of the quality of service.

## Excessive spending on ineffective interventions

Ideally, performance-based budgeting leads to changes in what is offered. In a number of countries around the world, incarceration is gradually being replaced by community sentencing or prison arrangements that are more effective in reducing rates of reoffending.<sup>15</sup> This process towards improved outcomes is slow, however. Many countries continue to spend a substantial portion of their justice budget on prisons. A 2017 report found that in addition to the \$80.7 billion the United States spends on public corrections agencies<sup>16</sup> each year, another \$64 billion is spent on related costs such as prison employees, construction, food, and private facilities.<sup>17</sup> This does not account for the social and public safety costs of an intervention whose core features – shame, isolation, exposure to violence, and an inability to meet one’s economic needs – are known to drive violence.<sup>18</sup> Gradually eliminating spending on injustice and introducing outcome-based monitoring to improve existing services can free up funding for better solutions.

## Complicated, adversarial procedures are an additional strain on people and budgets

Reports on access to justice consistently call for simplifying procedures. Most court innovation projects and new tribunals aim to streamline fact-finding, mediation, facilitation and early case-management in order to achieve outcomes in a more targeted way. Adversarial procedures have a tendency to escalate in cost terms. Time is needed to resolve an increasing number of points of contention, by an increasing number of participants. HiiL found indications that legal aid costs are strongly correlated with the complexity of procedures and with the use of adversarial models of conflict resolution.<sup>19</sup> More lawyer time devoted to more legal issues will also require more time from prosecutors, judges or experts. If the effects of complex and adversarial procedures are mitigated, this may lead to

additional costs for add-ons such as mediation, case management or coordination meetings between agencies. One influential analysis of cross-country data suggests that procedural complexity is indeed a major factor in court delays. The paper also suggests that courts spend more time on cases than is needed to achieve fair outcomes. This hypothesis is supported by data showing that faster judgments do not lead to higher appeal rates.<sup>20</sup>

*Legal aid costs are strongly correlated with the complexity of procedures and with the use of adversarial models of conflict resolution.*

## Seeking redress is costly, even when resolution services are free

From the point of view of the ordinary person, the distinction between institutions and procedures can be daunting. People often stumble from one office to the next in search for the right window to file their petitions for redress. Others shop across overlapping formal and informal jurisdictions, and multiple ramifications of the same underlying dispute take on unnecessary proportions.

Even when administrative and judicial dispute resolution services are free of charge, the procedural complexity and indirect fees (both illegal bribes and simple expenses, such as transportation costs or time off from work to wait in line), can render these services inaccessible for low-income individuals or simply too burdensome for most people to afford. Data collected by HiiL and the World Justice Project over the past fifteen years have shown that a very large proportion of life-changing justice issues facing people around the globe remain unsolved because people are unwilling or unable to bear the costs of seeking redress.

## A neighbour justice shopping spree

The outcomes people need have to emerge from the products delivered by many agencies and private actors. Assume your noisy neighbour threatens you with a knife.

- The police may be willing to file a report. One policeman may come over to effectively pacify the situation. Another may start to collect evidence of a crime. If you are out of luck, the policeman is too busy with a riot in another part of the city to intervene.
- If the file reaches the prosecutor, he may look at the likelihood of a conviction, because that is his main product.
- At the court hearing, the judge may attempt to mediate between you and the offender, or focus on delivering a judgment, which is her main product.
- Your neighbour may be sent to prison or have to pay a fine. These are the products of other government agencies.
- This might not lead to the outcome you want, which is a quiet life in a good relationship with your neighbour. So, instead of going to the police, you might buy advice and hear from a lawyer that the civil code protects you against nuisance from your neighbour.
- Your advisor may help you to confront your neighbour or sell you a mediation.
- If this does not work, you can go to the local judge, who delivers a judgement as her product.
- You could also go to your housing authority, to complain about the quality of living in your apartment, which may lead to an intervention from them directed to the neighbour.

In this way, citizens with neighbour justice issues shop for justice at different government institutions.

The sum of all these interventions – each funded in a different way, and each funder paying for different products – should calm things down and improve the quality of the living environment for citizens. Will it?

## Efficiency is hard to achieve

Performance-based budgeting for courts is often applied in combination with quality management systems and measures to increase efficiency.<sup>21</sup> Studies on the effects of introducing technology suggest that these effects are ambiguous.<sup>22</sup> Generally, European judicial systems did not markedly improve their efficiency between 2010 and 2016.<sup>23</sup>

## Incentives for courts may be insufficient in a complex setting

Many reasons for the lack of progress in efficiency and efficacy of court services have been suggested. Perhaps the incentives for courts and other third parties to solve neighbour disputes and other legal problems are insufficient. Perhaps current work processes are not sufficiently focused on delivering outcomes to citizens. Perhaps increasing the budget for prosecutors also creates more work for judges and lawyers. Perhaps legal complexity is the culprit. Even a dispute with a neighbour can lead to substantial debate regarding legalities.

## Reluctance to fund the justice sector

Given this state of affairs, it is not surprising that ministries of finance and donors currently find it difficult to handle funding requests from the justice sector. Outcomes and activities are not very clearly defined, extra funding does not lead to increased performance, and the reasons for this are unclear. Donor support for justice systems is low in most countries and has fallen by 40% globally between 2014 and 2017.<sup>24</sup> Government and international donors are unlikely to provide extra funding for the justice sector unless the financial models are sustainable, and services become more efficient in delivering outcomes for neighbours and others needing justice.

## The public is aware of existing inefficiencies and has ideas about what courts should invest in

A study on funding strategies for courts found that the public understands the inefficiencies in the justice system. The public and politicians are unlikely to be persuaded by general appeals to recognise courts as an equal branch of government or stories about courts being overburdened. Focusing on concrete benefits that better functioning courts bring to taxpayers and acknowledging the sector's shortcomings works best. The public is most likely to support specific investments that can improve performance.<sup>25</sup>

## **Raising revenues from fees is not broadly supported**

When the public sees justice services as inefficient, it is unlikely to support higher fees as they are often associated with corruption. As a result, few countries make a coordinated effort to increase revenues from justice services.

## **Few incentives to expand access**

The overall picture of current budgets for justice is that of a fixed pie, with a few options to increase budgets through donors or other government agencies. This has a number of consequences for the delivery of justice to all. First, courts, government agencies, and their funders have little financial incentive to expand access to their services. Helping more citizens to live peacefully side-by-side creates more work, without options to increase revenues.

## **No place for challengers providing innovative services**

Secondly, the fixed pie budget creates strong incentives to jointly oppose funding for new services. If the government promotes mediation for neighbour conflicts, an online service model or a dense network of houses of justice, subsidies for such services will compete with the budgets of police, prosecution, courts and the ministry. This may be the reason why few new government services in the justice

sector are more than token reforms. Financially, the sector has little reason to innovate or expand. Somehow, revenues must be able to grow. In later chapters, we will come back to this.

## **Justice users and providers have different expectations of justice**

Budgeting for justice is made more complicated by the divergent ways in which regular people and providers perceive and experience the justice system. From the perspective of the average person in the street, justice is expected to perform as one system. Expectations are different for career employees, whose training and incentives are confined to his or her agency's narrow responsibilities (rather than the overall service for the user). There is no chain of command or coordination mechanism connecting local family or landlord-tenant agencies, for instance, with the broader justice goals and policies of other branches and levels of government.

## **Who is ultimately responsible for the delivery of justice?**

The inter-agency fragmentation of justice delivery among a plethora of national, regional and local courts and administrative agencies dilutes the accountability of the whole system. Even when some degree of collaboration and coordination has been achieved – such as at the House of Justice in Ciudad Bolívar, Bogotá – the fragmentation

of responsibilities and budgetary processes creates an even bigger problem. Each justice agency has an incentive to develop process-based indicators of performance, and a disincentive for final outcome- and impact-based performance indicators.

## The justice budgeting process could be very different

Some recommendations for people engaged in justice budgeting are:

1

Start with the needs of the population – as in every other service, what the “user” needs and wants should be the starting point.

2

Focus performance indicators on ultimate outcomes (impact) for the population. People do not want stellar caseload clearance rates; they want safety in the streets and fair and agile dispute resolution services for their daily issues.

3

Enable cross-institutional and interdisciplinary design of justice sector budgets, rather than zero-sum negotiation, to identify potential synergies and savings across agencies.

4

Whereas one-year budgeting creates incentives for short-term performance and makes inter-agency coordination more vulnerable to political changes, multi-year budget commitments help form the foundation of successful, long-term inter-agency coordination.

5

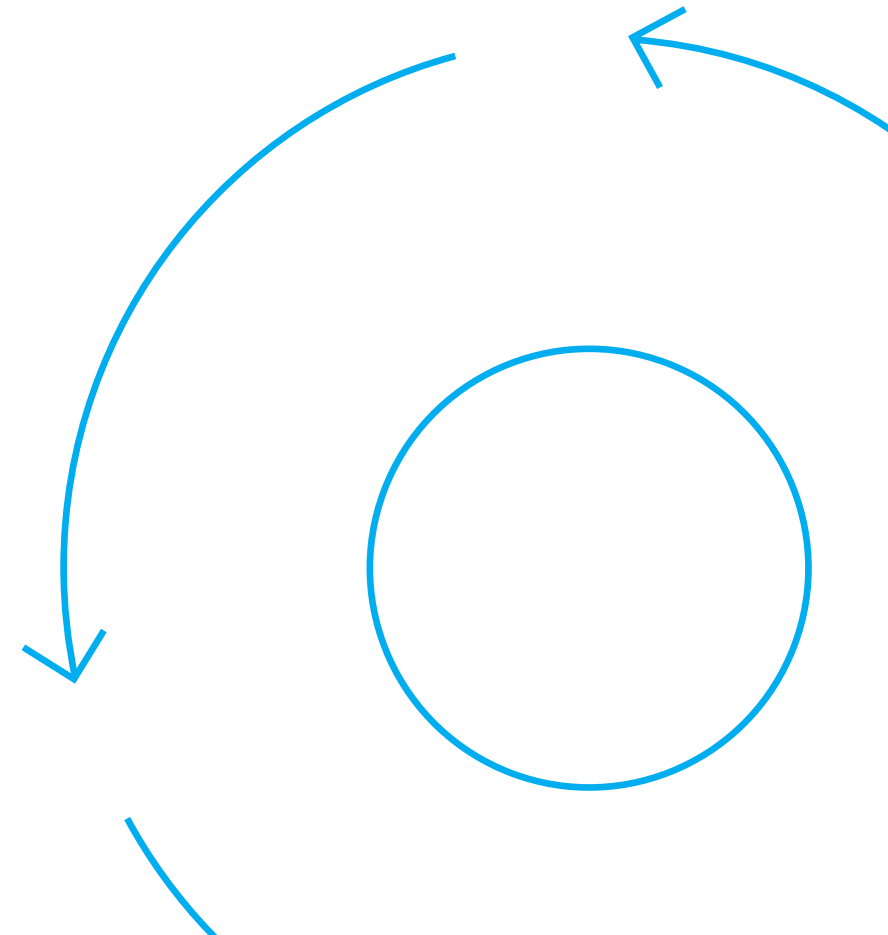
The inter-agency budgeting process may become an opportunity for collaboration – the ultimate goal is to align incentives across justice service providers in light of demand (the outcomes that ordinary people actually seek and need from the justice sector).

## References

- 1 See, for example, [Serbia: World Bank, Serbia Judicial Functional Review](#), 2014.
- 2 David Webber, [Good Budgeting, Better Justice: Modern Budget Practices for the Judicial Sector](#), The World Bank; USAID, [Study on the Recent Practice of Funding the Judicial System, Taking into Account International Practices of Funding the Judicial System](#), 2013; Frederica Viapiana, [Funding the Judiciary: How Budgeting System Shapes Justice. A Comparative Analysis of Three Case Studies](#), International Journal for Court Administration, 2019; Thierry Kirat, [Performance-Based Budgeting and Management of Judicial Courts in France: an Assessment](#), International Journal for Court Administration, 2010; Geoffrey McGovern, Michael Greenberg, [Who Pays for Justice? Perspectives on State Court System Financing and Governance](#), RAND, 2014.
- 3 Justice at Stake and NCSC, [Funding Justice: Strategies and Messages for Restoring Court Funding](#), 2012.
- 4 Botero, Pinzon and Pratt, [How, When and Why Do Governance, Justice and Rule of Law Indicators Fail Public Policy Decision Making in Practice?](#), Hague Journal on the Rule of Law, 2016.
- 5 International Framework for Court Excellence, [Global Measures of Court Performance](#), 2018, gives an impression of what is measured.
- 6 Federica Viapiana, [Funding the Judiciary: How Budgeting Shapes Justice. A Comparative Analysis of Three Case Studies](#), International Journal for Court Administration, 2019.
- 7 Tata Consultancy, [India Justice Report: Ranking States on Police, Judiciary, Prisons and Legal Aid](#), 2019.
- 8 CEPEJ, [European Judicial Systems: Efficiency and Quality of Justice](#), 2018.
- 9 Maurits Barendrecht, David Raič, Ronald Janse, and Sam Muller, [Rulejuggling: When Lawmaking Goes Private](#), International and Informal, HiiL, 2012.
- 10 Botero et al., [Judicial Reform](#), The World Bank Research Observer, 2003. Pulmbo et al., [The Economics of Civil Justice: New Cross-Country Data and Empirics](#), OECD, 2013;
- 11 Burundi, [Enquête sur le suivi des dépenses publiques et la satisfaction des bénéficiaires dans les secteurs de l'éducation, de la santé et de la justice](#), 2009.
- 12 Median country. CEPEJ, [European Systems of Justice](#), 2018 (2016 data).
- 13 CEPEJ, [European Systems of Justice](#), 2018 (2016 data).
- 14 See Romain Espinosa, Claudine Desrieux, and Hengrui Wan, [Fewer courts, less justice? Evidence from the 2008 French reform of labour courts](#), [European Journal of Law and Economics](#), 2017 on effects of reducing number of courts (negative, ambiguous).
- 15 José Cid, [Is Imprisonment Criminogenic?: A Comparative Study of Recidivism Rates between Prison and Suspended Prison Sanctions](#), [European Journal of Criminology](#), 2009.
- 16 This includes prisons, jails, parole, and probation.
- 17 Peter Wagner and Bernadette Rabuy, [Following the Money of Mass Incarceration](#), Prison Policy Initiative, 2017.
- 18 Danielle Sered, [Accounting for Violence: How to Increase Safety and Break Our Failed Reliance on Mass Incarceration](#), Vera Institute for Justice, 2017.
- 19 HiiL, [Legal Aid in Europe: Nine Different Ways to Guarantee Access to Justice?](#) 2014.
- 20 Stefan Voigt, [Determinants of judicial efficiency: A survey](#), [European Journal of Law and Economics](#), 2016. See also Decker et al.
- 21 Klaus Decker, Christian Möhlen, David Varela, [Improving the Performance of Justice Institutions](#), World Bank, 2011.
- 22 Thiago Favvrelle and Alessio Tony Almeida, [Determinants of Judicial Efficiency Change: Evidence from Brazil](#), [Review of Law and Economics](#), 2018.
- 23 CEPEJ, [European judicial systems - Efficiency and quality of justice](#), 2018, p. 336.
- 24 Marcus Manuel and Clare Manuel, [Achieving equal access to justice for all by 2030: Lessons from global funds](#), ODI, 2018.
- 25 Justice at Stake and NCSC, [Funding Justice: Strategies and Messages for Restoring Court Funding](#), 2012.

# 3

## SAFEGUARDING THE PUBLIC GOOD OF JUSTICE



## Justice is more than a service to individuals

Before we go on, it is necessary to reflect deeper on the role of the justice system as the third branch of government. Providing a fair and efficient system to resolve disputes among individuals and protect them is not the only function of justice. Justice also serves other vital societal interests – such as preventing disputes by ensuring a level playing field; protecting people’s rights from governmental and private abuses; ensuring effective implementation and enforcement of state policy; upholding the rule of law; and preventing tyranny by securing proper checks and balances of governmental action.

## Justice mitigates power, for the common good

From time immemorial, dispute resolution systems intended to provide equal justice among unequal parties, *i.e.*, to protect the weak – the strong did not need protection. This ideal is present in all legal traditions of the world:

” *(I was called) to bring about the rule of righteousness in the land . . . so that the strong should not harm the weak.* (Prologue, Hammurabi’s Code, 1772 BCE)

” *If someone disobeys the law, even if he is (otherwise) worthy, he must be punished. If someone meets the standard, even if he is (otherwise) unworthy, he must be found innocent. Thus the Way of the public good will be opened up, and that of private interest will be blocked.* (The Huainanzi, 139 BCE - Han Dynasty, China)

” *Treat the people equally in your court and give them equal attention, so that the noble shall not aspire to your partiality, nor the humble despair of your justice.* (Judicial Guidelines from ‘Umar Bin Al-Khattab, the Second Khalifa of Islam, 634-644 CE)

## Funding the voice of communities is also a key dimension of fairness

The judiciary is not the only justice actor that requires a minimum level of funding to preserve its independence and keep powerful interests in check. Resources must be balanced across different parts of the system such that balance is preserved. Without sufficient funding for prosecutors, public defence attorneys, legal aid, and paralegals, access to justice and legal protection becomes a function of wealth. Diverse revenue streams are needed to make grassroots legal empowerment resilient and hold the private sector accountable.<sup>1</sup>

## Proper funding should take into account the value of justice as a public good

Independent, stable and reliable courts are key for protecting these societal goals. Public interest litigation, by specialised lawyers that need to be funded properly, is part of the checks and balances that are needed. Another service providing legal empowerment is that of community paralegals, who help communities to voice grievances against local governments or companies that pollute the environment.

## Justice funding and judicial independence

The *United Nations Basic Principles on the Independence of the Judiciary* of 1985<sup>2</sup>, and the *Bangalore Principles of Judicial Conduct* of 2002,<sup>3</sup> recognize that funding for the judiciary as a public service is a key determinant of judicial independence and the balance of power across branches of government.

**1** *The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary...*

**7** *It is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions.*<sup>4</sup>

In 2015, The European Network of Councils for the Judiciary (ENCJ) set up a team to consider the dimensions involved in financing the judicial system. In its 2016 “Funding of the Judiciary” report, it concluded that “adequate funding of the judiciary is a key element in ensuring and safeguarding the independence of the judiciary and judges because it determines the conditions in which the courts and judges perform their functions. Funding of the judiciary is a wide issue including fund allocation, but also local and national management of these resources.”<sup>5</sup> Based on a selection of ENCJ and international literature, the team set out six principles for judicial funding (see box). These principles aim to ensure that the financing of courts is not used as a tool to influence the way they operate in cases where they provide checks and balances.

## Six principles for judicial funding

### 1. Independence

The independence of the judiciary is a prerequisite for the delivery of fair and impartial justice in protecting human rights and fundamental freedoms. Judicial independence must be strictly respected and preserved, irrespective of the need to cut costs.

### 2. Adequate Resources

To enable the courts to operate in accordance with the standards laid down in Article 6 of the European Convention on Human Rights, each state should allocate adequate resources, facilities, and equipment to the courts. Courts should be financed in a stable way on the basis of objective and transparent criteria, not discretionary decisions or political fluctuations.

### 3. Council for the Judiciary

The Council for the Judiciary should control its finances and activities independently of the legislative and executive branches of government. They must have the financial and administrative resources, as well as the power and capacity, necessary to do so effectively.

#### 4. Role of Judiciary in Budgetary Process

The Judiciary or its representative body should be closely involved at all stages of the budgetary process and permitted to express its views on the proposed budget in Parliament. The judiciary should be responsible for the financial management of the courts within the budgets allocated to it. Judges should receive the court administration training necessary to carry this out.

#### 5. Remuneration of Judges

The remuneration of judges should be commensurate with their professional responsibilities, public duties, and the dignity of the office. It should be sufficient to shield them from inducements intended to influence their decisions and based. It should also be based on a general standard, not the performance of an individual judge. To preserve judicial independence and impartiality, judges' remuneration must be entrenched constitutionally or guaranteed in the law.

#### 6. Control by the Judiciary

The financing of the judiciary, the administration of courts, and the training of judges should be wholly or partly under the control of a Council for the Judiciary or of equivalent independent and autonomous bodies. High-quality training should be funded by the state and available to judges throughout their professional careers.

## Balanced funding for security and justice

In many countries, justice and security are funded from the same sources. International donors such as the United States have invested heavily in security and justice in Afghanistan, Iraq, Mexico and Colombia.<sup>6</sup> In post-conflict countries, establishing the rule of law by pacifying violent groups and building a reliable police force is often seen as a priority. At the same time, overinvesting in security can lead to renewed conflict. A recent study by the World Bank and the UN emphasizes the following elements of pathways to peace that are related to access to justice:<sup>7</sup>

1

Inclusive approaches to prevention that recognize and address group grievances early

2

Ensuring that grievances are mediated quickly and transparently

3

Increasing a society's ability to manage conflict

4

Avoiding the mobilization of perceptions of exclusion and injustice, rooted in inequalities across groups

5

Creating opportunities for youth and women's participation and addressing violence against women

6

Adopting a people-centered approach, including local conflict resolution to empower underrepresented groups such as women and youth

7

Service delivery systems that make people partners in the design and delivery of public services.

These findings strongly suggest that post-conflict and fragile countries should spend a substantial proportion of their security and justice budgets on effective access to justice.

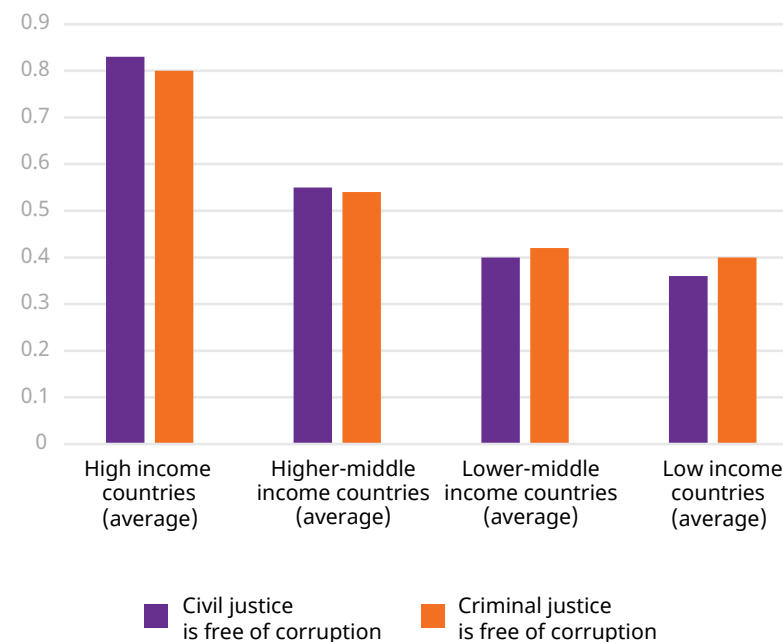
## Funding for justice and corruption

Funding for justice is a protection against corruption and other forms of improper influence by powerful private interests. Under-paid judges and court personnel, as well as customary justice authorities are more vulnerable to corruption at all levels, from petty bribes at local disputes in towns and rural villages, to complex litigation involving large corporations or other powerful private parties.

## “Unofficial fees” are endemic

In low- and middle-income countries such as the Democratic Republic of Congo (DRC), Haiti and Jordan, courts charge official fees and court personnel often add unofficial fees for prioritising a case.<sup>8</sup> Paying the police for services is part of the everyday practice of law enforcement in many countries.<sup>9</sup>

While the problem of corruption is present to a greater or lesser degree in all countries around the world, data from the *WJP Rule of Law Index 2018* suggests that it is more prevalent in developing countries.



## Judicial independence cannot come at the expense of judicial accountability

Safeguarding judicial independence does not preclude the judiciary from working and being funded on the basis of outcomes. Increasing access to justice requires that judges and court administrators be monitored and held accountable for their performance and the quality of service they deliver to the public. In words used by one expert on financing courts: “independence and impartiality are entitlements of citizens, not of judges.”

