

‘LEGAL NEED’ AND LEGAL NEEDS SURVEYS:

A background paper



‘Legal Need’ and Legal Needs Surveys: A Background Paper

Professor Pascoe Pleasence, June 2016

Technical materials to support Open Society Justice Initiative legal needs research.

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What is in this background paper?

This background paper answers some common questions about legal need surveys: What is 'legal need'? What are legal needs surveys? Why conduct legal needs surveys? What have legal needs surveys found? What impact have legal needs surveys had?

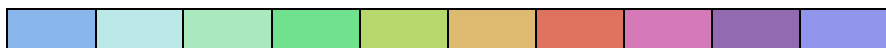


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“Four billion people around the world are robbed of the chance to better their lives and climb out of poverty, because they are excluded from the rule of law.”

Report of the
Commission on legal Empowerment of the Poor



What is 'legal need'?

In general terms, legal need arises when citizens (or businesses) require support from legal services (broadly defined¹) in order to resolve problems which have a legal dimension.

Beyond this, what constitutes legal need remains contested. However, it has been observed that "the unquestionable difficulty of arriving at any sensible definition of what might constitute a 'legal need' has not prevented a substantial research industry from engaging, periodically, in the practice of measuring legal need."² Also, while legal need remains an "elusive" concept that is difficult to "pin down,"³ an increasingly sophisticated understanding of the difficulties surrounding its definition and operationalisation (in an empirical context) has allowed significant narrowing of disagreement.

While it may once have been assumed that the experience of problems which have a legal dimension but do not lead to the instruction of lawyers is equivalent to "uncovering factual need" for legal services,⁴ it is now well understood that 'could' does not equal 'should'. There may be many potential and appropriate responses to problems with a legal dimension, some of which involve neither reference to law nor useful potential input from lawyers:

*A tenant with a leaking roof may be regarded as having a legal problem. However, he may choose to get a ladder and not a lawyer.*⁵

Thus, various commentators have highlighted the relevance of cost, and other disadvantages and advantages of potential responses to 'legal' problems in defining legal need; promoting a more pragmatic approach to its definition.⁶ Also, it has been argued that appropriateness can legitimately vary between individuals. Just because a middle income person might choose to use a lawyer does not mean that a poorer person should do so, as "so long as there are different incomes in society there will always be things that some can afford and others cannot."⁷

These criticisms of naïve conceptualisations of legal need led to efforts to remove value judgements from investigations into and discussions of experience of problems which have a legal dimension.⁸ Attempts to define legal need instead came to place emphasis on options, capabilities and preferences. This led to conceptualisations of legal need such as, for example, that of the Royal Commission on Legal Services in Scotland (the Hughes Commission) in 1980, that have (so far) proved to be relatively robust.

The Hughes Commission accepted that 'there [is] more to legal need than people having a legal problem and not being able to secure the services of an adviser' (para 2.7). Many people are able to find satisfactory non-legal solutions to their problems. Instead, legal need was argued to fall into two parts: first, citizens have a need for information to enable them to choose a way to resolve a problem; secondly, if they choose a legal path, they need the means to pursue it:

'In assessing the need for legal services, we must therefore think in terms of two stages - firstly enabling the client to identify and, if he judges it appropriate, to choose a legal solution; and secondly, enabling the client to pursue a chosen legal solution' (para 2.9)

'..... When we speak of 'unmet need' we are concerned about instances where a citizen is unaware that he has a legal right, or where he would prefer to assert or defend a right but fails to do so for want of legal services of adequate quality or supply' (para 2.10)

As was later observed, "the Hughes Commission placed a major emphasis on legal information ... It believed that everyone has the right to know about legal solutions, [as] without such information they cannot make a fully informed choice."⁹ However, It can be argued that ignorance of legal rights does not always occasion unmet legal need; particularly if reasonable and satisfactory outcomes are arrived at. Indeed, given the very low levels of legal literacy across populations,¹⁰ the Hughes Commission definition of legal need is likely to construct very high levels

of unmet legal need. Nevertheless, it provides an example of a relatively sophisticated conceptualisation of legal need that incorporates appropriateness and legal capability (also a contested concept).¹¹

The further incorporation in the Hughes Commission definition of the subjective element of a citizen 'judg[ing] it appropriate to choose a legal solution' also provides ground for contention. However, the subjectivity incorporated into the Hughes Commission definition reflects a more general choice between different types of need. Bradshaw's ubiquitous 'taxonomy of social need', for example, differentiates between 'normative need' (defined by experts), 'felt need' (equivalent to want), 'expressed need' (felt need that is acted upon¹²) and 'comparative need' (assessed by comparison of service use by those with similar characteristics).¹³ The Hughes Commission simply erred towards felt need, rather than normative need.

While legal needs surveys have "often proceeded without explicit, detailed definitions of the concept of legal need",¹⁴ some, such as the 2006 New Zealand *National Survey of Unmet Legal Needs and Access to Services*, have explicitly set out to operationalise the concept of legal need. In the case of the 2006 New Zealand survey, the concept was operationalised in a manner broadly reflective of the Hughes Commission definition.¹⁵ However, this operationalisation of the concept remains unusual, with recent surveys more likely to simply investigate *aspects* of need, such as legal capability, problem resolution strategy choices, and the relative seriousness of problems,¹⁶ to provide a broad picture of people's behaviours, successes and failures in resolving 'justiciable problems' (defined by Genn, in acknowledgement of the broad range of appropriate responses to such problems, as problems that give rise to legal issues, whether or not they are perceived to do so by those facing them, and whether or not they lead to the use of legal services or legal processes¹⁷). This enables policy makers, funders, legal services providers and others to apply their own concepts of legal need, on the basis of an understanding of the broad context within which legal needs arise.

While the concept of legal need is necessarily linked to use of legal

services or processes,¹⁸ the broader (and also contested) concept of access to justice (which also "defies precise definition"¹⁹) is not. Access to justice is concerned with the just resolution of problems which exist within legal frameworks. Access to justice *policy* is therefore increasingly concerned with the range of human services that have utility in addressing problems existing within such frameworks.

As the OECD has argued, justice policy should:

*include ... state and non-state, judicial and non-judicial means by which people realize their rights, solve disputes, obtain remedies (including against arbitrary or abusive conduct by officials), and affirm rules that protect individuals from injury and preserve social peace.*²⁰

Moreover, broader social policy is increasingly concerned with the relationship between different types of social problem and integrated responses. Thus, debates surrounding legal needs are now much more broadly contextualised than when legal needs surveys were conceived.



What are legal needs surveys?

Legal needs surveys investigate the experience of ‘justiciable problems’. Legal needs surveys are distinct from crime victimisation or offending surveys, as their focus is on civil law (including family law) issues;²¹ although many legal needs surveys also enquire about the experience of criminal law matters (beyond those that are counterparts of civil law matters)

Legal needs surveys can be traced back to the 1930s.²² However, they remained a rarity for a number of decades. Only in recent decades has “considerable momentum”²³ in the conduct of such surveys led to them becoming relatively common across the globe.

Over the past 25 years, at least 40 large-scale national legal needs surveys of individual citizens have been conducted in at least 22 separate jurisdictions: Australia, Bulgaria, Canada, England and Wales, Georgia, Hong Kong, Japan, Jordan, Kyrgyzstan, Mali, Macedonia, Moldova, the Netherlands, New Zealand, Northern Ireland, Scotland, Slovakia, Taiwan, Tajikistan, Uganda, Ukraine and the United States.²⁴ Over the same period, extensive sub-national surveys have also been conducted in Argentina,²⁵ China,²⁶ Colombia,²⁷ Ecuador,²⁸ Russia,²⁹ Indonesia³⁰ and Yemen,³¹ along with smaller surveys in countries such as Azerbaijan, Rwanda, Egypt and Bangladesh.³² Many sub-national surveys have also been undertaken in jurisdictions in which national surveys have also been undertaken.³³ In addition, six large-scale national legal needs surveys of businesses have been conducted in recent years.³⁴

The number of legal needs surveys, and jurisdictions in which such surveys have been undertaken, is greater still if broader based national surveys containing (limited) questions concerning the experience of justiciable problems are included. For example, the Brazilian national household survey included a justice module in 2009.³⁵ Some broader based surveys routinely collect limited information about citizen experience of justiciable problems.³⁶

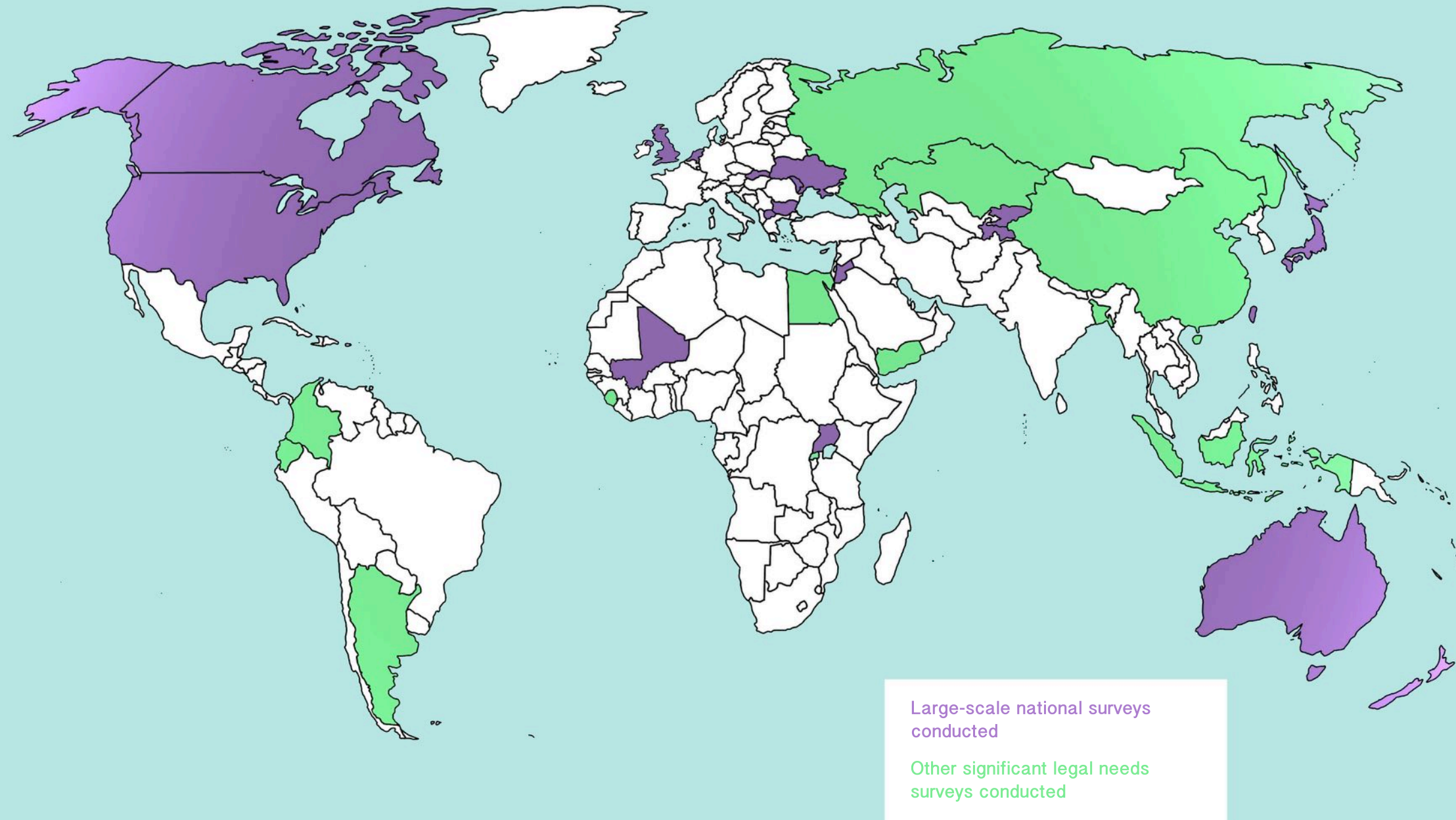
Some legal needs surveys (including most national surveys) have explored populations as a whole; enabling contrasts to be made between the experience of different social groups. Others have focused on discrete populations – such as people on lower incomes or living in particular circumstances³⁷ – or boosted the number of responses from minority population groups.³⁸

