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Sustainable Legal Aid and Access to Justice: A Supply Chain Approach

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Sustainable Legal Aid and Access to Justice: A Supply Chain Approach

Abstract

Many countries struggle to maintain an affordable and sustainable legal aid system. This paper describes an interactive consultation process that was organized to develop proposals for increasing access to justice while limiting costs for governments as well as for users of the legal system. During the process, some strategies were identified that are unlikely to be effective in increasing access to justice and limiting costs. The more promising strategies tend to focus on improving the entire supply chain of fair solutions for legal needs, from legal advice to settlement negotiations and court interventions. These strategies can indeed lead to savings on the legal aid budget and can improve access to justice at the same time. However, the ensuing policies are not easy to implement, because they require a form of coordination that is novel for the legal sector.

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I. Coping with Tight Budgets

In 2008, the Dutch legal aid system had to cope with a €50 million cut in a budget of €400 million (which is around 0.8% of the Dutch GDP). The Dutch Ministry of Justice did not react to this with political infighting or cuts in the legal aid programs, but started a project that should lead to a vision of a sustainable legal aid system and to an improvement in access to justice. Part of this project was an open, interactive consultation process. In this consultation process, the stakeholders offered their views and interacted with each other in order to identify suitable proposals and to improve them. These proposals formed the basis of a series of measures that were accepted by parliament.

In this paper, we first describe the consultation process and offer some insights from the evaluation that the Ministry of Justice undertook (Section 2). Then, we turn to lessons learned regarding the design of a sustainable legal aid system and, more broadly, access to justice. During the process, some strategies were identified that are unlikely to be effective in increasing access to justice and limiting costs. The more promising strategies tend to focus on improving the entire supply chain of fair solutions for legal needs. These strategies can indeed lead to savings on the legal aid budget and can improve access to justice at the same time. However, the ensuing policies are not easy to implement (Section 3).

The Dutch approach showed how valuable international cooperation can be. It copied and extended an approach developed in England and Wales, as discussed during the 2007 ILAG conference in Antwerp. In this program, which attracted major attention through changes in the fee structures for legal aid lawyers, stakeholders were also invited to review the supply of justice in the area of juvenile delinquency, which led to proposals for improvements in the procedure that at the same time limited the need for legal aid (Finlay and Regan 2007). Legal needs research was used to select areas that obtained specific attention, such as divorce, conflicts with government agencies, youth crime, and multiple problems (Genn and Beinart 1999; Genn and Paterson 2001; Currie 2007). The Dutch approach also built upon interdisciplinary research regarding dispute system design (see Barendrecht 2008; Bingham 2008; and Bordone 2008 for reviews of the literature).

II. Interactive Consultation of Stakeholders

A. Process

The consultation process took place between March 1 and June 1, 2008. Its main goal was to identify proposals that improve access to justice and that would lead to budget cuts of at least €50 million. Tisco, the research group of the first author, facilitated this process in close cooperation with civil servants from the Ministry of Justice. The methodology that was followed is known in the literature as consensus building (Susskind, McKearnan et al. 1999). The task was to lead the discussions, to help the participants develop proposals, to offer background knowledge from interdisciplinary research, and to look for common ground regarding the most promising proposals.

One-hundred-twenty key persons from more than 60 organizations involved in access to justice participated. Besides legal aid lawyers and representatives of the Dutch bar association, there were judges, social workers, and representatives from repeat players such as social security agencies. Legal expenses insurers took part, as well as consumer organizations, and of course, the Dutch Legal Aid Board.

The participants communicated with each other in five working groups, one for each of the four areas that needed specific attention, and one group that looked at legal aid and access to justice in general. This fifth group investigated options such as legal expenses insurance, broadening the use of paralegals, and improving access to legal information. Each working group met three times. After investigating problems and issues, it developed a list of proposals for its own area of inquiry. The members of the working groups, the other participants, and even the general public could follow the developments in each of the working groups from day to day through a wiki. This technology for jointly developing texts—which is well-known from the application in the web-encyclopedia Wikipedia—made the process very transparent and was essential in building trust among the participants. The wiki finally developed into a position paper that was delivered to the Ministry of Justice and all stakeholders (Barendrecht and Van Zeeland 2008).