## Funding the voice of communities is also a key dimension of fairness

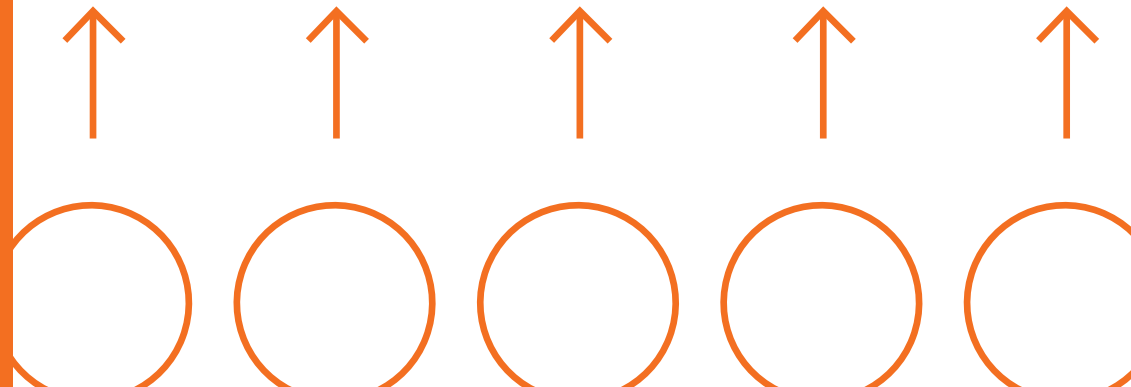
The “public good division” of courts and legal services may require a separate funding model. Dealing with a huge corruption case or a major conflict regarding elections is a task with a specific cost structure. This task is different from solving disputes and dealing with everyday crime in a standardised way, which requires a funding model that rewards scale, access, quality and efficiency. Outcomes of both divisions are different. In the future, outcomes at the societal level can be defined, targeted and somehow priced. Currently, this may be too difficult, because the rule of law protects many of these outcomes. A baseline funding formula – perhaps as a percentage of GDP of a country, state or county – for the public good delivered by courts and justice sector institutions is one possible solution. With this secured, the branches of the justice sector that primarily provide scalable services to individuals may get access to better funding.

## References

- 1 Vivek Maru, Only the Law Can Restrain Trump, Foreign Policy, 2017.
- 2 UN, United Nations Basic Principles on the Independence of the Judiciary, 1985.
- 3 Judicial Group on Strengthening Judicial Integrity, Bangalore Principles of Judicial Conduct, 2002.
- 4 UN, United Nations Basic Principles on the Independence of the Judiciary, 1985.
- 5 ENCJ, Funding of the Judiciary: ENCJ Report 2015-2016, 2016. The text in the box provides a summary.
- 6 The Law & Development Partnership, Developing a Portfolio of Financially Sustainable, Scalable Basic Legal Service Models, 2016, data in Appendix 1.
- 7 World Bank and UN, Pathways for Peace: Inclusive Approaches to Preventing Violent Conflict, 2018.
- 8 Jessica Vapnek, Peter Boaz and Helga Turku, Improving Access to Justice in Developing and Post-Conflict Countries: Practical Examples from the Field, Duke Forum for Law & Social Change, 2016.
- 9 Richard Rose, Caryn Peiffer, Paying Bribes for Public Services: A Global Guide to Grass-Roots Corruption, 2015.

# 4

PEOPLE-CENTRED  
SERVICES HAVE POOR  
BUSINESS MODELS



## Citizens pay billions to the private justice sector

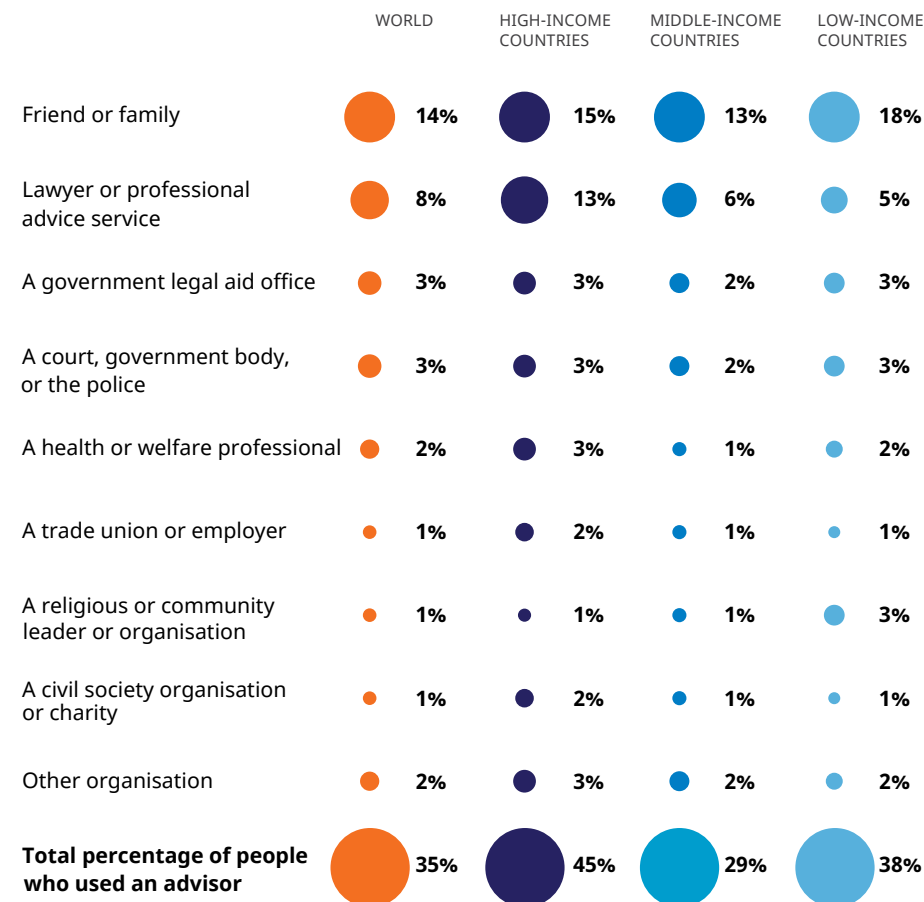
Where government justice services cannot protect them, citizens pay for walls, locks, barbed wire and security guards. Carefully drafted contracts safeguard their investments. If people have a conflict, they can get legal assistance. Lawyers help them to navigate legal procedures at courts and assist them to achieve a settlement. Millions of cases between companies and individuals are resolved by mediators and arbitrators all over the world. A thriving private justice sector provides helpful services, and benefits from the inefficiencies of courts and public justice institutions.

## Private services are unaffordable for most

For the affluent, this private market for law and security works, although they also might benefit from better services and lower costs. For the middle class and poor, law firms and private security are largely out of reach. Data collected by the World Justice Project show that typically less than 10% of people with a justice problem receive advice from a lawyer or similar professional.<sup>1</sup>

*Typically less than 10% of people with a justice problem receive advice from a lawyer or similar professional.*

### TYPE OF ADVISOR USED<sup>2</sup>



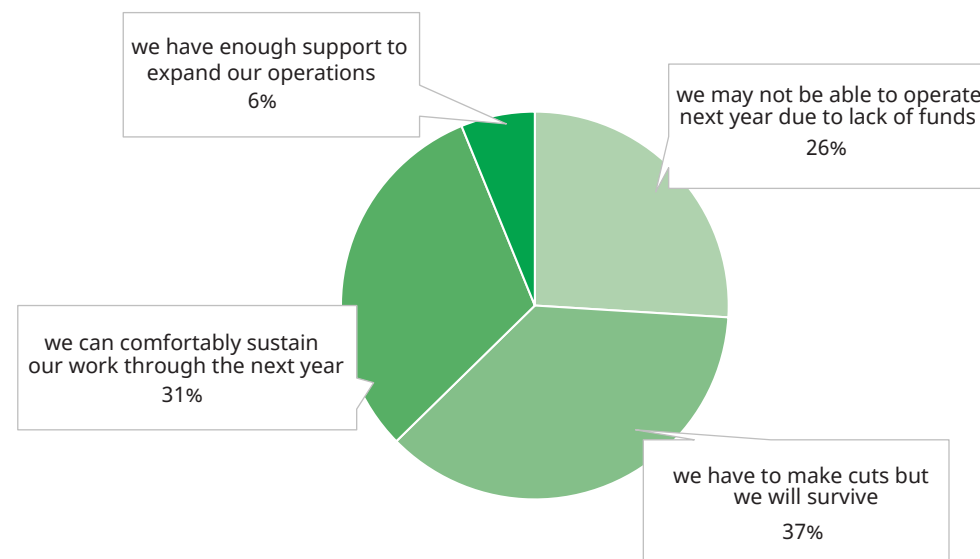
## Citizens rely on their local network

Currently, the poor and the middle class are served by a broad range of people. Families, friends and volunteers from the community are important. Advice is also given by legal aid lawyers, NGOs, government agencies, unions and consumer organisations, a tiny number of legal startups, police and prosecutors, community judges and lower level courts. Each of these services reaches a small proportion of the population experiencing legal problems (see table). If we analyse access to justice as a market, then this market looks immature and ripe for disruption.

## Justice workers serving individuals need more resources

The justice workers serving individuals tend to be overburdened and under-resourced. They work in small-to medium-sized organisations (solo or small law firms, government legal aid offices, NGOs) or provide advice next to their regular work (as court administrators, police, or health professionals). Many of these organisations serve people for free. Few lawyers and advisers who serve individuals operate from an organisation with a sustainable business model for legal assistance.<sup>3</sup> Most paralegals work in programs whose funding is at risk (see graph below). The same is true for many mediation programs. If justice workers do their job well, and attract more clients, their boss runs into trouble, because revenues will not increase. If justice workers develop a better way of serving people - by building an IT platform or researching what works for their clients, for example - there is no guarantee that their organisation can recoup these investments and scale up their services.

## HOW SUSTAINABLE IS YOUR FUNDING FOR THE COMING YEAR?



## Legal services can add considerable value

Cost benefit analysis of legal services provided to the poor and middle class have been conducted, mostly by organisations that want to obtain funding for them. Overviews by the Task Force on Justice<sup>4</sup> and the World Bank<sup>5</sup> show a broad range of services that have delivered a net positive value.

According to these studies, services that tend to report the highest benefits relative to costs include:

- Community legal information and advice services (by paralegals or others).
- Pro-bono services (not surprising, given that the only costs are program administration costs).
- Rehabilitation services for offenders.
- Civil legal aid (a very broad term covering many different delivery models for many different types of problems).
- Collaborative processes and mediation.
- Litigation and arbitration services have lower or negative net benefits.

## Investments and costs of delivery

### Confusion about terminology

Many cost benefit studies in the field of legal aid and legal empowerment use the word “investment” for what are actually the costs of delivering services. This word may be more attractive for the purpose of attracting funding. In this report, we use “investment” in the usual sense of capital invested in the expectation of recurring returns in the future.

## Barriers to access are often highlighted

In the justice sector, most commentators assume that high costs, complicated procedures, distance and the legal language are barriers to access. This is an intuitive storyline. Courts and lawyers are the way to deliver justice, so more people should have access to them. According to these commentators, greater access can be achieved by removing barriers.

## Services do not match what people need

Surveys of citizens also tell a different story. Many people with justice problems prefer to solve problems by themselves, and believe that they are capable of doing so. They fear the bureaucracy and relational damage that might come with official procedures. For them, it is not clear how the services offered will contribute to the outcomes they need. In our 2018 report, we mentioned indications that people often want help with resolution, knowing what their rights are, reconnecting with the other party, mediation, and navigating procedures. When there is a power imbalance between parties, people also need the protection of an independent adjudicator. Only a tiny minority of people with justice problems say their goal was to establish the other party's culpability or their own innocence.<sup>6</sup>

## Why people are not using current services<sup>7</sup>

### REASON FOR NOT SEEKING LEGAL HELP (OF 72% WHO DID NOT SEEK ASSISTANCE)

Did not think the problem was difficult	58%
Access barrier	25%
Other	17%

### REASON FOR NOT TURNING TO AN AUTHORITY TO MEDIATE, ADJUDICATE, OR RESOLVE THEIR PROBLEM (OF 84% WHO DID NOT TAKE SUCH ACTION)

I thought the problem was not important enough or easy to resolve	30%
I was confident I could resolve it by myself	26%
Resolving the problem would have taken a long time or a lot of bureaucratic procedures	8%
I did not have evidence or a strong case	5%
Scared of the consequences / The other party is much more powerful	4%
I did not know what to do, where to go, or how to do it	6%

Access problems (cost, distance, schedule, etc.)	3%
--------------------------------------------------	----

I did not trust the authorities	5%
---------------------------------	----

It would create problems for my family or damage a relationship	2%
-----------------------------------------------------------------	----

I caused the problem / It was up to the other party	1%
-----------------------------------------------------	----

Other	11%
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## Many people are willing and able to pay

If asked about their willingness to pay, many people seem to be willing to spend considerable sums for the security of their families, for identity documents, or for solving difficult conflicts.<sup>8</sup> Data from HiiL JNS surveys show that people spend substantial money on resolving their problems.<sup>9</sup>

*People spend substantial money on resolving their problems.*

## Private services cannot easily create a legitimate third party<sup>10</sup>

Can newcomers enter this poorly functioning market? We saw in [Chapter 2](#) that they are unlikely to become part of the government legal system, because they then compete for resources with powerhouses such as the police and the courts. Can they instead set up a private dispute resolution and adjudication service and make money from this? Technically, it is perfectly possible to build a one-stop process dedicated to solving neighbour justice problems, family issues or everyday violence and theft. An online platform can offer human support, information, guidance in negotiations, access to mediators and bring a judge to the table if the conflict persists. Early stage examples of such platforms exist for a range of frequent case types.<sup>11</sup> However, our 2016 trend report showed that bringing such a process to the market is hard.<sup>12</sup> The main reason for this is the so-called submission problem.<sup>13</sup>

## Selling a service to two parties in conflict is difficult

The submission problem results from justice being done between at least two parties. You and your neighbour are both needed for a solution. You are both likely to listen to a policeman or a local judge. Creating such a neutral authority is difficult for a private entrepreneur.<sup>14</sup> Your neighbour might just ignore the carefully designed source of neutral wisdom and authority. Lawyers may challenge the legitimacy of the online platform. Judges may see private judging as inappropriate, or as outright competition. So the only customers the platform will attract are those who are: already willing to cooperate; open to new technologies for solving disputes; and accepting of the advice of a neutral party.

## Collaboration between public and private services is difficult

A promising strategy would be to integrate these more helpful private services in the court system. Private innovation and organisational skills can then be combined with the neutrality and legitimacy of courts. This is not happening, however. Few countries have succeeded in fully integrating mediation, online supported dispute resolution or problem solving criminal justice in their courts. Rules of procedure need to be changed for this. Opposition from professional bodies can be expected. Rules for purchasing and tendering inhibit seamless integration.<sup>15</sup>

## The bottom line for gamechangers does not look good

OECD and the Taskforce on Justice want to see gamechangers, in particular for civil and criminal justice. Because of the submission problem, directly serving the public with civil or criminal justice is difficult. An alternative would be to offer the new process or technology to the courts, police, or prosecution, so that they can increase the number of citizens they serve. But as we have seen in [Chapter 2](#), this would not do much good for the court revenues. Such a game changer would just add to the cost of providing court, police, or prosecution services. Moreover, courts, police and prosecution are government services. They are obliged to tender for whatever they buy. They cannot easily enter into a research and development partnership that would be needed to design, build, improve and scale a new type of service.<sup>16</sup>

***Courts, police and prosecution cannot easily enter into a research and development partnership that would be needed to design, build, improve and scale a new type of service.***

## Will innovators find a way around these barriers?

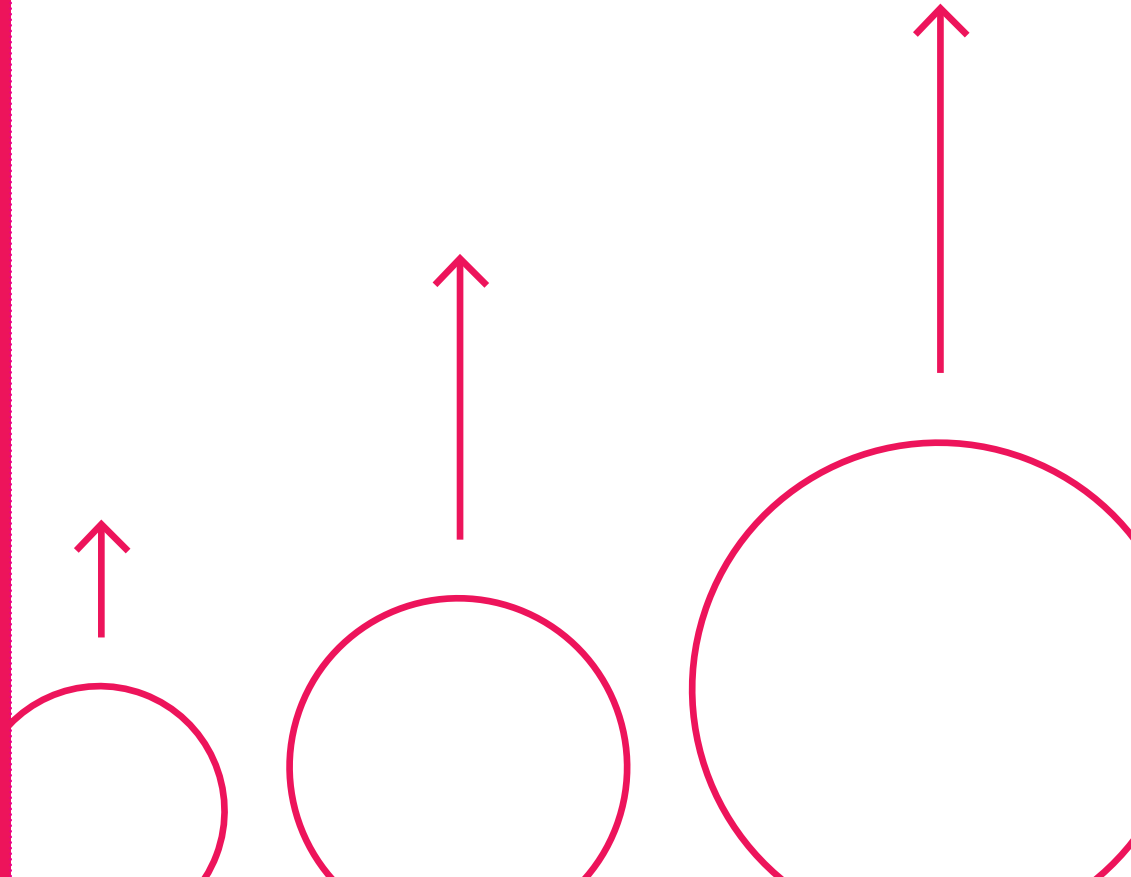
Demand for justice is huge and people are innovative. It is time to take a look at the pipeline of potential gamechangers and think strategically about how to mobilise investment in them.

## References

- 1 See next note. For lawyer or professional advice service, the range is 3% (P20) to 13% (P80).
- 2 Data from World Justice Project, *Global Insights on Access to Justice*, 2019. The percentage of people who used each type of advisor has been multiplied by the percentage of people who used an advisor in the corresponding country income category or in the world. It should be noted that many respondents report using more than one advisor.
- 3 HiiL, *Understanding Justice Needs: The Elephant in the Courtroom*, 2018, p. 86-95.
- 4 Lisa Moore and Trevor Farrow, *Investing in Justice: A Literature Review in Support of the Case for Improved Access*, Canadian Forum on Civil Justice, 2019.
- 5 World Bank, *A Tool For Justice: A Cost Benefit Analysis Of Legal Aid*, 2019.
- 6 HiiL, *Understanding Justice Needs: The Elephant in the Courtroom*, 2018, p. 67-72.
- 7 Data from World Justice Project, *Global Insights on Access to Justice 2019*, average score of 101 countries.
- 8 Rodrigo Nuñez and Maurits Barendrecht, Costs as a barrier to justice: empirical findings, HiiL, 2018.
- 9 See the HiiL *Justice Dashboard* for spendings on five different types of problems in 15 countries. Disclaimer on cost data, see OECD.
- 10 For everyday disputes among people. Private arbitrators are generally perceived as a legitimate third party in commercial disputes among companies; in disputes among relatively sophisticated parties, cost-benefit analysis tend to play a higher role than in disputes among ordinary citizens.
- 11 See for a recent overview: Peter Cashman and Eliza Ginnivan, *Digital Justice: Online Resolution Of Minor Civil Disputes And The Use Of Digital Technology In Complex Litigation And Class Actions*, *Macquarie Law Journal*, 2019, p. 39-81.
- 12 HiiL, *ODR and the Courts: The Promise of 100% Access to Justice*, 2016; HiiL, *Understanding Justice Needs: The Elephant in the Courtroom*, 2018, p. 113; Shannon Salter, *Online Dispute Resolution And Justice System Integration: British Columbia's Civil Resolution Tribunal*, *Windsor Yearbook on Access to Justice*, 2017.
- 13 William Landes, Richard Posner, Adjudication as a private good, *The Journal of Legal Studies*, 1979; Maurits Barendrecht, *Legal aid, accessible courts or legal information? Three access to justice strategies compared*, *Global Jurist*, 2011; HiiL, *Dialogue: Releasing the Value of Courts*, 2013.
- 14 This is known as the submission problem.
- 15 HiiL, *ODR and the Courts: The Promise of 100% Access to Justice*, 2016.
- 16 HiiL, *ODR and the Courts: The Promise of 100% Access to Justice*, 2016.

5

INVESTORS WILL FUND  
SCALABLE INTERVENTIONS



## Public investment is needed

Together with our partners in delivering this report, we tried to obtain an overview of current investment in people-centred justice — public or private. The basis for this is our work with justice innovators over the past 10 years and our monitoring of trends in the justice sector worldwide. To start, we see almost no public investment in new services or procedures. This is in line with the [Chapter 2](#) finding that ministries, courts and other public institutions have few incentives to invest. The OECD report contains detailed roadmaps for designing, implementing and monitoring people-centred justice journeys.<sup>1</sup> Yet we find very little money allocated to such activities in the budgets of ministries of justice or sector development plans.

