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IJCA is an electronic journal published on the IACA website (www.iaca.ws). As its name suggests, IJCA focuses on contemporary court administration and management. Its scope is international, and the Editors welcome submissions from court officials, judges, justice ministry officials, academics and others whose professional work and interests lie in the practical aspects of the effective administration of justice.

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**Presidents’ Message**
By Scott Griffith, National Association for Court Management, and Vladimir Freitas, International Association for Court Administration

A commitment to partnerships has been an abiding feature of the National Association for Court Management’s (NACM) work over the last several years. Nowhere has this been more evident than in our recent work with the International Association for Court Administration (IACA) to prepare for this year’s joint annual conference.

Discussions about a joint conference began between members of NACM’s and IACA’s leadership in the summer of 2014, and since then countless hours have been spent by member volunteers from both organizations, with the support of our partners at the National Center for State Courts, in meetings, on conference calls, and by email to address details regarding the conference venue, budget, social events, and, most importantly, the educational program. Many thanks are due to these committed and creative volunteers. We believe that their efforts will yield significant returns in learning for all those who attend, as well as those who view the sessions remotely via live stream or by accessing them on NACM’s website.

The annual conference agenda features an abundance of timely and relevant sessions that speak to the importance of the pursuit of excellence in judicial administration. Diverse perspectives on key issues in the field will be offered by a qualified and engaging roster of speakers, who will also provide important practical tools and tips for meeting the challenges of court administration in the modern age.

NACM and IACA members share a passion for their work and a commitment to strengthening and advancing the rule of law. Through collaborating on joint activities such as the annual conference, we seek to learn from each other, challenge each other, and inspire each other. As the two largest professional organizations serving court professionals in the world, our two groups are well positioned to dictate the course of the profession, and convenings like the annual conference provide a great opportunity to do just that.
From the Managing Editor:

Court Administration in Europe – Management in a Different Context

By Philip M. Langbroek

With this special issue, IACA’s International Journal for Court Administration – in cooperation with NACM’s The Court Manager, wants to contribute to the NACM-IACA Joint Educational Conference, on Court excellence on a world wide scale July 9-13, 2017, Arlington, VA (Washington D.C.). We have four very interesting professional articles about a variety of subjects: Environmental Justice in Brazil (Mariana dos Freitas), Drug Courts in the USA (Caroline Cooper), the Introduction of an Integrated Electronic Case Management System in Rwanda (Adam Watson, Regis Rukundakuvuga and Khachatur Matevosyan) and Case Management Concerning Special Immigrant Juveniles in a Trial Court (Danielle Fox, Hisashi Yamagata, Lili Khoezimeh, Marianne Hendricks, Madeleine Jones, and Rick Dabbs). I recommend those articles to our readership.

While preparing my participation at our conference with NACM in the United States, I thought it might be fitting to add a few words on court management in Europe.

While working on a report for the Department for Justice of the European Commission, it struck me how different court administration settings are not only within Europe’s diverse countries, but also compared to the United States. What European court administration has in common, is that it is always organized on a national scale. The European Union has hardly a say in court administration, apart from the arrangements for transnational cooperation in criminal matters, transnational insolvencies and transnational execution of civil judgments. Rules for those matters have to be implemented by national justice organizations, but are sometimes helped by European organizations that exchange information by means of IT. The European Commission organizes quite some evaluation studies in order to find out in how far these coordination efforts are effective.

Court administration on a national scale can be challenging. It is not only that courts can do many different things. Back offices in the courts may have hundreds of different procedural routines, to date automated, including filing and hearing cases on-line. Because courts are also decision-making organizations, play a role in law enforcement and in conflict resolution, their societal tasks are evident. Court administration and management are challenging, because they presuppose not only specialized legal knowledge at a technical level, but also other knowledge, essentially concerning the usual management issues: personnel, information dissemination, organization, finances, IT, communication, security and facilities. Each of those domains has local and national management issues, and local and national management issues are interrelated.

Even although our British colleagues established a ministry of justice in 2005 – a very continental way of organizing justice administration - judges in England and Wales, and in the United States are much more office holders than civil servants compared to the judges of continental Europe. Napoleon’s legacy is still holding European court administration and European judiciary in a civil service position, including hierarchical disciplinary supervision of the judges on a national scale. Local court organizations therefore are not very autonomous. They may have their own budget, and their own management, but for most of the management they are bound to sometimes quite detailed national rules, especially for budgeting and accounting, security, personnel policies and so on. In this respect it does not make a lot of a difference whether the national court administration is headed by a ministry of justice or by an administrative council for the judiciary.

With so much state power directly present in the administration of the courts, the art of court management is also the art of creating enough space for judges – who are considered civil servants, even although with an especially safeguarded position – to maintain their own professional domains. This is also about their production and their productivity. The latter two terms refer to economic approaches of judicial work. Creating judicial professional space however means also leaving enough time for, for example, law courses, individual peer review, review of case law, and interactions between stakeholders at the courts and the judges. If the economic approach becomes dominant, pressuring for higher productivity, professional space will be reduced, and risks are that judicial independence dissolves in routines. In practice this means that judges will have not enough time to differentiate between cases that can be dealt with routinely and cases
that need special attention – effectively no room for their consciences. Where the possibility to choose wisely between routinely and attentive approaches is diminished, judicial legitimacy is at risk in the long run. Managing courts in Europe therefore is also about enabling, facilitating, and maintaining judicial professional space, next to fulfilling all the other management duties.
Drug Treatment Courts and Their Progeny in the U.S.: Overcoming Their Winding Trajectory to Make the Concept work for the Long Term
By Caroline Cooper1

Abstract:

Looking back over the past quarter century of justice system initiatives in the U.S., many will likely agree that the introduction of the drug court model has been one of the major innovations that occurred. For the field of court administration, it represented a practical application of Differentiated Case Management (DCM) principles – e.g. the recognition that all cases filed in a court system are not alike and that multiple paths for their disposition should be created for the purpose of both efficiency and justice. For the larger field of justice system operations, it represented a re-examination of the traditional approach for criminal case processing and a jumpstart to creating partnerships with agencies outside of the justice system per se – in this case, public health – in order to more efficiently and effectively manage the case disposition process for certain criminal cases not productively handled through the traditional criminal case process.

For the legal profession, specifically – judges, prosecutors, defense counsel – it opened up the opportunity to use the leverage of the criminal justice system to utilize therapeutic approaches to the disposition of cases that did not lend themselves to the traditional punitive criminal case disposition approach – e.g., cases involving what later became recognized as the chronic disease of addiction and associated mental health disorders. Of particular import was that these nontraditional approaches were being instituted in an era of mandatory sentencing. All of these developments occurred within the framework of the constitutional and legal procedures, including "due process protections" that govern the criminal process and none of the founding drug court leaders ever intended for the drug court model to operate outside of that framework.

The focus of this article is upon the evolution of the drug court model in the U.S. since it was first introduced – not always a straightforward path as anticipated by the early developers of the model – and discussion of a few of the numerous issues that implementation of the drug court model has raised as new generations of leaders become involved, often without the institutional perspective of those who initially instituted the program, and suggestions for moving forward to promote the long term institutionalization of the drug court model within the constitutional and legal framework that applies to the U.S. criminal justice process.

The observations and recommendations which follow draw on the author’s experience in providing technical assistance and training to over 800 drug courts in the U.S. since 1989, much of which is documented in technical assistance reports, training curricula, and presentations at state, regional and national conferences.2

Keywords: drug treatment courts, United States

1. Drug Court Model – Origins

1.1 Context in which it developed
When the Miami Drug Court opened in August 1989, local leaders were not intending to revolutionize the way the justice system operated; they were simply developing a pragmatic response to the tremendous surge of drug involved defendants circulating through the court's “revolving door” and the minimal, if any, impact of the traditional sentencing process for these defendants. The drug court concept in Miami was developed by a group of justice system and treatment professionals3 who had long been dealing with substance using individuals involved with the criminal justice system, and who developed the model based on their practical experience. In doing this, they drew on the leverage they felt the

1 Caroline Cooper is a private consultant working in the field of national and international justice system reform. She can be reached via: carolinecooperesq@gmail.com.
2 See www.american.edu/justice where many of these reports and presentations are posted.
3 The key architects of the "drug court model" were Chief Judge Gerald Wetherington and Associate Judge Herbert Klein of the Miami-Dade County Circuit Court, the late Janet Reno, Miami-Dade County Prosecutor, Bennett Brummer, Miami-Dade County Public Defender, and Michael Smith, M.D., Director of the Substance Abuse Clinic at Lincoln Hospital in the Bronx.
criminal justice system could provide to promote treatment program participation and behavioral modification techniques that had been useful in drug treatment programs not necessarily connected with the court process. The practical wisdom that underlies the drug court model⁴, although not at the time based on research findings, has since been corroborated by numerous research efforts as a far more effective strategy for dealing with drug using individuals than the traditional justice and/or treatment process then in use.⁵

1.2 Carrot and Stick Concept
The “Drug Court” offered an alternative to traditional prosecution of drug involved, nonviolent, offenders by offering them the opportunity to hold their prosecution in abeyance on the condition they entered and completed an intensive outpatient treatment program under the court’s supervision. It also offered an opportunity to offer an alternative to the mandatory sentencing provisions that judges were otherwise required to impose if these cases were fully prosecuted. Much to local leaders’ surprise, not only did numerous drug involved defendants accept the Drug Court opportunity but, within a short period of time, justice system leaders from both the U.S -- many of whom from jurisdictions subject to mandatory sentencing⁶ requirements, -- and foreign jurisdictions descended upon the court to see firsthand the drug court concept in practice.

1.3 Subsequent Experience: Snapshot
Fast forward to 2017: The drug court model, with numerous adaptations, has since been introduced in every state in the U.S. as well as over 20 countries, with adaptation of the concept to a range of legal structures – both adversarial and inquisitorial -- and legal cultures, with greatly expanded and associated permutations of the model developed and continuing to develop. The recent experience with Veterans Treatment Courts in the U.S., for example, has introduced a major focus on the role and interplay of “trauma” in the lives of drug users, including post-traumatic stress disorder and substance use, which, one hopes, should further impact the approach non-Veterans Treatment Courts are taking and the services they are providing.

Despite the remarkable popularity of drug courts over the past 25+ years, the implementation trajectory of the drug court concept has not been straightforward, with continual challenges encountered in integrating evolving research findings and discipline specific evidence-based interventions within traditional silos of practice, particularly for criminal justice practitioners and substance use and mental health treatment providers, as well as in promoting the cross-discipline professional standards and collaborations necessary for the drug court concept to work. While early drug court leaders appeared to have an intrinsic sense of how these programs should operate, those succeeding them did not always fully share their vision and perspective, with the result that the core values of the drug court model⁷ have not been consistently understood, let alone maintained in toto, as the model requires. Rather many programs have appeared to pick and choose the elements to be utilized and those to be disregarded.

For the “drug court” concept to work, both over the short and long term, the justice system and the public health system – the two key partners in this venture – must be on the same page, both internally and collaboratively, with compatible goals, measures of “success”, standards of practice, and ready willingness to build on the continually evolving research findings and experience associated with the science of addiction and recovery. And all “pieces” of the drug court model – e.g., the “Key Components”⁸ – must be operating in sync.

The following sections provide a brief synopsis of the various permutations that the drug court model has taken since its inception in 1989, followed by a discussion of critical training, legal, service delivery, and organizational issues that have since emerged that potentially challenge the long-term viability of the drug court model and therefore warrant prompt attention.

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⁴ In 1997, a committee assembled by the National Association of Drug Court Professionals, with funding from the U.S. Department of Justice, crafted ten “key components” that appeared to capture the essential elements of drug court programs, reported in Defining Drug Courts: The Key Components. https://www.ncjrs.gov/pdffiles1/bja/205621.pdf.
⁶ During the 1980’s, the U.S. Congress and many state legislatures adopted laws imposing stiff penalties for individuals convicted of trafficking in illegal drugs and included mandatory incarceration for drug dealers and individuals in possession of certain amounts of illegal drugs for personal use. Despite studies that have demonstrated that incarceration for drug involved individuals has no effect on reoffending and/or on drug use, these laws, most of which were enacted during the “just say no” period of U.S. drug strategy, continue in effect strategy in the U.S. and are considered to be a major factor in contributing to the situation of “mass incarceration” that has been receiving increasing attention.
⁷ See “Key Components”. Note 4 above.
⁸ See “Key Components.” Note 4 above.
2. Drug Court Model – Evolution and Permutations
The drug court model emerged in Miami as a pretrial diversion option for defendants with limited prior contact with the justice system. Defendants entered a “not guilty” plea at time of arraignment and waived only the constitutional right to a speedy trial. If they did not complete the drug court program their case proceeded in accordance with the traditional case process. Although data is not readily available regarding the nature of the justice system process the drug court model presently follows in the various jurisdictions that have implemented these programs, the evolution appears to have followed the following path(s):

2.1 Shift from Focus on Pretrial Defendants to Defendants on Probation
While some drug court programs implemented during the 1990’s and early 2000’s remained pretrial/pre-plea programs along the model of Miami’s, many were post plea programs, requiring the defendant to enter a plea to the offense charged, with the plea stricken if the defendant completed the program and imposed with the applicable sentence if he/she did not complete the program. This approach met prosecutorial concerns about keeping cases open for protracted periods of time, only to then must prosecute them if the defendant wasn’t successful. Although the net effect for defendants who successfully completed the program was the same as for the pretrial model, the necessity for entering a plea in order to enter the program raised concern for defense counsel, particularly without full discovery and other aspects of due process proceedings, such as the filing of motions regarding the legitimacy of the arrest, etc.

