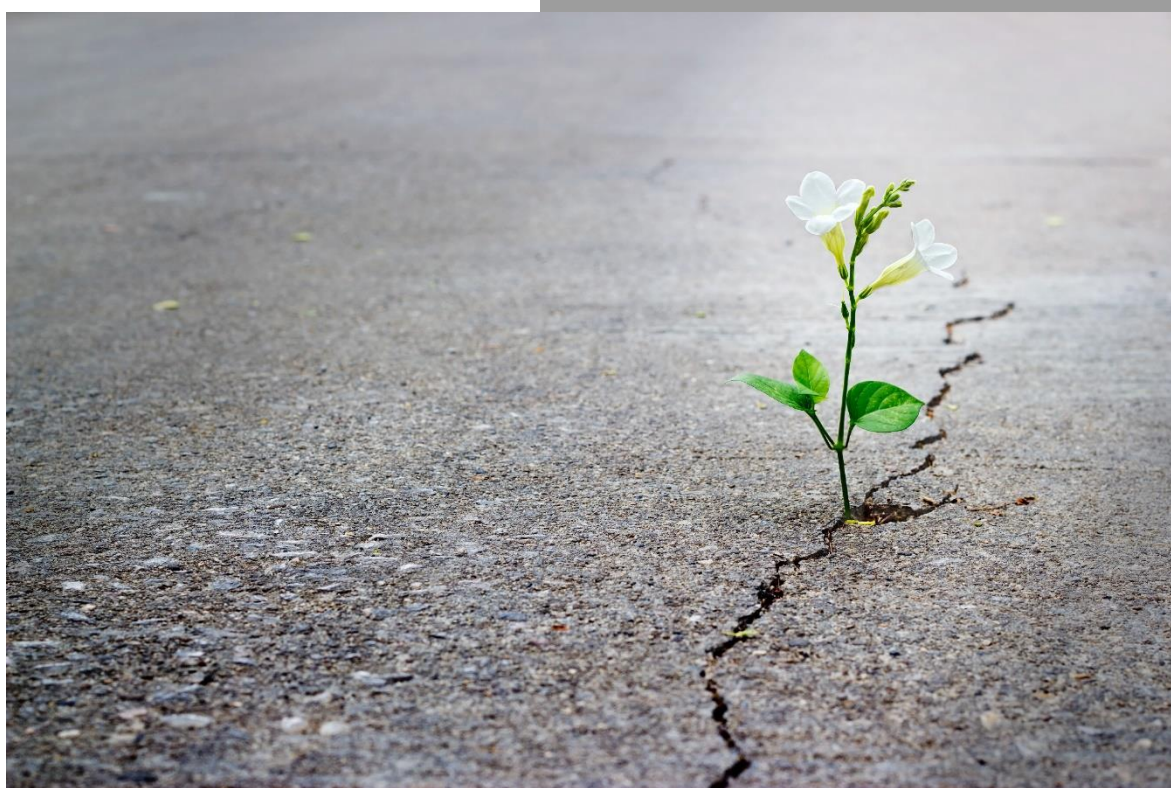


Building a Business Case for Access to Justice



An OECD White Paper
in collaboration with
the World Justice Project



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¹ This White Paper is part of the OECD Public Governance Directorate’s work on Equal Access to Justice, under the direction of Marcos Bonturi and Irene Hors. The preparation of the White Paper was overseen by Tatyana Teplova, Head, Gender, Justice and Inclusiveness, OECD Public Governance Directorate. The White Paper was drafted by Reza Lahidji, Associate Partner Menon Economics and senior advisor to the OECD, with written contributions and research assistance from Ayesha Amin, Dana Ghandour, Chloe Lelièvre, Martyna Wanat and Romain Zunigat. The Paper represents a collaborative effort with many countries and institutions participating in OECD Global Roundtables on Equal Access to Justice, and was developed in close collaboration with the World Justice Project.