Reflecting increasing understanding of ‘legal needs’ and survey design, and the evolving interests and priorities of governments, NGOs, justice sector professionals and researchers, the nature of the research questions addressed by legal needs surveys has changed over the years. Earlier surveys tended to place much greater emphasis on identifying the details of processes used to resolve problems. Later surveys have tended to be associated with greater interest in issues such as problem impact, problem clustering (including the clustering of legal and broader social problems), legal capability (including legal confidence and awareness of legal rights and services) and drivers of problem experience and problem resolving behaviour.³⁹

Recent years have also seen greater convergence in the issues addressed by legal needs surveys commissioned to support reform of established public legal assistance services, including legal aid (commonly by government agencies), and surveys commissioned to support the rule of law and/or introduction and development of public legal assistance services, including legal aid (commonly by NGOs).

Legal needs survey methodologies are now relatively mature. Landmark legal needs surveys in the 1980s and 1990s – the *Civil Litigation Research Project* and *Comprehensive Legal Needs Study* in the United States⁴⁰ and, particularly, the *Paths to Justice* surveys in the United Kingdom⁴¹ – have provided conceptually coherent and methodologically rigorous templates upon which later surveys have built. And the lessons of more recent surveys,⁴² and increased interest in, and effort towards, collaboration and best practice, have seen significant refinement of the structure of questionnaires and form of questions asked.

Legal Needs Surveys: A Global Endeavour



Why conduct legal needs surveys?

We live in an increasingly ‘law-thick’ world.⁴³ Across the globe, processes of ‘juridification’⁴⁴ have extended the reach of formal state sanctioned law into almost every aspect of daily life. Legal rights, responsibilities and protections provide frameworks for behaviour in the spheres of, for example, consumerism, education, employment, environment, children and families, health, housing and welfare. But, as Cappelletti and Garth famously propounded, “the possession of rights is meaningless without mechanisms for their effective vindication.”⁴⁵ Thus, alongside this growth of (both national and supranational) law has come great interest in the means available and obstacles citizens face in seeking to resolve justiciable problems; in whether citizens can achieve access to justice.

Historically, the focus of interest in the area of access to justice has tended to be the form and functioning of formal processes.⁴⁶ But increasing realisation that citizens routinely look to resolve justiciable problems at a distance from courts and lawyers, and perhaps beyond even the ‘shadow of the law’,⁴⁷ has led to emphasis also being put on citizen (and sometimes also business) perspectives on, and experiences of, justiciable problem resolution.⁴⁸ Thus, there is now broader interest in the ability of citizens (and businesses) to recognise and use law, travel the many potential ‘paths to justice’,⁴⁹ access appropriate legal services and processes, and efficiently resolve justiciable problems.

Of course, the focus of this interest varies between countries. For example, in countries with emerging legal infrastructures (or legal infrastructures that are undergoing fundamental reform following socio-political transformation), there tends to be greater focus on the reach of law, ‘legal empowerment’,⁵⁰ the nature and role of customary dispute resolution processes, ‘microjustice’⁵¹ and the appropriate form of legal services infrastructure (in particular, public legal assistance services and legal aid schemes); with interest often set within the context of the rule of law. In contrast, in countries with well-established legal infrastructures (in particular, public legal assistance services and legal aid schemes), the focus

of interest tends to be more on exploring patterns of vulnerability, problem clustering, problem impact, citizen capability, advice seeking behaviour and the particulars of obstacles faced in acting to resolve problems; with interest generally set in the context of efforts to better target and develop established services and processes.

These law-centred interests are also now commonly conjoined with broader interest in the relationship between justiciable problems and wider social health and economic problems; and, linked to this, the utility of legal services in addressing wider social policy goals.⁵² This has recently manifested in agreement to U.N. Sustainable Development Goal 16⁵³ – dedicated to the promotion of “peaceful and inclusive societies for sustainable development, the *provision of access to justice for all*, and building effective, accountable institutions at all levels”⁵⁴ – which is predicated in part on the notion that “the rule of law and development have a significant interrelation and are mutually reinforcing, making it essential for sustainable development at the national and international level.”⁵⁵

Against this backdrop, legal needs surveys can serve a number of purposes. Some surveys are commissioned by governments to inform service development and monitor changes in justiciable problem resolution behaviour against the backdrop of ongoing system evolution.⁵⁶ Some are commissioned by NGOs to support the emergence of new forms of legal service infrastructure, such as systems of legal aid, or even fundamental justice sector reform.⁵⁷ However, all legal needs surveys are commissioned because such surveys provide a unique (and the only practically achievable) overview of the justice system and citizen experience of justiciable problems. Thus while different legal needs surveys may address different agendas, they form part of a single tradition.

A unique overview.

A full overview of the justice system and citizen experience of justiciable problems is impossible to achieve using data collected by courts, legal services, etc., about those who utilise them. ‘Administrative’ data does not



extend to problems that parties deal with informally, or not at all. Moreover, fragmented responsibility for administrative data, its lack of standardisation and data duplication across organisations can, anyway, make it very difficult (or impossible) to piece different administrative data strands together. The same limitations attach to data collected from professionals working within the legal system.

On the other hand, legal needs surveys enable the collection of data concerning problems that never see the involvement of legal services or processes, in addition to those that do. Legal needs surveys thus provide the ‘big picture’ of citizen’s efforts to access justice; a picture that cannot be obtained through any other means. They are therefore ideally suited to quantifying problem experience across populations, mapping patterns of problem resolution behaviour, and illuminating changes in patterns of experience and behaviour over time. They are also suited to identifying obstacles to justice, from the citizen perspective; as well as providing insight into levels of legal capability (including legal understanding, awareness of services, legal confidence, resilience, etc.) and attitudes towards justice and the justice system.

Legal needs surveys therefore “provide evidence for policy intervention;”⁵⁸ as well as the ability to monitor changes in behaviour and experience against the backdrop of legal services reform.⁵⁹ And crucially, they provide a citizen perspective on access to justice; a perspective unusual in the justice context. As Mahamane Maïga, Director of CPS Justice, stated during a strategic workshop following the 2014 Malian legal needs survey:

Normally, we are the ones who judge. This time, it is the citizens who are judging us. (Barendrecht et al. 2014, p.101)

What have legal needs surveys found?

Although the many legal needs surveys conducted across the world form part of a recognised tradition of surveys, even small differences in survey design can have a profound impact on what is found.⁶⁰ Thus, it is generally not appropriate to compare the *details* of findings from different legal needs surveys. However, “this does not mean that there is no scope for exploring similarities and differences between the experiences of justiciable problems ... in different jurisdictions,”⁶¹ or for setting out the ‘big picture’ that has emerged from surveys to date.

Justiciable problems are ubiquitous

While it is not possible to be certain about the extent to which real differences, as opposed to methodological differences, lie behind the very different rates of reporting of justiciable problems in (say) Japan and Yemen (19% and 94% respectively),⁶² it is clear that justiciable problems are ubiquitous in both jurisdictions, and in every other jurisdiction around the world.

This ubiquity should not be surprising, as we live in a ‘law-thick’⁶³ world in which our everyday activities are played out within extensive and complex legal frameworks. Moreover, it should not be surprising that the relative incidence of different types of problems is somewhat similar across jurisdictions, because relative incidence of problems in large part reflects relative incidence of the circumstances that give rise to them,⁶⁴ and people engage in many similar activities wherever they live.

Analysis of national legal needs surveys conducted over the past 25 years reveals that 25 of 30 surveys (for which relevant findings are available) found consumer problems to be among the three most prevalent justiciable problem types.⁶⁵ Similarly, 20 of 28 surveys found money related problems to be among the three most prevalent types, and 17 of 24 found problems concerning neighbours to be among the three most prevalent types. Other common problems relate to families, housing,

employment, social security, public services and nationality and, among some population groups, obtaining formal identification.

Important exceptions to generally observed patterns are evident in some countries. For example, in Mali and Uganda – predominantly agricultural jurisdiction – justiciable problems concerning land were found to be the most commonplace; with such problems often concerning land grabbing, expropriation, water and nationalisation; rare problems elsewhere.⁶⁶ In contrast, in both jurisdictions consumer problems were found to be relatively rare (as they were also in Indonesia, rural China and rural Taiwan).⁶⁷ However, looking beyond land related problems, in Mali the next five most common problem types concerned (in descending order) employment, family, neighbours, housing and money;⁶⁸ common problems elsewhere. Similarly, in Uganda they were family, neighbours, money, employment and public services.⁶⁹

The pattern of justiciable problems around the world reflects patterns of everyday life around the world.