At the opening conference, there was hesitation among some of the participants. Is it possible to improve access to justice and lower budgets at the same time? After some initial discussion, a large majority of the participants decided it was worth giving it a try. What added to this positive attitude was an indication by the Ministry of Justice that it would not seek solutions in the direction of decreasing lawyers' fees, or increasing the contributions of the users of legal aid. There was also a general attitude that the performance of the system could be improved, in particular by focusing on solutions for the legal problems of consumers, divorcees, suspects, employees, and other users of legal aid, rather than the sometimes still legalistic application of legal rules to their cases.

B. Input

The facilitators of the process assisted the participants by suggesting possible lines of thought that could lead to workable solutions. Here, Tisco benefited from the extensive literature on access to justice (Cappeletti and Garth 1978; Woolf 1996; Parker 1999; Rhode 2004; Genn 2005; Mulherin and Coumarelos 2007). It was finally decided to make use of the draft report of the working group on access to justice of the UN Commission on Legal Empowerment of the Poor (Commission on Legal Empowerment of the Poor 2008). This working group reviewed the extensive literature on access to justice in developing countries (where budgets are extremely limited) so that creativity and efficiency are necessary. It also formulated four succinct and general strategies for improving access to justice (see Box 1).

The facilitators felt the basis of the four strategies was also appropriate for a developed legal system like the Dutch system. Making information available and facilitating self help, broadening the scope of legal services, streamlining procedures so the process of

settlement in the shadow of the law is improved, and working on the interaction between ADR and the formal justice system, are clear strategies that can be used in developed legal systems as well. They rephrased these strategies in terms more suitable for the Dutch situation (informal justice systems were replaced by ADR procedures, for instance) and offered these as guidelines for developing more concrete proposals, making clear that the participants were entirely free to come up with other types of suggestions, which they certainly did.

Box 1 Four Strategies to Improve Access to Justice
(Commission on Legal Empowerment of the Poor 2008)

Taking the justice problems of the poor as starting points, these strategies build on the options poor people have available to address these problems and to enforce their rights: spontaneous ordering mechanisms, informal, faith-based and customary justice, as well as the formal legal system. The common aim of these strategies is to lower costs that may be involved and increase justness and fairness of the outcomes poor people may obtain. These strategies have proven their value in practice, or seem particularly promising in the light of a theoretical framework that emphasizes a reduction of transaction costs and remedying market failure:

1. Empowering the poor through improved dissemination of legal information and formation of peer groups (self-help strategies). This can be done by strengthening information-sharing networks across consumer groups and organisations, by using information technology, non-formal legal education and media campaigns tailored to the target population and their problems.

2. Broadening the scope of legal services for the poor, in several directions:
a) an orientation towards empowerment, coaching and learning;
b) lower cost delivery-models (through paralegals, or otherwise);
c) bundling with other services (health care, banking, insurance) and introducing the concept of one stop shop;
d) use of the methods and skills of alternative dispute resolution, mediation and arbitration;
e) and legal aid services that are capable of assistance with the informal system as well as the state system.
Moreover, the market for legal services should gradually be liberalised by reducing regulatory entry barriers (such as 'unauthorised practice of law' restriction) for service providers, including non-lawyers, who are interested in offering legal services to the poor.
Scarce legal aid resources should be targeted to cases where the legal claim produces public goods (such as general deterrence or legal reform) and to situations with very high stakes for the individual (such as criminal defense).

3. Reducing aggregate legal transaction costs by adopting a combination of legal simplification and standardisation reforms, expanded opportunities for representative or aggregate legal claims, and improving the climate for fair settlements in the shadow of law by ensuring a credible threat of a neutral intervention.

