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Microjustice

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Abstract: *In this essay, we introduce the concept of Microjustice as an approach to tackle the problem of access to justice for those with limited resources. In addition to existing perspectives, we propose to analyze the justice sector as a ‘market’ with its corresponding chain of supply and a demand. The challenge is to develop processes that are affordable to users with limited resources, whilst making it attractive for the providers of justice to act as suppliers. Microjustice allows the demand for justice and the supply of justice to meet by using tools of the modern services economy: information technology, economies of scale, cheaper labor at the place of delivery, flexible adjustment to local circumstances, self-help and empowerment of the user. The analogy to microfinance is instructive.*

We first explore how the market for justice works and why justice does not reach the poor. Next, we proceed to the development principles for Microjustice, drawing on the work of Prahalad and Hart regarding markets at the “Bottom of the Pyramid.” We also show that legal systems are surrounded by knowledge that has an enormous potential for innovation, but are not yet open enough to use this potential. We give some examples of how Microjustice could look like in practice. Then we investigate the limitations of the market perspective and possible other objections to the Microjustice approach. We conclude by inviting the legal sector service providers, NGO’s and other institutions working on access to rights to consider the development of innovative services in the spirit of microjustice. Moreover, we urge governments and donors to think about access to justice programs in terms of creating a climate for innovation and a business climate that stimulates legal service providers to deliver their services at the bottom of the pyramid.

¹ The Microjustice Initiative is in its early stages of development. It aims to become an international platform in which organizations, universities, government institutions, experts and other individuals can participate to promote the development of microjustice. The goal is to develop Microjustice processes on the basis of input from field work, to exchange experiences and know how regarding the development of innovative justice services, and to gain support for the Microjustice approach (see www.microjustice.org). We thank Herman van Gunsteren, Piet Hein Donner, Federico Mayor Zaragoza, Frederik Schutte, José Jaime de Domingo, Jan Michiel Otto, Sam Muller, Annemarie van Swinderen, Matthijs Pars, Jin Ho Verdonschot, Toon Bullens, Gonzalo de Cesare and participants in a workshop at the Van Vollenhoven Institute for Law, Governance and Development for their valuable comments and contributions to the development of the concept of Microjustice.

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I. REACHING THE CLIENTS

At the Corte Nacional Electoral (National Electoral Court) in La Paz, hundreds of people line up to sort out problems with their birth registrations. Registering your newborn child in Bolivia can be a tedious business, with little immediate positive consequences. This is one of the reasons why many Bolivians do not exist according to the Registro Civil (Civil Registry of Persons). When children are due to start school, they are often required to show a birth certificate in order to enroll. However, if the child has not been registered at the time of birth, the law requires a more extensive procedure to obtain such registration. In addition, the bureaucracy is merciless, requiring long court procedures even for the simplest of mistakes, like a misspelled name. In a country with high illiteracy rates among its adult population, these types of mistakes are fairly common. Court cases can easily take years, not to mention the costs of lawyers and the time spent in doing additional paperwork. As a result, many grown-up Bolivians have no valid birth certificate and, therefore, do not exist legally.

In developing countries, millions of people have no effective access to authorities that protect their rights. Rule of law and access to justice are essential for basic human security. The quality of people's lives is closely linked to investments in property. Their human and social capital resides in their key relationships (employment, business, family, community, etc). Protection of this capital through processes that protect property rights, and that solve disputes in these key-relationships, is a key element of any strategy to stimulate human development and economic growth. However, the existing paths to justice are too expensive, too time-consuming, or too cumbersome. At the supply side of the justice system, police, lawyers, courts, and officials are often inadequately funded. Even when there are funds, these 'suppliers of justice' may have little incentives to help the poor. Legal empowerment is such a pressing issue that the United Nations has set up a Commission for Legal Empowerment of the Poor, hosted by the United Nations Development Programme (UNDP), and co-chaired by former US Secretary of State Madeleine Albright and the well known Peruvian economist Hernando de Soto.

The situation in developed countries is not always a shining example, because access to justice for people with little means can be problematic in similar ways. "Paths to Justice" surveys (ABA 1994, Genn & Beinart 1999, Van Velthoven & Ter Voert 2004, Pleasence et al. 2004) typically show that around 45% of the legal problems people experience remain unsolved. Although some of those problems go away or become less urgent over time, a substantial majority of the interviewed persons report that pursuing the issue would cost too much time, effort, and money. Some even point at the lack of an effective procedure.

The poor do not only have difficult access to justice, but also to most other services and goods (Hammond et al. 2006). They may have to pay an interest rate of as much as 400 % to money lenders in order to get credit. The poor in urban areas often pay several times more per unit of water than more wealthy inhabitants of the same city. They buy oil, soap, and other goods in small quantities for one time use, which makes these goods much more expensive than if they had been bought in larger quantities.

Equally, the poor have to spend more money and time than others in case they try to access their rights.

When appropriately targeted, however, there is a viable market of many poor who are now paying high mark ups on services and goods. The promising approach is the recognition that the poor have funds to spend. Although their individual buying power is small, their large numbers add up to a huge market. However, first world techniques, products, and delivery systems will have to be adjusted to large markets with low budget consumers in order to become profitable. Microcredit, for instance, is known by many. Banks providing this microfinance service extend small amounts of credit to groups, which monitor each other and advise each other on their business ventures. Physical collateral is usually replaced by a social collateral of group members underwriting each other's loans. Middlemen take this credit business up to a scale that makes it interesting for banks. The business opportunities of the poor are such that relatively high interest rates can be paid, but much lower than the poor had to pay to money lenders. Banks supply the IT systems and the credit.

Similarly, it may be possible to create justice by combinations of self-help, neutral local players, and back-up services provided by companies or government agencies. Microjustice intends to use the same underlying reasoning as other initiatives regarding services for people with limited resources. The poor also spend a lot of time and money to fulfill their legal needs. That can be a business opportunity. Drawing from other examples of profitable products for the poor, C.K. Prahalad and Stuart L. Hart have described the principles to use these opportunities in the "The Fortune at the Bottom of the Pyramid" (Prahalad & Hart 2004) and their analysis has been deepened and expanded by others (Hammond et al. 2006; see for a critical account: Karnani).

Imagine a small office with computers with an internet connection, just outside one of the Bolivian offices for birth registrations. For a fee of under 0,30 Euro, parents can file by themselves, on a state-of-the-art interactive website, all the details needed for the registration of their child online. Should they require assistance in filling out the form, this is available for a slightly higher fee. Prior to uploading the file, the assistant facilitating the process inspects the documents that prove who the parents are and keeps a copy of these. The next business day, the manager of the microjustice operation delivers to the registrar all the entries in a format that precisely fits with the Registry's needs. He also pays the fees due by clients minus a 50% discount the registry promises, because the lead-operator guarantees the quality of the files submitted and delivers the information in a format that fits the needs of the Registry. In troublesome or problematic instances, both parties will sort these out and the lead operator will record this in a laptop. Should there be a need for court interventions, the lead operator can print the necessary documents, when back at the office, and have them filed the next morning.

Both the microjustice firm and the registrar know that the information filed is accessible via the internet, by the parents or any person they authorize by providing their access password. They also know that by cooperating with each other, they can make their work easier. The 'profits' of that effort, will at the end, be shared between them. Part of their understanding is that they both have a reputation to care for. The lead operator acts as a watchdog of the Registry, carefully monitoring the

trustworthiness, the client-friendliness, the speed and other quality indicators for every Registry s/he works with. As this microjustice firm, there are others performing similar work throughout the region. They also publish performance indicators on their website, providing an impartial and transparent overview of the performance of the several registries. The registry has a similar role in monitoring the quality of the work of registration service companies such as this one and publishing quality indicators on such businesses on their national websites.

