

**NEGOTIATION AND CONFLICT MANAGEMENT GROUP (NCMG)**  
**ADR CONFERENCE 2019:**  
**Technology and the Changing Face of Justice**

Thursday, 14 November 2019

The Honourable the Chief Justice Sundaresh Menon\*  
Supreme Court of Singapore

---

**I. Introduction: “Justice for One and All”**

1. Good morning and thank you very much for inviting me to deliver this lecture. I was first invited to visit Nigeria two years ago to attend the 21<sup>st</sup> anniversary of the founding of the NCMG. Unfortunately, a number of other commitments made it impossible for me to accept that invitation. Although it has been a considerable time in the making, I am delighted to be here. As I prepared for this visit, I was profoundly struck by your deep commitment to advance the Rule of Law as a means of advocating peace and conflict management across Africa and the world. Your mission of promoting the pacific settlement of disputes through alternative dispute resolution is a noble one, and I am honoured to have been accorded the privilege to speak to you this morning on a few matters that are especially close to my heart: access to justice, the problem of inequality and the

---

\* I am deeply grateful to my law clerk, Reuben Ong, and my colleagues, Assistant Registrars Elton Tan and Kenneth Wang, for all their assistance in the research for and preparation of this keynote lecture.

peaceful resolution of disputes.

2. Let me begin with a story shared with me by a dear friend, the former Chief Justice of Malaysia, Tan Sri Richard Malanjum. Before 2007, the tribal peoples living in the deep interiors of Sabah and Sarawak in Malaysia often did not register the birth of their children. The topography of the region and the sheer remoteness of their villages from the cities, where the offices of the National Registration Department were located, made it virtually impossible for them to carry out even this simple formality. For instance, a villager who wished to travel from rural Kampung Inarad to the town of Sandakan to register the birth of his child would have to travel around 230km on roads made of gravel and timber. The arduousness of the journey would be compounded by its cost. The villager might have to rent a four-wheel drive vehicle and incur the cost of accommodation in Sandakan, since the registration process might take a few days. It is unsurprising then that many children were left unregistered. But it was they who bore the real cost. Without a birth certificate, a child would not be eligible to register for Form One and begin formal education,<sup>1</sup> or indeed to enjoy any of the privileges of Malaysian citizenship.<sup>2</sup> An unregistered child

---

<sup>1</sup> Philip Golingai, The Star Online, "Mobile court to the rescue" (15 November 2014) ("Mobile court to the rescue"): <<https://www.thestar.com.my/opinion/columnists/one-mans-meat/2014/11/15/mobile-court-to-the-rescue>>.

<sup>2</sup> Ida Lim, Malay Mail, "Richard Malanjum's epic journey from Tuaran in Sabah to Palace of Justice in Putrajaya" (13 April 2019) ("Richard Malanjum's epic journey"):

could subsequently apply for citizenship but this would require a judicial inquiry to establish the ethnic and tribal Malaysian origins of each applicant.

3. There was no easy solution.<sup>3</sup> In 2007, while serving at that time as the Chief Judge of Sabah and Sarawak, Tan Sri Richard Malanjum recognised that innovation was the only viable response. He procured, partly by his own means,<sup>4</sup> and partly with the help of benefactors, a number of buses which were then modified into “mobile courtrooms”, each staffed by an interpreter, a Commissioner for Oaths, and a Magistrate. The buses, proudly emblazoned with the motto “Justice for One and All” on their sides, would then make their way to the villages.<sup>5</sup> Each trip was slow, laborious and treacherous. The buses had to navigate muddy roads, hillsides and rivers to reach their destinations,<sup>6</sup> where numerous families would already be waiting in line. The herculean efforts of the mobile court teams have, over the years, paid tremendous dividends. By December last year, they had facilitated the birth registration of more than 87,000 children.<sup>7</sup> The

---

<<https://malaymail.com/news/malaysia/2019/04/13/richard-malanjums-epic-journey-from-tuaran-in-sabah-to-palace-of-justice-in/1742903>>.

<sup>3</sup> It would have been entirely cost-inefficient to build and staff courtrooms in these rural locations, which generally had low case volumes: see Richard Malanjum’s epic journey.

<sup>4</sup> Mobile court to the rescue.

<sup>5</sup> Daily Express, “How the Mobile Court Works” (3 December 2017) (“How the Mobile Court Works”): <<https://www.dailyexpress.com.my/news.cfm?NewsID=121469>>.

<sup>6</sup> *Ibid.*

<sup>7</sup> Richard Malanjum’s epic journey.

services they provide have since expanded to include the hearing of simple civil and criminal cases and the humanitarian work of distributing medicine, food, books and used clothing.<sup>8</sup>

4. The efforts of Chief Justice Malanjum and the mobile court teams are nothing short of heroic. They demonstrate that through sheer force of will, a sense of compassion for the marginalised, and a passion to use the law as a force for good, justice can be brought to the people who most require it. The mobile court initiative also neatly illustrates the three points that I wish to make today: first, the problem of inadequate access to justice or the “justice gap”; second, the need for technology to supplement human efforts in closing the justice gap; and third, why we need a complete rethink of what justice requires and how it can be delivered.

## **II. Inequality as a justice problem**

5. I would like to preface my discussion by explaining why the problem of access to justice is closely tied to one of the most pressing challenges of our age: the problem of inequality, both within and between countries. In other words, why access to justice is an issue that confronts *all* of us.

6. Inequality has intensified over the past half-century, leaving entire

---

<sup>8</sup> How the Mobile Court Works.

communities and countries behind. In 2017, the 42 wealthiest people in the world owned as much as the poorest 3.7bn people.<sup>9</sup> Just one year later, it took only the 26 wealthiest people to achieve the same equation.<sup>10</sup> In 1960, the per capita income of the richest country in the world was 32 times that of the poorest country. By 2000, that ratio was 134 to 1.<sup>11</sup> These inequalities of wealth are accompanied by equally stark disparities in lifestyles that were made obvious to all in an age of global digital communications. In a thoughtful essay on inequality in America, Morgan Housel observes that inequalities in lifestyle were nowhere near as pronounced in post-war America as they are today. As income inequalities emerged and started to grow, ordinary Americans assumed rising levels of debt in order to fund the same lifestyles as their peers with higher incomes, so that they *appeared* to enjoy parity of lifestyles but, in the process, they were in fact widening the gap between themselves and their wealthier peers.<sup>12</sup>

7. I do not mean to say that inequality is objectionable in and of itself.

---

<sup>9</sup> Larry Elliott, The Guardian, "Inequality gap widens as 42 people hold same wealth as 3.7bn poorest", 22 January 2018: <<https://www.theguardian.com/inequality/2018/jan/22/inequality-gap-widens-as-42-people-hold-same-wealth-as-37bn-poorest>>.

<sup>10</sup> Casey Quackenbush, Time, "The World's Top 26 Billionaires Now Own as Much as the Poorest 3.8 Billion, Says Oxfam" (21 January 2019): <<https://time.com/5508393/global-wealth-inequality-widens-oxfam/>>.

<sup>11</sup> Jason Hickel, *The Divide: A brief guide to global inequality and its solutions* (Windmill Books, 2017) at p16.

<sup>12</sup> Morgan Housel, Collaborative Fund, "How This All Happened" (14 November 2018): <<https://www.collaborativefund.com/blog/how-this-all-happened/>>.

I believe that some degree of inequality is unavoidable in any meritocratic setting and it is simply a consequence of the diversity of human ability and the vagaries of opportunity. Inequality may even be a spur to productivity. But inequality becomes insidious as it entrenches itself, and those working to better themselves and their circumstances find their aspirations constrained by an impenetrable ceiling. This is when socio-economic inequalities perpetuate inequalities of opportunity, so that the less well-off are hindered in their attempts to move up the ladder, not for any want of effort or ability, but simply because they lack access to the kind of opportunities that the better-off enjoy. When this occurs, social mobility diminishes and that in turn initiates an ever-deepening spiral of inequality, unfairly widening the gulf between the rich and the poor.