4. Combining formal or tacit recognition of the informal justice system with education and awareness campaigns that promote evolution of the informal state system, targeted constraints on the informal system (in particular limits on practices that perpetuate the subordination of women), and appropriately structuring the relationship between state and non-state systems so that the informal system can provide an efficient means of resolving private disputes, but people are able to use the formal system when crime and fundamental public values are implicated.

A fifth line of thought was added based on Tisco's research into dispute systems, and in particular the transaction costs of the tort system (Van Zeeland, Kamminga et al. 2007; Barendrecht and Verdonschot 2008). This strategy expresses the idea that some legal norms are more costly to apply than others. Norms sometimes require extensive fact-finding, but in other instances, they offer guidelines that are easier to apply. An example of the latter type of norm in Dutch law is the well-known formula for determining severance payment to an employee in case of dismissal, which is now one half of a monthly salary per year served with the employer. Many legal systems have schedules for determining compensation in personal injury cases, or for child support in case of divorce. The availability of such criteria has several beneficial effects on access to

justice: comparability that leads to the feeling that like cases are treated alike, less over-optimism as to the likely outcome, less anticipated regret, and less extreme positions in negotiations so that bargaining failure is less likely (Barendrecht and Verdonschot 2008).

C. Selection Criteria for Promising Proposals

Helped by the hints from these strategies, the participants developed a long list of 46 proposals. Parallel to this process, they discussed and decided on the criteria they would use for evaluating proposals.

For this, the facilitators suggested an evaluation framework that primarily focused on the perspective of the end user of the system and the political feasibility of the proposals. The participants added criteria to this that refer to the costs of implementing proposals, as well as the work-satisfaction of professionals, which is an essential condition for effective change.

Box 2: Evaluation Framework for Proposals that Decrease Costs of, and Improve Access to, Justice

Criterion	Elements to Take into Account
A. Number of Persons/Cases Affected	• Estimated number of cases per year • Number of persons per case
B.1 Impact on procedural quality	• Voice • Correctability • Respect and equal treatment • Explanations (of procedure) • Justification (explanation of outcome)
B.2. Impact on quality outcomes (settlement, judicial decision, sus-tainability of solution)	Quality outcomes • Efficacy (are interests met, is conduct changed, problem solved, orientation towards interests of the user, no side-effects such as damage to relationships, enforceability) • Predictability (and thus equal treatment) • Restoration of injustice (compensation, in criminal law just deserts) • Proportionality (does outcome reflect contribution)
B.3 Costs	• How does the proposal affect costs (fewer cases, less procedural steps, making steps unnecessary, cheaper alternative)? • How much of the anticipated cost reduction will become available for the user/citizen (reduction in administrative costs/improvement in access to justice)? • How much of the cost reduction will become available to the partners in the supply chain (legal aid providers, government as provider of legal aid, court system)?
B.4 Side-effects	• Which ones? • On whom?
B.5 Proportionality	• What is the present price/quality ratio? • Does the proposal improve this ratio substantially by decreasing costs or improving quality?
C. Feasibility	• Does the proposal contribute to political and societal goals (strengthening family values and relationships, working relationships, improving security and decreasing recidivism, lowering administrative costs/diminishing bureaucracy, innovation, sustainable economic growth)? • Contribution to quality of work and work satisfaction of professionals (lawyers, judges, paralegals, mediators, others working in the supply chain) • Feasibility for actors: knowing, can do, want to do, will they do it?
D. Costs of introducing the measures	• For professionals (education, changing processes and procedures) • For governments (costs of legislation and legislative procedure, change programs, reorganisation costs)

Meanwhile, a more detailed calculation of the cost effects of the proposals was

undertaken by a bureau specializing in evaluating and predicting effects in complicated government supply chains. Eventually, this calculation was the basis for proposals to change the legal aid budget.