Most importantly, the whole supply chain of registrations is involved in an ongoing process of improving its procedures. The major contribution of the central government to this has not been a subsidy, but an adjustment of incentives. The people working in courts, registries, and services companies can now all earn more money or make their lives easier, if they deliver better services to the public. The court, for instance, is not only paid a fee for each case, but the government also pledges a cash incentive for solving recurring issues through a precedent that sets out general guidelines for solving these issues. Any partner in the supply chain sets its own fees. For instance, some categories of clients can be charged more if they require additional or special services. This can be done as long as they remain transparent in their operations. Competition and pressure from within the supply chain keeps fees naturally in check. At the Registries, they have to maintain and ever increase efficiency and efficacy levels, as central governments can entrust the monitoring and administration to private companies. Even for the Courts governments can consider the real possibility to outsource their dispute resolution services to certified private providers.

Is this a realistic scenario? In this paper, we explore the idea of Microjustice. We discuss whether it is possible to reinvent first world legal institutions to suit third world environments and budgets. Can we develop paths to justice for the poor that are economically sustainable, in the sense that they are attractive to use for the poor and at the same time attractive to deliver by the suppliers, without substantive subsidies by either state or donors?

II. JUSTICE: DEMAND AND SUPPLY

A. Existing Paradigms: Access to Justice and Rule of Law

The access to justice paradigm takes the point of view of a person having access to a system of rules, authorities, and procedures. Improving access is then improving the institutions: better rules, training judges, appointing officials, and educating lawyers, as well as opening up more efficient procedures. This approach is visible in the five waves of attempts to improve access to justice that socio-legal literature distinguishes: improving access to legal aid, public interest law, informal justice such as mediation, competition policy, and requiring organizations to create access to justice mechanisms for their customers, employees, and other stakeholders (Parker 1999, Mc Donald 2003).

A similar approach is behind the programs that aim to improve the rule of law in developing countries. These programs try to bring values to life such as security, legitimacy (democratic governance), judicial independence, checks and balances (separation of powers) and due process. In practice though, rule of law programs often

deal with rewriting codes, improving the management of judicial institutions, and training the police or judges.

Because “access to the system” is the perspective, the literature on improving access to justice tends to frame the issue as one of removing obstacles to this access (Abregu 2001, Anderson 2003). Both at the supply side and at the demand side of the users of the system, there are “deficiencies” that need to be remedied. At the supply side, the story continues, the legal system may not provide legal services adequately because of poor organization, discrimination towards specific groups or individuals, lack of accessibility, lack of adequate legal aid system, and slowness of the system. Laws, regulations, and case law can be difficult to understand. Procedures may be formalistic, and not fitting for the problem. At the demand side, they notice problems such as distance to the institutions, lack of legal knowledge, lack of practical know-how and skills, lack of financial resources to cover the costs, lack of power to address the legal and administrative institutions in order to supply better services, or lack of power to confront an opposing party. Fear for retaliation from the system, from opponents, or from others, can be an important deterrent in the use of the justice system, in particular after a war or civil conflict. Justice, the story seems to go, can be obtained in a beautiful castle, and access is a matter of paving the roads that lead to it, paying people to guide the way, chasing away the ones who make this road unsafe, building bridges across the canal that surrounds the fortress, and learning the justice providers inside to cope with their bureaucratic tendencies.

This perspective is an invitation to start working on all those barriers and to remove as many of them as possible. That is often the gist of access to justice programs by government aid agencies and NGO’s. Many of them have collected best practices. A characteristic example is the Practitioners Guide of UNDP (UNDP 2005), that uses a model of access to justice with three major levels: normative protection, capacity to provide justice remedies through improving institutions, and capacity at the demand side (legal empowerment, legal awareness, and legal aid). It contains long lists of obstacles at each level, together with a myriad of possible strategies and entry points to address these obstacles.

The problem with these existing approaches, however, is that they implicitly try to build first world institutions with third world resources and in third world realities. Setting up a legal system with a judiciary, modern codes of civil and criminal procedure and a legal aid scheme that covers the majority of the population requires budgets that are beyond the means of developing countries. Even if those budgets could be found, they may not lead to stable situations in countries that are otherwise very poor. Legal aid subsidies, for instance, are likely to be channeled towards more urgent needs by the persons that are entitled to them. Well-funded courts with life tenure for judges can become career opportunities for powerful people who are not necessarily the best in the administration of justice.

Moreover, access to justice and rule of law programs tend to shelter the system from pressure to innovate. Donors and governments try to fix existing institutions, hoping they will become more accessible for the poor. But these systems have no incentives to adjust to the needs and capacities of the poor. If the poor do not have the capacities to use the system, they are helped to address the system with legal aid. The implied message to the people in the castle is that they do not have to adjust their services to

become more user-friendly. The message to the clients is that they have to adjust their needs and capacities so that they can come to the justice castle.

The Microjustice approach invites us to begin at the other end: In which situations do people need access to justice? What capacities do they have to cope with these problems? How can legal services be designed that fit the needs, budgets and skills of the people? How can providers of justice make their living by supplying these services?

B. Basic Legal Needs and Capacities to Fulfill These Needs

Let us first regard the situation from the point of view of the demand side, independently of what the existing legal system offers. What are the basic legal needs of individuals and what are the capacities of the users of the legal system to cope with them?

There is little systematic research about the situations in which the need for access to justice is most urgent. Even the concept of a legal need is difficult to define without using words like justice, legal, or rights, which tend to make the definition circular. We may assume, however, that legal needs are the needs of a person for protection against the conduct of another person or institution, or, more broadly, for help with solving a problem in a relationship with another person or institution. Personal security is important, but also the peaceful settlement of conflicts of interests that may arise between employee and employer, tenant and landlord, or neighbors. This shelter comes from outsiders, and is preferably neutral. It can come from norms and from interventions that structure behavior. Seen from this angle, it is immediately clear that the shelter provided by formal norms and interventions competes with informal norms and interventions, and also with other tools to protect one-self. So what is the business of the legal system?

One source of the most urgent legal needs is the line of research in which people are surveyed about their problems which raised legal issues (ABA 1994, Genn 1999, Van Velthoven & Ter Voert 2004, Pleasence et al. 2004, Coumarelos et al. 2006). These legal needs surveys give a fairly uniform pattern of the frequency and severity of matters that raised legal issues. Another way to establish the urgency of legal needs is to investigate the situations in which people need protection. This method assumes that the needs for protection vary with the value of the interests at stake, the probability that the other person hurts the interests, the possibilities of self-protection, and the possibilities of fleeing the situation (Barendrecht, Kamminga & Verdonschot 2007). In a family relationship, for instance, the value of interests at stake is high, family members may become threats to each others interests, self-protection may be very difficult to arrange, and the costs of splitting up are high. This indicates rather urgent legal needs in the form of protection against domestic violence and divorce proceedings that mitigate the costs of splitting up. Finally, the urgency of legal needs may be derived from the specialization of courts. Many countries have specialized criminal courts, family courts, and employment courts, and we may assume that they address rather important legal needs. On the basis of the little research that has been done, it is possible to list legal needs that are likely to be most urgent (see Table 1).