8. A society riven by a growing wealth gap might expect to encounter mounting dissatisfaction with a system perceived as being “rigged” against those left behind, and the unshakeable sense that the values of fairness, meritocracy and social justice that once formed the cornerstones of a progressive society have wilted away.<sup>13</sup> The economist Thomas Piketty has warned that a society in which inequality is entrenched may, over time,

---

<sup>13</sup> Professor Joseph Stiglitz has argued that perhaps the greatest cost that inequality imposes on society is “the erosion of our sense of identity in which fair play, equality of opportunity, and a sense of community are so important”: see Joseph Stiglitz, *The Price of Inequality: How Today's Divided Society Endangers our Future* (W.W. Norton & Company, New York, 2013) at p 146.

experience rising tensions that surface in the form of unrest, disharmony and even "violent political reaction[s]".<sup>14</sup> The Prime Minister of Singapore Mr Lee Hsien Loong has likewise cautioned of the potential damage to social cohesion in Singapore if inequality were left unchecked. In the Prime Minister's words, "if we fail [to mitigate the problem] – if widening income inequalities result in a rigid and stratified social system, with each class ignoring the others or pursuing its interests at the expense of others – our politics will turn vicious, our society will fracture and our nation will wither".<sup>15</sup>

9. The fairness dimension of inequality means that inequality is not purely a socio-economic problem, but is in fact also a *justice* problem. This follows first, from the fact that when segments of society feel locked within an unequal structure, they are inevitably struck by a sense of injustice; and second, from the relationship between inequality and unequal access to justice. Aside from the fact that inequalities in wealth result in unequal access to legal services, often, it is the poorest and most marginalised class of society that finds it most difficult to obtain legal solutions. The UN

---

<sup>14</sup> Thomas Piketty, *Capital in the Twenty First Century* (Harvard University Press, 2013) at p 556. Also relevant is a 2018 joint study by the World Bank and the UN which found that one of the greatest risks of conflict today is the perception of injustice, rooted in inequalities across groups. Feelings of exclusion from the system and unmet expectations play an important role in mobilising individuals and groups to violence: see World Bank Group and United Nations, "Pathways for Peace: Inclusive Approaches to Preventing Violent Conflict" (2018) at p xxii: <<https://openknowledge.worldbank.org/handle/10986/28337>>.

<sup>15</sup> Lee Hsien Loong, Today, "Concerted effort by the Govt to tackle income inequality, ensure social mobility and integration" (6 February 2018): <<https://www.todayonline.com/singapore/concerted-effort-government-mitigate-income-inequality-ensure-social-mobility-and-enhance>>.

Commission on Legal Empowerment of the Poor has estimated that 85% of the populations of 179 developing nations live in areas that are without the protection of the law, meaning that about 4.1bn of the world's poor lack effective recourse to justice through the law.<sup>16</sup> Even in a country as developed as the United States, four-fifths of low-income Americans have no access to legal help.<sup>17</sup> So striking is the correlation between the wealth gap and the justice gap that it has been said that the opposite of poverty is not wealth, but justice.<sup>18</sup> To make matters worse, the denial of due compensation and the inability to enforce rights perpetuates and worsens the socio-economic disequilibrium. The Organisation for Economic Cooperation and Development has found that the 4bn people who live outside the protection of the law are particularly vulnerable to being cheated by employers, driven from their land, preyed upon by the powerful, and intimidated by violence.<sup>19</sup> When these two points are taken together, we see that unequal access to justice is both a *cause* and an *effect* of inequality.

---

<sup>16</sup> UN Report of the Commission on Legal Empowerment of the Poor, "Making the Law Work for Everyone" vol 1 (2008) at pp 19 and 90: <[un.org/ruleoflaw/files/Making\\_the\\_Law\\_Work\\_for\\_Everyone.pdf](http://un.org/ruleoflaw/files/Making_the_Law_Work_for_Everyone.pdf)>.

<sup>17</sup> The New York Times, "Addressing the Justice Gap" (23 August 2011): <[nytimes.com/2011/08/24/opinion/addressing-the-justice-gap.html](http://nytimes.com/2011/08/24/opinion/addressing-the-justice-gap.html)>.

<sup>18</sup> Patton Dodd, Folo Media, "The opposite of poverty is not wealth. It's justice" (1 June 2017): <<https://www.folomedia.org/the-opposite-of-poverty-is-not-wealth-its-justice/>>.

<sup>19</sup> Organisation for Economic Co-operation and Development, "Leveraging the SDGs for Inclusive Growth: Delivering Access to Justice for All" (2016) at p 2.



10. The problem of unequal access to justice is an especially pernicious aspect of inequality that also takes a heavy toll on public confidence in the courts. A justice system that is open only to some offends our sense of fairness and erodes the legitimacy of an institution that has fairness as a foundational value. “Equality before the law” is an empty slogan if it is not accompanied by reasonable access to the law. For these reasons, it is imperative that the issue of access to justice remains front and centre in the global discussions about inequality.

### **III. The “justice gap” and how to close it**

11. Let me examine the problem of unequal access to justice more closely. The “justice gap” is a term frequently used in discussions on this issue, and it has been defined as the disparity between the legal needs of low-income persons and the resources available to meet those needs.<sup>20</sup> The metaphor of a gap or divide provides a useful image for us to think about the nature of the problem, which I suggest has three principal dimensions: a *physical* gap; a *resource* gap; and a *literacy* gap. The tribal peoples living in the interiors of Sabah and Sarawak are a perfect example of a community marooned on the far side of all three dimensions of the justice gap. They are separated from the institutions of justice, are without

---

<sup>20</sup> Legal Services Corporation, “The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-Income Americans” (June 2017) (“LSC Report”) at p 6.

the means to afford the cost of getting there, and have low levels of legal literacy.

12. The traditional response has been to bridge the justice gap through legal aid.<sup>21</sup> But legal aid – important as it is – is expensive, reactive and resource-intensive. This is why legal aid funding has generally failed to keep pace with the growth in demand for legal services. For instance, in the US, low-income earners who approach legal aid organisations for assistance ultimately receive limited to no legal help for more than half of their legal problems due to a lack of resources.<sup>22</sup>

13. I do not suggest that legal aid is futile. Rather, my point is that legal aid *cannot* be the sum total of our response to the justice gap because of just how difficult it is to sustain. As long as legal services remain expensive, legal aid will be as well; and so what we need is a more fundamental response. I want to suggest that in many respects, by empowering individuals, organisations, and governments, technology has the potential to help *close* – and not merely *bridge* – all three dimensions of the justice

---

<sup>21</sup> Steve Hynes and Jon Robins, *The Justice Gap: Whatever happened to legal aid?* (Legal Action Group, 2009); International Bar Association, “America’s Legal Aid Crisis: a longer bridge for the access to justice gap” (28 August 2018): <<https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=2E7FC83B-D223-4604-A286-B555EAFADF32>>.

<sup>22</sup> LSC Report at p 6. And in the UK, government spending on legal aid has fallen steadily, decreasing by 37% between 2011 and 2018: see Owen Bowcott, The Guardian, “Legal aid: how has it changed in 70 years?” (26 December 2018): <<https://www.theguardian.com/law/2018/dec/26/legal-aid-how-has-it-changed-in-70-years>>.

gap.

**A. Closing the physical gap**

14. I begin with the physical gap. The short point is that technology can alleviate the burden on litigants by removing the need for convergence, both physically and temporally.

