

WORKSHOP
2016 paper

Understanding Effective Access to Justice



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WORKSHOP BACKGROUND PAPER

INTRODUCTION

All countries have agreed to “promote the rule of law at the national and international levels, and ensure equal access to justice for all”, as part of the Sustainable Development Goal (SDG) 16. The OECD member states have further recognised people’s access to justice as integral to achieving inclusive growth.

What does this mean for countries in terms of their policy, service delivery and monitoring agenda on access to justice? How can states and civil society ensure effective efforts to implement SDG target 16.3 on access to justice? How can states and civil society ensure that these efforts contribute to economic growth and inclusive development that benefits all? How can measurement approaches and data collection enable countries to track progress in this area? How can we understand what works in access to justice? How can this effort help build a more credible business case for investment in legal and justice services?

This document is designed to provide a foundation for the expert workshop on Understanding Effective Access to Justice, to be held on 3-4 November 2016 at the OECD in Paris jointly organised by the OECD-PGC and Open Society Justice Initiative (OSJI). It aims to set the context for the discussion on how measurement of access to justice can be more reliable and focused on the effectiveness of various dispute resolution mechanisms to meet legal needs of people. Such conversation aims to support the implementation and monitoring of the SDGs.

More specifically, the paper provides an overview of approaches to conceptualising and measuring three components of effective access to justice:

- The nature and extent of unmet legal and justice needs and methodologies to understand people’s access to justice;
- The impact of unmet legal and justice needs on individuals, the community and the state; and
- The effectiveness of specific models of legal assistance in meeting these identified needs.

The paper lays the ground work for a more in-depth analysis and further conversations on holistic measures of access to justice as part of the implementation and monitoring of SDG target 16.3 on access to justice and rule of law.

SECTION 1. TOWARDS PEOPLE-FOCUSED MEASUREMENT OF ACCESS TO CIVIL JUSTICE?

Discussion questions

- What are the core methodologies to measure access to justice from a people-centred perspective? What proved effective in these areas?
- How can these measures and data collection methodologies be contextualised to respond to the specific service delivery and policy-making needs in promoting effective access to justice?
- How can the concepts of "legal capability" and "effectiveness" of the service be integrated? How can specific clusters of legal problems (e.g., gender-based violence) be addressed?
- How can citizen-centred measures on access to justice inform policy and service programming and its evaluation in the countries?
- How can the evidence be presented so that it is useful for governments to use to inform policy-making?

There is growing evidence that justice systems and the rule of law contribute to sustainable development and inclusive growth. Indeed, the accessibility and efficiency of justice services directly affect the way employment and land disputes are resolved, government accountability is promoted, and how businesses make decisions to invest and enter contractual relationships.

Current efforts to find common indicators to measure progress on the access to justice as part of the SDG target 16.3 mainly focus on two indicators related to the criminal justice system, namely the percentage of criminal detainees in pre-trial detention and the violent crime reporting rate¹. While important, these measures do not allow to fully capture the most frequent justice needs people face around the world (which are not criminal), as well as the many important contributions of the rule of law and access to justice to sustainable development. In measuring justice, governments and international organisations have historically focused on measuring institutional performance, particularly as it relates to criminal justice. While important for achieving efficiency and sound functioning of the justice system, these measurement approaches rarely are based on an understanding of the types of justice problems people have, what institutions they engage, the "effectiveness" of dispute legal mechanisms and what works, for whom and for what types of legal and justice needs.

Although criminal justice is a pressing issue, findings from legal needs surveys reveal that the most frequent legal problems faced by people are civil ones (Box 1).² While it varies between countries, most common issues include "consumer problems, employment issues, land and property disputes, family problems, conflicts with neighbours and debt"³. An effective understanding of people's legal needs and experiences in accessing justice then seems to be a prerequisite for designing appropriate solutions to local justice problems. Understanding effective access to justice requires a focus on outcomes – i.e., the ability of people to address their justice problems in a fair, cost efficient, timely and effective manner⁴.

This section provides an overview of existing and emerging sources of data on people's legal needs and access to legal assistance and dispute resolution mechanisms. The first sub-section considers different approaches to conceptualising legal needs. The second identifies methodologies for data collection and analysis. The third sub-section provides a synthesis of the main findings from this research and applications of these findings to improve access to justice. The final sub-section also briefly explores gaps in our current knowledge and ways to expand the collection and application of these data.

Box 1. Civil justice problems are more common than criminal problems

In **Colombia**, a 2014 national survey established that approximately 40% of the surveyed Colombian population had a legal issue in the proceeding four years, with fraud, theft, access to public services, and housing the most common problems. (Encuesta Nacional de Necesidades Jurídicas, 2013)

In **Papua New Guinea**, a 2009 national survey found that 40% of respondents had a dispute in the previous 12 months and the main sources of dispute related to land, water, and other natural resources. (World Bank, 2014)

In the **United States**, a 1994 national survey of low- and moderate-income households revealed that nearly half of all households had at least one legal need in the preceding 12 months with the most common issues: personal finance, consumer issues, and housing and property. (Comprehensive Legal Needs Study, 1994)

Source : OSF-WB Technical Brief

1.1. Conceptualising legal needs as the basis for people-focused measurement approaches?

A citizen-oriented access to justice framework requires a conceptualisation of legal and justice needs of people. Meeting legal and justice needs is a distinct policy objective from the general modernisation goal of increased efficiency within the broader justice sector as a main mechanism for fostering access to justice. It shifts attention away from identifying the “right” institutions in the justice system and an emphasis on courts and formal dispute resolution towards a citizen-based focus on everyday legal and justice problems, their connection with other problems, common paths for advice and to resolution and to outcomes measured from the individual’s perspective.

Research on legal problems has often proceeded without explicit, detailed definitions of the concepts of legal need and access to justice⁵. The concept of legal needs has broadened over time from initially narrow definitions to more expansive ones. This is an ongoing process shaped by the dynamic between greater empirical knowledge about the legal needs of specific communities and within distinct contexts, the reshaping of justice systems through legislative and institutional transformations and the evolution of views about legal need and access to justice⁶. Of particular importance is the broadening of the concept of legal need beyond legal problems for which traditional legal resolution was sought to a broader range of ‘justiciable’ problems, that is all problems for which there was a potential legal resolution even where the individual is unaware of the legal dimensions of the problem and where resolution of the problem occurs outside of the formal legal system⁷.

This inclusive conceptualisation more closely reflects the perspective of individuals and micro, small and medium-sized enterprises (SMEs) by incorporating problems that have legal and non-legal dimensions and resolution through legal and non-legal pathways. It includes both “expressed legal needs” and “unmet legal needs”. An individual expresses a legal need by seeking legal information, advice or assistance from a person, by pursuing resolution through a traditional or non-traditional legal (alternative) route, and/or by pursuing non-legal resolution strategies. It is important to note that the classification of a problem as “legal” in legal needs surveys is not done by the respondent. People are asked questions about problems and issues and the research team will then classify whether the issues has a legal component or not. Numerous surveys have shown that when people are asked about “legal” problems they misdiagnose problems and as a result fail to mention problems which they have that include legal dimensions.

The concept of “unmet legal need” describes a situation in which there is a gap between experiencing a legal problem and satisfactorily solving that problem⁸. Constraints to resolution can arise from individual, social or economic circumstances that affect a person’s capability to resolve a legal problem, as well as from failings of the justice system which act as barriers to effective resolution⁹. There is no consensus on a definitive measure that quantifies unmet legal need, but there is increasing commonality in the methods used by both governments and civil society¹⁰. A 2014 Law and Justice Foundation of New South Wales (LJFNSW) report notes: “The difficulty in quantifying unmet legal need largely reflects the complexity in defining all situations which constitute legal problems, and the subjectivity in determining the precise outcomes that would constitute satisfactory resolution of each specific problem”¹¹.