Table 1: Legal Needs

| <i>Category</i> | <i>Threats</i> | <i>Norms needed (issues to be regulated)</i> | <i>Interventions needed (processes)</i> |
|--|--|---|--|
| 1 Subsistence needs | Scarcity | Not effective | Other than legal |
| | Welfare benefits not paid by agency | Entitlements | Complaint, settlement, judgment. |
| 2 Basic personal security | Aggression by outside groups, robbery | Self-evident | Prevention strategies (peace-keeping, policing, poverty reduction, etc.), retributive/restorative justice |
| | Aggression by insiders (family members, neighbors) | Self-evident | Prevention strategies (psychiatric treatment, early warning, better dispute resolution), restorative justice |
| | Unfair detention/police treatment | Conditions for pretrial detention, police conduct | Complaint, judgment |
| | Negligence (accidents) | Safety rules, liability rules, damages scheduling | Prevention strategies, tort claims settlement, judgment |
| 3 Property rights protection | Property crime | Self-evident | Prevention strategies, criminal (retributive) justice |
| | Insufficient property registration | Self-evident | Registration procedures. |
| | Claims on property by others | Ownership in ambiguous situations | Property claims settlement, judgment |
| | Expropriation by government or private developers. | Determining fair compensation | Determining compensation |
| 4 Identity issues and documents | Bureaucratic authorities, individuals opposing registration | Self-evident | Registration procedures, complaint procedures. |
| 5 Problems in land use relationships | Landowner asking high share/rent | Norms on rent and maintenance | Incentives to follow norms, procedures to settle issues |
| | Eviction | Norms on termination and its consequences | Settlement of termination issues, judgment |
| 6 Problems in employment relationships | Employer offering low wage, labor conditions. | Norms on employment conditions | Incentives to follow norms, settlement of employment issues, judgment |
| | Unfair dismissal | Employment protection norms | Settlement of termination issues, judgment |
| 7 Problems in family relationships | Domestic violence, unfair treatment/exploitation of women and children | Norms prohibiting violence | Interventions in extreme cases, restorative justice |
| | Termination | Norms for division of assets and other consequences | Cooperative settlement of divorce issues, inheritance issues, judgment |
| 8 Problems in neighbor relationships | Disturbances, environmental damage, neighbor violence | Norms for nuisance and shared use | Settlement of neighbor issues, judgment, restorative justice |

| | | | |
|---|--|---|--|
| 9 Problems with sellers of goods/services | Fraud, low quality goods. | Norms for quality and consumer information | Factfinding on quality issues, settlement, judgment. |
| 10 Business problems | Untrustworthy or problematic business partners | Default rules for business transactions | Settlement of business conflicts, judgment |
| | Government exploitation | Transparent tax rules | Tax procedures, anti-corruption strategies |
| | Extortion by criminals | Self-evident | Prevention strategies |
| | Bureaucracy | Self-evident | Strategies to improve bureaucratic procedures |
| 11 Debt problems | Debts not paid | Self-evident | Debt collection, enforcement, insolvency procedures |
| 12 Problems with financial services | Fraud, conflicts about performance. | Norms for pre-contractual information, norms for loss sharing | Settlement of damages, judgment |

Source: Barendrecht, Kamminga & Verdonschot 2007

And what are the capacities people have to deal with their legal needs? For each of those situations, the persons with legal needs will have capacities that will help them to cope: communication skills, the possibility of advice from peers, knowledge of social norms. They can use their contacts, invest time, and some money as well. Some people in villages will have mobile telephones, a computer, or an internet-connection. Those capacities can be used. Any commercial provider of services would start from here: the needs of the customers and his or her capacities. Then he would consider whether he could offer a service that fits those needs and capacities, and still make a profit.

C. Market and State as Providers of Justice

That is the way of approaching the problem of access to justice that the analogy to microcredit suggests. Let us now further explore this analogy from the supply side. It implies that justice can be seen as a service that is obtained by users, who pay a price for access to this service. The suppliers (judges, officials, lawyers, police) have to make costs for this delivery. They will only enter the “market” of particular legal needs in situations where it is attractive for them to deliver this service. We should strive to develop ways of administering justice that are affordable to the poor and also attractive to deliver for the providers of these services. Unless supply meets demand effectively, there will be no justice.

This market approach may seem inappropriate for a service like the delivery of justice that is so strongly linked to the state. As we will see later, the picture of a market that provides justice has to be adjusted in many respects.

However, let us first try to be realistic about the image of justice as something provided by the state. Arguably, most justice is provided by the market already, and by many forms of hybrids between market and government intervention. Local justice is often provided by peer pressure, village elders, or other informal interventions. Where formal property registration does not work, informal systems of registering ownership will develop (De Soto 1989). Even in countries with sophisticated legal systems, many legal needs will be met through self-help, negotiations between parties involved or by providers of alternative dispute resolution services (such as mediators and arbitrators). Legal needs surveys show that only a small minority of legal issues reaches the courts. Even in a procedure before a state court, the majority of tasks is generally performed by lawyers, court-reporters, and experts, who collect the bulk of the fees. What we see as a classical task for the state, is in reality much more like a bundle of services provided by the market, with only some components delivered by state officials.

Even the idea that some elements of the norms and interventions that satisfy legal needs can only be delivered by the state can be challenged. Dispute resolution by courts, for instance, can be seen as a bundle of the following interventions: letting the parties communicate, facilitating negotiations, organizing incentives on both parties to cooperate with the process, fact-finding, setting norms for distributive justice, deciding on issues that split the parties, and organizing enforcement. Each of these activities can be delivered by courts and other state officials, as well as by the market itself. Although norms for conduct or for distributive justice can be set by the State,

these may already be present in the form of social norms or even be designed by private rulemaking. Enforcement can be induced by the threat of official intervention, but also by group pressure, by reputation mechanisms, or by interventions from private, officially certified agents such as bailiffs.

D. Costs and Benefits for Users and Suppliers

If we agree that the market is very much present in the realm of fulfilling legal needs, it makes sense to find out how the market for justice works. Again, this is not an issue that is well researched. Economists tend to assume property rights protection and contract enforcement are in place. Law and economics is mostly about optimal institutional design, how rules and institutions would look like ideally, not about the market forces that create such institutions on a state-wide level. The literature about the supply of legal services mostly regards the market for lawyers as agents for one of the parties, not about the market for mediators, arbitrators, courts, or other neutral institutions (Hadfield 2000, is an interesting exception). So, we have to explore this novel territory without much guidance. We should be curious, but have to be cautious as well.

At the demand side, for instance, the market perspective shows us that access to justice is a good that has benefits for the user, as well as a price. Somebody asking for a permit to build a house on his property, for an intervention by the police in a fight, or for a court decision in an employment dispute will expect certain benefits from invoking this intervention. These benefits may be the value of the assets that can be recovered or protected by the intervention, as well as the procedural justice that the complainant experiences during the process. He will also have to spend money, time and effort. These costs of a path to justice can be fees for lawyers or payable to bureaucrats, the time spent, the costs of uncertainty during the procedure, or the damage to relationships (Barendrecht, Mulder & Giesen, 2006).

If the expected costs exceed the benefits for the complainant, he will not try to access the intervention. That the poor often cannot afford access to the legal system has been documented extensively by Hernando de Soto and other researchers. They have shown that registering property, or getting the licenses necessary for starting a business, entails costs of several times an average yearly income in many developing countries (De Soto 1990, 2000).

Moreover, the user trying to access an intervention will compare its costs and benefits with other paths to similar outcomes. The user may have the choice between a formal court, an informal plea to a village elder, or hiring a person who can use force against the defendant. So what we call the formal legal system competes with informal ways to cater for legal needs.

At the supply side, the market perspective allows us to take a closer look at the incentives on lawyers, mediators, judges, officials, and law enforcement officers who have to deliver this service. For them, delivery of “just interventions” to the poor has to be an attractive proposition. This is clearly true for the legal services that are provided by the market, but it is also an instructive way to look at services provided by government officials and the judiciary. If incentives on those persons to deliver this service (salary, fees, supervision, but also the positive feelings connected with professionalism and altruism) are insufficient in comparison to the costs of delivery

(labor, expenses, possible sanctions) the justice service is not very likely to be delivered. In this perspective, making justice both attractive to “buy” and attractive to “deliver” is key.

E. Failure on the Market for Justice Services?

This perspective is also different in terms of the solutions that can be found to the problem of access to justice. In case there is no match between supply and demand for justice, we no longer think of all the concrete obstacles and barriers that have to be removed. In any market, there are enormous obstacles to be surmounted before a good can satisfy the demands of the consumer. Instead, we are invited to contemplate issues of innovation, missing markets, market failure, or government failure. The question now becomes: Why can cooperation between people not bring about access to justice when there is a clear demand for it?

