SESSION 1. Access to justice: Trends, barriers and impact

Discussion questions

- What are the current trends in access to justice in OECD and partner countries (especially in non-criminal domains, such as civil, family and administrative justice)? What factors affect the level of access to justice services by all?
- What are the main barriers to access (in non-criminal domains) for different groups of population and businesses? Low-income and middle-income groups? Unrepresented litigants? Women, elderly, children, minority groups? SMEs? New immigration/refugee populations?
- What are the costs of access to justice, especially in non-criminal justice domains (e.g., court fees, lawyer fees, transportation costs, time spent by litigants on a procedure)? What are the approaches to measuring costs of accessing justice (e.g., public vs. private costs)?
- What are the main challenges and pressures faced by countries in ensuring equal access to justice, irrespective of income levels and social status? What are the governance arrangements for access to justice policies and their implementation?
- What are the economic and social benefits of strengthening access to justice? What are the (legal, social and economic) costs and broader impacts of limited access?

Access to justice as a dimension of inclusive growth

Improving access to justice is increasingly recognised as a critical dimension of inclusive growth and as a mean for tackling inequality. The inability to access legal and justice services can be both a result and a cause of disadvantage and poverty. Legal (and justiciable)2 problems tend to occur in combination thus creating clusters of legal and justice needs (housing, employment for individuals and tax, regulation and employment for small businesses) and compounding legal issues. Although the data is limited, inability to obtain legal and justice services is often found to have a disproportionate impact on the low-income and other disadvantaged groups, precisely because of their lack of individual economic resources. This in turn can further undermine their ability to enforce their economic and social rights, including property and labour rights. For small businesses, inability to resolve legal problems, including disputes, may result in losses of employees, ceasing certain types of trading and incurring additional costs, thus hindering growth7 (for more discussion on legal problems and needs, see section 2).

In addition, inability to resolve legal problems may diminish access to economic opportunity, reinforce the poverty trap, and undermine human potential, which could affect growth. Conversely, while limited, there is increasing evidence that being able to address legal problems and access justice can contribute to inclusive growth by creating jobs, reducing work days missed due to legal problems, providing stable housing, resolving debt issues and stimulating business activities. Thus providing suitable legal advice and assistance to access justice can contribute (among other factors) to helping people move out of some of the worst experiences of social exclusion and enable equal access to economic opportunities4.

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1 These background notes have been prepared on the basis of a preliminary analysis and limited available data and aim to stimulate the discussion at the first OECD Roundtable on Equal Access to Justice. The roundtables will further explore these issues in greater detail.
2 The term “justiciable” has been used to describe problems that raise legal issues, whether or not this is recognised and whether or not any legal service or process is used in their resolution (e.g. Genn, H. 1999). However, for ease of reference, in this report “legal problem” is synonymous with “justiciable problem”. Where possible and appropriate both terms are included.
In addition, growing evidence highlights that equal access to justice can spur economic growth by enabling level playing field for economic stakeholders, including small and medium enterprises (SMEs). It can also support contract enforcement and fair competition as well as instil confidence in “the rules of the game.” Finally, ability to access justice is a key condition for establishing legal certainty and predictability, thereby creating a conducive climate for “doing business,” attracting investment, and contributing to economic growth.

**Social and economic costs and impacts of limited access**

When family, racial, employment, discrimination, housing or other legal problems or disputes remain unresolved they can lead to further legal and other social and health-related problems and costs. These costs can be borne both by individuals and by social and health services, income supports, disability plans, employment insurance, and other services. For example, unresolved problems relating to debt, housing, and social services may lead to social exclusion, which may in turn induce a dependency on government assistance. Unresolved legal needs may also secondarily affect children if parents are not able to access fair outcomes (in case of child support or parenting cases, or when unmet legal needs are related to housing or income issues). Moreover, studies found that physical illness and stress-related ailments caused by legal and justiciable problems cost Britain’s National Health Service £113-£528 and £195-£2224 per patient respectively. Other estimates indicate that experiencing everyday legal problems results in an estimated annual costs to the state of $248 M for social services, $450 M for employment insurance and $101 M in additional health care costs, with the total of approximately $800 M annually.

On the business side, although the data are limited and there is no common methodology to measure impacts of legal (justiciable) problems, some studies show that these problems may have a negative knock-on effect for businesses. Some of the most common negative impacts include loss of income, upset within the business, the incurring of additional costs, damage to business relationships, loss of reputation and damage to employee relations. In extreme cases, legal problems were said to have led to businesses ceasing trading. Problems concerning trading and intellectual property were associated with loss of income, problems concerning tax and regulation with the incurring of additional costs, while issues concerning employment were more likely than others to impact on capacity to undertake work. The OECD Policy Framework for Investment (PFI) suggests that when key elements of effective access to justice are missing or inefficient (e.g. complex, costly, and lengthy procedures), companies including SMEs may limit their activities. Also there is emerging (although limited) evidence that the perceived ability to settle efficiently and effectively a future dispute, including enforcing a contract and securing property rights, can unlock investment decisions and provide a level playing firms amongst firms, in addition to citizens. Overall, estimates from England and Wales indicate the cost of legal problems to individuals, businesses and public services to exceed €2,500 per capita per annum.
Box 1. Defining access to justice

International indexes and data highlight that the level of actual and perceived access to justice fluctuates across OECD member and partner countries, including among different population groups and regions (although comparisons across countries are challenging due to the differences in legal systems and other factors). Yet there is an increasing recognition of the importance of equal access to justice to foster inclusive growth and reduce inequality. To this end, there is also a growing trend to develop comprehensive efforts to ensure justice systems further facilitate access to legal and justice services, although access to justice strategies are differently pursued and vary widely in OECD member and partner countries (e.g., in the scope and coverage of legal services and legal aid).

While there are no internationally agreed upon definitions in this area, these background notes for the OECD 2015 roundtables on Equal Access to Justice adopt a broad and multidimensional definition of access to legal and justice services, which covers access to legal information and legal services, including counsel and representation to access to formal (such as courts) and to alternative dispute resolution, and their enforcement mechanisms.

Yet achieving “equal” access to justice represents a wicked policy issue, because of its complexity, resistance to resolution and information gaps about what actually helps and how best to direct appropriate resources, changing concepts of legal problems, justice and access to justice. Identification of possible solutions requires solid evidence on what works and exchange of good practice experiences, related to the circumstances and specific legal and justice needs. At the same time there seems to be uneven knowledge of how well the civil justice system work (the broader range of justice services available to meet justice needs of citizens), its private and public costs, who bears these costs, and whether it is meeting the legal needs of citizens and economic actors, or the price for failing to do so.

Barriers to accessing justice services

Common barriers to accessing justice services found in OECD countries range from institutional to economic, social, and cultural hurdles. On the institutional barriers, some studies showed that citizens often feel that justice systems are overwhelming, being too complex and complicated while reporting lack of information, help and direction. Citizens also recount the many administrative and procedural steps involved in enforcing a right or protection.

Actual and perceived cost of accessing justice and legal services appears to be an important consideration. There is growing evidence that the public often cannot afford to resolve their legal problems through the formal processes in courts across many countries. Although there is no single methodological approach to measuring costs of access to justice (e.g., court and lawyer fees, opportunity cost) borne by citizens, the costs of accessing legal and justice services are also linked to different legal and justice needs and hence respective paths to justice. Importantly, in some countries, the cost of legal services and length of proceedings seem to be increasing, although there is no unified trend in this area. Studies show that between 42% and 90% of individuals who decide not to seek legal assistance cite (perceived or actual) cost as the reason for not doing so (although there might be differences between actual and perceived costs). Cost of legal representation is also often cited as one of the primary reasons for the increase in the number of people appearing in court without legal counsel (self-represented litigants or SRLs), as evidenced across a range of OECD countries, where this number goes as high as 50% (depending on court, law
area and jurisdiction). Depending on the legal capability of citizens or business, this situation may lead to less optimal outcomes as compared to those who receive legal assistance. Opportunity costs (e.g. time off work, transportation) were also identified as inhibiting citizen’s action to resolve their legal problem.