D. Outcome of the Process

During the process, the participants were asked to rate proposals roughly on these criteria. At the conference that concluded the process in the end of May, the long list of 46 proposals was discussed. Small groups ranked the proposals on one of the criteria. Then, the rankings on each of the criteria by the different groups were compared. In this way, the list of proposals was finally reduced to a short list of 11 core proposals and 19 promising proposals, ranked roughly from more promising to less promising. Box 3 gives an impression of these proposals, leaving out the details that are typical for the Dutch situation and procedures.

Box 3: Proposals Interactive Consultation Process "Duurzame en toegankelijke rechtsbijstand"

1. Proactive conflict-management by government

Several government agencies (Tax, Social Security) developed processes to deal with disputes proactively: scrutinizing letters, telephone interaction, invitations to discuss decisions with conflict potential, and mediation in order to prevent administrative review procedures. Governments can set a standard of how organizations can deal with conflict.

2. Divorce-plan and case-management by judge

The divorce supply chain is crucial for the well being of children and of the couples who split up in 32.000 cases yearly. For the Ministry of Justice this represents an aggregate cost of €120 million per year. A core element of the proposals is that the various legal procedures around divorce will be integrated into one procedure in which the parties preferably design a divorce plan together. They can do this with the help of lawyers, or with a mediator, who will be incentivized to work constructively and in a problem solving manner. The judge decides on the issues that the parties leave open in their divorce plan, and manages the minority of cases that are more complex. The high costs of "divorce fights" will be born by the parties themselves, unless an independent diagnosis confirms that a party cannot be expected to work on a divorce plan cooperatively.

3. Make problem solving routes attractive

In other conflicts (such as employment, neighbor, consumer), it is important as well to stimulate the parties to communicate constructively and to let them grow towards a solution. A consistent scheme of contributions to legal aid, court fees, cost allocation in procedures, as well as of cost allocation within courts and of remuneration for lawyers is crucial for this.

4. Conflict-management know- how and objective criteria should be transparent

Problem solving negotiation processes are crucial and the know-how to negotiate in a problem solving manner should become available more widely. The same is true for criteria for the recurring distributive issues, the "how much" questions.

5. Early hearing at the court

An early hearing (before substantial costs are made) is necessary in order to put pressure on the negotiation process, in order to focus the parties on working towards solutions, and in order to reduce power differences and interdependencies. During this hearing, the judge can decide the remaining issues, and in a minority of complex cases, he can outline the process towards a decision.

6. Diagnosis and triage

A tool for diagnostics is needed in particular to distinguish standard cases from exceptions (using the 80/20 rule) and to develop best practices for exceptional cases that can develop into standards. Diagnosis should be undertaken early on and in similar ways throughout the supply chain (legal aid offices, intake by lawyers, intake by courts, etc.).

E. Evaluation of the Process

The consultation process was evaluated by civil servants of the Ministry of Justice, who interviewed participants and other stakeholders. The reactions were generally fairly positive, in particular in relation to the interactive consultation. Time pressure was high, but the pressure cooker effect was a necessary component as well. Less positive comments were related mostly to the fact that many proposals first have to prove their value in practice. Much more positive was the feedback on the amount of proposals and

their creativity. Moreover, the proposals formed a good basis for reaching agreement on the budget cut in the Cabinet of Ministers, as well as support among professionals and their organizations.

The evaluation report recommended continuing with the interactive process approach during the implementation phase. It also stressed the importance of financial monitoring of the implementation. Another suggestion was to clarify roles in such processes early on, in particular the roles of and expectations from the different layers in the political and governmental hierarchies. One other flaw was that courts and public prosecution were less well represented than other stakeholders. Inviting stakeholders to participate, giving them time to prepare, and making participation attractive for them is essential as well as time consuming.