15. First, technology can eliminate the physical distance between persons and the institutions of justice. This is particularly important for those who live in less accessible areas, suffer from physical disabilities, or are otherwise constrained from travel by their circumstances. For instance, in China, the courtroom application “Weisu” can be launched from the popular mobile platform WeChat. The app not only allows users to “join” the courtroom from the comfort of their homes, but also supports verification of identity, submission of court documents, and even the transcription of testimonies using WeChat’s voice-to-text technology.<sup>23</sup>

16. Some of us will also have heard of the Ugandan NGO known as Barefoot Law, which provides basic legal information and advice through multiple remote channels such as its website, Facebook, text messaging

---

<sup>23</sup> Masha Borak, Technode, “China embraces tech in its courtrooms” (24 October 2018): <<https://technode.com/2018/10/24/china-court-technology/>>.

and Skype.<sup>24</sup> Barefoot Law has proved to be extremely popular, providing up to 350,000 people each month with legal information.<sup>25</sup> The contribution of technology is especially significant when one considers that Uganda only has about 2,000 qualified advocates to support the legal needs of over 36m people, 94% of whom live in rural areas. Its potential is further signalled by the rapid uptake of mobile technology and substantial advances in internet connectivity in Uganda in recent years.<sup>26</sup>

17. Second, technology can remove the need for litigants to convene at a single place and time for hearings. In the UK, asynchronous hearings will be a key feature of the online courts that are gradually being introduced.<sup>27</sup> In an asynchronous hearing, evidence and arguments will be submitted through an online platform which the judge also uses to deliver his decision to the parties in due time. There is no physical or virtual hearing in the conventional sense.<sup>28</sup> This means that parties are relieved of the

---

<sup>24</sup> Barefoot Law: <<https://barefootlaw.org>>.

<sup>25</sup> ECDPM, "The story of Barefoot Law: An impressive example of African entrepreneurship" (21 June 2017): <<https://ecdpm.org/events/story-barefoot-law-impressive-example-african-entrepreneurship>>.

<sup>26</sup> Stephanie Francis Ward, "Gerald Abila's Barefoot Law helps Ugandans use smartphones to learn about their legal rights" (29 September 2014): <[www.abajournal.com/legalrebels/article/gerald\\_abila](http://www.abajournal.com/legalrebels/article/gerald_abila)>; Internet World Stats, "Uganda: Internet usage, broadband and telecommunications reports": <<https://www.internetworldstats.com/af/ug.htm>>.

<sup>27</sup> Conor Reynolds, CBR, "From Divorce to Parking Tickets, UK Court Digitalisation Beginning to Bear Fruit" (7 January 2019): <<https://www.cbronline.com/news/uk-online-court>>.

<sup>28</sup> "Written evidence from Professor Richard Susskind OBE (CTS0039) at para 4: <<https://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/justice-committee/hmcts-court-and-tribunal-reforms/written/97770.html>>.

need to pre-schedule blocks of time to attend hearings, which can be disruptive to jobs, caregiving and other responsibilities. We should not underestimate the importance of this contribution. In a 2018 survey conducted in Nigeria, lack of time was the fourth most common reason cited by respondents for deciding not to commence legal proceedings.<sup>29</sup>

**B. Closing the resource gap**

18. I turn to the resource gap. Sir James Matthews, an Irish judge in the late Victorian era, is said to have declared that “In England, justice is open to all, like the Ritz hotel”.<sup>30</sup> The irony is obvious: a justice system that welcomes and accommodates only the well-heeled, and leaves all others on the street, is inclusive only in name. In both the developed and developing worlds, the cost of legal services remains a significant deterrent to the pursuit of legal solutions, particularly for the less well-off. In Nigeria, an individual with low income is two times less likely to engage a court and four times less likely to engage a lawyer as compared to a high-earner.<sup>31</sup> And in the US, low-income individuals seek professional legal help for only 20% of their legal problems, due in part to their concerns over the cost of

---

<sup>29</sup> HiiL, “Justice Needs and Satisfaction in Nigeria 2018” (“Justice Needs in Nigeria”) at pp18 and 54-55: <<https://www.hiil.org/wp-content/uploads/2018/07/HiiL-Nigeria-JNS-report-web.pdf>> at p 100.

<sup>30</sup> Maurice Hayes, “Access to justice”, *Studies: An Irish Quarterly Review* Vol. 99 No. 393, Power and Accountability in Ireland (Spring 2010), pp 29–42 at p 29.

<sup>31</sup> Justice Needs in Nigeria at p 97.

engaging a lawyer.<sup>32</sup>

19. While legal aid requires a high level of sustained financing, technological solutions require only an initial investment followed by relatively lower levels of maintenance costs. Technology can therefore help narrow the resource gap significantly. I believe that the proliferation of low-cost digital tools capable of performing legal tasks and even offering legal advice will have a growing impact on the market for legal services. In so doing, technology promises to open the gates of justice to many who were formerly excluded.

20. Many of you will be familiar with LawPadi, the online platform and chatbot which was created here in Nigeria in 2015.<sup>33</sup> LawPadi began as a simple website on which users could post questions that members of the LawPadi team would then answer within 48 hours. By 2016, the sheer volume of queries meant that a different approach was required. The LawPadi team published more than 600 articles on different areas of Nigerian law, but soon came to realise that that too was not sustainable. In July 2016, LawPadi embarked on a new strategy, launching a chatbot known as the Automated Divorce Advisor, or “Ada”, which helps the user

---

<sup>32</sup> LSC Report at p 34.

<sup>33</sup> LawPadi, “Frequently Asked Questions”: <[lawpadi.com/frequently-asked-questions/](http://lawpadi.com/frequently-asked-questions/)>.

determine his or her eligibility for a divorce and connect the user to a lawyer. LawPadi has launched a similar chatbot for company-related matters, and is developing another for small claims.

21. LawPadi is an example of how technology, coupled with an enterprising spirit and a dose of imagination, can make legal services much more accessible to a public in dire need of legal help. We in Singapore have been investing in tools to help litigants find low or no cost solutions to their legal problems. We are developing an online dispute resolution platform that will assist in the resolution of motor accident claims.<sup>34</sup> This is expected to comprise an outcome predictor or simulator that recommends settlement amounts based on user-provided information, with an option to proceed to online mediation for more complex cases that the parties cannot resolve on their own.<sup>35</sup>

22. Access to justice is important not only for individuals but also for businesses, which play critical roles as producers and employers. In particular, legal costs can be crippling for small and medium enterprises

---

<sup>34</sup> Sundaresh Menon CJ, Opening of the Legal Year 2019 (7 January 2019) at para 58: <<https://www.supremecourt.gov.sg/Data/Editor/Documents/chief-justice-sundaresh-menon--address-at-the-opening-of-the-legal-year-2019.pdf>>.

<sup>35</sup> Sundaresh Menon CJ, "State Courts Workplan 2017 Advancing Justice: Expanding the Possibilities" (17 March 2017) at para 18: <[nas.gov.sg/archivesonline/data/pdfdoc/20170317004/State%20Courts%20Workplan%202017%20Keynote%20Address%20by%20Chief%20Justice.pdf](https://nas.gov.sg/archivesonline/data/pdfdoc/20170317004/State%20Courts%20Workplan%202017%20Keynote%20Address%20by%20Chief%20Justice.pdf)>.

("SMEs") that often operate on narrow margins. Today, the online marketplace offers SMEs a diverse toolkit of digital legal tools that are both affordable and effective. For instance, the South African company Origin Systems operates a web portal that can automatically generate customised legal documents based on the input of business owners and help to manage contracts, workflows and approval processes.<sup>36</sup>

23. Some sophisticated users might say that the current state of technology does not as yet adequately meet their needs. To this, I have two responses: first, I believe technology will in time develop the ability to meet the needs even of sophisticated users. The revolution of legal services brought about by technology will continue to gain momentum as new and more powerful digital tools, powered by artificial intelligence and machine learning, are developed, marketed and refined. Second, technology is already able to help meet the simple needs of the very many users who would otherwise be altogether excluded from the justice system due to the cost of conventional legal services.

24. Technology in this way is democratising the market for legal

---

<sup>36</sup> Brendyn Lotz, Hypertext, "Check out these 5 Southern Africa startups using tech to disrupt legal systems" (23 September 2016): <<https://www.htxt.co.za/2016/09/23/check-out-these-5-southern-africa-startups-using-tech-to-disrupt-legal-systems>>. Another example is Marketplace by LegalForms, a Nigerian online platform that connects SMEs to lawyers for task-based jobs at fixed prices. Users post job requests on the platform, and shortlisted lawyers then provide quotes on how much they will charge: see Marketplace by LegalForms: <<https://marketplace.legalforms.ng>>.



services not only by making many of these services cheaper and more accessible but also by breaking the historical monopoly of lawyers. I believe the ultimate beneficiaries will be the consumers of legal services, who will enjoy not only a wider range of options but also reduced prices, driven by competition and the lower base cost of technology. In this way, technology will help close the resource gap.

