Conversation 8

Will Digitalisation Help the Five Billion People without Meaningful Access to Justice?

ABSTRACT

This conversation brings together national and international policymakers to discuss the impact of digitalisation on access to justice. The background of the discussion is provided by the United Nation's Global Goal 16 to 'provide access to justice for all'. The policymakers contributing to this conversation represent the ministries of justice of Germany and Japan, the Organisation for Economic Co-operation and Development (OECD), the International Institute for the Unification of Private Law (UNIDROIT) and the Pathfinders for Peaceful, Just and Inclusive Societies. The discussants explore the potential of technology to provide meaningful access to law and justice. They do so within the context of their organisation's policy initiatives such as digitalising courts and other justice institutions. Referring to reform experiences, they pay attention to facilitators and barriers of technological change. The policymakers also consider the risks of technology for access to justice and emphasise the need to keep digital vulnerability in mind.

Speakers	Philip Scholz, Takashi Kikkawa, Tatyana Teplova, Maaike de Langen, Ignacio Tirado and Anna Veneziano
Moderators	Felix Steffek and Mihoko Sumida
Concluding Conversation	Felix Steffek and Mihoko Sumida
Questions for Further Thought	Felix Steffek

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IMPROVING ACCESS TO JUSTICE THROUGH DIGITALISATION

Sumida: Today, we are hosting an international workshop on innovating access to justice. First, our fascinating guests will give their presentations followed by comments and questions.

Steffek: Professor Sumida and I have assembled what we thought was our dream team for today. This last session concludes our conversation series. It is a great pleasure inviting first Dr Philip Scholz to take the floor. Dr Scholz will start this workshop as one of two speakers who represent national governments. The framework of this workshop is that we have two speakers representing national governments, followed by four speakers representing international organisations.

Dr Scholz is Head of Division and the leader of the project group on 'Legal Tech and Access to Justice' in the German Ministry of Justice. In this position, he oversees various activities in the Ministry relevant to today's workshop. In 2020, for example, he and his team organised a major event as part of Germany's EU Council presidency on 'Access to Justice in the Digital Age – Perspectives and Challenges'. He currently initiates and leads digitalisation projects for the German justice system. One of the projects is the development and piloting of an online civil court procedure. Today, he will speak on 'Digitalisation and Access to Justice – a European Perspective'. Dr Scholz, it is a great pleasure to have you on this panel and we are very much looking forward to your presentation.

Scholz: Thank you very much. I am very happy to be with you today. I am very pleased to give you a brief overview of digitalisation and access to justice as it is discussed in the European Union.

Germany held the presidency of the Council of the EU in the second half of 2020. The presidency of the Council rotates among the EU Member States every six months. During this period, the presidency chairs meetings at every level in the Council, helping to ensure the continuity of the EU's work in the Council. Perhaps most importantly, the presidency has the opportunity to set thematic priorities. The German Ministry of Justice put the digitalisation of justice systems at the top of its agenda.

An important result of addressing this issue was that the Member States were able to jointly agree on so-called Council Conclusions.[1] These formulated guidelines for the future digital development of our justice systems. The conclusions encourage Member States to make increased use of digital tools throughout judicial proceedings and call on the European Commission to develop a comprehensive EU strategy for the digitalisation of justice. In December 2020, the European

[1] Council Conclusions 'Access to Justice – Seizing the Opportunities of Digitalisation' 2020/C 342 I/01, OJ C 342I, 14 October 2020 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020XG1014(01)>, accessed 1 November 2023.

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Commission presented a Commission Statement, a so-called Communication, in which concrete legislative and administrative actions for digitalisation were outlined.[2]

It would be easy to understand these two acts as mere reactions to the COVID-19 crisis and the calls for more digitalisation. But I think this view does not capture the motivation. The digitalisation of the justice systems is and needs to be regarded as an aspect of access to justice, which is a fundamental right and a core element of the rule of law.[3]

This brings me to my next point, the fundamental rights perspective of the issue. The Charter of Fundamental Rights of the European Union states that every person has the right to an effective remedy before an independent and impartial court to have any violation of their rights and freedoms considered in a fair and public hearing. In order to improve the acceptance of justice systems and to strengthen confidence in the rule of law, the right to effective legal protection must also be fully asserted under the conditions created by digital transformation. That means, on the one hand, that the digital development of the justice sector must be constantly guided by and aligned with the fundamental principles of judicial systems, namely the independence and impartiality of the courts, the guarantee of effective legal protection.

On the other hand, and that is the more important aspect for me, digital technologies can be used in judicial systems to advance adherence to rule of law standards, as well as the exercise of and respect for fundamental rights. Even further, to fully ensure the effective protection of fundamental rights, the enhancement of digitalisation in the justice sector might be a necessity and not merely a luxury. The possibilities presented by digitalisation can simplify access to the judicial system for citizens on a very practical level. Some court proceedings can be conducted entirely online and thus provide access to justice for people who otherwise might not have turned to a physical court, for example, people living in rural areas, where the nearest court is far away. The use of videoconferencing in judicial hearings significantly reduces the need for burdensome and cost-intensive travel and may facilitate and shorten proceedings.

[2] Communication from the Commission, 'Digitalisation of Justice in the European Union: A Toolbox of Opportunities' COM/2020/710 final <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri = COM:2020:710:FIN>, accessed 1 November 2023. As a follow-up to the Communication, the Commission adopted on 1 December 2021 two proposals – a proposal for a regulation laying down rules on digital communication in judicial cooperation procedures in civil, commercial and criminal matters and a proposal for a directive aligning the existing rules on communication with the rules of the proposed regulation, see <https://commission.europa.eu/publications/digitalisation-cross-border-judicial-cooperation_en>, accessed 1 November 2023.

[3] 'Rule of law' refers to the idea established in the modern state of following laws enacted by parliament, as opposed to the 'rule of force', in which a powerful person or despot uses their power to arbitrarily administer the law.

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DIGITALISATION OF JUSTICE IN EU MEMBER STATES

Scholz: Let us take a closer look at the digitalisation or level of digitalisation of justice systems in the EU. Digital technology is constantly evolving. New approaches and solutions for managing, securing and exchanging information appear all the time. These developments also shape the digitalisation of justice systems. Measures such as the conducting of digital court proceedings, electronic communication between parties, courts and authorities, the electronic transmission of documents and the use of audio and video hearings and conferences have already become important elements of efficient judicial administration in numerous EU Member States. Progress varies greatly from one Member State to another, and I have to admit that Germany is by no means at the forefront of development here. There is still a lot to do, but we are on the right track. The German Federal Government Digital Strategy describes specific projects with concrete, measurable goals to advance digitalisation in Germany.[4] It also includes measures to further digitalise the judiciary.

A dynamic evolution of digital technologies in the judicial and legal sectors of the EU can be observed, in which plans to develop and use new technologies, including AI systems for justice, are increasingly formulated. It can hardly be denied that the further digitalisation of judicial systems has enormous potential to facilitate and improve citizens' access to justice. Digital tools can help to better structure proceedings and to automate and accelerate the handling of standardised and uniform tasks, thereby increasing the effectiveness and efficiency of court proceedings. In this way, digital tools can provide an enormous amount of support to the courts, leaving them with more time to devote to their core business: engaging in judicial deliberation and legal analysis, which no technology can fully replace.

Furthermore, it is important to emphasise the opportunities offered by digitalisation in enabling citizens and legal practitioners to have comprehensive access at all times to legal information, such as legislation and anonymised court decisions, as well as information on the progress of their own cases. But it is also clear that employing digital technologies and means of electronic communication should not undermine the right to a fair hearing, in particular the right to equality of arms and the right to adversarial proceedings, but also the right to a public hearing, including in certain cases the right to an oral hearing in the physical presence of the affected party.

THE USEFULNESS OF DIGITALISATION AS REVEALED BY COVID-19

Scholz: The COVID-19 crisis has exposed challenges and risks as regards the effective functioning of justice systems in exceptional circumstances. It has highlighted the need to strengthen the resilience of justice systems across the EU. It has also triggered a significant shift towards the uptake of digital technologies in our societies. Digitalisation was identified as a tool to address some of the resulting

[4] See <https://digitalstrategie-deutschland.de/>, accessed 1 November 2023.

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issues, particularly to avoid similar hardships in the future and to clear the backlog caused by the crisis. In the end, the COVID-19 crisis has confirmed that further digitalisation of justice and the enhanced use of new technologies are key factors in ensuring the efficiency and resilience of justice systems. The EU Member States and the EU itself should increase their efforts to promote and further expand digitalisation in this sector, always of course, with a view to ensuring equal access to and availability of digital services for everybody.

It is very important to us, and that is why I would like to emphasise this here in particular, that we follow a citizen-centric approach in the digitalisation of justice. The digital reorientation of court proceedings should focus on expanding access to justice in the service of citizens. If we assume that citizens are the 'users' of the legal systems, this approach could play a key role in the development of new digital solutions in the justice systems. Successful process design should focus on people and their needs rather than on specific institutionalised procedures.

In line with this people-centred design approach, it could be necessary to retain traditional non-digital processes alongside the new digital forms to provide citizens who cannot yet fully participate in technological developments with effective legal protection and access to justice. At the same time, there is a need to provide citizens with comprehensive information in simple and accessible language on how to use digital services and how to assert their rights in this way.

DIGITAL VULNERABILITY

Scholz: Finally, I would like to mention one important point regarding persons who are particularly vulnerable. The digitalisation process must take full account of the needs of the disadvantaged groups. Digital technologies are becoming increasingly user-friendly and accessible to a large majority, regardless of age or level of education, and accessible for persons with disabilities. At the same time, all citizens should benefit from the additional digital possibilities and should enjoy equal opportunities regarding digital access to justice and to fair proceedings. Digital participation must be unconditionally guaranteed to all societal groups without any discrimination. The needs of vulnerable persons, including children and vulnerable adults such as elderly people and persons with disabilities, should be taken into account in particular. The use of digital technologies in justice systems should not diminish procedural safeguards for those who do not have access to such technologies.

Let me come to a short conclusion. The digitalisation of justice systems gives us the chance to further improve access to justice – if we manage to develop and deploy technology in line with the rule of law and put the citizen's needs at the centre of technological development. Thank you very much for your attention.

WHY THE DIGITALISATION OF JUSTICE IS LAGGING BEHIND

Sumida: You gave an excellent presentation, but may I ask you one question? You just said that Germany is not necessarily the frontrunner in the EU in the

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digitalisation of the justice systems. On the other hand, Germany is known as a technologically advanced country. Can you tell us about Germany and the reasons behind this?