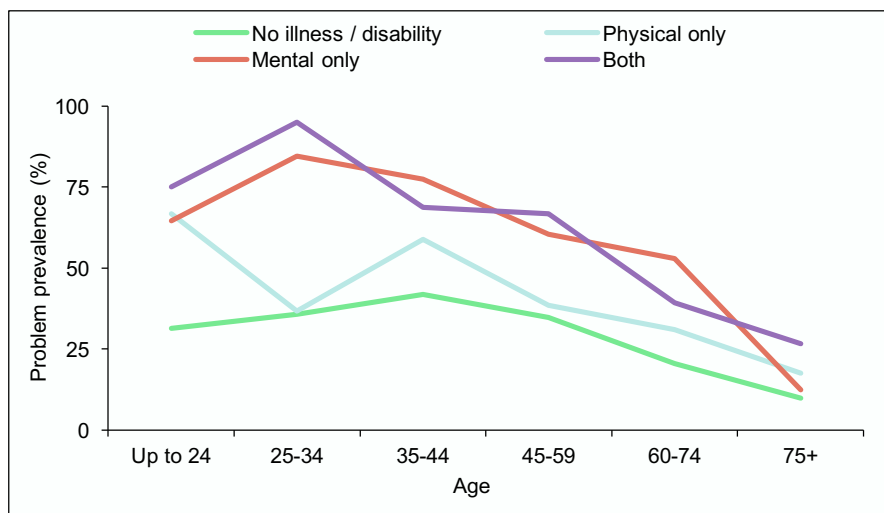
Inequality of experience

Although justiciable problems are ubiquitous, there is inequality of experience of them. Problems are far from randomly distributed across populations. Particular problems are associated with particular social groups or stages of life. And it appears that “socioeconomic disadvantage is pivotal”⁷⁰ to justiciable problem experience; with surveys repeatedly demonstrating associations between justiciable problem experience and disadvantage.⁷¹

Disadvantaged groups associated with elevated experience of justiciable problems include those receiving social security benefits, those with long-term health problems or a disability, lone parents, victims of crime⁷² and displaced persons.⁷³ The figure below illustrates the strong association between justiciable problems and health (particularly mental health) problems; confirmed across numerous legal needs surveys (and

other legal need studies⁷⁴) in multiple jurisdictions, and concords with an expansive socio-epidemiological literature.⁷⁵

Justiciable problem prevalence by age and illness/disability status
(England and Wales 2006-7)⁷⁶



While patterns of vulnerability vary between jurisdictions – owing to differences in social structures and behaviour – the only systematic review of findings to date suggests “patterns are fairly similar across jurisdictions, with few conflicts.”⁷⁷ However, the picture as regards gender is less uniform. In some jurisdictions “women’s weaker agency and lower social and economic participation”⁷⁸ leads to very different patterns of justiciable problem reporting as between men and women. For example, in Jordan 75% of those who reported problems were men.⁷⁹ Significant differences in reporting patterns were also identified in Mali. Here, men were associated with problems concerning, for example, employment, land and public services while women were associated with problems concerning, for example, family, children, neighbours and social security.⁸⁰

And, in addition to the globally consistent gendered reporting of domestic violence, some gender differences have been reported in richer jurisdictions. For example, men were found to be more likely to have experienced employment or personal injury problems in Slovakia, but less likely to have experienced family problems.

Justiciable problems can create and perpetuate broader social problems, such as poverty.

There are various reasons for the link between justiciable problem experience and disadvantage. For example, there are problems peculiar to disadvantage (e.g. those concerning social security). Also, disadvantaged people are able to draw on fewer resources and have less capability to avoid or mitigate problems.⁸¹ Linked to this, it has been found that justiciable problems have an *additive* effect,⁸² meaning that the experience of problems increases the likelihood of further problems being experienced.

The impact of justiciable problems

Lying behind the additive effect of justiciable problems is the fact that such problems often bring about or follow on from one another, or broader social, economic or health problems.

In recent years, legal needs surveys have routinely explored the impact of justiciable problems. In all cases, problems have been found to substantially impact of the lives of those facing them. For example, in Macedonia, 32% of survey respondents described non-trivial problems as ‘destroying my life’.⁸³

In England and Wales in 2006, the economic cost of this impact to individuals and public services was estimated to exceed US\$5 billion per year,⁸⁴ and in 2016 in Canada the annual cost to public services was estimated to be “approximately \$800 million (and perhaps significantly more).”⁸⁵

The table below shows the reported impact of justiciable problems on those facing them across five different jurisdictions: Azerbaijan, Mali, Rwanda, Egypt and Bangladesh. The picture presented is similar to that reported from surveys in richer jurisdictions.

Justiciable problems, through impacting more broadly on people's lives can create and perpetuate broader social problems:

*There is a relationship between legal problems and poverty. Legal problems, left unaddressed, can cause an economic or social shock that pushes vulnerable persons into poverty. For example, ... wrongful termination of employment, financial debt or denial of social safety net benefits can cause vulnerable persons to fall into poverty. Unresolved legal problems can also prevent an individual in poverty from escaping it.*⁸⁶

*Impact of justiciable problems (% of reported problems)*⁸⁷

| Impact | Country | | | | |
|------------------------|---------|------|--------|-------|--------|
| | Azerb. | Mali | Rwanda | Egypt | Bangl. |
| Stress | 58 | 39 | 62 | 64 | 94 |
| Loss of money | 53 | 61 | 52 | 53 | 59 |
| Loss of time | 22 | 47 | 46 | 22 | 15 |
| Health problems | 39 | 45 | 20 | 52 | 35 |
| Damage to relationship | 9 | 29 | 27 | 39 | 35 |
| Loss of employment | 19 | 43 | 13 | 14 | 6 |
| Other | 22 | 12 | 3 | 10 | 3 |

Problem clustering

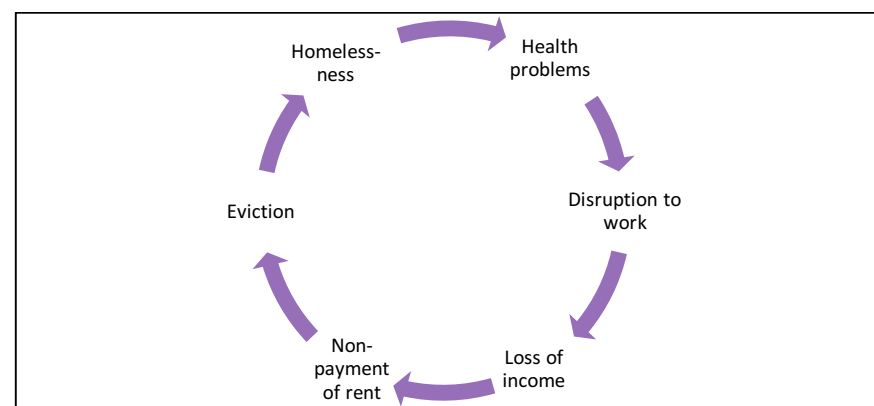
Various legal needs surveys undertaken around the world have identified the phenomenon of 'problem clustering', which comprises the increased propensity of particular justiciable problem types to co-occur when more than one problem type is experienced.

The causes of problem clustering are manifold. First, particular justiciable problem types are associated with particular types (and levels) of impact, and particular types of impact increase vulnerability to

particular types of problem. As was noted following the 2011 Moldovan survey, "It is easy to see how domestic violence can cause relationship breakdown, unemployment, tenant-landlord and debt problems."⁸⁸ Thus, problem clustering results. This can manifest in vicious cycles.

Also, some problem types arise from similar sets of circumstances and/or are associated with the same demographic factors. Again, this contributes to a tendency for some problem types to co-occur.

*Vicious cycle involving justiciable, health and wider social problems*⁸⁹



The most commonly identified problem clusters have been observed in the context of family breakdown, where domestic violence, divorce, ancillary issues and problems concerning children link closely. Other identified clusters include clusters centred on economic activity (e.g. problems concerning employment, money, consumer transactions, welfare benefits and housing), and problems centred on poor quality housing.⁹⁰

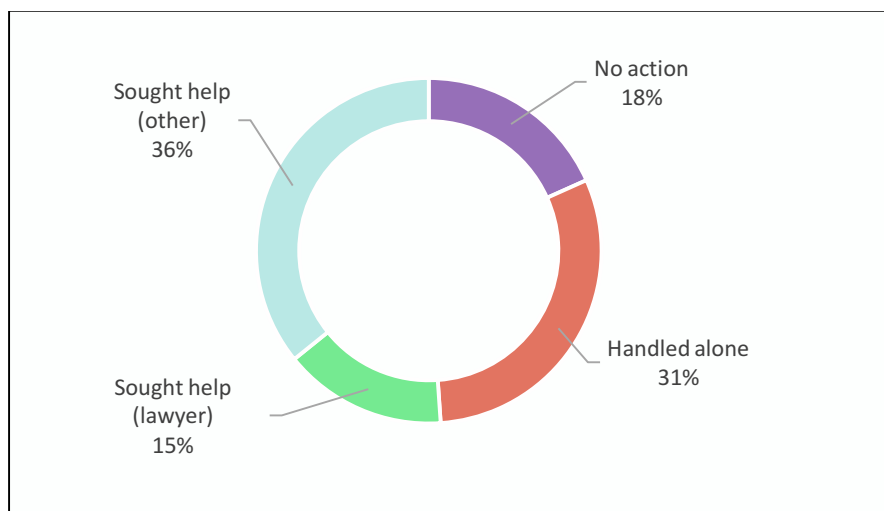
Problem resolution behaviour

Many different paths to justice are open to those facing justiciable problems, many of which involve little or no reference to law. Although

seeking help from lawyers (including private lawyers, law centres and legal aid) is relatively uncommon, so too (at least, generally)⁹¹ is taking no action to resolve problems (sometimes referred to as ‘lumping’ problems). Most people seek help elsewhere or try to resolve problems on their own, or with the help of family or friends.