## Private investors stay away from people-centred civil and criminal justice

The investments in legal tech are well monitored and categorised according to types of services provided. One overview of start ups by Legal Geek has 11 categories, including one for consumer services, with sub-categories for legal services, employment, real estate and dispute resolution. The 22 start ups in these categories mostly provide help with specific claims, such as appeals against fines, airline delay compensation or claims against landlords. Only few provide general support in starting court cases or resolving the disputes.<sup>5</sup> In 2019, investments in legal tech exceeded \$1 billion for the first time. Most money goes to start-ups providing services to major law firms serving companies (e-discovery, automated legal research). Others target companies directly (contract management, electronic signatures, new models for legal services). Only 2.8 % of the 2018 and 2019 investments are going to services directly oriented toward individual people struggling with legal problems for which they seek access to civil or criminal justice.<sup>6</sup> The largest of these investments (\$12.5 million) was for a platform providing consumer legal help to undo life insurance contracts.<sup>7</sup>

## Government investments in people-centred processes

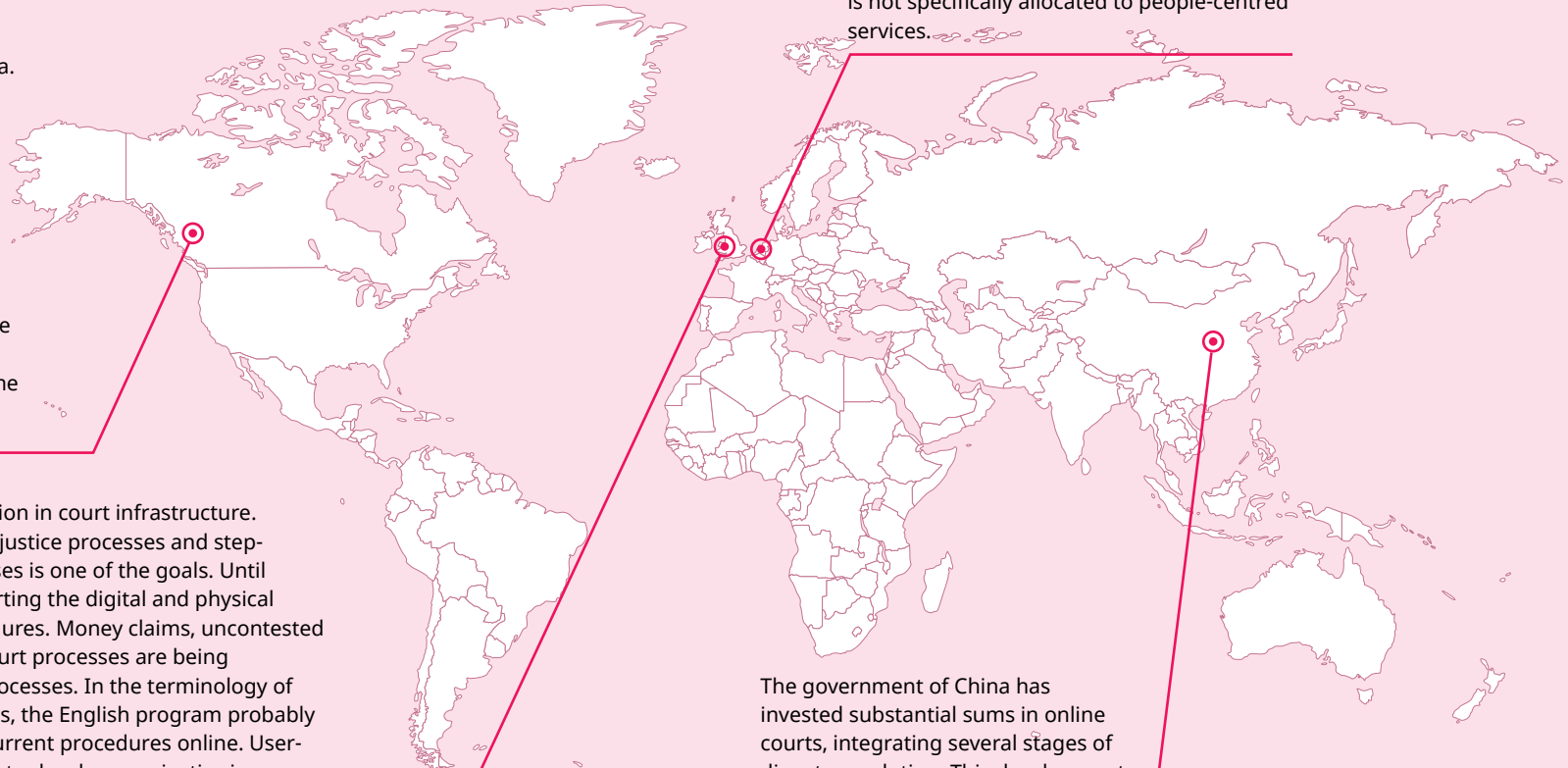
### User-centred design from problem to outcomes

One prominent example is the Civil Resolution Tribunal (CRT) in the Canadian province of British Columbia. The initial investment in the CRT was less than €10 million and its annual budget remains less than €5 million.<sup>2</sup> The tribunal now offers a mandatory one-stop process for motor vehicle injury disputes up to \$50,000, small claims disputes up to \$5,000, strata property (condominium) disputes of any amount, societies and cooperative associations disputes of any amount and shared accommodation (and some housing) disputes up to \$5,000.

England and Wales is investing £1 billion in court infrastructure. Developing problem-solving criminal justice processes and step-by-step civil justice resolution processes is one of the goals. Until now, most investment goes to supporting the digital and physical infrastructure of current court procedures. Money claims, uncontested divorces and many other standard court processes are being streamlined with online forms and processes. In the terminology of Richard Susskind's book *Online Courts*, the English program probably qualifies as *online judging*: bringing current procedures online. User-centred design has not yet been used to develop new justice journeys, starting from the problem experienced by the users and ultimately delivering the outcomes they need. This is what Susskind, focusing on courts as providers of such services, sees as the future. His online courts would also inform people, enable them to negotiate, receive facilitation and a court decision if needed.

In the Netherlands, €1 million is allocated to investments in "societally effective" court procedures from a total budget of more than €1 billion. That is 0.1% of the court budget, instead of the 2-4% that is generally recommended for research and development. Some budget is also available for innovation in the criminal justice supply chain, but this is not specifically allocated to people-centred services.

The government of China has invested substantial sums in online courts, integrating several stages of dispute resolution. This development builds on a huge demand for solutions, in a country with relatively few lawyers and very advanced in developing and using online services.<sup>3</sup>



CEPEJ publishes a wealth of data about justice systems in Europe. In their statistics, there is no specific mention of investments other than in court buildings. Courts in Europe spend 74% of their budgets on salaries, 2% on computerisation, 4% on expenses, 7% on court buildings, 1.4% on investments in court buildings and 0.3% on training.<sup>4</sup>

As far as we know, there are no major university research projects aiming to design scalable services in the way suggested by the OECD.

## Platforms delivering wills and contracts are attracting investment

Wills, registrations and draft contracts are increasingly delivered through online platforms. Legal Geek has 28 startups in this category, suggesting this is a more promising field for investors. The market leader is LegalZoom, which recently attracted a \$500 million investment in its platform that delivers contracts, wills and other legal documents. LegalZoom has a clear focus on small and medium businesses, but also serves individual people seeking access to justice. These companies seem to have discovered models that satisfy the conditions for private investments. Another interesting venture is Clio, which will invest \$200 million in a platform that assists small law firms and solo practitioners in their interactions with clients. If the lawyers supported by Clio's platform use evidence-based working methods in the future, the platform may help to make legal services provided by lawyers more standardised and effective.<sup>8</sup>

## Early stage investment in justice innovations is minimal

Since 2010, HiiL has supported justice innovations aiming to prevent or resolve the most urgent and frequent justice problems for individuals, including those related to family, land, neighbor, employment and crime, as well as the legal issues they encounter as self-employed entrepreneurs. We actively scouted many hundreds of early stage innovations from all continents, focusing on lower and middle income countries. Most of the investments in these innovations are family capital or grants from NGOs. Many of the promising innovations we found serve small companies, rather than individuals. Business models for legal services to individuals are much more problematic (see box).

## Current business models in HiiL innovation portfolio

The most frequent business models for justice innovations that the HiiL Justice Accelerator encounters are variations on the following themes:

- The majority of innovations targets private companies for revenues. DIY (Do It Yourself) platforms often let small companies pay for documents or automated legal information, followed by bespoke legal services, which are facilitated through the platform (see the LegalZoom example in the main text).
- Another model involves the sale of high-quality, transparent, visualised, and balanced contracts to one (richer) party in the relationship. This can be done via a white label model. One innovator sells employment contracts in this way. The value of the contract is that it provides fairness, trust and prevents disputes.

- Following the money, many innovators try to sell their innovations to government agencies or courts. Case management systems, customer relationship tools and other procedural enhancements can be sold under a licence fee (per user).
- Documents (wills, contracts) can be sold to individuals for a fee.
- Some innovations enhance the work and reliability of an existing type of service provider. In Nigeria, thrift collectors collect money from the unbanked. In India, women help people with their social security applications (see the Haqdarshak example in the main text). A platform can increase the reliability of these services, take over some of the non-performance risk and facilitate the flow of capital and information. The platform takes a % of the fee.
- Platforms that help people claim money from government agencies or companies is a variation on this theme. Such platforms take a cut from the money received. DoNotPay and other platforms help people to object to fines. These platforms offer a helpful service, but do not necessarily address the most urgent justice needs.
- Legal information platforms cannot subsist on advertising income. The only model HiiL has seen working is building a massive audience with some conversion to legal services. Part of the services can be facilitated by forms, chatbots or other tools on the platform.
- Some innovators sell hardware. An alarm system alerting the community in case of theft or violence has been developed and is sold at a low price in many places.
- Third party dispute resolution services such as facilitated negotiation, mediation or adjudication are difficult to sell, because of the submission problem. Services that target higher income categories can charge substantial sums for a well-supported divorce service, with high levels of online support and personal services when needed.
- Fruitful relationships between private and public services can solve this problem. The Lagos small claims courts and an innovative settlement service both benefit from higher numbers of settlements, enforced via certification by the court.

## Private investments require scalable models for service delivery

In order to attract private investments, the justice sector must present value propositions that are attractive to investors. Investments with measurable returns (as opposed to funding for program operations) are virtually unheard of in civil and criminal justice. A paper by Social Finance Inc, commissioned by Open Society Foundations and the Kresge Foundation, investigates civil legal aid as a field for outcome-based funding arrangements. The paper lists six criteria for such arrangements that can guide the search for better financing models:

1

There is a defined target population

2

There are measurable impact goals

3

The intervention has a data-driven track record of evidence demonstrating that it works

4

There are one or more capable service providers that have the ability to scale up with fidelity to the service delivery model

5

There is significant value generated for government, community and individuals

6

There is strong stakeholder engagement across public and private sectors

## Only specialised and standardised services meet these criteria

Some services and innovations seem to meet these criteria. Haqdarshak, a service supported by the HiIL Accelerator, specialises in access to social benefits for citizens of India. Its site helps clients assess their eligibility for one of the thousands of benefit schemes in India's states. Personal assistance to fill in forms is available locally, for \$1 per form. The impact of obtaining social benefits is measurable. The assistance model is easily replicable and the service is scalable across India. Achieving access to social benefits for the target group is supported by public and private sector stakeholders, at least for the time being.<sup>9</sup>

## Many legal services will need an upgrade in order to become investable

Can other, existing legal services become investable? Many services create significant value according to cost benefit analysis. Other criteria for becoming investable are more difficult to meet. Paralegal programs in Africa and Asia often work for a broad group of potential customers, from individuals engaged in family disputes to communities facing mining companies that are negatively impacting the environment. Informal justice providers in communities do not typically have a replicable model of service delivery. Family courts and criminal defence lawyers are not yet accustomed to measuring impact.

## The traditional professional services model has limitations

The apprenticeship model for training young lawyers or judges may not lead to services that are scalable in a standardised way. Investors will be less interested in services that mainly refer clients to lawyers, because the impact of legal advice or representation is uncertain. Sometimes, impact is clear: LegalZoom adds value by giving SMEs their licence to operate. LegalZoom also uses the brand to refer clients to individual lawyers that are rated on the site. In this model, each lawyer still has his own way of handling cases. Will this lead to fair, effective outcomes that can be monitored? This is questionable. In line with this, we do not yet see lawyer referral services for individuals that have attracted substantial investments.

## One-stop shop services<sup>10</sup> do not yet exist for most justice problems

In the OECD and Task Force reports on access to justice, the emphasis is on services that focus on outcomes for citizens. These services start from the problem: an accident; a neighbour dispute; a patient leaving hospital in a worse condition with questions about the quality of their treatment; or a false accusation in the media. Ideally, they provide a one-stop service from problem to solution. For some legal problems, such a service is available. The very successful eBay resolution system starts from a complaint by the buyer. The system provides a one-stop service. By contacting the seller, providing the parties with norms and information how to solve different types of complaints, giving access to mediation if the parties fail to settle, and

*The emphasis is on services that focus on outcomes for citizens. These services start from the problem: an accident; a neighbour dispute; a patient leaving hospital in a worse condition with questions about the quality of their treatment; or a false accusation in the media.*

leaving open the option of adjudication, eBay ensures that the complaint will always be settled and the outcome complied to. Money will be returned to the buyer, and the seller may be punished with negative reviews or even excluded from the platform.

## Gamechangers can provide all services to solve a dispute

In the world of dispute resolution, one stop services are still an exception, however. Courts deliver a process to involve the other party and adjudicate. Only a few courts now supply information and facilitate settlements as a standardised product. The design of most court processes rests on the assumption that both parties will hire a lawyer or mediator to deliver this product. For many crimes and conflicts, some form of therapy may be needed as well. This product is also not integrated in the process.

## Public investment is needed to integrate civil justice services

Developing integrated, one-stop services requires substantial investment. The adjudication and enforcement services delivered by courts need to be fully integrated with standardised information, negotiation and mediation services.<sup>11</sup> The design is complicated, because a resolution process includes many phases, steps and actions. For each action, the process nudges the parties to behave in a way that helps to resolve the dispute. Assumptions about how this can be done in a fair way have to be tested in multiple iterations.<sup>12</sup>

## Criminal justice processes may be redesigned as one-stop service

This can also be done for criminal justice. The intakes done at police stations need to be followed by investigation, therapeutic interventions, interventions providing security and giving voice to the people involved. A fully integrated service for violent crime would also aim at prevention, restoration for the victims, retribution and rehabilitation of the offender. Contributions from the wider community will need to link with services provided by government agencies. Newly designed IT systems will be indispensable to ensure a one-stop shop experience and standardised, high-quality services. The investments for this are high risk and costly. Private investors are unlikely to step in. This is also a very different form of public investment than existing investments in IT systems for courts, legal aid schemes for lawyers or reforms of procedural codes.

## Technological breakthrough is possible

Prototypes of one-stop procedures are available. Suppliers of case management systems for courts already have the technology to support individuals with a legal problem by providing information, engaging the other party, structuring negotiation, facilitating and - of course - adjudicating. What is missing is a clear trajectory to large-scale adoption by the independent actors in the justice sector: courts, prosecution and legislative bodies.<sup>13</sup> Without it, private investors are unlikely to take the risk.

## Mission-oriented innovation policy may deliver breakthroughs

This “justice investment gap” may require new arrangements between public and private actors. The justice sector may be an example of what economist Mariana Mazzucato and others are calling for.<sup>14</sup> Policy makers in the EU, Germany and the US are now looking at the concept of a mission-oriented innovation policy to address such challenges. They draw on examples of breakthrough technologies that have been initiated by government investments: GPS, interactive screens, nuclear technology, mobile technology and the internet itself. Creating one-stop shop justice journeys or providing basic community justice services may be another example of “concrete problems that require system-wide transformation across different types of sectors, and involve partnerships between different actors (private, public, third sector, civil society).”

Mazzucato identified a number of insights that can guide such policies:

- Measuring and evaluation should be dynamic.
- Government has a role before the private sector comes in.
- Government should act as an investor and reap part of the benefits (return on investment).
- Changing the discourse and narrative around wealth creation is key to this process. Public and private actors can form visions of what is to be created together, and how to divide both the risks and the rewards of the value that results.
- The process requires public agencies to welcome uncertainty, build explorative capacity and foster institutional learning. It is not mistakes that should be feared, but the lack of learning from them.

## Private and public investment depend on better business models

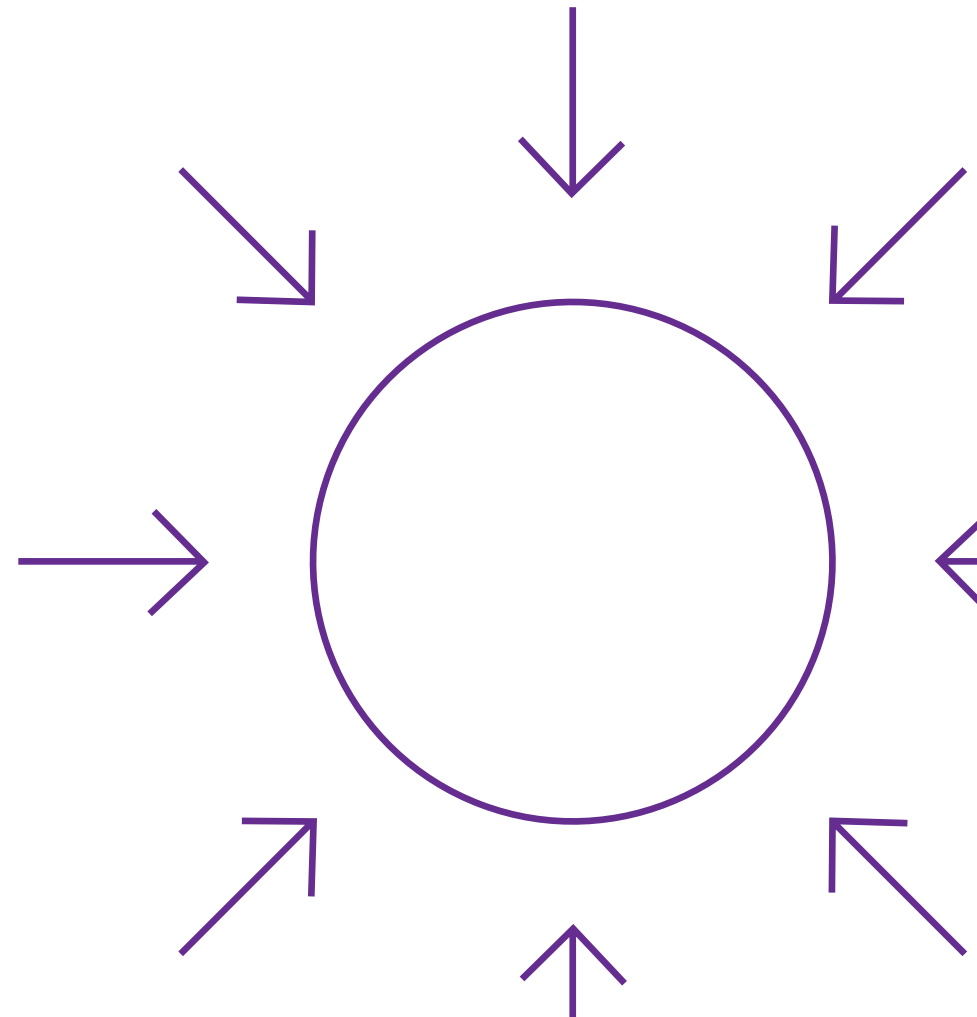
We identified a number of investable opportunities. The technologies for game-changing innovations are available and have been tested. The private and public investments needed to bridge the justice gap are small, compared to the benefits. But investors are unlikely to step in without a clear trajectory to scale. Even in a time of low interest rates and very cheap money, with a growing middle class that is willing to spend on fair solutions, investors stay away from processes that can provide what many people long for: voice, respect, an effective solution to a nagging problem, fairness, peace and the ability to move on with their lives. This needs to change.

## References

- 1 OECD, [Equal Access to Justice for Inclusive Growth: Putting People at the Centre](#), 2019.
- 2 [Media says](#) platform costs 11 million Canadian dollars and annual operating budget of 5 million.
- 3 Sebastian Ko, [5 factors driving the Chinese lawtech boom](#), World Economic Forum, 2019.
- 4 Median country. Source: CEPEJ, European systems of justice, 2018 (2016 data), p. 45.
- 5 [The Legal Geek Start Up Map](#) is probably the most useful categorization.
- 6 See Bob Amborgi, [At \\$1.2 Billion, 2019 Is A Record Year for Legal Tech Investments - And It's Only September](#), LawSites, 2019 for an overview of 2019 investments; See the overview of technology supporting legal empowerment by Tom Walker, [Technology And Legal Empowerment Around The World](#), The Engine Room, 2019.
- 7 Bob Amborgi, [At \\$1.2 Billion, 2019 Is A Record Year for Legal Tech Investments - And It's Only September](#), LawSites, 2019.
- 8 This remains to be seen: Clio has not yet disclosed its plans.
- 9 One risk of this service is that some government agencies may be reluctant to make the distribution of benefits easy.
- 10 The terminology is not yet firmly established. Other terms used for these kind of services are "wraparound," "holistic," and "integrated." See, for example: Bronx Defenders, Holistic Defense, and Neighbourhood Justice Center, [Integrated Services](#).
- 11 Shannon Salter, [Online Dispute Resolution And Justice System Integration: British Columbia's Civil Resolution Tribunal](#), Windsor Yearbook on Access to Justice, 2017.
- 12 Ayelet Sela, [E-Nudging Justice: The Role of Digital Choice Architecture in Online Courts](#), *Journal of Dispute Resolution*, 2019.
- 13 Information from [Tyler Technologies](#) and [Visionhall](#), providers of case-management systems for courts, and from [Justice42](#), provider of an integrated online dispute resolution platform for divorce/separation.
- 14 Mariana Mazzucato, [Mission-Oriented Innovation Policy: Challenges and Opportunities](#), RSA Action and Research Centre, 2017.

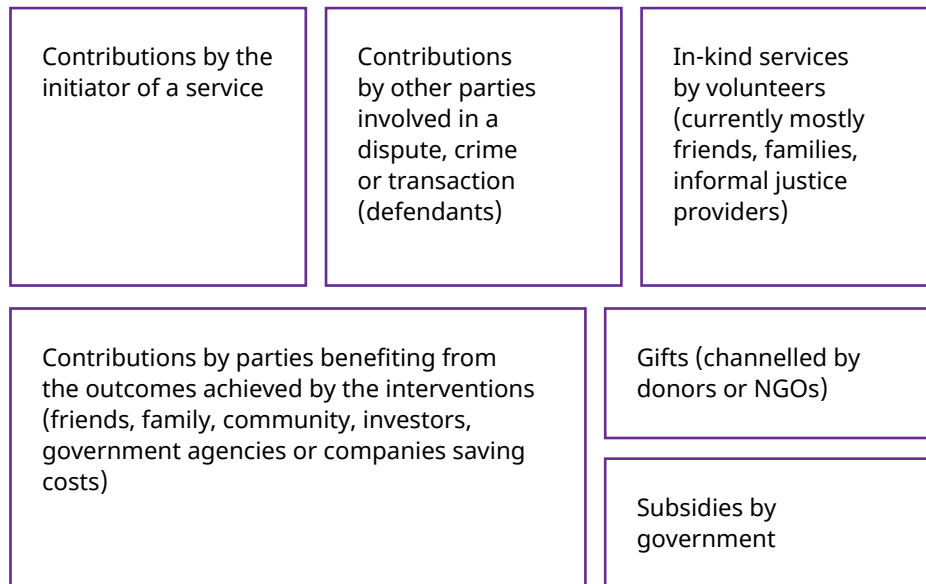
6

SMART CONTRIBUTIONS  
CAN COVER MOST COSTS



## Revenues need to increase and cover costs

In order to reach more people with effective services, the justice sector needs to grow and deliver more effective interventions. Revenues need to support this. These revenues must come from one or more of the following sources:<sup>1</sup>



In the following paragraphs, we investigate how these revenues can be increased, relying on best practices in the justice sector.

## Fees paid by initiators are already an important source of income

Fees paid by initiators are a good place to start. Fees already cover the costs of most private legal services (except a tiny amount covered by legal aid subsidies). Most problems are settled by agreements or by other interactions between parties. People are assisted by lawyers, by a range of other professionals or by volunteers. Lawyer compensation tends to be calculated as an hourly fee, for tailor-made services delivered to one individual. In some countries (Germany, Austria, Turkey, Japan are examples) lawyers tend to charge fixed fees.

## Economists support court fees

Fees provide revenues that equal 40% or more of the costs of courts in many European countries (see [Chapter 2](#)). Economists mention a number of reasons for funding courts through fees.<sup>2</sup> Court interventions have both private and public benefits. Internalisation by the litigant of all costs and benefits that result from their decision is efficient. Court fees regulate access to justice and help avoid excessive litigation. Fees provide monetary resources for the administration of justice. Pricing also creates incentives for the use of substitutes, like ADR. Increasingly, the arguments for fees for access to justice interventions are also accepted by the legal research community.<sup>3</sup>

## Court fees are hardly a barrier to access

A study among court users in the UK found that users typically felt that court fees were affordable, and they would not have been deterred from starting court proceedings if court fees had been set at the higher levels they were asked about in the study.<sup>4</sup> In [Chapter 2](#), we presented data collected by the World Justice Project, showing only 3% mentioned access problems such as costs. The main reasons people do not use third parties are that they think they can resolve the problem or do not like elements of the procedure third parties offer.

## Court fee schedules are poorly targeted

Companies, prosecutors and other government agencies are the main initiators of court action and bring complicated cases which require very substantial court capacity. Many countries do not make them pay for the use of courts or only charge a small amount of fees. Court fee schedules tend to assume that people going to court have a problem about money and often charge a percentage of the amount at stake. For other interventions, such as injunctions, referrals or settlements, there may be a fixed fee. This tends to be low.