Executive summary

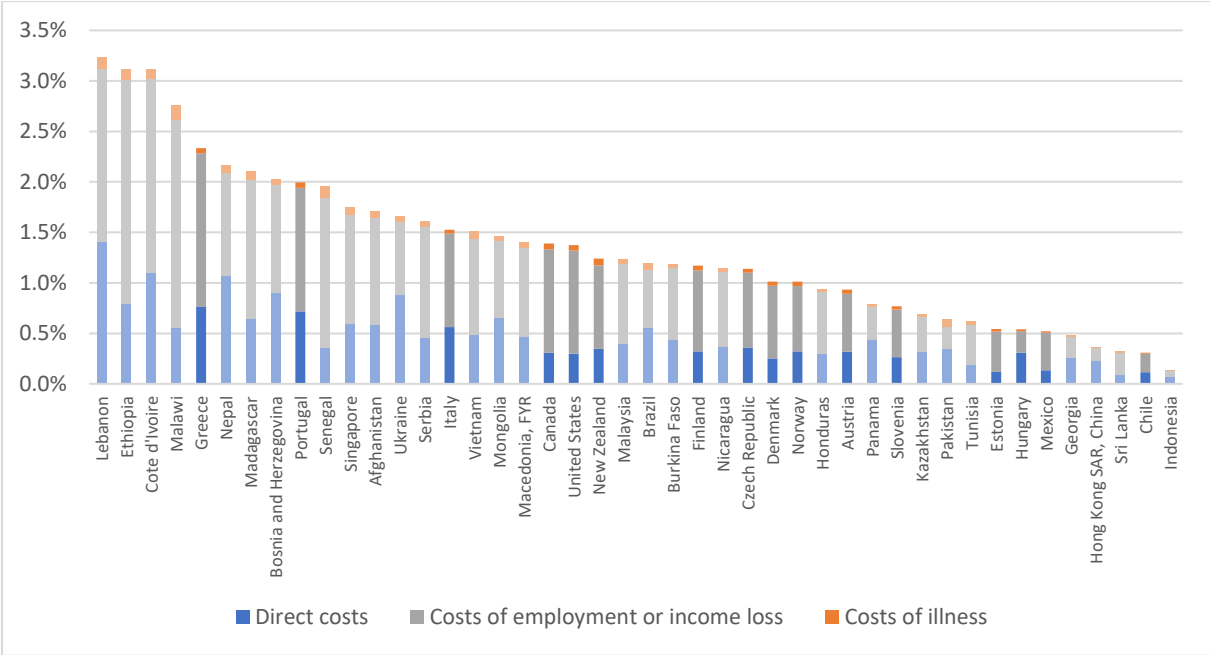
The White paper seeks to build a business case for access to justice by (a) reviewing the state of knowledge about the effect of access to justice on people’s lives and on economic development and inclusive growth; (b) reviewing the evidence and providing new evidence on limitations in access to civil justice services and the costs that they impose on societies in OECD and non-OECD countries, in particular for lower-income groups and people suffering other disadvantages; (c) reviewing the evidence on the benefits of interventions improving access to justice, in particular when targeting these individuals and groups.

The White Paper seeks to approach access to justice from the standpoint of individuals and social groups rather than that of institutions; to consider the entire range of justice channels and mechanisms available for individuals to vindicate their rights; and to apprehend economic consequences in terms of inclusive growth, paying particular attention to distributional aspects and to secondary impacts for disadvantaged individuals and groups.

As a key element of the business case, the White Paper develops an analysis of civil and administrative legal needs in a large number of countries, based in particular on cross-country survey data produced by the World Justice Project. The analysis shows that legal problems are highly prevalent in almost all countries, irrespective of their level of economic development and political and institutional set-up. Legal problems tend to affect more certain disadvantaged groups in the population and are associated with severe consequences, particularly when they remain unresolved. Many people facing a legal problem do not have adequate capability to address it and do not receive professional assistance. Justice institutions and alternative settlement processes are seldom used and many legal problems do not find a satisfactory settlement.

The White Paper also provides a first estimate of the costs generated by legal problems in a large group of countries. Focusing only on the direct expenditures related to legal problems (lawyer and court fees, transport, etc.) and the cost of adverse consequences on people’s health, income and employment situation, as reported by survey respondents, a conservative estimate places the annual costs of legal problems in a range going from 0.5% to 3% of the GDP in most countries (see Figure A).

Figure A. Annual costs of legal problems in % of GDP



Source: World Justice Project, General Population Poll 2017 + calculations by the author.

The White Paper reviews the vast literature on the impacts of specific interventions in justice and legal services and finds evidence of four types of benefits.

First, the burden imposed by legal problems can be efficiently reduced by targeted investments in justice, including legal aid to provide representation for clients with low legal capability and with complex legal needs, unbundled legal assistance and information for simpler cases, the development of ADR mechanisms when conditions are appropriate, court modernisation and specialisation.

Second, interventions directed towards disadvantaged groups of the population such as the poor or immigrants generate direct benefits for their recipients and contribute to more inclusive societies. These include full representation to address situations of vulnerability (such as evictions), specialised assistance when full representation is not available, integrated assistance such as medical-legal or employment-legal services.

Third, interventions targeting the victims of violence and the perpetrators of violent acts are effective in addressing a key factor of injustice with long-lasting impacts of societal welfare. Of particular interest in this respect are specialised assistance services and restorative approaches.

Finally, investments in access to justice can be a channel towards better governance, by tackling local situations of corruption and injustice, closing the gap between formal and actual rights, and triggering legal and institutional change – particularly when bottom-up solutions are implemented jointly with top-down reforms.

The White Paper concludes that there is a strong case for investment in targeted interventions – first and foremost empowerment actions and adapted support to those who are least capable of vindicating their rights. The White Paper also indicates four directions for future research on the benefits of access to justice.