The conceptualisation of legal needs results in broader conceptions of access to justice that expands far beyond access to courts or even access to a broad range of dispute resolution processes. For example, the concept of access to justice adopted by the LJFNSW includes the ability to obtain legal information, advice and assistance; access courts, tribunals and alternative dispute resolution mechanisms, obtain non-legal advocacy and support, and participate effectively in law reform processes¹². Other governments and non-governmental agencies have adopted similar definitions¹³.

1.2. Towards people-focused measurement: selected methodologies

Empirical research on legal needs, both quantitative and qualitative, has been undertaken in many jurisdictions around the world. Researchers, governments, and service providers utilise a number of different approaches to measurement and a range of methodologies which range in scope from national legal needs surveys to tailored legal help checklists administered on an individual basis. Some of them are highlighted below.

a) Legal needs surveys

One particularly utilised method to explore individuals’ and businesses’ experience of dealing with legal issues are “legal needs surveys”. Some surveys focus only on civil needs, others combine both civil and criminal ones. These surveys generally consist of in-person, telephone, or internet interviews of the target population that focus on problems experienced in a given time period by respondents that may have been addressable through the civil /criminal justice system. These surveys seek to understand legal problems from the perspective of people as opposed to whether they were brought to a particular institution, like a court. This allows policymakers to understand the total scope of legal need as opposed to the slice that reaches a particular institution. This is highly relevant given that surveys regularly reveal that people with legal problems take no action to resolve them.

There have been both standalone surveys and modules in broader living standards surveys. Legal needs surveys typically include five core components:

1. Whether the respondent (or anyone in their household) has experienced any legal problems in a specific preceding time period (typically twelve months to four years);
2. Whether the respondent tried to resolve the problem or dispute and what legal or social assistance, if any, they sought or received;
3. What institutions or resolution processes the respondent engaged in trying to address the problem;
4. What outcomes were achieved through this process; and
5. The respondent’s assessment of the process of resolution as well as the outcome.¹⁴

Some studies also attempt to identify legal problems that cluster together or trigger each other or assess the objective or subjective severity of the problems¹⁵.

Such surveys have now been carried out in more than 40 advanced and emerging economies¹⁶, including at least nine OECD member states¹⁷, as well as several developing countries (some of these surveys also cover legal needs related to criminal justice). Since the mid-1990s – with the build-up of “considerable momentum”¹⁸ in the conduct of such surveys, much fuelled by legal aid reform¹⁹ – at least 38 large-scale national legal needs surveys²⁰ have been conducted in upwards of 16 separate jurisdictions: Australia, Canada, England and Wales, Hong Kong, Japan, the Netherlands, New Zealand, Northern Ireland, Scotland, Slovakia, Taiwan, Ukraine and the United States²¹. Over the same period, extensive sub-national surveys have also been conducted in China²², Russia²³, Indonesia²⁴ and Yemen,²⁵ along with smaller surveys in countries such as Egypt and Bangladesh²⁶ and sub-national surveys across many of the jurisdictions²⁷. The World Justice Project (WJP) will deploy a common legal needs and dispute resolution module in major urban areas in more than 60 countries in 2016 and reach more than 100 in 2017, generating the first standardised data set on legal needs and dispute resolution across countries. These surveys have been conducted as nationally representative samples or focused on specific populations or geographies.

Building on this empirical foundation developed over twenty years, more recent legal needs surveys have investigated emerging issues such as individual legal capability and collected more expansive data on costs of unresolved legal problems²⁸.

Box 2. What we have learned from civil legal needs surveys

The results of legal needs surveys (both civil and criminal) have made an important contribution to understanding common obstacles to accessing justice experienced by both individuals and businesses and have paved the way for some reforms. The survey results concerning the incidence of civil legal problems and their impact are remarkably similar across countries and time. Common findings are:

- Civil legal needs arise frequently, touch upon fundamental issues and can create minor inconvenience or great personal hardship;
- Civil legal problems are a “pervasive and invasive presence in the lives of many”²⁹;
- The disruption caused by unresolved legal problems is significant and can cause cascading problems for individuals and families;
- There is an important connection between unresolved legal problems and broader issues of health, social welfare and economic well-being;
- Age, country of birth, disability status, personal income and education level are statistically independent predictors of reporting legal events;
- In some studies, gender, ethnic/racialised background and Aboriginal status were also shown to influence the experience of civil legal problems;
- Legal problems tend to cluster, meaning that problems tend to co-occur and can be grouped together (clusters vary across jurisdictions);
- Legal problems have an additive effect – with every additional problem experienced the probability of experiencing more problems increases and this is especially true for low income people and members of disadvantaged groups;
- While every group experiences civil needs, the poorest and most vulnerable experience more frequent and more complex, interrelated civil legal problems;
- The vast majority of justiciable problems are resolved outside of the formal justice system; and
- The justice system is poorly understood and/or perceived to be inaccessible by many and this complexity can in and of itself be seen as a barrier to access.

While the findings are generic at some level, it is wrong to conclude that the experience of civil legal problems is uniform. Certain groups are more vulnerable and this vulnerability compounds the effects of unresolved legal problems and makes it more challenging for them to navigate the justice system.

The conclusions drawn from civil legal problem surveys are also quite consistent across jurisdictions. The central points that can be drawn out from this body of research as a whole are:

- Information failure is a significant issue: people do not understand legal events, what to do or where to seek assistance. People do not seek traditional legal advice, but rely on non-professional sources of advice and generally available information;
- People do not generally seek to use courts or formal justice mechanisms as a means of obtaining assistance in relation to legal issues;
- More information should be made available and it is important to find ways to encourage more people to rely on the existing resources that are available to them;
- There needs to be multiple, diverse, and integrated access points and service responses: access to a wider range of entry points is key;
- Access to reliable information and assistance about legal processes and sources of self-help should be made available;
- More tailored legal services are required;
- Additional support to lawyers and paralegals who provide essential services to low and middle income people is essential; and
- Service models and priorities must be targeted, designed, and delivered to meet the specialised needs of these communities.

b) Legal needs assessments

Qualitative legal needs assessments are also used. This alternative to the quantitative legal needs survey methodology typically focuses on more in depth interviews with fewer respondents. For example, the Justicia Cotidiana initiative in Mexico identified, through the testimonies of citizens, several common justice issues and presented a set of recommendations to the Government at a federal, state and local level³⁰. For many years, community based legal assistance clinics have employed a mix of surveys, focus groups, workshops and interviews to gather data about legal needs for their programmatic work. Like large number legal needs surveys, such operational legal needs assessments can be framed based on a geographic units or by community characteristics such as low income, minority or disadvantaged groups, or specific types of legal problems (such as family law)³¹.

c) Collection of data on use of and satisfaction with legal and justice services

The collection of administrative data on the use of legal and justice services also assist in understanding the extent of legal need by contributing a picture of the demographic groups that access particular legal services, the nature of their expressed legal needs, the pathways they follow and the outcomes they achieve³². This methodology differs from legal needs surveys and assessments as it collects information on legal need after a case has already reached a particular institution. As described above, legal needs surveys and assessments seek to understand legal problems whether or not they are taken to particular institutions.

Such institution-generated data can include information on various types of cases, use of legal assistance services, the numbers of unrepresented parties before the courts and tribunals, use of ADR mechanisms that are connected to the formal justice system, and so on. There are also institutional (courts, ADRs)

user surveys, which aim to enable these institutions to understand the perspectives and experiences of users of legal and justice services, based on their feedback. Often these surveys include qualitative and quantitative elements and usually allow understanding the demographic profile of respondents to set the context for survey results. However, such data cannot estimate legal need that is expressed outside the legal system or the level of unmet legal need in the community³³. Although some statistics, such as the number of denials of legal aid applications can provide an indication of unmet legal need that is actually reaching the court system.