**C. *Closing the literacy gap***

25. The third aspect of the justice gap – which I call the literacy gap – is also the most often overlooked. It concerns a lack of legal literacy, which is manifested not only in an inadequate understanding of the law and the workings of the legal system, but more fundamentally in an absence of awareness of the legal dimensions of a given situation. In other words, a person lacking legal literacy may not recognise that her problem is one that calls for a legal solution, rather than one of a purely relational, financial or ethical nature. A 2017 survey showed that one in five low-income Americans failed to perceive that their problems were legal, leading to a failure to seek professional legal help.<sup>37</sup> In this sense, access to justice is, to a significant extent, premised on a basic level of legal literacy.

26. I suggest that technology can help close the literacy gap in two key

---

<sup>37</sup> LSC Report at p 33.

ways. First, technology can facilitate access to legal information and connect sources of legal help to those who require it. In Rwanda, the Legal Aid Forum and Viamo have partnered to use interactive voice response mobile technology to disseminate information about sources of legal assistance.<sup>38</sup> The results have been overwhelming – after launching the service in September 2018, the Legal Aid Forum received over 165,000 calls in just the fourth quarter of 2018. There are now plans to scale this technology to 16 other countries across Africa and Asia,<sup>39</sup> in the hope that such information will encourage recipients to consider whether their problems have a legal dimension, and if so, to seek legal assistance.

27. Second, technology can increase the psychological accessibility of the legal system. Lack of familiarity with the legal system can foster anxiety and distrust and therefore deter those with legitimate grievances from seeking recourse. In two recent surveys of lay users of the UK Crown Court, many respondents described the experience as “very frightening [and] daunting”<sup>40</sup> and suggested that the UK legal system was “not set up for

---

<sup>38</sup> Eddie Nsabimana, The New Times, “New mobile system to ease legal aid service delivery” (4 May 2018): <<https://www.newtimes.co.rw/news/new-mobile-system-ease-legal-aid-service-delivery>>.

<sup>39</sup> AllAfrica, “Viamo Mobile’s IVR Services Offer a Two-Way Communications Channel Across Africa At Scale - Mobile Operator Partnerships Key” (17 November 2017): <<https://allafrica.com/stories/201711200371.html>>.

<sup>40</sup> JUSTICE, “What is a Court?” (2016): <<https://justice.org.uk/what-is-a-court/>>, citing Hodge Jones & Allen, “Innovation in Law Report 2014”: <<https://www.hja.net/wp-content/uploads/hja-innovation-in-law-report-2014.pdf>>; J Jacobson, G Hunter & A Kirby, “Structured Mayhem: Personal Experiences of the Crown Court (2015): <<https://criminaljusticealliance.org/wp-content/uploads/2015/11/Structured-Mayhem1.pdf>>.

ordinary people”.<sup>41</sup> Notably, 59% believed that technology could improve their experience.<sup>42</sup> Given the prevalence and widespread acceptance of technology today, it is unsurprising that technology is coming to be viewed as a friendly intermediary between people and the legal system. An example of how technology can soften the psychological impact of the legal process is the Divorce Project in the UK, which is a fully digital procedure for divorce that completely removes the need for paper forms and in-person appearances in order to make the process of finalising a divorce as painless as possible. The project has achieved a remarkable 91% user satisfaction rate,<sup>43</sup> strongly suggesting that technology can indeed be a welcome presence in the justice system.

#### **IV. Closing one gap, opening another?**

28. I pause to address two possible critiques against using technology to close the justice gap. The broad concern is whether technology, in closing the justice gap, will in fact open new fissures in society or widen existing ones.

---

<sup>41</sup> Neil Rose, LegalFutures, “Consumers see technology as key to unlocking access to law” (30 May 2019): <<https://www.legalfutures.co.uk/latest-news/consumers-see-technology-as-key-to-unlocking-access-to-law>>.

<sup>42</sup> *Ibid.*

<sup>43</sup> UK Government, Press Release, “Fully digital divorce application launched to the public” (6 May 2018): <<https://www.gov.uk/government/news/fully-digital-divorce-application-launched-to-the-public>>.

## **A. The equality problem: the digital divide**

29. The first critique is that the integration of technology into the justice system will exacerbate what is known as the “digital divide”. The digital divide is the disparity between those who are in a position to access and operate technology, and those who are not. It is deeply relevant to our discussion of access to justice because the ability of technology to contribute to access to *justice* is itself premised on access to *technology*.

30. The digital divide is especially pronounced in less developed regions. Only 11% of the world’s internet subscribers reside in Africa, and only 35.2% of those residing in Africa use the internet.<sup>44</sup> But it is a problem that also afflicts the developed world. For instance, in the UK, nearly 1 in 4 adults (or about 12m people) do not have basic online skills;<sup>45</sup> and in the US, 11.5% of the population (or about 37m people) do not have internet access.<sup>46</sup> Uneven access to technology within a community is a significant problem because it is a tenet of the Rule of Law that there be *equal* access to justice.<sup>47</sup>

---

<sup>44</sup> Internet Users Statistics for Africa (31 March 2019): < <https://www.internetworldstats.com/stats1.htm>>.

<sup>45</sup> George Arnett, The Guardian, “Map shows parts of UK most excluded from digital world” (19 October 2015): <<https://www.theguardian.com/news/datablog/2015/oct/19/map-shows-parts-of-uk-most-excluded-from-digital-world>>.

<sup>46</sup> Internet Live Stats (2016): <<http://www.internetlivestats.com/internet-users/us/>>.

<sup>47</sup> UN Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels (30 November 2012): < <https://www.un.org/ruleoflaw/files/A-RES-67-1.pdf>>.

31. Having said that, I am optimistic about alleviating the digital divide. It is true that the divide is rooted in systemic issues concerning education, infrastructure and socio-economic development, but the explosive growth in internet penetration in emerging economies has already significantly narrowed it and the signs continue to point in the same direction. For instance, in India, the internet user base recently exceeded 500m people, and much of the new digital adoption was in rural India where there are now 251m internet users, with internet penetration there rising from a mere 9% in 2015 to 25% in 2018.<sup>48</sup> That year, Africa also experienced its fastest growth rates in internet penetration, with the number of internet users increasing by more than 20% as compared to 2017.<sup>49</sup> Further, I understand that Facebook and MainOne are partnering to install a 750km fibre optic network in the Edo and Ogun States in Nigeria that will bring connectivity to 1m people.<sup>50</sup> This is just one example of the many ongoing efforts to bring technology and the internet to unreached peoples to further reduce the digital divide.

---

<sup>48</sup> Nandita Mathur, Livemint, "India's internet base crosses 500m mark, driven by Rural India" (11 Mar 2019): <<https://www.livemint.com/industry/telecom/internet-users-exceed-500-million-rural-india-driving-growth-report-1552300847307.html>>.

<sup>49</sup> Daniel Mumbere, Africa News, "Digital in 2018: Africa's internet users increase by 20%" (6 February 2018): <<https://www.africanews.com/2018/02/06/digital-in-2018-africa-s-internet-users-increase-by-20-percent/>>.

<sup>50</sup> In addition, Kenya will see the installation by Safaricom and Huawei of a new backbone network capable of speeds of up to 400gbps, and South Africa will soon enjoy its first live 5G network: see Toby Shapshak, "African Internet Connectivity Gets A Mobile World Congress Boost" (27 February 2019): <<https://www.forbes.com/sites/tobyshapshak/2019/02/27/african-internet-connectivity-gets-a-mobile-world-congress-boost/#38669ea24c60>>.