Connecting legal and justice needs and availability of legal aid appears to be a challenge in many countries. This issue is partly related to low, or even declining, public legal aid financing and coverage, set against a growing number of people eligible for legal aid in many countries, including EU countries (partly as a result of rising poverty and inequality in the aftermath of the financial crisis). Moreover, in some jurisdictions, legal aid is mainly available in criminal matters, less in family and other civil matters, although there is a wide variation across the countries. There are also few countries providing legal aid for disputes addressed by alternative dispute resolution (ADR) services. At the same time, some studies point to the economic and business case for funding legal aid: not only did investment in legal aid services foster economic growth by increasing jobs, reducing work days missed due to legal problems, creating more stable housing, resolving debt issues and stimulating business activity at the local level, but “average social return on investment from Legal Aid Spending” varied from 1:2 to 1:8. Studies also show that legal aid funding can save public funds by reducing evictions and alleviating homelessness, protecting patient health and helping low-income people participate in safety-net programs. For example, a 2009 Texas study found that for every direct dollar in legal aid, the annual gains to the economy were found to be a reduction of $7.42 in total spending, and gain of $3.52 in output, and $2.20 in personal income.

In some countries, cases of regional disparities in who can access legal aid based on financial eligibility, the types of legal matters covered, and the amount and type of legal assistance and representation provided are also documented. Insufficient pre-trial counselling system and limited advice to avoid unnecessary procedures were also seen as a barrier to effective conflict resolution. Finally, some studies show that the quality of public legal assistance is often perceived as inferior to that of private lawyers, which may perpetuate inequality and create an additional barrier to equal access.

Fragmentation of legal and justice service providers and limited coordination are often reported as other systemic difficulties in some countries. Legal and justice services are often provided by a diverse range of private and public institutions, which sometimes also differ across regions within countries. Such modes of provision often imply that legal and justice services, while increasingly aiming to centre around clients, tend to be generally focused more on types of legal problems rather than on citizens’ needs. Some legal and justice service providers operate sectorially and fairly autonomously, with different types of legal jurisdiction and eligibility criteria, which requires citizens (and economic actors as appropriate) to deal with them separately. Fragmented approaches and limited coordination of both public and private (pro bono) legal services as well as social services can present a particular challenge for those in especially difficult situations and facing multiple legal problems. This means that these groups may be required to identify separate legal and other service providers for each problem, which may have different eligibility criteria and in itself present a barrier to accessing justice. A related challenge which was identified in a number of studies is linked to long waiting times for legal services and assistance, which may aggravate the legal problem as well as complicate and increase the cost of the resolution process.

Uneven geographical accessibility of legal and justice services is often reported as a barrier, in particular to those living in remote areas and who may need these services the most, given that many of these groups tend to have higher vulnerability to legal (justiciable) problems. This challenge is usually present in jurisdictions with substantial geographical coverage or in countries with low population density outside cities and regional centres where some people can find themselves beyond the reach of (or unable to reach) legal services, due to the lack of public
transport or other public services. The high cost of seeking justice in rural and remote areas is an increasing policy issue in certain OECD countries. While this challenge can be mitigated by outreach services (e.g., justice houses in France) and the use of technology, it has been shown to be particularly acute in some places (e.g., for indigenous groups living in remote areas in a number of member and partner countries).

Complexity of the “legal” language, which may not be accessible to the broader population and limited legal information available in “non-official” languages can serve as another impediment. Given increasing mobility and immigration, the ratio of residents not-speaking official languages is growing in a number of OECD countries. Yet in some countries, interpretation is mostly available during court proceedings, although the need is also acute prior to the formal process (e.g., pre-litigation counselling). The availability of the information in “non-official” languages may also vary across different regions in a country.

Limited legal capability, including awareness and understanding of the justice system by citizens and availability, type and scope of legal services is often cited as another barrier. For example, evidence from EU countries shows that a variation in terms of legal awareness about justice procedures among citizens (Figure 1). It is often reinforced by the complexity and multiplicity of laws and legal procedures. For instance, one study showed that 45% of adults who experienced one or more legal problems said that when the problem first occurred they did not understand the seriousness of the problem; 65% did not understand the legal implications; 40% did not know where to go for help; 42% did not know what sort of help was needed and 35% said they lacked the confidence and over all knowledge to deal with the problem effectively. Some studies also highlight that poorer respondents tend to have greater difficulties with legal paperwork. This in turn reduces the demand for legal assistance and overall justice services. The greater the level of empowerment, the more likely the use of legal services.

Capability is also linked to the preferences for use and ability to use different forms of legal service. These preferences exist in the context of increasing adoption of information technologies, as well as self-help materials and legal service “unbundling”, which can improve access for those with higher capability, but present significant challenges for those with lower capability. Indeed, people with poor literacy, communication and/or problem-solving skills may struggle to resolve more complex legal problems with any form of support short of full representation. This is also often the case for self-represented litigants (SRLs), who are often vulnerable in terms of a relative lack of education, income and assets. Yet sometimes people chose to self-represent themselves due to the lack of lawyers or high costs of the process. Hence their needs may vary from the need to have basic orientation around the legal system (buildings, courts, locations, child care, etc.), to diagnosing of legal problems, developing legal knowledge (procedural and substantive advice) and full resolution of legal problems (assistance to support fair outcomes).

Specific groups of population, including women, visible minorities, disabled people and the elderly may have additional legal (justiciable) needs and face extra barriers in accessing justice services. For example, women, given that they may experience higher level of sexual violence, would require specific assistance in such cases. Importantly, because women are often primary care givers, failure to obtain legal assistance may affect not only them as individuals but children who are dependent on them. People with disabilities in turn may require assistance in protecting them against employment discrimination. People with mental health disorders may require legal assistance with parenting or employment issues. Elderly people in turn may need legal support with health insurance and guardianship. While difficulties with immigration status renders individuals particularly vulnerable to legal and justiciable problems (e.g., employment abuse, domestic violence, housing) it could also serve as impediments to accessing justice, including for family matters, for fear of coming to the attention of immigration services.
Figure 1. Citizens who feel well informed about justice procedures, OECD-EU countries, 2013

Note: Data refer to the percentage of people who answered “Very well informed” and “fairly well informed” to the question “How informed or not do you feel about the justice system in (OUR COUNTRY) on each of the following topics?”

Source: Flash Eurobarometer, European Commission (2013)

On the business side, the duration, cost and complexity of litigation procedures were reported among the top barriers, particularly for SMEs. SMEs also highlighted unequal access to high quality legal assistance, particularly in disputes with large enterprises, which could afford more expensive support. As such, the survey data from some countries show that judicial litigation is often not a viable option for SMEs, which may affect their ability to resolve legal disputes and hence contribute to economic development. In fact, large companies are much more likely than SMEs to be satisfied with the cost of a court procedure to resolve a dispute (51% vs. 24%) and with the cost of an ADR procedure (72% vs. 49%). Limited coordination and lack of a comprehensive approach across justice services are often cited as one of the main challenges in enabling a seamless level of service and access to justice.
SESSION 2: Identifying citizen legal needs

Discussion questions

- What is known about legal and justice needs of different groups of citizens and businesses? How have they evolved?
- What country initiatives have been put in place to systematically identify legal needs and experiences of different groups of citizens and the private sector? What are the main challenges in their implementation?
- What is known about the way different groups of citizens and businesses resolve disputes, address their legal needs in practice, and ultimately engage with the justice system? What approaches can be effective to map their actual experiences in resolving their legal problems?
- How can the legal needs of different groups (e.g., unrepresented litigants, marginalised groups, etc.) be accounted for in the access to justice reforms, and in the design and delivery of justice services? What are the implications and benefits of this approach?