For a variety of reasons, starting in the 2003-05 period, many of the drug courts that were subsequently implemented were designed as programs for defendants on probation who were either sentenced to probation (with a sentence of incarceration suspended upon their successful completion of the program terms) or who had violated the terms of their probation and now faced the imposition of a (mandatory) prison sentence and were referred to the drug court as a “last resort.” Either way, the probation model operated very differently from the pretrial model.

This shift in the role of drug courts from those providing a diversion option at the front end to an incarceration alternative at the back end has had major implications in terms of the operation of the drug court model and its potential impact both for participants and the “system”. For example, the concept of “early intervention” which has been deemed critical for dealing with chronic disease, including drug addiction, was lost, with months if not years elapsing from the time of arrest to the court order for treatment program entry. Similarly, the “non-adversarial approach” upon which the drug court model is based became much less significant since the defendant was already convicted of the offense, with the prosecution and often defense no longer involved in the case. The shift to defendants already on probation also removed the earlier incentive which the pre-trial model provided to the “system” by diverting a significant portion of the court’s caseload that would otherwise have required the full persecutorial, defense and court and resources to handle through the traditional process.

2.2 Application to Juvenile Caseloads
Starting in 1994, the drug court concept began to be adapted for juvenile caseloads with significant success. In 2003, the U.S. Department of Justice assembled a multidisciplinary group of practitioners to define the key elements of juvenile drug courts, similar to the effort undertaken seven years earlier to define the “Key Components” of adult drug courts. Treatment strategies focusing on the developmental needs of drug involved adolescents were applied, along with a range of experiential and skill building opportunities to promote participating drug-involved youth to continue in school, become involved with community activities, and develop the self-esteem considered fundamental to succeeding in other domains.

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9. U.S. Constitution. Sixth Amendment, which reads: "…In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.”

10. Although the implementation of the early drug courts during the decade following Miami’s followed a fairly clear-cut procedural model, closely aligned with the “Key Components”, as the years went on, operational procedures varied significantly, particularly in terms of (a) offering the drug court as an alternative to traditional adjudication and (b) ensuring prompt entry into the drug court and its associated treatment resources following arrest. With the 2007-8 economic decline, drug courts became an attractive option for reducing prison costs and therefore many programs became alternatives to prison for defendants already sentenced, thereby satisfying many state government leaders interested in reducing the state budget(s).

11. See Note 9 above.

12. See Key Component # 3: Eligible participants are identified early and promptly and promptly placed in the drug court program.

13. See Key Component # 2: Using a non-adversarial approach, prosecution and defense counsel promote public safety while protecting participants’ due process rights.

of the adolescent’s life. The implementation and operation of juvenile drug courts also introduced new complexities in terms of required services and oversight the adult drug courts had not dealt with, particularly regarding services to the families of participants who themselves often presented situations of addiction, instability, and lack of parental skills that had to be addressed in order to sustain the progress of the juvenile drug court participant. For a variety of reasons, including the absence of federal technical assistance and training resources for juvenile drug court programs (although these resources continued for adult programs through the Bureau of Justice Assistance), it proved difficult to sustain the early juvenile drug courts, particularly as the founding judges retired. Subsequently, a “new generation” of juvenile drug courts emerged but evaluation results have not been positive, at least for the youth that need these services. Recent federal government efforts to jumpstart attention to juvenile drug courts and develop guidelines for their implementation appear to have, as of yet, had minimal impact in terms of restarting the vision in the field that made them effective during the earlier period of their operation.

2.3 Family Drug Treatment Courts

The passage of the Adoption and Safe Families Act (ASFA) in 1997 jumpedstart attention to the potential application of the drug court concept to cases involving abuse and neglect. Under the provisions of ASFA, states were mandated to file a petition to terminate parental rights and concurrently place for adoption children who had been in foster care for 15 out of the most recent 22 months, measured from the date of the first judicial finding of abuse or neglect, or 60 days after the child was removed from his/her home.

The overall goal of the family drug court has been to expedite the delivery of services to parents and children involved in abuse and neglect proceedings and to initiate the development of a meaningful permanency plan — which could involve a number of options, including reunification of the child(ren) with the parent(s), and/or involvement with other family members. While family treatment courts have not been the subject of significant recent evaluation, those that have been conducted have focused primarily upon whether differences were noted between court, child welfare, and treatment outcomes for families involved with Family Treatment Courts vs. those who proceeded through the traditional child welfare system in the locale.

2.4 Adaptation of the Drug Court Model to the Tribal Justice Systems of American Indian Nations

In 1997, the Drug Court Program Office (DCPO), Office of Justice Programs, U.S. Department of Justice developed a special program to assist American Indian Nations to plan and implement a drug court within their respective tribal government structure. Twenty-Two Indian Nations were awarded funds to implement the first of what are now 72 operational “Tribal Healing to Wellness Courts” in the U.S. In 2002, a set of “tribal key components” were developed by a committee of tribal justice and other community leaders, to provide the structure for Healing to Wellness Courts that adapted the “Key Components” for Adult Drug Courts to the context of tribal justice systems and communities. Although Tribal Healing to Wellness Courts operate within the jurisdiction(s) of their respective Indian Nations, many have cooperative relationships with neighboring state drug courts, particularly in situations where a tribal member may be charged with a state offense committed off tribal land. In these situations, it is not uncommon for the state drug court to transfer supervision and services to the Tribal Healing to Wellness Court, while still retaining ultimate jurisdiction for disposition of the case.


18 ASFA, Public Law 105-89.

19 See Note 13 above.


22 See Note 20 above.
3. Drug Courts: A Few of the Critical Training, Legal, Service Delivery, and Organizational Issues that have Emerged

3.1 Need for Adequate and Ongoing Training and Cross-Training for Drug Court Personnel

While the early drug court judges and other drug court personnel appeared to demonstrate a clear vision regarding the goals of the drug court programs, the services they needed to provide and the operational framework essential to providing them, as judges and other personnel changed, this universally shared perspective was often lost. Frequently, assignments of new “team” members were made without their receiving any prior training on the drug court model, the relationships entailed in implementing it, or critical issues relevant to the science of addiction, the cognitive effects on the brain resulting, and/or the major shift in paradigm that the drug courts vs. the traditional criminal justice or treatment process introduced.

In addition to general training, bringing together multiple disciplines to work together as a “team” -- many of whom had never previously worked in a similar collaborative effort -- had required specialized training on team functioning, discipline boundaries, and organizational relationships. Understanding of the functions of the various disciplines involved in a drug court team – prosecution, defense, probation, treatment, for example, -- has been a major challenge among team members in many programs. Role definition and boundaries, as well as respect for the functions of the specific disciplines involved with the drug court, has been a major challenge for many programs, exacerbated with periodic but ongoing team member turnover.

For example, a common issue that has occurred in many programs has related to the decision to terminate a participant; if a participant is to be terminated from the drug court, the termination decision is made by the judge, not the treatment provider -- and not by the vote of the team. Related to the need for role definition has been an understanding among team members regarding what each discipline does and the ethical and performance standards that may apply. This issue has had particular import in developing a common understanding among team members of “due process” requirements and constitutional rights.

3.2 Legal Issues

3.2.1 Decreasing Support and Involvement of Defense Counsel

The support and involvement of defense counsel with drug courts has decreased significantly over the years. While a number of factors are at play, the most significant of these are interrelated and appear to be the product of three factors: (a) the loss of drug courts as a “front-end” dispositional option, (b) the shift to a probation focus, and (c) the punitive vs. therapeutic nature that at least some drug courts exhibit.

The loss of drug courts as a “front-end” dispositional option creates a major void for defense counsel seeking a disposition that could assist their client with addressing their drug problem as well as concluding their case without a criminal conviction and thereby avoiding the associated collateral consequences – a critical “carrot” that the early drug courts offered. With the shift to a probation focus, drug courts no longer offer a front-end alternative for plea negotiation that defense counsel might support.

In a number of jurisdictions, the shift to a probation focus has also removed the state’s authority to provide public defense services – for which almost all drug court defendants qualify – because frequently the right to a public defender ceases, by statute or practice, upon case disposition. Although a public defender may represent a defendant at a probation violation hearing, the public defender does not continue to provide services while the probation violator is enrolled in the drug court. Consequently, the drug court defendant does not have assistance of counsel because his/her case is considered in probation status where, after the probation violation hearing, under the traditional process, he/she is not exposed to potential loss of liberty or other rights – a situation that does not, however, apply in the drug court., but, nevertheless, is frequently not distinguished from traditional probation services. Numerous appellate challenges to the termination of drug court participants in probation status who were unrepresented and the imposition of prison sentences have been dismissed, most frequently on the grounds that probation is a privilege and not a right.

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23 The observations in this section are drawn from the author’s extensive and ongoing contact with hundreds of drug courts during the 1989-present period.


The third factor that appears to have undermined defense counsel support and involvement with drug court programs relates to the commonly perceived punitive orientation of some drug courts (see No. 2 below) and the apparent lack of due process protections in drug court program decisions that affect a participant’s participation, and potential loss of liberty and ultimate program termination that may occur. Many defense counsel report that their clients are better off accepting a plea offer from the prosecutor than risking what often appears to be uncharted policies and procedures of the drug court in their local community.

3.2.2. Inconsistent Practices Regarding Protection of Constitutional Rights of Participants

Many – but not all – drug courts are designed to ensure the protection of participants’ constitutional and legal rights. However, the frequent absence of defense counsel actively representing participants in many programs as well as in legal and policy decisions regarding program operations, opens the way for violations of participants’ legal rights and/or, at best, lack of attention to protecting them. It is also not uncommon to find programs requiring participants to sign blanket waivers of constitutional rights without specifying what these rights are and the circumstances under which they might be suspended. Although reference is commonly made to the “non-adversarial” nature of drug court programs, everyone involved must be continually reminded that these are court programs that operate according to the applicable statutes and rules that govern all court operations.

3.2.3 Need for Clearly Articulated Eligibility Criteria Consistently and Universally Applied

One of the initial tasks in developing a drug court is the articulation of the program’s eligibility criteria – particularly in terms of offenses and criminal history. Once these are articulated, however, they need to be consistently and systematically applied to all defendants to identify those who qualify. Many drug courts appear to have adopted a practice of subjectively determining who can participate rather than applying clearly articulated eligibility criteria to all potentially eligible defendants. A few programs even require an application process which the defendant must follow even though, on paper, he/she would qualify, at least preliminarily, for the drug court program. Some programs require a “team vote” as to whether an individual defendant can be admitted. While the origin and rationale for these processes are not known, they are inconsistent with the legal principles and framework underlying the drug court concept: to make court supervised treatment services available to all who needed them and qualified for them. Anecdotally, programs that use these processes have been found to have relatively low retention rates – an expected result since they clearly are not using evidence based criteria for identifying candidates whom the program can best serve. Most significant, however, these subjective “selection processes” appear to be major factors accounting for the relatively low levels of participation many drug courts are experiencing.

3.3 Demographic Disconnects Between Arrestee Populations and those in Drug Courts, with Disparity and Other Disconnects Resulting

One of the direct results of the lack of systematic mechanisms to identify drug court-eligible participants for drug court program participation discussed above is the disconnect that has frequently resulted between the demographics of arrestee populations and those participating in drug courts. The discrepancy is particularly noted in the degree to which African Americans participate in drug courts compared with their representation in the arrestee population. Unfortunately, data is not collected systematically by drug court programs or the criminal justice system generally that can fully identify the number(s) of arrestees potentially eligible for drug court services and their demographics, with the result that the full extent of the problem is not documented and not yet systematically addressed. It is, however, a concern of many, both within and outside of the justice system, and a topic addressed in a plenary session at the 2016 Annual Conference of the National Association of Drug Court Professionals (NADCP).

3.4 Reinvigorating the Leadership Role of the Drug Court Judge

Many drug courts have been/are served by outstanding judicial leaders. Unfortunately, the enormous role they have taken on is not always recognized by the court to which they are assigned and, unfortunately, when they retire or are reassigned, a tremendous leadership vacuum is created. While it may not result in the immediate demise of the program it can reduce its outreach and impact and, most important, its therapeutic focus.