A point not discussed in the evaluation report was observed by some of the participants with extensive experience in dealing with the Ministry of Justice. Usually, organizations of stakeholders are consulted one by one. They try to lobby and negotiate a deal for their own organization, downplay the importance of the other stakeholders, and the Ministry has to take into account all the other interests involved. In an interactive consultation process, all stakeholders find themselves around the table and—at least in the Dutch culture—this restrains their tendency to overstate their own role. They also learn more about each other, challenge and question each others' positions, and see possibilities that they may overlook whilst discussing the options among their own membership. Although the Ministry of Justice has somewhat less control over the outcomes, an interactive consultation process makes its role in the process much easier, assuming that the goals of the process and the procedure are clear. One risk that should be managed, however, is that stakeholders try to influence the outcome on a one by one basis after the consultation process has been concluded.

III. Lessons Learned

This Section reflects on the consultation process and its outcomes with the goal of identifying policies that may, or may not work in situations of budget constraints and simultaneously a commitment to improving access to justice.

A. Unpromising Trajectories

First, the process gave an impression of possibly unhelpful policies and the reasons for them. The Dutch Ministry of Justice indicated early on that it would prefer not to consider *cuts in remuneration of legal aid lawyers, or higher contributions* to their fees by the users of the system. Part of the reasoning for this was practical. In the Dutch legal aid system, fixed fees are the norm, so there is little need anymore to switch from hourly fees to forms of remuneration that are likely to enhance efficiency. Normal budget scrutiny during the years before 2007 had already exhausted most of the potential for saving costs by comparing fixed fees to hours actually worked. Politically, lowering the hourly fees of legal aid lawyers—that is the basis for the fixed fee calculation—was unattractive because there had been a discussion about the fees for many years. This discussion had only recently been concluded with an expert report which formed the basis for the existing fee schedules, and a deal in which lawyers that agreed to being audited on the quality of their services would receive a slightly higher fee. Lowering fees could now easily be seen as a renegotiation of that political deal. Options like raising users' contributions, or lowering the financial thresholds for eligibility, were also considered to be asking for political trouble.

Another alternative that was considered related to privatizing the system in the direction of *legal expenses insurance*. In the Netherlands there exists a lively market for such insurance (30% to 40% of households have insured themselves against legal expenses, although the coverage is much lower for those eligible for legal aid). In the process, there turned out to be little support for this option. The Ministry of Justice decided to propose

this measure to parliament, mainly because the original decision to cut the budget was taken during the formation of the present government with this option in mind, so tat the minister was politically bound to try this option. Parliament gave it some thought, but was turned it down decisively in the end. The first problem here is that legal aid in criminal cases and in divorce cases is hard to insure. Perpetrators of crime are unlikely to have taken such insurance, and insurance of legal aid in divorce cases creates a moral hazard. The remaining cases that can be insured (consumer issues, employment law, personal injury, housing problems, and neighbor conflict) together form a relatively small part of the Dutch legal aid budget. This is due to particularities of the Dutch legal system, in which it is possible to claim legal aid expenses incurred during settlement negotiations from defendants in employment matters and in most personal injury cases. The administrative costs of insuring millions of citizens against legal expenses for these remaining cases would simply not outweigh the relatively small benefits for the government budget.

Probably more controversial is the insight that *one lawyer on one client legal aid* is an expensive way to serve justice needs. There are certainly situations in which this is the only solution that satisfies these needs, such as the threat of a long lasting detention. But legal needs surveys give a fairly precise picture of the number of legal issues citizens face in any given year, and even a rough calculation should make clear that no country can afford to subsidize a lawyer, or any other trained professional, for each consumer conflict, employee dismissal, criminal prosecution, and complaint against government agencies. And no bar association can afford to let its members deliver pro bono legal services to a substantial proportion of the poor (Rhode 2004; Sandefur 2007).

