Comparing legal aid systems

October 2014

International Forum on Legal Aid, Taipei

Prof. Maurits Barendrecht,
Tilburg University

HiiL innovating justice

The legal aid challenge ...

- **How much legal aid will she need for receiving child support from her former husband?**
- **Access to justice depends on:**
  - What help and advice is available?
  - How cooperative is the former husband?
  - Which third parties (mediator/adjudicator) can she go to (informal/formal)?
  - How difficult and effective is this procedure for her (and for her lawyer)?
  - Other helpers besides a lawyer available in procedure?

What follows

What we know and do not know about ...

1. **Overall spending**
2. **Types of problems that need to be resolved**
3. **Quality**
4. **Best practices for legal aid and access to justice**
5. **Legal aid cooperation in the future**

HiiL Innovating Justice

- **The Hague, City of Peace and Justice**
- **Not for profit research and advisory institute for justice sector**
  - Justice Innovation Lab for designing innovative procedures
  - Measuring access to justice
  - Innovation strategies for justice sector organizations
- **Joint venture with Tilburg University for valorization of research on dispute systems**

@Mauritsbarendr, @innojustice, maurits.barendrecht@hiil.org

Sources expertise legal aid/access to justice

- Two comparative studies European legal aid systems
  - Sweden, UK, Germany 2003
  - Nine countries, 2014
- Study with Oxfam: Models for Sustainable Legal Aid: Experiences from NGO's in Five Lower Income Countries
- International Legal Aid Group member since 2006
- Editor Working Group Report Access to Justice UN Commission Legal Empowerment of the Poor 2008
- Board-member Dutch Legal Aid Board 2000-2010
- Trend Report Towards Basic Justice Care for Everyone, 2012
- Academic publications (see ssrn.com)

Basis for analysis today

- **Comparative research European 9 legal aid systems**
  - Belgium, England & Wales, Finland, France, Germany, Ireland, Netherlands, Poland, Scotland
  - Commissioned by Dutch Ministry of Justice
  - Methodology: desk research and expert interviews
  - Cooperation with legal aid boards or research institutes
  - *Legal Aid in Europe: Nine Different Ways to Guarantee Access to Justice?* www.hiil.org
- **9 national reports for this conference**
  - Australia, Canada (BC), England & Wales, Japan, Malaysia, New Zealand, Philippines, South Korea, Thailand

1. Overall spending

Huge variety in government spending

	Country	% GDP		Country	% GDP
1	England & Wales	0.1300	10	Belgium	0.0200
2	Scotland	0.1300	11	France	0.0200
3	Netherlands	0.0800	12	Philippines	0.0150
4	Ireland	0.0600	13	Poland	0.0100
5	New Zealand	0.0600	14	Japan	0.0100
6	Canada (British Col)	0.0400	15	South Korea	0.0060
7	Australia	0.0400	16	Thailand	0.0006
8	Finland	0.0300	17	Indonesia	0.0004
9	Germany	0.0200			

What can explain huge differences in spending?