32. Having said that, as long as the digital divide does exist, we must help those who are unable to operate the technological features of the justice system so that technology does not hinder their access to justice. We can begin by retaining some traditional, face-to-face methods of access. For example, in Singapore, our shift to a digital court filing system has been accompanied by physical service and filing counters to provide in-person assistance to those who require it. In the UK, the introduction of online courts is coupled with the “Assisted Digital” initiative which consists of a network of support centres across the country and telephone support<sup>51</sup> to help those who lack facility with technology.<sup>52</sup>

33. We can also equip intermediaries, such as caregivers or family members, with digital legal tools. An example is the Legal Risk Detector app used by social workers serving home-bound elderly in New York. The app enables social workers to perform “legal health checks” on their beneficiaries through a digital questionnaire that identifies potential legal issues such as landlord-tenant or consumer debt problems. If such issues surface, the social worker can connect the beneficiary to legal resources or

---

<sup>51</sup> Mike Brazier, Gov.uk, “Helping people to use online services” (28 June 2018): <<https://insidehmcts.blog.gov.uk/2018/06/28/helping-people-to-use-online-services/>>.

<sup>52</sup> UK Ministry of Justice, “Transforming our justice system: assisted digital strategy, automatic online conviction and statutory standard penalty, and panel composition in tribunals – Government response” (February 2017) at p5: <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/590391/transforming-our-justice-system-government-response.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/590391/transforming-our-justice-system-government-response.pdf)>.

a lawyer.<sup>53</sup>

34. The dissemination of technology is an ongoing process that is proceeding apace. In the meantime, progress for the many cannot be delayed by the wait for the few. We must therefore continue to leverage technology to open more doors to justice, while retaining conventional means of access for those for whom technology remains foreign.

***B. The quality problem: “economy class” justice***

35. I turn to the second critique. The argument is that technology-assisted means of delivering justice, such as online courts, are inherently inferior to conventional processes and courtrooms. It is said that this will lead to two distinct classes within the justice system: an “economy class” service, in which machines replace the law with algorithms and dispense decisions on printouts and computer screens; and a “business class” service, where bewigged judges and berobed lawyers passionately debate the law in their pursuit of justice.

36. I suggest that the argument is fallacious on at least three levels. First, it assumes, without proving, that conventional processes deliver more accurate or more just outcomes than technology-assisted ones. Second, it

---

<sup>53</sup> Tanina Rostain, “Techno-Optimism & Access to the Legal System” (2019) 148(1) *Daedalus*, the Journal of the American Academy of Arts & Sciences 93.

is a caricature that appeals simply to our inherent preference for the known over the unknown. Third, and most critically, it presents a false dilemma between the two options. The *real* comparison is not between an inferior “economy class” service and an elite “business class” one, but between that “economy class” service and no service at all. That is a reality that arises from the basic economic problem of scarcity and the gap between our limitless wants and our limited resources. The justice gap is in fact a species of scarcity – it exists precisely because we are unable to fund and resource a “business class” service for all.

37. In thinking about using technology to improve access to justice, we therefore cannot be derailed by concerns about underserving people who are at present completely unserved. Those who stand to benefit most from technology are not those who can already afford access to the justice system, but rather those who would otherwise be completely shut out from it.

## **V. Technology and proportionate justice**

38. This brings me to the third and final part of my lecture. Just as inequality is a form of market failure, so is the justice gap a failure of our justice system. The justice gap forces us to re-examine our justice system, and in so doing, it confronts us with these questions: What is the nature of



the legal problems that are currently going unaddressed? What is the kind of solution that justice actually requires? And how then should we modify our justice system to deliver those solutions?

39. In his forthcoming book, *Online Courts and the Future of Justice*,<sup>54</sup> Professor Richard Susskind recounts a lecture that he delivered in 2017 to a gathering of 2,000 neurosurgeons. He declared, probably much to the chagrin of the audience, that patients actually did not want neurosurgeons. What they really desired, he said, was health; and neurosurgeons were simply the best solution we have today for a particular type of health problem.

40. Professor Susskind's message may be disconcerting, but it is undoubtedly true. Society does not want or need a body of professionals apart from the public good they bring. This means that if there is a better, cheaper or more efficient way of promoting that public good, then society will and should embrace that, and the old method of delivery will eventually fall into disuse. As Professor Susskind observed, it is not the purpose of ill health to keep doctors employed.<sup>55</sup> The same logic applies to lawyers, judges and the courts. If there is a better way to achieve the outcome of

---

<sup>54</sup> Richard Susskind, *Online Courts and the Future of Justice* (Oxford University Press, 2019) (draft) at p 47.

<sup>55</sup> *Ibid* at p 49.

the legal process – which is a fair and binding resolution of a dispute – then this should be preferred.

41. Professor Susskind argues that the time has come to jettison the idea that courts must be venues for the physical congregation of judges, lawyers and litigants,<sup>56</sup> and embrace the concept of an online court that operates without the need for the simultaneous presence of its participants.<sup>57</sup> He believes that this will not only make court services more accessible and affordable, but will indeed be welcomed by the fast-growing proportion of society that has embraced online processes as part of daily life.<sup>58</sup> Professor Susskind foresees that court services of the future will be delivered by a “blend” of physical, virtual and online courts, with disputes disaggregated into their component parts and each part allocated to the most appropriate type of court.<sup>59</sup> Eventually, technology will allow the courts to extend their services well beyond what is traditionally offered – to helping court users understand their options, identify relevant law, formulate arguments, assemble evidence, and attempt out-of-court settlement.<sup>60</sup>

---

<sup>56</sup> *Ibid* at p 50.

<sup>57</sup> *Ibid* at p 60.

<sup>58</sup> *Ibid* at p 62.

<sup>59</sup> *Ibid* at p 63.

<sup>60</sup> *Ibid* at pp 6 and 61.

42. Professor Susskind’s vision is a bold one, but I share his view that the technological transformation of judicial services is not only inevitable,<sup>61</sup> given the growing momentum of technological development, but indeed is essential to the building of a more just society by enhancing access to justice. Technology has the potential to empower the disadvantaged and less well-off by offering them a pathway towards the quick, affordable and just resolution of their legal problems. To satisfactorily address the type of legal problems that currently go unresolved, that pathway should not simply track conventional court processes, but must instead aim at delivering *practical justice through proportionate means*. Let me elaborate.

**A. Unmet legal needs and their requirements**

43. We must begin by understanding the type of legal problems that do not surface before the justice system, or what has been called the “latent legal market”.<sup>62</sup> Many of these are not complex, though they are pressing, particularly for low-income individuals. According to a 2018 global study involving over 70,000 respondents conducted by the Hague Institute for Innovation of Law (“Hiil”), 60% of all serious legal problems encountered by individuals fall into just five categories: family disputes; employment disputes; disagreements about land; criminal matters; and disputes

---

<sup>61</sup> *Ibid* at p 257.

<sup>62</sup> *Ibid* at p 185.

between neighbours.<sup>63</sup> For instance, in Uganda, 88% of respondents reported having serious justice needs in the past four years, with the three most serious problems being matters concerning land, the family, and crime.<sup>64</sup> The survey also found that legal problems had a substantially more serious impact on the lives of individuals with low incomes.<sup>65</sup>

44. As urgent as these disputes are, they are often fairly straightforward. Disagreements between neighbours or family members; disputes involving unpaid salaries, rent or parking tickets; and unauthorised encroachment onto land are generally unlikely to involve complex issues of fact or law. They are therefore particularly amenable to resolution by quick, simple and affordable processes that promote peaceful settlement by focusing on the *interests* of disputants and not simply on the adjudication of right and wrong. The HiiL study found that most people desired solutions that involved the cooperation of the other party, rather than judgments on who was to blame.<sup>66</sup> Disputes between neighbours were often best

---

<sup>63</sup> HiiL, “Understanding Justice Needs: The elephant in the courtroom” (“HiiL Study”) at p 15: <<https://www.hiil.org/wp-content/uploads/2018/11/HiiL-Understanding-Justice-Needs-The-Elephant-in-the-Courtroom.pdf>>.