The figure below illustrates the problem resolution strategies employed by respondents to the 2008 *Legal Australia Wide Survey*. The pattern of problem resolution behaviour in Australia is fairly typical. For example, in Yemen (socioeconomically distinct from Australia), a very similar proportion of people were found to involve lawyers in the problem resolution process, with other sources of help, and informal help from family or friends again more common. Critically, however, legal needs surveys the world over have demonstrated that different population groups have different attitudes to problem resolution,⁹² face different obstacles to action,⁹³ and have different needs in relation the help and processes available.⁹⁴

*Problem resolution strategies (Australia 2008)*⁹⁵



Inaction

Inaction in the face of justiciable problems is not always a cause for concern. Many problems are deemed not serious enough to warrant action, while others resolve quickly without the need for action. However, across jurisdictions, many reasons for inaction provided by respondents to legal needs surveys convey “a rather negative and powerless quality”⁹⁶

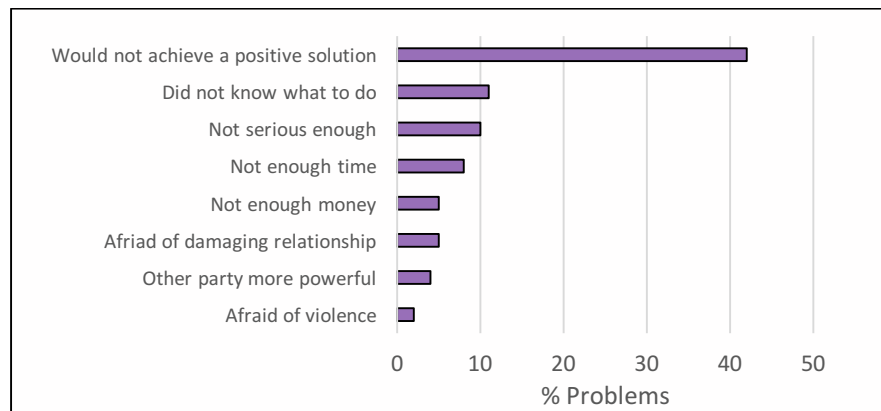
For example, people often believe that action would make no difference to the outcome of their problem (e.g. one-quarter of Indonesian ‘lumpers’, one-third of Argentinian and Ugandan lumpers, four-fifths of Ukrainian lumpers and one-half of Australian and Georgian lumpers);⁹⁷ despite “making this judgement without the benefit of any advice.”⁹⁸ People are also frequently fearful of the consequences (to relationships and sometimes personal safety) of acting to resolve legal problems, or are ignorant of their rights or options,⁹⁹ sources of help, or dispute resolution processes. Indeed, the most recent Ukrainian legal needs survey indicated that 12% of internally displaced persons who took no action to resolve justiciable problems were scared to do so (compared to 3% of others). In some jurisdictions, people also have concerns about the fairness of processes and, in some jurisdictions, corruption.¹⁰⁰

Reasons for inaction given by respondents to the 2015 Ukrainian *Justice Needs and Satisfaction* survey are shown below.

Multivariate analysis of factors associated with inaction, as reported for 9 national surveys,¹⁰¹ suggests reasonably consistent associations between inaction and problem type; with inaction found to be particularly associated with problems concerning anti-social neighbours (and, to a lesser extent, problems concerning employment),¹⁰² with the reverse the case for family problems (and, to a lesser extent, consumer problems. Inaction has also been found to be more common among men, those facing language obstacles and those regarding problems as the product of ‘bad luck’; and to become less common with age (although perhaps more common again in later years), education level, income, awareness of legal rights and legal services, legal confidence, problem value and problem severity.

This suggests an association between elements of social disadvantage and basic problem resolution strategy that sits on top of the association between social disadvantage and vulnerability to problems.¹⁰³

Reasons for inaction (Ukraine 2015)¹⁰⁴



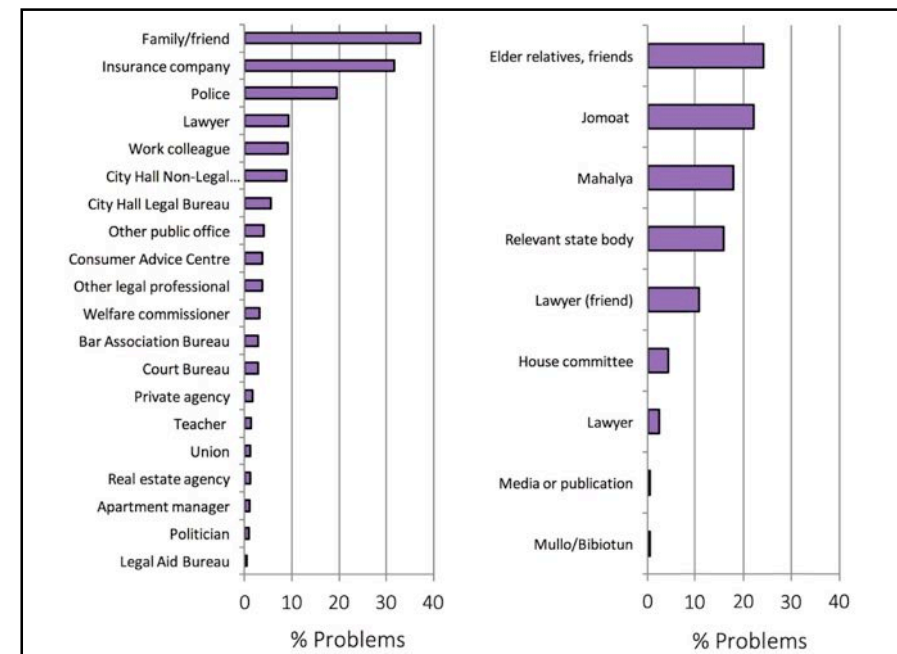
Reasons for inaction in the face of justiciable problems often convey 'a rather negative and powerless quality'.

Patterns of advice seeking

When acting to resolve justiciable problems, the public seeks help from a wide range of sources; informal and formal, promising and 'unpromising'.¹⁰⁵ Often people's choices are informed by relatives, friends and colleagues. For example, in Macedonia it was found that almost half of all consultations with "most essential advisers" followed suggestions by those within survey respondents' social networks.¹⁰⁶ Other common influences on choice are previous experience and personal understanding of options.

Beyond lawyers, common sources of formal help include independent advice organisations (including NGOs), unions, community leaders and judicial and other government bodies; along with public service workers, such as doctors and social workers. The range of sources varies between jurisdictions, reflecting differences in socio-political structuring and the landscape of available services. For example, in Tajikistan, Mahalya and house committees are notable sources of information and support (see figure); while, in England and Wales, Citizens Advice Bureau are notable, in Uganda, Local Council Courts, in Japan, insurance companies (see figure), in Moldova, the police,¹⁰⁷ and in Yemen, Sheikhs.¹⁰⁸ Also, of course, "different sources [are] helpful for different types of problem."¹⁰⁹

Main sources of information and support (Japan 2005, left, & Tajikistan 2012, right)¹¹⁰



When people are signposted or referred¹¹¹ to another source of help, not all go on to obtain further help. The more times people are directed elsewhere, the more they are likely to drop out of the formal advice system. This process is known as ‘referral fatigue’.¹¹²

As with inaction, multivariate analysis of factors associated with obtaining formal help suggests reasonably consistent associations between advice and problem type; with advice found to be particularly associated with problems concerning family breakdown, employment,¹¹³ personal injury and housing, with the reverse the case for consumer¹¹⁴ problems.

Looking more broadly, women tend to be more likely to seek help, and help seeking appears to increase with age (though, in some countries, it also appears to tail off in later years) and the reported seriousness and value of problems. There is also good evidence that language, socio-cultural factors, geography, available technology and other physical access and service infrastructure issues influence advice seeking behaviour.¹¹⁵

However, demonstrating the dangers of assuming behaviour will be similar across situations or countries, in the context of family disputes, women in Mali have been found to be particularly “reluctant to approach formal institutions” for “fear of the consequences.”¹¹⁶ Similarly, citizens of Bulgaria have been found to be unusual in routinely turning to public authorities to resolve justiciable problems of all types.¹¹⁷ And, in a few countries, a small (but notable) number of respondents report that criminal connections are sometimes turned to in order to resolve justiciable problems.¹¹⁸

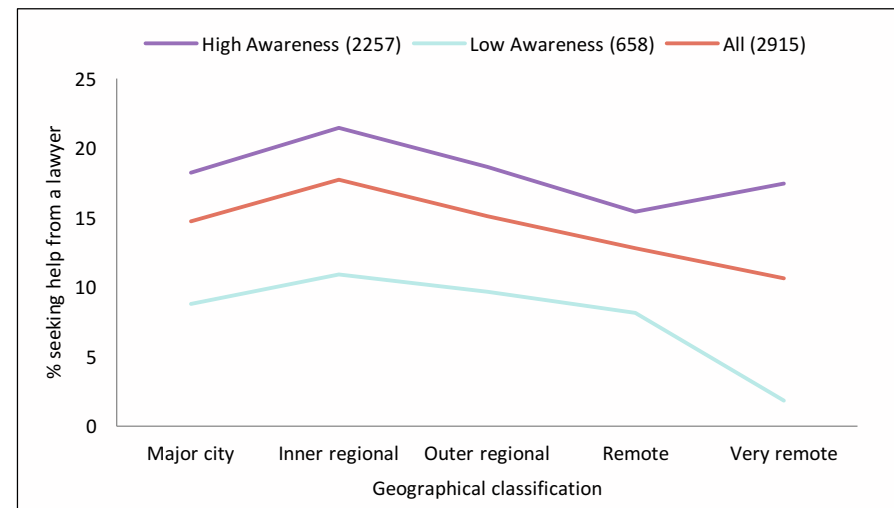
The use of (and obstacles to using) lawyers

Turning to the use of lawyers in resolving justiciable problems, it has generally been found that “problem type tends to swamp other considerations,”¹¹⁹ with family problems typically associated with high levels of lawyer use, and consumer problems with low levels.¹²⁰ However, notable differences exist in associations between problem type and lawyer use between countries.¹²¹ Moreover, problem type represents “an unsatisfactory explanation of problem resolution behaviour, given that it

likely acts as a proxy for more fundamental factors, such as the requirement of court involvement, the structure of the legal services market, cultural expectations and people’s understanding and characterisation of their problems.”¹²²

In England and Wales, it has been argued that different levels of lawyer use observed in respect of different problem types is likely to, at least in part, reflect the pattern of supply of legal services.¹²³ And the “remarkably small population of lawyers”¹²⁴ in Japan has been argued to lie behind relatively low levels of lawyer use in that country.