## Court fees are only a small part of the costs of access

Depending on the procedure courts offer, a court user may face other cost items. The total bill of going to court may include costs of serving documents, legal representation, expert evidence, time spent waiting and traveling, and the stress of going through the procedure. In a more user-friendly process, for which courts recover the full costs, the total costs for the court user may decrease.

## Best practices on fees for justice services are emerging

A large comparative study on the costs of civil litigation came to the following conclusions in 2010:<sup>5</sup>

- Court fees should be differentiated on the basis of the extent of use of resources. They should be related to the size of tasks of the court and follow a “pay as you go” structure.
- Subsidies by the state or cross-subsidies by wealthy litigants should be transparent.
- Lawyer fees are the biggest part of total costs and should be proportionate to the value at stake. They should also be predictable - preferably by tariffs or fixed fees established before the case starts.
- Lawyer fees should be determined by the tasks in litigation or dispute resolution: fewer tasks in simplified procedures reduce costs.
- More needs to be done to put costs that are proportional into effect.

- Predictable costs come with standardisation. A 'pathway' and 'track' approach has a number of attractions.
- Shifting more tasks from the lawyers to the judge lowers costs.
- For large (corporate) litigation it may be difficult to predict costs. Then case management is the answer.

## Fees may be an excessive burden on some people

Few studies have looked at the effects of court fees empirically. A recent Spanish study found that the effects are different for different types of court procedures, serving different legal problems.<sup>6</sup> Many states in the US recover fees from criminal justice defendants for covering part of the costs of defence, detention, probation services, community supervision or electronic monitoring. A recent study found that offenders had a median additional debt burden of \$260 because of such fees and suggested this could indeed be a barrier to reintegration in some cases.<sup>7</sup> Another study found that user contributions to legal aid do not seem to influence decisions to use the service.<sup>8</sup>

## Targeted subsidies can resolve this problem

In the US, the court has the power to waive fees for defendants in criminal cases.<sup>9</sup> Legal aid systems often provide fee waivers as well. Based on the World Justice Project data in the Table in [Chapter 4](#), roughly 10% of individuals using courts or other legal services would need to be subsidised due to financial limitations that would otherwise prevent them from accessing justice. Justice institutions are working on making subsidies more targeted already, by refining their assessments of ability to pay.<sup>10</sup>

## Legal needs occur in times of crisis

Fees are often burdensome because legal problems are associated with life events and drops in income. When a person is indebted, jailed, evicted, loses a job, is in hospital after an accident, has mental health issues or starts to live separated from his spouse, his or her financial situation becomes more risky. Understandably, courts and providers of legal services do not want to run the risk of not being paid, so they ask people to pay upfront. Unfortunately, this increases the financial pressure on individuals who are already struggling.

## Shifting the timing of payment helps

Pay as you go systems, with more predictable procedures, can relieve this pressure. The outcome of a fair and effective resolution process will often lead to a more stable financial situation. Monthly fees, or fees due after certain outcomes have been achieved, can be a solution for people who go through a temporary crisis.

*Monthly fees, or fees due after certain outcomes have been achieved, can be a solution for people who go through a temporary crisis.*

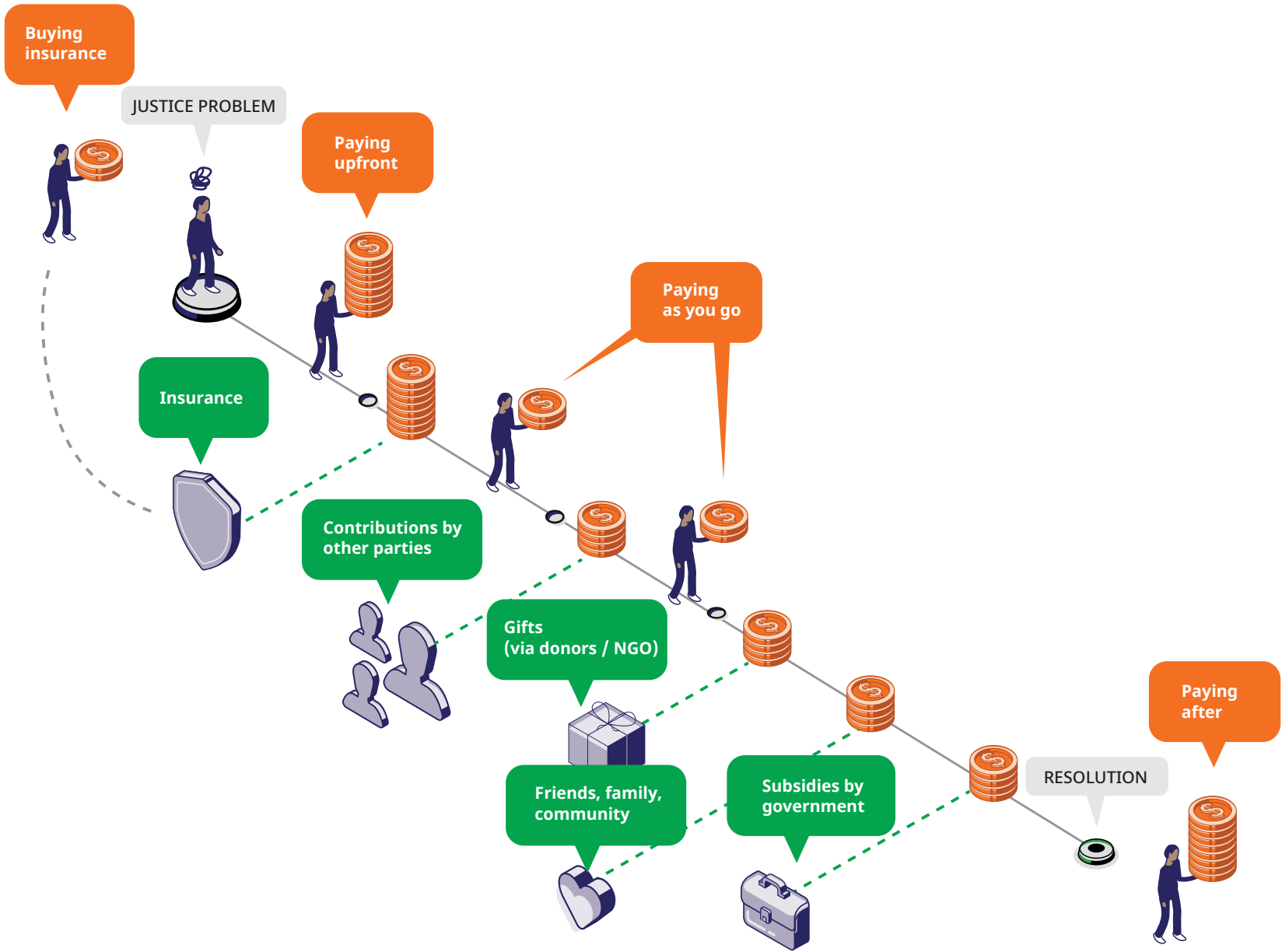
## Legal expenses insurance can be helpful

Legal expenses insurance is offered mostly in countries where legal costs are predictable. Up to 40% of families may have such a policy in these countries. Insurance policies tend not to cover family law and criminal law. Innovation on the basis of legal expenses insurance has been complicated by conflicts with lawyers about the way they run their business. In some countries, insurers can use their own personnel to resolve disputes on behalf of clients. In other countries, this is prohibited or disputed. Attempts to control the costs of contracting lawyers from the private sector have been hampered by rules that suggest the client can freely choose his lawyer, the costs of which the insurer has to pay.<sup>11</sup>

## Costs can be shifted to other contributors

In many types of disputes, contributions can also be raised from other parties. For employment disputes, it is customary in many countries that an employer pays most of the legal costs of the employee. Reasonable costs of resolving disputes can be shifted from personal injury victims to motor vehicle insurance or to hospitals. Vendors can contribute to disputes raised by consumers. Usually, such “defendants” can prevent disputes from escalating by having good processes in place, so it is reasonable and economically efficient to let them contribute more. Costs of crime prevention and prosecution can be covered by local taxes or by contributions from owners who value security and are already paying for walls, barbed wire or guards.

SMART CONTRIBUTIONS: WHO PAYS AND WHEN

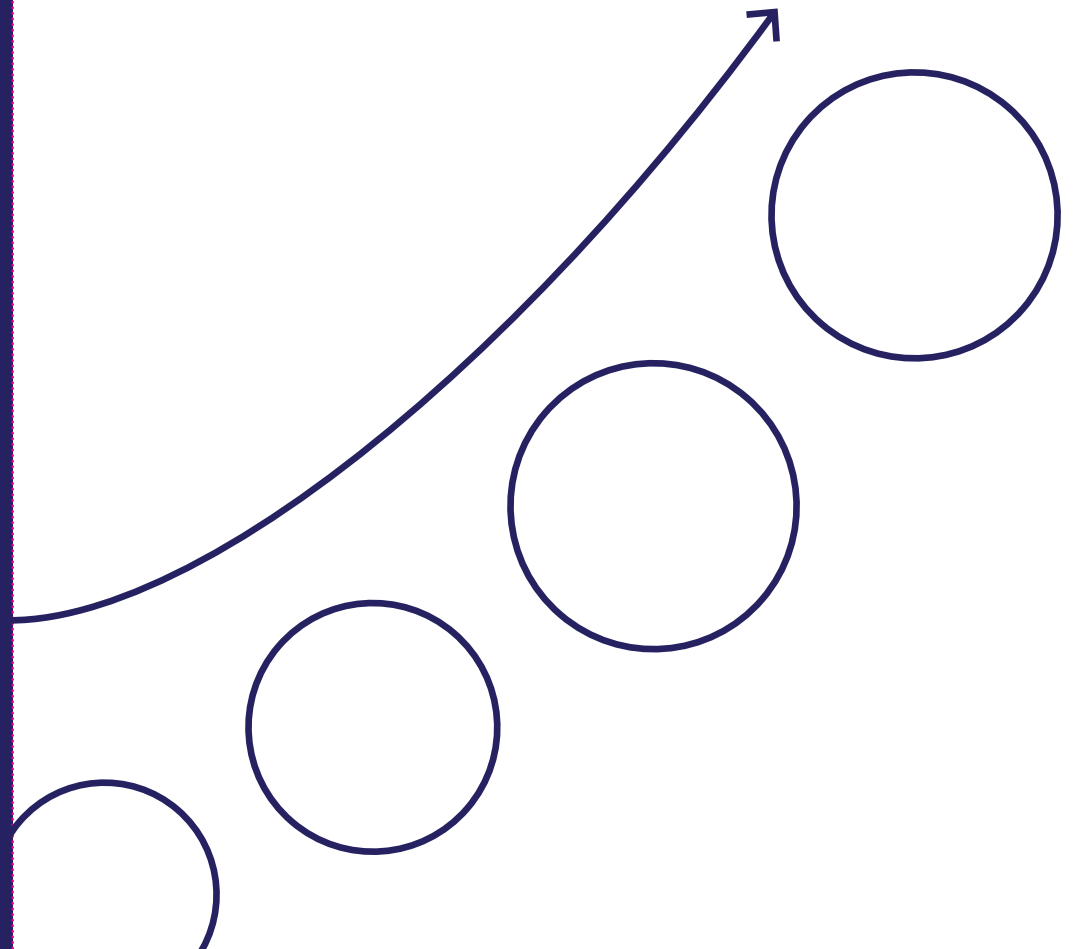


## References

- 1 These are the viable models we see in the [Hiil portfolio of innovations](#). Other models, such as advertising revenues, may contribute a bit. Referral fees and other fees charged from suppliers do not increase the revenues available for services.
- 2 Rafael Mery Nieto, [Court Fees: Charging the User as a Way to Mitigate Judicial Congestion](#), *The Latin American and Iberian Journal of Law and Economics*, 2015.
- 3 Andrew Higgins, [The Costs of Civil Justice and Who Pays?](#) *Oxford Journal of Legal Studies*, 2017, 687–713.
- 4 Isabella Pereira, Paul Harvey, William Dawes, and Helen Greevy, [The role of court fees in affecting users' decisions to bring cases to the civil and family courts: a qualitative study of claimants and applicants](#), Ipsos MORI Social Research Institute, Ministry of Justice Analytical Series, 2014.
- 5 C.Hodges, S. Vogenauer and M. Tulibacka, *Costs and Funding of Civil Litigation: A Comparative Perspective*, 2010.
- 6 Juan Mora-Sanguinetti and Marta Martínez-Matute, [An Economic Analysis of Court Fees: Evidence from the Spanish Civil Jurisdiction](#), *Banco de Espana Working Paper*, 2018.
- 7 Nathan Link, [Criminal Justice Debt During the Prisoner Reintegration Process: Who Has It and How Much?](#), *Criminal Justice and Behavior*, 2019.
- 8 Ronald Wright and Wayne Logan, [The Political Economy of Application Fees for Indigent Criminal Defense](#), *William & Mary Law Review*, 2006.
- 9 Ronald Wright and Wayne Logan, [The Political Economy of Application Fees for Indigent Criminal Defense](#), *William & Mary Law Review*, 2006.
- 10 [LFO \(Legal Financial Obligations\) Calculator \(State of Washington\)](#), Fines & Fees Justice Center, 2018.
- 11 International Bar Association, *Legal Expenses Insurance and Access to Justice*, 2019.

7

OTHER SECTORS  
SHOW HOW TO SCALE  
TO 100% COVERAGE



## In healthcare, coverage for basic services is almost universal

Other sectors have faced similar challenges in funding and achieving universal coverage for high quality services. In 2015, only 400 million people or 8% of the world population did not have access to one or more essential health services.<sup>1</sup> This gap is decreasing rapidly. Contrary to public perception, health care costs have stabilised at 10% of GDP since the year 2000.<sup>2</sup> Quality improvements, assured by standardised, evidence-based treatments, have led to huge gains in health and life expectancy.<sup>3</sup> A thriving health care sector provides work for hundreds of millions, working in big pharma, in multinationals delivering health tech, in medical research, in hospitals or as a primary healthcare worker in a community.

## Lessons from healthcare: local delivery and accountability

Universal coverage for basic healthcare provided a powerful vision. Once that vision was adopted, many insights developed that could guide policies. Two studies by the World Health Organisation found the following:<sup>4</sup>

- Hospitals tend to deliver rather costly treatments for not so common diseases. Many common diseases can best be prevented and treated locally, with standardised treatments. So investing in primary health care centres works.

- Start with covering one disease and gradually expand the coverage, disease by disease.
- Self-help and help by family or friends is also part of the strategy to achieve universal coverage.
- In Rwanda, a policy was enacted to provide insurance for the 20% poorest of the population, paid by the government.
- Data about local provision of healthcare outcomes and local accountability are essential for the success.

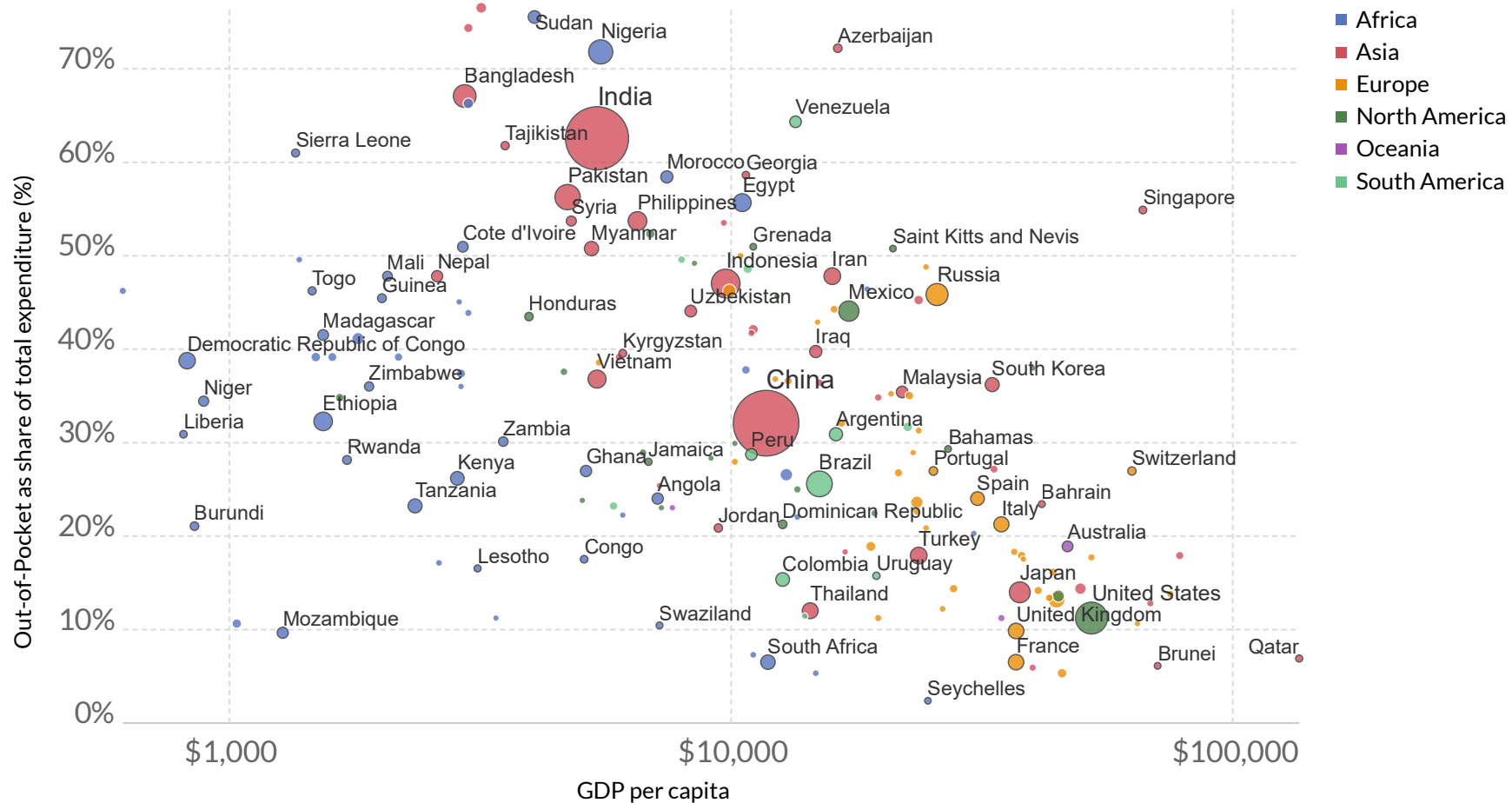
## Fees expand coverage

In primary healthcare, a no fees policy is desirable for services with a huge public value: vaccines and treatment of contagious diseases. Fees have increased the use of healthcare services where few services were available or quality was poor, or where informal fees could be replaced by more transparent formal fees.<sup>5</sup> Most people are willing to pay and not discouraged by fees from using services.

## SHARE OF OUT-OF-POCKET EXPENDITURE VS. GDP PER CAPITA, 2014

Out-of-pocket expenditure on healthcare as percent of total healthcare expenditure vs. gross domestic product (GDP) per capita, measured in 2011 international-\$. 'Out-of-pocket' refers to direct outlays made by households, including gratuities and in-kind payments, to healthcare providers

Our World  
in Data



## Fees can be a problem for some users

In health care, fees may create huge financial problems for the poor and people with chronic conditions. In 2015, an estimated 6% of people in low- and middle-income countries were pushed into extreme poverty because of health spending.<sup>6</sup> In response, countries have tried to reduce fees at the point of service and replace them with insurance schemes. However, the health care sector found that abolishing fees cannot be done overnight. A larger, flexible budget, and greater capacity to deliver medicine and treatments are necessary to meet increased demand. The interaction between frontline healthcare providers and patients changes. The paying customer becomes a patient waiting in line for high quality service. Monitoring, incentives for service providers, and rapid response to shortages are needed.<sup>7</sup>

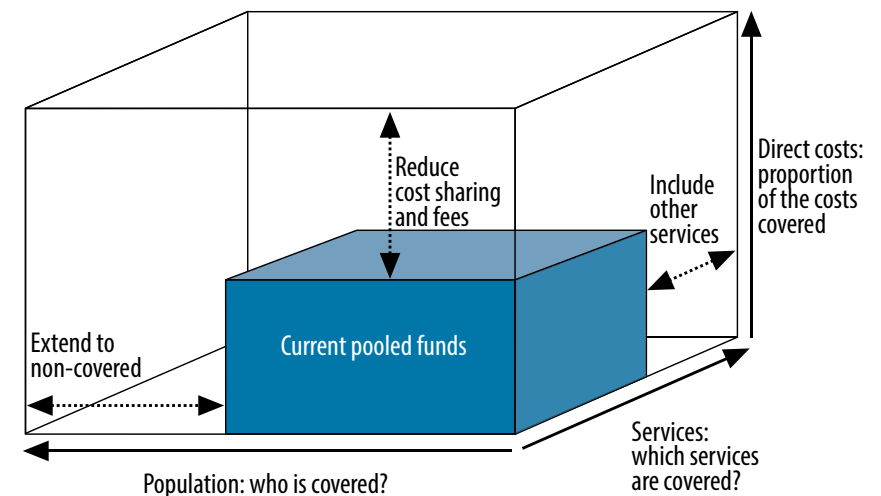
## Free packages and insurance, tailored to targeted populations

The World Bank has a research program monitoring policies to achieve universal coverage worldwide. Countries tend toward the following policies, working in the three dimensions in the Figure below:<sup>8</sup>

- A narrow universal basic package of services that are available to all with no user fees;
- Mandatory contributory programs for the higher income populations in the formal sector;

- Voluntary contributory programs in the informal sector;
- Fully subsidised coverage for the poor and other vulnerable populations.
- Decentralization of health care financing.

THE UNIVERSAL HEALTH COVERAGE CUBE



## Water and sanitation supply required huge investments.

Universal access to clean water and sanitation was a major issue during the 1990s. Huge investments were needed, both by the public and the private sector. The breakdown of financial sources was estimated to be: domestic public sector 65–70%, domestic private sector 5%, international donors 10–15% and international private companies 10–15%.<sup>9</sup>

## The entire regulatory framework was redesigned

Central governments gave a low priority to water sector issues. Social, environmental and commercial aims were confused. Political interference was endemic and water undertakings were poorly managed, within an inadequate general legal framework. Regulators were inexperienced. Lack of transparency in the award of contracts came with resistance to cost-recovering tariffs. So policies were changed, along the following lines summarised in a 2003 report, Financing Water for All:<sup>10</sup>

- Bridge the large gap between current financial flows and the investment estimates.
- No single source will be large enough to fill this gap alone. Cash flow from water revenues provides only part of recurrent costs (operation, maintenance, repairs) and only rarely contributes to funding investment.
- As the problem of water access and sanitation essentially lies at a grassroots level, decentralisation of policies will be crucial.

- The water sector badly needs reforming as a condition of generating and absorbing increased funding from all sources.
- Sustainable financing for water systems will require greatly improved cost recovery from their users and increased management efficiency. Tariffs will need to rise in many cases, but the flexible and imaginative use of targeted subsidies to the truly poor will be called for to make cost recovery acceptable, affordable, and sustainable. Cross-subsidization can be embedded in cost structures.
- Subsidies should be affordable, targeted and transparent.