We do not know of a systematic appraisal of the market for justice and the need for government intervention. Unlike other areas where government intervention is common (education, health care, social security), the need for intervention in the market for justice and legal services is not studied systematically. Several authors, however, point to possible problems on the market for legal services:

- Problems of asymmetric information are among the classical reasons for intervention in the market for lawyers (Stephen and Love 2000). However, in this respect the market for legal services is not different from markets for, say, IT-services, architects, or doctors.
- Access to justice for claims with no direct monetary value, or with low monetary value, may be problematic because financing claims is difficult (see Yeazell 2006). If a no-cure/no-pay deal with a lawyer cannot be struck access, will be limited.
- In case of conflict, the disputants may face severe coordination problems when they try to hire a neutral person to assist them with deciding on their differences (Barendrecht & De Vries 2006). This may be the core reason why the resolution of disputes is a classical government task, although the market offers a full range of alternative dispute resolution services that can do anything a court can do, services that are rated favorably by their users.
- This “market failure” may also lead to a lack of innovation in justice services. Because “default” court and government procedures attract the majority of disputants anyhow, they feel no pressure to innovate and to become more user-friendly (Barendrecht & De Vries 2006).
- Complexity of the legal rules and procedures, with insufficient incentives on legal professionals to simplify them (Hadfield 2000).
- The regulation of lawyers (prohibition of legal services by non-lawyers, restrictions on access to court jobs for non-lawyers, obligatory use of lawyers in courts, restrictions in advertising, price-regulation, prohibition of no cure no pay arrangements) may be intended to protect the user of legal services, but it can also

become a barrier to innovation, competition, and access to justice in itself (Ogus 2002, Paterson et al.).

From this very preliminary list of possible structural problems on the market for legal services, two things are immediately clear. First, suppliers of new forms of justice services will have to find ways to overcome these difficulties. For instance, they will have to cope with the fundamental problem that justice is a good that has to be attractive for two parties in a conflict at the same time. Both disputants must have reasons to buy this form of justice. Often, suppliers will need at least some help from local groups or authorities to achieve that. They will also have to face the issue of enforcement, although this can be reframed as an issue of sufficient incentives to cooperate with the delivery of justice. Secondly, suppliers of microjustice will have to cope with the existing regulations on the market for justice, which can be quite restrictive. States will differ greatly in their “business climate” for innovative justice services. Often, restrictive rules and bureaucratic practices will have to be changed before services can be developed that give citizens access to their rights.

III. SOME DEVELOPMENT PRINCIPLES

Let us now turn to the development of innovative forms of justice that reach the persons that are now not able to obtain justice. How can Microjustice proceed from the drawing board to reality? We discuss some possible contributions to what could become a technology of developing affordable and sustainable justice. Then we turn to some more examples of what microjustice could look like, for some of the legal needs categories we identified (Section IV).

A. *Justice for the Bottom of the Pyramid*

Microjustice may use the same underlying reasoning as other initiatives regarding services for people with limited resources. Drawing from other examples of profitable products for the poor, C.K. Prahalad and Stuart L. Hart have described twelve design principles in the “The Fortune at the Bottom of the Pyramid” (Prahalad 2004, see also Hammond et al. 2006). The challenge is to translate these principles into development principles for microjustice. In this essay, we can do no more than make a few remarks on each of them:

- “Focus on price performance of products and services. Quantum jumps in price performance are required.” Like microcredit and other examples from the quoted book show, microjustice should not aim to halve the price per unit of justice as provided by western lawyers and courts, but should strive for solutions that cost not more than 10% or even 1% of the western examples.
- “Innovation requires hybrid solutions. Mix advanced and emerging technologies with existing and evolving infrastructures.” Microjustice can blend elements from the long-established legal systems and local justice structures as for example the *Justicia Comunitaria* which is developed in Bolivia, with state of the art information technology and the newest psychological insights on compliance. Dispute resolution techniques that have a track record in mediation can be adapted to the skills that are locally available.
- “The method is scalable and transportable across countries, culture and languages, and at the same time solutions must be tailor-made according to the local

situation.” The problems people face in their lives are often also their legal problems. These problems are rather universal, and the solutions will tend to have similarities as well.

- “Look for solutions that use little capital and other resources.” The essence of dispute resolution processes is that disputants meet and discuss their dispute before a neutral person. It may be possible to do so without expensive court buildings, without costly legal aid, and without extensive paper files that have to be stored and kept. Building a website is much cheaper than a courthouse. Local labor less costly than city lawyers.
- “Obtain deep insight in functionality, not just form. Marginal changes to services developed for rich customers will not do.” This is a very important message to the designers of elements of the legal system. A typical code of procedure contains thousands of rules. But what exactly are the steps in the procedure, their function, and the ways to deliver these components in a manner that is efficient for anyone in the supply-chain?
- “Process innovations are critical. The presence of a logistics infrastructure cannot be assumed.” Delivery of policing services is completely different if people live in places that cannot be reached over a proper road. So protection has to be organized locally, and possibly privately, but with sufficient links to the back up of a central system.
- “Adjust to environments with poor infrastructure and limited skills.” Legal skills to sort out legislation and case law cannot be assumed. The applicable rules will have to be easily accessible, easy to understand and easy to apply.
- “Education of customers on product and services usage is key.” Many things lawyers do can be learned by others as well: communicating with opponents, formulating excuses for conduct, and settling disputes. A courts, or whoever deals with disputes as a neutral, can help customers to make their points by asking the right questions, and explaining what the steps in the procedure are. Microjustice provides on-hands basic legal education to people, on the basis of which they will use the Microjustice services to access their rights. Direct marketing techniques can be developed and door-to-door basic legal education. Also if Microjustice will be delivered in schools, awareness will be raised among children and their parents about the fact that they have rights in practice.
- “Services must work in hostile environments.” In post-conflict situations, neutral and trustworthy persons are hard to find. So panels deciding on disputes should be formed very carefully and if possible with the agreement of both disputants.
- “Research on interfaces is critical. Consumers differ in skills, experience, language etc.”
- “Innovations must reach the consumer.” Courts, lawyers, and officials have changed many processes in their back-offices. The interface with the customer, however, is still very similar to what it looked like 100 years ago: an intake where a lawyer takes notes, or a court hearing,

- “Product developers can focus on the platform. The feature and function evolution can be very rapid if they are developed centrally.” A platform that supports services that are an answer to legal needs in the realm of divorce or for conflicts between neighbors can be developed centrally. It could entail standard questions for an intake, a collection of norms for dealing with standard issues, and standard suggestions for agreements between disputants, which could also be the standard format for a judgment if the parties would not agree on an issue. Once this standard is in place, other content can be added locally: specific norms, typical issues for a specific community, or additional elements of a document that settles the issue.

B. Justice Know How

These development principles are general principles for services to be developed for the poor. Microjustice can also profit from an enormous body of know how that has been collected about matters closely related to justice during the last 50 years. This has been the work of social-psychologists, decision theorists, criminologists, victimologists, economists, negotiation theorists, management theorists, therapists, mediation theorists, and ADR practitioners, who often cooperated with lawyers.

This know how is available, but it has not yet been used systematically for innovation of the systems of criminal and civil justice. The rules of civil and criminal procedure tend to be designed by lawyers, who take their guidance primarily from existing legal rules and legal principles. Innovative methods such as mediation and problem-solving criminal courts struggle to get their place at the fringes of the system. Know-how that is not legal is often treated as “expert knowledge,” which implies that it is foreign to the legal system. In the core of the legal system, where lawyers and courts have the lead, people with legal training dominate. Their method of finding ways to apply existing legal norms to issues is still prevailing. In this manner, the legal system is shielded from innovation. If Microjustice can find a way around this, an enormous potential for innovation may become available.