I. Introduction

In September 2015, the General Assembly of the United Nations adopted, as part of the 2030 Agenda for Sustainable Development, a goal referring to universal access to justice:²

Sustainable Development Goal 16: Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.

One of the four targets under SDG 16 is devoted to “promot(ing) the rule of law at the national and international levels and ensur(ing) equal access to justice for all” (Target 16.3).

In seeking to implement SDG 16, governments, international institutions and civil society organisations are searching for innovative and efficient ways to increase access to justice in practice. Challenges abound, from the spread of fragility and conflict³ to a weakening global expansion⁴. Pressed by conflicting priorities and severe budget constraints, most governments of the world struggle to increase, or sometimes even to maintain, resources allocated to the justice sector.

This White Paper is part of an international effort to understand and measure the justice gap, promote investment in access to justice and share experiences on promising justice solutions. This effort involves, among others and in addition to the OECD, the UN agencies (UNDP, UNODC, UN’s Office for the Rule of Law and UN Women), the World Bank, the Council of Europe, the European Commission, the Open Society Foundations, the World Justice Project and the Hague Institute for Innovation of Law, and is spearheaded by the Taskforce on Justice of the Pathfinders for Peaceful, Just and Inclusive Societies.

The White paper seeks to build a business case for access to justice by (a) reviewing the state of knowledge about the effect of access to justice on people’s lives and on economic development and inclusive growth; (b) reviewing the evidence and providing new evidence on limitations in access to civil justice services and the costs that they impose on societies in OECD and non-OECD countries, in particular for lower-income groups and people suffering other disadvantages; (c) reviewing the evidence on the benefits of interventions improving access to justice, in particular when targeting these individuals and groups.

Emphasising the magnitude and breadth of the consequences of met and unmet justice needs is not contradictory to considering access to justice as an end in itself. From the human rights perspective that underpins the entire 2030 Agenda, individuals are rights holders and the responsibility of States as duty bearers includes facilitating the expression of their legitimate claims. Ensuring that every individual has the practical capacity and means to enforce his or her rights is therefore a fundamental duty for all States and has intrinsic value. This White Paper’s arguments regarding the consequences of access to justice simply add to the case for action.

The first section of the White Paper reviews common definitions of access to justice and summarises some of the findings of the literature on the link between access to justice on one hand, and economic development and inclusive growth on the other; further, it discusses methods to measure access to justice, positions the scope and approach of the White Paper and lists some of its limits.

The second section analyses the evidence on limitations in access to civil and administrative justice and their consequences for people that stem from legal needs surveys conducted around the world. As a key element of the business case, the section builds on survey data collected by the World Justice Project in order to investigate the multiple dimensions of unmet needs of people facing a legal problem and provides a first estimate of the costs generated by these problems in a large group of countries.

² United Nations (2015).

³ OECD (2018a); OECD (2017).

⁴ IMF (2019).

The third section presents the evidence on the benefits of a host of access to justice interventions that have been experimented and evaluated in different countries. Four categories of benefits are identified and discussed: the direct benefits for the individuals facing legal problems; the contributions to more inclusive societies; the impact on violence and its harmful consequences; and the effects on institutional and legal reform and better governance.

The final section discusses some further steps in consolidating the business case and concludes.

II. Defining access to justice

Access to justice is widely understood as the ability of people to uphold their rights and seek redress for their grievances. The UNDP, for instance, defines it as “the ability of people to seek and obtain a remedy through formal or informal institutions of justice, and in conformity with human rights standards”.⁵ For the World Justice Project, it is “the ability of all people to seek and obtain effective remedies through accessible, affordable, impartial, efficient, effective and culturally competent institutions of justice”.⁶

Recent years have seen a substantial evolution in our understanding of what access to justice is, what it entails, how it can be measured and how important it is for society and the economy. There has been a large degree of convergence in the literature and in international policy forums on most of these questions. On some, however, the debate is still open, as testified by the differences of emphasis in the two quoted definitions.

This section reviews these developments and positions the White Paper within this context. The first subsection discusses some of the key points of agreement and differences in the definition of access to justice. The second subsection analyses the role that access to justice plays at the nexus between the rule of law and development. The third subsection shows the relevance of access to justice when the focus is placed on inclusive growth. The fourth subsection introduces the tools used to measure access to justice and evaluate its consequences. The final subsection describes the scope of this White Paper and lists some of the limitations of the approach.

II.a. Justice from people’s perspective

A criterion that is common to all definitions of access to justice and arguably represents the core of the notion of access to justice is that it should address the *practical* ability of the people to activate their formal rights. In the words of the European Union Agency for Fundamental Rights, access to justice “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”.⁷ The emphasis is on the exercise of rights in everyday life rather than on the principles laid down in the law and in the organisation of justice institutions.