Drug courts rely on services from many sectors and can only be sustained through the ongoing leadership which the court must provide to engage these entities and sustain the collaboration necessary to make drug courts work over the long

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26 These findings are based on the author’s assessment of participant retention in the hundreds of drug courts she has worked with and generally documented in the individual technical assistance reports she has prepared. See: [www.american.edu/justice](http://www.american.edu/justice).

term. The leadership role of judges in this regard to establish – and sustain – drug courts cannot be overstated. The judge’s role vis a vis a drug court goes far beyond the courtroom and is crucial to instituting the collaborative partnership of the justice system with the public health/mental health system(s) and related agencies to make a drug court possible. With the multitude of leadership, budget, policy and other changes that affect – and can affect – the multi-faceted justice/public health system environment in which the drug court must function, the critical leadership role of the judge in sustaining a drug court program is vital – and now more important than ever.

The judge’s leadership role is also critical in keeping the drug court team focused on the therapeutic purposes and principles that underlie the Drug Court concept and how it differs from the traditional adversarial process. Without this continual therapeutic focus, it is, easy to slip back into the traditional paradigm, especially with personnel turnover.

3.5 Inconsistent Use of Evidence Based Practices

While the science of addiction and addiction medicine has developed significantly since the first drug court was introduced, these developments have yet to be systematically incorporated into the continuum of drug court treatment and related services. For example, the basic treatment services that drug courts have relied upon have been the Intensive Outpatient (IOP) model that entails a minimum of nine hours of counselling per week, supplemented with additional individual and/or group services as may be needed. Nevertheless, it is not uncommon to encounter drug courts that offer much more limited treatment services – clearly inconsistent with the intensive outpatient treatment services deemed critical. Similarly, the effectiveness of medication assisted treatment (MAT) has been well documented in numerous research efforts28 and yet it is not uncommon to find drug courts that resist the use of MAT because they have been traditionally “abstinence based”. The federal government’s recent mandate that any program that receives federal funding cannot exclude the use of MAT if it is available has brought the issue to the “front burner”. However, the long-term impact of the directive is at this point problematic for a number of reasons. The most significant reason is a shortage of physicians qualified to prescribe MAT, particularly in rural areas hit hard by the opioid crisis and desperately needing this medication. There is a need for (a) prescribers to work in close coordination with the psycho-social services provided by the drug court and (b) for procedures to be in place to minimize the possibility of diversion of the substance.

4. Strengthening and Sustaining Drug Courts over the Long Term

The preceding sections of this article were designed to provide a brief overview of the context in which drug courts have evolved and a few of the issues that have emerged as the drug court concept proliferated, adapting to the various criminal justice and political environments in which it was implemented. Many of the challenges the implementation of the drug court model is presently encountering are tied to decisions – made formally or informally – to “tweak” the model, resulting in programs calling themselves “drug courts” but clearly lacking all of the Ten Key Components required. In some instances, this “tweaking” also entails foregoing the constitutional and legal protections to which all defendants in criminal matters in the U.S. – drug court and non-drug court – are entitled.

It is not the purpose of this article to provide an “action plan” for remedying operational issues that have emerged, some of which are addressed above. That task can be taken on by those working more closely with individual programs. The purpose of this article, rather, is to suggest a few systemic steps that can be taken to strengthen the drug court model over the longer term and preserve the unprecedented opportunities it provides for individuals to rebuild their lives, restore relationships with families and communities, and promote public safety in a systematic and constructive way that hasn’t previously been done. While there are still many excellent drug courts operating, actively achieving all of the Ten Key Components, it behooves all students of the justice system to take account of the past and the lessons it provides to build for the future.

Building for the future over the longer term will require a qualitative rethinking of the drug court model, not simply quantitative improvements. The following are key issues that should be considered:

4.1 Developing a Unifying Mission that all Disciplines whose Support is required can Adopt

One of the major reasons drug court programs have received the sustained support which they have is that they have become all things to all people. On the one end, they have served as pretrial diversion opportunities for defendants to obtain treatment and, if successful, to remove the stigma and associated collateral consequences of a criminal record. On the other end, they have been used as prison alternatives and advocated as vehicles for cost-savings. While these various purposes are not mutually exclusive, experience has shown that, often along the way, the overall mission of the drug court concept and the constitutional and legal framework in which it was designed to operate can become

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compromised, particularly when the multidisciplinary collaborations required are not in sync, traditional silos of practice remain in place, and evolving research, particularly regarding addiction, treatment, therapeutic practices and related topics, does not systematically make its way into the day to day operations of a drug court program.

The “Key Components” were developed by a committee of professionals for whom the unifying mission of the drug court concept was an unspoken “given.” With the many who have since circled in and out of drug court programs, it may be time to redirect attention to the purpose of these programs and develop a unifying mission statement that will set the tone and direction for these programs now and for the future and make sure everyone is on the same page as to the goals of the program, the services it needs to provide, and the therapeutic strategies that need to be employed. As part of this process, it will be useful to take into account some of the pathways drug courts have travelled that have been constructive and those which have not been. Hopefully observations presented in this article can provide a starting point.

4.2 Determining where Drug Courts belong in the Criminal Justice Spectrum
With most local prosecutors in the U.S. state judicial systems elected and the increasing focus on “high risk”/”high need” offenders who have been found to benefit significantly from the intensive supervision, treatment, and holistic services of the drug court, returning the drug court to a pre-trial status may not be feasible in many locales. However, even if drug courts operate as post-conviction and/or probation programs, there is no reason why the process cannot be expedited and enhanced so that the benefits of early intervention (Key Component Three) are achieved. There is also no reason why the dispositional process cannot be rethought to develop strategies for eliminating the felony conviction -- at some point -- for participants who complete the program, so that they do not suffer the collateral consequences and stigma that limit or foreclose altogether opportunities for employment, voting, professional licensing, and many other rights and privileges which are currently off limits to persons with a criminal history. Addressing these issues would go a long way in terms of promoting true reintegration of participants into the community.

4.3 Creating Partnerships with Graduate Schools to develop Curriculum that can prepare new Generations of Professionals regarding the Therapeutic Concepts imbedded in the Application of the Drug Court Concept
Among the many lessons the drug court experience has provided is the significant value a therapeutic jurisprudence approach -- e.g., using the law as a potential therapeutic agent -- can add to the traditional criminal justice function. Many disciplines involved with the criminal process can benefit from this approach generally whether or not they are directly involved with drug court services. We have now developed sufficient history and experience with these concepts to incorporate them into the formal academic curriculum used for educating professionals, at least some of whom may likely be drug court practitioner or otherwise involved with the justice system in the future. Included in this curriculum should be an overview of the traditional approach for adjudicating criminal cases, along with concepts and case studies that can be applied to enhance traditional practices with such concepts as therapeutic jurisprudence, procedural justice29 and justice system alternatives generally. In addition to law schools, schools of social work, psychology, sociology, and anthropology appear to be prime targets for this proposed academic collaboration, but there are likely many more.

4.4 (Related): Developing Partnerships with Medical Schools and Schools of Public Health.
Drug courts desperately need to partner with medical schools and schools of public health in order to ensure that continually evolving evidence based research findings are being incorporated into the treatment and related services drug courts provide. Judges, in particular, rely on scientific findings for their decision making for cases before them, and drug court cases are no exception. Partnerships with medical schools and schools of public health would have benefits for both partners. Drug Courts would have access to requisite medical professionals for both training and service delivery, as feasible, as well as current research that may be relevant to the needs of the participants their programs are serving. And medical schools and schools of public health can develop first-hand experience in dealing with the front-line substance use, mental health, medical and public health situations that drug court regularly confront.

4.5 (Related) Integrating Drug Court Principles into the Regular Continuing Education Programs for all Judges, Prosecutors and Defense Counsel regardless of whether they work in a Drug Court.
With drug courts now operating for more than a quarter of a century, it is time for the topic to be a regular component of continuing judicial and other legal education programs, just as evidence, criminal law and other substantive topics have become standard CLE segments. Hopefully other disciplines will take on this initiative as well. A well-structured CLE program on drug courts can include the critical issues that need to be addressed in developing sound evidence based programs that build on best practices, effective treatment and related service delivery models, and the organizational infrastructure necessary to ensure their effective operation. Even those who do not presently work in a drug court can

29 Essential concepts of procedural justice, as applied to the court process, entail decision-making that is transparent, consistent, involved the “voice” of those involved, and is respectful even when decisions may not be popular for all involved. See “Beyond Intractability”, http://www.beyondintractability.org/.
benefit from this training in light of the high percentages of drug and alcohol involved litigants that constitute most court caseloads – civil as well as criminal.

4.6 Developing and Disseminating Evaluative Information that Succinctly and Meaningfully demonstrates their Value

Because drug courts are complex organizations, it has been difficult to provide evaluative information that succinctly captures the benefits they provide – particularly compared to “business as usual”. Most of the public doesn't fully understand how the “traditional” justice system operates, let alone the “outcomes” resulting, so providing salient evaluative information on drug courts will require its presentation against the backdrop of (1) the function(s) and outcomes of the “traditional” process, as well as (2) the research continually emerging regarding addiction, associated mental health disorders, and brain impairment that the traditional process has not addressed.

While traditional evaluation methodologies using comparison and/or control groups may make sense academically, the evaluations that drug courts need are those that can convey the diversity of needs presented by participants (e.g., substance use, mental health, medical, criminogenic, etc.), the range of services the drug court is providing, and the incremental outcomes – measured often in days – that are being achieved. Addiction is a chronic, recurring disease of the brain and recovery is an ongoing process with “cycles of relapse and remission”30; drug court evaluation methodologies need to follow the paths associated with these characteristics even if they don’t traditional research methodological approaches.

Case in point: most drug court “evaluations” focus on the degree to which participants complete the program and do not reoffend. While these measures are important, they are meaningless without the context in which they develop. First, reporting primarily the number of “completers” and their recidivism rates, puts the burden of assessing the value of the drug court on the participant, rather than first looking at the quality of the services the program, the individualized treatment regime involved for each of the participants, and the degree to which the program reflects fidelity to the Ten Key Components and ongoing integration of evidence based practices. Given the frequency with which drug courts presently deviate from these quality benchmarks, evaluations of drug court programs can be significantly more useful if they first focus on the program’s fidelity to the “key components”, quality of services and then assess the outcomes for participants.

There is also no reason why Drug Court evaluation methodologies should not follow the protocols of evaluations of the treatment of other chronic diseases, focusing on the treatment regime in place, characteristics of the patients studied, and then the outcome(s) for the individuals involved. While summary aggregate data may be useful for some purposes, given the multi-faceted nature of addiction and recovery and the individualized treatment regimens that are needed, evaluation of drug court programs need to convey the range of needs participants present, the nature of services provided, and their respective situations at time of program entry – drugs used, years of drug use, family situation, living situation, associated mental health and other conditions, etc.

Documentation of aggregate participant outcomes can also be significantly enriched if the present focus on recidivism – e.g. reoffending – is augmented with measures of desistance – e.g. pro social measures associated with not reoffending -- such as employment status, family status, physical well-being, etc. -- that may account significantly for upward or downward recidivism findings. These measures can also tie into cost savings – for the justice system, employers, public health, emergency room admissions, and others where costs are incurred directly or indirectly to address the ramifications of drug use.

5. Moving Forward

How can these recommendations be implemented? Do they require money? And, if so, where will it come from?

Moving forward with these recommendations, at least initially, requires thoughtful follow up and collaboration. In most instances, the infrastructure is already in place to build upon. Ideally it would seem that follow-up efforts should proceed on a state by state basis, identifying judicial education and training entities, academic institutions, and administrative agencies that can potentially spearhead these efforts. In moving forward, however, the last recommendation – developing meaningful evaluative information – may be the first to focus on. Institutionalizing the change in paradigm that the drug court model has introduced requires convincing the various audiences whose support is needed that this paradigm shift is in everyone’s interest(s). Experience has reinforced the recognition that, while the human benefits must be stressed (“drug courts save lives”), the economic benefits and cost savings must also be clearly documented. It is in everyone’s interest to strengthen and sustain the drug court model.

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When Special Immigrant Juveniles and Trial Courts Intersect: The Value of Data-Informed Case Management

By Danielle Fox, Ph.D., Hisashi Yamagata, Ph.D., Lili Khozeimeh, Esq., Marianne Hendricks, Esq., Madeleine Jones, Esq., and Rick Dabbs

Abstract:

In recent years, the United States experienced a large influx of unaccompanied alien children (UAC). While state courts do not adjudicate the immigration status of UAC, they may become part of the process by which UAC seek immigration relief from the federal government. Special Immigrant Juvenile Status (SIJS) is a designation under the US Immigration and Nationality Act of 1990 to assist such children obtain temporary immigration relief and possibly lawful permanent residency. Obtaining SIJS requires specific factual findings to be made by a state juvenile court in a predicate order. The influx of UAC has resulted in increases in cases with SIJS requests experienced by state courts nationwide. This article describes a Maryland trial court’s evolving approach to the management of these cases and the use of data to inform and guide that evolution.