Here are some of the areas of knowledge about justice that are ready to be used for setting up innovative legal services:

- Procedural justice research has clarified why people comply with legal norms or with decisions by authorities. It has identified the elements of a procedure that are essential in order to induce acceptance to the outcome. It also clarified to some extent which type of procedures people prefer (MacCoun 2005, Sunstein 2006).
- Conflict theorists and negotiation researchers have developed the method of integrative negotiations. The basic idea behind it is that disputants should focus on their interests. Its toolbox contains many techniques for communication that have proved their value in practice (Raiffa et al. 2002, Lewicki et al. 2004).
- Economists and negotiation theorists have developed knowledge about the settlement process that takes place in the shadow of the law. Incentives on the parties and on lawyers have been shown to have a considerable effect on this process. Researchers have also sorted out which elements of a negotiation environment induce cooperation (Bazerman et al. 2000; De Dreu et al. 2000).

- Criminologists doing “What works” research have collected evidence about the effects of programs that deal with criminals (Welsh & Farrington 2006).
- Victimologists have obtained a rather precise picture of the needs of victims, and also of the effects of various programs that intend to take care of these needs (Fattah 2000).
- Law and economics, as well as research into fairness and distributive justice (Konow 2003), has delivered many insights in the acceptability of norms that decide the outcomes. Legal norms have mostly been found to be in line with this research, but often give the message in a much more complicated way, because courts had to fit reasonable solutions in an existing system of rules. This research suggests that many substantive legal rules can be formulated in a more direct manner and be made much easier to understand.
- On line dispute resolution. ODR has become a field on its own. It has delivered a variety of online dispute resolution tools that work in practice, such as online bidding systems and the dispute resolution system operated by E-Bay (Raines & Conley Tyler 2006).

C. Existing Business Models as Opportunities for Learning

As we have seen, meeting a legal need is often a matter of linking several services in a supply chain. Some services are organized or subsidized by the state, whilst users have to pay the full costs of other services. Because subsidies are scarce, many urgent legal needs are met already by services offered by the market. So there is much to learn from the business models that are already in place.

Legal services are mostly services to one of the parties in disputes or in setting up transactions. Here, the most common business model is clear: lawyers try to work for the most interesting clients with the deepest pockets. The bottom of the pyramid is served by people who cannot make it to the top of the profession, or by people who let other motives prevail over the profitability of their business. A model for one-sided legal services that can be an interesting example, however, is the one of legal expenses insurers. They have to deal with their cases efficiently, and thus are constantly looking for economies of scale. They have to find the balance between obtaining good results for their clients in order to keep them satisfied and low costs. Dutch legal expenses insurers publicly state that lawyers they sometimes have to hire externally are about three times as expensive then their in house lawyers, which gives an indication of the jumps in price performance that are still possible.

Generally, however, legal advice is not what the person with a legal need is after. What he wants is a change of behavior of somebody else, so what he needs is a neutral intervention. So let us look into the existing business models in that area. Some countries have judiciaries that deal rather efficiently with small claims. The justices of the peace of the civil law countries can be successful examples of fairly efficient claim handling, although many of their procedures seem old-fashioned. Simple debt collection can now be done in an on line procedure in many countries, and for courts this seems to be rather profitable business.

And of course there is an endless variety of alternative dispute resolution services, from the International Chamber of Commerce in Paris to many types of mediation services and on to the Rondas Campesinas in rural Peru. Interestingly, however, most of these services are set up as a platform that can be used by the parties if they agree to it. This business model attracts some clients, but it is hard to sustain it, unless the providers have organized a major stream of referrals from courts, local leaders, or other neutrals, or else get clients on a regular basis because their contracts choose this platform as the way to cope with possible disputes.

A more attractive model, in particular for helping the poor, may be one in which the person that desires a change in the status quo can choose the provider of the neutral dispute resolution service. This model has obvious disadvantages for defendants, however. They should at least have some control over the neutrality of the service provider. Moreover, this model only gives the right incentives if the amount charged from the plaintiff and the defendant together covers the costs of the neutral. If the neutral service provider cannot determine its own price, and is also bound to procedural requirements that make its service expensive, this model is likely to fail. These are complex issues, which may explain why this model is not commonly used in its purest form. It is more or less by accident, that procedural arrangements give the plaintiff the choice between various providers of justice that have to compete for the business. Examples are rules of civil procedure under which the plaintiff can choose which court he addresses and dispute resolution clauses in standard contracts that give consumers or employees the choice between addressing a certain ADR provider or a court. The same choice may exist in situations where state institutions cannot enforce their monopoly on justice services, leaving room for local justice providers to serve the clients.

It is also interesting to take a closer look at the business models behind legal reform projects in developing countries. As an example, we take a project in which one of us was involved in former Yugoslavia. The falling apart of Yugoslavia into six new republics did not only result in huge waves of refugees, but also into many new borders and frontiers, which became legal and administrative barriers. The around 500.000 refugees from Croatia that had come to Serbia from 1991 to 2000 needed to restore their property rights, obtain reconstruction loans, and obtain a legal status in either Serbia or Croatia. This involved complex cross-border paperwork, to which the authorities in Croatia did not cooperate smoothly, and which was also not a priority for the humanitarian legal aid programs in Serbia, that only provided legal aid within Serbia and did not help the refugees across the border.

By creating a network of lawyers, paralegals and volunteers on both sides of the border International Legal Alliances (ILA), an NGO based in The Hague, has been able to supply many thousands of refugees with documents like birth-certificates, citizenship-certificates and proof of property, which are necessary to return to the country of origin or to start a new life in the host country. The basic set up of the operation is described in Table 2. In addition, ILA had to initiate hundreds of test cases, write comprehensive reports, lobby authorities and international organizations that could influence the situation, organize seminars, and everything else that is necessary to let things go more efficiently.

Table 2: Cross-Border Legal Service for Refugees in Serbia to Access the Legal and Administrative System in Croatia (International Legal Alliances)

ILA's Serbian partner organization HCIT (Humanitarian Centre for Integration and Tolerance) consists of lawyers, who themselves are refugees from Croatia. Therefore they have an easy access to the refugees and have a widespread network of contacts with lawyers and influential figures in Croatia. Funded by UNHCR, HCIT is implementing a field legal program covering most towns and villages with major refugee concentrations in the north of Serbia (Vojvodina), where the majority of the refugees have settled. The cross-border mechanism works as follows:

- HCIT field lawyer fills out a power of attorney on the name of the refugee and the name of a paralegal or lawyer in the region of his/her origin in Croatia.
- The refugee goes to the municipal court with the power of attorney to have it verified and stamped, and after that (s)he brings the power of attorney back to the lawyer
- The powers of attorney are collected in the central office in Novi Sad, where the legal network coordinator comes once a week from Vukovar on the other side of the border in Croatia to collect the powers of attorney. The central office also receives powers of attorney from humanitarian legal organizations covering the south of Serbia.
- In the Vukovar office the powers of attorney are registered and sent to the lawyers and paralegals in Croatia.
- The paralegals go to the municipal and registry offices and obtain all the relevant documentation, which they send back to the Vukovar office. Attorneys represent the refugee in court cases.
- The Vukovar office brings the documents to Novi Sad, where the field lawyers give the documents to the refugees.
- The Vukovar office is manned by two officers who are doing the entire operation, administration, and coordination.

The business model of this program has been a typical human rights program, aimed at assistance for the weakest refugees. The Dutch Government, UNHCR, and Dutch charitable organizations paid for it. This fits the idea of the responsibility to protect: these people are blameless victims of the war; the community is responsible for restoring their legal position. Funding obtained in this way, however, can only be obtained for the most urgent legal needs and is also dependent on the attention of the international aid community. So the funding stopped before the needs of all clients were met.