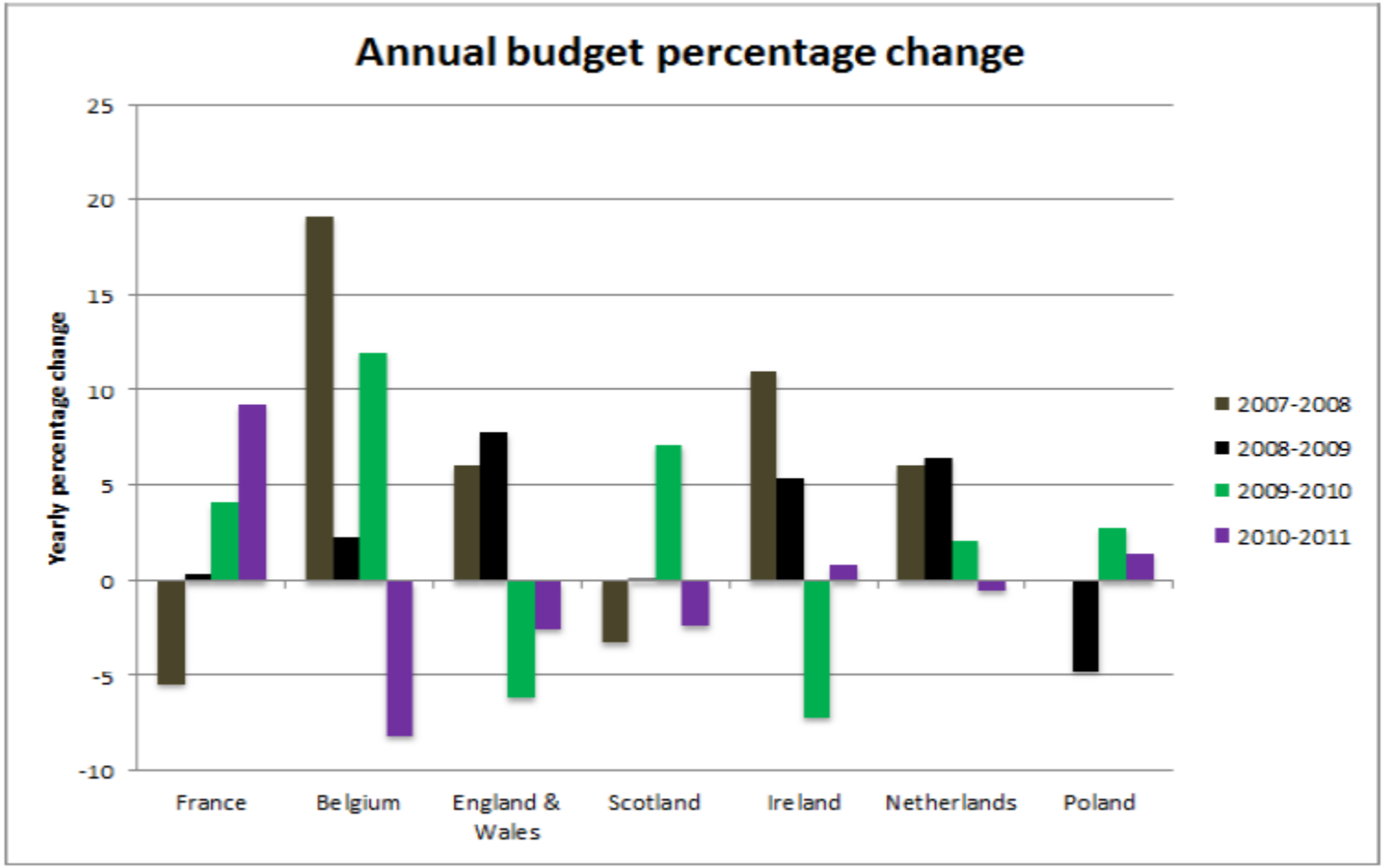
Major influence likely:

- Availability and complexity of procedures at 3rd parties
- Scope/outreach of programs
- Lobby of lawyers and political priorities
- Donor programs and private (collective) solutions

Less influence likely:

- Nr of problems (no huge variation across jurisdictions according to surveys)
- Eligibility criteria (cover 15 – 35% population)

No clear European trends



Private legal aid?

On the continent, legal expenses insurers offer coverage + fixed fee products for consumer, personal injury, neighbour, housing, administrative issues

Total expenditure per capita (euros)	
1. England & Wales	39.37
2. Scotland	34.28
3. Netherlands	29.11
4. Ireland	21.18
5. Finland	12
6. Belgium	6.96
7. Germany	6.52
8. France	5.40
9. Poland	0.59

Premium income of legal expenses insurance	
1. Netherlands	47.90
2. Germany	36.65
3. Belgium	33.55
4. France	14.15
5. Finland	12.96
6. Poland	11.27
7. Scotland	not available
8. Ireland	not available
9. England & Wales	not available

Spending overall

- **Know:**
  - Government budgets from 0.1300 to 0.0004 of GDP
- **Also relevant (posible trade-off):**
  - Budgets for courts, tribunals, ombudsmen, other 3rd parties
- **Not know and relevant:**
  - Funding access to justice programs by private donors
  - Size collective mechanisms (legal expenses insurance, consumer organizations, trade union membership)

2. Types of problems that need to be resolved

Legal aid is about helping ...