Identifying legal needs

Studies seeking to identify the legal (justiciable) needs of citizens and businesses (especially in civil, family and administrative justice), along with the multiple justice pathways followed to resolve legal problems, are being undertaken in an increasing number of countries (although still limited). While various methods have been utilised to explore individuals’ and businesses’ experience of and success in dealing with legal issues, many countries have relied on “legal needs surveys”. Such surveys have now been carried out in more than 25 advanced and emerging economies, including at least nine OECD member states, as well as a number of developing countries. Since the mid-1990s – with the build-up of “considerable momentum” in the conduct of such surveys, much fuelled by legal aid reform – at least 38 large-scale national legal needs surveys 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 States. Over the same period, extensive sub-national surveys have also been conducted in China, Russia, Indonesia and Yemen, along with smaller surveys in countries such as Egypt and Bangladesh and sub-national surveys across many of the jurisdictions. While only six of these surveys focused on businesses, there appears to be similarities in the broad patterns of individual and business experience that have emerged from legal needs surveys. Other countries, such as Mexico, have used an extensive consultation process to identify everyday legal needs of citizens across every state.

Prevalence of legal problems

Everyday legal problems are a reality for many people in OECD member and partner countries. Law shapes and pervades all citizens’ and businesses’ lives; rich or poor, profitable or unprofitable, from birth to death. Law provides a framework for notably contracts, financial dealings, employment, ownership and rental of property, family structure and parenting, health and injury, benefit entitlements, human rights, and corporate arrangements. People may become a victim or suspected of crime, or have disputes in relation to social security, government permits, neighbourhood, employment or immigration challenges. In fact, evidence increasingly shows that many citizens are prone to experience legal problems in their lives. For example, in the Netherlands,
a recent survey has found that, on average, citizens have to resolve at least one serious legal need a year. In 2006, 29% of individuals in New Zealand reported one or more problems. In a 2013 survey, 38% of small businesses in England and Wales experienced “one or more ‘significant’ legal problem” within the year including 56% for other micro businesses and 77% for other non-single person small businesses. In the US, according to the Attorney General, “every year, as many as half of all American households confront a legal issue that has the potential to dramatically affect their lives—from veterans threatened with eviction, to students faced with suspension or expulsion under well-intentioned but ultimately misguided zero-tolerance disciplinary policies, to individuals across the country living with violent domestic abuse”.

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 (Figure 2). Recent research shows that elements of disadvantage, such as low income, ill-health/disability, single parenthood and unemployment, homelessness or being in a minority group tend to be associated with the experience of legal problems (e.g., social affairs cases, dismissal cases, payment of debts). For example, links between legal and health problems are increasingly documented, in particular in relation to mental illness/disability. Moreover, experiencing more than one form of disadvantage, such as low-income, disability and remoteness, can have a multiplier effect by increasing challenges in different areas of life, including health and employment, which may significantly compound legal issues and further entrench social exclusion and undermine access to economic opportunities.

**Figure 2. Proportion of disadvantaged Australians by number of legal problems faced 2008**

![Figure 2: Proportion of disadvantaged Australians by number of legal problems faced 2008](image)

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

**Everyday legal (justiciable) problems may have a cascading and clustering effect.** There is substantial evidence that both legal and social problems tend to cluster and occur in distinct patterns. Data also show that legal problems spark other legal problems. They also trigger, and are triggered by, a range of non-legal problems. 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, thus contributing to a cycle of decline (Figure 3) and adding to the
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. This may suggest that public service delivery approaches based on life events strategy that are currently utilised in many OECD countries could also be applicable to the provision of legal and justice services.

**Figure 3. An example of a cycle of decline**

![Figure 3](image)

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

Citizens and businesses often tend to face difficulties in recognising and resolving legal problems, according to emerging evidence in some countries. For example, studies show many legal needs often remain unmet, particularly those related to civil law disputes, thus exacerbating legal problems and/or affecting adversely other areas of citizens’ everyday life. Importantly, low-income groups with limited legal capabilities and awareness are more likely to take no action when facing legal problems. In addition, middle-income groups in many countries do not qualify for financial legal aid, yet in many cases do not earn enough to afford the legal services to meaningfully address any significant legal problem, which makes the system difficult to access for all. While the available data are limited and general, they highlight that the percentage of unresolved legal problems varies from 35% to 41% in some OECD and partner countries. In some cases, studies show that even when the problems were resolved, the outcome could be perceived as unfair or allowed to obtain little or nothing of what was originally expected.

**Businesses in turn may face legal issues** related to tax, regulation, employment or payment of invoices (for example, according to a UK study, about 38% of businesses reported one or more “significant” legal problem in the past year). While just 29% of single person businesses experienced one or more significant problems, the figure rose to 56% for other micro businesses and 77% for other small businesses. The prevalence of legal problems by business sector is shown on Figure 4. Analysis indicated that tax and regulation problems were closely related, and formed a broader cluster with problems concerning employment and business premises. Problems concerning intellectual property, business structure and “other” issues also formed a cluster. In addition, the extent of business activity may form one basis of vulnerability to legal problems, and
the “predictable series of organisational crises”\textsuperscript{91} associated with particular stages and forms of business constitute another form of vulnerability. For businesses that grow, both the increased likelihood of reaching tipping points and participation theory suggest that an increase in exposure to justiciable issues will follow. For example, taking on employees may bring with it a legion of legal issues, as does obtaining or extending business premises, expansion of geographical markets, product innovation, marketing, collaboration and business acquisition.\textsuperscript{92}

\textbf{Figure 4. Estimated Problem Prevalence by Business Sector}

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\caption{Estimated Problem Prevalence by Business Sector}
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\textit{Source: Pleasence et al. (2013)}

\textbf{Resolving legal (justiciable) problems}

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. However, as the Royal Commission on Legal Services in Scotland\textsuperscript{93} argued, unmet legal need may arise “where a citizen is unaware that s/he has a legal right, or where s/he would prefer to assert or defend a right but fails to do so for want of legal services of adequate quality or supply.” 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.

While difficult to compare, overall the surveys of individuals and businesses indicate that only a relatively small minority of legal (justiciable) problems are lumped. However, formal use of legal services also seems relatively uncommon, with people either seeking help from other independent services or, frequently, attempting to resolve problems with informal help from family and friends or alone (as shown on Figure 5 for individuals\textsuperscript{94} and on Figure 6 for businesses).\textsuperscript{95}

In addition, there seem to be some similarities between the types of reasons provided for inaction between different jurisdictions, such as not knowing where to seek help or feeling powerless to do so. For example, studies conducted in different jurisdictions have highlighted the prominence of inaction due to lack of knowledge of rights or where to obtain help,\textsuperscript{96} fear of
consequences (with worries centring on damage to relationships and sometimes personal safety) and belief that action will be ineffective. However, as Genn, H. (1999) also noted, people who take no action believing nothing can be done generally make this judgment without the benefit of advice and, therefore, without the benefit of an opportunity to identify solutions they are not personally aware of.

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, subjective legal empowerment, problem value and problem severity. As Pleasence, P. et al (2014) commented, “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”.