Keywords: Case Management; SIJS; Performance Management; Performance Measurement

1. Introduction

A portion of global migration includes unaccompanied alien children\(^2\) (UAC) (Simich and Mallozzi, 2015; Levinson, 2011). The average number of UAC arriving in the US who were under the custody of the US Department of Health and Human Services (HHS) increased eightfold from 7,100 per year\(^3\) between Federal Fiscal Years (FedFYs)\(^4\) 2003-2011 to 57,500 in FedFY2014\(^5\) (HHS, 2016; Government Accountability Office (GAO), 2016). Additionally, the number of UAC apprehended at US borders increased by 180% from 24,481 in FedFY2012\(^6\) to 68,631 in FedFY2014\(^7\) largely due to an influx of UAC from Guatemala, Honduras, and El Salvador (Donato and Sisk, 2015; GAO, 2015).\(^8\) While the number of UAC apprehensions decreased by 42% to 40,035 in FedFY2015, the number increased to 58,821 in FedFY2016.\(^9\) The increased presence of UAC resulted in heightened attention and concern among the public about, among other things, the country’s response and the ability of local, state, and federal governments to meet these children’s diverse and unique needs (Chishti and Hipsman, 2014; Simich and Mallozzi, 2015).

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\(^2\) Per 6 U.S. Code ‘279(g)(2) see https://www.law.cornell.edu/uscode/text/6/279, [accessed 07 March 2017], an “unaccompanied alien child” is under the age of 18, and with no parent or legal guardian in the United States or no parent or legal guardian in the United States available to provide care and physical custody.

\(^3\) Calculation was performed from data retrieved from https://www.acf.hhs.gov/sites/default/files/olab/2016_acf_cj.PDF [accessed 08 March 2017].

\(^4\) The federal fiscal year (FedFY) spans from 01 October to 30 September. For example, FedFY 2003 spans from 01 October 2002 to 30 September 2003.

\(^5\) Data for FedFY2014 referrals to HHS custody was retrieved from https://www.acf.hhs.gov/orr/about/ucs/facts-and-data [accessed 07 March 2017].


\(^8\) Toward the end of FedFY2014, shifts occurred in the representation of UAC from Mexico and Central American potentially due to the responses that were put in place to address the influx of unauthorized immigration (Kandel, 2017; Rosenblum and Ball, 2016).

State courts in the US have a unique connection with UAC through an immigration relief classification known as Special Immigrant Juvenile Status (SIJS). While not adjudicating the immigration status of UAC, state courts function as an intermediate step in the federal immigration process by making determinations as to whether children meet certain factual findings needed to apply for the status (CPPS and NCSC, 2015). As courts work to meet their workload and caseload demands and case processing performance goals, handling cases with a SIJS request may present unique procedural challenges such as serving individuals residing outside the US. Without a management structure and clear procedures to guide case progress, these cases may languish in the system challenging the administration of justice (Martin et al., 2009, 2010). Adherence to the rule of law is also critical and enables courts to deliver justice in an accessible, fair, and efficient manner (NACM, 2015). In relation to cases with SIJS requests, predicate findings by state courts are required before UAC’s SIJS status can be considered and determined by the federal government. By creating a process that ensures the predicate findings are made timely, correctly and consistently, the court's process facilitates that the rights and opportunities provided under federal law are accessible to all.

Since May 2013, a Maryland trial court has experienced a steady increase in the volume of family law cases with SIJS requests. The most noticeable increase occurred between July 2015 and June 2016. Focusing on the evolution of the court's management practices associated with these cases, this article addresses the following questions:

- How is data utilized to inform the management of case progress when shifts in caseload occur?
- What resources are needed for courts to sustain a data-informed approach to case management?

1.1. Immigration Relief: Special Immigrant Juvenile Status (SIJS)

SIJS, which was established by the US Immigration and Nationality Act (INA) of 1990, offers temporary immigration relief for certain UAC seeking to obtain lawful permanent residency in the US (Knoespel, 2013; Junck, 2012; CPPS and NCSC, 2015). “Special immigrant” as defined by the INA is an immigrant who is under the jurisdiction (or care) of a state juvenile court, is deemed eligible for long-term foster care by that court and for whom it has been determined that it is not in his/her best interests to return to his/her home country or last habitual residence (Knoespel, 2013). Per US Code, “eligible for long-term foster care” means that the juvenile court made a determination that “family reunification is no longer a viable option.”

The SIJS immigration classification is tailored to protect a child who is not a US citizen from deportation (Baum et al., 2012) with its focus on the child’s best interests (Pulitzer, 2014). In 1997, amendments added the language of abuse, neglect or abandonment (United States Customs and Immigration Services (USCIS), 2004; Knoespel, 2013; Hamm, 2004) to clarify the law’s original intent. In 2008, the William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) expanded eligibility for SIJS by removing the “long-term foster care” language (USCIS, 2009). In particular, TVPRA clarified that if it is not viable for a child to reunify with one or both parents due to abuse, neglect, abandonment or similar basis found under state law, then the child may be eligible to petition for SIJS relief (Junck, 2012; Catangay, 2016). TVPRA also outlined the eligibility requirements that a state juvenile court must make for a valid SIJS petition (Knoespel, 2013). The specific findings that must be contained within the state court’s predicate order to petition for this immigration relief are:

- Declare the child dependent on the juvenile court, or legally commit or place the child under the custody of either a state agency or department or an individual or entity appointed by a juvenile court;
- State that reunification with one or both of the child’s parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law; and
- Include the best interests determination for the child not to return to his or her country of origin.

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1.2. Maryland Courts and SIJS
According to Maryland Code (Family Law (FL) §1-201(b)(10)), circuit courts have jurisdiction over custody and guardianship matters where an immigrant child is seeking factual findings in support of SIJS relief (In re: Dany G., 223 Md. App 707 (July 2015)). A Maryland circuit court is a trial court of general jurisdiction handling major civil and more serious criminal cases, as well as family and juvenile cases. In 2014, the State of Maryland sought to align its state law with federal regulations on eligibility requirements for SIJS application. Specifically, Maryland law, which took effect in October 2014, altered and extended the jurisdiction of an equity court in custody and guardianship matters of an immigrant child pursuant to a request for SIJS factual findings (Page, 2014). It also addresses a gap between state and federal immigration laws related to the age of a child for court dependency purposes, defining a child as an unmarried individual under the age of 21 years. Expanding jurisdiction of Maryland circuit courts increases the likelihood that children meeting specified eligibility requirements can take greater advantage of immigration relief available under federal law (Page, 2014).

2. Methodology
The present analysis uses data from family law cases with a SIJS request filed with Montgomery County Circuit Court, a local trial court in Maryland from May 2013 through September 2016. The court serves a population of over one million residents with 24 judges, 5 family magistrates, 14 senior judges and 300 Court Administration and Clerk of the Court personnel. We examined the number of filings, closures and pending family law cases with SIJS requests, as well as pending days.

The filing date was based on the initial SIJS request date.

A case was considered closed if the SIJS-related order was entered or the case was otherwise closed (e.g., dismissed). The closure date associated with the SIJS-related order was the primary closure date captured for analysis. If no SIJS-related order was entered but the case was otherwise closed during the data collection period, then that closure date was used for analysis. Pending cases were those without an entry of a SIJS-related order or other case closure (as defined above) at the time of the data collection period. Age of pending cases was calculated from the initial SIJS request filing date to the date of the reporting period (in days).

Descriptions of the court’s case management efforts were obtained from court personnel directly involved in the monitoring and management of cases with SIJS requests. A total of 939 cases had their initial SIJS request filed with the court between May 2013 and September 2016. Ninety-eight percent of the SIJS requests were filed as part of a custody (N = 612) or guardianship (N = 306) case. Accordingly, all analyses focus on custody and guardianship cases containing SIJS requests.

3. Management of Custody and Guardianship Cases with SIJS Requests
Between Fiscal Year 2014 (FY2014) and FY2016, a total of 26,807 original family law cases were filed with Montgomery County Circuit Court. Of those, 4,556 (17%) were cases with custody or guardianship as the main charge in the complaint. The court processed 740 custody and guardianship cases with SIJS requests, accounting for 16% of custody and guardianship cases and 3% of all family law cases. During this period, the percentage of custody and guardianship cases among all family law original case filings increased from 15% to 19%. The representation of custody and guardianship cases with SIJS requests among all family law cases also increased from 1% to 5% while that of non-SIJS custody and guardianship cases remained at 14%. Thus, the increased representation of custody and guardianship cases among overall family law original case filings was largely due to the increase in those with SIJS requests. In fact, the representation of cases with SIJS requests among custody and guardianship cases increased from 8% in FY2014 to 24% in FY2016.

20 May 2013 was identified as the beginning of the reporting period because that is when the court began officially tracking cases with SIJS requests. To the extent that the specific SIJS request code was not docketed in a case, the results will be underestimated.
21 SIJS requests may be filed with a juvenile, dependency/child protection, or other family law (e.g., divorce, paternity, or adoption) petition; however, those cases represent 2% of the entire SIJS caseload.
22 Since the analysis uses the complete population of custody and guardianship cases with SIJS requests, no statistical significance testing is necessary.
23 Analyses are primarily reported either by month/year or by state/local government fiscal year (July 1 – June 30) beginning with Fiscal Year (FY) 2014 (July 1, 2013 – June 30, 2014).
Between May 2013 and September 2016, a total of 918 custody or guardianship cases with SIJS requests were filed. Sixty-seven percent of SIJS requests were filed with a custody petition while 33% were filed with a guardianship petition. As shown in Figure 1, since May 2013, the number of custody and guardianship cases with a SIJS request has steadily increased. The most noticeable increase took place between July-December 2015 and January-June 2016, when the 6-month average between the two periods increased by 69% from 26 to 44 cases. A variety of factors contributed to this increase, including the deadline for visa applications for the citizens of El Salvador, Guatemala, and Honduras (announced in February 2016); recent political rhetoric related to US immigration policy coinciding with the presidential primaries; and an increased awareness by attorneys in the local, geographical area about the court’s improved processing of its SIJS caseload. Additionally, an increase in custody cases with SIJS requests occurred in October 2014 coinciding with new case law and a change in Maryland Law expanding the definition of a child for the purposes of SIJS factual finding determinations.

As the number of cases filed with SIJS requests increased so did the number of pending cases leading to the court’s review and revision of its management approach. The evolution of the court’s SIJS case management efforts are discussed in relation to three time periods: Pre-January 2014, January 2014-September 2015, and October 2015-September 2016.

3.1. Pre-January 2014
While cases with SIJS requests filed at Montgomery County Circuit Court date back to 2007, increased attention on these cases did not occur until 2013. Between 2007 and 2012, a total of 41 custody and guardianship cases were filed with a SIJS request, which may have more than one SIJS request filed, which is usually reflected as an amended request. Cases and not SIJS requests were the unit of analysis.

24 Cases may have more than one SIJS request filed, which is usually reflected as an amended request. Cases and not SIJS requests were the unit of analysis.

25 It is likely that cases with SIJS requests pre-date 2007; however, based on searching for cases with the word “immigrant” contained in the case management system between 2006 and 2009, no more than 3 cases had a SIJS request filed or referenced in the docketed pleadings.
request. Given the small caseload (7 cases per year), a single judge presided over these cases. Attorneys primarily coordinated hearing dates with the judge’s chambers, and there was minimal pre-hearing review of case documents by the court to ensure the case was in the proper posture for the judge to make factual findings on the SIJS request at the initially scheduled hearing.

During 2013, the court received a total of 69 custody and guardianship cases with a SIJS request, reflecting a 68% increase from the prior 6 years. The increase in SIJS requests, new case law addressing issues related to guardianship appointment (e.g., In re Guardianship of Zealand W. and Sophia W. 220 Md. App 66, 2014) and the retirement of the judge presiding over these cases presented an opportunity for the court to examine its management practices in relation to these cases.

3.2. January 2014 – September 2015

The average number of family cases with a SIJS request doubled from 5 to 13 per month in 2014 (see Figure 1). In early 2014, court personnel developed separate procedures for processing custody and guardianship cases with SIJS requests because of their different statutory requirements. The court also adopted a two-judge management approach where one judge presided over the custody or guardianship matter while the other presided over the SIJS matter. Separating out the custody/guardianship and SIJS matters was to offer a more focused review of these distinct issues. Also, having a single judge preside over the SIJS requests added a level of standardization and consistency in the factual finding determinations.

3.2.1. Custody cases with SIJS requests

After filing a petition for custody and a request for SIJS findings with the court, clerk personnel determined if service was achieved based on the additional papers filed with the petition. Following this initial service determination, family case managers conducted their service review process pursuant to Maryland Rules 2-121 to 2-126 and removed the scheduling hearing from the magistrate’s docket (once service was established). The case file was then sent to the judge designated to preside over the custody issue. Judge’s chambers contacted the party’s attorney to coordinate the scheduling of the hearing. After the custody order was docketed, the file was sent to the judge designated to preside over the SIJS request.

Similarly, the scheduling of the hearing for factual findings on the SIJS request was made in coordination with the attorney’s schedule.