Scholz: Thank you for this legitimate question. One reason for the relatively slow development in Germany could be that the judiciary in Germany is mostly the responsibility of the 'Länder'. The Federal Republic of Germany, as a federal state, consists of sixteen partly sovereign federated states. That means, that we are organised on a decentralised basis. That makes certain things more difficult because different Länder have partly developed different IT systems. For example, we have different e-file systems in the judiciary, which do not make it easy to exchange information.

Another reason could be that digitalisation has often been understood as a one-to-one transformation of analogue processes into digital processes. This does not go far enough. The associated potential is not fully exploited. Instead, the previous design of the processes should be reviewed, and processes should be rethought and set up anew.

Nevertheless, things are moving forward here as well. We have several research projects in the area of artificial intelligence (AI) in the justice sector, for example, on the identification of hate crimes on social media, machine translation services for legal documents, anonymisation of court decisions and analysing, structuring and preparing information on the subject matter of cases. In Germany, it is already possible to use videoconferencing technology for hearings in civil and commercial cases. It is also possible to initiate proceedings and file claims in a digital way. Nonetheless, we could do more, and we could be better. At the moment, we are working to create a legal framework to allow court proceedings that can be conducted entirely online, i.e. generally without oral hearings. Citizens are also to be given easier access to justice through the use of digital structuring tools, e.g. web application forms.

Sumida: Thank you very much, Dr Scholz.

DIGITALISING THE JAPANESE JUSTICE SYSTEM

Sumida: I would now like to welcome Mr Takashi Kikkawa from the Ministry of Justice of Japan. The Ministry of Justice in Japan handles a wide range of tasks, including drafting the country's civil and criminal laws, immigration and residency management and management of correctional facilities such as prisons. He is responsible for the development and management of the information system, which is the subject of today's discussion. Mr Kikkawa was appointed Prosecutor in 1995 and was in charge of investigations and trials of various criminal cases at the Public Prosecutor's Office in the Tokyo District. He has also served in the Ministry of Justice as Counsellor in charge of legislation such as the amendment of the Code of Criminal Procedure and acted as Director of the Judicial Law Division and Director of the General Affairs Division of the Criminal Affairs Bureau.

Kikkawa: Thank you for inviting me here today. In relation to 'Innovating Access to Justice', I would like to focus on the Ministry of Justice's efforts to digitalise the justice system. In the previous sessions, many of you have pointed out the slow

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adoption of AI, IT and other technologies in Japanese society. I believe that this is precisely the case, and the justice sector is a prime example of this. The justice sector is currently in the process of digitalisation and has not yet reached the stage of sufficient digitalisation, much less digital transformation.

It is often pointed out that the slow introduction of AI, IT and other technologies in Japan is due to the maturity of its society. In other words, it is said that this is because many people are satisfied with the current status of Japanese society and have little motivation to make major changes to the existing systems. I believe, however, that there are further reasons for the delay in the justice sector.

First, I believe that the legal response to AI, IT and other technologies can be divided into two approaches: the substantive law approach and the procedural law approach. The substantive law approach refers to issues such as what effect the law will have on or how it will regulate AI, IT and other technologies. For example, when automated driving of vehicles on public roads becomes possible, who will be responsible for accidents and under what regulations and rules will that be allowed. In other words, the question is how the law will tackle issues involving AI, IT and other technologies.

On the other hand, the procedural law approach concerns how AI, IT and other technologies can be used in judicial proceedings, including litigation hearings. In other words, the question is how to integrate AI, IT and other technologies into judicial proceedings.

The two approaches differ in the speed of evolution. Substantive law must keep pace with changes in society. As Japanese society adopts technologies such as AI and IT, it is forced to respond and create substantive laws. The development of rules and regulations for virtual currencies is one such example.

Procedural law, on the other hand, is essentially autonomous. Even if digitalisation and the use of IT advances within a society, there is no reason that the same would be pursued in the judicial field. At least there is no time pressure to achieve that. Moreover, the judicial system is the very foundation of society. In Japan, a certain level of trust is maintained by the public in the judicial system, including the decisions of the courts. Therefore, there has been a tendency to emphasise the negative aspects that could arise from the digitalisation of and use of IT in judicial procedures. This may be the fundamental reason why digitalisation and the use of IT have not advanced quickly in the justice sector.

THE PUSH FOR THE DIGITALISATION OF JUSTICE

Kikkawa: Procedural laws, including the Code of Civil Procedure and the Code of Criminal Procedure, have been amended after controversial discussions in response to changes that have occurred in society. However, the obstacles hindering digitalisation and the use of IT seem to have been particularly difficult to overcome. From a student's point of view, you may feel that it would be a good idea to introduce something convenient as soon as possible, but when

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trying to create a new system, we must at the same time identify the negative aspects and think about how to deal with them. Also, considerable momentum is needed to make major changes to a system that has been maintained for a long time.

As Dr Scholz pointed out earlier, the justice system must be easily accessible to people. In Japan, the degree of access to justice is at a good level due to the development of one-stop consultation services such as the Japan Legal Support Centre ('Hou-terasu' in Japanese) and the contributions of lawyers and other representatives of the justice system. It would be a mistake to reduce access to justice for the digitally vulnerable by proceeding with digitalisation too hastily. In addition, given the vulnerability of technology to interference by third parties, there is good reason to maintain a paper-based filing system. Furthermore, as judicial proceedings are procedures in which judges find the facts, face-to-face contact in some respects is superior to online procedures. The negative aspects of digitalisation and the use of IT have attracted widespread attention, which has prevented us from being motivated to take quick steps forward.

In recent years, however, consideration has begun to digitalise civil court proceedings. One of the main driving forces behind this is the need to deal with internationalisation. Japan's civil court procedures are no longer for its citizens alone. If Japan's civil court procedures are regarded internationally as difficult to use, this will affect economic activity. I am aware that such external factors have strongly motivated the government to push for the introduction of IT in civil courts, and the heavy wheels have finally started to move. I seek your understanding for the rather long introduction. I hope this background information is useful for what I am about to say.

THE CURRENT STATUS OF THE USE OF IT IN CIVIL COURT PROCEEDINGS

Kikkawa: The Legislative Council of the Ministry of Justice is currently discussing the introduction of IT in civil court proceedings, with the aim of submitting a bill in 2022. This is the very starting point for the digitalisation of the justice sector in Japan. It has the potential to enable the use of new technologies such as AI in the future and to significantly change the nature of the judiciary. This will be a landmark step in the Japanese justice system. Professor Kazuhiko Yamamoto is leading the discussions in the Legislative Council.

The outline is shown in Figure 8.1. Conceptually, the project aims for the full implementation of IT from the filing of the complaint to the judgment. The main pillars of the concept are, 'e-submission', which enables the online submission of complaints and documents containing the parties' claims, etc. 'e-court', which enables both parties to participate in oral arguments and other proceedings via the internet, and 'e-case management', which enables the parties to access the court's servers via the internet at any time to view and download records electronically. The more concrete institutional designs for these pillars are currently being developed.

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June 2022
The Civil Affairs Bureau
Ministry of Justice

Amendment of the Code of Civil Procedure (related to digitalisation)

(Outline)

Current Status of Digitalisation

Amid the current circumstances, the digitalisation of civil litigation procedures is limited in terms of, for example, the following:
1. An action must be filed by submitting a written document
2. Web participation in oral arguments (in court) is not permitted
3. Inspection of case records (documents) must be done in court

Background to Review

February 21, 2020: Consultation with Legislative Council
February 14, 2022: Decision on outline
March 8, 2022: Cabinet decision on bill
Enacted on May 18, 2022 (Act No. 48 of 2022)

Digitalisation of the Civil Litigation System

From the viewpoint of making civil trials more accessible to the public by further increasing their speed and efficiency, we reviewed the Code of Civil Procedure and the civil litigation system with an emphasis on digitalisation

(1) Online submission, etc.

1. Online filing of all complaints, etc. is possible
[related to, inter alia, Article 132-10 of the Code of Civil Procedure]

2. Service from the court can also be performed online
[related to, inter alia, Article 109 to 109-4, of the Code of Civil Procedure]

*Attorneys and the like are obliged to submit and receive documents online

[related to Article 132-11 of the Code of Civil Procedure]

(2) Web participation

1. Expansion of dates (e.g., for oral argument) on which web participation is possible and relaxation of requirements
[related to, inter alia, Article 87-2 of the Code of Civil Procedure]

2. Relaxation of requirements for dates on which participation through audio transmission is possible
[related to, inter alia, Article 170 of the Code of Civil Procedure)

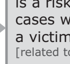
(3) Inspection of case records

1. In principle, case records are digitalised
[related to, inter alia, Articles 132-12, 132-13, 160 and 252 of the Code of Civil Procedure, etc.]

2. Parties can access the court's server via the internet and inspect the case records
[related to Article 91-2 of the Code of Civil Procedure]

Establishment of Procedure for Hearing with Statutory Time Limit Upon Motion by Party

There are no provisions in the current Code of Civil Procedure that stipulate a trial period, causing parties to be unable to predict when their trial will be concluded



Establishment of a system in which, upon request and with the consent of both parties, a trial is concluded within six months of the commencement of proceedings in certain cases and a judgment is rendered within one month thereafter
[related to Articles 381-2 to 381-8 of the Code of Civil Procedure]

Establishment of a Concealment System for Names, Addresses, etc.

Under the current Code of Civil Procedure, there are no restrictions on the inspection of case records by parties; the name, address, etc. of the opposing party as stated in the complaint, etc. can be inspected

Establishment of a system to make it possible to conceal the name, address, etc. of a party when there is a risk of substantial detriment to social life (e.g., in cases where a party is a victim of domestic violence or a victim of a crime)
[related to Articles 133 to 133-4 of the Code of Civil Procedure]

Digitalisation of Personal Status Litigation and Domestic Relations Case Procedures

A divorce may not be finalised through settlement or conciliation without an actual appearance before the court

Establishment of a mechanism that enables divorce through settlement or conciliation by participation in a web conference on a specific date
[related to Article 37 of the Personal Status Litigation Act and Article 268 of the Domestic Relations Case Procedure Act]

Partial Prior Enforcement

Concealment System for name, address, etc.: Within nine months after promulgation

Relaxed requirements for dates for participation through audio transmission

Participation on dates for oral argument via web conference: Within 2 years after promulgation

Divorce finalised by web conference: Within 3 years after promulgation

Full-Scale Enforcement

Within 4 years after promulgation

*Date of promulgation: May 25, 2022

FIGURE 8.1 Digitalisation of civil court procedures in Japan

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In this context, a system is being considered whereby judgment documents are digitised and uploaded to the court's data system for downloading by the parties. Access to electronic judgments has been intensively discussed in this conversation series. If the court can digitise and centrally manage judgment documents and turn them into open data, the possibilities for their use will expand dramatically. At present, information on civil judgments and other information is available on court websites, but this is limited to cases, which are important precedents, and cases of high social interest. Currently, a study group of the Japan Federation of Bar Associations is discussing how data should be managed and used, with a view to making civil judgments open data.