As a corollary, access to justice is first and foremost concerned with the case of people who experience the greatest challenges in upholding their formal rights, who are usually the socially disadvantaged, the legally vulnerable and, in many cases, the women⁸ and the children.⁹

The World Justice Project estimates that 5 billion people do not have adequate access to justice globally because they fall in one of the following categories: (1) people who live in extreme conditions of injustice due to the systematic failure of justice institutions, e.g. because of ongoing conflict; (2) people who are excluded from the opportunities that the law provides, because they lack legal identity, land or housing tenure or a formal employment; (3) people who live under the jurisdiction of functioning justice institutions, but cannot obtain justice on a civil, administrative or criminal matter.¹⁰ Seeing justice from the standpoint of the people entails understanding the particular challenges of individuals and communities within each of these categories.

As a second corollary, access to justice has to address all justice institutions that people can turn to in order to express their grievances, whether formal or informal, public or private, advisory or adjudicatory.

⁵ UNDP (2005).

⁶ World Justice Project (2013).

⁷ European Union Agency for Fundamental Rights (2012).

⁸ U.N. Women and the Council of Europe (2016).

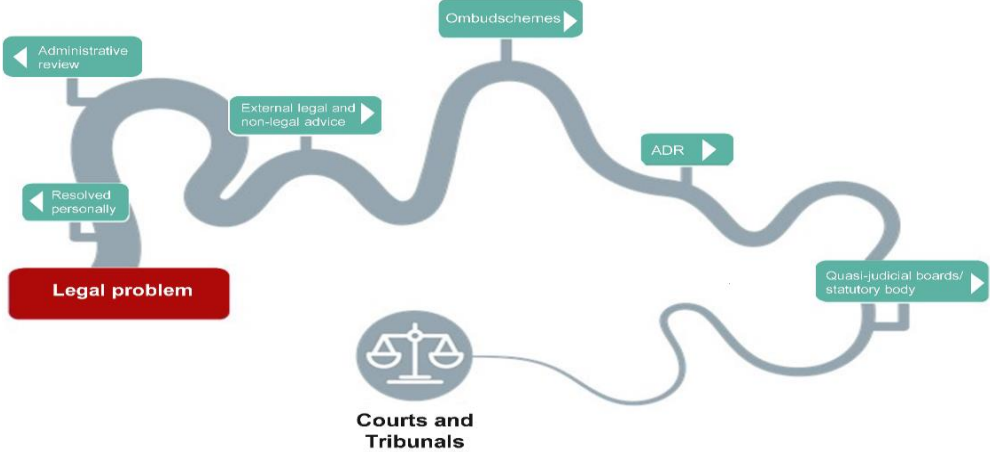
⁹ Beqiraj and McNamara (2016).

¹⁰ World Justice Project (2019).

Dispute settlement should encompass the formal justice system, which consists of courts, judges, lawyers, paralegals, prisons, police and official alternative dispute resolution systems, but also customary and informal justice systems, and administrative procedures and decisions (see Figure 1). While this broader focus is commonplace in analyses of justice in the development context, it should be emphasised that it is also relevant in the context of OECD countries – even though the types of institutions falling within its scope are different from many developing countries. The well-documented finding that in all jurisdictions, only a small fraction of disputes is addressed through formal courts (see Finding 7). The figure below underscores the relevance of a broader consideration of resolution mechanisms.

Justice services should also be understood as a continuum of services provided by a range of professionals, including paralegals, public legal education providers, community advocates, collaborative service providers, etc. The continuum can be seen as a graduated scheme from least interventionist, such as the provision of legal information, to advice and various forms of limited legal assistance, partial or limited forms of legal representation (such as “limited-scope” or “unbundled” legal services) and finally to full representation in various ADR processes and non-judicial as well as judicial forums.

Figure 1. A continuum of dispute settlement mechanisms



Source: Attorney-General’s Department of Australia (2009)¹¹

The people-centric understanding of access to justice stands in sharp contrast to approaches that dominated the analysis of justice until the early years of this century. Access to justice advocacy and interventions in OECD countries were essentially limited to seeking to expand the provision of lawyer services within the confines of the judiciary. In the development arena, the “rule of law orthodoxy”¹² emphasised the effectiveness and efficiency of courts in enforcing property rights and settling civil disputes.¹³ In both cases, however, initiatives from practitioners, in particular in the field of legal empowerment, had paved the way for a broader approach that would take the experiences of the people as a starting point.¹⁴

While there is nowadays broad agreement on the relevance of the people-centric approach, there remain significant differences when it comes to the normative reach of the notion of access to justice. Many consider that access to justice entails substantive requirements - in other words that it cannot be the access to a justice system operating within any legal framework. This is generally expressed, as in the

¹¹ Attorney-General’s Department of Australia (2009).
¹² Golub (2003).
¹³ Maru (2010).
¹⁴ For an example of early reflections on legal empowerment in OECD countries, see Alfieri (1987-88). On legal empowerment in the context of development, see Golub and McQuay (2001). For early examples of comprehensive approaches to access to justice, see Macdonald (2005) and Schetzer, Mullins and Buonamano (2002).

case of the UNDP, through a reference to international human rights standards. In other definitions (such as the World Justice Project's), by comparison, normative requirements are more limited and focus on procedural aspects.