**Figure 5. Broad pattern of responses to legal problems in Canada 2006**

- No action taken: 23%
- Problem handled alone/with informal help: 43%
- Non-legal formal help: 22%
- Formal legal help: 12%

*Source: Currie (2007)*

**Figure 6. Broad pattern of small businesses’ responses to legal problems in England and Wales 2013**

- No action taken: 62%
- Problem handled alone/with informal help: 9%
- Independent help (excl. lawyers): 13%
- Formal legal help: 16%

*Source: Pleasence et al. (2013)*

Addressing legal (justiciable) problems experienced by citizens and businesses and hence their legal and justice needs (as opposed to centring mainly on the operations of courts, bar associations etc.) may require reflecting on the way justice and legal services are delivered (see discussion in section 3). It may also call for deeper understanding of legal needs and experiences in accessing justice by people and businesses (or not), including members of low-income, migrant, aboriginal and rural populations and other vulnerable groups.
SESSION 3: Developing citizen-oriented approaches to delivering access to justice

Discussion questions

- What country approaches have been put in place to improve legal and justice service delivery to citizens and businesses? How do they recognise and respond to different paths to justice, especially in non-criminal matters? How do they respond to the evolving legal and justice needs, including those of unrepresented litigants?
- What have been successful country experiences in developing integrated solutions to the provision of legal and justice services? What types of services have been included (e.g., Alternative Dispute Resolution mechanisms)? What have been success factors and main challenges?
- Are there successful approaches in linking legal and justice services with other public services (e.g., housing, health, education, and labour) to facilitate resolution of citizen’s legal and related needs? What have been the impact and results?
- How can success of these initiatives be measured, in terms of costs, quality of procedures and quality of outcomes?

To respond to a range of legal problems experienced by various groups of citizens and businesses (specifically in non-criminal domains), there appears to be an emerging emphasis amongst some countries (e.g., Canada, United States, Australia, the Netherlands), on strengthening user- and citizen-orientation of justice systems, which may involve the necessary institutions, knowledge, navigation assistance, resources and services to empower citizens to avoid, manage and resolve various types of legal problems and disputes. More specifically, current debates in some countries point to several emerging examples for developing citizen-centred approaches to delivering legal and justice services (especially non-criminal areas) towards:

Recognising multiple paths to justice

Growing focus on the broader range and scope of problems experienced by the public and hence their legal and justice needs (not just those that are adjudicated in courts), also highlights the recognition of various paths to justice (in particular in civil justice). For example, depending on the circumstances, legal needs may be addressed through a range of legal and justice services (court and non-court-based), which could be arrayed along a service continuum from public legal education (PLE) to early resolution services to full representation and resolution. Such a continuum could be formed along the dual-track approach to legal service provision, in particular in civil justice, aimed at both preventing and resolving legal problems (see emphasis on PLE section below). Achieving this seamless continuum and the recognition that many paths to justice exist may require navigation assistance, effective triage system (e.g., Australia’s Strategic framework for access to justice in the federal civil justice system) and increasing collaboration, coherence, and coordination of various justice and legal services, which are often delivered at various levels of government and by different institutions. It may also require rethinking certain legal processes (e.g., renforcer la communauté de travail dans les juridictions in France; Channel Strategy from the UK Legal Aid Agency), including the frequent divide between courts and ADRs and the structure of the legal aid. In addition, it may call for an expanded system of justice such as an early resolution services system (ERSS), which may include a range of services and resources that provide information and assistance to individuals and/or groups concerning the law and legal issues, and that are designed to reach people as early as possible in the life cycle of their problem.
For instance, the Canadian Action Committee on Access to Justice in Civil and Family Matters argued that, in the case of family justice, there is a need for “a range of accessible and affordable services and options — in the form of a family justice services continuum — [that] must be available and affordable for all family law problems (see Figure 7). The family justice services system would offer an array of dispute resolution options to help families resolve their disputes, including information, mediation, collaborative law, parenting coordination, and adjudication. Early “front end” services in the family justice services system could be expanded. Specifically, this means allocating resources so as to make front-end services highly visible, easy to access and user-friendly; coordinating and integrating the delivery of all services for separating families; and making triage services (i.e. effective channelling of people to required services), including assessment, information and referral, available for all people with family law problems.\textsuperscript{106} Similarly, in Europe, in 2013, under the Daphne III project, the implementation of Family Justice Centres started in 5 pilot countries (the Netherlands, Belgium, Germany, Poland and Italy) (Box 2). Family justice centres aim to make the step from collaboration to service integration where through partnerships new services for clients are designed based on their needs.\textsuperscript{107}

\textbf{Figure 7. Family Justice Services Continuum}

\begin{figure}[h]
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\caption{Family Justice Services Continuum}
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\textit{Source: Action Committee on Access to Justice in Civil and Family Matters (2013a)}

To facilitate navigation across multiple (potential) justice pathways, some countries are developing \textbf{simple gateways into the system of legal service or one-stop shops} (e.g., Family justice centres, le service d’accueil unique des justiciables or SAU en France) in order to overcome the fragmentation of legal services and to better meet the legal and justice needs of citizens and businesses. Such entry points, or “front door” into the system of legal and justice services, if simple, accessible and visible, are seen as facilitating access to legal services and the justice system, avoiding referral fatigue and maximising legal resolution.\textsuperscript{108} From the citizen’s perspective, such “front door” (or several major gateways) to the legal service system could be connected with other agencies and services to provide relevant referrals to specialised legal services as appropriate, which could promote simplicity for clients.\textsuperscript{109} Given the potential overlap between legal and non-legal needs, these entry points could also provide appropriate referral to other human services and hence serve as the starting point for quick access to the most relevant legal and other social services (“\textit{no wrong door approach}”). This may also require setting up a system of legal “triage”, whereby legal needs are assessed and prioritised, providing the first steps towards legal diagnosis. For example, currently in Australia, a number of legal hotlines provide legal triage, such as LawAccess NSW and various hotlines operated by Legal Aid and community legal centres (CLCs). These hotlines vary in their scope and services, such as the extent to which they provide direct caller access to a lawyer,
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comprehensive referral to legal and non-legal services and follow-up ancillary services (e.g. face-to-face advice and written information). In addition, various CLCs provide generalist legal services and to some extent provide a triage service. Dutch Legal Aid Board (Rechtwijzer website) and the British Columbian online Civil Resolution Tribunal (CRT) provide other examples of innovations in this area (Box 3).

Box 2. One-stop-shop approach: Family justice centres (Europe)

The origin of the family justice centres can be found in the United States, where in 1989 the first centre was opened to provide victims of domestic violence a safe place and the delivery of legal assistance. A family justice centre offers comprehensive medical, legal and social services to victims of domestic violence. Moreover it can offer counselling services to victims and children, access to juvenile, family and criminal courts, as well as on-site support by legal professionals.

Each family justice centre is different and is based on victims’ needs. Therefore the services provided vary from centre to centre. In certain centres the services are limited to help offered by the police, prosecutors and lawyers, whilst other centres may also provide full health services, job training, counselling services and legal assistance.

Pilot projects with family justice centres started in 2013 in Europe with the financial support of the European Union in five different countries: the Netherlands (Mutsaers Foundation Venlo, Domestic Violence support Centre Midden-Brabant), Belgium (Client-oriented organisation with three partners (police-court, care-justice house, city-PWC province), Germany (BIG Koordinierung), Poland (Fundacja Centrum Praw Kobiet: Centre for women’s rights) and Italy (Guzetti Foundation).

Greater responsiveness to legal and justice needs through multiple justice pathways may also call for greater emphasis on case triage service (which can be seen as a process which distributes resources based on the type/scope of a citizen’s legal and justice need and case complexity to ensure that all citizens can have access to justice). For example, the recent Strategic Technology Summits organised by the US Legal Services Corporation highlighted case triage as one of the top six priorities for enhancing access to justice in the United States. Similarly, in Australia, the Access to Justice Taskforce from the Attorney General’s office put forward a methodology highlighting “the use of triage to guide citizens to the right path of dispute resolution” and “the stimulation of resolving disputes outside the courts and accessible, fair court services when needed”.

In addition, a number of studies argue that courts could play an important role in ensuring that the full range of legal and justice services (including early resolution services and alternative dispute resolution mechanisms) is consistent with the rule of law, legal norms and judicial interpretation by establishing the norms that dispute resolution and other access to justice mechanisms should follow. They underline that courts have a central and irreplaceable role in maintaining a legal framework for resolving disputes, by maintaining that the formal and informal aspects of the justice system – courts, tribunals and the broader civil justice system – should work together effectively. Other reports also put forward the idea that courts and tribunals could serve as multi-service dispute resolution centres, providing a range of dispute resolution services, such as negotiation, conciliation and mediation, judicial dispute resolution, mini-trials, etc., as well as motions, applications, full trials, hearings and appeals. Some of these services could be offered by trained court staff, duty counsel, dispute resolution officers, court-based mediators and others.