THE CURRENT STATUS OF IT IN ALTERNATIVE DISPUTE RESOLUTION

Kikkawa: The use of IT and other technologies is also being considered for Alternative Dispute Resolution (ADR), a procedure whereby civil disputes are resolved by an impartial third party such as a mediator, for example, in claims for damages from a traffic accident. In the case of a claim for damages for a traffic accident, a private dispute resolution organisation sponsors mediation and resolves the dispute by agreement between the parties concerned. This online ADR is called ODR – Online Dispute Resolution. Since ADR is a private-sector activity, it is possible to design procedures that are more flexible than court proceedings. By incorporating IT, it is expected that procedures can be constructed to meet the needs of various users by increasing convenience, speed etc. Currently, possible procedures are being considered, including the establishment of a new dedicated platform common to all ADR-related organisations. Furthermore, if data is accumulated through open data of court proceedings and AI is able to predict the outcome of court proceedings, then it is expected that ADR will benefit.

The IT of civil court proceedings and ADR is currently considered, and beyond that, the IT of domestic affairs and execution proceedings will also be an issue to be addressed. In the future, the digitalisation of the justice sector should lead to a better system as a whole compared with the current one. The result should be that disputes can be resolved more quickly and appropriately in accordance with people's needs and the nature of the dispute. To this end, it is important to think in terms of system design, starting from the legal consultation of the parties to the execution stage.

Figure 8.2 provides an overview of the digitalisation of the justice sector in Japan. The first issue is accessibility. Everyone should have easy access to dispute resolution procedures. A variety of dispute resolution procedures should be available and support should be provided for the digitally vulnerable. The second issue is reliability. Dispute resolution procedures, whether court proceedings or ADR, are based on the trust of the public and users. Procedures must lead to good decisions, ensure adequate security and provide seamless access. The third issue is realisability, i.e. implementation. The content of judgments and other decisions must be implemented smoothly. With these aspects in mind, it is necessary to consider in detail

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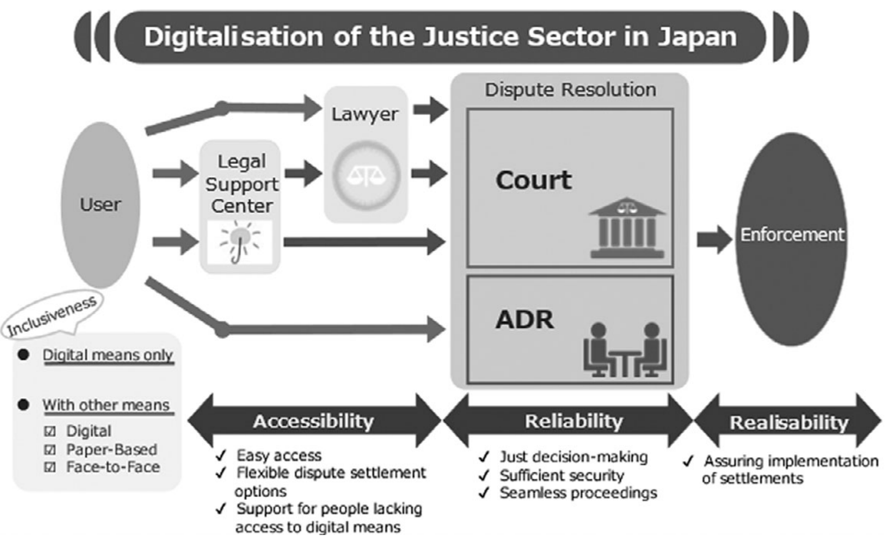

FIGURE 8.2 Digitalisation of the justice sector in Japan

which specific procedures should be digital-only, whether they should be digitalised while allowing a choice of conventional methods to coexist, or whether they should not be digitalised.

THE CHANGES THAT DIGITALISATION WILL BRING TO THE JUSTICE SYSTEM

Although I have focused on civil matters up to this point, IT considerations will soon begin for criminal proceedings as well. Based on the actual conditions of investigations and trials in criminal cases, a wide range of discussions will take place, including the creation and management of documents using electronic data, the online issuance and receipt of documents when requesting and issuing warrants and trials using an online system. In addition, the Ministry of Justice is also involved in a wide range of other tasks such as correctional services, rehabilitation, immigration control and litigation. We are currently working with experts to examine whether we can make our operations more efficient and appropriate by digitalisation and using AI and other emerging technologies.

AI, IT and other technologies have great potential in the justice sector. If we first promote digitalisation and IT, and if AI and other technologies are further utilised, we will see major changes in the way judicial procedures are carried out. We may even see a new judicial system that is adapted to the digital world. I believe that where we are now is at the very edge of such changes. As society becomes more digitalised, supercomputers and other devices will make various simulations possible, and the day will come when the effects of laws can be predicted to a certain extent in advance. If this happens, the way legislation is made, and the way laws are made may change.

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I am very encouraged and grateful that Professor Sumida and other professors are one step ahead in considering the use of AI and other methods, based on the premise of digitalisation, and that various studies and initiatives are underway at law firms and other organisations. I personally believe that speed is very important, but on the other hand, as the judicial system is the foundation of society, we must not allow that people fall through the net of the judicial system or undermine trust in the judicial system due to hasty changes. I think it would be good to have some time in which the digitalisation and digital transformation of the justice sector in Japan can proceed with some delay while referring to the results of studies and practices in other countries. In any case, I sincerely hope that many of you will participate in this major public-private project in the future. Thank you very much.

LEGAL PROCEDURES, THE INTERNET AND FACE-TO-FACE COMMUNICATION

Sumida: Thank you very much. Would anyone like to ask questions or comment?

Student A: Thank you very much for your excellent presentation. In your presentation, you mentioned that procedural law is rather autonomous and not strongly connected to societal change, but I think that if the nature of disputes changes with the spreading of the internet, then this will change the nature of procedures.

Kikkawa: Thank you for your question. In the past, in response to the differentiation of disputes, there have been changes in the nature of judicial procedures or an increase in the menu of judicial procedures in order to make them suitable for resolving various types of disputes. However, the integration of AI, IT and other technologies into judicial procedures is a somewhat different matter. Even if society's approach to disputes changes as a result of the spreading of the internet, as you have asked, and even if the content of disputes themselves increasingly relates to AI, IT and other technologies, it does not necessarily follow that judicial procedures using AI, IT and other technologies must be introduced in order to resolve such disputes. Whether or not to incorporate AI, IT and other technologies into judicial procedures is an independent decision.

However, as AI, IT and other technologies permeate society, it is inevitable that calls for their inclusion in the judicial sector will grow louder, and that is exactly what is happening now. If digitalisation in the judicial field progresses, and if AI and other technologies are utilised, then there is a possibility that a dispute resolution system will be constructed in a completely different way. It can be faster and more satisfactory for the parties concerned.

Student B: Thank you very much for your valuable talk. You mentioned that there may be a need for face-to-face communication at judicial hearings. I understand that in the criminal justice system, it is difficult to see faces or to capture facial expressions in court proceedings when people wear masks.

Kikkawa: Thank you for your question. According to media reports, online jury proceedings have been tried in some states in order to overcome the stoppage of jury

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trials in the United States during the COVID-19 pandemic. Although it is an unavoidable measure, it seems that some cautious arguments have been raised against such efforts. I think it is a common perception in many countries that face-to-face attendance is suitable for civil trial proceedings, which are directed at the determination of facts and decisions based on those facts.

As I mentioned earlier, following the introduction of IT in civil court proceedings, discussions are about to start on the introduction of IT in criminal court proceedings. At that time, the question of which proceedings will be online and which will be face-to-face will be a major debate. Even once the system has been established, I am sure that it will be further improved as technology advances. I hope that the students attending this conversation series will be involved in such discussions in the future.

JUSTICE PROBLEMS ARE EVERYWHERE

Steffek: Now, it is a great pleasure to introduce Dr Tatyana Teplova. Tatyana, you are Head of Division at the OECD for Policy Coherence for the Sustainable Development Goals, which is an urgent call for action adopted by all United Nations Member States in 2015. You are also Senior Counsellor for Gender, Justice and Inclusiveness, which means that you take an inclusive and comprehensive view of access to justice. You are a part of the Public Governance Directorate at the OECD, meaning that you look at what states and lawmakers do in terms of strategies and approaches to justice. Finally, you lead the Justice Department of the OECD, and your team has developed leading guides and reports on access to justice. I can only recommend that everyone look at the website of the Access to Justice team of the OECD.[5] There is a wonderful assembly of guidance and reports. You will speak to us on Access to Justice for All in the Time of COVID-19 and beyond.

Teplova: Thank you, Felix. Thank you to you and Professor Sumida for putting together this extremely impressive programme and, of course, for inviting the OECD to join this discussion and to share the highlights of some of our work. As you mentioned, we take a broad approach to access to justice, but I also feel that there are many elements that were already highlighted by the previous speakers from Germany and Japan. Hopefully, my presentation will be complementary to what was already said but perhaps offer a slightly broader approach.

As you can see in Figure 8.3, we at the OECD look at access to justice as part of the policy action on inclusive growth, which is a key strategic priority for the OECD. We are not concerned only with income and equality, but also focused on how inequalities can touch every aspect of people's lives, from employment and likelihood of getting employment, educational outcomes, to where you live and even how long you live.[6] As you mentioned already, Felix, access to justice is a key part of the 2030 agenda and the full spectrum of the targets for sustainable

[5] See <www.oecd.org/governance/global-roundtables-access-to-justice/>, accessed 1 November 2023.

[6] The following is based on The OECD White Paper on Building a Business Case for Access to Justice, <www.oecd.org/gov/building-a-business-case-for-access-to-justice.pdf>, accessed 1 November 2023.