<sup>64</sup> HiiL, “Justice Needs in Uganda 2016” at pp 4–6: <<https://www.hiil.org/wp-content/uploads/2018/07/Uganda-JNST-Data-Report-2016.pdf>>. And in Bangladesh, 31m people experience a legal problem each year, the most common being disputes about land: see HiiL, “Justice Needs and Satisfaction in Bangladesh 2018” at p 5: <<https://www.hiil.org/wp-content/uploads/2018/07/HiiL-Bangladesh-JNS-report-web.pdf>>.

<sup>65</sup> *Ibid* at p 51.

<sup>66</sup> HiiL Study at p 66.

resolved through agreements about how to deal with noise, for instance; and employment disputes could be settled with the employer providing some compensation and helping the worker to transition to a new job.<sup>67</sup> In contrast, litigation tended to promote “serial denial” which prolonged the dispute and foiled prospects of peaceful resolution.<sup>68</sup>

45. The HiiL study referred to the Gacaca courts in Rwanda as “[o]ne of the most remarkable justice stories of our time”.<sup>69</sup> The Gacaca courts were set up in 2001 to deal with the legal consequences of the Rwandan Genocide in 1994, which was a tragic reminder to the world about the necessity of peacebuilding and conflict resolution.<sup>70</sup> By 2000, Rwanda’s prisons were filled with about 130,000 alleged perpetrators of genocide and there was a pressing need to process their cases urgently. At the same time, it was clear that the answer did not lie in the conventional court system, which according to estimates would require about 200 years to prosecute that many people.<sup>71</sup> The government’s response was “*gacaca*”, which means “justice on the grass”. The Gacaca courts focused more on

---

<sup>67</sup> HiiL Study at p 58.

<sup>68</sup> HiiL Study at p 74.

<sup>69</sup> HiiL Study at p 65.

<sup>70</sup> Dennis Sadowski, “Lessons from Rwanda: Diplomacy, peacebuilding head off violence before mass atrocities” (8 April 2014): <[americamagazine.org/issue/lessons-rwanda](http://americamagazine.org/issue/lessons-rwanda)>.

<sup>71</sup> “Living with the Legacies of Historical Globalization” at p 192: <<https://resource2.rockyview.ab.ca/ss102/txt/ch8.pdf>>.

restoring social harmony, and less on establishing a comprehensive account of what had happened.<sup>72</sup> Information was collected through confessions and accusations, and a hearing convened before a court of fellow citizens<sup>73</sup> in villages and marketplaces across the country.<sup>74</sup> The process was by no means perfect – there can be little doubt that some injustices went undetected and uncorrected – but the Gacaca courts succeeded in processing a staggering 2m suspects over 10 years, finding 65% guilty.<sup>75</sup> It received the support of ordinary Rwandans, who preferred the “*gacaca*” process over the conventional court system,<sup>76</sup> and is said to have achieved, by and large, its objective of “mass justice for mass atrocity”.<sup>77</sup>

46. In a world of scarcity and imperfection, “*gacaca*” justice is surely better than no justice at all. In his seminal work *The Idea of Justice*, the Nobel laureate Amartya Sen argues that justice should not be seen as a transcendental absolute that can either be achieved or not, but should

---

<sup>72</sup> Luc Huyse and Mark Salter, *Traditional Justice and Reconciliation after Violent Conflict: Learning from African Experiences* (International Institute for Democracy and Electoral Assistance, 2008) (“Huyse and Salter”) at p 33: <[https://idea.int/sites/default/files/publications/traditional-justice-and-reconciliation-after-violent-conflict-learning-from-african-experiences\\_0.pdf](https://idea.int/sites/default/files/publications/traditional-justice-and-reconciliation-after-violent-conflict-learning-from-african-experiences_0.pdf)>.

<sup>73</sup> Huyse and Salter at p 42.

<sup>74</sup> BBC, “Rwanda ‘gacaca’ genocide courts finish work” (18 June 2012): <[bbc.com/news/world-africa-18490348](http://bbc.com/news/world-africa-18490348)>.

<sup>75</sup> *Ibid.*

<sup>76</sup> Huyse and Salter at p 51.

<sup>77</sup> Huyse and Salter at p 52.

instead be understood as existing as a matter of degree and therefore evaluated along a continuum.<sup>78</sup> I respectfully agree. When we think about how our justice system may be reconfigured to address the vast number of unresolved legal problems despite its limited pool of resources, we should therefore be thinking in terms of solutions that are *good enough*, and bear in mind Voltaire's famous warning that perfection is the enemy of the good. In the context of access to justice, I think Voltaire is right on at least three levels. First, it would place an impossible strain on judicial resources if we strove to examine each case with the highest levels of rigour and exactitude. Second, a strain of even greater magnitude would be placed on the individuals who most require access to justice, since they are often the most deprived of resources and time. Third, such a process would be ill-suited to the types of legal problems that currently go unaddressed, since these are generally straightforward but require urgent resolution, and often the best result is an amicable settlement.

**B.      *Recasting the aspirations of our justice system***

47.      Before I turn to explore the modalities by which these legal needs can be met, I want to take a moment to consider the nature of the outcomes that our justice system should strive to produce. What is the optimal result

---

<sup>78</sup> Amartya Sen, *The Idea of Justice* (Harvard University Press, 2009) ("The Idea of Justice") at p 106.

that an individual who seeks recourse through the law might hope for? What would be the ideal effects on her life of the legal determination that she receives at the end of the justice process? And more broadly, what kind of outcomes would best promote society's interests? If any of this seems abstract, I suggest that we must begin from a posture of some idealism in order to articulate the process values that will guide us to the best possible practical outcomes for users of the justice system.

48. The answer, I believe, must begin with the unerring principle that the law stands in the service of justice, which is broader than the law. As the great American jurist Roscoe Pound once observed, justice is not the law, but the end of the law.<sup>79</sup> This means that the law stands not in the service of lawyers or judges or indeed in the sustenance of the old ways and forms of legal practice – as Professor Susskind rightly points out – but in the alleviation of the suffering that injustice brings. In a world wrought and riven by conflict and self-interest, I believe that the law stands in the service of society, for which it is sometimes the only bastion against intolerance and aggression.

49. In a lecture I gave earlier this year, I suggested that we must

---

<sup>79</sup> Roscoe Pound, Annual Convention of the American Bar Association, "The Causes of Popular Dissatisfaction with the Administration of Justice" (1996): <law.unl.edu/RoscoePound.pdf>.



broaden our vision of what justice requires. It must encompass “not only an accurate adjudication of rights and obligations but also the preservation of ‘harmony, reconciliation, balance, and equality’”.<sup>80</sup> On one level, justice – as John Rawls famously argued – is about fairness,<sup>81</sup> and this calls for an accurate adjudication of right and wrong through a process that is neutral and impartial.<sup>82</sup> In Rawls’ estimation, fairness is also about the right to basic liberties and to “fair equality of opportunity”,<sup>83</sup> which means that an individual should not only have an equal right to opportunities, but also an *effective* equal chance as another individual of similar talent.<sup>84</sup> That is precisely why the entrenchment of inequality in society that I spoke of earlier is so repugnant to our basic moral instincts, and why we must ensure that there is *effective* equal access to justice – so that the courtroom remains open in a way that the Ritz hotel might not be.

50. But I also believe that if the horrors of war, persecution and civil strife that have marred much of the past century are to be any guide, then

---

<sup>80</sup> Sundaresh Menon CJ, Supreme People’s Court of Vietnam Workshop on Mediation, “The Singapore Convention on Mediation & The Coming of a New Age” (17 September 2019) at para 21: <[supremecourt.gov.sg/docs/default-source/default-document-library/vietnam-spc-mediation-workshop---for-publication.pdf](http://supremecourt.gov.sg/docs/default-source/default-document-library/vietnam-spc-mediation-workshop---for-publication.pdf)>.

<sup>81</sup> John Rawls, *A Theory of Justice: Revised Edition* (Harvard University Press, 1999) (“A Theory of Justice”).

<sup>82</sup> *The Idea of Justice* at p 54.

<sup>83</sup> *A Theory of Justice* at section 12.