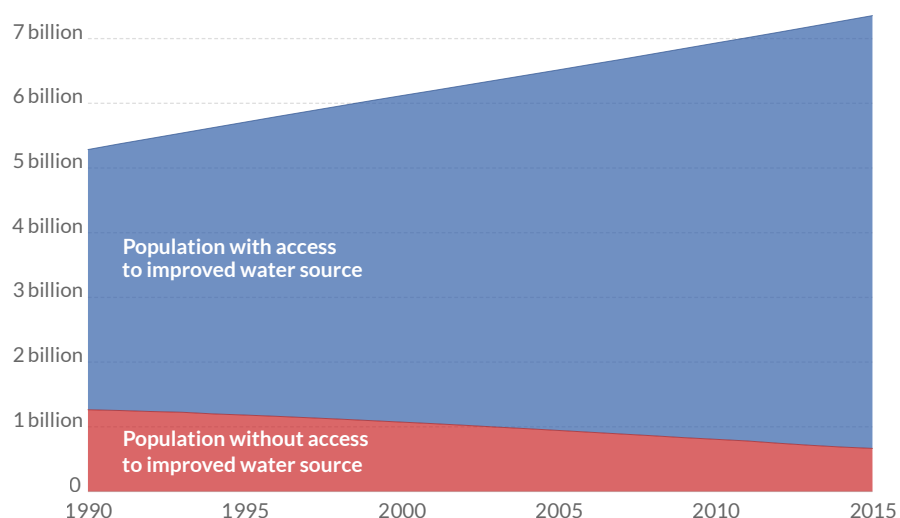
## The access to water gap is narrowing fast

In the years since, the access to clean water gap has narrowed from 24% of 5.3 billion people living on the globe to 9% of 7.4 billion people. A 2018 study by EY and Unilever shows that these policies were broadly implemented.<sup>11</sup> They suggest that the best technology (reverse osmosis) is not always needed nor affordable. Programs now need to focus on key financial indicators (revenue, fixed operating costs, marginal costs and site development costs). Given the high investments needed, and the low revenue per client, scale of water services matters and staying lean on capital is recommended. Data on critical performance indicators through a balanced scorecard are keeping the system on track.

## NUMBER OF PEOPLE WITH AND WITHOUT ACCESS TO AN IMPROVED WATER SOURCE, WORLD

The absolute number of people with and without access to an improved water source. An improved drinking water source includes piped water on premises (piped household water connection located inside the user's dwelling, plot or yard), and other improved drinking water sources (public taps or standpipes, tube wells or boreholes, protected dug wells, protected springs, and rainwater collection).

Our World  
in Data



Source: OurWorldinData based on World Bank, World Development Indicators

## Smart fees and smart regulation make the difference

What should the justice sector do to follow these best practices and examples? The following insights from other sectors can be applied:

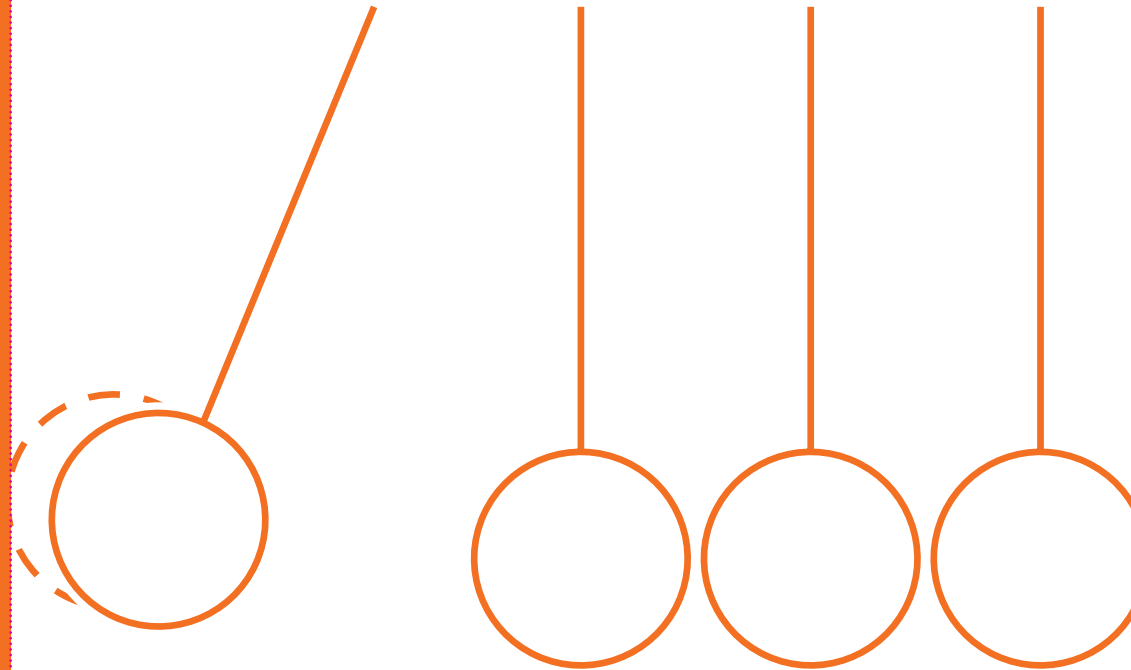
- Universal coverage is an inspiring goal;
- Private and public investments are needed;
- A smooth integration of private and public service requires sophisticated governance and high quality regulatory work;
- Targeted contributions can substantially increase revenues, building on willingness to pay for services that deliver predictable prices and outcomes through standardised services;
- Cost barriers at the point of service should and can be addressed by smart fees (well-timed, pay-as-you-go), insurance models and targeted subsidies that are affordable and transparent;
- Governments should focus on investments, rather than covering costs of services;
- Efforts should focus on strengthening self-help, local networks and standardised services for the many, rather than subsidizing high-quality and costly treatments for the few in centralised facilities;
- Start with a narrow universal basic package for all, covering a limited number of frequent and urgent justice problems, and expand from there;
- Use cross-subsidisation, in a transparent way.

## References

- 1 World Health Organisation, Tracking universal health coverage: First global monitoring report, 2015.
- 2 Esteban Ortiz-Ospina and Max Roser, Financing Healthcare, Our World in Data.
- 3 Esteban Ortiz-Ospina and Max Roser, Global Health, Our World in Data.
- 4 World Health Organisation, World health report 2013: Research for universal health coverage, 2013.
- 5 David Peters et al., Poverty and Access to Health Care in Developing Countries, Annals of the New York Academy of Sciences, 2008, p. 168-169.
- 6 World Health Organisation, Tracking universal health coverage: First global monitoring report, 2015.
- 7 Lucy Gilson and Di McIntyre, Removing user fees for primary care in Africa: the need for careful action, The BMJ, 2005.
- 8 Daniel Cotlear and Nicolas Rosemberg, Going Universal in Africa: How 46 African Countries Reformed User Fees and Implemented Health Care Priorities, Universal Health Coverage Study Series No. 28, World Bank Group, 2018.
- 9 Michel Camdessus and James Winpenny, Financing Water for All, World Water Council, 2003.
- 10 Michel Camdessus and James Winpenny, Financing Water for All, World Water Council, 2003.
- 11 Unilever, "Impact Entrepreneurs": Making Everyone's Right to Safe Water a Reality, 2018.



POTENTIAL  
GAME CHANGERS  
SHOULD ADD UP

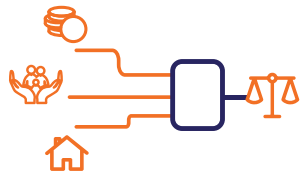


## We now zoom in on four types of services

This chapter investigates how the insights gathered in the preceding chapters can be put into practice. We look at four potential gamechangers, to explore the conditions for investing, scaling and delivering outcomes for justice needs effectively.



**Legal aid in criminal cases**



**One-stop journey for family justice**



**Online platforms for contracts and other legal documents**



**Local delivery of basic justice**

## We looked at sustainability and scalability

In the following, we explore the extent to which each service is meeting the conditions for sustainability and scale. We also investigated the costs of delivering the service - assuming these conditions would be met - as well as the investments that would be needed to improve service quality and bring it to scale. Throughout this chapter, and building on the preceding chapters, we look at the enabling environment, sustainability and the potential for investment. We draw from learnings in other sectors to assess how these services can become real gamechangers (through contributions and other revenue streams).

## The services presented are selected on the basis of their potential to bridge the justice gap

The following four delivery models are often promoted, not only by the providers of such services themselves, but also by experts and in the landmark policy reports discussed in [Chapter 1](#).

## These innovations also dominate the HiiL Accelerator Portfolio

Since 2011, HiiL has scouted innovations around the world and assisted them in scaling up. Because our goal is to provide 150 million people with solutions that prevent or resolve their justice needs by 2030, we have been on the lookout for potential gamechangers. Many of the potential gamechangers we encounter fall into one of the four categories described below.

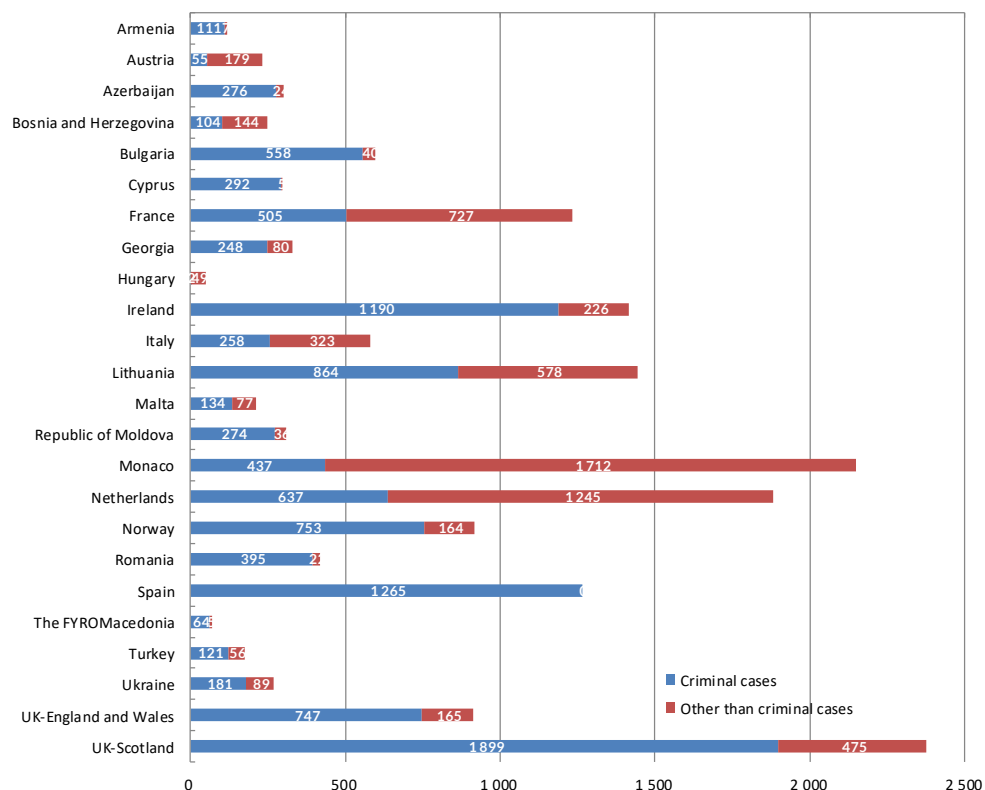


### 1. LEGAL AID IN CRIMINAL CASES

#### Defendants in criminal justice cases are the main target group

The first category we look at is legal aid by a lawyer assisting an individual. Legal aid systems exist in almost every country, in a wide variety.<sup>1</sup> Often the system's ambitions are not matched by adequate funds, so entitlements may only exist on paper. Legal aid is mostly recommended and broadly offered to individuals taken in custody for violent crime or property crime, who are at risk of being incarcerated and excluded from social relationships. For those accused of homicide and other high profile crime, legal aid is seen as indispensable. Some countries also cover the costs of serious civil conflicts (evictions, separation, mental health interventions) through their legal aid regime (see Table below).

## NUMBER OF CASES PER 100 000 INHABITANTS BROUGHT TO COURT FOR WHICH LEGAL AID HAS BEEN GRANTED (Q20)



## Most legal aid money is going to representation in court

Legal aid is mostly spent on litigation. Navigating a court procedure requires specific knowledge and skills. This is where a lawyer adds most value. Moreover, litigation is time consuming, although in some cases negotiating a settlement can also be very costly.

## Costs and outcomes depend on the efficiency and effectiveness of court procedures

There is a relationship between the quality of court procedures and the effectiveness of legal aid. A legal aid lawyer can only be as effective as the court procedure allows him to be. If court procedures are complex and lengthy, the costs of legal aid will be higher.<sup>2</sup> The more unpredictable a court procedure, the more difficult it is to manage the costs of legal aid and to monitor outcomes. More generally, experts see the quality of legal aid services and the outcomes achieved as a major challenge.<sup>3</sup>

## In complex proceedings clients with lawyers tend to do better

The value added by using a lawyer not always clear. Only a small minority of citizens seeking justice tend to use a lawyer ([Chapter 3](#)). Many studies compare the outcomes for people in courts with or without lawyers. Most studies are observational, however, and few randomised controlled trials have been done. Literature reviews tend to find that lawyer assistance produces better outcomes in more complex proceedings.<sup>4</sup>

## Legal aid by lawyers from private law firms requires effective contracting

Legal aid comes in two models with different incentives. The judicare model uses lawyers from private law firms. It is used in high income countries such as England and Wales, the Netherlands and Canada. This depends on effective contracting with private law firms, using tendering, fixed fee arrangements and quality control mechanisms.

## Legal aid by public defenders is a lower cost alternative

An alternative is a government legal aid office hiring lawyers to assist clients in courts, known as the public defender system for criminal cases. Costs tend to be lower in public defender systems. Middle income countries such as South Africa and Brazil mainly use public defenders, and hire lawyers from private firms for specific cases. Several studies compare the outcomes achieved in both systems. These tend to be highly dependent on how lawyers in both systems are recruited, trained, incentivised financially and monitored.<sup>5</sup>

## Legal aid is usually only available for the poorest 10-20% of the population

Legal aid tends to be connected to a means test. In most countries, this means test is at a rather low level of income.

## User contributions to legal aid are common










In order to manage the costs of legal aid, countries tend to require contributions by the users, depending on their income. This is more common in civil legal aid than for criminal legal aid. Another reason for user contributions is that they provide an incentive to use legal aid effectively.

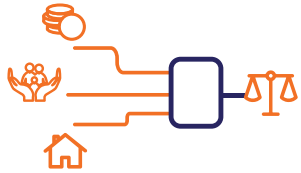
## Assumptions for an investable opportunity

In the following business model canvas<sup>6</sup>, we summarise how this model can work, quantifying activities, possible revenue streams and giving an indication of the required investments. We also give estimates of market size and potential contribution to growth of the justice sector, showing the most important assumptions for these calculations.

In particular, we start from the following assumptions:

- Outcomes for clients of legal aid are systematically monitored.
- Legal aid is provided for criminal matters in cases where a person is detained or may be detained.
- Legal aid encompasses more than defense in court; suspects need and want a broader range of services. These may include rehabilitation, reintegration, and the opportunity to restore the harm they caused.
- Court procedures are sufficiently predictable and efficient.

<div>KEY PARTNERS</div> <div></div> <div><ul style="list-style-type: none"><li>• Courts and prosecutors</li><li>• Effective processes at courts and prosecution</li><li>• Bar associations and ministries of justice</li><li>• Investors</li></ul></div>	<div>KEY ACTIVITIES</div> <div></div> <div><p>Interventions to resolve problems with % of clients that need each intervention:</p><ul style="list-style-type: none"><li>• Diagnosis and information (100%);</li><li>• Interaction/negotiation/mediation with police, prosecution, probation, victims (60%);</li><li>• Representation during adjudication (30%);</li><li>• Assistance and advice to client (100%);</li><li>• Additional services for murder and other severe cases (5%)</li></ul></div>	<div>VALUE PROPOSITIONS</div> <div></div> <div><ul style="list-style-type: none"><li>• Outcomes aimed for: fair process; accountability and/or punishment of offenders; rehabilitation; reintegration; restoration.</li><li>• Outcome indicators: procedural justice as experienced by clients; indicators for reintegration in society; indicators for relationship with victims</li></ul></div>	<div>CUSTOMER RELATIONSHIPS</div> <div></div> <div><ul style="list-style-type: none"><li>• Public defender or specialised countrywide law firm/companies</li></ul></div>	<div>CUSTOMER SEGMENTS</div> <div></div> <div><ul style="list-style-type: none"><li>• Users: People who have been arrested or are at risk to be detained</li><li>• Suspects of homicide;</li><li>• Estimated number of new problems of this type in user group per 100,000 population per year: 390<sup>7</sup></li></ul></div>
	<div>KEY RESOURCES</div> <div></div> <div><ul style="list-style-type: none"><li>• Standardised treatments;</li><li>• User-friendly information;</li><li>• Streamlined processes with courts, prosecution;</li><li>• Processes to interact with victims and community;</li><li>• Processes to interact with media;</li><li>• Lawyers trained and committed to value proposition.</li><li>• Order of magnitude initial investment: \$5 million;</li></ul></div>		<div>CHANNELS</div> <div></div> <div><ul style="list-style-type: none"><li>• In person interactions with clients, supported online;</li><li>• Interactions with courts, prosecutors, online and in person;</li></ul></div>	
<div>COST STRUCTURE</div> <div></div> <div><ul style="list-style-type: none"><li>• Indication of hours FTE: diagnosis and information (1 hour); interaction/negotiation/mediation with police, prosecution, probation, victims (4 hours); representation during adjudication (4 hours); assistance and advice to client (5 hours); additional services for murder and other severe cases (30 hours)</li><li>• Other costs/profit margin: 30% overhead for central organisation</li></ul></div>		<div>REVENUE STREAMS</div> <div></div> <div><ul style="list-style-type: none"><li>• Revenue model: Fixed fee</li><li>• Fees covered by initiator (the accused): 30%</li><li>• Smart fee elements: initiator fee 20% up front. 80% when back at work - other contributions up front</li><li>• Other contributions: 40% local government, family/friends, 30% from prosecution/prison budget (for murder and other severe crimes)</li><li>• Indication of average revenue per case \$657</li><li>• Per capita revenues: \$2.6 = 11% of current justice budget in Ukraine</li></ul></div>		



## 2. ONE-STOP JOURNEY FOR FAMILY JUSTICE

### One-stop resolution procedures for one type of problem may be effective

Court systems and tribunals are experimenting with one-stop procedures. Employment tribunals, for instance, are integrating legal information, mediation and adjudication. One stop procedures, supported online, have been developed in Singapore, UAE, Canada and the Netherlands. Of line examples include the processes ran by ombudsmen. Providers of informal justice in countries such as Rwanda, Uganda and Switzerland also offer one stop processes, which are less specialised. Social impact investors are looking at supporting dispute resolution procedures with online platforms (ODR). The British Columbia (BC) Civil Resolution Tribunal is a prominent example.

### BC Civil Resolution Tribunal

The Civil Resolution Tribunal in British Columbia provides one-stop resolution processes for four types of disputes. Starting with disputes between neighbours in apartment buildings (condominiums), it has since introduced procedures for claims below \$5,000, for personal injury claims arising from motor vehicle insurance and for disputes in societies and cooperations.

#### How it works



##### EXPLORE AND APPLY

Start with our Solution Explorer. It has free legal information and tools. It will also give you the right CRT application form for your type of dispute.



##### NEGOTIATE

Once your application is accepted, try our secure and confidential negotiation platform. You can talk through your dispute and try to reach an agreement.



##### REACH AN AGREEMENT

If you can't resolve your dispute by negotiation, a case manager will try to help you reach an agreement. Agreements can be turned into orders, and be enforced like a court order.



##### GET A DECISION

If you can't reach an agreement by negotiation or facilitation, an independent CRT member will make a decision about your dispute. A CRT decision can be enforced like a court order.

These procedures were developed outside the existing court system, by a new start-up court, allowing for an interdisciplinary and user-centred design approach. By making procedures are mandatory, the BC Civil Resolution Tribunal has solved submission problem. Most disputes are resolved at the initial stages - only a small percentage requires a judicial intervention. In-house facilitators mediate cases, and judges make decisions and take appeals through the formal court system.

The procedures developed by the BC Civil Resolution Tribunal can be implemented in the court system for other types of disputes. This means that both the courts and the innovative new tribunal gain from this development.

## Unified systems for family disputes are emerging

We focus on a system for family law, assisting people with issues arising from separation. One-stop shop systems for family law are promoted in the US and the Netherlands, for instance.<sup>8</sup> Usually, the designs provide different tracks for: people who can mostly solve their problems themselves; people who would benefit from continuous facilitation, and; people with complications such as high levels of conflict behavior, domestic violence or substance abuse.

## Subsidizing fees in a more targeted way

User fees should cover the maintenance and development of the online support tool. Government agencies can opt to subsidise entry fees (covering intake, diagnosis and negotiation), fees for mediation, and fees for extra guidance and/or review. Having separate fees for each step in the justice journey enables the government to subsidise in a more targeted way and have a clearer understanding of the impact of their subsidies.

## Integrated online support tools face challenges

Some jurisdictions do not allow private, non-regulated actors to provide legal advice. Developers of online support systems should be careful and decide whether the provision of legal advice is part of their solution. In other jurisdictions, developing a tool that provides online support for the steps necessary to come to a separation agreement (i.e. the steps from intake to review), can be done without facing major regulatory issues. However, issues arise when input from the court is needed (i.e. when a decision in court should be made).

## Evidence-based family justice can be the default procedure

An evidence-based family justice journey solution that is supported online is more attractive to investors if it is part of the national default procedure for divorce and separation. More people will make use of such a solution. In order for this solution to be considered the default procedure, the civil procedure rules will have to provide for this. Governments would be eager to accept a new default procedure if it is the most viable solution.

Reasons to consider the evidence-based family justice journey solution include:

- The online supported evidence-based family justice solution can be financially sustainable and thus attractive for investors.
- Online supporting tools are scalable and therefore potentially able to cover the entire target group.
- The solution is developed in an evidence-based, outcome-focused way and is therefore able to provide high quality results.

## Local justice providers can plug into online tool and give in person assistance

A one-stop shop solution, supported online, will not only be available for self helping users. Local justice providers (see next paragraph) can assist and guide people that are illiterate or not connected to the internet. They would use the system for case-management and interactions with other professionals.

## One-stop shop models for one type of justice problem are emerging

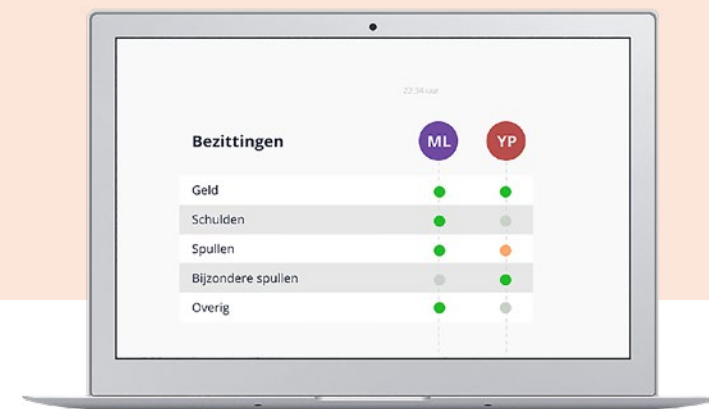
In the following business model canvas we summarise how this model can work - quantifying activities, possible revenue streams and giving an indication of the required investments. We also give estimates of market size and potential contribution to growth of the justice sector, showing the most important assumptions for these calculations. Specifically, we assume:










- There is a growing body of evidence-based interventions, with integration of mediation, informal/formal components and an interdisciplinary problem solving/therapeutic approach to adjudication.
- Social impact investors are interested in the justice sector.
- Every justice journey for people dealing with separation and divorce starts with negotiation between parties. The parties need help from neutral third parties on matters that they cannot agree on. Generally, couples will conduct an intake to assess their needs and receive a diagnosis from a professional. Parties will negotiate again, and if needed, receive mediation and/or extra guidance by a neutral decision-maker.
- Once a separation agreement has been concluded, a lawyer or judge will have to review the agreement.

- For family justice, IT platforms exist that aim to offer support for a one-stop service. These can be implemented and rolled out at a cost below \$10 million.
- A process for monitoring and aftercare can also be integrated into an online supporting tool.
- Pay-as-you-go and fixed fees are possible. Entry fees may be in the range of \$100 to \$300 in high-income countries. Entry fees enable users to do an intake, receive a diagnosis and start negotiating. Additional (fixed) fees are paid if help is needed from professionals (such as mediation and decision-making).
- Couples that are not able to conclude a separation agreement with the help of an online tool need more time in the decision-making process and therefore pay considerably more (in lawyer fees and court fees). The total amount of lawyer and court fees is not fixed, it is dependent on the severity of the conflict.