3.2.2. Guardianship cases with SIJS requests

When a party filed a guardianship petition with a SIJS request, clerk personnel docketed both pleadings in the case management system and the adoption-guardianship case manager reviewed the file pursuant to Maryland Rule 10-201 ensuring service was achieved and consent obtained. The adoption-guardianship case manager then issued a show cause order and set a hearing date on the calendar of the judge assigned to hear the guardianship matter. Following the docketing of the guardianship order in the case management system, the case file was forwarded to the judge designated to hear the SIJS matter. That judge then scheduled a hearing on the SIJS request in coordination with the party’s attorney.

While the two-judge approach reduced the likelihood that a single judge’s docket would become overwhelmed by an increasing SIJS caseload, receipt of complete and accurate documents and the timely scheduling of key events in these cases continued to challenge the court. For instance, attorneys, unfamiliar with custody and guardianship rules of procedures and/or immigration law, would submit incomplete or insufficient paperwork resulting in delayed court proceedings or case dismissals. Furthermore, evolving case law related to SIJS factual findings and amendments to Maryland statute that occurred during this period underscored the need for continued monitoring of the court’s case management processes to ensure compliance with legislative, rule, and policy changes.

In July 2015, the court observed an increase in pending family cases with SIJS requests. At that time, there were 240 pending custody and guardianship cases with SIJS requests, and the average age of those pending cases was 199 days.

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26 The Court of Special Appeals in Maryland concluded that the circuit court did not have the authority to appoint a third party as a guardian of a child when a parent is alive and parental rights have not been terminated under Md. Code, Estates & Trusts Article, section 13-702. This ruling shifted the type of cases in which SIJS requests were primarily filed. Prior to the decision at the end of October 2014, the guardianship-custody breakdown was 53%-47% (N=177) whereas following the decision it was 29%-71% (N = 741).

27 In instances where an emergency petition for custody was filed along with a request for SIJS findings, the case file was sent directly to the judge presiding over the custody matter to determine if the hearing was to proceed immediately or be scheduled at some later date.

28 The court has five family case managers including a supervisor who support the Family Division as referenced in Maryland Rule 16-307.

29 Scheduling hearings were automatically set in these cases by the court’s case management system per the Family DCM plan (http://www.montgomerycountymd.gov/circuitcourt/Resources/Files/FamilyDivision/Family_Division_Case_Management_Plan.pdf [accessed 07 March 2017])

The average age of the pending caseload continued to increase, reaching 214 days by September 2015. Of all 560 SIJS closures during the 3.5 year period, only 27% (151) occurred during the first 2.4 years (May 2013-September 2015) despite 46% (N=422) of the 918 SIJS case filings during the same period.

3.3. October 2015-September 2016

By November 2015, the pending SIJS caseload reached 300 cases highlighting the need for action by the court. In addition, the percent of the SIJS pending caseload that was backlogged increased to 22% in November 2015 (and remained at that level in December 2015) from no more than 5% between May 2013 and January 2015. At the end of December 2015, the court’s Family Judge In-Charge implemented a special docket to address a portion of the court’s pending SIJS cases. As a result, the average number of cases closed between December 2015 and September 2016 increased to 39 cases per month from 5 cases per month during the previous 6-month period. In addition, as shown in Figure 3, the average age of pending cases decreased by 44% from 233 days in December 2015 to 130 days in September 2016. The clearance rate, which was 32% in FY2014 and 37% in FY2015 substantially improved to 90% in FY2016.

During this period, the two-judge management approach from the previous period was modified into a three-judicial officer approach where the same two judges independently presided over guardianship cases with SIJS requests while a single magistrate presided over custody cases that had an accompanying SIJS request. Case preparation efforts were expanded to ensure that service was properly established, consent was obtained (in guardianship cases), documents and accompanying translations were complete and accurate, and case preparation worksheets and critical reviews were completed prior to the scheduled hearings. These tasks were performed by the adoption-guardianship case manager for guardianship cases and by the magistrate’s administrative assistant for custody cases. In addition, the task of scheduling events shifted from an attorney-driven approach to one managed by the court. For example, in custody cases, the custody and SIJS hearings were automatically set by the case management system to occur within 125 days of service being achieved.

Figure 2 – Number of Requests, Closures, Pending Custody and Guardianship Cases, May 2013-September 2016

31 See Appendices A and B for flow charts of the pre-hearing processes in custody and guardianship cases with SIJS requests, respectively, during this period.
32 A pending case is considered backlogged when its age is greater than 365 days per the Maryland Judiciary’s case time standard for family law cases.
33 The clearance rate was calculated by dividing the number of cases that received a SIJS order or were otherwise disposed by the number of cases where a SIJS request was filed.
While the pending SIJS caseload initially declined to 248 cases by the end of April 2016, it started increasing in May 2016 and reached 358 cases by September 2016. This increase was impacted by two factors. First, the number of SIJS requests surged in January 2016. The 6-month average of SIJS requests in custody and guardianship cases, which increased from 26 in the July-December 2015 period to 44 in the January-June 2016 period increased further to 55 between July and September 2016. The number of SIJS requests filed in guardianship and custody cases between January and September 2016 totaled 427, which was a 108% increase over the same 9-month period in 2015. Second, the number of SIJS closures started to decrease beginning in May 2016. Case closures reached 62 in April 2016 exceeding the 56 closures achieved in December 2015. In May 2016, there was a 35% decrease in closures from the previous month. By September 2016, closures decreased by 77% to 14 cases. A likely reason for the decrease in SIJS closures is the disruption in the management of SIJS cases between August and September 2016 that resulted from turnover of personnel directly involved in the management of these cases.

![Figure 3 – Number of Pending Custody and Guardianship Cases and their Average Age (in Days), May 2013-September 2016](image)

More active oversight and management of this caseload including greater use of data occurred during this period. Simultaneously, discussions took place regarding the role of family case managers in the monitoring of the progress of custody cases with SIJS requests since management of these cases was primarily undertaken by judicial administrative assistants. To assist the work of case managers and administrative assistants, the court developed a SIJS database that would draw data from the court’s case management system and automate certain operations that were manually performed by staff, including generating critical review sheets. The critical review sheets inform judicial officials about the posture of the case prior to the custody (or guardianship) and SIJS hearings.

**4. Discussion**

Over the past four fiscal years as Montgomery County Circuit Court’s SIJS caseload grew, the examination and re-examination of its case management practices became essential to ensure efficient processing and adherence to the rule of law. These reviews of practices required collaboration and teamwork among staff at all levels of the organization and a recognized value by court leadership in the use of data to inform management decisions. The court’s case management efforts are not solely about meeting a performance goal or being efficient at any cost but rather ensuring meaningful events produce meaningful outcomes within the context of timely justice. The commitment to these case management tenets
cannot be overstated especially when presiding over cases involving minors seeking factual findings to support a SIJS application for temporary immigration relief.

Custody and guardianship cases with SIJS requests increased in volume by 5% over the court’s existing family caseload between FY2014 and FY2016. Increases in case volume have minimal impact to the extent that they can be managed within the court’s existing resources, docket capacity and operational framework. However, if the caseload increases to the point of adversely impacting operations and timely, quality justice, the court must undertake a more focused review its case management policies and practices.

In the present study, data was used to initiate and guide the court’s SIJS case management efforts. A performance management approach was invoked whereby the court sought an improvement over its current situation (Ostrom and Hanson, 2010) and drew upon data to inform, assess and demonstrate those improvements. While few would argue with a data-driven approach to operations management, many courts continue to be challenged by a lack of capital or investment in the utilization of data. As discussed in the High Performance Court Framework (Ostrom and Hanson, 2010), the value of court capital in relation to the people, organization, information, and technology is realized in the practical application of the court’s mission.

At this Maryland court, leadership made investments in those capitals as a means to support and demonstrate the value of data. For example, in relation to human capital, as positions became available targeted recruitment of individuals with specific-skills believed to support the vision for the organization occurred. Efforts were made to identify grant funding opportunities and partner with the State’s Administrative Office to invest in resources that the local jurisdiction was unable to support alone. The acquired investments were reflected in the court’s infrastructure, organizational structure and policies. The court’s development and implementation of a case management system, its establishment of core administrative departments (e.g., case management, data quality control, and research), its hiring of case management professionals (e.g., DCM Coordinator and family case managers) as well as the institutionalization of case management policies (e.g., DCM) are all examples of organizational capital. These systems, departments, personnel and policies guide management and operations. Ideally, the cumulative impact of the court’s leadership, organizational structure, policies and processes is reflected in the service delivered at the front counter and the justice delivered in the courtroom. Further, acquiring and sustaining these investments is more easily achieved when there is a shared vision of the value of data among leaders within the organization.

Even when a court has established a level of organizational capital to collect and use data to inform management decisions, performance management is not always easily implemented or sustained. While most court leaders and managers acknowledge the value of data, potential roadblocks exist in translating that acknowledged value into a practical reality. For example, key case-related data may not exist in a court’s case management system. If the data exists, it may not be easily accessible. If the data exists and is easily accessible, courts may not have personnel who understand the data and know how to use it in a way that informs their management and business decisions. When these data challenges arise, courts should mobilize and seek additional resources or assistance to identify and implement solutions. This is where courts committed to data-driven management establish a plan for performance measurement and management as well as explore their capacity to engage in and use evaluation (see Bourgeois and Cousins, 2013).

Successful case management evolves over time. It is an iterative process that frequently requires continuous review of policies and procedures with data to reach and maintain a level of high performance (Ostrom and Hanson, 2010). Montgomery County Circuit Court experienced this in its management of custody and guardianship cases containing SIJS requests. While data was used to varying degrees between May 2013 and September 2016, it was only in the last case management period in 2016 where data was actively used to inform not only case management initiatives but also operations management. As the court moves forward, focus is on developing a database to allow personnel to track case progress and run workload and data quality reports, as well as print case-specific critical review sheets for judges as they prepare for related case events. Additional functionality is underway to automatically schedule the SIJS hearing and issue scheduling orders in these custody cases from the case management system. In an ideal situation, the court would not have needed to modify its case management approach because our first approach would have been the best, most appropriate response given the existing organizational capital. However, this is not realistic since the environment that surrounds the court is constantly changing. What the court has learned and invested in is the importance of recognizing and capitalizing on improvement opportunities when they arise.
A few areas that courts may explore further as it relates to SIJS case management, in particular and data-informed case management, more broadly include:

- Identification of key metrics for SIJS case management and the reporting of those metrics from a database (possibly external to a case management system for ease of analysis). At a minimum those metrics should include: number of cases with SIJS requests, number of pending cases with SIJS requests, average (and median) case age, cases with SIJS hearings scheduled/held, case processing time of closed and active cases with SIJS requests by month and year. It is also important to establish linkages between the SIJS caseload and the court’s other operations, such as interpreter usage and case processing performance.

- Collaboration and innovation in the use of data and case management practices to improve the administration of justice. As with most courts, challenges exist in getting personnel to move beyond their work silos and collaborate on solutions. In late 2016, Montgomery County Circuit Court instituted a technical advisory board that brings together managers across functional areas to discuss efficiency gaps in business processes and in search of possible technical solutions. These meetings provide an opportunity for exchanges of ideas to occur with a focus toward innovation.

- Gather intelligence to better anticipate and prepare for possible changes in caseload. For instance, the change in Maryland Law in October 2014 that expanded the circuit court’s jurisdiction for custody and guardianship cases where SIJS findings are requested could have been identified as a harbinger for the influx of SIJS cases. Internal and external outreach efforts should be undertaken to coordinate information, estimate future caseload and resource needs, as well as identify possible responses to an anticipated influx of these cases.

- Education and training are important for court personnel on the role of state courts in SIJS cases (CPPS and NCSC, 2015; Feerick Center for Social Justice, 2014; Junck, 2012; Slayton, 2014). Courts across the US differ in their interpretation and understanding of their role in cases with an immigration nexus (such as those requesting SIJS factual findings); therefore, dialogue with immigration attorneys, development of SIJS fact sheets and the use of data to inform caseload impacts are all useful tools to support state courts.

5. Conclusion
In the United States, trial courts play an important role in cases seeking temporary immigration relief through receipt of a predicate order containing SIJS factual findings. These cases highlight the link between state courts and the federal immigration system and potentially add a layer of complexity to the court system’s response. Therefore, increased understanding and engagement in regard to the management of these cases among personnel at all levels of the organization is important. The collection and utilization of data to identify, inform and evaluate management practices and processes cannot be over-stated as a critical success factor. These cases afford courts an opportunity to demonstrate their commitment to the rule of law and their values of providing fair, accessible, efficient and effective justice. Delivering quality justice to a fragile population in need of relief may ultimately increase public trust and confidence in courts and the judiciary, more broadly.