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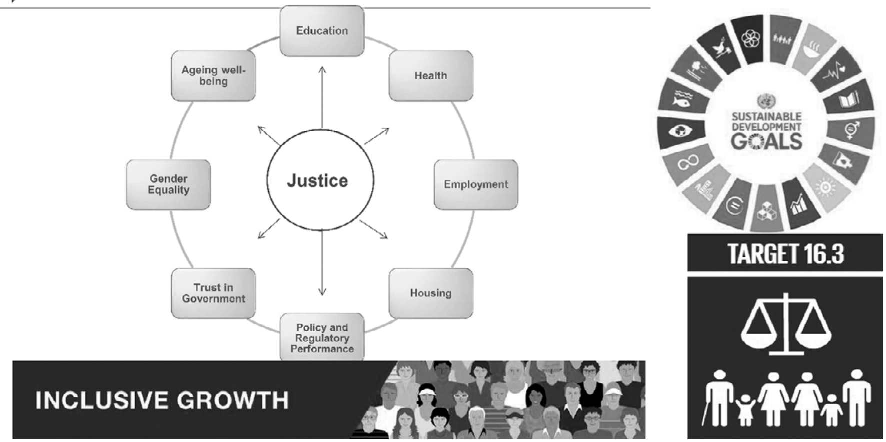

FIGURE 8.3 Access to justice as an enabler for creating prosperity and sustainable development

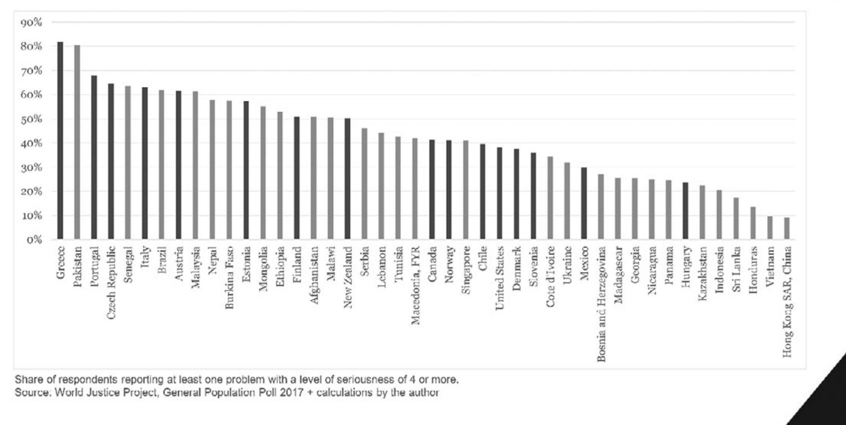

FIGURE 8.4 Justiciable problems are highly prevalent

development goals and, specifically, Target 16 where countries have committed to provide access to justice to all, to leave no one behind and to build effective, accountable and inclusive institutions.

In Figure 8.4, we see that legal problems are not rare, they are not unique. We know that nearly every aspect of people's lives, from health to employment, depends on sound legal frameworks. Any problem or dispute that arises within those

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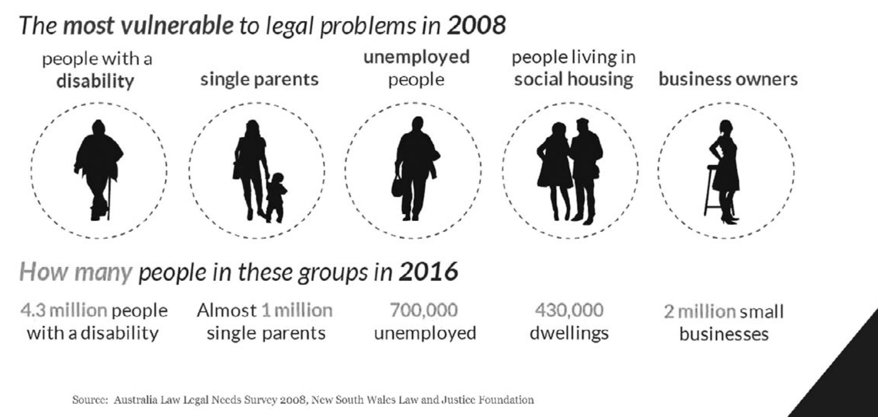

FIGURE 8.5 The most vulnerable to legal problems – Australia Law Legal Needs Survey

sectors, by necessity, can bring into play laws and regulations. What we see in the data, which comes from the World Justice Project, is that legal problems are ubiquitous and that they can flow from everyday life and can be experienced by many on a daily basis. For example, this figure shows that on average, around 50 per cent of the people who were surveyed among 45 countries experienced legal problems in a given two-year period. So, such problems are quite frequent. Actually, the proportion of unresolved legal problems can also go as high as 50 per cent, meaning that these problems did not get resolved either because the legal justice system was inaccessible, or people decided not to take legal action for a variety of reasons. I will touch a bit on those.

Looking at Figure 8.5, we also see that these legal problems tend to cluster together with issues related to employment or debt, housing or health problems. This can trigger a vicious cycle for already vulnerable populations. We know that not all groups have equal experiences in accessing justice, as was already highlighted by the German speaker, Dr Scholz. Indigenous populations, people with disabilities, women, single parents and the elderly face a higher prevalence of legal problems. This is what we see from the data in Figure 8.6. These groups can also experience particular barriers when trying to resolve these problems such as language, distance or lack of digital skills. This is particularly relevant for the discussion today. The greater reliance on technology can improve the efficiency and effectiveness of the justice system, but it can also create a new layer of marginalised populations who lack digital skills. It is important that to be truly accessible, justice systems take into account this dimension.

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Legal problems affect more certain disadvantaged groups in the population

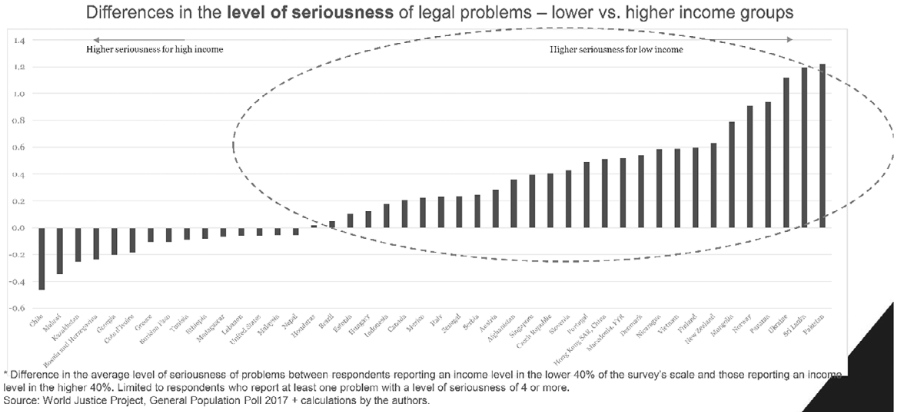

FIGURE 8.6 Legal problems affect certain disadvantaged groups more severely

Justice institutions and alternative settlement processes are seldom used

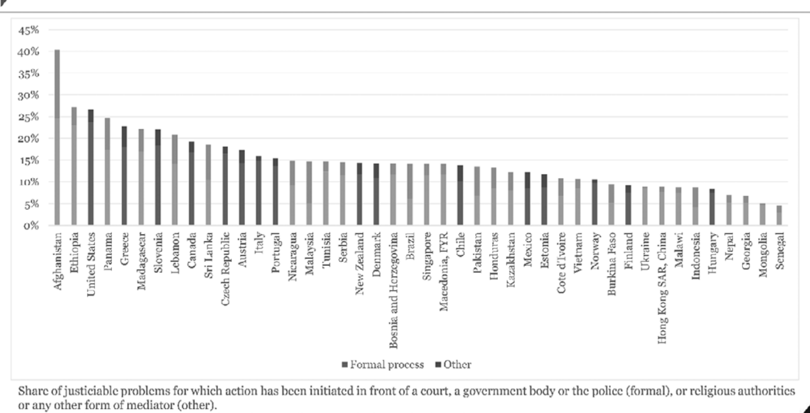

FIGURE 8.7 Share of justiciable problems for which action has been initiated in justice institutions

BARRIERS OF THE JUSTICE SYSTEM

Teplova: Figure 8.7 shows that only a small fraction of people deal with their legal problems through the formal justice system. This reinforces the need to increase access to alternative, but also cost-effective, dispute resolution mechanisms that are tailored to the needs of people and to the nature of the problem that they face.

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We know that the cost is actually one of the top reasons why people choose not to do anything about their legal problems. But there are also many other barriers, such as the complexity of the justice system and the complexity of the legal language. In some cases and, actually, more frequently than we anticipated, it is the lack of trust in the justice system that is a barrier to addressing legal problems.

The COVID-19 crisis has had a profound impact on the legal needs of people and of businesses, but also on the justice systems themselves. In multiple discussions in the OECD Access to Justice Roundtables, we have seen that legal needs are increasing as a consequence of the crisis due to rising unemployment, growing business disputes, company insolvencies, increased medical issues, insurance problems, difficult access to healthcare and a rise in domestic violence. This is, unfortunately, a worrying trend in many of the OECD Member countries. We also know that the cost of unmet legal needs, i.e. the cost of not doing anything about them, was already extremely high. It was quite significant even before the crisis, reaching up to 3 per cent of the gross domestic product (GDP) on average across OECD Member countries. If legal needs are increasing as a result of the COVID-19 crisis, then of course, the cost to society is also quite likely to increase.

As we already heard, justice systems have been severely affected during the COVID-19 pandemic. Note the closure of many courts in OECD countries, the suspension of many procedures and the difficulties of providing legal aid during the pandemic. It has also generated significant case backlogs in many countries during the crisis and recovery phases. There is also a brighter side in that we also observed unparalleled innovations in the justice systems, including through digitalisation, which is, again, particularly relevant for today's discussion.

OPPORTUNITY FOR A DIGITALISATION REVOLUTION

Teplova: I would like to highlight some key lessons in terms of the justice systems' responses during the crisis. First, globally but also individually, justice systems should not miss the opportunity. Usually, change is slow due to various constraints, be it the governance arrangements in the justice system, be it the legal culture, be it that it is difficult to develop digital skills. We know from years of discussions on this topic that the adoption of technological innovations can be quite slow across the justice sectors. The crisis has offered an opportunity to accelerate such change. In many, many countries, change is already here. It is happening. The big question is how to capitalise on this opportunity.