A number of reports identified several challenges in the current collection of justice system statistics in OECD and partner countries such as paucity of data, lack of common units of measurement and methodologies among institutions within a country and so on³⁴. Some have called for the development of civil justice system wide data and indicators that would extend beyond the formal justice system to include various pathways to justice³⁵. The Australian government responded to this need by launching an initiative to consider “what might be involved in developing a sound evidence base to better support civil justice policy and reforms”³⁶. The background work to this initiative provides a useful analysis of both the scale of the challenge and the value of meeting it.

d) Institutional mapping projects

Other research initiatives have investigated the extent of legal need and the capacity of justice services to respond to them through complex exercises known as “needs mapping”, which may involve a combination of service inventories and focus groups with those involved in the legal system and with community members. Most mapping projects have been carried out on a geographic basis, including a state-by-state portrait of the services available to assist the U.S. public in accessing civil justice³⁷ and similar projects at a sub-national level in two Canadian provinces, Alberta³⁸ and Ontario³⁹. Some of these projects provide data on legal needs, what legal assistance services are available, how they are coordinated, who access these services, how the available services align with community legal needs, and how legal services can be improved. Mapping projects are often designed as community-based, collaborative research initiatives with extensive involvement of a range of individuals and organisations in project design, execution and analysis⁴⁰. Other smaller scale projects map the gaps between the identified legal needs of specific segments, including women⁴¹ and Indigenous women⁴², and the services available to them.

Mapping projects contribute to a refined understanding of needs within a geographic area, the capacity of existing services to meet these needs, identify gaps in service, the degree of effective collaboration between providers, the ease of pathways. Common conclusions include the problematic fragmentation in the legal assistance sector and inequality of access⁴³. They have also contributed to our understanding that legal problems occur in complex social contexts that often require a multi-sector collaborative response. The collaborative design aspect of these initiatives can assist in effective coordination practices among service providers over the long term.

Another mapping methodology used to measure legal needs is process or ‘journey’ mapping. A study conducted National Center for State Courts identified the discrete tasks that unrepresented litigants must perform in various types of civil cases⁴⁴. In her review of this study, Abel considers this list to be the most comprehensive list of self-representation tasks developed to date⁴⁵. This type of process mapping can be used both to gain a better understanding of legal needs, to develop legal services that provide effective assistance, and/or to undertake reform to simplify justice processes. It can also be used to evaluate the effectiveness of access to justice interventions (discussed further below).

A related methodology is to take this list of individual tasks and render it as a “journey map”: a visual diagram of the typical steps an individual goes through in accessing a court or tribunal. Journey mapping is a design tool that assists service providers to understand and improve the experience of the user of their services⁴⁶. Typically, journey mapping would be less detailed than a step-by-step listing of discrete

tasks but would provide a higher level of synthesis. Journey mapping has been used extensively by the corporate sector and more recently by public service providers⁴⁷. Pro Bono Net, an organisation that supports the delivery of legal services on a pro bono basis throughout the US utilises journey mapping to better understand and serve legal needs in specific justice pathways⁴⁸. HiIL also employs process mapping in its justice reform initiatives⁴⁹.

e) Legal help checklists

One emerging operational methodology for measuring (and meeting) legal needs takes the general knowledge about legal needs gathered from the legal needs surveys and refines it into a checklist of legal problems frequently experienced by individuals living in situations of disadvantage or during a critical life event (such as a medical crisis within the family). This 'second generation' approach, which is used after baselines and trends are established through legal needs surveys, has been demonstrated to be effective in proactively ascertaining the legal needs of individuals well before the legal need is expressed⁵⁰. This approach is now being employed by community legal clinics in Ontario and by medical-legal partnerships in the US and Canada⁵¹. The legal help checklist approach could also be used at a systemic level by governments and legal service providers to better anticipate legal needs based on known patterns of legal problems and the demographics of various communities⁵².

1.3. Gaps, Limitations and Future Directions

As described above, internationally agreed measures for SDG 16.3 focus on victimisation and criminal justice. Other internationally standardised measures, for example through the UN Surveys on Crime Trends, typically focus on inputs and outputs related to aspects of the criminal justice system. Growing experience with legal needs and justice surveys reveal that most people's justice problems relate to civil issues and are resolved not through the criminal justice system but through administrative and community based systems, as well as direct negotiation. The work described on civil legal needs has created a foundation of knowledge about the prevalence of legal problems, the extent of unmet legal needs, general barriers to resolving these problems, and the effectiveness of available dispute resolution services.

The legal needs survey methodology captures the lived experiences of people engaged in dispute resolution, and the veracity of these perceptions is strengthened because it is grounded in recent experience. Legal needs survey methods are analogous to those used in other SDGs, including food security (indicator 2.1.2 based on the Food Insecurity Experience Scale (FIES)) and education (indicator 4.2.2 measuring the participation rate in organised learning). Indeed, approximately one third of the SDG indicators rely on household survey methods, including several other Goal 16 indicators.

Still, the legal needs survey present a number of gaps or limitations among which:

- They rely on the experiences of survey respondents (when only surveys are used) and are strengthened through corresponding evaluation of institutional structure and performance;
- Low income and other vulnerable or isolated populations, such as linguistic minorities, may not always be proportionally represented in legal needs surveys due to selection as well as fear of participation;
- Legal needs surveys effectively describe prevalence of legal problems and processes of resolution from the perspective of the population, although could be limited in their ability to assess the complexity of legal problems; and
- On their own, legal needs surveys typically do not allow to measure long-term impact of legal problems/resolution/lack of resolution; such methodologies are strengthening over time⁵³

To complement legal needs surveys, some countries are using additional methodologies to ascertain local, regional, and national patterns of need, the distinct needs of groups in disadvantaged conditions, and priorities within service environments. Emerging methodologies such as legal help checklists and legal process or journey mapping build on this knowledge base and have the potential to identify and address legal needs on a proactive basis and to provide feedback for further reform in the delivery of legal and justice services.

SECTION 2. TOWARDS MEASURING THE IMPACTS OF LEGAL PROBLEMS AND SPECIFIC MODELS OF LEGAL ASSISTANCE SERVICES

Discussion questions

- How can we conceptualise and measure the impacts of unmet legal needs, including on other SDG areas and inclusive growth (e.g., health, employment, education)?
- How can people-centred measurement approaches, including legal needs surveys, be used to support the analysis of impacts of justice problems?
- What are the practical and methodological challenges and opportunities in understanding impacts of justice problems?
- How can we measure the impacts of different models of legal assistance services? How do we conceptualize “what works”, for whom and when?
- How to identify the strategies that help address the legal needs for specific groups, at what cost, and particular circumstances?
- What are the examples of promising impact evaluation methodologies used in practice?

This part provides an overview of existing and emerging sources of data on measuring access to justice, the impacts of justice problems and the effectiveness of different models of legal assistance. The first subsection looks at the available evidence on impacts of unmet legal needs and costs of limited access to justice. The second subsection sets out the continuum of models of legal assistance and the rationale for supporting a range of public and independent legal services. The third identifies methodologies for evaluating the effectiveness of the models in a range of contexts and some of the main findings. The final subsection briefly explores gaps in our current knowledge and ways to expand the collection and application of these data.

The OECD policy roundtables revealed that there is an emerging but very scarce evidence base on the impact of unmet legal needs. The roundtables similarly highlighted difficulties in developing a convincing “business case” for legal aid (while there is a constitutional obligation for most countries to provide legal aid for criminal justice cases, it is much less prevalent for civil law cases). Persisting gaps in understanding the impacts of different models of legal aid on different groups of population, especially the marginalised and the vulnerable, were also discussed. Finally, there is very limited information available on the various country strategies to enhance responsiveness and accessibility of justice and legal services to meet legal and related needs of citizens, including how investment in “primary” civil justice assistance can divert people from more serious criminal problems.

Indeed, unlike other sectors such as health, employment and education, there has been uneven investment in sound evidence-based research and evaluation into understanding what strategies work, work cost effectively, when, why and for whom. In particular, there is limited understanding of the models of provision of legal assistance services across countries and different regions within countries. These gaps may undermine both the countries’ capacity for effective and cost-efficient planning and delivery of legal services, the funding and selection of services at government level, and the efforts to establish a business case on the value of legal assistance services or broader justice system reforms designed to enhance inclusive growth. Roundtable participants stressed the need for greater evaluation, research and exchange of ‘lessons learned’ to better understand appropriate solutions in given circumstances.