To give prominence to the efforts to enable access to justice through different justice pathways, there are examples of efforts to collaborate and coordinate across and within jurisdictions, but also across and within various sectors and aspects of the justice system (civil, family, early dispute resolution, courts, tribunals, the legal profession, court administration, academia, the public, etc.). For example, while country approaches are widely different, some countries are establishing specific structures, such as the access to justice commissions in the United States, in order to provide a coordinated effort involving most justice stakeholders. There are
Rechtwijzer 2.0 provides legal support through mediation, adjudication and a neutral review of agreements. One of the most developed parts of the platform is related to divorce cases, landlord-tenant disputes and employment dismissal cases.

With regards to divorce procedures, the platform does not only offer information to visitors of the website on aspects which are important in a divorce (e.g. assets and divorce, children, immovable goods (house) and income) but it also guides citizens who are planning a divorce through an online divorce procedure, where the end-result of this process is a divorce-plan that can be approved by a judge in a judicial proceeding. The process itself as presented on the website is based on five steps. In the first step (intake) the personal situation of the persons involved will be described. The second step is the start with the development of a divorce plan. This plan will describe all relevant aspects that the partners needs to agree upon for a divorces, an agreement about the distribution of the assets, the height of the alimony for the children and the (former) partner, the income before and after the divorce, etc. The third step (when the plan is prepared by only one of the partners) is to discuss this plan with the other partner and - when needed – legal assistance can be requested (step 4: through a mediator or through an adjudicator) to support the partners in their negotiation process. The last step contains the official adoption of the divorce plan. The divorce plan can be used by a court to resolve the dispute in a swift manner.

The results of an evaluation study on the use of the platform show that the majority of the visitors to the website rate the site in a positive manner. Most of the visitors of the site are in an early stage of the conflict process and try to collect necessary information that can help them to make proper decisions how to solve the dispute. People with very complex conflicts or with a high need for legal aid are main users of the platform (see Bickel, E.A. et al., 2015).

Roundtable brings together 18 federal agencies in collaboration with the White House Domestic Policy Council to evaluate current programs and practices and improve outcomes in a wide array of fields—including health services, housing, and education, employment, family stability and community well-being. It has developed a Toolkit, which aims to engage the legal services community, and to identify for both legal service providers and Federal agencies the programme areas where legal service providers’ work can be of greatest relevance.116

**Joining up services** 117

Provision of joined-up legal, justice and other social services is emerging as another trend in a number of countries, such as Australia, Belgium, Germany, Italy, Poland and the Netherlands. Joined-up services aim to deal with interdependent clusters of legal and non-legal problems, which are difficult to address on their own (although countries cite multiple challenges in this regard, e.g., regulations of legal services118). They are seen as having a potential to provide time- and cost-efficiencies in assisting with a range of linked problems, through swifter and more effective problem noticing and referral, economies of scale, reduction in the number of public service contracts and, where underlying problems are consequently dealt with, better and more enduring outcomes. This ties in with findings119 that low income- or marginalised groups are often dealing with multiple related legal (relationship breakdown, housing, debt and government payments) and associated health, economic and social problems. Allied to this is a growing literature, emerging from the United States, pointing to the benefits of partnerships between legal and medical services, which has led to both the American Bar Association (in 2007) and American Medical Association (in 2010) resolving to encourage lawyers and doctors to develop partnerships so as to be able to better deal
with the underlying problems faced by clients/patients. Similarly, the Commonwealth Attorney-General’s Access to Justice Taskforce (2009) also recommended “a more strategic approach to legal assistance, including greater collaboration between service providers” and set out an ambition “no wrong number, no wrong door”. This was further reflected in the National Partnership Agreement on Legal Assistance Services and in the work of NSW Department of the Attorney General and Justice (2012) which has recommended the promotion of “seamless access to legal information and services”. Family courts and problem solving courts in Australia, the UK, Canada and the United States also provide examples of joined-up legal and human services.

Emphasising public legal education, prevention and outreach

Recent debates within access to justice research and policy-making communities highlight that all legal problems, whether or not the individuals experiencing them recognize their legal nature or use any part of the formal justice system in an attempt to resolve them, represent some level of legal need. To this end, responses to legal need seem to increasingly recognise the importance of public legal education and prevention aspects - l’accès au droit in France (which could be upstream in the legal and justice service continuum discussed earlier), and are increasingly facilitated by the use of technology. Examples of activities may include self-help outlets, such as law clinics, online legal portals or mobile legal apps (e.g. Box 4).

Box 4. Mobile apps for access to justice (US and Europe)

Under the influence of a growing use of mobile and smart phones there will be new possibilities created for improving access to justice. To serve an increased number of low-income people who have only access to websites using mobile phone, a number of countries (including the United States) developed mobile versions of their websites. For example in 2011 the Legal Services of Delaware (US) launched its first mobile website that is easily readable on various devices such as mobile phones and tablets.

In addition to an improved use of legal and judicial websites suitable for mobile phones and tablets there is a growing market for mobile apps that can be used for legal services or for receiving information about judicial proceedings. One of the first mobile apps in the US on legal aid was developed by the Illinois Legal Aid board online. In 2011 the Illinois Legal Aid app and the Illinois Pro Bono app was made available for Android, IOS and as a web app. The Illinois Legal Aid app was designed for lower-income groups who need legal assistance. It provides legal information and referrals to courthouse legal self-help centres and legal aid agencies. The Pro Bone app offers legal professionals a search tool that can be used for finding upcoming legal events and can be used as a resource guide for common pro bono practice areas.

Other examples of mobile apps that can fill the gap on access to justice are: Ask a lawyer, Citizenship works, My Attorney, Expungement, etc. The Ask a lawyer app can be used by US citizens when they have a legal question. Moreover, it contains a chat function and a search possibility to find an appropriate lawyer. The my citizenships works app is meant for foreign citizens who want to apply for citizenship in the United States, and gives an explanation of the US citizenship procedure. The my attorney app can be used by citizens who need direct access to the phone number of their lawyer, and includes the possibility to store information about their cases, witness information and photographs related to the case on their mobile phone or tablet. For juvenile justice there will be an app developed by the Mikva Juvenile Justice Council explaining the expungement legal process (expungement is a first time offender of a prior criminal conviction seeks that the records of that earlier process be sealed, thereby making the records unavailable through the state or Federal repositories). In Europe a dedicated app (ECC travel app) has been developed by the European Consumers Centres to inform European citizens about their legal rights during traveling, renting a car, hotel stays, buying goods in other countries, etc.

Sources: ABA (2015); Cabral, J.E. et al. (2012)

In addition, countries are increasingly engaged in outreach activities involving proactive steps to provide some form of legal assistance rather than waiting for service users to come to them (l’accès à la justice in France). There are examples that show that through outreach, simple gateways into legal services can be created which can benefit the general community and
particularly targeted groups in need of specific legal support. For example the Intereach Neighbourhood Centre in Deniliquin, New South Wales, Australia brings together different public agencies and private offices with the intention to reach out collectively to people in need in a determined geographic area, which also helps overcoming geographical barriers (broadband network initiative Australia). Through the use of technology (e.g., phones, web applications) the outreach efforts can be scaled up to offer legal services (e.g. Online Dispute Resolution platforms). For example, in the United States there is a wide range of self-help centres and internet applications (e.g., HotDocs, ProBono Net, Stateside Legal, Self-Represented Litigants Network, Limited License Legal Technicians in Washington, Navigators in New York, and Justice Corps in California). The discussion at the 2nd OECD Roundtable on Equal Access to Justice to be held on 1 December will aim to discuss the role of technology in promoting access to justice in greater depth.