It is important to embed, from the outset, an understanding of what works for whom under what circumstances. Technology should not be adopted blindly and it should not disadvantage groups that have already been marginalised. Data and evidence will play a critical role in making the most effective policy in this area, but also in allocating already scarce resources in the best possible way.

We have observed that the responses have been most effective when countries have established cross-functional teams to lead the change and adjust the justice

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systems to respond to the growing needs. The whole-of-government approach, but also the whole-of-justice chain approach have been most effective – when the task forces included courts, ministries of justice, health ministries, social ministries and ministries of labour or business development. So, horizontality is crucial to best support the needs of the people.

We also saw that clear communication with citizens is particularly crucial. This is specifically relevant for groups which are at risk of even further marginalisation during the crisis. It is important to ensure that they know which legal remedies are available to them and how to access them. On the topic of technology, we saw that it has massive potential to improve accessibility and efficiency of justice. We also learned that special efforts must be made to maximise the benefits of technology while minimising the absorbed risks and challenges. We saw that procedural simplification is possible and there have been many examples across the OECD membership when countries looked at their legal procedures with a view of simplifying them. Of course, such change should aim to maintain quality, ensure the rule of law and a fair trial, but still reduce unnecessary steps in the legal process to ensure that access to justice is improved.

If you take a look at Figure 8.8, you will see key country innovations that we observed during the COVID-19 pandemic, a period of unprecedented change and opportunity. Many of our Member countries have adopted innovative approaches. This included using technology, which has been one of the biggest accelerators of change during the crisis. There is also the growing use of ADR mechanisms, for example, in Chile, or procedural simplification in Portugal. In terms of technology, countries invested in maintaining the continuity of legal services, trials and legal aid through different technical means such as remote trials via videoconferencing or phones. As already mentioned, we need to be mindful of the risks in the use of these

Good country practices

In the **OECD Compendium of Country Practices**, we have observed the following types of effective solutions across systems:

- **Ensuring availability and accessibility during the crisis**
  - Continuity of legal services, trials and legal aid through different technical means (**many countries**). However: **risks** been identified
  - Increased use of Alternative Dispute Resolution methods (e.g. **Chile** offered free mediations for COVID-19 related contract disputes)
  - Use of appropriate means for each collective through a multi-channel approach (e.g. **Finland**), and simplification of processes
- **Enhancing access to justice through collaboration and integration of services**
  - "No wrong door" or "one-stop shop" approaches; medical-legal partnerships; integration of legal aid with other social benefits (e.g. **USA Legal Services Corporation** implemented a *no wrong door* approach when closing it's offices installing a video interphone)
- **Empowering communities to deal with their legal problems**
- **Promoting equality and inclusion through the justice system, with measures targeted at the most vulnerable groups:**
  - Domestic violence victims (e.g. **Colombia, Spain, Ireland** have habilitated new hotlines)
  - Migrants, the elderly and children (e.g. **Portugal** has granted migrants rights to services equal to nationals' during pandemic)
  - Business, in particular SMEs (e.g. **South Korea, Slovak Republic** have made their insolvency regimes more flexible)
- **Increasing effectiveness through evidence-based planning**
  - Live surveys of the legal needs of citizens (e.g. **Canada**)
  - Research studies on the impact of remote trials (e.g. **United Kingdom**)

FIGURE 8.8 Good country practices

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technologies and multi-channel service delivery remains an important priority. The Finnish government has taken particularly active steps in this regard. Other countries have applied a no-wrong door approach or a one-stop-shop approach to justice services. For instance, in the United States, there is a growing use of medical-legal partnerships as well as integration of legal aid and other social benefits. So, when people are applying for unemployment insurance, legal aid is integrated into the package that was offered as part of this support.

Finally, I would be grateful if you took a quick look at Figure 8.9. The OECD has been developing resources to support countries in their efforts to bring justice closer to the people and to implement their commitments under the 2030 Agenda for Sustainable Development. We are also one of the co-custodians of the new indicator on Access to Justice to Leave No One Behind. I would like to encourage you to take a look at our materials and, of course, I am happy to answer any questions and provide any further information. Thank you so much for your attention.

Sumida: Thank you very much for talking so clearly about how access to justice is linked to social issues. I would now like to invite Professor Kozuka to comment.

CHALLENGES ASSOCIATED WITH COMMERCIAL DISPUTE RESOLUTION SOLUTIONS

Kozuka: Thank you very much, Dr Teplova, for your fruitful presentation on the subject. When we think about the digitalisation of justice, we come across the issue of the use of the proprietary commercial system. Strong countries like Germany or Japan may be able to create a digitalised judicial system through government funding but, from the perspective of an international organisation, this is not the

FIGURE 8.9 Justice for growth and inclusion: towards people- and business-centred justice systems

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case in all countries. Some countries may need to rely on commercial systems, which may have a proprietary nature that is not disclosed, or it may have biases. How do you think such a commercial system can be controlled and how can it be led in the right way to help people have access to justice?

Teplova: Thank you for this question. I am afraid that I do not have a straightforward answer to this question. This is a dilemma that is faced by many of our Member countries. The role of the OECD is to work together with the countries in developing principles that could guide the use of commercial systems for public purposes. This includes principles concerning the reliance on public systems, be it the judiciary or the broader public service delivery for many other areas. So, this is a big question. What is the role of the governments in regulating technological solutions? How do we ensure the appropriateness of the public-private interface? We know that many countries are developing public-private partnerships with clear guidance and clear principles surrounding these partnerships. So, there is no single answer to your question. We do know that, of course, the private sector is offering many innovative solutions and that for governments there is certainly scope to benefit from and to build on those solutions through partnerships. Governments, of course, also have the responsibility to protect the public interest. This is where there must be clear regulations and strict precautions to ensure privacy, data protection and so on. This is something that we are looking forward to developing further together with our Members.

ACHIEVING SUSTAINABLE DEVELOPMENT GOALS BY 2030

Steffek: Thank you very much again, Tatyana, for a very interesting and rich presentation. It is now a great pleasure to introduce Maaike de Langen, who is the Programme Director for Justice for All with the Pathfinders for Peaceful, Just and Inclusive Societies,[7] a programme of New York University's Center on International Cooperation. Maaike has over fifteen years of experience leading national and international programmes and teams in the areas of governance, rule of law and legal empowerment. She has worked in the Netherlands, Mali, Chad and New York. To pick just one of her stations before she came to her current role, as Policy Specialist on Legal Empowerment of the Poor for the UNDP in New York, she was involved in drafting the report of the Commission on Legal Empowerment of the Poor and created UNDP's first global project on legal empowerment of the poor.

de Langen: It is a great pleasure speaking to you today about innovating access to justice. Firstly, I will speak about access to justice and about a global movement that is coming together to improve people's access to justice around the world. Secondly,

[7] The Pathfinders is a group of UN Member States, international organisations, civil society and the private sector, that works to accelerate the delivery of the SDG goals for peace, justice and inclusion by 2030.

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I will speak about justice in a pandemic and about the impact of the COVID-19 pandemic on justice services and people's justice needs. Thirdly, I will talk about technology and innovation, the theme of this programme, and I will present seven principles for innovation with a people-centred justice perspective.

What is access to justice? I will tell you about the context in which we operate, which is the United Nations Sustainable Development Goals. The United Nations adopted these 17 global goals for the world to achieve by 2030.[8] Goal 16 focuses specifically on issues related to peace, justice and institutions. One of its core components is to provide access to justice for all. In 2015, all the countries of the world together embraced this universal ambition and committed 'to having systems that provide equal access to justice for all by 2030'. This goal was new in the global development agenda and a group of countries came together as Pathfinders to accelerate delivery of these goals. They developed the Roadmap for a Peaceful, Just and Inclusive Society, which sets out strategies and a plan to achieve SDG 16.

5.1 BILLION PEOPLE DO NOT HAVE MEANINGFUL ACCESS TO JUSTICE

de Langen: Justice had a high priority within the Roadmap because it is one of the three central components in SDG 16. One of the first things the Pathfinder countries did was to establish a Task Force on Justice, to identify strategies and plans for achieving the goal of providing equal access to justice for all. As shown in Figure 8.10, the Task Force was led by ministers from Argentina, the Netherlands and Sierra Leone, together with the Elders. A group of countries and international organisations came together in this process, which led to the publication of the 'Justice for All' report[9] and a series of other reports.

The Task Force asked the following question: 'If we want to provide equal access to justice for all, we must know, first, where we are today. So, we must find data on the global justice gap. What is the gap between the justice people receive and the justice that they need?' And once the data was assembled by the World Justice Project, the Task Force reached a shocking conclusion. It found that, across the world, 5.1 billion people do not have meaningful access to justice. This is the global justice gap. It is composed of 4.5 billion people who are excluded from social, economic and political opportunities that the law provides; 1.5 billion people who

[8] The 2030 Agenda for Sustainable Development, adopted by all United Nations Member States in 2015, provides a shared blueprint for peace and prosperity for people and the planet. At its heart are the 17 Sustainable Development Goals (SDGs), which recognize that ending poverty and other deprivations must go hand-in-hand with strategies that improve health and education, reduce inequality, and spur economic growth – all while tackling climate change and working to preserve our oceans and forests. See <https://sdgs.un.org/goals>.

[9] The full report, in multiple languages, is available at <www.sdg16.plus/resources/justice-for-all-report-of-the-task-force-on-justice>, accessed 1 November 2023.

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FIGURE 8.10 Taskforce on Justice: Pathfinders for Peaceful, Fair and Inclusive Society

have a criminal, civil or administrative justice problem that they cannot resolve and 253 million people who live in extreme conditions of injustice without any meaningful legal protections.

So, how can this global justice gap be closed? One crucial step is to bring together evidence of what works to increase people's access to justice. In the Justice for All report, we developed the notion of people-centred justice, putting people at the centre of the justice system and at the centre of what you are trying to achieve. This is the perspective that we take when we speak of access to justice. It is really about people's justice problems and resolving and preventing them.

'SHADOW PANDEMIC' TRIGGERED BY COVID-19

de Langen: I will now turn to my second point, on access to justice in a pandemic. How has the pandemic impacted people's access to justice and what was the impact on justice actors and the justice sector more broadly? We have produced a series of briefings around that. They are shown in Figure 8.11. The first one focused on the public health emergency.[10] When the pandemic hit in March and April 2020, we saw in country after country that there were measures being taken – lockdowns were imposed, public health emergency measures were put in place and justice actors were on the frontline of this pandemic. Justice actors were helping to enforce lockdowns. There were tensions between justice actors and people who were objecting or protesting against lockdowns and other public health measures. There was a risk of abuse. A lot of questions arose around prisons. Could prisoners

[10] Available at <dx.doi.org/10.2139/ssrn.4755459>, accessed 1 September 2024.