2.1. Impacts of legal problems and limited access to justice

The methodologies described above, and particularly legal needs surveys, have contributed greatly to our understanding of the prevalence of legal problems and to the short and long term negative consequences of unresolved legal problems⁵⁴. As Wexler said, “the poor are always bumping into sharp legal things”⁵⁵. Citizens in disadvantaged circumstances seem to be particularly prone to legal problems. Legal needs surveys across a number of member and partner countries show that legal problems are far from randomly distributed across the population. There is increasing (although limited) evidence that disadvantaged groups are typically those that are most vulnerable to legal problems, resulting from uneven exposure to the circumstances that can give rise to legal and social problems and/or their lower ability to avoid or mitigate problems (Box 3).

Box 3. Toward an Understanding of the Dynamics of Legal Needs

Understanding the dynamics of legal needs provides an important background to understanding and measuring the effectiveness of legal assistance as well as designing justice systems which better respond to most people’s problems. Such research provides context for understanding effective models of legal assistance and dispute resolution for different populations.

A snapshot of our current understanding of the dynamic relationship between legal needs and non-legal needs and the extent to which effective access to justice is provided could look something like the following.

Prevalence of legal problems

Law shapes and pervades all citizens’ and businesses’ lives; rich or poor, profitable or unprofitable, from birth to death. As a result, everyday legal problems are a reality for many people in OECD member and partner countries. People living in conditions of disadvantage are particularly likely to experience legal problems (Figure 1).

Legal problems are experienced in combination with other types of problems including social, economic and health issues and the two can interact in ways that have an additive or cascading negative effect. For example, social problems can lead to legal action, while legal problems, such as domestic violence, family/relationship breakdown, injury from accident, housing, employment, and discrimination may precipitate social problems, or exacerbate those already in existence. Similarly, a medical problem can lead to a cascading number of economic, social and legal problems. Data also show that legal problems spark other legal problems.

The most common legal problems seem to arise from circumstances routinely experienced across the population, based on stages of life and demographic vulnerability. Young people’s efforts to, for example, secure homes and employment, are associated with vulnerability to particular types of legal issue. As people get older, the consolidation of families, arrival of children, home ownership, increased consumption and debt are associated with vulnerability to different legal issues. And, as people enter their later years, increased need for medical treatment and care and diminishing powers of decision-making are associated with vulnerability to yet different legal issues.

Pathways to justice

Many people do not recognise the legal dimensions of problems they experience nor separate out legal problems from other issues they face. Many do not pursue legal remedies, and are unaware of legal assistance services or are otherwise unable to access these services.

Although the data is limited, there can be an inverse relationship between legal need and ability to access assistance. The inability to obtain legal and justice services is often found to have a disproportionate impact on the low-income and other disadvantaged groups (such as people with a disability, mental illness, single parents, unemployed people and people living in disadvantaged housing), precisely because of their lack of individual economic resources. In addition to the economic and cost barriers in accessing justice, there is a wide range of structural, institutional and capability factors that impinge upon access to justice for citizens, such as complexity, time, individual capability, geographical and physical constraints.

There are numerous potential justice pathways that can be taken when faced with legal problems, ranging from “lumping” problems (i.e., taking no action) to instituting formal legal process. Relatively few legal problems are resolved through the formal legal system, though courts and tribunals continue to play an important role in the protection and enforcement of rights. A high percentage of legal problems, somewhere between 35-41% in some OECD and partner countries, are unresolved. In some cases, even when the problems were resolved, the outcome could be perceived as unfair or the process unduly stressful. Thus an understanding of patterns of responses to legal problems and of citizen and business decision-making, as well as their actual experiences in this regard also seems important in assessing levels of access to justice.

Impact of unmet legal needs

There is growing evidence about the detrimental social and economic impacts of unmet legal needs and inaccessible justice at the individual, community, subnational and national levels. Inaccessible justice is negatively correlated with development, contributes to growing poverty and social exclusion and can undermine economic growth and democracy⁵⁶.

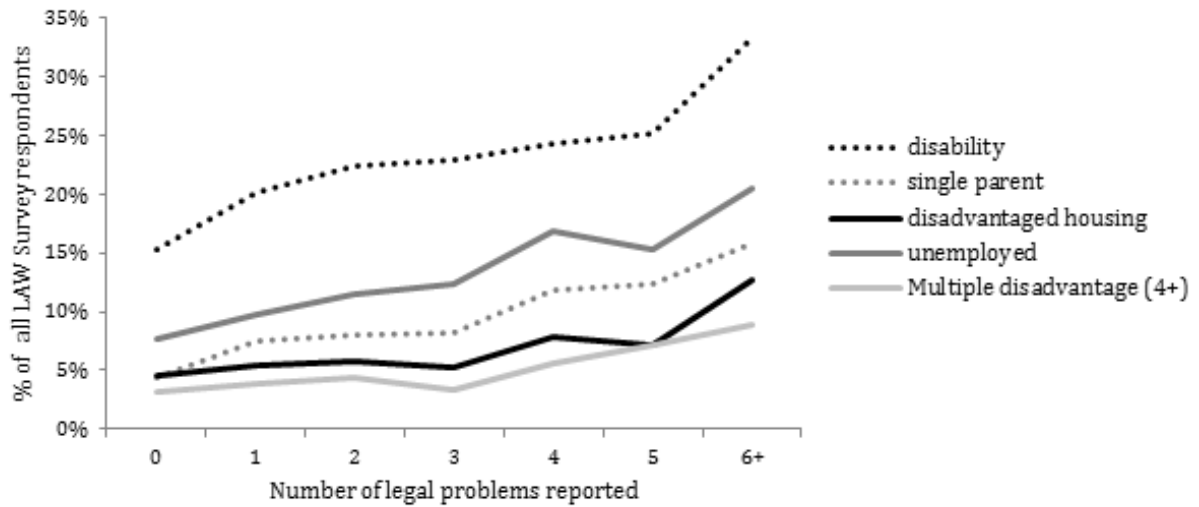
Unequal access to justice is expensive. Evidence is mounting that unresolved legal problems are costly both to the individuals directly affected and to society as a whole.

Unmet legal need can have many negative consequences including undue financial burdens, increased stress and attendant health consequences, strain on family relationships, disruption and inability to work sometimes leading to loss of employment. These individual consequences can in turn translate into greater spending on public programs such as social and health services, income supports, disability plans, employment insurance, and other services. The failure to resolve legal problems can contribute to a ‘cycle of decline’ (Figure 2) in which one problem leads to another with escalating individual and social costs. Inability to resolve legal problems and limited access to justice may diminish access to economic opportunity, reinforce the poverty trap, and undermine human potential, which could affect growth.

At the community level, the inability to exercise legal rights can result in or reinforce social exclusion. Unequal access to justice also diminishes public confidence in the justice system which can further erode the social fabric. Lack of access to justice has also been found to negatively influence poverty reduction programmes and democratic governance by undermining participation in the community, transparency and accountability. At a societal level these costs include lower economic productivity and knock-on costs to public spending in other areas (e.g. employment insurance, social assistance, health). Recent Canadian research estimates these knock on costs are approximately 2.35 times greater than the annual direct service expenditures on legal aid.

Studies have also shown that inadequate legal aid results in additional costs to other justice services, through for example longer and less efficient hearings.

Figure 1. Proportion of disadvantaged Australians by number of legal problems faced, 2008



Source: Pleasence, P. et al. (2014)

Studies show that access to justice mechanisms, in turn, and in particular effective legal assistance services (also commonly referred to as legal aid), provide a range of public benefits beyond the justice system by promoting economic and social well-being⁵⁷ of individuals, families, the community and society as a whole⁵⁸. Legal assistance can support individuals and families in resolving their legal and social needs, obtain access to opportunities, and become full participants in the community and economy. This broader view is consistent with public conceptions of access to justice as inclusive of substantive just outcomes and includes notions of promoting legal health, legal empowerment and social inclusion, also in support of the SDGs⁵⁹. Yet, while some of these impacts can and have been measured, others, such as the long term impact, have been beyond the scope of research to date.