- A man taken in custody ...
- A woman wanting a separation and child support ...
- A family loosing their home or land...
- An employee being fired or not being paid ...
- A buyer of an inadequate product or service ...
- A citizen in need of government services ...

Which problems?

Biggest spending in most countries:

- Police custody/pretrial detention
- Criminal defence
- Divorce/separation and other family

Less spending but also relevant:

- Consumer, employment, refugee and immigration, debt, personal injury, housing, social security

High volumes in some countries:

- Debt cases/insolvency (Japan), Overdue wages (South Korea)

Specific areas

- **What causes differences in spending here?**
- **European report zooms in on specific problems:**
  - Police custody/pretrial detention, criminal defence, family, consumer, employment, refugee and immigration, debt, personal injury, housing, social security

Criminal defense:
Huge differences in spending

Country	Spending per head €	% of legal aid budget
Eng	21.3	51
Scot	23.8	63
Neth	9.3	35
Ire	13.0	59
Bel	2.1	38
Fra	1.8	33

Family cases (divorce and children): Huge differences in spending

Country	Spending per head €	% of legal aid budget
Eng	15.9	37
Neth	5.1	23
Bel	0.9	17

Refugee and immigration cases: tribunals help to reduce costs

	Spending per head €	% of legal aid budget
Eng	0.92	1.9
Scot	1.16	3.1
Neth	2.95	17
Ire	1.1	5
Bel	2.1	13

Our hypothesis from European systems

- **Traditional court procedures very costly to operate for lawyers and thus for citizens and thus for legal aid budgets**
  - General civil and criminal procedures
- **When specialized, modernized (tribunal) procedure, legal aid costs tend to be much lower**
  - Migration/refugee tribunals in UK and other countries
  - Indonesia religous family courts
  - Phillipines mandatory mediation employment disputes
  - Problemsolving courts for drug crime - youth crime

3. Monitoring quality?

Monitoring quality of legal aid services

- **Many ways to do this**
- **No comparative data**
- **Uncertain what the effects are of:**
  - Audits
  - Peer review
  - Training and qualifying legal aid lawyers
  - Experience requirements
  - Complaints and investigation systems

Monitoring quality of access to justice

- **Some indications of quality access to justice**
- **Comparative data exist**
  - Mostly survey data: Eurobarometer Justice Survey 2013, World Justice Project Rule of Law Index (yearly)
  - Mostly reporting impressions not experiences
- **New methods emerge:**
  - Surveys of access to justice as experienced by citizens
  - Quality of procedure, outcome and costs

Country	Legal aid budget (%GDP)	% Fairness civil justice judgments (very) good (Eurobaro)	People can access and afford civil justice (WJP)	Due process of law and rights of the accused (WJP)	Civil justice ranking (WJP)	Criminal justice ranking (WJP)	Number of EHRM violations per 100,000 people
Eng	0.13 (1)	63 (4)	0.66 (4)	0.82 (4)	11 (4)	11 (4)	0.19 (2)
Scot	0.13 (2)	--	--	--	--	--	--
Neth	0.08 (3)	76 (1)	0.73 (1)	0.89 (2)	2 (1)	6 (2)	0.26 (3)
Ire	0.06 (4)	62 (5)	--	--	--	--	0.33 (4)
Fin	0.03 (5)	66 (3)	0.69 (3)	0.91 (1)	5 (3)	2 (1)	1.8 (8)
Ger	0.02 (6)	56 (7)	0.71 (2)	0.77 (5)	3 (2)	9 (3)	0.15 (1)
Bel	0.02 (7)	69 (2)	0.65 (6)	0.76 (6)	18 (6)	18 (6)	0.95 (6)
Fra	0.02 (8)	58 (6)	0.66 (4)	0.74 (7)	17 (5)	21 (7)	0.83 (5)
Pol	0.01 (9)	41 (8)	0.62 (7)	0.86 (3)	22 (7)	16 (5)	1.35 (7)