## Justice42

Justice42 is a Dutch social enterprise focused on making justice more accessible and user-friendly. In September 2017 it launched [uitelkaar.nl](https://uitelkaar.nl), a one-stop online platform that helps couples who want a divorce work together to develop a fair, sustainable agreement and avoid escalation.<sup>9</sup> Uitelkaar.nl's online dispute resolution technology empowers users to take control of the process and offers tailored, as-needed support from case managers, mediators, and family law experts along the way. Users of the platform pay step-by-step and according to their income (with a maximum cost of 750 euros per person for the entire process, including in-person mediation).



<div>KEY PARTNERS</div> <div></div> <div><ul style="list-style-type: none"><li>Dependencies: Platform use mandatory</li><li>Courts</li><li>Bar associations and ministries of justice</li><li>Investors</li></ul></div>	<div><div>KEY ACTIVITIES<div></div></div><div>Interventions to resolve problems with % of clients that need each intervention:<ul style="list-style-type: none"><li>Intake/diagnosis (100%);</li><li>Negotiation (95%);</li><li>Mediation (62%);</li><li>Decision-making (extra guidance) (27%);</li><li>Review (100%);</li><li>Decision-making in court (20%);</li><li>Interventions for complications (domestic violence, psychological problems, severe conflict) (20%); monitoring and aftercare (100%);</li><li>Helpdesk (50%)</li></ul></div><div><div>KEY RESOURCES<div></div></div><div><ul style="list-style-type: none"><li>Online platforms;</li><li>Evidence-based guidelines;</li><li>Codes of conduct;</li><li>Research and development treatment for complications;</li><li>Network of services that add value</li><li>Case-managers and lawyers trained and committed</li><li>Order of magnitude initial investments: \$10 million</li></ul></div></div></div>	<div>VALUE PROPOSITIONS<div></div><div><ul style="list-style-type: none"><li>Outcomes aimed for: Children are cared for; Secure housing for all; Secure incomes for all; No violence; Respectful communication; Fair division of debts and property</li><li>Outcome indicators that can be measured (social impact): Resolution rate; User assessments of achieved outcomes; Satisfaction rate</li></ul></div></div>	<div><div>CUSTOMER RELATIONSHIPS<div></div></div><div><ul style="list-style-type: none"><li>Organisational model: Newly designed court (public or social benefit private) + network of private fixed price services</li></ul></div><div><div>CHANNELS<div></div></div><div><ul style="list-style-type: none"><li>In person interactions, supported online with parties</li><li>Interactions with courts, service providers online and in person.</li></ul></div></div></div>	<div>CUSTOMER SEGMENTS<div></div><div><ul style="list-style-type: none"><li>Users: Families (married couples and cohabitation with children)</li><li>Estimated yearly number of new problems of this type in target group per 100,000 population: 1000</li><li>Based on: 0.3% families breaking up each year = 1% of population</li></ul></div></div>
<div>COST STRUCTURE<div></div><div><ul style="list-style-type: none"><li>Indication of hours FTE: intake/diagnosis (online supported); negotiation (online supported); mediation (3 hours); decision-making (extra guidance) (5 hours); review - (100%) (3 hours); decision-making in court (10 hours); interventions for complications (domestic violence, psychological problems, severe conflict, financial advice) (20 hours); monitoring and aftercare (online 2 hours); helpdesk (1 hour)</li><li>Other costs/profit margin: 50% overhead for central organisation</li></ul></div></div>		<div><div>REVENUE STREAMS<div></div></div><div><ul style="list-style-type: none"><li>Revenue model: Fixed fee depending on value of the family house</li><li>Fees covered by initiator: 35%</li><li>Smart fee elements: Monthly fee during 3 years</li><li>Other contributions: 25% other party; 15% friends, family; 25% (local) government subsidy</li><li>Indication of average revenue per case:</li><li>Per capita revenues: \$23.4 = 3% of current justice budget in Netherlands</li></ul></div></div>		



### 3. ONLINE PLATFORMS FOR CONTRACTS AND OTHER LEGAL DOCUMENTS

#### Legal documents can be delivered in a scalable way

Online platforms are now delivering wills, contracts and other legal documents for key relationships in many countries. They provide tools that give people access to opportunities in the formal economy. With the help of such documents, relationships can be structured, conflicts can be prevented and the resolution of disputes can be facilitated. As we saw in [Chapter 4](#), wills, registrations and contracts are increasingly delivered through online platforms. This is where most investments in legal tech that benefits individuals is going.

#### Outcomes need to be defined and measured

In our work with innovators, we see many such platforms emerging. Ideally, such documents should help create effective and fair relationships, as well as prevent or manage disputes. We have not yet seen platforms that systematically define and monitor such outcomes. Most platforms do not enter in a continuous relationship with the clients: the contract or document is sold as a product for which the client pays a fee.








#### Value generated can include fairness and legality guarantees



One of the possible ways to add value is to ensure that the contracts are fair to both parties and legally sound. It is also important that the contract can be stored unchanged somewhere, to reduce the parties' need for a notary to authenticate the document. These qualities can distinguish a platform from the many free templates for contracts that are available on the internet. Visual contracts, or versions written in everyday language, can be particularly attractive. This is a field with a huge potential for innovation.

#### The potential of online platforms to become gamechangers can be assessed

In the following business model canvas, we summarise how online platforms can work, quantifying activities, possible revenue streams and giving an indication of the required investments. We also give estimates of market size and potential contribution to growth of the justice sector, showing the most important assumptions for these calculations. More in particular, we assume that platforms will be further developed to add more value in the following ways:

- Outcomes can be defined and monitored;
- Guarantees of fairness and legality;
- Improved usability, through visualising and plain language.

<div>KEY PARTNERS</div> <div></div> <div><ul style="list-style-type: none"><li>• Dependencies: Independent certification of fairness, effective contracts and documents</li><li>• Employers and landlords accepting certified contracts</li><li>• Investors</li></ul></div>	<div>KEY ACTIVITIES</div> <div></div> <div><p>Interventions to resolve problems with % of clients that need each intervention:</p><ul style="list-style-type: none"><li>• Information (100%);</li><li>• Standard document with self help (80%);</li><li>• Tailored advice by neutral facilitator (20%);</li><li>• Yearly updates of this (100%);</li><li>• Helpdesk (30%)</li></ul></div>	<div>VALUE PROPOSITIONS</div> <div></div> <div><ul style="list-style-type: none"><li>• Employment (contracts, documents), family (wills, prenuptial agreements), tenure security (housing /land agreements and documents)</li><li>• Outcomes aimed for: Fair and balanced relationships; security of livelihoods (work, family, tenure); conflicts prevented and well managed</li><li>• Outcome indicators that can be measured (social impact): Satisfaction with relationships; indicators for stress/anxiety; indicators for economic stability; number of conflicts</li><li>• Stored and unchangeable</li></ul></div>	<div>CUSTOMER RELATIONSHIPS</div> <div></div> <div><ul style="list-style-type: none"><li>• Organisational model: Commercial online platform, independently certified</li></ul></div>	<div>CUSTOMER SEGMENTS</div> <div></div> <div><ul style="list-style-type: none"><li>• Users: People seeking first serious job, starting families, independent households</li><li>• Estimated yearly number of new problems of this type in target group per 100,000 population: 6000</li><li>• Based on: 20-35 year olds; 2% of population entering this phase of life each year; needing help for these 3 documents</li></ul></div>
	<div>KEY RESOURCES</div> <div></div> <div><ul style="list-style-type: none"><li>• Online platforms;</li><li>• Visual and user-friendly documents;</li><li>• Evidence-based feed-back and monitoring system;</li><li>• Marketing;</li><li>• Service desk and case-management</li><li>• Order of magnitude initial investments: \$5 million</li></ul></div>		<div>CHANNELS</div> <div></div> <div><ul style="list-style-type: none"><li>• Online platform;</li><li>• Supported with in person advice;</li></ul></div>	

<div>COST STRUCTURE</div> <div></div> <div><ul style="list-style-type: none"><li>• Indication of hours FTE: information (online);</li><li>• Standard document with self help (online);</li><li>• Tailored advice by neutral facilitator (2 hours);</li><li>• Yearly updates of this (1 hour);</li><li>• Helpdesk (0.5 hour);</li><li>• Other costs/profit margin (80% overhead for central organisation)</li></ul></div>	<div>REVENUE STREAMS</div> <div></div> <div><ul style="list-style-type: none"><li>• Revenue model: Fixed fee differentiated per type of document</li><li>• Fees covered by initiator: 90%</li><li>• Smart fee elements: Fee upfront plus yearly updates</li><li>• Other contributions: 10% family, friends, local government</li><li>• Indication of average revenue per case: \$70</li><li>• Per capita revenues: \$4.2</li></ul></div>
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## 4. LOCAL DELIVERY OF BASIC JUSTICE

### Local delivery of basic justice is promoted by many experts

Focus on local delivery is in line with what happened in the healthcare and water sector. Most justice needs emerge from local relationships, close to home. Different versions exist. Models are known as houses of justice, strengthening informal justice, community paralegals, barefoot lawyers, justices of the peace and judicial facilitators.

### Paralegals deliver justice in communities

Paralegal programs assist people in communities. Present in many countries, they are promoted and supported by an international network for legal empowerment interventions, Namati. Paralegals help solve disputes between community members, and help communities to address issues with companies or with state institutions. In disputes between community members, paralegals usually focus on education, mediation, monitoring and advocacy. Evaluations of paralegal programs show that they improve outcomes for clients. Studies show that they are more effective than lawyers and programs focusing only on education. Paralegals are probably most effective in disputes with state institutions.<sup>10</sup>

### Several models for local delivery exist in parallel

Paralegal programs complement other models for local delivery, sometimes existing in the same locations. Informal adjudication is carried out by chiefs, village heads, local (informal) courts or justices of the peace.<sup>11</sup> If the local services cannot solve or prevent disputes, users will need to get assistance from more sophisticated services. Legal aid lawyers may help them to bring more difficult cases to courts. Justices of the peace, or judicial facilitators, may help escalate to the formal judiciary. The table below lists the different local delivery models and their focus. The table also summarises how services are connected to revenue streams and follow up services.

Local delivery model	Focus justice problems	Focus in services	Follow-up services if not successful	Main revenue streams
Civil legal aid lawyers	Disputes and crimes	Mediation, advocacy, navigating adjudication	Legal aid lawyers, formal court adjudication	Fees, NGOs, Ministry of justice
Community paralegals	Disputes and crimes Issues with companies and state institutions	Education, mediation, monitoring, advocacy	Legal aid lawyers, formal court adjudication	NGOs, Community contributions
Informal justice by local leaders and others	Disputes and crimes	Mediation, adjudication	Any	Time from volunteers and officials
Justices of the peace	Minor disputes and crimes	Mediation, adjudication	Referral to formal court adjudication	Judiciary
Judicial facilitators	Disputes and crimes	Education, mediation	Integration with local court adjudication	Judiciary
Local (informal courts)	Minor disputes and crimes	Mediation, adjudication	Enforcement in community	Local government
Houses of justice	Disputes and crimes	Information, advice, referral	Any	Ministry of justice

## Linking informal systems and formal (court) systems

Community paralegal programs, and similar local delivery models, need to link users to services that provide solutions when their problem is beyond the scope of the paralegal program or the local service cannot provide a solution. The governance model and the regulatory system will have to bridge the gap with the formal systems. This is similar to the challenge of linking primary healthcare and hospitals. By taking an outcome-focused problem-solving approach, community paralegals can provide the start of a user-friendly journey that makes use of the most suitable service providers for different stages of conflict resolution. The paralegals would try to ensure that unresolved conflicts are addressed by local, problem-solving<sup>12</sup> adjudicators or by official courts. They would also monitor outcomes for their clients.

## Multiple sources of funding are available

Studies show that there is a willingness to pay for solutions. This means that user fees can contribute to funding for local justice (see Box below). Initially, as a first step towards independent funding, community paralegals can use existing services and budgets by integrating with existing institutions, which also include public sources of funding and donors. An outcome-focused approach with clear indicators also has the potential to attract private sector capital, particularly impact investors and development finance institutions.

## Funding models for paralegals

Funding models include in kind contributions from local governments (office space, operational expenses). Sometimes sectoral ministries provide funding for dealing with land disputes or employment disputes. In Uganda, the Ministry for Local Government provides funding for the Local Council Courts, which help resolve disputes at a local level for plaintiffs who cannot afford the high costs of litigation. Funding through legal aid budgets is less frequent, because scarce legal aid money is supposed to be spent on criminal defence first. User contributions are sometimes prohibited by law, but community contributions are acceptable. Overall, paralegal programs remain heavily dependant on donor funding or volunteer labour.<sup>13</sup> A sustainable financing model would be welcome.

## Investments have to cover tools and methods to provide effective services

What investments are needed to set up and run a local delivery model? The Box below shows the type of resources required by community healthcare workers. Community justice workers will also need practice guidelines and protocols, teaching tools, data collection instruments and means of identification. Depending on the local situation, they also need budgets for transportation and office space.<sup>14</sup>

## What investments are needed for local delivery?

### Resources needed for Community Healthcare Workers

Needs assessments to determine the resources, tools, and supplies necessary to provide effective care should form part of annual monitoring and evaluation. These may include practice guidelines and care protocols, teaching tools, data collection instruments such as health registers, cell phones or other mobile devices, and drugs. To assist with movement and recognition within their communities, community healthcare workers may be provided with uniforms, nametags, backpacks, and writing/recording materials. Local contexts may demand further investments, such as transportation support or the construction of a village health post. The supervisors will also require support to monitor, evaluate, and support the activities of the community healthcare workers.<sup>15</sup>

## Support by an outcome-focused case management system










A system collecting data monitoring outcomes is crucial. Customising such a solution to include an outcome-focused user journey would allow for an integrated approach from diagnosis to resolution. Many programs have developed their own case management systems. Having a specialised third party service provider allows for greater efficiency and lower costs. Examples of platforms for case management systems used in the sector include Tyler (Modria),

Salesforce, CrimeSync<sup>16</sup> and VisionHall<sup>17</sup>. For example, VisionHall's costs per case per year can be under \$2 when provided at scale.

## Local delivery model for a limited number of problems may be sustainable

In the following business model canvas, we summarise how local delivery can work, quantifying activities, possible revenue streams and giving an indication of the required investments. We also give estimates of market size and potential contribution to growth of the justice sector, showing the most important assumptions for these calculations. In particular, we assume:

- Local service providers such as community paralegals can provide outcomes for a number of common problem types.
- Outcomes can be monitored and have a high value, so we suppose that community justice providers are dealing with some issues from problem to solution, not only giving advice or representing people.
- Currently, most paralegal programs provide education (information and advice) as well as mediation. Programs could also deliver adjudication, perhaps by linking or merging with other local delivery models. In our model, the role of paralegals is more focused on delivering outcomes that help resolve conflicts and allow people to move on.
- The target users are rural populations. Community paralegals, and similar programs, are mostly targeted at rural/remote regions where legal services are physically harder to access. Bringing similar services to urban populations is possible as well, and will generally be less costly.

<div>KEY PARTNERS</div> <div></div> <div><ul style="list-style-type: none"><li>Dependencies: connecting to adjudication for unresolved disputes; local council courts can be empowered to perform some of these duties</li><li>Investors</li></ul></div>	<div><div>KEY ACTIVITIES<div></div></div><div>Interventions to resolve problems with % of clients that need each intervention:<ul style="list-style-type: none"><li>diagnosis/information (100%);</li><li>mediation (60%) (all unresolved problems);</li><li>adjudication (25%) (all unresolved mediations);</li><li>monitoring and aftercare (100%)</li></ul></div></div> <div><div>KEY RESOURCES<div></div></div><div><ul style="list-style-type: none"><li>Standardised treatments for top 5 problems and guidelines for top 20 agreements;</li><li>teaching tools;</li><li>data-collection and recording instruments;</li><li>systems for supervision;</li><li>marketing</li><li>trained and committed local justice providers</li><li>Order of magnitude initial investments: \$20 million</li></ul></div></div>	<div>VALUE PROPOSITIONS<div></div><div><ul style="list-style-type: none"><li>Types of justice problems addressed: (Resolving and preventing) most urgent (local) problems: land, family, crime, employment, neighbour etc.</li><li>Outcomes aimed for: depending on type of problem, to be defined; increased services accessible for people in their communities; raised awareness amongst users and local leaders on how to resolve issues; increased resolution rate through evidence-based interventions applied by paralegals</li><li>Outcome indicators that can be measured (social impact): resolution rate; user assessments of achieved outcomes; awareness levels on evidence-based interventions</li></ul></div></div>	<div><div>CUSTOMER RELATIONSHIPS<div></div></div><div><ul style="list-style-type: none"><li>Organisational model: Network of local providers managed by central organisation, building on services provided by civil legal aid lawyers, community paralegals, informal justice by local leaders and others, Justices of the peace, judicial facilitators, local (informal courts), houses of justice</li></ul></div></div> <div><div>CHANNELS<div></div></div><div><ul style="list-style-type: none"><li>Local delivery from home or community</li></ul></div></div>	<div>CUSTOMER SEGMENTS<div></div><div><ul style="list-style-type: none"><li>Users: People living in rural/ remote communities with few resources and a lack of legal awareness. For this model we then take rural population (70% of population)</li><li>Estimated yearly number of new problems of this type in target group per 100,000 population: 10000</li><li>Based on: 4.4 million problems in rural Uganda for 43 million people</li></ul></div></div>
<div>COST STRUCTURE<div></div><div><ul style="list-style-type: none"><li>Indication of hours FTE: diagnosis/information (1 hour); mediation (3 hours); adjudication (1 hour referral to local council courts or courts); monitoring (1 hour)</li><li>Other costs/profit margin: 30% overhead central organisation; assistance with transportation. renting meeting spaces, maintenance IT, marketing</li></ul></div></div>		<div><div>REVENUE STREAMS<div></div></div><div><ul style="list-style-type: none"><li>Revenue model: Fixed fee differentiated per type of problem</li><li>Fees covered by initiator: 60%</li><li>Smart fee elements: Initiator fee 30% at intake, 70% after resolution; other contributions up front</li><li>Other contributions: 20% local community contributions, 1 USD per person or volunteer time; 10% international donor contribution; 10% central government contribution</li><li>Indication of average revenue per case \$53</li><li>Per capita revenues: \$5.3 = 44% of current Uganda justice budget</li></ul></div></div>		

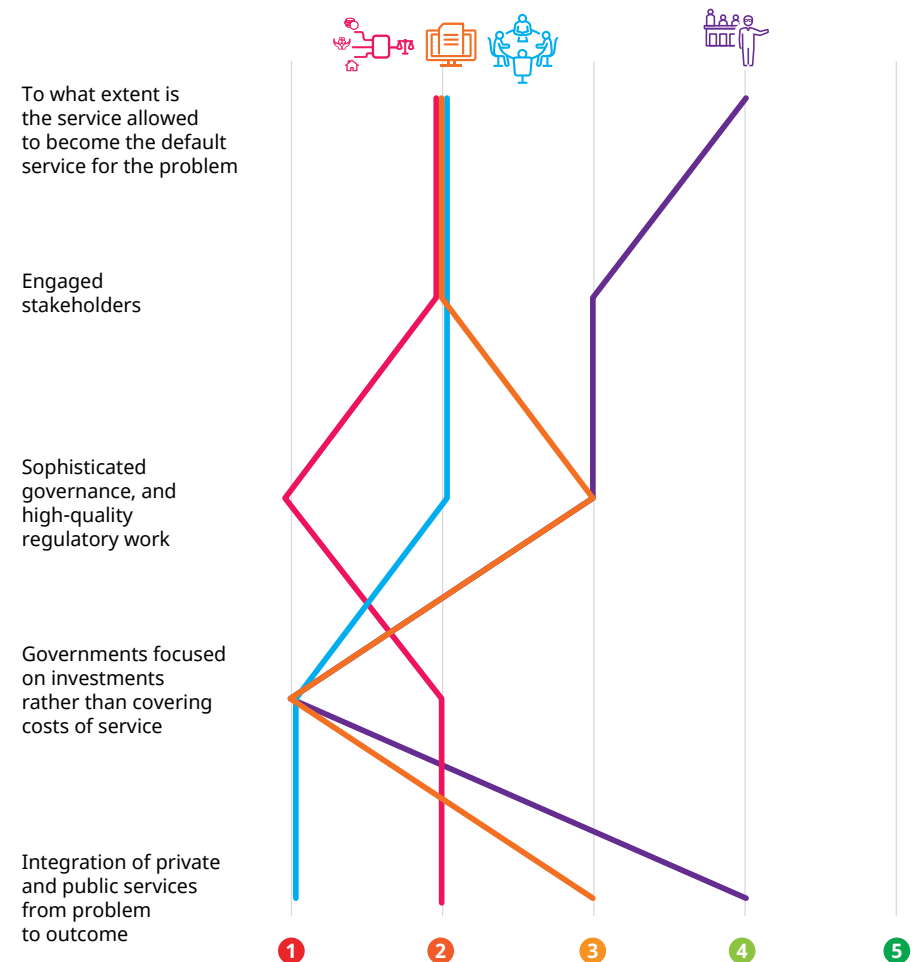
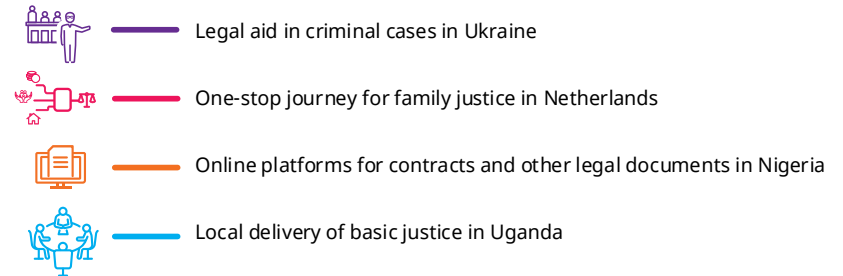
## Sensing how to activate gamechangers

In the following tables, we explore how the four potentially gamechanging services are doing. The point of reference consists of the conditions for effective and sustainable justice services discussed in Chapters 1 to 6. The services assessed are above average examples of the services in the countries mentioned. The numbers in the table reflect our subjective and intuitive impressions, informed by working in the four countries on innovation for a number of years. So these indications should not be used out of context. The aim of this exercise is just to get a preliminary idea what is most needed to let these gamechangers flourish. That is also the reason we do not mention the innovative services by name.

## The enabling environment is expected to be rather poor

The overall reasoning in this report is that the enabling environment is unlikely to produce effective, well funded innovations. Therefore, the first diagram looks at the enabling environment for these particular innovations ([Chapter 2](#) and [7](#)). We assessed the elements of the enabling environment on a scale from 1 to 5: very poor (1), poor (2), fair (3), good (4), excellent (5).