Figure 2. An example of a cycle of decline



Source: Adapted from Tyler, T. et al. (2011)

Legal needs surveys are one important methodology helping us to understand and assess the lack of access to justice and to answer questions about costs borne by individuals, families and SMEs, the community and society as a whole when legal needs are left unaddressed (see Box 4). Another source of data are studies of the experience of unrepresented persons in the formal legal system which has demonstrated poorer procedural and substantive outcomes, inefficiencies within the justice system, and a reduction of confidence in the justice system. More refined cost-benefit analysis of the provision of

legal assistance relies on the development of workable counterfactual situations that is direct comparisons of situations where assistance is provided to those where there is no assistance⁶⁰. The broader societal and longer term impact of unmet legal needs versus legal needs that are addressed through effective services is the subject of emerging research methodologies that focus on robust outcome measures considered in the next part.

2.2. Continuum of legal assistance and justice services

One of the important recent developments is a shift to a broader understanding of access to justice needs and a more encompassing definition of legal assistance services in the public sector. While at one time access to justice was seen as synonymous with access to a lawyer and a court, today the legal and justice services are increasingly understood to encompass a continuum including access to legal information, advice, and representation, access to judicial and non-judicial proceedings, as well as access to alternative mechanisms, access to premises that provide possibilities for a fair resolution of a dispute, access to pre- and post-resolution support, and so on⁶¹.

Two sets of overarching strategies for legal assistance may help respond to the legal needs research findings. One set of strategies aim at preventing legal problems and disputes by increasing the legal capabilities of individuals, proactively identifying legal needs, and through substantive law reform that seek to resolve frequent legal problems on a systemic basis. Another set of strategies are aimed at improving the ways in which citizen legal and justice problems are addressed by ensuring the availability of effective and timely legal information and assistance services, the simplification of procedures, and the provision of appropriate, timely and tailored legal and justice services, including legal empowerment. A continuum of services allows legal and justice service providers or coalitions of providers to be comprehensive and avoid gaps in meeting the legal aid needs of the communities served. Providing a range of services helps to ensure responses proportionate to the need and that problems are identified and addressed early, when possible.

The growing range of legal aid and assistance services requires an improved ability to measure and take into account individual personal and legal capabilities in the tailoring in service provision and developing stronger diagnostic and triage systems⁶². Service models need to be flexible and nuanced to be responsive to client needs and informed by mapping legal needs with the location of services⁶³. Greater understanding of differentiated legal need and capability is key: “Services will be more ‘appropriate’ and potentially more efficient from funder, service provider, and client perspectives, when sufficiently personalised to match legal need and capability”⁶⁴. How services dovetail together in the continuum is also very important in matching assistance with the needs and capabilities of clients. Dovetailing would ensure, for example, that legal advice is made available directly after community legal education or that outreach services have direct links to casework where additional assistance is required⁶⁵.

2.3. Approaches to measuring effectiveness

There are several approaches to measuring the effectiveness of legal services and access to justice, including but not limited to: programme evaluation of specific legal assistance services, the justice pathway evaluation and empirical impact evaluations. In each case, a range of methodologies can be employed to measure indicators of effectiveness. There is no agreed upon standard for what comprises “effective” or “meaningful” access to justice⁶⁶.

a) Programme evaluation

Governments and public legal service providers employ a range of methodologies to evaluate the quality and impact of the legal services they provide. Traditionally these evaluations have focused on experience in service delivery and some measurement of client satisfaction⁶⁷.

Studies show that clients receiving legal assistance services have a high level of satisfaction with the services received but it is more difficult to gauge the effects on case outcomes⁶⁸. Researchers have noted the danger of focusing narrowly on client satisfaction as an indication of effectiveness of service⁶⁹ since “[c]lient viewpoints, while important, tell us very little about the key issues for quality, such as correct advice and appropriate help”⁷⁰. Nor do client viewpoints tell us whether litigants receiving help actually were able to perform the tasks required of them or whether they prevailed in their cases as a result⁷¹. Curran urges a shift to “client feedback”, which can explore the level of ‘quality’ of the service⁷². For example, the Australian Strategic Framework Report expressed caution in over-emphasising the extent that general information can be adequate assistance. Results have to be closely scrutinised:

It would be wrong to conclude on the basis of the strong rating for the Internet (as well as other sources of information) that direct assistance is less effective. This is because when more than one adviser is used the Internet was rated as the most useful sources in 34.6 % of cases (still a strong outcome) whereas a private lawyer was rated as the most useful in 72.7% of cases – significantly higher than all other sources⁷³.

More recently, methodologies have expanded to the quality of procedure and quality of outcomes experienced by individuals who receive assistance. It is key to have “[...] an eye toward measuring the effectiveness of the assistance received in terms of case outcome, rather than accepting the mere facts of assistance as sufficient”⁷⁴. Particularly in the context of limited resources and unmet demand, “[M]easuring effectiveness is about measuring whether or not the program achieved its aim or intended outcome”⁷⁵. In rare cases, studies investigate the longer term impact of legal assistance such as “whether clients gained new confidence, knowledge or reassurance as a result of the legal services they received”⁷⁶.

Procedure and outcomes can also be assessed from a systemic perspective, for example reduction in the length of a hearing or achievement of a broader policy goal such as reduction of poverty. Ideally, evaluation provides feedback needed to ensure both quality of service and as a feedback loop facilitating systemic reform where needed⁷⁷.

A wide range of methodologies are utilised in measuring the effectiveness of legal assistance services including:

- Interviews
- Focus groups
- Surveys with users of services and justice system stakeholders
- Online evaluations
- Feedback cards distributed along with resource; analysis of returned cards
- Tracking distribution, tracking usage and traffic patterns for online services
- Experimental design methodologies (including randomisation).

In her in-depth comparative analysis of methodologies, Curran concludes that the most useful methodologies are:

- **‘Most Significant Change Technique (TMSCT)’** described as: “[...] a participatory form of evaluation that uses a story approach to explore the impact of a service or program. This challenges the conventional evaluation so commonly used and discussed above with its focus on predefined indicators. TMSCT is a process that ensures that the many stakeholders, including client, community, service providers and government are involved in deciding on what kind of impact and change is important and records and reflects on these. Case studies are often used in this approach”. [note this technique is more often referred to by the acronym MSCT]

- **‘Survey Research’** which “involves the use of questionnaires and structured interviews to collect quantitative data at a single point in time which is examined to identify patterns and relationships”
- **‘Case Design Approach’** which “involves a range of qualitative and quantitative evaluation methods including interviews, questionnaires, participant observation (difficult in legal assistance research due to client professional privilege issues) and document analysis. It focuses on a very in-depth analysis of a case or service program and examines these to develop in depth understandings rather than causal explanations. Such approaches reveal particularity and diversity and are good at enabling greater sense to be made of a situation that might not be evident with a more superficial study”
- **‘Participatory action research’** which “involves the evaluator working with the client/service/community to identify research questions, to collect the data and analyse it. This approach sits within a critical theory which is designed to contribute to learnings and empower people in the process and into the future by learning about their situation and working with the service/community/client to work out ways of making improvements. It uses ‘quality criteria’ which involves reliability, measurement validity, credibility, transferability, dependability and confirmability. It requires that the participation be authentic and ensures that the cause and effect relationship holds”⁷⁸.

Curran employed a blend of these four research approaches in a 2011 study of one of the Australian⁷⁹.