Lawyer use by awareness and remoteness
(Australia, 2008)¹²⁵



In England and Wales it has also been found that whether or not legal needs survey respondents characterised justiciable problems as ‘legal’ is strongly associated with whether or not they sought help from a lawyer. In fact, after controlling for other factors, lawyer use was 169% higher when problems were “characterised as legal.”¹²⁶ Moreover, characterisation was found to substantially affect lawyer use both across

and within problem types; providing a possible explanation for differences in advice seeking behaviour relating to problem types strongly associated with lawyer use (such as family problems). And later analysis demonstrated that problem characterisation is strongly associated with the pattern of supply of legal services;¹²⁷ demonstrating the complexity of potential influences on behaviour.

Elsewhere, awareness and proximity of legal services have also been observed to link to lawyer use. In Australia, for example, people living in very remote areas and unaware of legal services were found to report very low levels of lawyer use.¹²⁸ Similarly, uneven regional availability and awareness of legal services was found to impact on problem resolution behaviour in Ecuador and Georgia.¹²⁹

Lawyer use has also been found to be associated with problem severity and value (with lawyer use increasing along with severity/value).¹³⁰ Evidently, 'cost-benefit calculations' are applied in people's choices about whether to use lawyers.¹³¹

And lawyer use has been found to be linked to levels of legal confidence (sometimes referred to as 'subjective legal empowerment'). In England and Wales, citizens with the highest levels of legal confidence have been found to be 43% more likely to seek help from a lawyer than those with the lowest levels.¹³²

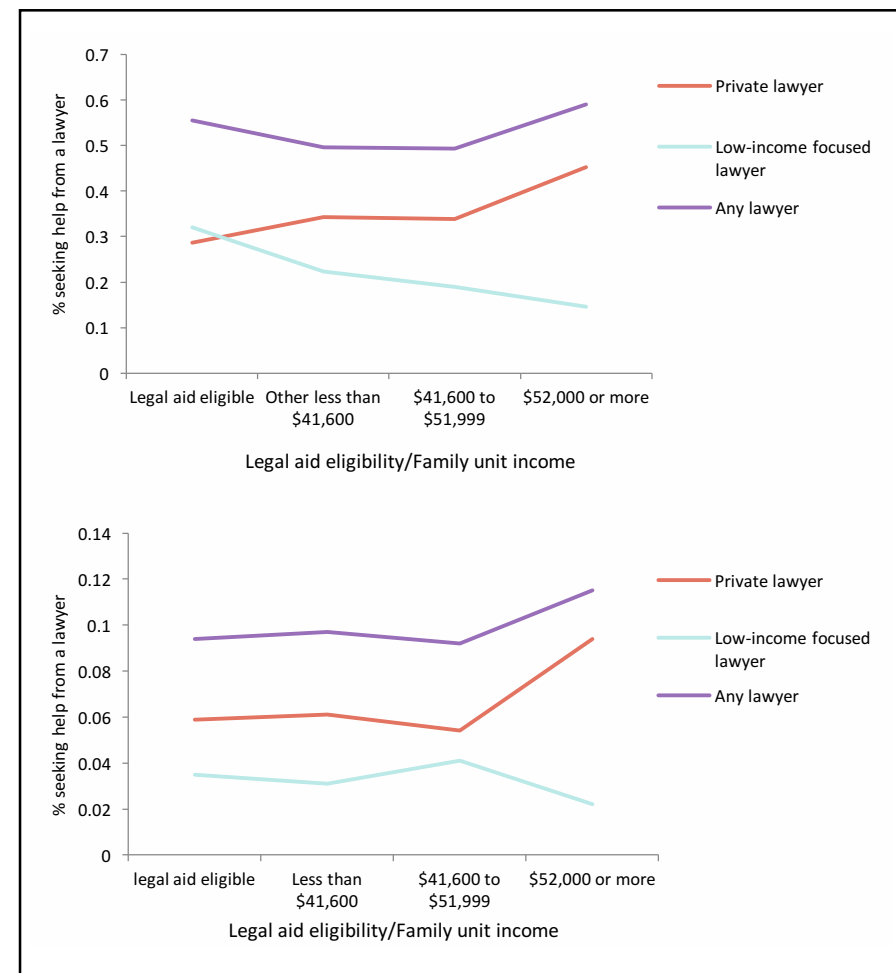
Frequently mentioned barriers to accessing legal services include language, social convention/etiquette, expectation and, of course, physical obstacles to accessibility (beyond geography), such as opening hours, waiting times, etc..¹³³

Lawyer use and income

One concern about access to lawyers is that it may be unduly restricted by income. A "central aspect of much of the debate over access to justice is the cost of legal services."¹³⁴ One review of survey findings from seven countries suggested that "income has relatively little relationship with the decision to use a legal professional to deal with a dispute or other legal need."¹³⁵ However, many legal needs surveys have suggested a

relationship between income and lawyer use, including surveys in Canada, Colombia, Jordan, Macedonia, the Netherlands, New Zealand, Scotland, Taiwan;¹³⁶ sometimes U-shaped in form.¹³⁷

Use of lawyers for family problems (top) and all other problems, excluding personal injury (bottom) (Australia, 2008)¹³⁸



Furthermore, analyses of data from the 2008 *Legal Australia-Wide Survey*¹³⁹ and 2010 *English and Welsh Civil and Social Justice Panel Survey*¹⁴⁰ point to a subtle relationship between income and lawyer use mediated by subsidy and payment mechanisms. Illustrating this mediated relationship, findings from the Australian survey suggested a U-shaped association in the case of family problems (where no or low cost legal assistance is available for those on a low income), no association in the case of personal injury (where no-win no-fee arrangements are available) and a positive association in other cases. Additionally, patterns of use of private lawyers and legal services aimed at those with low incomes provided a coherent structure for the findings overall (see figures above).

The English and Welsh survey also found among that those who chose to obtain help from not-for-profit advice services rather than solicitors' firms "cost concerns dominated," with any suggestion of lack of need "relegated to a distant second place."¹⁴¹

In addition to problem type, lawyer use has been found to link to the supply of legal services, awareness of services, how problems are characterised, problem severity/value, and legal confidence.

Use of the Internet

While face-to-face and telephone contact with sources of help still dominate,¹⁴² increasing numbers of people are turning to the Internet for help with justiciable problems. For example, the 2015 Ukrainian *Justice Needs and Satisfaction Survey* indicated that people turned to the Internet in relation to 23% of problems, up from just 12% five years earlier.¹⁴³ However, "people who use the Internet to help resolve legal problems are not representative of the public as a whole."¹⁴⁴ In addition to 'the first digital divide' (which relates to the ability of individuals to physically access the Internet), the 'second digital divide' (which relates to the capacity of individuals to use Internet resources)¹⁴⁵ also acts to distort the profile of those who look to the Internet for help resolving problems.

So, for example, Internet use increases along with educational attainment.¹⁴⁶ Also, there is evidence that younger people, while having relatively high levels of Internet access, use the Internet to help resolve problems "to a lesser degree than similarly connected age cohorts, and are less successful when doing so."¹⁴⁷

Legal needs surveys also suggest that people often struggle to find what they are looking for online (which generally goes beyond the details of offline sources of help¹⁴⁸); although, it also appears that most people obtain *some* useful information through their efforts.¹⁴⁹

Formal Process and outcomes.

Legal needs surveys have repeatedly shown that formal processes play a largely peripheral role in the resolution of most types of justiciable problem:

*Very few people with legal problems use the formal legal system to resolve their problems.*¹⁵⁰

Most problems resolve through informal methods; often directly between the parties. However, formal process is common in relation to problems such as those concerning family breakdown. And when justiciable problems involve the use of formal processes, individuals can face further obstacles in their paths to justice. For example, people may not be familiar with the form and requirements of processes, or may be (or feel) unable to afford representation. A review of research on litigants in person found that "most" suggested litigants in person face a variety of knowledge related disadvantages; such as in "identifying facts relevant to the case", "understanding evidential requirements" and "understanding the nature of proceedings."¹⁵¹

While it is difficult to establish the impact of problem resolution behaviour on outcomes through legal needs surveys,¹⁵² there is evidence from legal needs surveys that although, when advice is obtained, reasonably similar outcomes are achieved by both those who are aware

and unaware of their legal rights, those who are unaware of their legal rights achieve relatively worse outcomes in the absence of advice.¹⁵³ Furthermore, if advice is not obtained, those unaware of their rights are more likely to regret their problem resolution strategy.¹⁵⁴

The cost of paths to justice

The cost of resolving justiciable problems varies considerably, most obviously by the nature of the problem and nature of the services and processes employed by the parties. The cost of resolving legal problems also varies by jurisdiction:

“[While] legal problems and justice needs are similar in different jurisdictions and different locations ... processes for resolving them, as well as rules determining outcomes, however, vary widely.”¹⁵⁵

In Canada, the 2014 *CFCJ National Survey of Everyday Legal Problems* was designed specifically to explore the ‘cost of justice’.¹⁵⁶ It found that, of those people who reported on the cost aspects of their problems, 43% had “spent some money attempting to resolve the problem,”¹⁵⁷ at an average of CAN\$6,100 each (“almost 10% of the average total 2012 Canadian household expenditure”).

As can be seen from the table below, expenditure was found to go well beyond court and lawyers’ fees. Although, many people will have had these fees subsidised (e.g. through legal aid, government/NGO grants to particular legal services),¹⁵⁸ so levels of personal expenditure will understate the overall cost of these fees.

Beyond monetary costs, there is also the (sometimes considerable)¹⁵⁹ time that citizens spend in resolving justiciable problems (e.g. communicating with other parties, searching for information, obtaining and preparing evidence, administering a claim, travelling and attending meetings and hearings, etc.) and the emotional cost of resolving problems. Almost 60% of respondents to the 2001 *English and Welsh Civil*

and Social Justice Survey who attempted to resolve problems “described it as having been stressful.”¹⁶⁰

Impact of justiciable problems (% of reported problems) (Canada 2014)¹⁶¹

| Expenditure type | Percent |
|---------------------------------------------|---------|
| Lawyer fees | 22 |
| Transportation | 16 |
| Purchase of materials, copying and printing | 13 |
| Court fees | 11 |
| Other advisers and mediators | 10 |
| Telephone, long distance and fax | 5 |
| Child care and other household expenses | 5 |

Attitudes to the justice system

Attitudes to justice systems may vary considerably between jurisdictions, perhaps reflecting socio-political traditions. So, while 12% of respondents to the 2010 and 2012 *English and Welsh Civil and Social Justice Surveys* disagreed that if they went to court with a problem they ‘would be confident of getting a fair hearing’, only 12% of respondents to the 2015 *Ukrainian Justice Needs and Satisfaction Survey* agreed that they ‘trust the court system in Ukraine’ (being much more confident in ‘traditional mechanisms to resolve disputes’).¹⁶²

While these sentiments are not directly equivalent, legal needs survey findings nonetheless give an impression that, in countries in which open government is still in the process of becoming established attitudes towards the justice system tend to be somewhat negative. For example, in addition to the ‘very low’ level of trust in the court system in Ukraine,¹⁶³ the 2012 *Kyrgyzstan Access to Legal Services for Low Income People* survey evidenced a general belief that the judicial system is ineffective¹⁶⁴ and 41% of respondents to the 2012 *Georgian KAP Survey Concerning Justiciable Events* said they do not trust the courts. Although, raising some doubt as to the extent of differences between attitudes in countries with different

socio-political traditions, 29% of respondents to the 2006 Canadian *National Survey of Civil Justice Problems* stated that they disagreed that 'the laws and justice system are essentially fair'.