The difference between the two positions is not merely formal. It determines whether aspects such as the freedom of speech or controls of abuse of power, for example, should be considered when assessing the level of access to justice in a country. An estimate of the global justice gap that would include substantive requirements would substantially exceed the World Justice Project's figure of 5 billion people.

A related issue is whether changes to the legal framework should be included in the scope of access to justice. Here again, opinions differ, with some experts considering legal reform as part and parcel of the concept,¹⁵ while others rather see it as the *outcome* of a process through which people – in particular those who do not belong to the elite – would be given effective access to justice.¹⁶

II.b. Access to justice and the rule of law

The economic consequences of access to justice have been primarily investigated in the context of development cooperation. As already noted, early interventions in this area focused on judicial reform and the performance of courts in enforcing private contracts, in line with the "rule of law orthodoxy". This orientation was supported by a vast body of theoretical and empirical literature in economics emphasising the importance of property rights for development.¹⁷ In particular, the cornerstone of the new growth theory, which emphasises the role of institutions in development, is the influence of property rights on investment.¹⁸

Well-defined property rights, according to the theory, are necessary to provide economic agents the assurance to enjoy the fruits of their labour; they are therefore the foundation for incentives to invest in one's property and education, and in the education of one's children. For instance, changes in land titling schemes in developing countries have been shown to have a substantial impact on the entitled owners' investments and education choices.¹⁹ Incidentally, property rights also create the ability to leverage property for credit purposes.

Once property rights are established, the role of the justice system is to effectively enforce those rights; should it fail to do so, there would be an increase in the risk faced by investors and the economy would be affected. Theoretical contributions focus on two particular aspects of justice performance:²⁰ independence from the executive, which ensures that the judiciary can protect investors from government abuses; and efficiency, which makes the settlement of disputes over private contracts predictable and reduces its cost. Several studies measure the practical benefits of efficient judicial systems, e.g. in increasing foreign direct investment inflows to a country,²¹ or fostering market entry by new entrepreneurial firms and allowing firms to grow larger in size.²²

The new growth theory has however encountered empirical challenges in demonstrating that its insistence on property rights and judicial efficiency – as opposed to other aspects of the rule of law – is

¹⁵ The Commission on Legal Empowerment of the Poor was a strong proponent of this view. Others, such as Schetzer, Mullins and Buonamano (2002), concur, but with nuances that are discussed below.

¹⁶ See Golub (2009).

¹⁷ For a review, see Asoni (2008).

¹⁸ The two most influential contributions to this literature are Barro (1997) and Acemoglu, Johnson and Robinson (2001).

¹⁹ Besley (1995); Galiani and Schargrodsy (2010).

²⁰ Messick (1999); Botero et al. (2003).

²¹ See for instance Bellani (2014).

²² See for instance Fabbri (2010).

entirely justified.²³ In a part of the literature, what is *interpreted* as an indicator of the protection of property rights is actually a broad indicator of the rule of law.²⁴ But even when property right enforcement is estimated more precisely, it appears that its effects can be replicated by other rule of law measures.²⁵

In parallel, research on the role of institutions in development gradually highlighted the role of other dimensions of the rule of law, such as the control of crime and violence,²⁶ or the gap between *de jure* and *de facto* legal rules.²⁷ The emphasis shifted from the risks of government predation to the role of government in providing security and enforcing rules.²⁸ The unbundling of the notion of rule of law, to determine which combinations of justice institutions matter and when, remains a vivid topic for economic research on the role of institutions in the development process.

These developments in the literature are consistent with some of the lessons drawn from the experience of justice reforms in the past twenty-five years. In many cases, reforms that focused on the judiciary failed to deliver the expected strengthening of the rule of law and the associated economic benefits, as the focus on procedural aspects did not help to bring about the more fundamental reforms concerning, e.g. checks and balances on the executive.²⁹ On the contrary, it appeared that the broader justice and rule of law context could be a powerful force acting against court-centric approaches, as “judiciaries are the product of localized evolution and persistent differentiation”.³⁰

Similar observations have been made following the adoption of legal reforms to strengthen investor protection and creditor rights in many countries. Empirical analyses have not documented a clear effect of these reforms on economic outcomes, “reinforcing the idea that changes in the form of laws do not necessarily change the way the legal systems function”.³¹

This experience has accredited the idea that reforms targeting legal rules and judicial institutions have to be complemented by a bottom-up approach seeking to address the practical deficiencies of the legal – and more broadly of the justice – system. The ability of citizens to claim their rights has appeared, on a par with the provisions of the law and the strength and balance of the institutions, as a crucial channel for creating accountability, exerting control on corruption and power abuses, and enhancing economic development (see Finding 12).³²

II.c. Access to justice and inclusive growth

The work of the Commission on Legal Empowerment of the Poor from 2005 to 2008 constitutes a key milestone in the integration of access to justice to the development agenda. In its final report, the Commission advocated for focusing development policy on the justice needs of disadvantaged populations through three channels: facilitating the creation of state and civil society organisations that work in the interest of the excluded; making the formal judicial system more accessible by integrating customary and informal legal procedures with which the poor are already familiar; and supporting concrete measures for the legal empowerment of women, minorities, refugees and internally displaced persons, and indigenous peoples.³³

²³ For a review, see Haggard and Tiede (2011).