In some cases, services are evaluated on a broader basis that allows for a comparison of a variety of providers. For example, Community Legal Education Ontario undertook an in-depth assessment of effective formats and delivery channels for reaching low-income and disadvantaged communities in Ontario with information about their legal rights⁸⁰. The report noted the many barriers people experience in effectively accessing and utilising legal information and concluded that the very best approach is a multi-layered response tailored to individual needs. One US study carried out an in-depth evaluation and assessment of the outcomes of five hotline information services over a three-year period⁸¹. This study was completed in 2002 but is considered to have been “pioneering” in the field and to have “withstood the test of time” in terms of identifying key issues⁸². Smith undertook a meta-analysis of seven studies and draws a number of tentative conclusions about hotlines as a means of providing legal advice. He highlights the fact that hotlines vary substantially and “cannot really be measured against each other”⁸³. He also suggests that studies show: “The benefit of the hotline expands with the depth of services offered. The best results are obtained when the hotline is the ‘front end’ of a system that can extend through assistance to full representation”⁸⁴.

One of the most thorough evaluation plans established by a service provider was used by the UK Legal Services Research Centre at the time Community Legal Advice Centres (CLACs) and Community Legal Advice Networks (CLANs) were introduced in England and Wales in 2009. This effort was designed to “constitute a new approach to the way that civil legal and advice services are funded, purchased and delivered” in that country⁸⁵. The LSRC developed a research framework based on four key areas against which the services were to be evaluated: accessibility, seamlessness, integration and tailored services. The published studies provide a comprehensive review of the initial period of these new service delivery models⁸⁶.

Methodological approaches included:

- Observation of advice sessions;
- Separate interviews conducted with both clients and advisors immediately following the advice sessions, and through in-depth, follow-up interviews two weeks after observations;
- Field work in some of the centres;

- Face-to-face footfall survey of clients in reception areas of the five operating CLACs and their outreach locations: Questionnaires were administered to clients who visited the services during a one-week period, thereby providing a snapshot of CLAC users; and
- The development of a reporting tool through a collaborative approach with stakeholders and the implementation and analysis of the reporting tool.⁸⁷

As part of the reporting process, the LRSC developed a set of outcome criteria for various types of legal matters against which results were to be measured. Other examples of the development of substantive standards for the evaluation of outcomes exist in the US⁸⁸ and Australia⁸⁹.

b) Justice pathway evaluation

A different approach to the quantitative assessment of access to justice is proposed by the “Measuring Access to Justice” (MA2J) project developed by Tilburg University, Tilburg Institute for Interdisciplinary Studies of Civil Law and Conflict Resolution Systems (TISCO), and Hague Institute for the Internationalisation of Law (HiiL). MA2J has developed a research methodology aimed at measuring access to justice through the perceptions and attitudes of people who have travelled a “path to justice”⁹⁰. This technique is based on using a legal needs survey to understand the performance of different institutions.

The “path” approach’s units of measurement are individuals who had a legal problem and acted to solve it with the means of state or non-state intervention. The definition of path to justice is simple: a commonly applied process that users address to cope with their legal problem. Three major “pillars” of the experiences of the users are measured: the costs of justice, the quality of the procedure, and the quality of the outcome. Each of the three pillars is modelled as a multi-faceted indicator consisting of sub-indicators. The individual scores of the sub-indicators form the scores of the three cost, procedure and outcome indicators. Eventually, the MA2J project intends to aggregate the information on costs, quality of the procedure and quality of the outcome into one composite figure, the Access to Justice Index. The goal is for this index to provide focused information about the measured paths to justice⁹¹.

The indicators and sub-indicators have been developed over a period of years during which conceptual and methodological problems were addressed⁹². More than twelve-pilot applications of the methodology were conducted to test, validate and refine the measurement instruments and overall methodological framework⁹³. While acknowledging the findings from civil legal needs research that many people who have a problem for which there is a legal solution do not take steps to address that problem, MA2J focus on measuring justice needs “from the moment when a person first takes a step toward resolving the problem”⁹⁴. This “demand-oriented” approach focuses on the most urgent legal problems experienced by citizens. MA2J identifies twelve categories of legal problems “that appear to be urgent in many, if not most, legal systems and locations”⁹⁵.

Measurement is undertaken from the perspective of the “users” based on their experience on the path of justice: “After completing a path to justice, people think about the costs incurred, the procedure and the outcome. In its essence the methodology asks the users of justice to reflect on their experiences and formulate a quantitative account of the particular path to justice”⁹⁶. The quality of procedures and outcomes are measured not against an objective characterisation of justice, but against the user’s perception of procedure and with the outcome being the perceived result of the procedure and the perceived quality of the received outcome. Data is collected through surveys of random samples of persons who have engaged in and used the services within various paths to justice.

Costs of justice, quality of the procedure, and quality of the outcome are multi-faceted categories and MA2J measures their different dimensions with one or more variables. For example, the costs of the procedure are defined as the resources the user would need to travel from the beginning to the end of a

path to justice. Within this indicator, a set of sub-indicators reflect different types of procedural costs: out-of-pocket expenses, time, and other opportunity and intangible costs (stress, emotions, etc.).

Table 1 sets out the indicators and sub-indicators developed by MA2J⁹⁷.

Table 1. MA2J: Indicators of the Costs and Quality of Paths to Justice

Cost of the Procedure		
<i>Indicator</i>	<i>Description</i>	<i>Examples</i>
Out-of-pocket expenses	The monetary amount spent on transactions during and as a result of the proceedings	Lawyer fees, expert fees, filing fees, transportation fees, bailiff and witness fees, notary fees, costs for communication
Time	Time spent dealing with the procedure	Searching for a legal advisor, collecting information, contacting professionals, travelling, awaiting/attending hearings, waiting in queues
Other lost opportunities	The cost of lost opportunities due to the proceedings and their possible lengthiness	Lost income, devaluated resources, losing a job opportunity
Intangible costs	On their paths to justice, people tend to expend emotions, suffer stress, become depressed or experience deterioration in their relationships with significant others	Stress, negative emotions such as frustration, fear, disappointment or anger, loss of relationships

Quality of the procedure		
<i>Indicator</i>	<i>Description</i>	<i>Sub-indicators</i>
Procedural Justice	Fairness perceptions of users regarding the processes that are utilised to resolve disputes and allocate resources	Process control, decision control, consistency, bias suppression, accuracy, ability to correct, ethicality
Restorative Justice	Concerned with the harm that has been caused by the legal problem and attempts to offer reparation to the user of justice	Opportunity to ask the other party for an explanation and recognition
Interpersonal Justice	The extent to which people are treated with politeness, respect, and propriety	Politeness, respect, propriety, respect for rights
Informational Justice	The validity of information provided by decision makers as the foundation of the decision making process	Honesty, explanation of rights and options, as well as whether the explanation was timely, understandable, and in need of clarification
Quality of the Outcome		
<i>Indicator</i>	<i>Description</i>	<i>Sub-Indicators</i>
Distributive Justice	The allocation of resources among individuals with competing needs or claims	Equity, equality, need

Corrective (compensatory) Justice	When one person is wrongfully injured by another, the injurer must make the harmed party whole	Compensation
Restorative Justice	Looks to the future and the best means to achieve reparation of harm, including elements of apology, shame and repair of relationships	Opportunity given to the offender to show remorse and to accept responsibility, the degree of reparation of emotional and monetary harms, closure, alleviation of fear
Retributive Justice	An infliction of proportionate loss and pain to the injurer is necessary to achieve justice	
Utilitarianism	Social harmony can be attained via the prevention of future harm	Deterrence and incapacitation
Informational Justice	The validity of information provided by decision makers as the foundation of the decision making process	Outcome justification
Transformative Justice	The future is a main concern, in addition to transformations with the self, self-in-relationships, and self-in-society	Considering parties' interests and re-building relationships
Legal pragmatism	Concerned with facts and consequences	Pragmatic outcome, consequences taken into account
Formal Justice	Similar cases are defined by the situation, not the person – i.e., treat similar cases alike	Similar outcomes and ability to compare outcomes with related others

The three indicators will be drawn together into a composite access to justice index based on a rating of the importance of the indicators and sub-indicators (with the more important dimensions given more weight within the index)⁹⁸.