Attitudes to justice systems also vary within jurisdictions. For example, the 2006 Canadian survey also found that "the more justiciable problems people have, the less favourably they view the justice system."¹⁶⁵ So, while 72% of those who reported no problems held positive views about the justice system, the figure was just 40% among those who reported seven or more problems.

Similar findings also originated from the 2012 Macedonian Legal Needs Survey:¹⁶⁶

... Attitudes were significantly more negative among those respondents who had more experience with justiciable problems. While in the group with very positive attitudes only 38% experienced a justiciable problem, this was true for 46% of the respondents in the somewhat positive attitudes, 58% in the somewhat negative attitudes and 61% in the very negative attitudes group. In sum, people that have experienced a justiciable problem are more likely to have negative attitudes toward the justice system ... Negative attitudes are not only related to the experience of a justiciable problem (or lack thereof), but they are also related to the number of justiciable problems. While in the very positive attitude group respondents have experienced 0.6 justiciable problems on average, i.e., significantly less than 1, in the very negative attitudes group they have experienced 1.6 justiciable problems, i.e., significantly more than 1.

Unpublished findings from England and Wales tell a similar tale.¹⁶⁷

Other demographic associations with attitudes to the justice system have also been observed. For example, in Georgia, associations were found with age, region and ethnicity.¹⁶⁸



What impact have legal need surveys had?

The findings of legal needs surveys have demonstrated how justiciable problems contribute to processes of social disadvantage and poverty, impact on public services and dampen economic activity and growth. They have also highlighted the many obstacles people (and businesses) face in accessing justice around the world, and suggested paths to more inclusive and effective legal services and processes.

In doing this, the findings of legal needs surveys have significantly influenced access to justice policy and the development of public legal assistance services across the globe. Not least, these findings have substantially contributed to a shift in the focus of considerations of access to justice, from the form and functioning of formal legal processes to the real world experience and needs of those for whom formal legal processes exist, namely citizens.¹⁶⁹ As the Canadian *Action Committee on Access to Justice in Civil and Family Matters* observed:

*Historically, access to justice has been a concept that centred on the formal justice system (courts, lawyers and judges) and its procedures. The formal system is, of course, important. But a more expansive, user-centred vision of an accessible civil and family justice system is required.*¹⁷⁰

One English policy maker described legal needs surveys as having “changed the way [policy makers] think”¹⁷¹ And justice policy outputs in countries such as Australia,¹⁷² Canada¹⁷³ and England and Wales,¹⁷⁴ are scattered with references to survey findings. In particular, in jurisdictions such as these, findings concerning the socially patterned distribution of justiciable problems, problem clustering, obstacles to legal advice and drivers of problems solving behaviour

have informed and shaped the key directions for reform of public-funded legal services; towards greater targeting (to those most in need),

*outreach (to target those who have difficulty access traditionally located services), joining up (of services, both legal and non-legal), early intervention (to prevent problems occurring or escalating) and appropriateness (of services, reflecting client capability).*¹⁷⁵

This is manifested in, for example, the detail of the Australian National Partnership Agreement on Legal Assistance Services, currently running from 2015 to 2020.¹⁷⁶

However, the influence of legal needs surveys has not been uniform, either over time or between jurisdictions. Policy processes can move quickly, especially in the aftermath of political or economic interruption.¹⁷⁷ And a distinction should be drawn between those jurisdictions in which surveys have been commissioned, generally by government, to inform the development of established public legal assistance services and schemes – such as Australia, Canada, England and Wales, and the Netherlands – and those jurisdictions in which surveys have been commissioned, generally by NGOs, to support the emergence of public legal assistance services and/or fundamental reform of justice sectors – such as Argentina, Bulgaria, Kyrgyzstan, Moldova and Mali.

In the former case, legal needs surveys are built into the policy process. In the latter case they need to be introduced into the policy process. And when they are, provided they are timed to coincide with Government interest in reforming the justice sector, they can have significant impact on the form and objectives of the policy process.

For example, the 2011 *Met and Unmet Legal Needs in Moldova* survey – conducted within the context of the Soros Foundation Moldova’s “Improving Good Governance in Moldova through Increased Public Participation” project, at the time the Ministry of Justice was in the process of developing a *Justice Sector Reform Strategy 2011-2016* “that meets European standards”¹⁷⁸ – provided “rock solid arguments to prove the need to change/improve the system”¹⁷⁹ and contributed both to thinking around the third ‘pillar’ of the Justice Sector Reform Strategy (concerning “access to justice and enforcement of court decisions”¹⁸⁰) and Soros

Foundation Moldova becoming part of the working group set up to develop the Strategy for Justice Sector Reform for 2011 – 2016, and thus having direct involvement in the policy process.

Elsewhere, in Mali, the 2014 *Justice Needs and Satisfaction Survey* became part of the national dialogue on access to justice through a symposium opened by the Minister of Justice and Human Rights and attended by “presidents of jurisdictions, ministry directorates, prosecutors, representatives of the médiateur de la république, civil society leaders, and the bar association - under the leadership of the Malian Ministry of Justice.”¹⁸¹ The symposium considered the implications of the survey’s findings for the various jurisdictions involved and

Two working groups were formed: one on justice related issues, and the other on reconciliation. Both working groups worked on concrete recommendations for action plans.

And in Argentina, in 2016, in the wake of a 2013 legal needs survey conducted by the Asociación Civil por la Igualdad y la Justicia, the National Director of Promotion and Strengthening Access to Justice (within the Deputy Secretary’s Office of Access to Justice of the Ministry of Justice and Human Rights)¹⁸² commissioned the first of a series of legal needs surveys to inform the substantial reform of the (currently around 80) Community Legal Aid Centres across the country. These surveys will, like surveys in Canada, England and Wales and the Netherlands, both provide insight into the needs and problems access justice of those people the centres serve and also allow for monitoring of citizen experience and problem resolution behaviour over time.

In conclusion, the unique citizen centred perspective of legal needs surveys operates to influence considerations of access to justice and processes of justice sector reform in many ways. In general, legal needs surveys provide “a background of empirical generalisations and ideas that *creep* into policy deliberations”¹⁸³ In the particular, they provide robust evidence to inform specific reform programmes, both evolutionary and

revolutionary, and allow monitoring of citizen experience and behaviour over time. Legal needs surveys also make made evident the uniqueness of the socio-legal environments that people in different regions and jurisdictions live in, and thus the uniqueness of the patterns of needs and unmet needs they face, and uniqueness of the challenges that are faced in securing access to justice for all.



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Notes

¹ Legal services are here intended to include lawyers, paralegals and other sources of formal help (including remote and online services) that utilise law and/or formal dispute resolution processes operating within a legal framework to assist citizens (or businesses) to resolve problems which have a legal dimension. The incorporation of wholly extra-legal services would render void the 'legal' component of 'legal need'.

² Genn (1997, p.6)

³ Engel (1998, p.124), referring to frustration felt among researchers studying legal need in the 1970s that accompanied a period of contraction in the field.

⁴ As Pleasence et al. (2000, p.10) described the "background assumption" of much legal needs research in the 1960s and early 1970s.

⁵ Lewis (1973, p.79)

⁶ Such as Lewis (1973), Marks (1976) and Griffiths (1980).

⁷ Lewis (1973, p.94)

⁸ See, for example, Curran (1980).

⁹ Pleasence et al. (2000, p.13)

¹⁰ See, for example, Pleasence & Balmer (2012a) and Pleasence et al. (2015).

¹¹ Although another that is being formulated in an increasingly sophisticated manner. See, for example, Parle (2009), Collard et al. (2011), Pleasence et al. (2014).

¹² For example, in seeking help from a legal service.

¹³ Bradshaw (1972)

¹⁴ Coumarelos et al. (2012, p.3)

¹⁵ Legal Services Agency (2006), Ignite Research (2006). For the purposes of the survey, unmet legal need was defined as existing if (a) a problem arose and no action was taken because the person didn't know what to do, (b) a person gave up trying to resolve a problem, or (c) no help was sought "because of specific barriers, e.g. language barriers, thought it would cost too much, intimidated by the legal process etc."

¹⁶ Of particular relevance in the context of limited resources and access to justice policy centred on relative need.

¹⁷ Genn (1999)

¹⁸ Unless need is (wrongly) conceived as an attribute of problems, rather than a requirement for something.

¹⁹ Schetzer et al. (2002, p.5)

²⁰ OECD (2005, p.4)

²¹ Civil law refers to all law that can be applied to or by individual citizens (or, in a business context, businesses) other than criminal law.

²² The first legal needs survey is accredited to Clark and Corstvet (1938), who separately surveyed citizens and businesses in Connecticut, United States, to explore "how the needs of the community for legal service were being met" during the 1930s recession at the U.S. Bar.

²³ Coumarelos et al. (2012, p.1)

²⁴ Published findings are available in, for example, Reese & Eldred (1994), Genn (1999), Maxwell et al. (1999), Genn & Paterson (2001), Currie (2005), GfK Slovakia (2004), Van Velthoven & ter Voert (2004), Currie (2007), Dignan (2006), Ignite Research (2006), Pleasence (2006), Murayama (2007), Sato et al. (2007), Asia Consulting Group Limited & Policy 21 Limited (2008), Gramatikov (2008), Currie (2009), Tamaki, T. (2009), Pleasence et al. (2010), Van Velthoven & Haerhuis (2010), Kobzin et al. (2011), ACSSC (2012), BDRC Continental (2012), Chen et al (2012a), Coumarelos et al. (2012), Gramatikov (2012), Social Research Center (2012), Pleasence & Balmer (2013a), Prettitore (2013), Srbijanko et al. (2013), Barendrecht et al. (2014a), Farrow et al. (2016), HiiL (2016) and Piest et al. (2016).