²⁴ This applies in particular to Barro (1997) and Acemoglu et al. (2001).

²⁵ This applies in particular to Acemoglu and Johnson (2005). See the discussion in Haggard and Tiede (2011).

²⁶ North, Wallis and Weingast (2009).

²⁷ Woodruff (2006).

²⁸ Collier (2007).

²⁹ Carrothers (2009).

³⁰ Jensen (2003).

³¹ World Bank (2017), p.88.

³² Peruzzotti and Smulovit (2007).

³³ Commission on Legal Empowerment of the Poor (2008).

The Commission also called for comprehensive legal reform to improve access to justice, deeming it necessary “to audit all laws, regulations, procedures, and institutional set-ups” and to critically assess and change “laws that discriminate against the rights, interests, and livelihoods of the poor”. Some proponents of legal empowerment considered this proposal for a reform strategy guided by the State contradictory to the very aim of putting the excluded at the centre.³⁴ Still, the work of the Commission reframed the global debate on justice.

Two other developments have contributed to this reframing.

First, international norms and treaties, often in conjunction with international campaigns run by civil society organisations, have led to the enhancement of rights or the definition of new rights in an ever-increasing number of areas: labour rights, civil rights, the rights of women and children, indigenous rights, environmental rights, etc.³⁵ These rights have in turn been integrated in the legal framework of many countries, at least formally. This has increased the relevance of an international dialogue on the implementation and enforcement of these rights.

Second, economic development goals have increasingly referred to the need to address the rise in inequalities. This is testified by the primacy of poverty and inequality reduction objectives in the 2030 Agenda and by the adoption of the OECD Framework for Policy Action on Inclusive Growth by the Meeting of the OECD Council at Ministerial level in 2018.

The OECD defines inclusive growth as economic growth that creates opportunity for all segments of the population and distributes the dividends of increased prosperity, both in monetary and non-monetary terms, fairly across society. The notion of inclusiveness “goes beyond poverty and income distribution and encompasses other dimensions, such as well-being, voice in the political process and participation in social life”.³⁶ The approach also highlights the multidimensional nature of inequality: although rising inequality in earnings and wealth is a major concern, inequality in education, health, education and employment are also considered fundamental because of their capacity to affect personal development over the course of a lifetime.

The lack of access to justice is understood as both a consequence and a cause of inequality.³⁷ Low-income earners and other disadvantaged groups often have a greater need of justice (see Finding 2 below), at the same time as a lower ability to navigate the legal system (Finding 5) and obtain assistance (Finding 6). In turn, because of their vulnerability to adverse events, they suffer more from the consequences of inadequate access to justice (see Finding 3).

From the perspective of inclusive growth, access to justice is therefore primarily a channel for helping people move out of some of the worst experiences of social exclusion, enabling better access to economic opportunities, and thereby reducing inequalities.

To ensure that the benefits from economic growth are distributed more equitably, the OECD Framework invites governments to invest “in people and places that have been left behind through (i) targeted quality childcare, early education and life-long acquisition of skills; (ii) effective access to quality healthcare, *justice*, housing, infrastructures; and (iii) optimal natural resource management for sustainable growth.”³⁸

³⁴ See Golub (2009). The Commission’s call for the *conduct* of legal reform can also be contrasted with earlier reflections on access to justice that advocated public *participation* in legal reform (Macdonald, 2005; Schetzer et al., 2002).

³⁵ World Bank (2017).

³⁶ de Mello and Dutz (2012).

³⁷ OECD and OSF (2016).

³⁸ OECD (2018b).

II.d. Measuring access to justice: Legal needs surveys

As it is often the case for individual capabilities, access to justice is difficult to measure directly and easier to approach through the states or actions that materialise it;³⁹ in other words, by investigating the *extent* to and *conditions* under which people use justice services when they are facing a problem related to their rights rather than their *freedom* and *opportunities* to do so.

A series of concepts have been introduced to this effect.⁴⁰ Individuals are considered to have a *legal capability* to address legal problems in their everyday lives. A *legal problem* is here understood as any problem that has a legal dimension and can therefore be addressed, in part or in total, through justice institutions. Legal capability is defined as the individual's ability to recognise the legal dimension of the problem, navigate the law and justice services and processes, and ultimately resolve the problem in a lawful and satisfactory manner. The lack of legal capability in the face of a legal problem generates a *legal need*.⁴¹ Justice services can respond to this need and help the individual address her problem. When the individual does not receive adequate support from justice services to resolve her problem in a lawful and satisfactory manner, her legal need is *unmet*. Unmet legal needs characterise the lack of access to justice.