MA2J is expected to assist in measuring, defining and operationalising the paths of justice that meet the demands for resolution of urgent legal problems. The researchers foresee that the project “will provide vital data for the accessibility of the legal processes put in place as well as the subjective perceptions of the users”⁹⁹. Comparisons will also be possible with alternative paths to justice, between different users or groups of users, or with a baseline data collected through a separate process. It will be possible to measure changes in the paths to justice and along the three main indicators over time. The information gathered will also provide feedback to providers of justice system services, identify bottlenecks and may make it possible to predict use of different paths. In summary:

What the data from MA2J could offer the users is knowledge which will make it easier for them to weigh the cost and benefits of a (legal) process. Better assessment of the cost, quality of the procedure and quality of the outcome should lead to improved access to justice¹⁰⁰. This data will also assist in evaluating different systemic properties such as accessibility, predictability, fairness and equality¹⁰¹.

A Canadian project initiated by Community Legal Education Ontario is utilising a similar research design method. Evolving Legal Services Research Project (ELSRP) is an innovative longitudinal research project and examines the effectiveness of public legal education and information (PLEI) in helping low-and modest-income people address their legal problems. One of the main differences between the MA2J methodology and that of the ELSRP is that the Canadian project will measure process and outcome issues against both a subjective (perspective of the individual) and objective (integrating legal norms) standard¹⁰².

Finally, Abel recommends a three-prong approach for employing process mapping and analysis to evaluate the effectiveness of the spectrum of access to justice interventions. These are: (a) identifying the tasks required; (b) identifying the obstacles from completing the required tasks; and (c) identifying the access to justice interventions that can overcome the obstacles. She too emphasises this analysis must extend to considering outcomes in the sense of whether access was meaningful and effective. As she notes, while several evaluations have found that self-help interventions can improve the ability of unrepresented litigants to perform certain tasks, they do not show that they “enable them to perform those tasks at a level sufficient to enable the court to reach a fair and accurate decisions”¹⁰³.

c) Empirical impact evaluations

Many US studies have investigated the impact of counsel in various settings that handle civil cases¹⁰⁴. These reports consistently show that representation is a significant variable affecting a claimant’s chances for success in a vast range of legal proceedings including eviction, custody, and debt collection cases, as well as administrative proceedings¹⁰⁵. The type of proceeding involved has varied from uncontested, to claims adjustment, to mediation, to arbitration, to various types of administrative adjudications, to court proceedings (including specialised courts of limited jurisdiction)¹⁰⁶. A recent California study carried out an in-depth evaluation of partial legal services in housing-related cases¹⁰⁷. The outcomes assessed in this study were both procedural and substantive in nature. The findings indicate was that the unbundled legal services program was successful in furthering procedural justice, but that its impact on substantive case outcomes was quite limited¹⁰⁸.

Until recently, the vast majority of these studies were observational in nature, that is the research design was to compare outcomes in cases where the individual was represented by counsel to similar cases where the individual was unrepresented. This approach has been the subject of a lively debate among scholars.

There are a number of recent and ongoing US projects carrying out what many consider more empirically rigorous randomised evaluations of the need for legal representation, in which participants are randomly selected to receive a type of legal assistance service and whose experience and outcome are compared to a cohort which did not receive the service¹⁰⁹. Concerns are also raised about the ethical and practical limitations of randomised studies and the limitations of their utility in providing meaningful evaluation of civil legal services and policy formulation¹¹⁰.

The Boston Bar Association’s Civil Gideon Task Force¹¹¹ and the Shriver Pilot Projects in California¹¹² have established multi-year pilot projects engaging a range of research methods to evaluate the experience of persons who have full legal representation to those who receive more limited forms of assistance in a variety of court-based processes. Methodologies include: analysis of a randomised studies, assessment of the court dockets, efforts to follow litigants after the period of the study, and interviews with judges, advocates, and other personnel involved. These evaluation methodologies were developed through a participatory process engaging practitioners, policy makers, experts and other stakeholders. This multi-pronged methodological approach with its mix of quantitative and qualitative research methods is considered to have strong potential for evaluating the effectiveness of legal services¹¹³. Early results from the Boston project conclude that people who receive full legal representation fare much better in court-based processes, both in terms of legal outcomes and socio-economic outcomes¹¹⁴.

2.4. Gaps, Limitations and Future Directions

The main challenge in delivering citizen-oriented access to justice services is to enhance responsiveness and ensure that provision extends to the ‘right’ mix of services, to the ‘right’ clients, in the ‘right’ areas of law and in the ‘right’ locations and at the ‘right’ time¹¹⁵. In order to meet this challenge, we need to know people’s problems, what methods respond to them, for what type of client and under what conditions.

Evaluation of the effectiveness of various models of legal assistance is a relatively new field and there are a multitude of approaches to legal service delivery. A lack of common definitions and a common framework means that there is a relatively low ability to generalise from results. There is no widely accepted definition of the parameters of different types of justice services, “effective” or “meaningful” access to justice and there is no common framework for developing process and outcome indicators that would facilitate comparison of results. Another gap is the lack of attention that is often played to individual legal capabilities in the assessment of the effectiveness of services. Studies have demonstrated that a sophisticated understanding of legal capability is a critical aspect of developing and delivering responsive legal assistance services¹¹⁶. Yet few research methodologies adequately meet this requirement.

Finally, there is an important opportunity to develop connections between research into the effectiveness of models of legal assistance on individuals and the impact of providing this service on the broader community. The 2015 OECD Roundtables concludes that there is a partial business case but that much more evidence is needed to develop a clear understanding of the interactions between effective legal aid and positive social and economic outcomes at the individual, community and state levels as seen from short, medium and long-term perspectives. Countries also pointed to limited evidence about the effects legal problems have on the social, health and economic lives of citizens, both in the short term and over time. The key link between studying the effectiveness of specific models of assistance and the business case for legal aid is the definition of outcomes employed in these studies. Emerging methodologies encompass more thoughtful conceptions of “outcomes” of legal and justice processes but there remain important gaps at both the conceptual and operational levels. Similarly, definitions of effectiveness can be broadened to include measurements of impact beyond the individual to connect legal aid provision to justice system and broader societal goals of development and social and economic equality.

Effectiveness and outcomes are strongly interrelated: effectiveness is usually defined as meeting a desired outcome. Sound arguments have been presented for measuring effectiveness relative to a broad range of outcomes and impacts that extend well beyond a specific case outcome: “Civil justice research must step back from narrow definitions of effectiveness that are limited to case outcomes and consider the broader, systemic effects of representation on individuals and those around them”¹¹⁷.

Box 4. Overview of Approaches to Conceptualising and Measuring Outcomes

The development of meaningful outcome indicators is a key component of understanding the effectiveness of legal assistance and other access to justice interventions and is an emerging priority on the access to justice research and policy agenda. One concern is how to address key contextual variables such as individual legal capability, types of legal problems/legal processes or forums, and quality and responsiveness of the service(s). A partial list of specific factors include: characteristics of the individual/group experiencing the legal problem, personal and legal capability, relationship with other party/parties, characteristics of the legal problem, type(s) of dispute resolution process, complexity of tasks required by the process, type(s) of legal information and assistance available, and mechanisms for provision of support and assistance including diagnosis, triage and referral systems. Clarity on these types of factors is central to the generation of useful data and the ability to compare and generalise results.

This section provides an overview of approaches to conceptualising and measuring outcomes proposed and/or applied in current literature and research projects¹¹⁸. There is some overlap between indicators. This overlap illustrates differences in approach to conceptualisation.