Some first impressions

- England & Wales, Scotland: expensive, quality OK
- Netherlands: rather expensive, high quality
- Finland/Germany: most value for money
- France/Belgium: cheap systems, quality uncertain

Just indications where to look for best practices!

New methods to assess quality

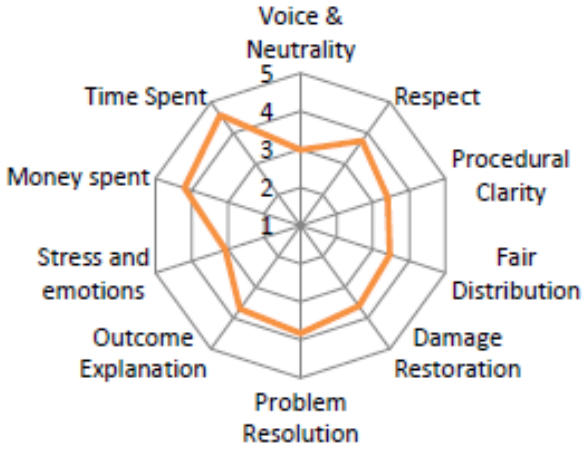
- **Population survey access to justice**
  - Which problems? Which paths to justice? Legal empowerment? Quality processes and outcomes?
- **Done in Indonesia (small sample), Mali, Netherlands, Yemen**
- **More countries considering**

Fairness on paths to justice

People use formal and informal processes to resolve their legal problems. In our methodology the commonly applied justice processes are called *paths to justice*. HiiL measures each paths to justice through asking the people who use them about 10 easy to understand indicators. In this way we measure justice from the bottom-up.

1. **The costs of to justice**
   - Monetary costs: out-of-pocket costs for legal fees, travel, advisors
   - Time costs: time spent to search for information, attend hearings, travel
   - Stress and negative emotions
2. **The quality of the procedure**
   - Voice&Neutrality: process control, decision control, neutrality, consistent application of rules,
   - Respect: respect, politeness, propriet communication
   - Procedural clarity: timely explanation of procedures and rights
3. **The quality of the outcome**
   - Fair distribution: distribution is fair according to needs, equity and equality criteria
   - Damage restoration: fair compensation for monetary damage, emotional harm and damage to relationships
   - Problem resolution: extent to which the problem is solved and the result has been enforced
   - Outcome explanation: the extent to which the people receive outcome information access

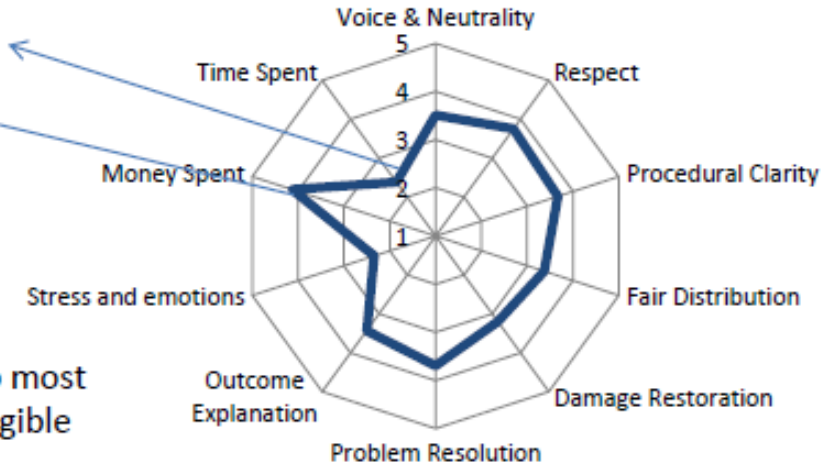
For each path to justice we plot the justice dimensions in a spider-web. On the scale 1 means bad and 5 means good.