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FIGURE 8.11 Reports by Pathfinders on Justice in the pandemic

be kept safe? There were releases of prisoners in some countries. A separate problem was the increase in domestic violence. During lockdowns, it was widely reported from across the world that there were massive increases in domestic violence, to the extent that UN Women even called this a 'shadow pandemic'.

The second dimension of the pandemic that we looked at is the economic crisis.[11] Due to the economic crisis, access to justice and the problems that people face in obtaining justice are changing. We have seen, for example, increases in unemployment, which brings with it justice problems. There is an increased risk of evictions, increases in divorce, increases in domestic violence and so on. At the same time, we saw that justice actors had difficulty operating because of the restrictions. They could not meet with their clients. Courts closed and had to change their procedures. Suddenly, the justice sector, which is not the most innovative and which does not change procedures very often, had to be creative.

Our third pandemic-related briefing[12] assessed the role of justice in mitigating the long-term negative social and political impacts of the pandemic and in helping societies to 'build back better' in its wake. Justice actors are critical intermediaries for the social contract between states and citizens, but if countries are to recover from the pandemic, they will need to work to strengthen societies' resilience against crises, reach out to all population groups, solve the problems that matter most to people and engage people to develop solutions to injustice.

We call what has happened during the pandemic the triple crunch. On the one hand, you see justice problems increasing because of the public health emergency, the economic crisis and the social impacts of the virus. In parallel, justice actors are facing restrictions that limit their ability to respond. They cannot meet in person.

[11] Available at <ssrn.com/abstract=4762622>, accessed 1 September 2024.
[12] Pathfinders, 'Justice for All and the Social Contract in Peril', 2021, available at <ssrn.com/abstract=4802282>, accessed 1 September 2024.

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They cannot have regular procedures. So, the operations of paralegals, lawyers and judges are heavily restrained. And thirdly, due to the economic crisis, there is a lack of funding across the board, including in the public sector. As a result, investments in innovations are more difficult to make.

The result of this triple crunch is that we must do more with less and provide more access to justice with fewer resources. What we have seen is that this leads to three things: innovation, creativity and collaboration. Court procedures had to move online, documents suddenly had to be exchanged in digital format, case management systems had to be implemented, hearings were held online, etc. Using technological solutions became a necessity overnight.

The exact technological solutions have been discussed in the rest of this course in more detail than I can give you. What I will focus on is the question of how you can improve people's experience and people's access to justice while using these new technologies. What are the principles of people-centred justice innovation?

SEVEN PRINCIPLES FOR PEOPLE-CENTRED JUSTICE INNOVATION

I have seven principles that I will discuss. First, putting people at the centre. This is the basic principle of people-centred justice. It means that you must understand people's capabilities. Not everybody is highly educated. Not everybody is very competent in using computers or has access to technology. Another principle of the SDGs is that we want to leave no one behind. We must keep that in the back of our minds with every access to justice solution. Is it easy for all people to understand? Can they access it? Can everybody use it?

The second principle is to focus on the reality of people's lives and experiences. What are the problems they are facing? How can the justice services we provide really address those problems? Focusing on resolving justice problems requires a broad perspective. You must look at clusters of problems, try to address the underlying issues and be conflict-sensitive in the approaches used. A procedure or technical solution can either promote conflict behaviour or de-escalate conflict. It is important to keep this in mind in the design phases.

The third principle is the need to create better justice journeys. What is the journey that people are taking when they resolve their problems? What is their access to justice? How are they empowered to access the justice system? What people-centred justice services are available? Interestingly, that means that digitising the process as it currently exists should not be the goal. As we have seen, 5.1 billion people are excluded from meaningful access to justice. Digitising existing processes, which exclude so many people, will not help. We must use the process of digitalisation, the process of using AI and other advanced technologies, as an opportunity to improve the justice journey and to improve the way the system serves people.

The fourth point I would like to raise is that we need to be open to different actors. Often, there is a focus on the courts. The exact percentages may differ from

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country to country, but it is true everywhere that, in the vast majority of cases, the courts do not come into play when people are faced with a justice problem. So, if you want to resolve people's justice problems and really provide them with access to justice, you must look at different actors, such as lawyers, paralegals, civil servants, police officers, trade unions and other organisations that help people address these issues. We must focus on collaborations and there are technologies that can support those kinds of collaboration between different actors with the objective to serve people better. Collaborations across sectors are also needed. For example, lawyers can collaborate with social workers or with psychologists depending on the justice problem being addressed.

The fifth principle is that we must create standard solutions. If you digitalise, you must develop a standard process that is more efficient than the traditional way of providing justice services. However, people are not standard and problems are not standard. So even though you design a standard process, you must make sure that there are individual escape routes. What if I must tick a box but none of the boxes apply to me? What if I must perform the next step but I want to go back to the previous step? These are simple examples but they are important to keep in mind when you digitalise processes. Standard solutions need individual escape routes. If you have those standard solutions, there are economies of scale, because many cases are similar and can be resolved much more easily than is typical in our current justice systems.

Point six refers to the importance of collecting data and then using that data to learn and to improve. For technically minded people this is a natural way of working. You try something, then you collect the data and you improve it. That is how the process develops. The justice sector is often less focused on data and on using justice data to really understand what the problems are that people are facing, how they are experiencing the process, what the solutions are that really work, how you can better serve people and how you can make improvements in the justice services they provide.

That brings me to the last principle, preventing justice problems by learning from individual cases. This, too, is about using data to learn and improve. But now it is about the justice problems that people face and the structural issues in the legal system. If you really understand the sum of these individual cases, you can identify the bottlenecks in regulations, in the laws or in their implementation. What are the obstacles that people are facing? Where do things go wrong and do problems emerge? This information can help identify structural solutions and contribute to preventing justice problems from occurring in the first place. This also reduces the justice gap.

I hope this people-centred approach to justice is useful as you think about technological solutions for innovating justice services and improving people's access to justice. The pandemic has forced innovation at a much higher speed in the justice sector than we had previously thought possible. So, there are amazing opportunities, especially if we work together and put people's justice problems at

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the centre of our efforts. There is a lot of work to do and a lot of improvements that can be made to help close the global justice gap. Thank you.

UNIDROIT PROMOTING GLOBAL MODERNISATION AND ECONOMIC GROWTH

Steffek: Thank you very much, Maaike, for this excellent and thought-provoking presentation. Now, we are blessed to have both the Secretary-General and the Deputy Secretary-General of UNIDROIT as our final speakers. UNIDROIT is the International Institute for the Unification of Private Law based in Rome. Professor Ignacio Tirado was appointed as Secretary-General in summer 2018. Before that and in addition to this, he is a professor at the Universidad Autónoma of Madrid. Previously, he was a senior legal consultant at the World Bank's Legal Vice-Presidency and the Financial Sector Practice for almost nine years, having also consulted for the IMF on insolvency-related matters, as well as for the Asian Development Bank on commercial legal reform. Amongst others, there are many accolades I could mention, but I will only mention two. He is a founding member of the European Banking Institute and a director of the International Insolvency Institute.

Anna Veneziano is the Deputy Secretary-General of UNIDROIT. She is also a professor, in that case, Professor of Comparative Law at the University of Teramo in Italy, and she was affiliated with the University of Amsterdam in the Netherlands as a Professor of European Property Law. She has published widely, for example, on international comparative law, European contract law, secured transactions and international insolvency law. We are very grateful that you are taking the time. We know that you are very busy, and you have many projects going on at UNIDROIT. We are very grateful, Ignacio and Anna that you are here with us today. You will speak on UNIDROIT's initiatives concerning access to justice, with a particular focus on the enforcement of creditor claims. Thank you very much and over to you.

Tirado: Thank you very much, Felix. We would like to start out by wholeheartedly thanking the University of Cambridge and Hitotsubashi University in Japan, and especially Professors Steffek and Sumida, who have very kindly invited us. As Professor Steffek mentioned, it is not usual for both the Secretary-General and the Deputy Secretary-General to participate. We do this because of the importance of the project and the importance that the United Kingdom and Japan have for our institution. We very much look forward to continuing this important collaboration moving forward. Fortunately for all of you, most of the important speaking will be done by Professor Veneziano, while I will just give a very quick overview of our institution.

We should not take for granted that you all know what UNIDROIT is. I am, therefore, going to take a minute to talk about it. It is one of a group of organisations

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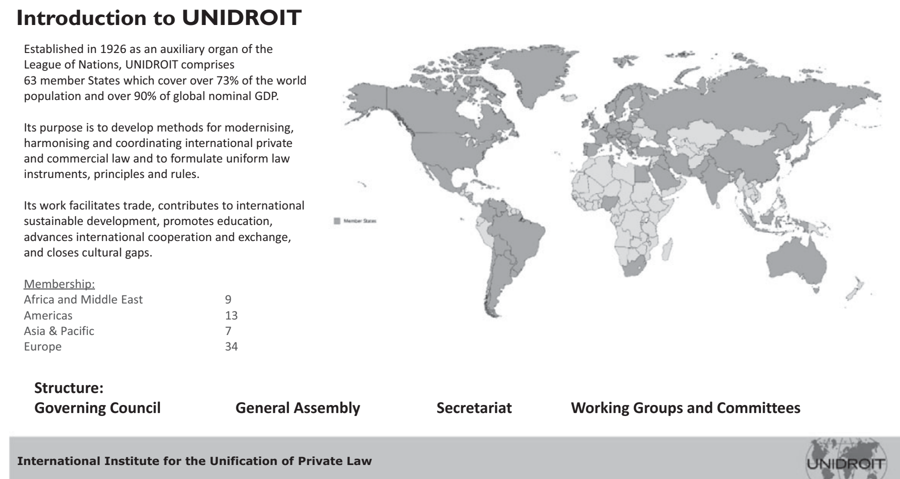

FIGURE 8.12 Introduction to UNIDROIT

known as the three sisters, the three organisations around the world working on transnational law and the unification of private law. The three sisters are the Hague Conference on Private International Law, the United Nations Commission on International Trade Law that is UNCITRAL and UNIDROIT. We are a bit older than UNCITRAL, having been founded in 1926 and thus approaching our first century celebration. UNIDROIT was founded in the context of the League of Nations, which, as all of you will know, was the predecessor of the United Nations. This is important because the *raison d'être* of the League of Nations, which was created after World War I, very much influences the principles of our organisation. Our principles are international collegiality and ensuring the harmonisation of private law as a mechanism for fostering economic growth and peace amongst nations. We currently have 63 constituent countries, which may sound like about one-third of the countries in the world, but in truth represent almost 75 per cent of the world's population and about 90 per cent of the world's nominal GDP. These very relevant countries are shown on the map in Figure 8.12.