A more permanent and sustainable model has been difficult to find, in particular because UNHCR prohibits requesting the slightest contribution from the beneficiaries to pay for the services. Local and international NGOs consider this as 'not done,' or even as an 'illegal activity' that amounts to 'theft' from poor people. Moreover, the governments expressed a bureaucratic-, passive-, and anti-entrepreneurial mindset, which made it difficult to discuss the desired services and possibilities for covering the costs with them. In sum, donors, governments, lawyers, and clients needed to cooperate closely to get the supply chain going. If they would have talked about efficient services and ways of covering the costs in a permanent way instead of looking at their rules, the program could have reached many more people.

D. Program Design and Product Development of Microjustice Programs

Microjustice has to be developed in concrete contexts. Here, it can of course profit from the experience with program design of many organizations in the access to justice arena. A recent literature review has been compiled by the Swiss Agency for Development and Cooperation (Byrne, Mirescu & Müller 2007). There is much to

learn from this literature, but the example from former Yugoslavia shows that the business perspective can be very valuable. So the lessons from this literature should be merged with know how about product development. As Prahalad and Hart show, the ways of multinational companies can be very helpful tools to serve the poor.

In this essay, we do not go into this in detail. We just give a preliminary list of points to consider in the process of designing concrete microjustice services.

- Identification and Assessment. Any program will have to start with an analysis of the basic legal and administrative needs that have to be addressed. The present way to address legal needs will have to be studied, as well as the legal-political framework, the relevant case law and legislation, power structures on a central and local level, the social-economic situation, the culture, traditions and history (belief systems), the logistic infrastructure and accessibility of the countryside (available electricity, internet, roads, flights), the available human resources (lawyers, IT & computer experts, community workers, groups with unskilled labour), and institutions and organizations, who could be involved in microjustice. Together these create the “business climate” and the feasibility of successful microjustice development.
- Setting up an initial team. Relevant local people, organizations and possibly government institutions will have to participate in a core working team and in various cooperation and supervision structures.
- Develop procedures and norms with stakeholders for obtaining general guidance on the desirable and sustainable legal solutions for the legal needs. Studying relevant legislation and case law is usually not enough. Communication channels with the relevant authorities and other stakeholders are needed, inviting them to provide clear answers: the practicalities of the relevant procedures, time limits, the formal and informal fairness norms and procedures that really determine the outcomes in case of disputes or uncertainty. Not the law in the books, but the law in action has to be made explicit, because that is the justice that can and will be delivered. If there is uncertainty regarding fair outcomes or procedures regarding legal needs, a procedure to deal with this uncertainty has to be in place.
- Develop legal services through the use of an interactive web-page. The website will provide guidance on the substantive norms, and on the procedures, including the practicalities of the procedures. The site can also inform on the practical implementation in real life. The non-compliance by specific authorities or other players would also be published on the website. The site also provides access to forms, documents, powers of attorney, etc; without unnecessary formalities.
- The website is the basic instrument for interactive rulemaking and development of procedures in accordance with the agreed norms. Regular meetings are held with the relevant authorities (executing administration), political and leading administrative levels in order to develop clear rules and procedures to be put on the website and which will become a permanent process. Meetings are also held with the international community representatives to exert pressure in solving potential obstacles. The approach here must be to make it attractive for all stakeholders to cooperate, so their needs have to be taken seriously and have to be taken care of. At the same time, no stakeholder should be able to obtain a position

that blocks progress. In case of doubt, the legal needs of the users of the system should be the criterion which determines how to proceed.

- Pilot phase. Start the program on a pilot scale with a few local service points and an operator with legal skills servicing the website and answering questions by e-mail or phone from the main city.
- Preparation of large scale implementation. In order to reach more people, a distribution network of intermediaries (local and community service points) is needed, as well as a publicity campaign, which will have to be developed.
- Set up and develop training program: train-the-trainer programs and training sessions for the legal intermediaries. Handbooks for trainers and for the local service points (Microjustice Facilitators).
- Identify and train community focal points as paralegals that have access to internet in the villages. People come to them with their queries and the community service point looks up the particular issue on the website and asks for feedback through e-mail or phone, etc. The training of persons manning local service points is based on the identified legal needs. They will also have to get incentives to provide feedback on the website. Specializations will have to be developed based on the actual legal needs. If, for example, many people have problems registering land title, some paralegals will be trained exclusively to have basic knowledge on this procedure, the challenges and issues specific to it.
- Identify ways to reach the regions without internet connection. For example: Train community focal points in these places. An exchange will take place between the community focal points in the villages with internet and without internet. Set-up a permanent communication network and back-up system between the center, the focal points with internet coverage and the focal points without internet coverage. Aim in as much as possible to integrate the villages lacking internet access to get them connected.
- Develop an effective and efficient system of backup by the central organization. Involve academic researchers, lawyers, paralegals, technicians and other Microjustice team members for facilitating the entire operation. They should provide feedback to the field operations, providing solutions, collecting feedback and implementing any changes that may be necessary. In addition they are to , design and organize practical legal solutions so that the supply and demand sides meet. Moreover, whenever necessary, they will develop possibilities for class action and/or other ways to solve problems (cases) for a large group of people together. These solutions for large groups of people may include (but are not limited to) cases of registering firms for a lot of people at once through the use of a power of attorney. Other responsibilities by the staff in the centra location include the constant update the website to include as much current information as possible. They will also develop standard forms, update the basic rules and other guiding substantive legal information, select and list focal points, certify people that may provide interventions locally (mediators), monitor the implementation, and signal cases of corruption and/or non-compliance by the suppliers of justice.

- Setting up as a business. At some stage, and preferably from the start, a Microjustice system should be organized as a business, or as a bundle of independent businesses facilitated by a central organization. If initial subsidies are necessary, a careful consideration is necessary, because the system should not become dependent on subsidies. Options are concrete subsidies for concrete elements of the system, or vouchers handed out to some categories of users, which can be funded by NGO's. Issues that have to be dealt with are protection of know-how, profit-sharing, responsibility, certification, and ownership.
- Marketing and creating public awareness. Unlike many established programs, Microjustice services are poised to attract large numbers of clients,. As such the principles of economies of scale are relied upon in order to make the services financially sustainable.
- Funding and payments. After the initial development phase, the system should fund itself. This requires a transparent system of fees, fee-collection, and of monitoring of financial transactions.
- Organize broader setting and supporting network. Work with the local authorities on legal capacity building upon the principles of micro justice. Use of law and IT students as volunteers is a possibility. This can be for field work (assessing particular regions), development of various areas of the website, setting up IT infrastructure in the central offices or the field offices, providing answers on legal questions asked by e-mail or phone by either the community focal points or the clients directly.
- Research. All the phases can be used as a basis for research activities. There will be opportunities for socio-legal and IT research, but other social sciences may also benefit from this sampling.

IV. EXAMPLES OF POSSIBLE MICROJUSTICE SERVICES

In this way, the stage for development of Microjustice is set. Possible applications, for some of the categories of legal needs that we have identified, follow. In order to stimulate the imagination of the reader, some scenarios that show how the application of Microjustice in certain areas and aspects would be are described below. As these are fictitious scenarios to stimulate discussion and feedback, real-life application may well be different. Not all the technology described already exists, and if it does, it is not yet in place in every local community. But during the next years, it will certainly become widely available in the cities and in bigger villages. We also appreciate that there must be many persons and organizations that are already considering such applications or have them in place. We invite them to share their views so that, relying on these experiences, a more realistic and practical implementation of the Microjustice approach can be achieved.

A. *Criminal Justice*

What is the essence of a community reaction to a crime? It may not be a full blown criminal procedure. Taking care of the victim may be the first priority. Then follows an investigation, which can be organized in many ways, within the constraints of the available resources. Protection of victim and alleged perpetrator will be necessary. A trial may be necessary to establish what exactly happened. More often than not,

however, it is rather clear what happened, and the main issue will be which combination of restorative justice and punishment is adequate.