### ENABLING ENVIRONMENT FOR POTENTIAL GAMECHANGERS



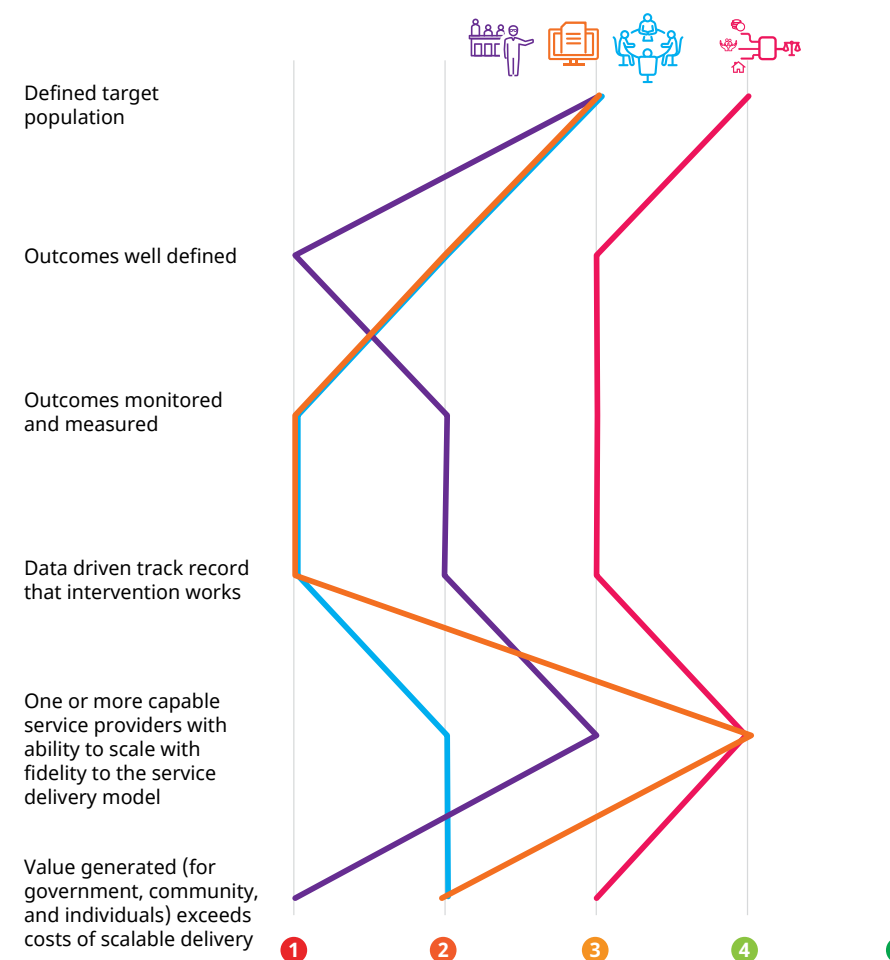
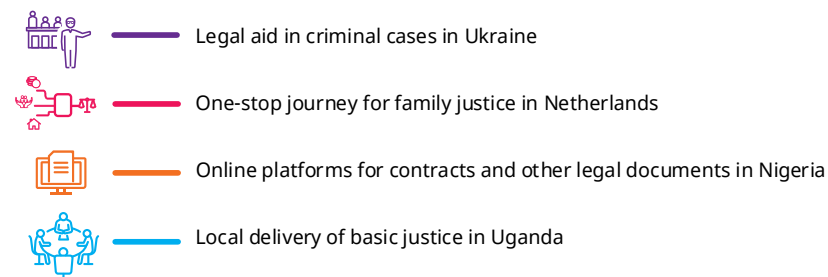
## For innovative services, the regulatory environment needs to be improved

The scores suggest that for criminal legal aid the regulatory environment is much better than for the other three potential gamechangers. Criminal legal aid is well integrated in the public services (court procedures) compared to one stop family justice and local delivery of basic (informal) justice. Governments hardly invest in these gamechangers yet. Stakeholders have not yet been mobilized sufficiently. Prospects for becoming the default service are poor for one stop services and local justice in these problems. The enabling environment is somewhat better for online platforms delivering contracts and other legal documents.

## Quality of services can be improved with limited investments

The second table covers the conditions for sustainable and effective services for users ([Chapter 1](#), [2](#) and [5](#)). The results suggest that the potential of these services to deliver high quality is considerable. The providers of these services also have work to do. Generally, target groups and outcomes are not that well defined. Monitoring outcomes and effectiveness is early stage. Criminal legal aid and local justice are delivered by individual justice workers, who may each have a different way to assist their clients. The table suggests that the quality of services could rapidly be improved by introducing or improving monitoring and standardising the service in an evidence based way. The investments required for this are limited, as we have seen. Improving quality, with a focus on outcomes, would also increase the value generated for the users of the service, the community and the government.

## EFFECTIVENESS OF SERVICES AND SOCIAL IMPACT







## Optimising revenue streams is at an early stage

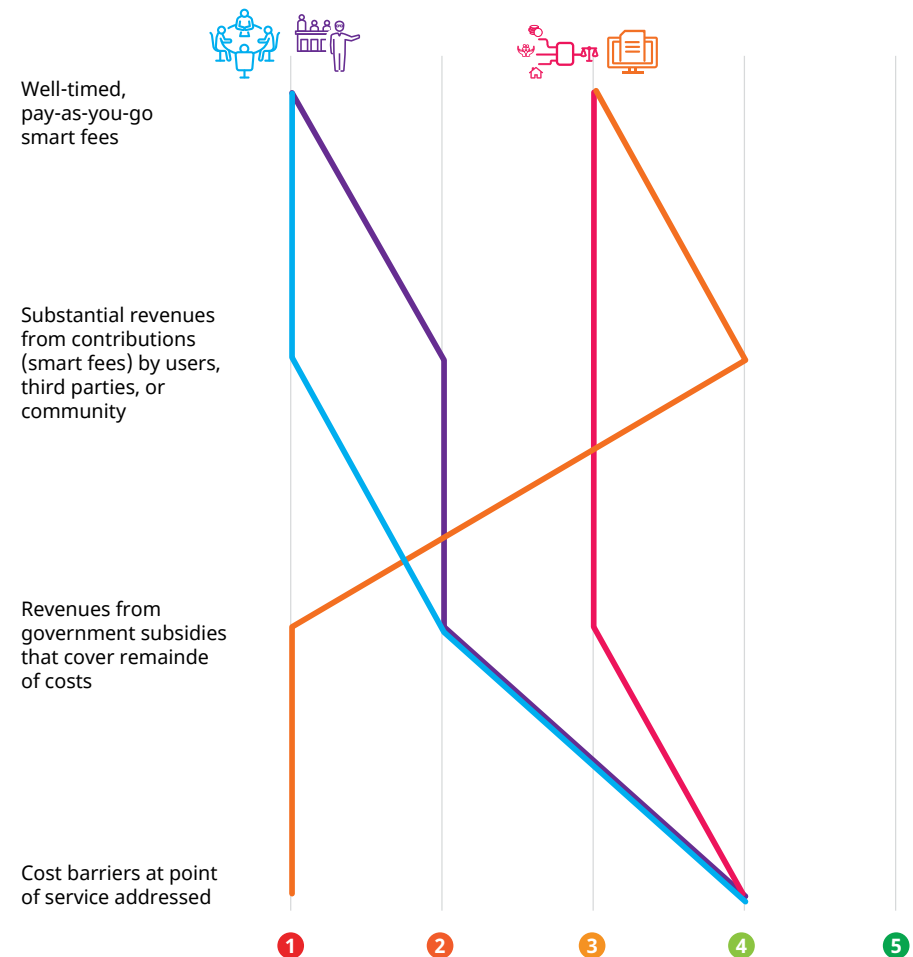
The third table looks at revenue streams that are higher than costs as a condition for sustainability. The revenue streams from platforms for contracts and other legal documents are already substantial. For other services, smart fee systems still need to be developed, and complemented by contributions from governments. Interestingly, the cost barriers at the point of access seem to have more priority than a sustainable revenue stream.

## How to improve enabling environment, quality of services and revenue streams?

The casestudies in this chapter confirm that the enabling environment, the quality of services and the revenue streams need to be improved. Most likely in concert. At the same time, the challenges have been identified and none of them seems to be insurmountable. Overcoming them is mainly a matter of allocating sufficient resources to the process of improving the enabling environment, the quality of the services and the revenue streams. This process needs to pick up steam fast, otherwise the goal of equal access to justice for all by 2030 will not be achieved. In the final chapter, we look at how this transformation process can be sequenced and kick-started, in the context of the politics of the legal system.

### SUSTAINABLE REVENUE STREAMS

-  Legal aid in criminal cases in Ukraine
-  One-stop journey for family justice in Netherlands
-  Online platforms for contracts and other legal documents in Nigeria
-  Local delivery of basic justice in Uganda

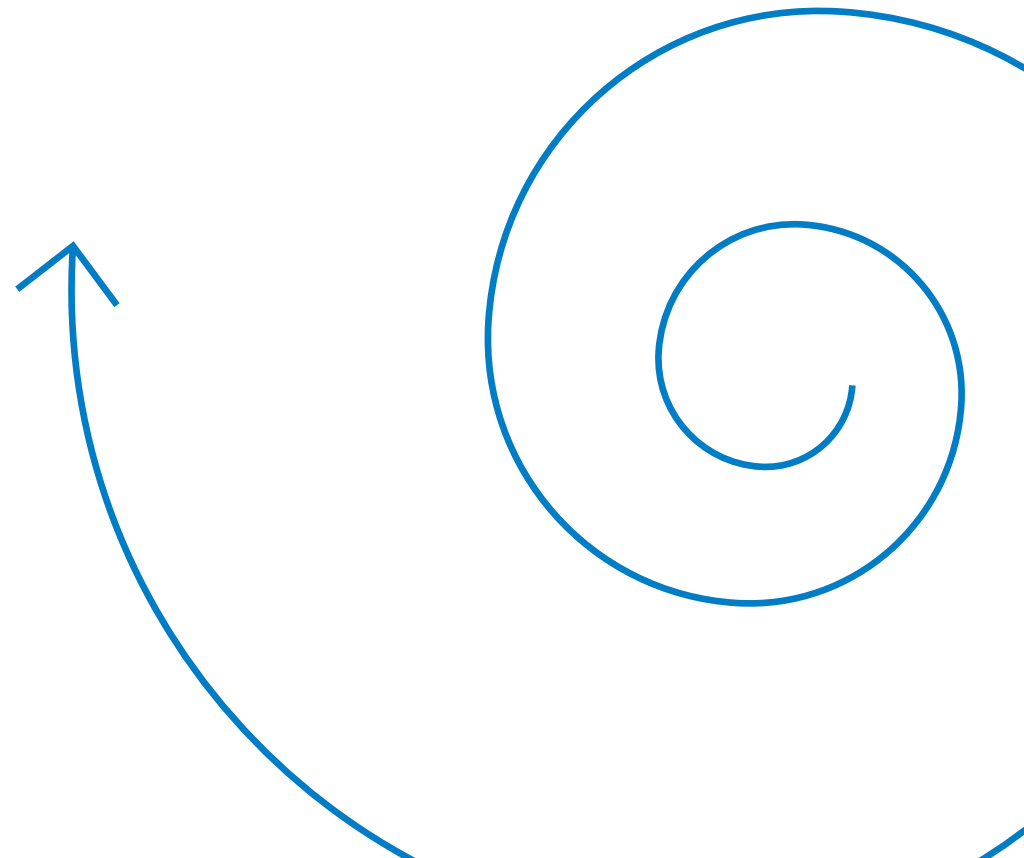


## References

- 1 UNODC, Global Study on Legal Aid, Global Report, 2016 gives a very useful overview.
- 2 Barendrecht et al., Legal Aid in Europe. Nine Different Ways to Guarantee Access to Justice, HiiL, 2014.
- 3 UNODC, Global Study on Legal Aid, Global Report, 2016, p. 157.
- 4 Emily S. Taylor Poppe Jeffrey J. Rachlinski, Do Lawyers Matter? The Effect of Legal Representation in Civil Disputes, *Pepperdine Law Review*, 2016.
- 5 See Evarn J. Ooi, Suzanne Poynton and Don Weatherburn, The Impact of Private versus Public Legal Representation on Criminal Proceedings, *Crime and Justice Bulletin*, NSW Bureau of Crime Statistics and Research, 2019, for an overview of earlier studies.
- 6 Based on The Business Model Canvas, [Strategyzer.com](https://strategyzer.com).
- 7 Based on: 0.13% of population detained (10.4 million people detained worldwide (prisonstudies.org)) multiplied by 3 to cover all people at risk to be detained during a year.
- 8 IAALS and NCSC. Principles for Family Justice Reform; Barbara A. Babb, Judith D. Moran, *Caring for Families in Court: An Essential Approach to Family Justice*, Routledge, 2019.
- 9 Disclosure: The online dispute resolution platform Rechtwijzer, which HiiL developed in partnership with the Dutch legal aid board and Modria (now Tyler Technologies) was the original version of Uitekaar.nl. HiiL still has a stake in Justice42.
- 10 Vivek Maru and Varun Gauri, Community Paralegals and the Pursuit of Justice, Cambridge University Press, 2018, p. 11, 18.
- 11 Vivek Maru and Varun Gauri, Community Paralegals and the Pursuit of Justice, Cambridge University Press, 2018, p. 16.
- 12 HiiL, Understanding Justice Needs: The Elephant in the Courtroom, 2018.
- 13 Vivek Maru and Varun Gauri, Community Paralegals and the Pursuit of Justice, 2018, p. 22, 32.
- 14 Keeping in mind that housing has proven to be unsustainable for local courts in European towns, so more cost-effective solutions are needed.
- 15 Strengthening Primary Health Care through Community Health Workers: Investment Case and Financing Recommendations, July 2015.
- 16 [crimesync.xyz](https://crimesync.xyz)
- 17 [visionhall.com](https://visionhall.com)

9

TRANSITION  
TO UNIVERSAL COVERAGE  
IS POSSIBLE



## The transition challenge is clear

In this chapter, we bring together the insights we gained in the preceding chapters on how to increase revenues and investments in delivering justice to all. We sketch elements of a government strategy towards 100% access to justice. At first glance, the path forward may look simple: better justice services, reaching more people with better outcomes ([Chapter 1](#)). This will create more willingness to pay and higher revenues ([Chapter 6](#)), by focusing first on the most urgent problems for citizens ([Chapter 7](#)). Higher revenues will attract public and private investors wanting to do good and to have a decent return, so the required investments can be funded ([Chapter 4](#)). Four potential gamechangers have been identified, each requiring further development and investments.

## The political challenge is considerable, however

In the real world, supply and demand for justice do not match so easily. Currently, ministries of justice do not have incentives to expand access. This is also true for courts, prosecutors, police and legal aid lawyers. Expansion of people-centred services requires these justice professionals to set up new activities, without a corresponding increase of revenues. For outside innovators, there is no way in: they cannot become part of the justice services portfolio, because of the (submission) problem of “selling” services to two parties in conflict. The insiders will defend their budgets against the newcomers ([Chapter 2](#)). The path to change needs to address these complexities.

## Justice sector reform should benefit current providers as well as innovators

The main political challenge is to enable a transition that benefits both current and new providers. Legal aid lawyers, judges, prosecutors, prison workers and police have powerful lobbies. They are respected professionals, working for the common good, for average salaries, and sometimes much less. Opening up the sector to innovators will be more acceptable if these justice professionals can be included in the path to growth.<sup>1</sup> Integrating these two perspectives, of

what is desirable to expand services and what is politically feasible, we now sketch a trajectory towards well-funded, universal coverage.

*Opening up the sector to innovators will be more acceptable if these justice professionals can be included in the path to growth.*

## 1. Setting an inspiring goal of 100% coverage of effective solutions for the most urgent and frequent justice problems.

### The magnitude of the challenge should be the starting point

We assume your government is not prepared to substantially increase public spending on the justice sector as a percentage of GDP. We can also assume that the courts, similar authorities, lawyers and other specialised professionals in your country jointly serve up to 16% of citizens with justice problems and solve 4% of these problems by their decisions. Self-help, agreed solutions and resolution by coordination in the community can prevent or resolve something like 35% of problems. The remaining problems are unsolved, leading to economic and social harm, as well as frustration with government. Quality, as we have seen, is variable. The justice gap is thus considerable.

### A goal of 100% coverage unites justice workers and policy makers

SDG16 sets a goal of equal access to justice for all. 100% access to justice is an inspiring target, towards which progress can be quantified and measured. Such an approach worked for health, education and water ([Chapter 7](#)). A target focuses efforts on the needs of users. It is ambitious, and all stakeholders see that growth and unorthodox measures are needed. If your government wants to close the justice gap, it has to scale professional services very substantially, reaching perhaps 3 to 5 times more people. Self-help and resolution in the community can also be scaled, perhaps by a factor of 2. What's more: quality has to improve, and game-changing services have to be developed, because current services are not always solving the problems citizens experience. Short-term policies that temporarily relieve stress in one part of the system can make way for bold, medium-term steps and new forms of coordination. The target also makes clear that revenues have to increase very substantially, perhaps by a factor 2 or 4.

## 2. Safeguarding core funding for the broad social goals of the justice system and introducing smart fees: increasing contributions by beneficiaries and government agencies for effective services, whilst decreasing general subsidies.

### Core funding for the third branch of government should be ensured

Besides delivering the private good of civil and criminal justice, the courts and adjacent services also provide checks and balances. They have a key role in the state, serving multiple social goals. For this role as independent arbiters in the state, upholding the rule of law in government itself, courts need a funding mechanism that is protected from political interference ([Chapter 3](#)). The same is true for prosecution, public interest lawyering and the legal empowerment services protecting communities against powerful interests. If funding for these broad tasks is ensured, courts and other justice sector institutions can safely focus on that other part of their tasks: delivering justice to citizens who have to cope with conflict and crime.

### Opening a dialogue about user contributions

The next step is a delicate one. In order to increase revenues, private contributions need to grow. The justice sector is reluctant to charge fees. Countries like France, Spain and South Africa have principled positions against court fees. So scenarios for a future without increased fees and for growth with increased contributions have to be developed side by side. Going through these scenarios will enable decision-makers to see the medium-and long-term effects of each more clearly.

### Explore a scenario without private contributions

The scenario without increased fees should be explored in depth. This scenario relies on government services to scale and improve quality. The government would have to fund all investments and costs of running the services, perhaps with the support of a few international donors.<sup>2</sup> Efficiency gains would have to be achieved by public management methods, which would need to be adapted to the specific setting of (independent) courts, prosecutors and legal aid. Investments are needed for the development of new services. In this scenario, the government would have to raise money for investments by taking a cut from the funding designated for operating the courts, prosecution and other government services. This means that current providers of services would see their budget being squeezed. And importantly: depending on how this scenario unfolds, citizens may end up paying more. Instead of fees for efficient services, they may have to pay for individual lawyers and private security and bear the additional costs that come with prolonged conflicts.

## Explore a scenario with a focus on outcomes and increased contributions

In the increased contributions for better outcomes scenario, revenues and organisations would be able to grow. Better outcomes can then be ensured by higher cost services for more people or by serving more people with standardised services. This would require a very substantial change of mindset and organisations. Processes and roles now defined by judgments and rules would have to be redesigned with a focus on fair outcomes for citizens. Many justice workers in the front line would welcome this change, but others would be hesitant to become a provider of justice services, for which citizens have to pay a price. The opportunities are not to be ignored, however. We have seen how contributions can be raised from initiators, beneficiaries, and other parties ([Chapter 6](#)). Effective employment dispute resolution can be funded by employers, with some employee contribution. The German and Austrian courts run effective registries, with fees that cross-subsidise conflict resolution.

## Coverage by contributions can be the rule

Experience in the water and healthcare sector suggests that coverage of costs by fees from beneficiaries can be the rule, not the exception. Most poor and middle class people have legal problems only once in 5 years. When surveyed, they do not mention costs as the main barrier to access ([Chapter 3](#)). Most citizens can afford to pay, provided that interventions lead to the outcomes they need, pricing is transparent, and the fee does not exceed other irregular expenses, such as replacing a car or repairing the roof of a house.

## Smart fees and targeted subsidies increase revenues

Privately paid fees are already covering a substantial part of court costs and costs of legal services. Fees at the point of service can provide a barrier to access, however, because legal problems often coincide with a crisis in ability to pay. So smart fees that are: proportional to the value at stake; well-timed; informed by willingness to pay and the type of conflict; and levied from the party who can contribute most to solving the problem, are essential. Services to families that are breaking up can be funded by a monthly fee until the situation has stabilised, for instance. Subsidies should be targeted at chronic users, users requiring a very costly treatment and the poorest users ([Chapter 6](#) and [7](#)).

## First increase contributions for services already delivering good outcomes

Levying fees for effective services will be more acceptable than charging for services that do not meet users' needs. For government justice services that already deliver outcomes effectively, and for which there is willingness to pay, user fees and community contributions can be increased first. In the next phase, courts and other justice sector organisations can be allowed to charge higher fees for services in return for better outcomes.

## 3. Allow justice sector organisations to reinvest the extra revenues.

### Safeguarding the immediate financial future of institutions

The available expertise suggests that most of the additional fees for valuable services should stay with the provider of the services ([Chapter 6](#) and [7](#)). Knowing that delivering value for money can lead to increased revenues, courts, government agencies and private sector legal services are incentivised to improve and expand access to their services. They also increase their revenues, relieving them from being overburdened and enabling them to focus on delivering high-quality interventions

### Funding can gradually be linked to outcomes

Investors seek opportunities where outcomes can be monitored, and reports recommend focusing on outcomes ([Chapter 4](#)). This can gradually be reflected in financing models for courts and legal services. A performance-based budgeting system could be based on outcomes such as dispute resolution rates, procedural justice indicators, and indicators for outcomes such as prevention, restoration for victims or rehabilitation of offenders. For categories of disputes and crimes specific outcomes can be defined and monitored (good relationships between children and both parents after separation; clear and fair usage rights after a land conflict).

#### 4. Regulatory space for developing well-defined, scalable, financially sustainable services for particular target groups. Courts, other current providers of services and innovative newcomers should be allowed to develop gamechangers.

### Open up opportunities to develop justice journeys that deliver better outcomes

With the immediate financial future of government justice services safeguarded by increased revenues, the sector can start to invest. Both government service providers and innovators from the outside can be given the opportunity to develop and deliver new interventions. Our four case studies show how: legal aid can be made sustainable for specific problems; a one-stop justice service can be financed; innovative platforms for contracts and documents can be run; and local justice services can be made more effective.

### The opportunities are diverse and many new services are needed

A web platform and a legal aid NGO can support houses of justice to deliver one-stop services for neighbour disputes. A major NGO and a university may want to invest in a criminal procedure that is not purely retributive. Such a procedure could deliver other outcomes that are essential for victims, offenders and the community. These include knowing what happened, reconciling conflicting perspectives, recognising and repairing harm done, feeling included in the process, safely returning to the community and securing active accountability.

### A new regulatory framework should be created

Gamechangers require a new regulatory framework. The water sector also needed this. The new regulatory regime should facilitate the development of new services delivering information, conflict resolution and adjudication. Current regulation of legal services and rules of procedure for courts make it difficult to develop effective services, because lawyers are limited in their organisational models and courts can only offer variations of codified procedures.<sup>3</sup> Under current rules, innovators from the outside may not offer alternative services, except for the small minority of cases where both parties opt out of the codified procedures ([Chapter 4](#)).

## Courts, legal services and newcomers need a level playing field

Both innovators from the outside and current providers should be able to deviate from current rules and be regulated in a way that stimulates innovation. As traditional regulation of legal services comes under increasing pressure, new regulatory regimes are being designed. Justice leaders in the US have recently adopted strategies for opening up legal services for different organisational models, allowing for online platforms and other new services to be developed by lawyers and non-lawyers alike.<sup>4</sup> Experts now often refer to a regulatory sandbox model, where new services are introduced and tested in tandem with appropriate risk- and evidence-based regulation.<sup>5</sup> This may require an independent body overseeing the development and introduction of new “treatments.” The healthcare sector and other sectors already have such independent regulatory agencies. In the justice sector, this is being looked at as well.<sup>6</sup>

5. Attracting private and public investment by ensuring that evidence-based, scalable and financially sustainable services can become the default for particular categories of disputes and crimes. These services should observe value-based regulation.

## Investors will come if gamechangers can reach the target group

Investors will be interested if they can be sure that regulation of legal services and court procedures allows them to scale up services, once developed and tested against desirable outcomes. Investors need measurable outcomes, evidence-based interventions, and service providers that can deliver standardised interventions and predictable revenue streams ([Chapter 5](#)). The goal of 100% access implies that suppliers of justice should be able to be ambitious. Just as a water facility wants to reach 99% of the people in the area, and new medical treatments aspire to become the standard, courts, legal services and innovators should aim to serve a very large proportion of the target group.

## **New services should be able to become the default (mandatory procedure)**

Voluntary services, where the parties jointly opt out of the default legal procedure, tend to reach only 1 or 2% of the target group ([Chapter 4](#)). Doing justice also includes the possibility of ensuring a fair solution if voluntary cooperation cannot be achieved. New services should be allowed to become the default if they achieve better outcomes than the current default procedure at a court or police station.