Mediation seems to be an attractive solution, because it can provide procedural justice, and solutions that fit the interests of both parties. It is also cost-efficient because a limited number of professional hours are generally sufficient, and because it basically divides the number of professionals that are necessary to deal with an issue by two, as compared with the one lawyer-one client model. However, mediation has not lived up to its promises as a tool to improve access to justice substantially. Voluntary mediation needs the consent of both conflicting parties, and this is often a big problem. Moreover, there are increasing worries that mediation cannot work to remedy power differences between the parties, unless it takes place in the shadow of low cost access to a court (Welsh 2001; Hernandez-Crespo 2008). Most mediation in the U.S. and also in the Netherlands takes place after the initial stages of a judicial procedure, and referral by the court. This court-annexed variant of mediation does not lead to substantial savings in legal costs. Another variation is mediation programs set up by repeat-players such as governments, or employers of a large workforce. Thus far, the direct impact of mediation on access to justice has been limited and local. An option for making a bigger impact would be to make mediation mandatory for certain classes of disputes, but that was not an option favored by the participants in the Dutch interactive consultation process.

B. More Promising Strategies

Many of the strategies that were seen as more promising had to do with streamlining procedures. The proposals that ended highest on the short list focused on the role of *government agencies as defendants* in procedures. Just rewriting standard letters so that they are more informative, and more empathetic, can substantially decrease dispute rates, was the experience of several government agencies that participated in the process. A short telephone interaction, followed by an invitation to discuss decisions with conflict potential, can prevent communication failure, and thus the perception of a conflict. Some agencies combine this with an offer to mediate in situations with continued questions from the citizen, so that only a limited number of procedures go to the more costly and more formal procedure of administrative review, and the administrative appeals procedures within the court system.

If *organizations carefully design their dispute systems* (Ury, Brett et al. 1988; Costantino and Sickles Merchant 1996; Shariff 2003; Bingham 2008; Bordone 2008), substantial cost savings are possible, and also an increased satisfaction with procedure and outcome on the side of the plaintiff. Although some safeguards are necessary to prevent overzealous civil servants from coaxing plaintiffs into dropping their claims, this was seen as an important and effective strategy that can be translated into an obligation for government agencies that have substantial numbers of disputes with their clients. An interesting issue that was not explicitly taken up in the proposals is whether such an obligation to have a good dispute management system in place can be extended to repeat players on the market, such as sellers of consumer goods, and insurance companies that are responsible for substantial caseloads in the legal system.

Simplifying procedures was another recurrent theme. A good principle is to have *one procedure per distressed relationship*, not more. Legal categories, and rules that give jurisdiction to courts, often do not conform to this principle. In the Dutch situation, it is fairly common to have two or three procedures in one divorce case, or around one dismissal of an employee. This obviously adds to the costs for all involved.

Procedures can be simple. Every jurisdiction we know of has fairly simple procedures along the following lines. Across countries this pattern exists for almost every recurring type of justice need: employment tribunals, consumer dispute commissions, courts dealing with youth delinquency, problem solving courts, justices of the peace, etc. Such a procedure starts with a short, written introductory exchange of views, followed by a court hearing in which issues are clarified, settlement is attempted, and courts collect information for their decision, which follows after a few weeks. This is a low cost option, and also an option that has every possibility of scoring high on users' perceptions of procedural justice and outcome justice. If more extensive fact-finding is necessary in exceptional cases, the continuation of hearings is possible, and then it is important to coordinate this through case-management.

Taking a slightly different perspective, a plaintiff needs access to a court early in the process. By granting the option of such an *early hearing*, courts become supervisors of the negotiation process, referees in procedural issues, decision makers in case of impasse, and providers of checks and balances in situations with a much more powerful defendant. This need was clearly and repeatedly brought forward by the Dutch organization of legal aid lawyers as an important way to improve access to justice. Making such an option available seems to be costly, because it requires extra interventions by courts. However, Dutch employment termination procedures, which are simple and provide early hearings as described, show that this is still an attractive option for overall cost savings in the supply chain. Under the conditions that are present in these procedures, around 90% of cases settle before they reach the court. Knowing that a court will grant a hearing of one hour maximum in a few weeks—and will generally immediately decide after that along lines that are fairly predictable—is a very powerful incentive to reach a fair settlement. Delaying tactics, extreme positions, or abuse of power are much more unlikely if both parties know that they have to look into the eyes of the judge in a few weeks from now. The parties also expect the decision of the judge to be rather straightforward, so that they can outsmart the court by reaching a settlement that reflects their individual interests in a much better way than a court—with limited information about the parties—can ever achieve.