More targeted, timely and appropriate legal services

Another trend observed in OECD member and partner countries is an increasing emphasis on providing targeted, timely and appropriate legal services. Thus, targeted services (to those most in need) aim to ensure limited public funds are first used to assist those facing the most severe problems and least able to otherwise access help, thus maximising social return on investment. Targeted services also require recognition that justice and legal needs are tied to an individual’s life circumstances (e.g., problem solving courts dealing drug and alcohol abuse, domestic abuse). The U.S. Federal Government’s Legal Aid Interagency Roundtable is a case in point. Specific case studies describe common challenges faced by vulnerable populations, including consumers, the elderly, tribal populations, victims of domestic violence, former offenders, veterans and people with housing needs. The Roundtable provides examples of Federal responses to these challenges, along with concrete examples of the ways in which civil legal aid meaningfully supports Federal agencies’ efforts. Many OECD countries are considering alternatives to the traditional model of legal service delivery, which most often assumes direct legal support from a lawyer in a traditional litigation or legal action model, such as models which provide a mix of alternative service providers based on an assessment of the client’s overall justice needs, the level of complexity of the service required, and the available financial resources. Another tailoring option to civil justice needs of citizens is to “unbundle” legal services and provide partial legal or paralegal representation. Some countries take steps to tailor services for specific groups: age, gender, vulnerable and disadvantaged groups and SMEs. The challenge is matching people who are now without legal assistance to the type of assistance they need in more efficient and effective ways. Other examples include the Australian Government’s initiatives to target specific disadvantaged groups as well as local efforts to improve access to better targeting such as civil and family law outreach services to culturally and linguistically diverse communities or Homeless Persons Legal Service Clinics.

Similarly, the emphasis on early intervention (to prevent problems occurring or escalating) - reflects the recognition that legal problems, particularly, if left unaddressed, can bring about and exacerbate other legal and non-legal problems (and entrench social disadvantage). Timely legal services are seen as limiting problem escalation, adverse consequences and dispute resolution process costs. Implementing this principle effectively may require building a robust early resolution services system which may enable providing accessible justice services at a time and place at which most everyday legal problems occur.

Finally, focus on the appropriateness of legal services in terms of mode of service delivery, location and level of assistance, reflecting client capability, aims to support efficiencies by migrating users to the least expensive services that adequately meet their needs. Legal needs surveys and broader access to justice research highlighted that no particular form of service delivery suits all clients and that services should be delivered in a way that is appropriate to individual clients’ capabilities. While technology may provide increased opportunity for those, for example, with
mobility problems, some in remote areas and those who have very limited time, there is evidence that shows that vulnerable population groups can face even greater marginalisation with the predominant reliance on technology-based service delivery. To this end, while investing in online service delivery is growing (e.g., self-oriented services) there is a growing recognition that these modes of information and service delivery should be inclusive of all age groups and cultural backgrounds, and where appropriate, identify opportunities to develop and implement self-help strategies and resources to assist those members of the public with capacity to resolve their legal issues. For example, in Australia the LAW Survey found that telephone and in-person communication were commonly used to consult legal advisers, and highlighted the role of non-legal advisers as gateways to legal services through, for example, a single point of referral. Canada’s Alberta Legal Services Mapping Project aimed at achieving access to justice for citizens through a coordinated and holistic approach that closely takes into account local social conditions and needs as reflected by the “One Client, One Place” initiative. The study recommended enhancing access to basic legal information, providing rural residents with improved telephone access to key legal services, enhancing the capacity of court workers, increasing internet access in remote communities, providing adequate support for people with family law needs, enhancing support for children and youth and providing increased support for people going to court without representation.

Box 5. Self-help services (United States)

The main idea of self-help services is to provide litigant information and tools to help them understand how to start a judicial procedure, to move a case forward, to present the facts to the judges and to comply with the court’s order. The advantage of self-help services is that it will reinforce the traditional lawyer-client model. Through self-help services legal aid lawyers can focus their limited resources on those citizens that need more in-depth representation, because the citizens with self-help services will receive assistance from the court or from other sources of help.

There are different types of self-help services that can be identified: self-help websites, courthouse desk or office, telephone or internet based programs, in-person/online workshops and legal clinics, courtroom and caseflow services, law libraries, and partnerships with law schools and universities.

**Self-help websites** can help to inform citizens about which legal services can and cannot be offered to a self-represented litigant by presenting multilanguage information, online forms and other resource information. Also self-help websites can be of use for self-represented parties with visual, auditory or other physical limitations. Examples of these sites can be found in Utah and South-Carolina. A **courthouse desk or office** can have various forms, such as the availability of staff or a volunteer that greets a court user, directs them to the appropriate services and provides basic information. More comprehensive self-help services may include a staff-attorney or trained volunteers than can offer more in-depth support to the visitor of the court.

**Telephone or internet based programs** are especially suitable for situations which require reaching clients in rural or underserved areas. Hotlines for civil legal assistance intake and other legal services can be given to any person where there is access to a phone or the internet. See for example: the [Alaska Family Law Self-Help Center](http://www.alfamsc.org) and the [Maryland District Court Self-Help Center](http://www.mdcourts.state.md.us/selfhelp/).

**In-person, online workshops and legal clinics** are other forms of self-help that can be used to assist citizens in raising their level of legal knowledge and information about their legal rights. Videoclips can be made available (for example how to prepare for a court hearing), the posting of seminars on websites, the use of social media to inform citizens about the organisation of seminars. See for example: the [Minnesota Self-Help Center](http://www.mn.gov/self-help) and the [New York City Civil Courthouse website](http://www.nycourts.gov/).(22)

**Courtroom and case-flow services** can include the online monitoring of the progress of a case by the litigant, the use of triage models to direct the litigant to the right dispute resolution mechanism and the creation of special calendars for self-represented litigants where court hearings will be scheduled on specific days of the week. For example several courts in California have implemented special calendars for specific types of self-represented casetypes such as those involving family law and guardianship issues.

**Law libraries and public libraries** are also useful sources of information for self-represented litigants. Since libraries allow access to public computers and library staff members are trained in assisting the public with research issues, the libraries are an excellent starting point for self-help. **Partnerships with universities and law schools** can be of great help for those citizens that cannot afford expensive legal assistance. Law students can fill this gap by providing legal assistance to low income groups. Example: [California Justice Corps program](http://www.cjb.org/).
While there are trends to develop holistic and citizen-centred approaches, emerging evidence and lessons learned show that success of access to justice policy often depends on reality as it manifests in the region or jurisdiction concerned, in terms of local patterns of need, the current service environment and the objectives of public, charitable and commercial service funders. As such coordinated efforts at the country wide level may also need to provide room for “acting locally” and to tailor the provision of legal and justice services various needs, including to groups in disadvantaged conditions, on a case-by-case basis at the local/regional levels.

To further bridge legal needs of citizens and available justice and legal services and to address any remaining barriers to accessing justice services, countries are exploring innovative approaches and practice, such as efforts to assess actual costs of accessing justice and to provide effective legal aid and representation assistance, exploring ways to use technology to enhance responsiveness to legal needs and legal empowerment (e.g., online dispute resolutions, mobile applications, web portals), including in remote areas, improving coordination and transparency with alternative dispute resolution mechanisms, developing triage service protocols, and establishing specialised mechanisms for resolving disputes. These and other initiatives are proposed for the discussion during the 2nd OECD Roundtable on Access to Justice to be held on 1 December 2015.
1 CFCJ (2006; 2013); Coumarelos, C. et al. (2012); World Justice Project; Flynn, A. et al. (2014); Indiana Legal Services et al. (2008); Currie, A. (2005; 2007a). Studies show that the rule of law, security and justice have a strong impact on the ability of countries to achieve inclusive growth, including economic performance, levels of inequality and broader citizen wellbeing. They do so by ensuring contract enforcement, reducing transaction costs (which are increased with theft, corruption, weak property rights, etc.) and enabling economic actors to make longer-term investments. They further enable a level playing field for market stakeholders, by instilling confidence in “the rules of the game,” ensuring fair competition and protecting property rights. They are also critical elements for fostering legal certainty and predictability, thereby creating a conducive climate for “doing business,” attracting investment, and contributing to open trade and economic growth, OECD (2014); see also US Department of Justice (2014); Foster, L. (2015); Gargarella, R. (2004); Indiana Legal Services et al. (2008); Access to Justice is contemplated as part of the post-2015 Development Agenda. See for instance Beqiraj, J. and McNamara, L. (2014b).