Our work is on private law in a broader sense. Most of our work is concentrated on commercial law and the commercial sides of private law, but there are also important exceptions. Figure 8.13 presents a clustered summary of our instruments, both those that are already in force or at least have been approved and those that we are currently working on. All of them pretty much relate to access to justice in one way or another because they are legal instruments, after all. One of the main areas of work concerns international commercial contracts, an area in which I would like to highlight the UNIDROIT Principles of International Commercial Contracts. These Principles are deemed an international best practice or standard in international contracts, not only because they are a very high-level instrument from a technical

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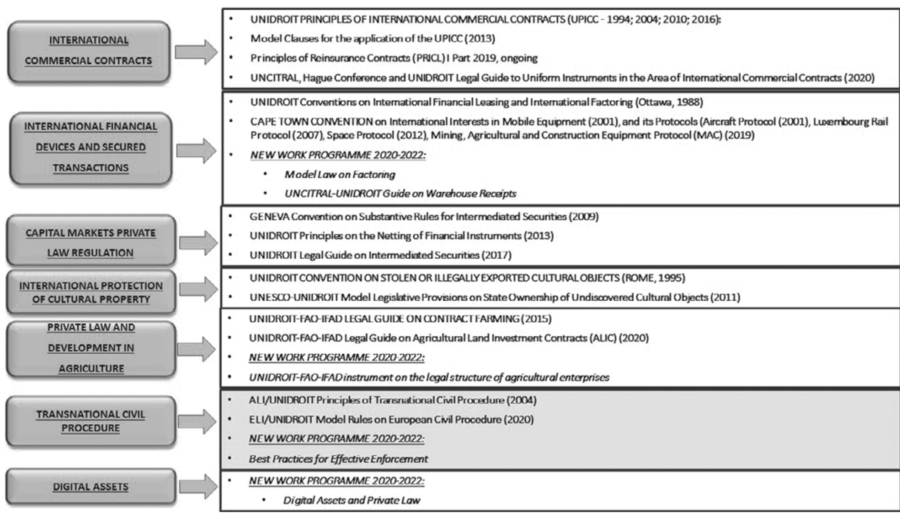

FIGURE 8.13 UNIDROIT instruments

standpoint, but also because they strike an extraordinary balance between common and civil law perspectives of contract law. This makes them extremely useful for arbitration, for model legal reform and for other uses. Countries such as China, Russia, Argentina and France are but a few that have recently amended their civil codes and their contract laws according to the UNIDROIT principles on international commercial contracts.

We also have important projects on secured transactions and access to finance, including one of the most successful commercial law treaties in the world, which is the Cape Town Convention. Most transactions concerning aircraft, such as aircraft engines and helicopters, take place using the Cape Town Convention, prepared by UNIDROIT and for which we are the Depositary. We are currently working on drafting a model law on factoring and another on warehouse receipts, which are key in access to finance, especially in developing nations. This is an area where modernisation and harmonisation of law are most needed to lower transaction costs and, thereby, increase investment growth. We also have an important practice in capital markets, which I will not get into as it has little to do with access to justice.

CONTRIBUTING TO CIVIL PROCEDURE

Tirado: An important, procedural part of our work concerns cultural property. The UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects of 1995 is a milestone of our signature instruments. It has fifty signatory states and it keeps

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growing. It is an important instrument to ensure that cultural heritage, especially in developing countries, is not unduly taken away. It basically dries out private markets and facilitates the recovery of those assets. So, that is another side of our work which you might find interesting. You might be interested in an area of our work where access to justice is still very much in the making, which is digital assets. We are currently working on digital assets and private law. How litigation and other problems that might arise in the market practice of digital assets are to be addressed nationally and internationally remains to be seen.

We have now reached the final part of my introduction, which concerns national civil procedure. We have done quite a lot on this front. We proudly approved the American Law Institute/UNIDROIT Principles, which are deemed a world standard for procedural principles that facilitate arbitration and transnational litigation.[13] They provide a meeting point between common law and civil law approaches to procedural law, which hopefully makes them useful and relevant. Following suit, we have recently approved the European Law Institute/UNIDROIT Model European Rules of Civil Procedure, which are more detailed, more European, ad-hoc, tailor-made, but pretty much consistent with the general principles approved before.[14] We are hopeful that in the future, we can continue and produce similar types of instruments for Asia, Latin America and Africa. Those three regions are yet to develop common procedural principles.

Our current work is focused on enforcement. While access to justice is important around the world, the place, the moment, the when and where in which access to justice fails the most, is when it comes to implementing decisions, i.e. when it comes to enforcing the rights of the parties. This is not just a problem in developing nations but also in fully developed nations. Legal enforcement is often too late and too costly. Anna Veneziano will speak about all of this in detail.

WHAT IS REQUIRED TO ENFORCE A CLAIM?

Veneziano: Thank you very much, Ignacio, and thank you, of course, Professor Steffek and Professor Sumida, for the invitation. The second part of our presentation will focus on a current UNIDROIT project, which is directly connected to the topic of access to justice. As the Secretary-General mentioned it focuses on the development of best practices for effective enforcement.[15]

This is a project that we have only just begun. We held the first Working Group session in December to discuss the scope of the project and were fortunate enough to involve Professor Steffek in our work. There is, therefore, a caveat to bear in mind

[13] See <www.unidroit.org/instruments/civil-procedure/ali-unidroit-principles/>, accessed 1 November 2023.

[14] See <www.unidroit.org/instruments/civil-procedure/eli-unidroit-rules/>, accessed 1 November 2023.

[15] See <www.unidroit.org/work-in-progress/enforcement-best-practices/>, accessed 1 November 2023.

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because the project is so young: we have more questions than answers at this stage. Nevertheless, sometimes posing the right questions is also important.

We decided to focus on this topic for two main reasons. The first reason is, as noted by Ignacio, that enforcement is often neglected when discussing issues of access to justice. With the term enforcement, we mean the actual execution phase, to use a term that is more familiar for civil lawyers, i.e. the procedures and mechanisms to execute creditors' rights when creditors are granted such rights in a judgment or when they are exercising remedies extrajudicially. This is, as mentioned, often neglected, but remains an integral part of access to justice and of the legal framework for a developed credit market, improved access to credit, increased trade and investment and overall economic development and sustained growth. These are all goals that were also mentioned by previous speakers. However, there are growing concerns in many legal systems as to inefficient enforcement mechanisms for creditors, delays, costs, lack of transparency and insufficient satisfaction. This is the backdrop against which the proposal of the World Bank to develop a guidance instrument for policymakers in this area was accepted by our governing bodies.

The second reason why we wanted to focus on this project is the impact and role of technology. In our view, as well as according to the views of the experts, technology will play an essential part in this project, much more so than in previous UNIDROIT instruments on civil procedure. The European Law Institute/UNIDROIT Model European Rules of Civil Procedure mentioned by Ignacio do contain several provisions on the appropriate use of electronic communication between courts and parties and among parties (such as video or audio conferencing, video recording of hearings, use of technology in evidence taking, disclosure, production of electronic data and electronic platforms in collective civil proceedings) and also emphasise settlements, which can be achieved using technology. However, they do not go into detail, which is what we would like to do with this new project.

There are two related issues of more general importance on this matter that I would like to present, and then I would like to go into some more detailed questions that were posed by the experts participating in the group.

ADVANTAGES AND CHALLENGES OF TECHNOLOGY

Veneziano: First, there are considerations as to the double role of technology. While it is a tool to tackle traditional obstacles to effective enforcement, it is also a source of new potential problems. Previous speakers have mentioned, for example, issues pertaining to monitoring, accountability and respect of fundamental rights. The second general issue is the challenge of technological neutrality. Experts advise us of the need to ensure the neutrality of legal instruments with respect to specific types of technology, which ensures that the instruments are future-proof and can be

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applied globally. This, however, is easier said than done. How does one ensure the development of a technologically neutral instrument in this area? What about the issues of compatibility and interoperability that might also arise?

This leads us to the specific issues raised by experts. One of them concerns the development of new architectures, such as the platforms that can be used in civil procedures for different purposes. They can also be used for enforcement. There are clear benefits, such as limiting delays and the costs of enforcement, as well as enhanced transparency. Depending on the purpose of the technologies employed, they can enhance effective asset liquidations, in the case of e-auctions for instance, and they can create secondary markets. But what about the challenges? This indeed raises further questions: Who is responsible for the management of the platform? What is the role of private actors? Should a monitoring system be introduced? How do we deal with possible concerns as regards the applicable law?

Other issues relate to automation, such as the automatic partial or total performance of agreements, including the enforcement of obligations. How should we deal with the opacity of the decision-making process and the possibility of errors or misuse? Is there a need to introduce mechanisms to protect the debtor's rights? In our opinion there is, but what would be an efficient and fair way to go about it: ex-ante, or ex-post? Finally, questions arise as regards new types of assets, namely digital assets. How shall we adapt existing concepts or procedures, such as the concepts of repossession and control, to this new environment? Alternatively, should we develop a completely different set of legal tools and soft concepts to deal with enforcement in a digital environment? These are all topics that the experts have begun discussing and where they have not identified a very straightforward and clear answer for the time being.

As anticipated, I have presented more questions than answers but our project will try and tackle these problems and come up with suitable solutions and advice. Thank you once again for the invitation to participate in this very interesting workshop. Further information about UNIDROIT can be found on our webpage.[16]

Sumida: This is a world that is not very familiar to our audience, but the presentation was an excellent reminder of the breadth of the issues. Thank you very much. Professor Takeshita, may I ask you for some comments?

THE IMPACT OF TECHNOLOGY ON ENFORCEMENT

Takeshita: My name is Keisuke Takeshita and I am based at Hitotsubashi University. Thank you very much for your very interesting presentation. The issue of 'enforcement' is very important from the perspective that law is not a 'picture in a box' but is only meaningful if it is implemented in reality. I represented Japan at the Hague Conference on Private International Law in 2019 when the Convention on

[16] See <www.unidroit.org/>, accessed 1 November 2023.