The concepts of legal need and legal capability help to operationalise that of access to justice in the particular area scrutinised in this White Paper, i.e. access to established and functioning justice institutions on civil and administrative matters. It should be noted that these concepts are not relevant for assessing access to justice in presence of systematic failures of justice institutions, in the case of individuals who are excluded from the scope of the law, or on criminal matters. Both concepts are also defined with reference to an existing legal system; changes to the system by the means of legal and judiciary reform are therefore outside of their scope.

Surveys are conducted within samples of populations at community or national level to measure legal needs and the extent to which they are met. Legal needs surveys seek to identify the legal problems that individuals have experienced within a certain timeframe, investigate if and how they have addressed these problems and, as a result, assess their legal capability and describe different facets of their legal needs.⁴² Survey methodologies have evolved through time and have to some extent converged across countries in recent years. Importantly, most legal needs surveys do not directly ask individuals about their legal problems, so as not to presume that they are know what constitutes a legal problem; rather, they propose a list of practical problems⁴³ and ask respondents which of those they have faced in the recent past.⁴⁴ For example, many surveys⁴⁵ use a variation of the 1997 Paths to Justice survey from England and Wales:

“I would like to ask you about different sorts of problems you might have had... Since [date] have you had any problems or disputes that were difficult to solve to do with any of the things on this card?”

³⁹ The literature on the capability approach distinguishes functionings, i.e. a person's “beings and doings”, and capabilities, i.e. the “opportunities or freedoms to realize these functionings”. See Robeyns (2006).

⁴⁰ Pleasance, Balmer, and Chapman (2018), p. 6.

⁴¹ The concept of legal need was initially characterised as any experience of a legal problem without the help of a lawyer; it has been gradually defined in more general terms in parallel to the broadening of the notion of access to justice itself. See Pleasance et al. (2001).

⁴² For a detailed presentation of legal need surveys, see Pleasance et al. (2018).

⁴³ Genn (1999) refers to a justiciable event as one that raises legal issues “whether or not it was recognized by the respondent as being ‘legal’”.

⁴⁴ Pleasance, Balmer and Sandefur (2013).

⁴⁵ Similar, if not identical, questions are included in surveys from Bulgaria (2007), Canada (2004, 2006, 2008), Scotland (1998), England and Wales (2001, 2004, 2006, 2010, 2012), Hong Kong (2006), Japan (2005), Netherlands (2003, 2009), New Zealand (1997, 2006), Northern Ireland (2005), Slovakia (2004) and Taiwan (2011). See Pleasance et al. (2013), pp. 75-9.

The range of listed problems has widened considerably since the earlier surveys and includes more than 100 types of problems in some recent surveys. In such cases, surveys often start with broad categories of problems and include follow-up questions where relevant.⁴⁶

Some surveys, however, make direct references to the law. For instance, the 2008 Australian survey addresses problems that may raise legal issues and the 2012 Moldovan survey refers to problems that require legal measures to solve.

Legal surveys then gather information on the steps that the respondent has taken to address (one of) the problem(s) that she or he reports: what type of assistance was sought or received, which institutions or processes were engaged, which outcomes were achieved, and how the respondent assesses both process and outcomes. Surveys ask respondents to assess the services that they received, in particular with respect to the fairness of the settlement process. The latter is usually considered as an important outcome in itself since “people care at least as much about procedural justice in resolving legal disputes as they do about substantive outcomes”.⁴⁷

Recent surveys have started to investigate issues such as individual legal capability and the costs of unresolved legal problems.⁴⁸ Some surveys also elicit the respondent’s judgement on the usefulness of justice services that they have *not* received. For instance, the 2014 Canadian survey asked participants if they felt that their outcomes would have been better had they received some assistance.⁴⁹ The same survey also attempted to capture extensive tangible and intangible costs associated with legal problems such as lawyer/adviser fees, transportation costs, domestic costs (babysitting, house cleaning, etc.), as well as impact on health and on relationships.⁵⁰

Legal needs surveys have considerable advantages for measuring access to justice in practice. They relate directly to the experience and opinions of individuals, thereby contributing to elaborate a bottom-up understanding of access to justice. In particular, they provide information on the choices and constraints of people who do not seek professional advice or take any kind of action to resolve their legal problem, and might not even perceive its legal dimensions. By shedding light on the magnitude and the nature of access problems experienced by different groups within the general population, they also indicate general directions and priorities for improving access.