Building on this, another promising strategy is to strengthen the links between negotiation and litigation. In actual legal practice, these are very closely connected: the parties "litigotiate" (Galanter), negotiate in the shadow of the law (Mnookin and Kornhauser 1978), or switch between two tables where they play the problem-solving and litigation games respectively (Mnookin, Peppet et al. 2000). *Integrating negotiation and litigation* has been one of the intentions behind the English 'preaction protocols,' which streamline

the flow of information towards the courts, and thereby also enable both parties to inform themselves on the strengths and weaknesses of their case.

It is also possible to start at the other side, however, and streamline the negotiation in such a way that it also becomes easier for the court to decide the remaining issues. As of March 1st 2009, Dutch divorce procedures will have the novelty of an obligatory parenthood plan, where parents are obliged to jointly deliver a plan for their future relationships with their children. Inspired by this development, the working group on divorce in the consultation process developed the idea of a *divorce plan.* The idea here is that people wanting to obtain a divorce get the option of letting themselves be helped with an online tool that leads them to the essential issues that they have to clarify and decide on. In this online document, they can identify issues, exchange views, and settle the issues on which they agree. This document informs all professionals involved (lawyers, mediators, judges, experts) and is the place where each of them gives additional input. If there are issues on which the parties do not agree, the judge can eventually give his judgment on precisely these issues. According to the proposal, this process will not be obligatory, but the parties who use this process obtain a substantial reduction in their court fees and have to contribute less to the payment to their legal aid lawyer, reflecting the lower costs for the court system.

This approach can possibly be applied more broadly in the future. The overall idea is to guide the parties through a constructive negotiation process, making use of state of the art conflict management skills, not unlike the ones currently supplied by mediators. They can, however, *agree to disagree*, in which case a court or another neutral is available to render a decision.

Another tool to enable settlement that attracted positive attention was the *transparency of objective criteria.* As was discussed in Section II, schedules, formulas, or other guidelines help people to get an idea of what a fair price might be for settling their claims, which are often based on rights that are described in the abstract. Interestingly, this was the second point repeatedly brought forward by the Dutch organization of legal aid lawyers. They felt that their clients needed to be able to predict what a fair outcome would be. Moreover, legal aid lawyers in Holland (being paid by fixed fees, with an exception for laborious, time-consuming cases) have to cope with unrealistic expectations regarding the value of claims, possibly caused by Hollywood images of what legal procedures may deliver in cash. Being able to refer their clients to criteria certainly adds to the quality of the service that they can deliver to their clients.

A final promising avenue is *diagnosis and triage*. Streamlining diagnostics as an instrument for choosing treatment is well-known in health care. According to the participants, a neutral diagnosis can be very useful for legal disputes, where both parties often have strategic reasons for not choosing a suitable procedure jointly.

C. Implementation Problems

Finding promising strategies is one thing; implementing them is far more complicated. Improving the supply chain for obtaining just outcomes for disputes involves many different stakeholders, with their own rules, cultures, and budgets. Moreover, there is much independence around, which is not always a guarantee for smooth cooperation between professionals and their organizations.

A first problem was encountered during the consultation process. Legal aid, court fees paid by the parties and remuneration of courts run through different budgets. Conflicts may be dealt with by a number of different procedures; therefore, there is no quick way to assess what the overall costs for the courts or the parties of a specific type of conflict are. Establishing possible cost savings and monitoring effects of measures taken requires good *management of information*. Although some efforts are under way in this direction,

there is not yet an agreed framework for measuring the performance of the supply chains in the legal system (Gramatikov, Barendrecht et al. 2008).