6. References
Appendix A – SJS Pre-Hearing Case Processing in Custody Cases (October 2015-September 2016).

1 The documents that are to accompany the custody petition when requesting SJS factual findings are: 1) A request for SJS findings, 2) Memorandum in support of SJS findings, 3) Exhibits (and their translations), which include: the child’s birth certificate, the child’s parent(s)’ consent, child’s declaration, and parent(s)’ death certificate (if applicable).

2 The Notice issued from the case management system will include the following information: 1) case number, 2) case filing date, 3) hearing date, 4) documents required at the time of the hearing (as mentioned in the first reference note).

3 Once time to respond to service has expired, moving party may file for default if no answer/consent has been filed with the court.

4 The case prep sheet highlights all relevant information for both the custody and SJS portions of the hearing, including service. It also notes what documents are in the file and at what docket entry.
Appendix B – SIJS Pre-Hearing Case Processing in Guardianship Cases (October 2015-September 2016).

1 The documents that are to accompany the guardianship petition when requesting SIJS factual findings are: 1) A request for SIJS findings; 2) Memorandum in support of SIJS findings; 3) Exhibits (and their translations), which include: the child’s birth certificate, the child’s parent(s)’s consent, child’s declaration, and parent(s)’s death certificate (if applicable).

2 Translations are primarily reviewed for Spanish.

3 If two error notices are mailed (in a row), the case may be dismissed, which would occur approximately 60 days after the first notice is issued.

4 Petitioner’s counsel prepares the SIJS order.
Access to Environmental Justice in Brazil
By Mariana Almeida Passos de Freitas¹

Abstract:

This article aims to show how equal access to environmental justice occurs in Brazil, even with litigants in inequality, discrimination in the environmental matter, problems with interpretation of the law and little jurisprudence and information. The increase in access to justice in Brazil is evident including in the environmental area. With access to justice, we must understand the two basic principles of the legal system: that the system has to be equally accessible to everybody and that it produces individually and socially fair results. It is not just the simplistic conceptualization of the number of lawsuits. True access to justice is achieved once the rights of the population are effectively guaranteed. The number of environmental lawsuits has been increasing each year, mainly due to the Brazilian Federal Constitution of 1988. Article 225 provided the right for an ecologically balanced environment for present and future generations, and determined that the government and the community have a duty to preserve it.

In addition, the problems are not being adequately resolved at the administrative level. Access to environmental justice should be understood as access to the law, a fair, well-known and effective legal system, with access to the courts, alternative mechanisms (especially preventive ones), with the population materially and psychologically able to exercise their rights, by overcoming objective and subjective barriers.

For access to environmental justice, it is necessary to ensure appropriate procedural instruments are in place to address the conflicts in environmental protection, and to overcome barriers in accessing that protection.

In Brazil, some procedural instruments have been introduced to guarantee access to environmental justice. They are, mainly: “popular action” and “public civil action”. Both have a specific provision for admission with actions of this nature and it is important to highlight that they aim to protect mainly the collective rights and have been widely used in Brazil, facilitating citizens’ actions. Also, they break down some barriers that hindered access to environmental justice, providing for non-condemnation in fees, non-payment of costs, payment for expertise only at the end of a matter by the losing party etc. Thus, this article seeks to demonstrate how access to environmental justice in Brazil has grown. Whilst not yet being the ideal, it is indicating how this situation can be reached. Some ways of increasing this access are pointed out, not only focusing on the number of lawsuits but also as a way of developing environmental law in search of the desired effectiveness.

Keywords: access to justice; environmental law; appropriate procedural instruments; effectiveness; lawsuits

1. Introduction

In Brazil we have a clear situation of environmental insecurity. Although the situation has developed, compared to the period before the Federal Constitution of 1988, the depletion of natural resources is still a reality. Environmental disasters continue to occur, individualism and disinterest for future generations persist. The environmental legislation, although satisfactory, still has some gaps and the Executive Power, being somewhat inactive, has reduced effectiveness. For this reason, a many of the environmental problems Have become the responsibility of the Judicial arm of Government to resolve.

For a number of reasons, it is noticed that in practice, t public powers have not managed to appropriately perform the duty of controlling activities harmful to the environment or to put into practice action programs and environmental public policies.

Therefore, this article aims to show how access to environmental justice occurs in Brazil even with different levels of litigants, discrimination regarding environmental matters, problems of hermeneutics, little jurisprudence and inadequate environmental information.

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Firstly, access to justice will be analyzed; secondly, the specific access to environmental justice and, finally, the procedural tools available to Brazilians.

2. Access to Justice
With access to justice, two basic goals of the judicial system should be considered, as stated by Mauro Cappelletti and Bryan Garth, which are: the system should be equally accessible to all and produce individual and socially fair results; moreover, the simplistic conception of bringing lawsuits (numbers) should not be used.2

Therefore, according to Cappelletti and Garth, "Access to justice can be seen as the fundamental requirement - the most basic of human rights - of a modern and equal judicial system, which intends to guarantee, and not only to proclaim, everybody's rights".3

There has been an expansion of what can be called access to justice. It transposes the mere guarantee of access to the Judicial Power to encompass the commitment with prevention and treatment of legal conflicts, within certain parameters of justice and equality. It represents a commitment to the achievement of democracy, with a view to enhancing the inclusion of citizens in the decision-making areas.

It also promotes equality and freedom, aiming at equal conditions of guarantee and protection of rights, as well as of autonomy and independence of the parties, regarding their performance in the search of decisions for conflicts of interests that may entail limitations to their rights.4

In Brazil the Judicial Power became quite accessible after some events, such as Law n. 1050/605, which provided for the benefit of free legal assistance; the institution of the Special Courts; judicial representation by unions, associations; provision for the filing of collective actions; increased transparency and information, etc.

It is true that the number of lawsuits in Brazil has been clearly increasing being evidence that people always seek a guarantee of their rights, especially the constitutionally provided ones (like the environmental rights). The Brazilian Constitution of 1988 elaborated on in the post-military dictatorship period, is extremely ‘guarantist’, and it seeks to protect each and all forms of individual or collective rights. Thus, the number of lawsuits that aim to declare unconstitutionality, as well as those that intend to interfere in issues which are pertinent to the Public Administration, related to public policies, increase every year.

In fact, strictly political issues, which were previously resolved within their sphere of political competence, are now brought before the Judiciary. It cannot be forgotten that the problems to be solved by this power are extremely complex.

Justice Herman Benjamin, from the Superior Court of Justice, emphasizes the issue of access to justice by mentioning that it is access to the law, i.e., to legal order that is fair (enemy of imbalances), well-known (socially and individually recognized) and implementable (= effective). Access to Justice involves contemplating and combining, at the same time, an appropriate list of rights and access to courts, access to alternative mechanisms (mainly preventive ones). It also means the right-holders are fully aware of their rights and materially and psychologically qualified to exercise them, by overcoming the objective and subjective barriers analyzed below: it is in this last extended meaning that access to justice means access to power.6

Thus, it can be said that access to justice is access to power, by creating the necessary structural conditions for the exercise of environmental citizenship, which provides adequate means for the prevention and treatment of legal-environmental conflicts, having environmental justice as a parameter.7

3 Ibid., p. 12.
5 “Establishes norms for granting legal aid to those in need”.
7 CAVEDON, Fernanda de Salles; VIEIRA, Ricardo Stanziola, op. cit.
There are some barriers that prevent full access. The first ones are objective and relate to the risks of the process, from the point of view of costs, time and effort required. In turn, the subjective barriers refer to the psychological obstacles of the party protected by the law against the language and formalities of the legal area, the position of economic and informational superiority of the other party and the lack of information on legal issues.

Today, the greatest challenge to achieving effectiveness is no longer related only to the superficial aspect of access to justice (costly and time-consuming process, lack of time for legitimized ones, psychological and cultural barriers), but to substantial access to true justice. In the substantial aspect, the material dimensions of effectiveness deserve special mention.⁸

3. Access to Environmental Justice

In view of the serious environmental problem and the situation described here, there has been an increase in the number of judicial lawsuits that deal with this issue. As pointed out, with the development of access to environmental justice, which happened in Brazil mainly after the Constitution of 1988. Considering that art. 225⁹ provided for the need of an ecologically balanced environment for present and future generations, besides determining that the Public Power and the community have a duty to preserve it.

However, the problems are not being adequately resolved at the administrative level. Access to environmental justice should be understood as access to the law, a fair, well-known and effective legal order, with access to the courts, access to alternative mechanisms (especially preventive ones) and with the population materially and psychologically conscious to exercise them, by overcoming objective and subjective barriers.

Environmental justice is characterized by having fair treatment regarding distribution of power, risks, environmental costs and benefits, together with the democratization of decision-making processes. Environmental injustice, on the other hand, is a kind of environmental discrimination, as far as it imposes a disproportionate burden of environmental costs on groups already weakened by socioeconomic, racial and informational conditions in comparison to the costs imposed on society in general.

Therefore, there is a so-called environmental exclusion, which shows a deficit of citizenship, since the main factor of exclusion is precisely the deficiency in the exercise of the environmental rights of access to information, public

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⁹ Article 225. All have the right to an ecologically balanced environment, which is an asset of common use and essential to a healthy quality of life, and both the Government and the community shall have the duty to defend and preserve it for present and future generations.

Paragraph 1. In order to ensure the effectiveness of this right, it is incumbent upon the Government to:
I – preserve and restore the essential ecological processes and provide for the ecological treatment of species and ecosystems;
II – preserve the diversity and integrity of the genetic patrimony of the country and to control entities engaged in research and manipulation of genetic material;
III – define, in all units of the Federation, territorial spaces and their components which are to receive special protection, any alterations and suppressions being allowed only by means of law, and any use which may harm the integrity of the attributes which justify their protection being forbidden;
IV – demand, in the manner prescribed by law, for the installation of works and activities which may potentially cause significant degradation of the environment, a prior environmental impact study, which shall be made public;
V – control the production, sale and use of techniques, methods or substances which represent a risk to life, the quality of life and the environment;
VI – promote environment education in all school levels and public awareness of the need to preserve the environment;
VII – protect the fauna and the flora, with prohibition, in the manner prescribed by law, of all practices which represent a risk to their ecological function, cause the extinction of species or subject animals to cruelty.

Paragraph 2. Those who exploit mineral resources shall be required to restore the degraded environment, in accordance with the technical solutions demanded by the competent public agency, as provided by law.

Paragraph 3. Procedures and activities considered as harmful to the environment shall subject the infractors, be they individuals or legal entities, to penal and administrative sanctions, without prejudice to the obligation to repair the damages caused.

Paragraph 4. The Brazilian Amazonian Forest, the Atlantic Forest, the Serra do Mar, the Pantanal Mato-Grossense and the coastal zone are part of the national patrimony, and they shall be used, as provided by law, under conditions which ensure the preservation of the environment, therein included the use of mineral resources.

Paragraph 5. The unoccupied lands or lands seized by the states through discriminatory actions which are necessary to protect the natural ecosystems are inalienable.

Paragraph 6. Power plants operated by nuclear reactor shall have their location defined in federal law and may not otherwise be installed.
participation in the decision-making processes and access to justice in environmental matters. Thus, it can be seen that those who face difficulties in exercising environmental citizenship are those who bear the heaviest burden of environmental costs and risks, and consequently would need more frequently and more intensely to have access to justice and instrumentalization. However, they also face the biggest barriers to access to justice.

It is in this context that the movement of access to justice in the environmental sphere is highlighted, aiming to guarantee the realization of environmental rights, not only by the availability of procedural instruments appropriate to legal-environmental conflicts, but also by the search for solutions to the realization of environmental justice. This is the approach that should be used, including from the point of view of the administration of justice.

Access to justice in environmental matters was recognized as one of the basic environmental rights advocated in the Aarhus Convention, adopted on 25 June 1998 in Denmark, by claiming that “Concerned that effective judicial mechanisms should be accessible to the public, including organizations, so that its legitimate interests are protected and the law is enforced”. The purpose of this Convention is: “In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention”.

The Convention aims to contribute to overcoming the barriers of access to justice, especially as regards the parties’ capacity and the issue of legitimacy to bring a suit, which arise from the use of inappropriate concepts of civil procedure. In this sense, it establishes the obligation of the parties to promote environmental education and awareness, so that everyone can become aware of the possibilities of bringing a suit in the defense of environmental interests, as well as the recognition and support of environmental protection organizations, which implies the recognition of their legitimacy to go to court in defense of the environment.

The difficulties of access to information for the recognition and exercise of rights is one of the factors that lead to the characterization of a group as fragile, in the process of distribution of environmental costs and benefits. This is why environmental citizenship is a prerequisite for environmental justice, especially with regard to the equitable distribution of power in environmental matters. The knowledge of basic environmental rights and the possibility of exercising and defending them in the legal-institutional sphere integrate the content of environmental citizenship.

It is important to note that in order for environmental injustices and disrespect for human rights to be addressed, it is necessary to create, both within the domestic law of each nation and in the framework of international law, legal mechanisms that strengthen the rights of information, participation and access to justice.