²⁵ Bercovich et al. (2013)

²⁶ Michelson (2008).

²⁷ La Rota et al. (2013). Although classified as a sub-national survey, the survey was geographically dispersed, being conducted in 14 cities: Bogotá, Medellín, Cali, Barranquilla, Bucaramanga, Cartagena, Pasto, Montería, Tunja, Neiva and Pereira.

²⁸ ECOLEX (2014)

²⁹ Details of the Russian survey kindly provided by Martin Gramatikov.

³⁰ Gramatikov et al. (2014).

³¹ Barendrecht et al. (2014b)

³² Gramatikov & Verdonshot (2010)

³³ For example, surveys have recently been conducted in more than one-quarter of all U.S. states.

³⁴ Asia Consulting Group Limited & Policy 21 Limited (2008), Croes and Maas (2009), Orima Research (2010), Croes (2012), Pleasence & Balmer (2013b), Blackburn et al. (2015)

³⁵ Instituto Brasileiro de Geografia e Estatística (2010)

³⁶ For example, the regular *Scottish Crime and Justice Surveys*.

³⁷ For example, the 2004 Canadian *National Survey of Civil Justice Problems* and the 2012 Kyrgyzstan *Access to Legal Services for Low Income People* survey were both restricted to those on a low income (Currie 2005, ACSSC 2012) while in 2001 a survey was undertaken of the legal needs of people living in temporary accommodation in England and Wales.

³⁸ The 2008 *Legal Australia Wide Survey* included a boost of indigenous people to allow comparisons to be made with the general population. The survey was also stratified by state to allow state by state comparisons to be made.

³⁹ Over the course of the five repetitions of the *English and Welsh Civil and Social Justice Survey* to 2012, the survey placed increasingly greater emphasis on understanding the social context of justiciable problem experience and early problem resolution strategy decisions and less emphasis on experience of formal processes (being rare, and often the subject of some confusion on the part of respondents).

⁴⁰ Trubek et al. (1983), Reese & Eldred (1994).

⁴¹ Genn (1999), Genn & Paterson (2001).

⁴² Particularly the *English and Welsh Civil and Social Justice Survey*.

⁴³ Hadfield (2010, p.133)

⁴⁴ Habermas (1987)

⁴⁵ Cappelletti and Garth (1978, p.185)

⁴⁶ See, for example, Action Committee on Access to Justice in Civil and Family Matters (2013).

⁴⁷ This phrase references Mnookin and Kornhauser's (1979) paper on 'bargaining in the shadow of the law', which focused on (lawyer) settlement negotiations in the case of divorce. This realisation is in large part attributable to the findings of earlier legal needs surveys.

⁴⁸ See, for example, Pleasence et al. (2013a, 2014), and also the *Impact of Legal Needs Surveys* section below.

⁴⁹ Genn (1999)

⁵⁰ Golub and McQuay (2001). The concept of legal empowerment emerged in the field of law and development and now refers to the focus of developmental justice

programmes on "empowering individuals to realise their rights and voice their demands more actively" (Kolisetty 2014, p.9).

⁵¹ Barendrecht & van Nipsen tot Severaer (2008)

⁵² See, further, the *Impact of Legal Needs Surveys* section below.

⁵³ At a supranational level interest in the socio-economic aspects of is evident in the recent activities and outputs of organisations such as the OECD and World Bank. For example, the OECD (2015, p.3), in exploring economic dimensions of access to justice, has observed that "improving access to justice is increasingly recognised as a critical dimension of inclusive growth and as a means for tackling inequality." Similar sentiments have also emanated from the World Bank: "Legal problems, left unaddressed, can cause an economic or social shock that pushes vulnerable persons into poverty. For example, ... wrongful termination of employment, financial debt or denial of social safety net benefits can cause vulnerable persons to fall into poverty ... [Legal services] can protect the vulnerable from falling into poverty because of the economic shocks caused by legal problems" Prettimore (2015, p.1)

⁵⁴ Furthermore, Goal 16.3 is to "promote the rule of law at national and international level and ensure equal access to justice for all."

⁵⁵ <http://www.un.org/sustainabledevelopment/peace-justice/>

⁵⁶ Such as Australia, Canada, England and Wales, and the Netherlands.

⁵⁷ Such as Argentina, Bulgaria, Kyrgyzstan, Moldova and Mali.

⁵⁸ Piest et al. (2016, p.23)

⁵⁹ This monitoring function lies behind the repetition of surveys in, for example, the Netherlands (2003, 2009, 2013) and the United Kingdom (2001, 2004, 2006-9, 2010, 2012, 2015), and the ambition to do the same in Argentina (starting from 2016).

⁶⁰ Pleasence et al. (2016). See, also, the companion background paper *Conducting Legal Needs Surveys*.

⁶¹ Pleasence et al. (2013a, p.28)

⁶² Murayama (2007), Barendrecht et al. (2014b). Prettimore (2015, p.1) reports a relatively low figure for Jordan also, with "roughly 20%" of families indicating a family member had experienced a legal problem in the previous 5 years.

⁶³ Hadfield (2010, p.133)

⁶⁴ Pleasence et al. (2004, p.28) refer to these circumstances as the 'defining circumstances' of problems. See, also, van Velthoven and ter Voert's (2005) application of participation theory in this context.

⁶⁵ Excluding crime, where recorded. And, in the case of the online surveys conducted in England and Wales, excluding non-contentious (or likely problematic) legal issues (such as conveyancing).

⁶⁶ For citizens of in countries such as Mali and Uganda, “land is the most important economic, social and legal asset” (Piest 2016, p. 131). Other notable differences in patterns of problem reporting include the high level of ‘elections’ related problems reported in Kyrgyzstan (ACSSC 2012).

⁶⁷ Gramatikov et al. (2014), Piast et al. (2016), Michelson (2007), Chen et al. (2012b). Although, demonstrating the complexity of social and problem patternation, they were found to be relatively prominent in Yemen (Barendrecht et al. 2014b).

⁶⁸ Barendrecht et al. (2014a).

⁶⁹ Piast et al. (2016)

⁷⁰ Coumarelos et al. (2012, p.5)

⁷¹ While broadly accurate, in a global context it should be noted that factors of vulnerability to justiciable problems can be diametrically opposed, and vary (sometimes considerably) by problem type. Both elevated socio-economic activity and depressed socio-economic status may fuel problem experience – but in different ways. As Gramatikov (2012, p.20) explained “On the one hand, poor people are more vulnerable because they have fewer resources to mitigate and cope with legal problems. On the other hand, those who are more affluent participate more in the economic, social and political life.”

⁷² Crime victimisation has commonly been identified as associated with the experience of justiciable problems. For example, this was identified through multivariate analysis in Moldova (Gramatikov 2012). Less often reported is the strong association between experience of justiciable problems and criminal offending. See, for example, Kemp et al. (2007) and Pleasence & McDonald (2013).

⁷³ Piast et al. (2016) identified internally displaced persons (as a result of partition and civil war) as being associated with much higher problem prevalence. Related to this, Pleasence et al. (2004) found those living in local council temporary accommodation to be associated with high problem prevalence.

⁷⁴ See, for example, Balmer and Pleasence (2012).

⁷⁵ See, for example, Coumarelos et al. (2013).

⁷⁶ Pleasence and Balmer (2009)

⁷⁷ Pleasence et al. (2013a), p.30. Excluding domestic violence, that is consistently gendered across jurisdictions, significant gender based differences in justiciable

problem experience have been found in only a minority of jurisdictions. However, some differences are notable.

⁷⁸ Prettitore (2015, p.2). Prettitore also noted, in the context of Jordan, that some “social norms may pressure women against registering complaints”

⁷⁹ *Ibid.*

⁸⁰ Barendrecht (2014a)

⁸¹ One aspect of this is that problems can have a different character for disadvantaged people. For example, what an affluent person might regard as a trivial consumer issue – such as the purchase of food that is unfit – might be highly problematic for someone living in poverty.

⁸² This was first described and quantified by Pleasence et al. (2004). Findings are consistent across jurisdictions. For example, in Moldova, 16.7% of respondents reported one problem, 3.5% reported two, 1.3 % reported three and 0.6% reported 4 (Gramatikov 2012).

⁸³ Srbijanko et al. (2013, p.82)

⁸⁴ Pleasence (2006, p.i)

⁸⁵ Farrow et al. (2016, p.16)

⁸⁶ Prettitore (2015, p.1)

⁸⁷ Gramatikov & Verdonchot (2010)

⁸⁸ Gramatikov (2012, p.19)

⁸⁹ Adapted from Tobin Tyler et al. (2011)

⁹⁰ See, for example, Pleasence (2006), Gramatikov (2008), Currie (2009), Coumarelos (2012).

⁹¹ In some jurisdictions, relatively high levels of inaction have been reported. For example, in Macedonia, no action was reported in respect of 36% of problems (Srbijanko et al. 2013).

⁹² For example, Barendrecht et al. (2014a, p.82) report that some justice preferences in Mali differ from norms elsewhere, such as putting more weight on ‘obedience to the heads of families.’

⁹³ For example, geography and language issues affect diverse population groups differently (e.g. Pleasence et al. 2014).

⁹⁴ See, for example, Pleasence et al. (2014, 2015)

⁹⁵ Coumarelos et al. (2012)

⁹⁶ Genn (1999, p.70). The report of the 2012 Georgian KAP Survey Concerning Justiciable Events referred to this as “a nihilistic approach to the legal system” (Institute of Social Studies and Analysis 2012, p.96).

⁹⁷ Gramatikov et al. (2014), Bercovich et al. (2013), Piest et al. (2016), Hiil (2016), Coumarelos et al. (2012), Institute of Social Studies and Analysis (2012). Although it may sometimes be true that action will not improve a person's predicament, Genn (1999) observed that 'lumpers' who believe nothing can be done may reach this conclusion in ignorance of their legal position or options.