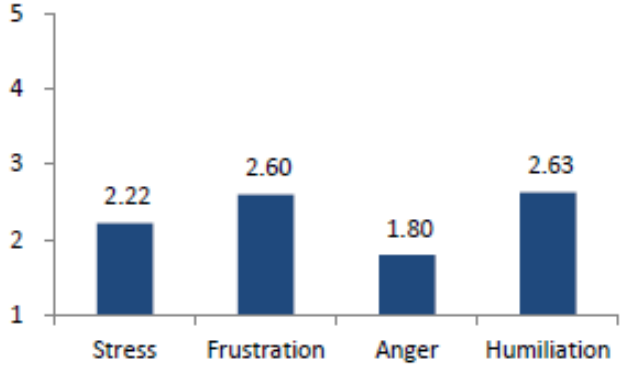
Zooming in on land disputes

How people experience land disputes?

On average people spent 150 000 IDR and 424 hours to solve a land problem.



Anger and stress are the two most distinctive examples of intangible costs of justice.



What are the steps necessary to improve the process for resolving land problems? How improvements will affected the perceived quality and accessibility of justice in land disputes?

Possibilities for international cooperation

- **Monitoring access to justice is possible**
- **Data about justice needs and how well they are served**
- **Provides learning, incentives and rational basis for funding**
- **In partnership**
  - Legal aid programs (private NGOs/public legal aid boards)
  - Donors (Open Society Justice Initative, EU, MoJs, MoFA)
  - See www.hiil.org for more information

4. Best practices for legal aid and access to justice

Best guesses about what works from comparing European systems:

For lower costs, higher quality of legal aid:

1. **Reducing complexity of procedural routings**
2. **Specialized procedures/tribunals for most frequent and urgent problems**
3. **Services integrating other disciplines (debt, family)**
4. **Reducing services under professional lawyer monopoly**
   - Finland, France, Netherlands, UK
5. **Improving legal information and advice infrastructure**

And also

6. **Getting rid of hourly fees**
   - Still in some parts of UK and Netherlands systems
7. **Fixed fees in market for legal services**
   - German tradition, emerging model everywhere
8. **Closed budget**
   - Belgium, French approach
9. **Reducing compensation levels for lawyers**

Less can be expected from

1. **Availability of legal expenses insurance**
   - Unless family and criminal can be covered
2. **Preventing legal problems**
3. **Mediation as a separate service (unless mandatory)**
4. **Raising own contribution and income levels**
5. **Recovering legal aid from applicants, defendants, other sources (claw-back)**

Does legal aid policy follow main strategies to enhance access to justice?

1. Empowerment through (legal) information
2. Hybrid, problemsolving services (integrating mediation), for fixed fees
3. Specialized, simple court/tribunal procedures
4. Best practices and protocols
5. Online platforms for resolving disputes

(See, for instance, literature review and expert opinions in: HiiL Trend report Towards basic justice care for everyone, 2012)

Examples of programs that follow strategies

- LawAccess and similar websites, guides/leaflets (Australia, CanadaBC, New Zealand, Skorea)
- Community law/legal aid centres providing information and advice (Au, CBC, Japan, Malaysia, NZ, Ph, SK)
- Parenting through separation and similar dispute resolution (Au, NZ)
- Integrating mandatory conciliation, mediation in procedures employment/local administrative cases (Philippines)

But if you follow the money ...

- **70-90% of budgets still spent on lawyers**
  - In individual cases
  - Mostly in litigation
  - Mostly before courts
- **0-20% budgets spent on information and advice**
- **Not much spending on**
  - Hybrid, problemsolving services; improving (court) procedures; developing protocols/best practices; online dispute resolution platforms

5. Legal aid cooperation in the future:

An online, problemsolving self-help court?