5 Pleasence, P. and Balmer, N.J. (2013a).


8 CBA (2013).

9 While in the short run, the nexus between rule of law, governance and growth may not be very strong, the evidence suggests that it is particularly robust in the long run. http://blogs.worldbank.org/governance/does-rule-law-matter-economic-development

10 CFCJ (2012).


12 Pleasence, P. et al. (2007).


19 CEPEJ (2014).


21 According to the World Justice Project, access to justice is “the ability of all people to seek and obtain effective remedies through accessible, affordable, impartial, effective and culturally competent institutions of justice”; For the European Union Agency for Fundamental Rights, “the right of access to justice encompasses the right to a fair trial and the right to an effective remedy as guaranteed by Article 47 of the EU Charter of Fundamental Rights, Articles 6 and 13 of the ECHR, and Articles 2 (3) and 14 of the International Covenant on Civil and Political Rights”: “Access to justice includes not only the rights of the accused in the criminal process and respondents in the civil process, but also the rights of victims and claimants. It is not only a right in itself, but an enabling right in that it allows individuals to enforce their substantive rights and obtain a remedy when these rights are violated”. UNDP defined access to justice as “the ability of people to seek and obtain a remedy through formal or informal institutions of justice for grievances in compliance with human rights standards”.

22 Pleasence, P. et al. (2014).

23 CFCJ (2012).

24 CBA (2013); Beqiraj, J. and McNamara, L. (2014a); ABA; Coumarelos, C. et al. (2012). See, for example in France, l’étude de perception de juillet 2014 en préparation de la réforme relative à la justice du 21ème siècle.

25 “The costs of seeking justice (primarily civil justice) can be divided into (a) public costs (e.g. judicial and court staff salaries, court budgets), and (ii) the private costs borne by individuals who are seeking to address their legal needs. Although country approaches differ, the private costs depend on the level of fees/taxes for court and tribunal adjudication and resolution ADR mechanisms, lawyer fees and legal aid policies. These also depend on the type (criminal, civil or administrative) or the complexity of a case. The challenge is often to understand the full private costs of accessing justice services or lack of access. The private cost of resolving legal problems also varies by jurisdiction and country, reflecting such things as different traditions of dispute resolution (including forms of service), different economic environments and different forms of regulation. For example, in some jurisdictions legal services are predominantly reserved to the formal legal professions, while in others they are not; and in some jurisdictions fees are entirely market based, while in others they can be largely prescribed. The mechanisms for meeting costs also vary considerably. For example, costs can be paid by parties directly, met by before-the-event insurance (especially in advanced countries such as Germany, which have extensive before-the-event insurance provision), met by
legal aid schemes, met through pro bono, met by trade unions, or subject to contingent or conditional fee agreements. And the cost of lost opportunities on the part of parties to disputes also vary considerably, and are a particular cause for concern to small businesses that can sometimes collapse under the weight of problem experience”. See Semple, N. (2015); Gramatikov, M. (2009); See, for example, Kilian, M. (2003); Hadfield, G.K. (2010).


27 Overall, the cost of resolving legal problems varies considerably, most obviously by the nature of the problem and nature of the services and processes employed by the parties as part of the resolution process. See Garth, B.G. and Cappelletti, M. (1978); Silver, C. (2002); Trubek, D. et al. (1983); Williams, P.L. and Williams, R.A. (1994); CLEG and UNDP (2008); United Nations Development Programme, 2005. Lawyers’ rates for different types of legal matters (civil, family) also vary depending on jurisdiction, type of case, seniority and experience. For example, in Canada national ranges of legal fees are recently reported to be $13,561 - $37,229 for a civil action up to trial (2 days), $23,083 - $79,750 for a civil action up to trial (5 days), $38,296 - $124,574 for a civil action up to trial (7 days), and $12,333 - $36,750 for a civil action appeal, Action Committee on Access to Justice in Civil and Family Matters (2013a).


29 Action Committee on Access to Justice in Civil and Family Matters (2013a).

30 Indiana Legal Services et al. (2008); See for opportunity costs examples: Gramatikov, M. et al. (2010).

31 For example, in Canada, in Ontario, legal aid funding is generally only available for individuals with a gross annual salary of less than $18,000, or for a family of 4 with a total gross annual salary of $37,000, Action Committee on Access to Justice in Civil and Family Matters (2013); In the United States, in 1999, approximately 45 million people were legal aid eligible, while by 2013, that number increased to over 60 million. Yet the available budget for civil legal aid saw a noticeable decline (from $1.3 billion in 1999 to $1.3 billion in 2014, which is a 23% decrease in real dollars from 1999), Action Committee on Access to Justice in Civil and Family Matters (2013a); See Foster, L. (2015).


33 CBA (2013).

34 Abel, L. K. (2012).


36 CBA (2013).

37 Coumarelos et al. (2012); Forrell, S. et al. (2005); See also Currie, A. (2004), University of Toronto Faculty of Law (2011), Beqiraj, J. and McNamara, L. (2014a), FRA (2011).

38 Pleasence, P. et al. (2014); Buck, A. et al. (2010); Access to Justice Taskforce (2009).

39 Indiana Legal Services et al. (2008).

40 Even in some relatively densely populated countries, such as the U.K., there is evidence that distance links to problems resolving behavior. Patel, A. et al. (2008) found that those who had no transport and lived five miles or more from a specialist adviser least often accessed advice.

41 Barendrecht, M. et al. (2012); Indiana Legal Services et al. (2008).

42 CFCJ.

43 Pleasence, P. et al. (2013).

44 CFCJ (2015).

45 Unbundling legal services refers to a legal representation or aid delivery model whereby legal services are performed “à la carte”, moving away from the traditional comprehensive and full retainer legal services. In view of limiting legal costs, this model “breaks down the tasks associated with a client’s legal matter and [the lawyer] provides representation only pertaining to a clearly defined portion of the client’s legal needs”, Kimbro, S. (2012).

46 See, for example, Lawler, M. et al. (2009); Giddings, J. and Robertson, M. (2003). In addition, Meeker et al. (1998) have demonstrated that telephone advice can substantially extend the geographical reach of services; For example, Pearson and Davis (2002); Legal Services Commission (2004); Eurlch, S. et al. (2006), Susskind, R. (2008); Buck, A. et al. (2010); Denvir, C. et al. (2011, 2103); Duffy, J. et al. (2012); Smith and Paterson (2014); Pleasence, P. et al. (forthcoming).


49 Indiana Legal Services et al. (2008).

50 Indiana Legal Services et al. (2008).

| 23 |
On this concept see for example Gramatikov, M. et al. (2008): “The term “path to justice” has rather sociological than legal connotation. It is not used in substantive and procedural legal provisions and we cannot derive its meaning through normative legal analysis. Itself the term “path” suggests less uniformity and abundance of variation within certain intervals”[…] “we define the end of a path as the moment of a final decision by a neutral, joint agreement of the parties, or an end to the process because one of the parties quits the process”; Pleasence, P. et al. (2013) “the Paths to Justice tradition [has] firm roots in, and following the structure of, Genn’s landmark survey in England and Wales. This tradition recognises that law does not always provide the best context for problem solving, and sees the adoption of a neutral stance towards citizen experience and behaviour. The tradition is characterised by a focus on issues that may have a legal solution, but are not restricted to those familiar to lawyers or discussed in tribunals or civil courts. The aspiration is to observe the entire dispute pyramid, from everyday problems (whether or not they are understood as legal) to formal proceedings”.