<sup>84</sup> Stanford Encyclopedia of Philosophy, “Equality of Opportunity” (25 March 2015): <[plato.stanford.edu/entries/equal-opportunity/#ForEquOpp](http://plato.stanford.edu/entries/equal-opportunity/#ForEquOpp)>.

justice must also be about the maintenance of peace and the promotion of compromise, conciliation and closure. The declaration of winners and losers in litigation is a zero-sum game that often resolves disputes at the cost of relationships. When this results in the erosion of ties and the exacerbation of tensions over time, that can be too heavy a price for society to pay. It is therefore timely to recognise that our justice system should aspire not only to *peacekeeping* – through the enforcement of rights and obligations once they have been violated – but also to *peacebuilding* – by repairing broken relationships, reinforcing existing ones, and thereby helping to rebuild our sense of community.

51. The enterprise of peacebuilding aims at the nonviolent resolution of conflict and the prevention of future conflict.<sup>85</sup> In a 2018 UN report on peacebuilding and sustaining peace, UN Secretary-General António Guterres observed that an “important breakthrough” in modern thinking about peacebuilding has been the recognition that efforts to sustain peace must begin “long before [conflict breaks out], through the prevention of conflict and [by] addressing its root causes”.<sup>86</sup> Hence, if the aim of justice

---

<sup>85</sup> Alliance for Peacebuilding, “What is Peacebuilding?”: <<https://allianceforpeacebuilding.org/what-is-peacebuilding/>>; and United Nations Peacebuilding: <<https://www.un.org/peacebuilding/>>.

<sup>86</sup> UN General Assembly Security Council, Report of the Secretary-General, “Peacebuilding and sustaining peace”, UN Doc A/72/707-S/2018/43 at para 3: <[https://www.un.org/peacebuilding/sites/www.un.org/peacebuilding/files/documents/sg\\_report\\_on\\_peacebuilding\\_and\\_sustaining\\_peace.as\\_issued.a-72-707-s-2018-43.e.pdf](https://www.un.org/peacebuilding/sites/www.un.org/peacebuilding/files/documents/sg_report_on_peacebuilding_and_sustaining_peace.as_issued.a-72-707-s-2018-43.e.pdf)>.

is the sustenance of peace, then it is surely too late for the justice process to begin only in the aftermath of conflict, at a time when relationships have already broken down irretrievably and the only response is mitigation rather than prevention. The touchpoint of the justice process must therefore be situated earlier in time, when the bridges have not yet fallen apart and can still be mended.

52. This broader vision of justice invites us to see the justice process as an integral part of the *peace* process. This means that a user of the justice process should emerge from that process not only with a fair resolution of the dispute in question, but also with an attitude of reconciliation, the tools to make lasting peace, a clearer understanding of her interests as well as those of other parties, and an enduring sense of closure and catharsis. It also means that those who manage and operate the justice system should see themselves both as administrators of justice and as facilitators of peace. They do so not only by righting wrongs but by repairing relationships and helping parties to chart a shared future beyond their dispute.

**C. *Rethinking the process values of our justice system***

53. Let me now identify the process values that we must embed into our justice system to help us realise these aspirations. We can also think

of these as the design values that guide our decisions on how to reengineer the processes of our justice system.

54. I suggest that conflict prevention and the creation of conditions for peace are often better promoted by cheaper, faster and more accessible processes that encourage peaceful dispute settlement, rather than by rigorous but slower and costlier ones that focus on vindication and rest on adversarial methods of dispute resolution. Few things are felt as keenly or passionately as injustice, and if the injustice is not swiftly addressed, feelings of anger and humiliation will fester and may in time even manifest in violent form.

55. In order to defuse tensions and promote resolution, the priorities should be speed and pacifism over breadth and rigour. A justice system that resolves disputes quickly and cheaply is more likely to prevent the breakdown of society than one that is slower and less accessible. The Gacaca courts that I mentioned earlier are a perfect illustration of a system that focused on restoring and maintaining social order by addressing urgent justice needs. The simple, efficient and participatory methods used by the Gacaca courts have set in motion the process of reconciliation between

feuding communities.<sup>87</sup> I suggest that this has been so because accessible and peaceable solutions enhance a sense of justice, and this in turn is an essential condition for peace.

56. In line with this, at a lecture I delivered two years ago on mediation and the Rule of Law,<sup>88</sup> I suggested that there is a pressing need to refine our vision of the Rule of Law ideal given the rising costs of litigation, limited judicial resources and the increasing complexity of procedures. I proposed then that we should widen our conception of the Rule of Law so as to recognise the importance of ensuring access to justice, which entails the adoption of a user-centric approach that focuses on affordability, efficiency, accessibility, flexibility and effectiveness.

57. Overlaying those qualities, I now propose two overarching values. The first is *proportionality* – to underscore the importance of ensuring that the nature, complexity and cost of the processes and solutions offered by the justice system bear a suitable relation to the nature, complexity and size of the legal problems before it. Equal access to justice means that like

---

<sup>87</sup> Human Rights Watch, “Justice Compromised: The Legacy of Rwanda’s Community-Based Gacaca Courts” (31 May 2011): <<https://www.hrw.org/report/2011/05/31/justice-compromised/legacy-rwandas-community-based-gacaca-courts>>.

<sup>88</sup> Sundaresh Menon CJ, Law Society Mediation Forum, “Mediation and the Rule of Law” (10 March 2017): <[https://www.supremecourt.gov.sg/Data/Editor/Documents/Keynote%20Address%20-%20Mediation%20and%20the%20Rule%20of%20Law%20\(Final%20edition%20after%20delivery%20-%20090317\).pdf](https://www.supremecourt.gov.sg/Data/Editor/Documents/Keynote%20Address%20-%20Mediation%20and%20the%20Rule%20of%20Law%20(Final%20edition%20after%20delivery%20-%20090317).pdf)>.

should be treated alike; it does not mean that the same approach should be applied invariably to every type of dispute, from the smallest to the most complex. That is why proportionate justice – which is about fairly, equitably and responsibly distributing scarce judicial resources, so as to promote the interests of all who require justice – tends to support, rather than undermine, equal access to justice.

58. Alongside proportionality, I also add *peacebuilding* – not only because an amicable settlement is an effective, accessible and indeed proportionate way to resolve disputes, but more crucially because the preservation of ties furthers the pursuit of peace, which is the object of justice. Peacebuilding can be an especially critical value in complex cases where the divisions are deep, real and often rooted in sincere beliefs of right and wrong.

59. Allow me to illustrate the point by reference to one of the most delicate areas of legal practice – family law. In the Family Justice Courts of Singapore (“FJC”), dispute avoidance and containment are deeply integrated into court processes. Family disputes often involve deep-seated tensions that may have festered for years. However, because of their financial, psychological or emotional circumstances, the disputants are often ill-equipped to engage in complex and protracted litigation. At the

same time, there will often be a particular need for closure. For instance, where children are involved, parental relationships and responsibilities survive the breakdown of marriage. As I have said elsewhere, following a divorce, ex-husbands are still fathers and ex-wives are still mothers.<sup>89</sup> Some degree of continuing cooperation between the parties will therefore be essential to promote the child's welfare. For this reason, family disputes require not only the delivery of substantive and procedural justice, but also restorative and therapeutic justice.<sup>90</sup> To promote better outcomes for families and children, the FJC uses a team of specially trained judge-mediators, counsellors, social workers and psychologists who work together to help parties understand the consequences of divorce, reach amicable settlements, and work out arrangements on care, custody and access. This is peacebuilding at the level of the family, which is the "natural and fundamental group unit of society",<sup>91</sup> and must therefore be the starting point for any attempt at sustaining peace and minimising conflict in society.

---

<sup>89</sup> Sundaresh Menon CJ, Opening of the Family Justice Courts (1 October 2014): <[familyjusticecourts.gov.sg/docs/default-source/resources/speeches/2014\\_cj\\_opening\\_of\\_fjc.pdf](http://familyjusticecourts.gov.sg/docs/default-source/resources/speeches/2014_cj_opening_of_fjc.pdf)>.