⁹⁸ Genn (1999, p.71)

⁹⁹ Recent legal needs survey findings from England and Wales indicate that levels of understanding of legal rights and responsibilities are very low (and, indeed, sometimes systematically erroneous)(Pleasence et al. 2015)

¹⁰⁰ For example, in the case of Indonesia, Gramatikov et al. (2014, p.89) reported that "a deeper look at three of the most frequent and serious categories of problems - land disputes, crimes and money related disputes - reveal that people are concerned about the time it takes, the stress and negative emotions as well as the fairness of the process." And in Ukraine, Kobzin et al. (2011, pp.57-61) have categorised the broad barriers to access to justice as including emotional, informational, physical, financial, effectiveness, bureaucratic, corruption, and secondary victimisation barriers.

¹⁰¹ Australia (2008), England and Wales (2001, 2004, 2010, 2012), Moldova (2011), the Netherlands (2003, 2009) and Taiwan (2011).

¹⁰² And personal injury; although the was slightly mixed, with the Australian survey indicating the reverse.

¹⁰³ Pleasence et al (2014, p.15)

¹⁰⁴ Hiil (2016)

¹⁰⁵ (Pleasence 2006, p.108). Pleasence argued that the unpromising nature of many sources of help indicated "real uncertainty as to the most effective way of responding to [legal] problems."

¹⁰⁶ Srbijanko et al (2013)

¹⁰⁷ Gramatikov (2012)

¹⁰⁸ Social Research Center (2012), Pleasence (2006), Piest (2016), Murayama (2007), Barendrecht (2014b), respectively. Importantly, in terms of the value of legal needs surveys, in Tajikistan it was found that "Despite the widespread opinion that religious leaders (Mullo/Bibiotun) are popular sources of information, data shows that they are the least popular sources" (Social Research Center (2012, p.155).

¹⁰⁹ Piest et al. (2016, p.71)

¹¹⁰ Social Research Center (2012), Murayama (2007)

¹¹¹ 'Signposting' and 'referral' are distinguished on the basis of the extent to which the signposting/referring source liaises with the receiving source. Signposting generally refers to the process of providing a client with the details of a more appropriate (or further) source of help, but does not liaise with the other source to facilitate contact. Referral generally refers to the process of actively arranging contact with the other source.

¹¹² Pleasence et al. (2004, p.77)

¹¹³ Although the contrary was found in Taiwan (Chen et al. 2012a), and findings were mixed in the case of the 2008 *Legal Australia-Wide Survey*. Initial analysis suggested employment problems were associated with increased advice seeking (Coumarelos et al. 2012), but later analysis – incorporating a different and broader set of explanatory variables suggested employment problems were associated with less legal and non-legal advice (Pleasence et al. 2013b).

¹¹⁴ And, to a lesser extent, problems concerning debt.

¹¹⁵ See, for example, Pleasence et al (2014), Pleasence & Balmer (2014).

¹¹⁶ Barendrecht et al. (2014a, p.70)

¹¹⁷ Gramatikov (2008)

¹¹⁸ See, for example, Kobzin et al. (2011) and Institute of Social Studies and Analysis (2012).

¹¹⁹ Genn (1999, p.141)

¹²⁰ For example, in Georgia, 60% of family problems involved legal consultation, while the figure was just 5% in the case of problems related to social assistance (Institute of Social Studies and Analysis 2012).

¹²¹ For example, personal injury problems are strongly associated with lawyers in the United Kingdom and Canada (e.g. Pleasence et al. 2004, Currie 2009), while the opposite is true in countries such as Japan, New Zealand and Hong Kong (e.g. Murayama 2007, Ignite Research 2006, Asia Consulting Group and Policy 21 Ltd 2008).

¹²² Pleasence & Balmer (2012b, p.38)

¹²³ Pleasence & Balmer (2008)

¹²⁴ Sato et al. (2007, p.11)

¹²⁵ Pleasence et al. (2014)

¹²⁶ Pleasence & Balmer (2014, p.42)

¹²⁷ Pleasence et al (2015)

¹²⁸ Pleasence et al. (2014). Even in relatively densely populated England and Wales, Patel et al. (2008) found that those with no personal transport who lived five or more miles from a specialist adviser were least likely to access advice.

¹²⁹ ECOLEX (2014), Institute of Social Studies and Analysis (2012)

¹³⁰ See, for example, Huang et al. (2014), Pleasence & Balmer (2014)

¹³¹ Kritzer (2008)

¹³² Pleasence et al. (2015).

¹³³ For example, Genn (1999), Pleasence (2006), Murayama (2007), Gramatikov (2008), Coumralos et al. (2012), Barendrecht et al. (2014a, 2014b), Gramatikov et al. (2014).

¹³⁴ Kritzer (2008, p.875)

¹³⁵ *Ibid.*

¹³⁶ Currie (2009)(Canada), Prettitore (2014)(Colombia and Jordan), van Velthoven & ter Voert (2005)(the Netherlands), Ignite Research (2016)(New Zealand), Pleasence & Balmer (2009)(New Zealand), Huang et al. (2014)(Taiwan).

¹³⁷ New Zealand, the Netherlands, Taiwan.

¹³⁸ Pleasence & Macourt (2013)

¹³⁹ Pleasence & Macourt (2013)

¹⁴⁰ Pleasence & Balmer (2012b)

¹⁴¹ Pleasence & Balmer (2014, p.58)

¹⁴² For example, 76% of contact with sources of help in Georgia was face-to-face (Institute of Social Studies and Analysis 2012). And even in rich countries, such as England and Wales, where a majority of people first contact sources of help via telephone, face-to-face communication is still routine (Pleasence & Balmer 2014).

¹⁴³ Hiil (2016). Similarly, the 2012 *English and Welsh Civil and Social Justice Panel Survey* indicated that people turned looked to the Internet in relation to 24% of problems, up from just 4% a decade earlier (Pleasence et al. 2015).

¹⁴⁴ Pleasence et al. (2015, p.xi)

¹⁴⁵ See, for example, Attewell (2001).

¹⁴⁶ Pleasence et al. (2015)

¹⁴⁷ Denvir et al. (2011, p.96)

¹⁴⁸ Pleasence et al (2015) found that around one-third of those using the Internet to help resolve justiciable problems were using it as a hi-tech form of directory.

¹⁴⁹ Pleasence et al. (2015)

¹⁵⁰ Farrow et al. (2016, p.9)

¹⁵¹ Williams (2011, p.5)

¹⁵² Establishing causation through cross-sectional survey data is generally problematic.

¹⁵³ Balmer et al. (2010)

¹⁵⁴ *Ibid.*

¹⁵⁵ Gramatikov et al. (2011, p.349)

¹⁵⁶ Farrow et al. (2016)

¹⁵⁷ *Ibid.*, p.12

¹⁵⁸ Pleasence et al. (2004) provided details of the extent to which various third parties met the costs of legal services reported by respondents to the 2001 and 2004 *English and Welsh Civil and Social Justice Surveys*. These included the services themselves (pro bono), legal aid, insurance companies, unions, local government, friends and relatives.

¹⁵⁹ Unpublished findings from the *English and Welsh Civil and Social Justice Panel Survey* indicate that, while resolving problems sometimes involve very little time input, citizens routinely spend considerable amounts of time resolving problems (sometimes running to months of work).

¹⁶⁰ Pleasence et al. (2004, p.101)

¹⁶¹ *Ibid.*, p.15

¹⁶² Pleasence & Balmer (2013a), Hiil (2016)

¹⁶³ Hiil (2016, p.146)

¹⁶⁴ 49% described the system as ineffective, compared to 9% who described it as effective (ACSSC 2012).

¹⁶⁵ Currie (2007, p.84)

¹⁶⁶ Overall, in Macedonia, 36 % of respondents disagreed that “if I ever appear as a party in a court procedure, I will receive a fair hearing/justice’ (Srbijanko et al. 2013).

¹⁶⁷ For example, while 11% of those respondents to the 2010 *English and Welsh Civil and Social Justice Panel Survey* who reported no justiciable problems disagreed that they ‘would be confident of getting a fair hearing if they went to court with a problem’, the figure was 13% for those who reported 1 problem, 14% for those who reported 2 problems, 15% for those who reported 3 problems, 20% for those who reported 4 problems and 22% for those who reported 5 or more problems.

¹⁶⁸ Institute of Social Studies and Analysis (2012)

¹⁶⁹ For a detailed account of the impact of legal needs surveys on the policy process in English speaking Western nations, see Pleasence et al. (2013a).

¹⁷⁰ Action Committee on Access to Justice in Civil and Family Matters (2013, p.2)

¹⁷¹ Pleasence et al (2013a, p.44)

¹⁷² See, for example, Commonwealth Attorney-General's Access to Justice Taskforce (2009), NSW Department of Attorney-General and Justice (2012), Productivity Commission (2014).

¹⁷³ See, for example, Action Committee on Access to Justice in Civil and Family Matters (2013)

¹⁷⁴ See, for example, Legal Services Commission (2006), described by one policy maker as being "entirely based" on findings from the *English and Welsh Civil and Social Justice Survey*.

¹⁷⁵ Pleasence et al. (2013, p.26)

¹⁷⁶ Council of Australian Governments (2015)

¹⁷⁷ For example, in England and Wales a distinction must be drawn between government policy output before and after the onset of the global financial crisis. While survey findings were routinely used to support government policy before the onset of the global financial crisis, by 2011 nearly all use of such findings "was either providing context for a criticism of government policy or, more commonly,

used to directly criticise policy" (Pleasence et al. 2013a, p.41). Pleasence et al. (2013a) also warn that knowledge (and policy orthodoxy) can be quickly lost to the policy process as people move on.

¹⁷⁸ A reference to the European Union.

¹⁷⁹ Private correspondence with representative of Soros Foundation Moldova.

¹⁸⁰ Draft *Strategy for Justice Sector Reform*, 2011, p.12, available at http://www.justice.gov.md/public/files/file/reforma_sectorul_justitiei/srsj_p_a_s_rsj/SRSJen.pdf

¹⁸¹ Barendrecht et al. (2014a, p.94). They further detailed that "the meeting was opened by Minister Mohamed Aly Bathily of Justice and Human Rights, in the presence of the Minister for Reconciliation, Mr Zahabi Ould Sidi Mohamed and the President of the Supreme Court, Mr Nouhoum Tapily. Former minister Mamadou Diakité moderated the session."

¹⁸² Who had previously been involved in the 2013 survey while working at the Asociacion Civil por la Igualdad y la Justicia.

¹⁸³ Weiss (1980, p.318, original emphasis). This is how social science research evidence has been argued to influence policy development in general.