Barendrecht et al. (2012).

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).

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.


Details of the Russian survey kindly provided by Martin Gramatikov.


For example, over the past two decades, surveys have been conducted in more than one-quarter of all U.S. states, as well as in other jurisdictions such as Australia (Coumarelos, C. et al 2006) and Canada (Baxter et al 2012).


In certain OECD countries difficult legal problems affect 50% of households (for example Hsiu, 2015; Pleasence, P. et al. 2014).


Pleasence P. and Balmer N.J. (2013b).


McDonald, HM. and Wei, Z. (2013).

Clustering refers to the increased propensity of specific problem types to co-occur when more than one problem is experienced. As Pleasence, P. et al. (2014) have explained, problem clustering is a consequence of various factors, including direct causation between problems (through processes such as those just described), problem sharing defining circumstances (i.e. the circumstances that give rise to different problems may overlap), and people having coinciding vulnerabilities to sets of problems (i.e. the demographic factors associated with different problems may overlap). The most visible clusters have consistently been seen in the context of family breakdown, where domestic abuse, divorce, ancillary issues and problems concerning children link closely. For qualitative accounts, and accounts within a practice environment see, for example, Moorhead, R. and Robinson, M. (2006) and Smith, M. et al. (2013).

84 Pleasence, P. et al. (2014).
86 CFCJ (2014).
89 Hierarchical cluster analysis was used. For details, see Pleasence, P. and Balmer, N.J. (2013a).
90 For example, the greater the volume of provision and procurement of goods and services (all giving rise to legal rights and obligations), the greater the volume of potential legal problems.
91 Recognising the “wide variety of transitional paths open to organisations” (Phelps et al. 2007, p.5);(Lippit and Schmidt 1967, p.102).
92 Porter (1985); Eisenhardt and Tabrizi (1995); Lu and Beamish (2001); Hall et al. (2003); Bruce and Picard (2006); Neupert et al. (2006); McAdam and Marlow (2007); Blackburn et al. (2008); Higson and Driffield (2011).
93 Hughes Commission (1980).
95 Among those who acted alone or with only informal help, the great majority of small businesses acted entirely alone. In only around one-sixth of these cases did businesses seek help from external colleagues or friends. In Hong Kong, direct communication with the other side was also the most common response to problems. See also Barendrecht, M. et al. (2014a).
96 The public’s understanding of legal rights is generally poor, and appears more influenced by social norms than the actual state of the law (Pleasence, P. and Balmer, N.J. 2012; Pleasence, P. et al. forthcoming).
97 Though the picture is a little unclear in this regard. For example, Pleasence, P. and Balmer, N.J (2014) found the reverse; although they also found – independently – that those on social security were more likely to lump problems.
98 And experience in the legal sector, See Pleasence, P. and Balmer, N.J. (2014).
99 Gramatikov, M. and Porter, R.B. (2011) define subjective legal empowerment as “the subjective self-belief that a person possesses and can mobilize the necessary resources, competencies and energies to solve particular problem of legal nature”.
100 This emerging evidence is interwoven with access to justice policies that increasingly emphasise the importance of citizen and business perspectives on, and experiences of, legal issues. For example Pleasence, P. et al. (2013); Pleasence, P. et al. (2014).
101 Canadian Action Committee on Access to Justice in Civil and Family Matters (2013); see also, for example, Legal Services Commission (2006); Productivity Commission (2014).
102 For example, according to the Final Report of the Canada’s Access to Justice Committee, with regard to civil and family justice, the system must be able to provide access in ways that are as timely, efficient, effective, proportional and as just as possible: 1) by preventing disputes and by early management of legal issues; 2) through negotiation and informal dispute resolution services; and 3) where necessary, through formal dispute resolution by tribunals and courts. There is analogous focus in less developed countries. This is manifested in, for example, the citizen centred (or ‘bottom-up’) approaches of “legal empowerment” – a concept introduced by Golub, S. and McQuay, K. (2001) that now commonly reflects an emphasis within global justice programmes on “empowering individuals to realise their rights and voice their demands more actively” (Kolisetty 2014, p.9) – and ‘microjustice’ (Barendrecht & van Nipsen tot Severaer 2007). It is also broadly recognised that there can only be limited effectiveness of access to justice reform narrowly focused on formal legal institutions. The OECD (2005, p.4), for example, has emphasised that policy should go beyond these “to include other state and non-state, judicial and non-judicial means by which people realise 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.” Nevertheless, access to justice policy in a development context is linked more closely with the rule of law (as opposed to the operation of law), establishment of legal services and institutions (as opposed to maturing the form and regulation of legal services/the legal services market), and local legal pluralism than elsewhere. Concerns with “international legal pluralism” (Burke-White, W.W. 2003) in advanced and emerging countries generally fall outside access to justice debates; although there are evidently access to justice related legal pluralism concerns in relation to, for example, indigenous people in former colonial jurisdictions, such as in North America and Australasia (e.g. Borrows, J. 2005; Tamanaha, B.Z. 2008).
See, for example Access to Justice Taskforce (2009).


Pleasence, P. et al. (2014).


Access to Justice Taskforce (2009).


Action Committee on Access to Justice in Civil and Family Matters (2013)

Action Committee on Access to Justice in Civil and Family Matters (2013a). In addition, Geoff Mulherin’s in the Pleasence, P. et al. (2014) report argues that service integration is dependent on, not only the autonomy of many providers (both individually and sectorally), but also funding and cross-governmental co-ordination.


See, for example, the experiment with Community Legal Advice Centres in England and Wales (e.g. Legal Services Commission 2006; Buck, A. et al. (2010); Fox, C. et al. (2010); Smith, M. et al. (2013). For the extensive development of medical-legal partnerships in the U.S. see Tyler, T. et al. (2011).


COAG (2010)

Pleasence, P. et al. (2014).

See, for example, the development of Legal Aid Ontario’s Aboriginal Strategy (Legal Aid Ontario 2008) and citing of advice services by the Taiwan Legal Aid Foundation (e.g. Legal Aid Foundation 2010), also an example of integration, demonstrating that the different access to justice policy directions can be mutually supportive. See, also, Forell, S. and McDonald, H.M. (2013).

Pleasence, P. et al. (2014).


See, for example, Legal Aid New South Wales’ initiative to target services towards “high service users” based on van de Zandt, P. and Webb, T. (2013).


While they are less developed, promising examples of business-centred approaches in resolving legal problems are developing. For instance, in Australia, established Small Business Commissioners (SBC) offer tailored advice and assistance to small businesses. They also provide state-sponsored dispute resolution services to resolve business-to-business and business-to-state disputes in the form of mediation or legal representation, in line with the growing use of ADRs mechanisms

Pleasence, P. et al. (2014).

See, for example, the Family Law Early Intervention Unit Duty Lawyer Service based on Forell, S. and Cain, M. (2012).

Coumarelos C. et al. (2012); Commonwealth of Australia (2008); Access to Justice Taskforce (2009).


For a detailed discussion, see Pleasence, P. et al. (2014). For examples of innovation in the U.S. court system see, for example, Zorza, R. (2002), Self-Represented Litigation Network (2008).

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See Coumarelos C. et al. (2012); Ally, M. et al. (2012). For literature review, see Genn, H. (1999); Barendrecht, M. et al. (2014); “Creating an ethical quality system for unbundled services” (e.g. important for SRL, “Increase lean thinking and simplification to address
access including affordability”; See Clarke, T. et al. (2013), Collaboration and Leadership – E.g. judicial leadership, see ATJ Commission in the US; Problem-solving initiatives; see also ABA (2002); France (2015).

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