If the supply chain is streamlined, there are basically two possibilities. The first is that an existing procedure is used less often. Generally, this will lead to cost savings because remuneration of courts and lawyers is based on the number of cases they deal with. The second possibility is that the work in a procedure is diminished. Courts and lawyers have to spend less time because they all use one interface for communicating about the case, or because the clients do more by themselves, and get a reduction in court fees in return. In this scenario, *renegotiation of court and lawyers' remuneration* is necessary, at least in the Dutch setting where legal aid lawyers are generally paid fixed fees. This can be a complicated process.

Another problem is that procedures are at least partly determined in codes of procedure. Changing this type of *legislation* can be troublesome because specialized lawyers at the Ministry of Justice feel that these codes are core legislation, which have their own rationality and integrity, that should be preserved, and which are shielded from the whims of politicians and civil servants with another orientation than preserving legal values. Moreover, the number of specialized legislation lawyers is limited and their time restricted.

Other agents involved in changing procedures are the courts*. Judges tend to have a complicated relationship with procedures*. They want to be loyal to parliament, which in the end enacts procedural laws. They want to be loyal to the parties, and their lawyers, who own the dispute. At least in Holland, they do not particularly appreciate that they are thought to be part of a supply chain. Of more practical nature is that judges are still hesitant to participate in processes with other stakeholders because this might impair their independent judgment. Finally, judicial councils are relatively new organizations, with their own aspirations and agendas for change.

Even in the higher management levels of courts, there is limited awareness of the role the courts have in all of these cases they never see. Negotiation and settlement are a reality for them only insofar that they take place inside the court house. *Courts see themselves primarily as decision makers, not as providers of access to justice*, that do most of their job by improving the shadow of the law. They have their own ideas about how to conduct a procedure, but do not always feel themselves responsible until the case reaches their desk.

More generally, the *attitude of the professionals* is to be responsible for justice in individual cases. Wholesale improvements that lower the transaction costs of divorce cases or consumer conflicts do not easily grab their attention. One of the problems here is that courts tend to be remunerated per case decided, and not for, for instance, the number of conflicts under their jurisdiction that obtain fair solutions.

These complications should not be underestimated. For the civil servants of the Ministries of Justice and Finance, it may be easier to agree on a proposal with a clear budgetary consequence for one stakeholder, than striving for an improvement of the supply chain, with complicated consequences throughout, and multiple negotiation processes with different stakeholders. Reorganizing the supply chain requires dealing with uncertainties, careful planning and monitoring, innovating procedures, and a long term commitment of persons and organizations feeling responsible for *long term supply chain management*.

In the Dutch process, there were some hesitations in this respect. Compared with the proposals formed in the interactive consultation process, the Ministry of Justice put some more *simple budget cuts* in the package that was finally proposed to, and accepted by, parliament. The threshold for the amount at stake in a procedure was raised from €180 to

€500. For some asylum and legal status cases, as well as legal aid to defendants in criminal cases after a short detention, the fee system was adjusted. Interestingly, however, these last changes still reflected a supply chain approach, because it was felt that the normal case was that one lawyer would represent the client in the different stages of the proceedings, and that this lawyer would need less time to bring forward similar points in these subsequent stages. But these measures were perceived as budget cuts, and met much more resistance than the other elements of the package.

IV. Conclusion

Legal aid is often discussed in isolation, as an essential and independent tool to improve access to justice, but also as a separate and costly burden on government finance. Bringing together all stakeholders in supply chains that serve specific justice needs is a procedure that changes the perspective and opens the door for new types of outcomes. This form of cooperation can lead to proposals for improvements in quality and cost-efficiency of legal procedures, including the advice and negotiation processes that precede them. Interdisciplinary research on legal aid, access to justice, and dispute system design can inform such an interactive consultation process. However, this approach requires forms of supply chain management, involving and confronting all stakeholders, that have to be developed and maintained.

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