In order to organize this, a local facilitator is appointed, who takes care that there is some person who reports the facts, someone assisting the victim and someone else assisting the defendant. Finally, some persons are trusted to decide on the appropriate interventions. A necessary link between this local application and the central system is a website. This website shows the criteria for reactions to specific (similar) types of crime, taking into account insight from victimology and criminology. Possible reactions include compensation, interventions aimed at healing or sanctions. All participants to the process have access to the guidelines on this website, either through a computer screen in the room, or through a print out of the most important norms.

To make this work, procedures have to be in place with sufficient safeguards. Procedures are not described in articles in a code of procedure, but in informal language, describing the steps of the process and stating the goals of every stage. Procedural rules are not goals in themselves, but are standardized solutions for problems that occur frequently.

A webcam and a microphone register what happens. They replace costly written documents. Because the procedure is recorded, any person with access to the internet can examine what happened. A supervising body uses the recordings to give feedback to the local facilitator, so that the quality of the procedure can improve. The defendant has a right to appeal to this body which, following conferences with the defendant may adjust the actual outcome (punishment).

The facilitator and the system are paid for by a contribution from the local fund that is kept by the village elders. Fines go into this fund as well. Using trained and experienced people in the roles of this process is seen as something that is desirable, but if there is no money to pay for them, the process will work with volunteers, rather than leaving the crime unpunished.

B. Protection Against Expropriation

With the help of Google Earth, that may be increasing the area covered by high resolution imaging during the years to come, tools may be developed to provide protection to poor people with insufficient property rights. People who feel threatened by others who try to take possession of their property, or who had to flee from it already, can file a claim on a website. The claim is marked with a flag on digital image of the land, and its status is indicated by the color of the flag. The initial claim can be filed for a small fee. For an initial neutral evaluation of the claim an additional fee must be filed. This evaluation requires hearing the other party on its position regarding the claim. The website contains the standards for monetary compensation from every jurisdiction, adjusted for purchasing power, in order to make comparison easy for the user.

On the website, it is also possible to see how many claims building companies, developers, or governments have pending against them. NGO's use this information to put pressure on these organizations to settle such claims. If the claim is settled after the filing on the website, a small percentage of the settlement is due as compensation

to the provider of the website. Although enforcement of this obligation is problematic, most customers pay this, because they rate the service as excellent.

C. Neighbor Disputes

For disputes between neighbors in a city, it might be feasible to let people complain at a local point of entry (Eg. a store within the neighborhood). A complaint can be filed on a simple form on a website. Operators of the website, qualified to deal with these issues, may appoint a neutral person from a list to deal with the complaint. This neutral person would contact the other party and the system would have incentives encouraging the other party to cooperate.

The neutral person deals with the dispute for a small fixed fee, combining basic mediation techniques with the power to give a binding decision. This person would be guided by easily understandable criteria regarding neighborhood disputes, that can be found on this website. These criteria reflect general fairness principles to deal with such disputes. The parties have access to these criteria as well. On the website, the parties can also find the feedback by previous clients on the particular person appointed as the neutral intermediary. The feedback also helps to establish a ranking of these neutral intermediaries regarding future assignments. This is all done through the use of software allowing the indexing, ranking and accessibility of all this information.

D. Disputes in Employment Relationships

Disputes arising out of an employment relationship are best solved by processes that do not stress the relationship. On the other hand, the employee may be in a weaker position, as s/he is more dependent on the employer than the other way round. Legal systems try to compensate for this difference in power. Employers, however, complain about complicated court proceedings with uncertain outcomes. Private mediation companies may in the future offer a smart solution to this problem, applying the principles of Microjustice.

Because they understand that fair negotiations need the shadow of the law, they convince the government to set up a simple procedure for a single junior judge in case of a conflict, including conflicts about the termination of the contract. The parties can explain their case by a simple letter to the judge, which must contain the answer to a few standard questions about the conflict. The judge decides the issues that are brought before the court following a hearing of half an hour. The government guarantees a judgment within one month from the filing of the claim. The employer pays the costs of the court, unless the judge finds that the claim of the employee was clearly unreasonable. The judge decides on the basis of interpretation of the employment contract. In case of an unfair or discriminatory dismissal, the court uses a schedule for a reasonable compensation, with a discretionary power for the court to adjust the compensation in case the circumstances so require. This enables the parties to predict the outcome within a reasonable margin.

What the mediators could gain from this, and what also makes the deal interesting for the government, is that most employers and employees prefer to settle their case in a way tailored to their needs and the circumstances. If they go to the judge, he will roughly weigh the circumstances and come to a rather crude assessment, that may

come as a surprise. So the parties have every incentive to settle. Helping them to work out a tailor made settlement has become big business for mediators.

Mediators are generally paid by employers though, which will rise concerns among the Unions who question their neutrality. Consequently, they have to set up an independent certification system for mediators.

The arbitration business can profit as well from this set up. Directors of companies, and other employees who wanted better quality than a speedy procedure before a junior judge, now often make specific arrangements for their disputes. Frequently, the choice is made for a mixture of mediation and arbitration before a panel of three experts. But this high end service is not forced upon the poor.

V. DISCUSSION AND CONCLUSIONS

In this essay, we explored the needs for access to justice and the problems associated with supplying it. We explained why Microjustice, with its orientation towards solutions provided by the market, might be a promising approach. Then, we explored what principles may be used to develop innovative legal services for the poor and showed some examples of what Microjustice may look like. This section contains a discussion of some of the objections against the idea to stimulate the development of innovative legal services in the way we described.

A. *Questions (Asked Frequently)*

During the development phase of the Microjustice Initiative, we encountered many questions, all very to the point, and some of which challenged the validity of concept: Here are the most frequently asked questions, with some initial thoughts about answers.

1. Is Microjustice Justice for Minor Problems?

For some, the word Microjustice seems to refer to small problems, like the ones experienced by consumers. Microjustice, however, is intended to become just as real and important as microcredit. It should contribute to make life much easier for the billions of people who have no access to justice now, because, although they have rights, either they and/or their governments may lack the resources to pay for the delivery of the extensive services that codes and case law promise them. In our experience, people in developing countries understand that message and for them, the association with microcredit means that they start thinking of a justice system that is accessible to them.

2. Second Rate Justice?

The goal is to provide real justice. Microjustice does not change any of the principles of justice. Microjustice is about an efficient organization of access to the justice system, facilitating an effective meeting of supply and demand. This can be achieved by more insight in the functionality of the different components of the services that form the supply chain of justice. Too many efforts to improve the legal system have taken for granted that justice is justice and that a court should provide what a court should provide.

We should reverse-engineer justice and courts. In doing so we can come to the types of insight, mentioned above. Dispute resolution consists of a mixture between and

improvement in communication, facilitation of negotiations, organization of incentives for both parties to cooperate with the process, fact-finding, establishment of norms for distributive justice, decisions on issues that split the parties and, coordination of enforcement. Similarly, criminal justice can be taken apart, looking at what it does for people. Nowadays, it includes mechanisms that deliver general prevention, fact-finding, reparation, healing and recognition for victims, appropriate treatment for some types of convicted criminals, and retribution. Delivering legal services with a focus on what is needed, and not only on what the law says, will lead to justice of a higher quality delivered to many more people.

Moreover, developing cross-border platforms for legal services can lead to higher quality, because experiences and solutions will be exchanged. Unsatisfactory local practices will be more exposed, because users and supervisors of systems can see them and compare them with better practices elsewhere.

3. A Danger for the Values behind the Justice System?

No. Microjustice is all about the essential values of procedural justice, distributive justice, retributive justice, and restorative justice that make respectful cooperation between people possible. These values can be reinforced if justice is done and is seen to be done. Transparency, neutrality, independence, predictability, and objectivity are also key. What is new in Microjustice is that it is realistic, open-minded, and innovative about the ways to achieve this: through the acts of people who are motivated to deliver justice where it is needed.