Individual service, process, and substantive outcome indicators

Service outcomes:

- Accessibility of legal assistance services
- Proactive identification of legal needs and related non-legal needs
- Contribution to the resolution of legal and other related issues
- Responsiveness to existing legal capability of individual and contribute to enhanced legal capability

Process outcomes:

- Level of satisfaction with process as measured against various dimensions of satisfaction (e.g. well prepared, perception that process fair, perception that s/he was heard)
- Level of stress experienced during the resolution process
- Promoting a feeling on the part of the individual the process was fair and that their story was told, thereby increasing the litigant's willingness to accept the result of the resolution (favourable or unfavourable)
- Educating the client as to their best interests or as to what is possible given legal and factual constraints, thereby adjusting the client's goals
- Comprehensively addressing legal and non-legal dimensions of an individual's problems/needs; intervene in common patterns of cascading effects/cycle of decline
- Whether clients gained knowledge to solve problems
- Whether clients had their voice heard in the legal system
- Whether different levels of legal assistance result in proper referrals to agencies and to programs designed to assist with resolving problems and challenges
- Whether the individual benefit from the full factual and legal development of the case
- Comprehensive process outcomes through the stages of a legal resolution: a good client interview; clients with chaotic lifestyles attend interviews, appointments and court dates; clients are better able to plan and organise their legal affairs; improvement in the client's interaction with the legal system; consideration of issues before a court or tribunal enhanced because the lawyer asked questions/raised issues and brought the client's story before the court; client is better able to understand their legal position and the

options open to them; a process is undergone where the client is listened to, respected and given fearless advice of their legal position; relationships and trust building with other legal and non-legal support agencies enabling client referral and support; holding of authority to account; a holistic service delivered to the client through collaboration, networking, community legal education and joined-up services.

Substantive outcomes:

- Whether clients obtained a legal resolution
- Whether different levels of legal assistance result in the resolution of problems and challenges
- Creation of a lasting outcome that prevents recurrence of same and/or similar problems in the future
- Whether clients obtained access to the legal system or an intended benefit of the law
- Whether likely negative consequences of unresolved problem were avoided
- The likelihood of obtaining a better (or “desired”, or “more favourable”) substantive outcome with the service
- Outcomes that recognise the underlying purpose of the social programs that form the setting for legal interventions
- Outcomes that recognise the importance of litigants perceptions of fairness, both of the process and of the outcomes of adjudicatory processes
- How the substantive outcome in a specific case compares with the expected outcome (based on an external objective standard)¹¹⁹
- Outcomes that engage long-term health and functioning changes (e.g. socio-economic status, physical health, mental health, substance use, criminal justice involvement, child functioning)

Justice system process and outcome indicators

- Assuring that each person subject to official decision-making and/or state coercive power is treated with dignity
- Contribution to consistency and fairness in legal outcomes
- Protection of legal rights and support of social norms
- Enhance coordination and collaboration between service providers; ensure provision of integrated service; and easy to navigate justice pathways
- Making adjudicatory systems run more smoothly
- Court and tribunal efficiency outcomes
- Contribution to public confidence in the justice system and justice institutions
- Are there unintended outcomes for the justice system?

Socio-economic outcome indicators

- Improvement in the individual or family’ s socioeconomic situation, even if the legal outcome is the same, perhaps because the legal assistance includes referrals to other official and community resources
- Improvement in a SME’s functioning and capacity for growth
- Contribution to specific policy goals such as the reduction of homelessness, eviction rates, gender-based violence, child poverty
- Contribution to health of population and sub-groups within a population

- Increase in the ability of individuals to effectively participate in and contribute to the economy and society
- Contribution to reduction in inequality in meeting basic needs and accessing public services
- Contribution to inclusive growth/reduction of poverty
- Contribution to the economic functioning and sustainability of small businesses
- Are there unintended societal outcomes?

ENDNOTES

- ¹ “Percentage of victims of violence in the previous 12 months who reported their victimization to competent authorities or other officially recognized conflict resolution mechanisms (also called crime reporting rate)” and “Unsentenced detainees as percentage of overall prison population”. Available at: <http://unstats.un.org/sdgs/indicators/indicators-list/>.
- ² Pleasence P. *et al.* (2013), Paths to Justice: A past, present and future road map, Nuffield Foundation and Centre for Empirical Legal Studies, p. 62, available at www.nuffieldfoundation.org/sites/default/files/files/PTJ%20Roadmap%20NUFFIELD%20Published.pdf (accessed March 1, 2016).
- ³ OSJI-WB (2016), Public access to effective and just dispute resolution – Technical Brief, available at <http://deliver2030.org/wp-content/uploads/2016/03/Technical-Brief-Public-access-to-effective-and-just-dispute-resolution.pdf>.
- ⁴ OSJI-WB Technical Brief (2016).
- ⁵ Coumarelos, C., Macourt, D., People, J., McDonald, H.M., Wei, Z., Iriana, R., Ramsey, S. (Coumarelos C. *et al.*) (2012), Legal Australia- Wide Survey: Legal Need in Australia, *in* Law and Justice Foundation of NSW, Sydney (2012), p. 3 and referring to Coumarelos *et al.* (2006); Schetzer, Mullins and Buonamano (2002).
- ⁶ *Ibid.*
- ⁷ Genn, H. (1999), Paths to justice: what people do and think about going to law, Hart, Oxford.
- ⁸ Dignan, T. (2004), Northern Ireland Legal Needs Survey, Northern Ireland Legal Services Commission, Belfast.
- ⁹ *Ibid.*
- ¹⁰ See for example, Dignan T. (2006); Ignite Research, Report on the 2006 National Survey of Unmet Legal Needs and Access to Services, Legal Services Agency, Wellington; Legal Services Commission (2006), Making legal rights a reality: the Legal Services Commission’s Strategy for the Community Legal Service.
- ¹¹ Pleasence P., Coumarelos C., Forell S., McDonald H.M. (Pleasence, P. *et al.*) (2014) (2014), Reshaping Legal Assistance Services: Building on the Evidence Base, Sydney, *in* Law and Justice Foundation of New South Wales (2014).
- ¹² Schetzer, L., Mullins, J., Buonamano, R. (Schetzer, L. *et al.*) (2002), Access to justice and legal needs: a project to identify legal needs and barriers for disadvantaged people in NSW, Background paper *in* Law and Justice Foundation of New South Wales (2002).
- ¹³ Access to Justice Task Force, Attorney-General’s Department (2009), A Strategic Framework for Access to Justice (Government of Australia); National Action Committee on Access to Justice in Civil and Family Matters (2013), A Roadmap for Change, Ottawa, Canada.
- ¹⁴ OSF-WB Technical Brief (2016).
- ¹⁵ For a brief comparison on survey methodologies see: www.nuffieldfoundation.org/sites/default/files/files/PTJ_List%20of%20Surveys.pdf; for a comparison of Canadian surveys see: www.cfcj-fcj.org/sites/default/files/Canadian%20Civil%20Legal%20Needs%20Surveys%20-%20A%20Brief%20Comparison%20-%20M.%20Dylag.pdf.
- ¹⁶ Barendrecht, M., Gramatikov, M., Porter, R., Verdonchot, J.H. (Barendrecht, M. *et al.*) (2012), Trend Report: Part 1 – Towards Basic Justice Care For Everyone, Den Haag: The Hague Institute for the Internationalisation of Law, The Hague: HiIL.

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- ¹⁷ See for example, large-scale national surveys conducted in OECD members states in the past two decades. A further small-scale study was also conducted in Ireland (Ryan, M., 2008).
- ¹⁸ Coumarelos, C., Macourt, D., People, J., McDonald, H.M., Wei, Z., Iriana, R., Ramsey, S. (Coumarelos C. *et al.*) (2012), Legal Australia-Wide Survey: Legal Need in Australia in Access to Justice and Legal Needs (Vol. 7), Law and Justice Foundation of New South Wales.
- ¹⁹ For example, in emerging countries such as Bulgaria (Legal Aid Act 2005) and Moldova (Legal Aid Act 2007), in advanced countries with no legal aid tradition such as Taiwan (Legal Aid Act 2004), and in advanced countries with established civil legal aid schemes such as the U.K. (e.g. Legal Services Commission 2006, Ministry of Justice 2010).
- ²⁰ The figure would be higher still if it included surveys containing only small sections asking about civil legal problem experience, such as the 2008-9, 2009-10, 2012-13 and 2013-14 *Scottish Crime and Justice Surveys*.
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