<sup>90</sup> Sundaresh Menon CJ, International Family Law Conference 2016, "The Future of Family Justice: International and Multi-Disciplinary Pathways" (29 September 2016) at para 11: <[supremecourt.gov.sg/Data/Editor/Documents/Speech%20-%20The%20Future%20of%20Family%20of%20Family%20Justice%20.pdf](http://supremecourt.gov.sg/Data/Editor/Documents/Speech%20-%20The%20Future%20of%20Family%20of%20Family%20Justice%20.pdf)>.

<sup>91</sup> Article 16.3, Universal Declaration of Human Rights.

**D. *Reimagining the modalities for the delivery of justice***

60. Finally, I return to the question of the modalities by which unmet legal needs might be met.

61. For the reasons I have already canvassed, I believe technology is a particularly effective agent for the delivery of proportionate and targeted solutions. Critically, technology can seamlessly integrate dispute resolution with the equally important processes of dispute containment and avoidance, which promote peacebuilding. The convergence of technology and non-adjudicative methods of dispute settlement has in fact already begun in earnest. In recent years, two global movements – namely, the alternative dispute resolution (“ADR”) and the online dispute resolution (“ODR”) movements – have inspired an evolution of the processes by which justice is delivered.<sup>92</sup> They have prompted the reconstruction of justice systems according to the model of a “sequential multi-door courthouse”,<sup>93</sup> within which each dispute is advanced progressively through three broad stages: evaluation, facilitation and adjudication.

62. The first stage, that of evaluation, aims to provide litigants with a

---

<sup>92</sup> Dorcas Quek Anderson, “The convergence of ADR and ODR within the Courts: The impact on access to justice” (2019) *Civil Justice Quarterly* 38, (1), 126–143.

<sup>93</sup> John Sorabji, “The Online Solutions Court – a Multi-Door Courthouse for the 21<sup>st</sup> Century” (2017) 36(1) *C.J.Q.* 86 at 100.



better understanding of the dispute so they can assess whether it is worth their while to pursue litigation. Automated processes involving questionnaires, customised decision trees and triage software helps them diagnose their problems, particularise their claims and even provide a preliminary assessment of their merits. By helping litigants better understand their situations, the process of evaluation helps to close a particular dimension of the justice gap that I spoke of earlier: the literacy gap, which disadvantages those who lack a basic understanding of the law and are therefore unable to determine if their problems are susceptible to legal solutions.

63. Disputes that survive triage are then filtered into the second stage, known as facilitation, which embeds ADR into the justice process. Trained case officers help parties reach settlement through mediation, early neutral evaluation, negotiation and case management. Such facilitative processes give due recognition to the fact that non-adjudicative modes of dispute settlement should no longer be viewed as a secondary or inferior “alternative” to court litigation – as is connoted by the label of “alternative” dispute resolution – but instead as a particularly “appropriate” means of resolving many kinds of disputes,<sup>94</sup> including the sort of straightforward but

---

<sup>94</sup> Sundaresh Menon CJ, Global Pound Conference Series 2016, “Shaping the Future of Dispute Resolution & Improving Access to Justice” (17 March 2016) at paras 22–27: <supremecourt.gov.sg/Data/Editor/Documents/[Final]%20Global%20Pound%20Conference%20Series%2

urgent legal problems often encountered by those without effective access to justice. By funneling disputes through the processes of evaluation and facilitation at the outset, it may be expected that many, perhaps even the bulk of disputes will be resolved without reaching the third stage, which is that of adjudication. In that final stage, remaining disputes are resolved by judges, typically through an asynchronous hearing within an online court, reserving the physical confines of the conventional courtroom to the few cases that truly require it.

64. Across all three stages, technology would be the essential and omnipresent “fourth party”<sup>95</sup> that not only provides overall support to the process but also itself assumes distinct and important functions. Interactive self-help applications guide and inform parties within the process of evaluation. Automated online negotiation platforms facilitate the exchange of offers and proposals. And when disputes come to be adjudicated, technology would enable the asynchronous hearing of many of these cases.

65. I have already spoken of the UK’s online courts. In British Columbia,

---

02016%20-%20Shaping%20the%20Future%20of%20Dispute%20Resolution%20%20Improving%20Access%20to%20Justice'.pdf>.

<sup>95</sup> Ethan Katsh and Janet Rifkin, *Online Dispute Resolution: Resolving Conflicts in Cyberspace* (Jossey-Bass, 2001).

the Civil Resolution Tribunal, which handles disputes involving small claims and motor vehicle injury claims,<sup>96</sup> offers an online tool known as the “Solution Explorer”. The tool emulates the guidance of a human expert and draws upon a specialised knowledge base to help parties diagnose and understand their problems. Within its first year of operation, the Solution Explorer has already enjoyed considerable success, having achieved a 94% resolution rate at this preliminary stage of dispute avoidance without requiring further intervention.<sup>97</sup> It is a testament to the extraordinary potential and synergy of the ODR and ADR processes.<sup>98</sup>

66. Let us take a step back to survey the landscape we have traversed today. We began with the premise that the law stands in the service of justice, and that justice should be less about declaring winners and losers than about achieving fair outcomes that are equally and effectively

---

<sup>96</sup> Civil Resolution Tribunal, “Welcome to the Civil Resolution Tribunal”: <[civilresolutionbc.ca](http://civilresolutionbc.ca)>.

<sup>97</sup> Joint Technology Committee, JTC Resource Bulletin, “ODR for Courts” (29 November 2017) at p 4: <[ncsc.org/~media/Files/PDF/About%20Us/Committees/JTC/JTC%20Resource%20Bulletins/2017-12-18%20ODR%20for%20courts%20v2%20final.ashx](http://ncsc.org/~media/Files/PDF/About%20Us/Committees/JTC/JTC%20Resource%20Bulletins/2017-12-18%20ODR%20for%20courts%20v2%20final.ashx)>.

<sup>98</sup> Singapore has also embarked on the process of integrating, through technology, dispute avoidance and containment into its court processes. The Community Justice and Tribunals System operated by the State Courts of Singapore is an e-filing and case management system for small claims and claims involving neighbour and employment disputes. These disputes are usually fairly straightforward and of low value, and therefore lend themselves to settlement or resolution through a quick and simple process. Users can take an online pre-filing assessment to find out whether their claims fall within the court’s jurisdiction, and participate in online negotiations and mediation in their own time. Two years after the launch of the system for small claims, 1725 small claims have undergone e-Negotiation and 35% have been amicably settled as a result: see See Kee Oon J, State Courts Workplan 2019, “State Courts: 2020 and Beyond” at paras 13–15: <[https://www.statecourts.gov.sg/cws/Resources/Documents/State\\_Courts\\_Workplan2019\\_KeynoteAddresses\(FINAL\).pdf](https://www.statecourts.gov.sg/cws/Resources/Documents/State_Courts_Workplan2019_KeynoteAddresses(FINAL).pdf)>.

available to all. If, in this light, we recognise that the end of justice is the achievement of real and lasting peace, then we must reshape our justice processes through technology and ADR to deliver accessible and proportionate justice that aims to build peace. In so doing, we would be acting to tilt an unequal society closer toward equilibrium and prophylactically to prevent the breakdown of relations.

## **VI. Conclusion: a straight line to justice**

67. Let me close, as I began, with the work of the mobile courts that have brought justice to so many in the jungles of East Malaysia. The mobile courts are a striking illustration of the dispensation of justice at its most authentic and unadorned, but in no less effective a means: rights are recognised and protected beneath the painted proclamation of “Justice for One and All”, a world away from the stately confines of a courtroom. The processes may be simple and the surroundings austere, but the outcomes are no less foundational – the acknowledgment of citizenship and the conferment of rights.

68. Despite their relative lack of technology, the mobile courts reflect, in two important ways, the essence of what I have discussed. First, in an unequal and divided world, we must liberate justice from the conventions of the courtroom in order to afford access to those who most require it. The

justice gap will continue to widen if we put our old ways before what justice really requires. And second, justice can sometimes be done through the very simplest and humblest of processes, not by the longest or the hardest. After all, the shortest distance between two points will always be a straight line.

69. Thank you all very much.

---