How could the future look like?

Trends already coming together

- **1000s of online information and advice sites for end-users and (para)legals ...**
- **Widespread availability of problemsolving legal services, with decreasing fixed fees ...**
- **Ever more tribunals and specialized courts ...**
- **More international best practices and protocols to deal with the most difficult problems ...**
- **LegalZoom and many other online platforms supporting this ....**

HiiL innovating justice

An online, problemsolving self-help court?

Your Separation Plan

10% View

Welcome to the Rechtwijzer

Your payment was successful.

Rechtwijzer has invited your partner to join.

You now access the dialogue and cooperation part of Rechtwijzer. Here, you can work on developing the solutions for your separation plan. You find the model solutions that reflect the initial ideas you shared in the intake in the solution boxes and can edit them so they fit your situation.

HiiL innovating justice

Empowerment through (legal) information

Diagnosis

You worry about your relationship. You can read more here:

Signs of Relationship Breakdown

Relationships change. But, when do you know a relationship does not work anymore? There may be some signs. For example: you fight more often. You do less things together. You can not put up with as much as you did before. There is very little left to talk about. Or, there is someone else.

Relationship test

What goes well and what does not go well?

Communication tips

We do want to go on, but how?

When staying together is not an option

Continue Back

Diagnosis

Separation in our country

1 in 3 relationships fail

A bit more than 33% of married couples separate. The average marriage last for 14 years. Men on average separate at the age of 46 and women on average separate at the age of 43. The percentage of cohabitating people who separate is slightly higher. Per year, about 93.000 couples go through a separation.

6 out of 10 couples file for divorce. It is increasingly normal to separate in a collaborative manner. When there are children, this “after-marriage” is hugely important.

70,000 children

Why do people separate?

Emotions

Decrease in income

What happens in your life when you separate?

- (●) Children
- ( ) Family home
- ( ) Properties
- ( ) Income

Separation and work and income

Maintenance

Maintenance is one partner's contribution to another partner's cost of living. Those entitled to maintenance can be the partner (partner maintenance) or the children (child support).

Child support

How is child support calculated?

When calculating child support, three aspects are important. You can calculate this together with your partner:
- Household income;
- The children's expenses;
- The paying partner's capacity to pay.

You and your partner need to agree on how costs of upbringing and child care are divided. The parenting plan should include how much the child support will be and who is going to pay for this. What each partner paid for the children's expenses during your relationship can be a starting point. Also, identify children's expenses such as the cost of clothing, grooming (hair stylist), hobbies, sports, school and so on.

Rechtwijzer provides a calculation tool you may use to calculate the amount of child support. The calculator is based on the same standards that the court uses when determining child support.

Obligation and duration of child support

Partner maintenance

More information

CHILDREN

- Visitation 0/4
- Belongings 0/5
- Information 0/3
- Decisions 0/3
- Costs 0/2
- Details 0/4

You have one child who is younger than 18 years

For your child you are going to make agreements regarding when he/she will stay at which parents place.

What are your initial ideas for this?

At father's place

Children habitually live at their father's place and visit the mother regularly.

At mother's place

Children habitually live at their mother's place and visit the father regurlarly.

Co-parenting

Children stay at their mother's and father's place equally.

Other

My initial idea is not featured.

You have not made a decision! Select one of the two options

Hybrid, problemsolving services (integrating mediation), for fixed fees

Rechtwijzer Dialogue

Nicholas Peterson

Communication

Your Separation Plan

65% View

CHILDREN

Interests

Details

Visitation

Belongings

Information

Decisions

Costs

Guusje heeft de intake ingevuld

Client contact centre

0800 - 2124124

Visit help page

Calculator tool

view

School holidays

view

Agreed Mediation Decision

DIALOGUE

I find it of importance that Kimberly does not have to travel too much.

How do you see that?

Select the mediators you prefer

Here, you find three mediators. We request you to make two preferences. You may read what the remaining process will look like.