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the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters was newly adopted. This Convention only obliges states to guarantee enforcement but does not deal with issues beyond that, namely, how to enforce foreign judgments in concrete terms. This is related to the fact that, traditionally, the issue of actual implementation, such as enforcement, has been left to the sovereignty of the states. Even today, each country has its own system of enforcement, which would make global unification very difficult.

From what you have said, UNIDROIT does not only look at the enforcement of judgments but at an even wider range of enforcement, including the enforcement of security interests and enforcement against digital assets. This breadth makes it a very challenging project. I would like to ask whether you intend to focus on the use of new technologies in enforcement against digital assets, or whether the project will deal with enforcement issues more broadly and generally.

Veneziano: Thank you for the question and for mentioning the work by other organisations on the international enforcement of judgments, such as the Hague Conference. Our project is dealing with enforcement in general. Its aim is to introduce best practices that might help enforcement, both when it is done in a judicial situation and when it is done extrajudicially. Therefore, we are considering enforcement regardless of whether you have a decision by a court, and you would like to enforce it, or the creditors wish to enforce extrajudicially, for example, in a situation where they hold a security right. Technology will play an essential role because we think that if you use technology and mechanisms that are based on technology, you can do two things. One is that you may support the development of more efficient enforcement proceedings, as it is already happening in some legal systems. I mentioned some possible uses of technology such as e-auction platforms, for instance. The other aspect that we touched upon is the creation of new assets through technology. There, enforcement must be linked to this technology. So, we look at enforcement in general, but technology will play a very important role.

Sumida: Thank you very much. Now, are there any questions from the students?

THE FEASIBILITY OF AN AI JUDGE

Student C: I think it is conceptually possible to create an AI judge and that AI makes legal decisions, even in arbitration. However, I have a question about the feasibility of such concepts. If AI can be used to make legal decisions in a very short time and if the quality of such decisions can be ensured by eliminating bias, then I would consider the use of AI in law to be very positive. However, I would like to ask whether this can really be achieved and, if so, what the challenges are.

Sumida: Thank you very much. How about you, Dr Scholz?

Scholz: We discussed the question of AI in judicial systems during our negotiations on the Council conclusions. AI systems in the justice sector offer great opportunities. In the future, these systems will be capable of performing increasingly

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complex tasks, like structuring and preparing information on the subject matter of cases, automatically transcribing records, anonymising court decisions, estimating the chances of success of a lawsuit and so on. The use of AI tools has the potential to improve the functioning of justice systems by assisting judges and judicial staff in their activities, accelerating court proceedings and enhancing the comparability, consistency and, ultimately, the quality of judicial decisions.

On the other hand, we see that the application of AI in the justice sector may also contain the risk of perpetuating and possibly strengthening existing discrimination and of allowing distorted or opaque decision-making. The outcomes of AI systems based on machine learning can in certain cases not be retraced, leading to a black box effect.

Against this background, we think that the use of AI in the justice sector should not interfere with the decision-making power of judges or judicial independence. A court decision, in the end, must always be made by a human being and cannot be delegated to an AI tool. I hope this answers your question, at least partially.

Sumida: Thank you very much. Mr Kikkawa, would you like to add something?

Kikkawa: I agree with what you have just said. Since technology has advanced so far, it will continue to progress by leaps and bounds and advance to the level of humans. The question will be, which decision-maker users place more trust in: what the machine does or what a human does? If a lot of people place more trust in what the machine does, then that may take priority, but, I think, that at the end of the day, people will place their trust in the decisions of a human. So, I believe that AI should only perform auxiliary tasks.

Sumida: Thank you very much. Finally, Felix, could you please provide us with a summary?

Steffek: Thank you very much, Mihoko. I have prepared an attempt to summarise today's proceedings. However, in the interest of time, I will not present it. However, it is not only time that brings me to this conclusion. I have two substantive reasons. First, I think our speakers have been so excellent and have presented us with such rich content that it is not necessary for me to attempt to summarise it. The speakers were so fantastic that they stood up for themselves. Second, we will publish the presentations and discussions in a book. So, I can write down my comments and we will have a chance to read them later.

It is a nice outcome that our work, our conference, our thoughts and our discussions will be available in the form of a book. It is also part of access to justice that experts and those studying law do not keep to themselves, but that they engage with the wider society. So, the book that we are planning is one that makes our topic accessible. It will be directed to our audience in a way that makes our thoughts accessible also to non-experts. I am very grateful to Mihoko Sumida, who has proposed this, and I will hand it back to you, Mihoko, to close our conference.

Thank you.

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Sumida: Thank you. I would like to thank the students for their patience with our very challenging sessions. During this time, Professor Steffek and I, who organised the event, have received feedback from the guests who collaborated with us, saying that they had a very enjoyable experience interacting with the students. I think this is due, above all, to the students who participated in the conversations with great enthusiasm and asked excellent questions. This conversation series started with the topic of 'Legal Innovation', but in fact, the main aim was to encourage and nurture the seeds of innovation. I am very happy to say that, thus far, we have achieved that objective.

Finally, please give a round of applause to our guests, who gave really wonderful presentations. I would like to conclude now. Thank you very much.

CONCLUDING CONVERSATION

Sumida: It really was a great feast of discussion on innovations in access to justice, with a host of magnificent guests! Discussing 'access to justice' from different perspectives was like a kaleidoscope, with commonalities and diversities, inviting us to a new understanding. What does it mean to view access to justice from an SDG's perspective, and how should we think about access to justice after the era of COVID-19? I was very excited to be able to share this cutting-edge understanding.

Steffek: I am sure the guests enjoyed themselves and it was a really great finale. So, without further ado, let me give you my own summary of the day.

The first thing that became clear throughout this workshop is that technology can be very powerful in closing the global justice gap and providing equal access to justice for all if we put people at the centre of the justice services we design. Maaike de Langen of the Pathfinders emphasised this. Similarly, the OECD – represented by Tatyana Teplova – estimates that gaps in access to justice can cost up to 3 per cent of the GDP. In addition, the OECD emphasises the importance of access to justice for inclusive growth, well-being and even health. This is in line with national governments such as the German Ministry of Justice – represented by Philip Scholz – placing great importance on the need to employ technology to protect vulnerable groups. Ultimately, all speakers based their statements on a people-centred approach, i.e. on an approach that puts people and their interests at the centre of access to justice.

Generally, and I agree, the lawmakers presenting in this workshop think that technology can be useful in facilitating access to justice. All of them, however, also agree with UNIDROIT – present via the contributions of Ignacio Tirado and Anna Veneziano – cautioning to keep in mind that there remain risks and challenges. This is also the approach taken by Takashi Kikkawa speaking for the Japanese Ministry of Justice. The Japanese Ministry has very actively engaged with the advantages and risks of using technology in the justice sector and is currently preparing draft legislation.

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Sumida: Nevertheless, I was really surprised by the global gap in access to justice, i.e. that there are 5.1 billion people in the world – two-thirds of the world's population – who do not have meaningful access to justice. If I remember correctly, this number is almost three times the number of people without bank accounts – the 'unbanked'. Given the scale of the problem, I thought that this creates an imperative to utilise technology.

It was meaningful for Japan to have this international workshop at a time when the digitalisation of civil justice is about to start in earnest. We were able to share the big picture and share excellent know-how, awareness of issues and challenges. By the way, Mr Kikkawa's presentation was very advanced in content and full of power. The students seemed to be greatly inspired and asked a lot of questions.

Steffek: Yes, I was impressed by Mr Kikkawa's progressive views. I was also very much in favour of the workshop consistently taking a comprehensive approach to 'access to justice' and not just considering the courts. Mr Kikkawa stressed the importance of out-of-court dispute resolution. This is in line with the OECD's and Pathfinders' insight that many problems faced by citizens are ultimately not dealt with by the formal justice system. This is why legal practitioners need to look at the stage before a dispute goes to court.

This comprehensive view was further expanded by UNIDROIT's presentation on the importance of enforcement for access to justice. As regards enforcement, even advanced jurisdictions face challenges. Technology could fundamentally change the way enforcement happens. In particular, technology might have the effect of making public enforcement institutions superfluous in part.

Sumida: Traditionally, when people refer to 'access to justice', they tend to think of it as the threshold for using the justice system to find solutions to people's problems. Here, instead, we used the term in a very broad and comprehensive way to cover the entire legal system and how it solves people's problems. We included not only which rights are recognised, but also the enforcement stage of realising those rights. When you start to think of it that way, you realise why Sir Geoffrey Vos said that the justice system provides an economic infrastructure.

On a personal note, it was eye-opening to hear Professor Tirado talk about UNIDROIT's mission in terms of 'access to justice'. My understanding of what it means to study comparative law and what the harmonisation of law means for society and the economy was renewed.

Steffek: Both national lawmakers, for example, Takashi Kikkawa, and international organisations, for example, the OECD, stressed the importance of data for the future development of access to justice. This requires involving society, both in terms of sharing data with society but also listening to the concerns society has about data. The societal challenge we are facing is not just a technology challenge, but also a data challenge.

Considering the effect of COVID-19, the OECD and the Pathfinders showed that the pandemic has not only facilitated the use of technology to improve access to

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justice but that the pandemic has also created new justice problems. The Pathfinders call this the triple crunch of (1) more justice problems, (2) operational constraints and (3) funding constraints. This was picked up in the discussion by a question asking how states that do not have the funds to use technology in the justice sector should proceed.

The workshop ended with speakers and commentators agreeing that a broad perspective was necessary when dealing with access to justice and that this broad perspective was also necessary when considering the implications of technology for access to justice. I very much agree with this perspective as it is the perspective of the people who are, negatively and positively, affected by the law and legal conflicts.

QUESTIONS FOR FURTHER THOUGHT

- What is the relationship between technology and law? Does law trump technology or vice-versa? Is there a possibility to develop a system in which law and technology cooperate?
- Will private justice solutions become more attractive than public justice solutions, i.e. might start-ups offer more attractive services such that parties do not use state institutions in the future? If this happens, how should legislators react?
- How should governments deal with the challenge that technology will first require costly investment before it achieves cost-saving in the future?
- Should technology try to mirror the current justice system or are there aspects of the current justice system that technology could improve?
- Will technology have the effect that citizens can better understand the law before they take action and will, therefore, have fewer disputes later?

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