There is no doubt, however, that strengthening access to justice in environmental matters as it has been advocated, inevitably requires, as it could not be otherwise, the improvement of the judicial bodies responsible for giving vent to the initiatives of civil society in the protection of the environment. This implies, on the one hand, increasing awareness among judges regarding environmental issues and, on the other hand, more specialization of judges, including the establishment of courts of first and second instance specialized in environmental issues. The experiences of several countries, and also of Brazil, in the specialization of tribunals in this field, have been reported, for the most part, to be successful, and for that reason may be expanded.

4. Procedural Instruments

It should be noted that there is no point in a complete or almost complete normative framework, as is the case in Brazil, without proper instrumentalization to make it effective.

In the case of environmentalism there is a peculiar situation, taking into account the trans individual and diffuse nature of these interests. The consequence is the lack of motivation of its holders in seeking the guardianship, considering the lack

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10 CAVEDON, Fernanda de Salles; VIEIRA, Ricardo Stanziola, op. cit.
12 CAVEDON, Fernanda de Salles; VIEIRA, Ricardo Stanziola, op. cit.
of personal and direct advantage. Appropriate procedural instruments are needed for collective conflicts and for the issue of environmental protection, in order to facilitate the protection of environmental assets in court and to overcome barriers of access to justice in this area.

In both Environmental Law and Consumer Law, the issue of access to justice occupies a prominent position. Under the commandment that "the individualistic principles of the last century must be forgotten when it comes to solving conflicts of environment and consumption", in both disciplines the objective is always threefold:

- definition, within the scope of the process and the substantive law, of a preventive structure (and, more recently, the adoption of the precautionary principle);
- reduction, if not elimination, of objective and subjective barriers of access to justice; and,
- "relaxation" of the rules of legitimation to act, facilitating collective access to justice, turning small injustices pulverized into supra-individual damages, with the consequent awareness of individuals that, in the position of victims, suffer as a group and not as isolated units, and that any possibility of change inevitably passes, as we will see, by their organization.\(^{15}\)

In Brazil, some procedural instruments came as a means of guaranteeing access to environmental justice. They are mainly the popular action (article 5, LXXIII,\(^{16}\) of the Federal Constitution, and Law n° 4,717/65\(^{17}\)) and the public civil action (Law n° 7,347/85\(^{18}\)). Both have a specific provision for bringing a lawsuit of this nature, and it is important to highlight that they aim to protect exactly the collective rights, and have been widely used in Brazil, facilitating citizens' actions. Likewise, they break with certain barriers that hindered access to environmental justice, providing for non-condemnation in fees, non-payment of costs, payment of expertise only at the end of a matter by the losing party, etc.

However, it should be noted that, given the nature of the barriers previously mentioned, the formal possibility of access to justice in environmental matters only through the provision of procedural instruments for collective protection does not guarantee their effective use by the owners of the environmental asset. It is necessary for the environmental right-holders (collectivity) to have access to information and to be able to identify environmental aggressions as an injury to their rights. That is, they must have at their disposal the means, material and information, so that environmental conflicts will reach the legal-institutional sphere.

Cole and Foster point out the difficulties faced by less favored communities in participating and influencing decision-making processes, and in developing sufficient skills to adequately represent the environmental interests. On the other hand, they recognize that information and knowledge are a means of empowerment within decision-making processes, which places such communities in a position of inferiority in legal-environmental conflicts.\(^{19}\)

Thus, from the point of view of court administration, providing information is also essential.

5. Conclusion
This article demonstrated how access to environmental justice in Brazil has grown, not yet being the ideal, but indicating how it can be achieved. Some ways of increasing this access were pointed out, not only focusing on the number of lawsuits, but also as a way of developing environmental law, in search of the desired effectiveness.

Access to justice should, therefore, be democratized, even by the courts, in order to ensure broad access, enabling the inclusion of the environmentally excluded ones, with the availability of tools and spaces of environmental management, as well as conflict resolution.

It should not be forgotten that access to justice is a prerogative of environmental citizenship since, in order to achieve the effectiveness of environmental law, accessible means must be made available to exercise and operate it. Hence, the traditional conception of access to justice is superseded. What really matters in the country at the moment is the effectiveness of environmental law, accessible means must be made available to exercise and operate it. Hence, the traditional conception of access to justice is superseded. What really matters in the country at the moment is the effectiveness of environmental law, accessible means must be made available to exercise and operate it. Hence, the traditional conception of access to justice is superseded. What really matters in the country at the moment is the effectiveness of environmental law, accessible means must be made available to exercise and operate it. Hence, the traditional conception of access to justice is superseded. What really matters in the country at the moment is the effectiveness of environmental law, accessible means must be made available to exercise and operate it. Hence, the traditional conception of access to justice is superseded. What really matters in the country at the moment is the effectiveness of environmental law, accessible means must be made available to exercise and operate it. Hence, the traditional conception of access to justice is superseded. What really matters in the country at the moment is the effectiveness of environmental law, accessible means must be made available to exercise and operate it. Hence, the traditional conception of access to justice is superseded.


\(^{16}\) LXXIII – any citizen is a legitimate party to file a people’s legal action with a view to nullifying an act injurious to the public property or to the property of an entity in which the State participates, to the administrative morality, to the environment, and to the historic and cultural heritage, and the author shall, save in the case of proven bad faith, be exempt from judicial costs and from the burden of defeat.\(^{17}\)

\(^{17}\) Regulates the popular action.

\(^{18}\) Disciple the public civil action of responsibility for damages caused to the environment, the consumer, goods and rights of artistic, aesthetic, historical, tourist and scenic value and other measures.

environmental justice. It also means the possibility of having access to the necessary information and operational means, to efficiently represent the environmental interests and also have the appropriate structure to exercise the environmental citizenship.

In short, it concerns the operationalization of environmental justice, creating communication channels between groups weakened by socioeconomic and informational issues and the environmental legal system. And it should not be forgotten that this operationalization of environmental justice requires structural means and operational instruments equally accessible to all, capable of restoring equality in the distribution of environmental costs, benefits and power. One of the administrative measures of great relevance in Brazil was the specialization of certain courts in environmental matters.

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Integrated Justice: An Information Systems Approach to Justice Sector Case Management and Information Sharing
Case Study of the Integrated Electronic Case Management System for the Ministry of Justice in Rwanda
By Adam Watson¹, Regis Rukundakuvuga² and Khachatur Matevosyan³

Abstract:

Automated Case Management Systems are still at an early stage of adoption in many developing countries. These are frequently standalone systems implemented with donor financing, and they often fail due to capacity constraints or as a consequence of short-term, project-based funding. But there are examples of developing countries overcoming these pitfalls and producing innovative solutions that surpass government practices in more developed countries. The Integrated Electronic Case Management System (IECMS), developed and implemented by the Ministry of Justice of Rwanda from 2015-2016, is one such innovation. This system has progressed rapidly in its level of adoption and integration between law enforcement, the prosecutor’s office, courts, and corrections. This paper will discuss the key system functionalities and the implementation methodology, including both the benefits and shortcomings of this approach, with the goal of applying lessons learned in future installations. Foremost among the successes of this project were the integrated Sector Wide Approach, the thorough business process reengineering, and strong ownership by the Rwandan Justice Sector staff. Particularly instructive will be the analysis of the integrated approach, covering five institutions with a single system in less than two years. However, the particular success in this case may not be replicable for governments with a more decentralized approach.

Keywords: Case Management System, International Development, Integration, Rwanda, Sector Wide Approach

1. Introduction
Twenty-three years ago, Rwanda was economically, politically, and socially shattered. The 1994 Genocide against Rwanda’s Tutsi population wiped out any semblance of a viable state. The government that assumed office had an uphill task in resurrecting the economy and attempting to restore justice and order. Although the transformation did not happen overnight, sustainable improvements in economic and development indicators have made Rwanda a remarkable case study in development transformation.

One of the key enablers of rapid development initially identified by the Rwandan government was Information and Communication Technology. This was included as one of the major priority pillars upon which the Rwandan economy would be built. The Justice Sector has been a recent focal point of this IT transformation with the implementation of an Integrated Electronic Case Management System (IECMS). The implementation of this system provides valuable insights into the unique challenges and benefits associated with implementing Case Management Systems in a developing country context.

2. The Justice Sector of Rwanda
The Justice, Reconciliation, Law and Order Sector of Rwanda (commonly referred to as simply “the Justice Sector”) is a sector-wide institutional approach led by the Ministry of Justice and consisting of thirteen member organizations. The current institutional organization of the Justice Sector is nascent, with the National Police and the current criminal investigation system formed and established in 2000, the Judiciary and the National Public Prosecution Authority established in 2004, and the Rwanda Correctional Services formed in 2010.

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The purpose of the Justice Sector is to “efficiently provide justice related services to the people of Rwanda with the aim of transforming Rwanda into a country marked by the rule of law, accountable governance and a culture of peace, thus contributing to socio-economic development and poverty reduction.”4 The Sector Wide Approach enables this to happen by providing an institutional arrangement whereby external and domestic funding are pooled to support a single policy and development framework that is country owned and driven.

There are five key institutions within the Rwandan Justice Sector that are directly involved in the development, processing, and execution of judicial cases. These institutions require a detailed level of data sharing to efficiently execute their respective missions. These institutions include the National Police, National Public Prosecution Authority, the Judiciary, Rwanda Correctional Services, and the Civil Litigation Service. In criminal cases, there is a clear flow of information from one agency to the next, and this makes the integrated sector approach both intuitive and necessary. The National Police are responsible for registering complaints, investigating crimes, and gathering evidence. The National Public Prosecution Authority takes information gathered by the police and prosecutes cases within the Judiciary, which is responsible for hearings, settlements, and judgments. Once a judgment is rendered, convictions are handed over to Correctional Services for supervising sentence execution. These activities form one coherent and logical workflow process in which many actors representing many agencies must participate.

3. The Challenge
The 2013 Rwanda Justice Sector Strategic Plan documents the challenges facing the Justice Sector as the government approached its five-year planning cycle. The Strategic Plan identified delays in case disposal, and the perceived subjectivity and uncertainty around case delays, as the root cause of a number of critical problems, such as prison overcrowding, high rates of recidivism, increased opportunities for corruption, and loss of confidence in the justice system. The delays in case disposal were found to be caused by increasing backlogs, poor case management, and poor communication between justice sector agencies.5 Collectively, these problems were hindering national development.

At the time, Justice Sector institutions were unable to monitor court caseloads. Without this ability, it was impossible to quantify the case backlog or prioritize cases. This resulted in a narrow focus on whatever case happened to be in front of the particular institution or individual at a given time, rather than on a holistic, equitable and systematic approach toward case management.

With the exception of a few basic tools, the Rwanda Justice Sector was completely paper-based. One of these tools was a rudimentary e-filing system.6 The tool could not verify users or user accounts, and was limited in scope. The Rwanda Correctional Services also had a basic prison management system, but it was not available online and had to be installed separately at each prison.

4. The Implementation Approach
The Ministry of Justice (MoJ), as the lead agency of the Justice Sector, issued a public procurement for an Integrated Electronic Case Management System (IECMS) based on the needs identified in the Justice Sector Strategic Plan. The approach was government-driven from the start, and was fully implemented through Government of Rwanda institutions, with the backing and support of development partner funding. Although Rwanda receives donor assistance and budgetary support from the EU, the Netherlands, Sweden, UNDP, UNICEF and USAID, this project was contracted and managed completely through the MoJ and no development partners were involved in the project implementation or contract management.7

The project was executed in stages, and the MoJ prepared the groundwork in a manner that was neither rushed nor unduly delayed. A well-defined TOR was developed by an independent consultant one year before the bidding for application development. Since the documentation provided by the consultant already contained user roles, positions, and workflow procedures for various types of cases, the business process reengineering was largely completed prior to procuring the IECMS. The consultant’s report was presented to the awarded software vendor, Synergy International Systems, Inc., prior to the development of an Inception Report and Gap Analysis in January 2015. It was then refined during the needs assessment, with support from the National Center for State Courts. This resulted in a System Design Document, containing 500 pages of prototypes, workflows, and user roles and permissions, that was finally delivered in May 2015.

5 Ibid.
7 See note 1, supra.
The system was designed and executed in strategic order. The first iteration of the IECMS, a module for police to track criminal investigations, was finalized in July 2015. The prosecution, courts, and Rwanda Correctional Services were added shortly thereafter and iteratively refined. In this way, software development was done logically, based on the natural process flow of a case, and in accordance with Rwandan civil and criminal procedural law. Through agile development, user feedback was collected and modifications were made until an approved final product was achieved.

The training strategy involved a decentralized, Training-of-Trainers approach. In September 2015, a training was conducted by Synergy to equip the Justice Sector Project Technical Team with the knowledge necessary to train users across the Justice Sector institutions. After completion of the training, the IECMS was finally deployed in January 2016. The product was first launched for fifteen courts in Kigali, and after about six months of pilot operations, training began for the remaining courts. In September 2016, the Minister of Justice and Attorney General conducted a press conference to officially launch the system nationwide, adding 29 new courts. A final launch in June 2017 added 38 new courts, making the system available in every court in the country. The system was promoted throughout this process via television and radio public awareness campaigns and through the support of local internet cafes and trained facilitators.