4. Can Microjustice Cope with Power?

Not in any definitive way. Powerful and corrupt people may always find ways around the system for their own personal advantage. Microjustice can make a difference, however, by providing transparent information on norms and practices. Comparison across borders may also help to curb abuse of power.

5. Can Microjustice Be Developed Across Borders and Across Cultures?

Legal needs are rather similar. Solutions are also rather similar. Even divorce “proceedings” across cultures and countries have certain commonalities. Procedural justice, distributive justice, restorative justice, and restorative justice are issues everywhere. Comparatists and legal anthropologists have learned to focus on the differences. Because legal systems develop in some isolation from each other, they have followed different trajectories. But there seems to be no reason why legal systems of different countries or different legal origins could not profit from economies of scale across borders.

Multinationals have painstakingly learned to deliver services across borders that cater for the same human needs. They now know what can be standardized and what should be adjusted to local circumstances. Law firms work across borders as well. So why not try it for the legal needs of the poor? This is especially true for the poor living in smaller developing countries, where economies of scale within the country cannot be found.

6. There is Too Much Justice Already!

Nowadays, lawyers and legal systems do not have an unquestioned reputation. Issues like deregulation, the tort system, worries about the administrative costs related to

government, and overburdened courts are high on the political agendas. There is no question, however, that some legal system is necessary and that access to justice is essential in situations like the ones we identified as the most urgent legal needs. Moreover, Microjustice strives to make rules more accessible and to investigate the essence of procedures. Diminishing the administrative costs for citizens is exactly what Microjustice is about.

Still, there could be worries that Microjustice brings waves of people to the courts, making life miserable for companies and governments alike. There are many possible answers to such objections.

First, the problem is that a (sizeable) segment of the population has no access to justice because it is too difficult and expensive to obtain it. If work is done on that issue specifically, it is implicit that more services will have to be delivered. Secondly, poor people (the segment of the population established to have no access to justice) live on approx US\$2 a day in developing countries. These people will certainly think carefully before bringing a case forward (as there are costs, however small, associated with Microjustice). Thirdly, there is no evidence that people who have the resources are systematically burdening courts with trivial cases.

The real problem is costs: legal costs, uncertainty, and damage to reputation during the time it takes the existing legal system to process a case. That is a problem that Microjustice will help to tackle. Finally, the best answer is to leave it to a well-functioning market for justice. If interventions are neutral, transparent, predictable, speedily/timely and are performed against costs fully covered by fees from the disputants while reflecting the principles of justice, then it can be left to the plaintiffs to decide whether that intervention is worth its price.

7. Should Justice be Tailormade?

Providing justice is often seen as a pure people's business, deliverable as a person-to-person service, tailored to the parties and their circumstances. This personalized picture of justice is attractive, but it also defines justice as a luxury good, that is outside the means of most people. It is an extremely unrealistic view, if justice should also be a more or less free service for all citizens in all their conflicts.

One insight from Prahalad and Hart's principles is that justice may be standardized, just like many other services, making use of economies of scale. Modern technologies, such as internet and mobile phones, make it possible to develop programs and services for entire countries or regions. Delivering justice is similar to delivering credit. Personalized legal services should be possible, but as an add-on for the ones that want to pay for it. Just like in the credit-business.

8. Trust in the Market?

Remember: the market already delivers most justice services by turn-over, by number of interventions, or by any other measure. It certainly delivers the substitutes for formal justice that develop spontaneously in refugee camps, villages, and settlements outside the major cities of the Third World. Governments and Courts all over the world better accept their limited role in the delivery of the interventions that make justice real. They could do a better job by developing their monitoring and supervisory role, which is essential. Markets cannot be trusted if they are left by

themselves. Markets need rules of the game and supervision. Only then suppliers on the market can earn the trust of the users of their services.

9. What Can the Market Deliver?

We will not know the answer to that unless we have tried it. It seems unlikely that the provision of justice services should follow a completely different trajectory from all other products and services. Usually, they follow a path of competition, innovation, and attracting more and more clients, creating access to the service for these people. But this is a complicated market, which has not yet been thoroughly analyzed. Moreover, some government intervention is necessary. Cooperation between market and government, however, needs to be optimized, supported by research institutions and others who can fuel the innovation process.

A problem may be that neutral legal services have a network character. They work better if more people use the system, but this requires an initial high investment.

What we can also predict, however, is that it will be most difficult to reach the poorest of the poor. The bottom of the pyramid is very broad. There, millions of people need access to justice. They do have a limited purchasing power and can also invest time, if the services fit their needs and are understandable to them. Economies of scale can be reached. The poorest of the poor may still depend on subsidized legal services due to more complicated problem,s/issues and much more limited resources. Entrepreneurs working for profit will not see this as the biggest of opportunities. However, paying for legal aid for 5% of the population in order to help them through a system that is accessible for a low fee is different than proposing to help 50% of the population to cope with a slow and complicated system designed for realities with much higher income levels. Therefore, humanitarian aid agencies will still have a role to play, but probably for a more focused group of people.

10. Justice is a Matter for the State!

As we have shown in Section II.C, the role of the market, measured by numbers of clients served and by annual-turnover, is already much larger than the role of the State in meeting legal needs . There is no element of the norms and interventions of the justice system that can only be provided by the States. Sometimes state institutions have a comparative advantage in organizing the type of services that meet legal needs, sometimes market parties. The challenge is to let the State and the market cooperate in an optimal manner, looking at all incentives by all relevant participants.

11. What Can Donors Do?

The principles of Prahalad applied to the justice sector thus change the approach of donor interventions as well. Traditional models of providing access to rights in a development context are based on a major donor support of legal aid programs, starting on a pilot scale. Efforts attempting to make legal aid structural (covering the country and providing structural legal solutions) and sustainable (permanent) often fail.

As we have seen, these models sometimes use conditions on which Microjustice differs. For instance, some donors forbid contributions by users, or they require that services are bought from preferred partners, such as law firms and legal experts from donor countries. Instead, Microjustice programs by donors will concentrate on trying

to establish justice with minor investments, using less-skilled (inexpensive) labor, and providing paid legal services. In this way aid in the area of access to justice can lead to structural and sustainable improvements, because locals can make a living from the services. Donor's funding may be helpful for the development phase, the product identification, the general program costs (updating the website, research, documentaries etc), and for field-work in post-conflict zones where sustainability may still be difficult or impossible to achieve. Ideally, in the long term, the general program costs should also be covered by the clients. If that is not possible, the sources of funding should be made permanent. Justice should be there to stay.

B. Conclusions

Like microcredit, Microjustice can become a new way to deliver services that have traditionally existed. The needs of the clients, and their capacities, are the starting point for the development process. Then the existing services need to be analyzed thoroughly, in order to rediscover what is essential and what is a specific way to do things that has become the rule in more developed and richer markets. Similar to the way the credit business found new ground in the microcredit concepts, justice too can find new ground in innovative forms of legal services. What the world needs in particular are new forms of delivery of neutral interventions, by trustworthy, and independent decision makers, who have the necessary incentives to be transparent, induce cooperation between their clients, and serve clients at the low end of the market. Their solutions to legal needs should be locally applicable (to the specific realities) and be informed by the best, most current, available know how.

Legal services firms, legal expense insurers, banks, or any other organization offering commercial services may find it interesting to consider the development of innovative services in the spirit of Microjustice. Governments and donors may find it helpful to think about access to justice programs in terms of creating a climate for innovation and for legal services providers who deliver justice for profit at the bottom of the pyramid. Moreover, governments should be open to cooperation with providers of Microjustice, because they provide essential parts of the supply chain of justice.

Accesible legal services fulfilling the legal needs of those at the bottom of the pyramid provide an entire new perspective on the justice sector. It could offer an instrument for the legal empowerment of the poor in a fruitful cooperation between the public and private sector. The challenge is huge and there will be problems along the way. However, a long journey starts with a first step.

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