## **Some interventions will still be reserved**

If this enabling environment is achieved, both private initiatives and initiatives inside public institutions will provide services with better outcomes. For some activities, private initiatives can replace the existing public ones. Other activities, such as murder trials, will in all likelihood always be reserved for formal courts. Still, the resolution method could be developed by private initiatives and applied by government agents. Different courts could offer different procedures - developed by start-ups or in university laboratories - until one procedure is clearly superior in terms of outcomes achieved.

## **6. Focus on local delivery of solutions for the most urgent and frequent justice problems. Support local delivery with world-class know-how.**

### **During the transition, focus on local services to address problems close to home**

The water and healthcare sector show that local provision and ownership of services are key. Hospitals and big water facilities easily eat up most of the resources, as do courts and prisons. Most justice problems occur close to home and can be remedied in the local community. If the best practices and the best know how from international research would be available, better outcomes would be achieved.

## High-quality local services require standardisation

The challenge is to enable local providers to deliver treatments that are state of the art ([Chapter 8](#)). In almost every village around the world, you will find community healthcare workers who can prevent and treat the most common diseases locally, and have the protocols based on research to diagnose whether more intensive care is needed. Our case study on local justice services suggests that investors may be willing to fund them, provided that the revenues from such services are stable, predictable and substantial, with outcomes that are well-monitored.

## Achieving 100% coverage for the most urgent problems, one at the time

Gradually, the 20 most urgent and frequent justice problems will attract the investments necessary for research, design and development. Ideally, a number of public, private and mixed providers would develop effective, replicable processes and interventions for debt problems, shoplifting, and attacks on social media. The general purpose procedures for criminal justice, civil justice and informal justice in communities would become less relevant, but still exist for exceptional cases. They would be replaced by higher-quality, sustainable, and specialised services with universal coverage, delivered locally.

## Institutions, legal services and innovative justice services can all grow

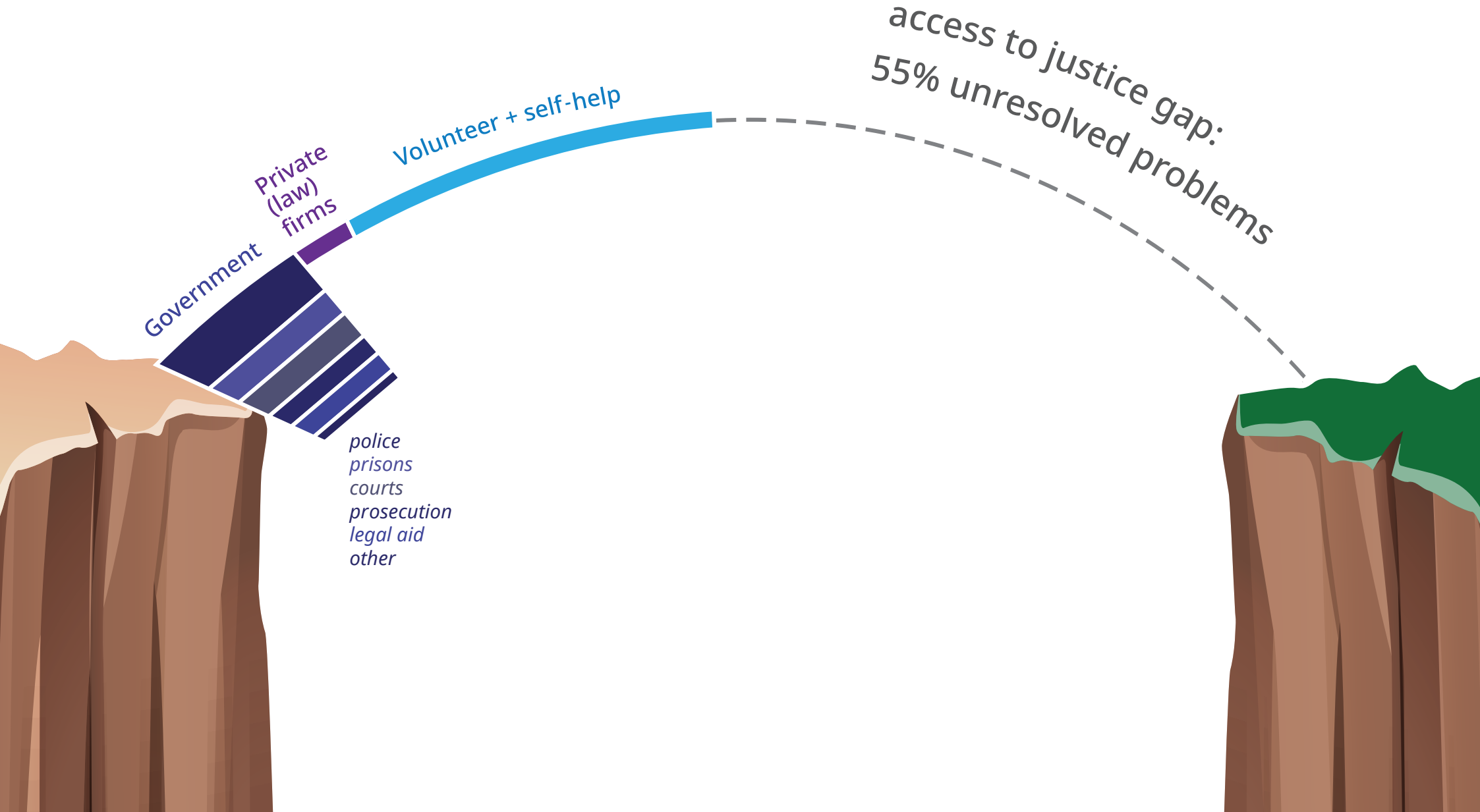
In this trajectory towards 100% access to justice, all stakeholders can benefit and grow. Courts and other government institutions can expand their reach, focusing on the most difficult justice problems, for which (innovative) private services may be less suitable. Legal services, freed from their current regulatory restraints, can grow as well. Newcomers can develop the default service, perhaps specializing in standardised, high-volume problems, or delivering innovative processes to new types of courts. The infographics on the next page represents the path to growth. Expanded budgets are made possible by increased contributions by citizens for better services.

## Developing a package of basic justice care may be feasible

When economies of scale really kick in, the next step could be to develop a package of basic justice care that is free at the point of service. This can cover as few as 5, and as many as 20 urgent justice problems. For this, the experience of the healthcare sector tells us that an extensive system of private insurance, government contributions and smart fees will be needed ([Chapter 6](#)). The healthcare sector is moving in this direction, after a long period where increasingly effective treatments were developed and paid for directly. At the other end of the spectrum, almost every family now pays for their own water, after decades of attempts to deliver it free of charge.

BRIDGING THE ACCESS TO JUSTICE GAP BY FINANCING DIFFERENT SERVICES:  
CURRENT STATE

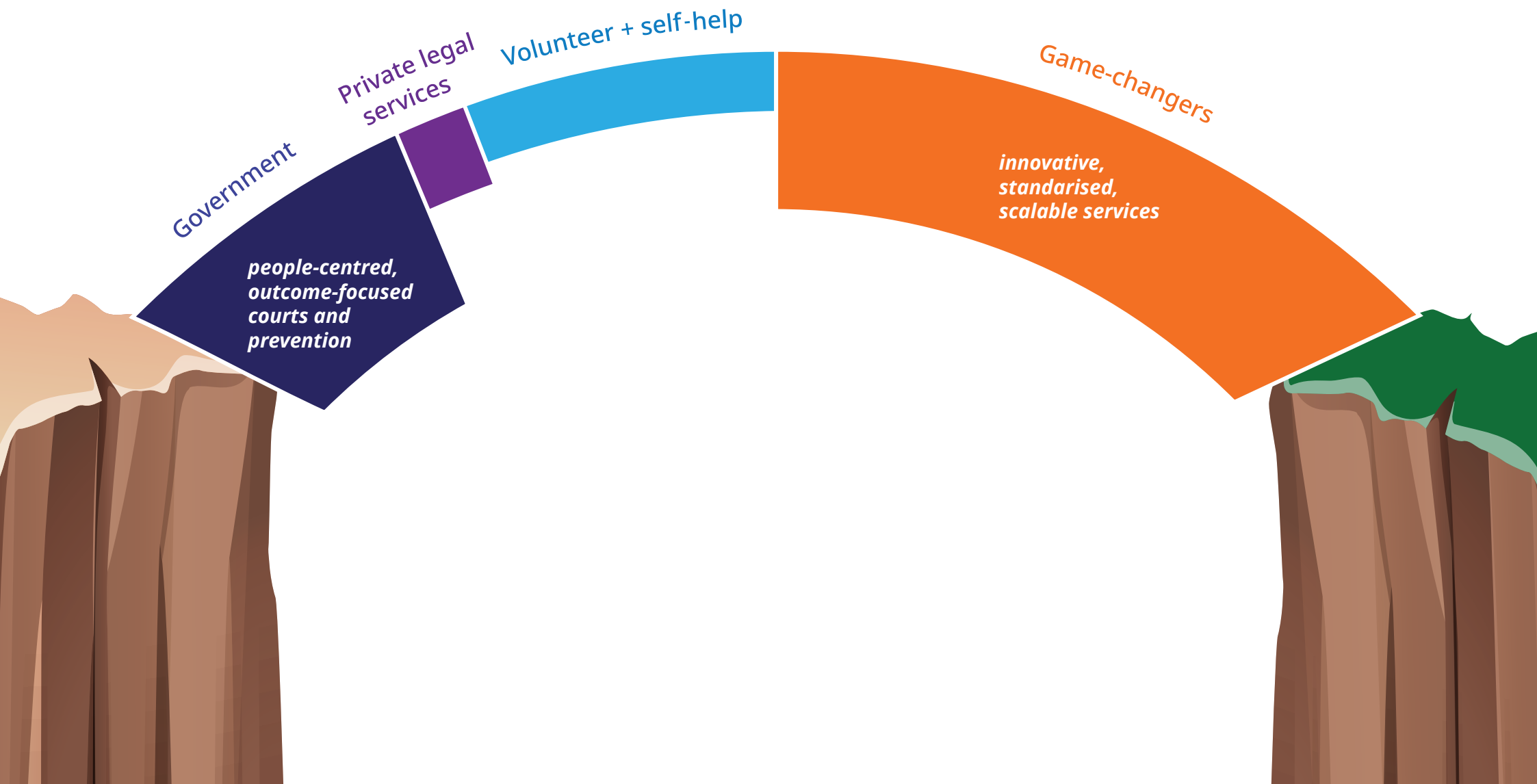
*Thickness of the bridge represents financial contributions*



## BRIDGING THE ACCESS TO JUSTICE GAP BY FINANCING DIFFERENT SERVICES: RECOMMENDED APPROACH

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*Thickness of the bridge represents financial contributions*



## 7. Investment (by the World Bank, OECD countries or major foundations) in basic technologies for delivering fair solutions that can be used worldwide.

### Finally, investment in new technologies should support breakthrough innovation

For other sectors, government research and development provided basic technologies. Gen-therapy, penicillin, GPS, the internet, touchscreens and nuclear energy are examples of breakthrough innovations that enabled entire sectors to emerge or achieve double-digit growth. Governments may want to lead in discovering the next generation of justice delivery mechanisms. This could also be the remit of the World Bank or major philanthropic organisations ([Chapter 4](#)).

### Government investments can trigger a justice revolution

In this report, when looking at investable opportunities, we encountered many hints of where to focus research and development. Agreements are the most common way to resolve disputes, yet legal procedures tend to be organised as debates. So redesigning court procedures towards producing fair agreements may trigger a revolution in doing justice. Most conflicts arise in the context of a long-term relationship.

What type of visual and user-friendly contracts really prevent such relationships from deteriorating, or help to manage such conflicts? One party doing what the other person requests is also an effective way to solve a problem. So what technologies work best to induce compliance in a fair way? Punishment by incarceration has far too many negative side-effects, whereas alternative sanctions are seen as too soft. Which new crime response process can satisfy all needs for justice?

### Demand for justice can be matched with effective supply through increased contributions

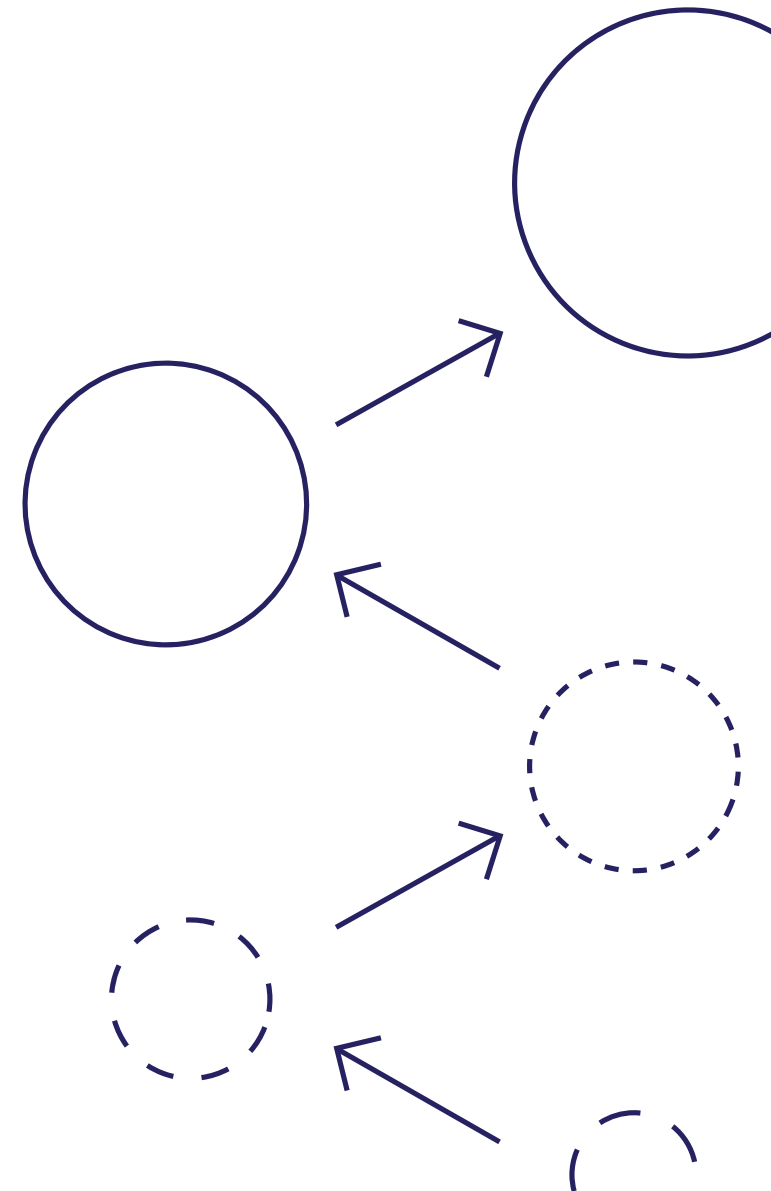
In order to bridge the justice gap, the sector needs growth. The path towards growth is complicated, and requires change on many levels. The findings in this report suggest that charging for justice requires an increase in revenues and effectiveness, triggered by an enabling environment for investment and innovation. Even in justice, there's no such thing as a free lunch. It may seem existing justice services are free, but in fact the costs of these low-quality services ultimately fall on users and society as a whole by widening the justice gap. So we need to open up the sector for innovation and create an enabling environment for people-centred justice.

## References

- 1 Elayne Greenberg and Noam Ebner, Strengthening Online Dispute Resolution Justice, *St. John's Legal Studies Research Paper*, 2019.
- 2 Private money can theoretically be mobilised in this scenario through social impact bonds, but this requires standardised, scalable services, with measurable outcomes, that can be managed by the investor.
- 3 HiiL, Dialogue: Releasing the Value of Courts, 2013.
- 4 The Utah Group on Regulatory Reform, Narrowing the Access-to-Justice Gap by Reimagining Regulation, 2019;  
Institute for the Advancement of the American Legal System, Unlocking Legal Regulation; American Bar Association, House of Delegates Resolution 115, Midyear Meeting 2020; Conference of Chief Justices, Resolution 2: Urging Consideration of Regulatory Innovations Regarding the Delivery of Legal Services, 2020 Midyear Meeting February 5, 2020; Innovation Working Group, Innovating Justice: Needed and Possible, 2019, p. 15.
- 5 The Utah Work Group On Regulatory Reform, Narrowing the Access-to-Justice Gap by Reimagining Regulation, 2019.  
Jorge Gabriel Jiménez and Margaret Hagan, A Regulatory Sandbox for the Industry of Law, 2019;  
Jayne Reardon, Regulatory Sandboxes for the Legal Industry, 2Civility, 2019.
- 6 Alison Hook and Hook Tangaza, The Use and Regulation of Technology in the Legal Sector beyond England and Wales, Hook Taganza, 2019;  
Esther Robertson, Fit for the Future: Report of the Independent Review of Legal Services Regulation in Scotland, 2019.  
See for the rapid developments in the US: Zachariah DeMeola, Legal Regulation in the Age of Disruption, IAALS Blog, 2019. In England and Wales: Stephen Mayson, Independent Review Of Legal Services Regulation: Findings, Propositions and Consultation, LSR Interim Report, 2019. Bundesministerium der Justiz und für Verbraucherschutz, Eckpunkte für eine Neuregelung des Berufsrechts der anwaltlichen Berufsausübungsgesellschaften, 2019.

# 10

## CONCLUSION



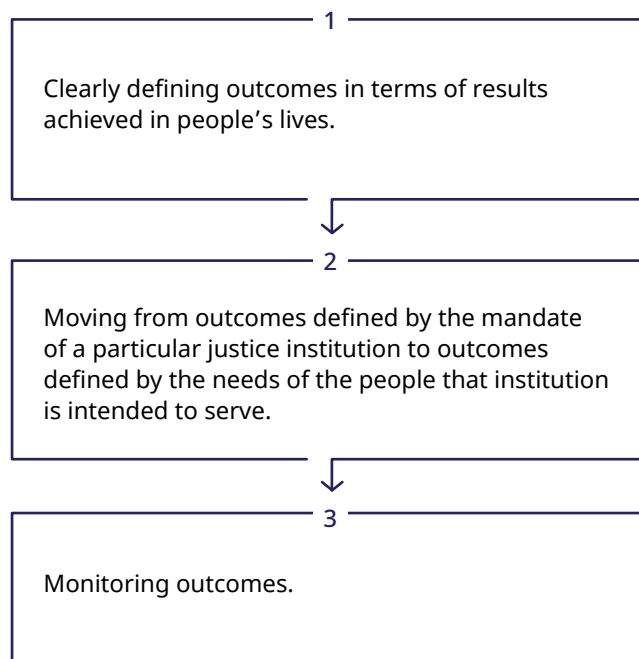
Better services, achieving fair, well-defined outcomes consistently - that is what people and investors need for peaceful, just and inclusive societies. That is what motivates justice workers and inspires innovators across the globe.

For better services, money is essential.

Our conclusion in this report is that better financing is possible: governments and civil society can substantially increase money available for delivering justice to individuals.

By focusing on measurable outcomes for people, it is possible to collectively redesign and expand the budget pie for justice - even at a time when we fear our ability to provide justice care is diminished.

We identified three key steps to **an outcomes-based approach**:



Defining justice outcomes attracts investors looking for measurable returns and social impact and facilitates public-private partnerships that might otherwise not be possible.

A people-centred approach to outcomes makes it possible to identify common goals and creates opportunities for collaboration and resource sharing across formal and informal justice institutions.

Tracking progress towards outcomes has several important effects:

- ✓ It makes possible transparent, performance-based budgeting that helps the public hold governments accountable for providing high-quality justice services. This may in turn increase people's willingness to pay.
- ✓ It also highlights areas where existing justice services are failing to meet people's needs and where innovative newcomers can have the greatest impact.
- ✓ It makes clear the many ways in which increasing access to justice reduces costs elsewhere: in security, education, and healthcare. This opens the door for creative, cross-sector financing as part of the UN SDGs.

The more providers of justice focus on outcomes, the better they will become in achieving them. The more value they will add, the more likely it is they will increase revenue streams and escape the framing of justice as a cost or burden on society.

## About this report

This is a report in the HiiL trend report series that started in 2012:

- [Basic Justice Care for Everyone](#)
- [Rulejuggling: When Lawmaking Goes Private, International and Informal](#)
- [Dialogue: Releasing the Value of Courts](#)
- [ODR and the Courts: The Promise of 100% Access to Justice?](#)
- [Understanding Justice Needs: The Elephant in the Courtroom](#)

HiiL developed an early concept note for this research based on input from experts at CIC, ODI, OECD, and the World Bank. This concept note was shared with the participants of a working session on social impact financing at the World Justice Forum, which took place in The Hague in April 2019.

The first draft of *Charging for Justice* was completed later that year, and drew from innovations literature research, HiiL's innovation portfolio and cross-country JNS data, and the landmark reports on access to people-centred justice published by the OECD, the Taskforce on Justice, the Elders, and the World Justice Project in 2019.

This draft was shared with a small group of experts in the field, including justice sector leaders, social impact investors, donors, innovators, regulators and court administrators. These experts were selected based on their knowledge about particular chapters in the report. Asked to reflect on the report and their experience with financing justice, twenty-one experts provided feedback and suggestions for improvement through expert interviews or in writing.

The initial draft was revised to incorporate the expert feedback received. This revised report was presented (and the executive summary shared) at HiiL's annual [Innovating Justice Forum](#) in February 2020, which explored innovative financing strategies and their potential to close the justice gap. The 2-day event featured pressure cooker workshops focused on:

innovations to increase revenues, stakeholder collaboration to increase funding for the justice sector, investing in justice, defining measurable justice outcomes, and the potential of public/private partnerships. Participants also had an opportunity to co-design an innovative justice budget and evaluate it as part of a plenary panel. Throughout the Forum, HiiL staff gathered participant feedback on the ideas outlined in the report.

The following topics were points of particular interest and discussion at the Forum and helped to push the conversation around financing for justice forward:

- What are the most effective ways to engage with governments' responsibility to provide justice? What forms should private sector engagement in the justice sector take?
- Partnerships and people-centred storytelling are key to bringing potential gamechangers to scale.
- Gamechanging justice innovation is not limited to legal tech. Affordable documents, community paralegals, problem-solving courts and legal literacy also generate value for money.
- Agreed upon measures of justice outcomes must be developed to build an evidence base and attract investment in the sector.
- Cherry-picking of low-risk interventions by social impact investors is a challenge. How do we increase funding for high risk, high impact interventions?
- An innovative justice budget should be designed rather than negotiated, starting from the needs of people. Identifying areas of common ground and sharing resources across institutions and innovations can expand the budget pie.
- "Throwing money at the problem" is not enough, we also need to stretch our imagination and collaboration to rethink what is possible.

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## About HiiL

HiiL (The Hague Institute for Innovation of Law) is a social enterprise devoted to user-friendly justice. That means justice that is easy to access, easy to understand, and effective. We will ensure that by 2030, 150 million people will be able to prevent or resolve their most pressing justice problems. We do this by stimulating innovation and scaling what works best. We are friendly rebels focused on concrete improvements in the lives of people. Data and evidence is central in all that we do. We are based in The Hague, City of Peace and Justice.

It is nice that we can make vacuum-cleaners user-friendly, but we think justice is a little bit more urgent.

We are friendly rebels who are passionate about social impact. We aim to empower 150 million people to prevent or resolve their most pressing justice problems by 2030. Why?

Each year, 1 billion people have a new justice problem. Shockingly, over 70% of those people do not find a satisfactory resolution. 30% don't even feel empowered enough to take action. This has a high impact on their lives and society: from violence to seriously damaged relationships and business conflicts.

To make a long story short: justice does not deliver what people need in their most difficult moments.

The problem is that we are still using the same models developed in the past centuries. It makes the process of getting justice today slow, tough, difficult and very expensive.

We truly believe basic justice care for everyone is possible. With data and technology we co-create high quality justice based on what we need now.

We at HiiL call it: user-friendly justice.

Justice that is affordable, accessible and easy to understand. It is justice that works.



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