5. The Solution
The IECMS serves as the single point of entry for all Justice Sector institutions involved in managing cases. The system records all judicial case information from the time a plaintiff files a civil case, or in criminal matters, from the time of arrest through sentence execution, efficiently sharing that information among all relevant sector institutions. The IECMS automates the existing workflow processes of the Justice Sector and provides each institution with a configured interface to perform their specific functions, restricting access based on user roles, permissions, and case status.

General Information data entry

http://www.minjust.gov.rw/media/news/news-details/?tx_ttnews%5Btt_news%5D=466&cHash=2b1dd2f00482207c0713422386db2533 [accessed 17 April 2017].
The case workflow automates the processing of cases from one agency to the next, so that there is a seamless integration of activities and communication. The system automatically sends in-system, email, and SMS notifications to users, and users can create, assign, and track tasks. Information is captured and passed on digitally, and data exchange is no longer fragmented. A detailed audit trail provides a record of all edits and status updates.

The system tracks individuals separate from cases, so that authorized users can access an individual’s profile to see their relevant case histories. If the police create a case file on an individual, for example, they will instantly have access to the individual’s full case history across all justice sector institutions. This includes comprehensive access to legally authorized police, court, and prison records.
My Cases section in the IECMS system

Dashboard screen in the IECMS
6. Business Intelligence
In addition to case tracking, the IECMS acts as a Monitoring and Evaluation tool for analyzing and reporting on the performance of sector institutions in the provision of justice. This includes reports and graphic presentations of key performance measures, such as the average caseload per judge, the court clearance rate, and the average time to disposition.\(^9\) The analytical reporting tools include ad hoc report builders for charts, graphs, tabular reports, GIS and an Executive Dashboard module for presenting multiple reports in a single view. All reports and analytics can be saved and modified, and are dynamically updated every time a user opens the analytics module.

The IECMS implementation is ongoing, and execution of civil cases will soon be processed through the system in addition to criminal case execution. In addition, future integrations are envisioned with other information systems and institutions, such as the Court Bailiffs, National Identification Agency, Rwanda Development Board, Rwanda Law Reform Commission and Law Library, to permit easy access to shared information directly through the IECMS.

7. Results
The system has now been operational for enough time to observe some preliminary indications of success. The IECMS is accessible nationwide and has over 8,000 registered users, including an average of 5,000 users per month and approximately 1,400 users per day. For an interagency public sector system so recently launched, this level of utilization is remarkable.

Through the integrated features of the system, the Judiciary of Rwanda can now see a comprehensive overview of current cases and case backlogs disaggregated by court and even by judge. This is enabling more strategic planning and resource allocation for the police, courts, public prosecution, and corrections as they monitor overall performance. The system benefits litigants by providing online services for case filing, payments, automated reminders, and free access to summons and judgments. This significantly reduces the burden on the court to respond to in-person requests. Effective monitoring of the case workflow guarantees compliance to the rules of procedure, which in turn guarantee and protect the rights of litigants, as any misuse of the required procedures is immediately evident. The IECMS speeds up proceedings, eliminates duplication of effort across agencies, and reduces the time required to transmit documents between institutions. It increases transparency, equality before the law, and accountability. It enforces compliance with procedures across institutions, so that one cannot jump the queue, and permits easy access to precedent for judges to ensure quick, fair, and consistent decisions.

The effective implementation of an automated Case Management System has also been the source of international recognition of the Justice Sector, and was specifically cited by the World Bank as the primary factor causing Rwanda’s ranking in the Enforcing Contracts section of the Doing Business Report to rise 22 positions between 2016 and 2017.\(^10\) The improvement in enforcing contracts is directly attributable to the IECMS implementation.\(^11\) Rwanda is now ranked second in Sub-Saharan Africa for ease of doing business, and now has the highest Quality of Judicial Processes Index score in the region, even higher than the average for OECD High Income countries. On average, it takes less than half the time to enforce a contract in Rwanda as it does in the average OECD High Income country.\(^12\)

The IECMS was also presented a continental public management award, just 3 months after its launch in 2016, for being the best demonstration of innovative public management in Africa. The award was organized by the African Association of Public Administration Management. The IECMS came in first place among 51 innovation programs from thirteen countries.\(^13\)

8. Key Factors for Success
The key factors contributing to the success of the IECMS include:

**Country Ownership** – The IECMS development was a government-driven process from the start. This is critical to ensure long term funding and sustainability, as donor funded projects are often short-term and independently executed. The fact that the project was procured and implemented completely through government systems is a testament to the strength of the public sector in Rwanda and to the Court’s prioritization of ICT as a rapid development enabler.

**Sector Wide Approach and Interagency Cooperation** – The level of coordination needed to roll out an interagency information system is highly sophisticated. In Rwanda, this was made possible through the combination of a highly

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\(^9\) [http://www.courtools.org/Trial-Court-Performance-Measures.aspx](http://www.courtools.org/Trial-Court-Performance-Measures.aspx) [accessed 17 April 2017].

\(^10\) [http://www.doingbusiness.org/Reforms/Overview/Topic/enforcing-contracts#rwanda](http://www.doingbusiness.org/Reforms/Overview/Topic/enforcing-contracts#rwanda) [accessed 17 April 2017].

\(^11\) [http://www.doingbusiness.org/data/exploreeconomies/rwanda#enforcing-contracts](http://www.doingbusiness.org/data/exploreeconomies/rwanda#enforcing-contracts) [accessed 17 April 2017].


centralized government and a predefined Sector Wide Approach. The Justice, Reconciliation, Law and Order Sector has been in place, with a documented strategy, since 2009. This puts the government in the driver’s seat, versus individual donor projects with limited capacity for collective strategy and planning.

Proactive Business Process Reengineering – One year before the IECMS development, a contracted consultant performed a thorough business process analysis resulting in some 500 pages of reports, workflows and diagrams. This included a description of the required technical solution and all business processes, down to the level of each individual staff action and the related permissions. This expedited the work of the developers, who were able to quickly validate the workflow with only minor fine-tuning.

Developing from the Beginning – The development of the IECMS was done logically, in the same order as the workflow. Development started with the Rwandan National Police and ended with the Rwanda Correctional Services. This enabled the developers and users to track the development and workflow of case processing logically, making adjustments with a thorough understanding of the precedent for each successive step.

Deploying from the End – Although the system was developed from the beginning, it was deployed from the end. This means that the Court application was rolled out first, which created a demand for data from the prosecution. When the prosecution began using the system, it placed a demand on the police to provide data. This strategy creates a demand for information which motivates the previous organization in the chain of information to provide good data. This pulling of data is more effective than attempting to push data from one entity to another that is not prepared for it.

Focusing Forward – When the Ministry of Justice announced the launch of the IECMS, the Judiciary instructed that from that point forward, each new court activated on the IECMS would receive new cases in the electronic format. Rather than go back and attempt to enter historic cases from the project inception, it is better to initially focus on new cases only. Cases that were underway already were completed without the IECMS. This enabled the court to adapt without the overwhelming requirement to enter all existing or closed cases.

Training of Trainers – A Training of Trainers model was used to reach the large number of users. Some forty trainers were trained to support ongoing efforts at bringing new users online. Many online trainings were conducted during the technical support period, and trainings were held both before and after launching the application, to ensure a continuous rotation of training activities. A separate team of administrators received advanced technical training over a period of seven weeks from June to July 2015 so that they could monitor and maintain the system independent of developer intervention.

9. Challenges Encountered and Lessons Learned

The following are some of the challenges encountered and lessons learned from those who developed and implemented the IECMS, which may provide useful insights for future implementations:

Addressing Capacity Constraints – As mentioned above, training public servants before, during and after launch was a critical first step to addressing capacity constraints. However, even with a strong team of trainers, resources were limited when bringing the IECMS to scale. To respond to increasing requests, the Judiciary established a mailing list of every court that came online with the IECMS. The mailing list enabled users to share problems, questions, and solutions, often answering each other’s questions and easing the burden on the core team of trainers. This enabled those who were early adopters to actively assist new users. It was also a good way to monitor feedback from users to help improve the system.

Confronting Institutional Resistance to Change – As with any CMS implementations, court staff and judges are naturally resistant to change. In Rwanda, this was most conveniently addressed through regularly scheduled meetings of court leaders, which were already being held on a quarterly basis. In these meetings, the IECMS team was able to present the many benefits of using the new system. Judges and registrars were mutually encouraged by their colleagues in these meetings, and this proved to be the best way to achieve buy-in from new users.

Promoting Public Awareness – Rwanda faced a major logistical challenge in educating its nearly 13 million inhabitants about the new IECMS. The Judiciary turned to the local radio stations, national network televisions, and local newspapers to educate litigants about the benefits of using the IECMS. The Supreme Court has a weekly slot on a local radio station (Isango Star 91.5FM) which has been used periodically to advocate for use of the IECMS, and representatives of the judiciary made appearances on national talk shows both before and during the launch of IECMS to tell citizens about the

14 See note 1, supra.
Providing Access to eJustice – The Judiciary of Rwanda faced a massive challenge in promoting an electronic government solution in a country where only about 20% of the population has a reliable internet connection.\textsuperscript{15} Although required training activities could be used for public servants, the broader public had to be engaged through other means. One solution that was executed by the Judiciary involved the training of youth “facilitators,” who could more easily adopt the new technology, and would be able to offer their services in support of new users. These facilitators were deployed throughout the country to inform citizens and help new users create accounts and file cases, receiving a small fee for their services. The facilitators were trained along with workers in cyber cafés, ICT telecenters, and smart villages, mobilizing the private sector to provide e-service kiosks throughout the country so that litigants could get the help they need. The more facilitators that were trained, the lower the cost became for citizens. Poor litigants who cannot afford these services are able to access support directly from MoJ employees, enabling them to file or follow-up on cases free of charge. In addition, since many Rwandans are not fluent in English, user manuals and tutorial videos on YouTube were distributed in both English and Kinyarwanda.

Adapting to Scale – A frequent concern with projects of such an ambitious scale is that they will end up being poorly designed and overly ambitious. The general rule in such implementations is to proceed incrementally - starting with a simple system (basic case tracking) and gradually adding case management features, then eventually integrating with other justice sector institutions. Rwanda is unique in attempting a unified system from the start, which intensified the need for efficient local coordination and left little room for error. This approach was enabled by a phased approach in which the system was rolled out for different regions and different institutions at a moderate pace. This mitigated the demand on Judiciary resources and logistical support. It also enabled the judiciary to learn and apply best practices from one phase to the next. Above all, the process of bringing the application to scale was made possible through focused leadership, a positive reception by the population, and a firm political commitment to embracing technology as a driving tool for development. Given the unique social and political climate, it should not be taken for granted that the successful outcome in this instance could be easily replicated in other environments.

Using Agile Processes – The application was developed using the Agile process which included multiple iterations, prototypes, and user-driven fine-tuning based on the feedback received from actual end-users. This was the correct approach, but our experience showed that insufficient time was allocated for the user testing of each iteration. Something we quickly learned after the system was launched was that no matter how qualified the staff, user testing should be closely guided and accomplished in live scenarios with actual case records to be effective. In addition, the most complex cases should be identified for testing, to ensure that the system can handle any given type of case.

Minimizing Change Requests – When it comes to implementing a useful application, priority must be given to the core tasks that automation can most dramatically and easily improve. This was a constant challenge, and required diligence in balancing the desires of system users against the actual utility of the requested functionality. Overdeveloping the application can stall the project. Beyond being a well-designed system, the tool must actually make the user’s life easier. This aspect of change management should be understood from the beginning of the project, in order to focus efforts on the most meaningful areas of impact.

Adapting Procedural Law – In Rwanda, the procedural law must now be aligned with the IECMS, as the automation has made certain procedures obsolete, or modified others. For example, since all litigants can get summons directly from the system, it should no longer be obligatory to service summons manually. The IECMS streamlines procedures and so the Procedural Law must adapt accordingly.

10. Where we go from here
In many countries, the level of integration achieved by the Justice Sector of Rwanda over a period of just two years is not realistic. This may be due to political or organizational constraints, procurement inefficiencies, or entrenched interests restricting the flow of data between agencies. However, if the process efficiencies of the integrated approach can be properly communicated, and the tangible results in improving justice sector performance are properly documented, this may provide the incentive needed for other governments to attempt similar approaches. Defining precisely what environment is most conducive to accomplishing this level of integration is beyond the scope of this report. But as best practices are tested in the developing world, it will be essential to share both the successes and failures of these approaches. It is our hope that this paper contributes substantively to this discussion. We also hope that improving data integration in justice systems will both enhance the ability of justice sector institutions to monitor process efficiencies, and

equip decision-makers with the data they need for criminal investigations and predictive analysis. This will serve to strengthen the rule of law, lift confidence in government institutions, and ensure access to justice.

**Further Reading**