Machteld Pel

Mediator since 2001

12 years of experience

mediator.com

Rating: ***

Henri Niezink

Mediator since 2001

12 years of experience

mediator.com

Rating: ***

Tako Johannesma

Mediator since 2001

12 years of experience

mediator.com

Rating: ***

Continue

Separation plan of Nicholas and Rachel

A GOOD FUTURE FOR KIMBERLY

close agreement

54% Done

Share review

Legal version

Visiting arrangements and living situation for our children

Kimberly will go to Nicholas during the weekend once every fourteen days, in the even weeks. The weekend starts on Friday afternoon at 16:00 and ends on Sunday evening at 19:00. The parent who the children stayed with last, takes the children to the other parent when a switch has to be made.

☐ Approved ☐ Not approved View (N) AGREED (R) MEDIATION

Housing registration

Kimberly will be registered at her mothers address.

☑ Approved ☐ Not approved View (N) AGREED (R) MEDIATION

(R) *Enter your suggestions and feedback for the parties...*

Division of belongings

The belongings of Kimberly will go to her room at Rachel's place. For Kimberly's room at Nicholas' place, both her parents will buy new belongings, including at least a bed, toys and some basic sets of clothing.

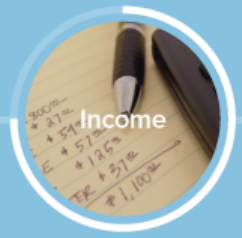
Services facilitated ...

- Guided negotiation (parties)
- Help by telephone (paralegals)
- Mediation of issues not resolved (lawyer/mediators)
- Decision of issues not resolved (judge/adjudicator)
- Review of solutions (lawyer/reviewer)

To be developed:

- Specialised, added value services (lawyers/other service providers)

Specialized, simple court/tribunal procedures



Your Separation Plan

65% View

CHILDREN

- Interests
- Details
- Visitation
- Belongings
- Information
- Decisions
- Costs

Current | During intake

online (2) N R

WORK TOGETHER ON A GOOD & STABLE FUTURE FOR YOU CHILDREN

We find it is important that our children have a stable living situation. That is why we agree that our children...

Will live at . She will visit once every 14 days. This takes place in the weeks. The weekend starts on Friday afternoon at and ends on Sunday afternoon at .

RACHEL

N AGREED R MEDIATION

Agreed | Mediation | Decision

Rachel has joined your separation plan

Client contact centre

0800 - 2124124

Visit help page

x^2 Calculator tool

view

School holidays

view

DIALOGUE

NICHOLAS

I find it of importance that Kimberly does not have to travel too much.

How do you see that?

Configurable platform

Currently specialized procedures for:

- **Divorce**
- **Landlord/tenant**
- **Neighbour problems**

Also possible:

- **Consumer, employment, social security, criminal ...**

Best practices and protocols

Quality control

Platform can easily facilitate:

- **Best practices for dealing with ...**
  - Special issues such as pensions, domestic violence
- **Monitoring ...**
  - Quality of each service provider
  - Quality of results
  - Client satisfaction

HiiL innovating justice

Online platform

New way of international cooperation

- **Legal aid organizations**
  - Legal aid board Netherlands (supported by MoJ)
  - Legal Services Society BC
  - Open to new jurisdictions: Finland, Singapore already interested
- **IT/ODR provider**
  - Modria (San José, CA)
- **Configurations and dispute system design**
  - HiiL Innovating justice

Rechtwijzer exemplifies the benefits of international cooperation in legal aid

- Sharing deep knowledge
- Sharing best practices for resolving justiciable problems
- A joint legal aid agenda with clear priorities
- Sharing costs of system development and maintenance

Conclusions

- **Spending hugely different, justiciable problems similar**
- **Main variables policy makers should look at**
  - Procedural routings for most frequent and urgent problems
  - Structure of market legal services
- **International cooperation in legal aid works and is expanding**
  - Increasing quality and effectiveness + monitoring
  - Innovative platforms for delivery