At the same time, surveys may provide limited information on pathways to and from legal service providers, and therefore may be of limited value to reform efforts, when interpreted in isolation. Combining administrative data from legal service providers with that of legal needs surveys can help map the delivery of legal services against relevant measures of need, in effect matching supply and demand. For example, Colombia used data from its national legal needs survey⁵¹ in combination with administrative data to develop an Effective Access to Justice Index that measures effective access to justice across the territory.⁵²

II.e. Scope and limitations

Economic research on justice has largely focused on judicial institutions and their impact on contract enforcement, property rights and via that channel, on the enabling environment for investment. This

⁴⁶ For instance, the 2014 Canadian survey included a broad category for debt problems, which covered issues such as being harassed by collectors, being given incorrect information when purchasing financial products, or being asked to pay incorrect charges by a bank or utility company, among others. See Canadian Forum on Civil Justice (2016).

⁴⁷ Aiken and Wizner (2013).

⁴⁸ See, for example, Currie (2016).

⁴⁹ Canadian Forum on Civil Justice (2016), p. 24.

⁵⁰ Farrow et al. (2016).

⁵¹ La Rota, Lalinde and Uprimny (2013).

⁵² See Departamento Nacional de Planeación, Índice de Acceso Efectivo a la Justicia, available at <http://dnpsig.maps.arcgis.com/apps/Cascade/index.html?appid=b92a7ab2fe6f4a06a6aec88581d6873e>.

White Paper follows a different and complementary approach encompassing a broader range of justice institutions and emphasising the direct effects of justice on people and on human development outcomes.

The following sections investigate these effects in two steps. Section III uses survey data and findings to assess the needs of people living in conditions of disadvantage, such as low-income earners and people living on public benefits, women, indigenous persons, disabled persons and the elderly. Section IV reviews the available evidence on the effectiveness and benefits of a highly diverse set of access to justice interventions.

The White Paper draws on two main sources to build a business case for access to justice. To document issues in access to justice and their consequences for people across the world, the White Paper reviews the findings from a large number of legal needs surveys conducted at national level and analyses the results of an international survey launched by the World Justice Project in 2017. To assess the benefits of better access to justice, it reviews the vast literature evaluating the effects of interventions targeted at justice services.

The White Paper's approach emphasises procedural rather than substantive requirements and does not extend to legal reform. Further, the White Paper does not address situations of extreme injustice or exclusion from the framework of the law (due e.g. to the lack of legal identity) and mainly concentrates on the capacity of people to seek justice on civil and administrative matters in their everyday lives. These choices are consistent with the White Paper's focus on the available evidence on the lack of access to civil justice and the effectiveness and benefits of access to justice interventions.

These methodological choices entail a number of limitations.

Legal needs surveys are affected by representativeness and reporting issues that are common to most population surveys. For instance, low income and other vulnerable or isolated populations, such as linguistic minorities, may not always be proportionally represented, either because they are not selected or because they choose not to participate. The mode of administration can be important in this respect. Telephone surveys, for instance, are believed to aggravate under-representation particularly for remote indigenous populations and young and low-income adults with no fixed-line telephones.⁵³ The World Justice Project's survey, which was not based on nationally representative samples and was conducted by telephone in some countries in 2017, is concerned by these issues.

Surveys also rely on a respondent's ability to self-report data, on their ability to understand the questions, recall information and communicate their experiences. The reference period in surveys have ranged from 1 to 6 years, which can impact on the nature of problems reported (longer periods potentially capture a greater variety of problems and more serious problems) and the granularity with which events are recalled (which can also depend on the severity of the problem).⁵⁴

A particularly strong caveat should be made about causal attribution. Legal needs surveys include questions about the negative outcomes that respondents have experienced as a consequence of their legal problems. However, this information should not be interpreted as a rigorous assessment of the *impact* of legal needs. It rather constitutes an account of the personal events that respondents associate with their legal problem, subject to reporting and cognitive biases.

Legal needs surveys often avoid making explicit references to the law by establishing a list of relevant problems. In doing so, they impose a normative view of individual rights, which does not necessarily correspond with the law of the country in which they are conducted or with human rights standards. In either case, the surveys remain ineffective in situations in which the respondent is unaware of her rights

⁵³ Pleasence et al. (2013), p. 10.

⁵⁴ Pleasence et al. (2013), pp. 23-5.

to the point that she would not express lack of access as a problem (e.g. when the respondent does not know that she is entitled to receiving a benefit).

In addition, legal needs surveys cannot account for cultural, socio-economic, political or institutional factors that influence the extent to and the way in which a respondent perceives and describes her experience. For instance, in societies where freedom of speech infringements or race- or gender-based discrimination are commonplace, individuals are unlikely to perceive and report these as personal legal problems.

As a consequence, the results of legal needs surveys are difficult to compare between countries, even when methodologies are identical (as with the WJP survey). Great caution should therefore be applied when interpreting the cross-country evidence presented in section III. As a general principle, the section seeks to emphasise trends that are consistently observed across countries (or groups of countries) rather than to compare countries on the basis of particular indicators.

The review of evaluations of access to justice interventions in section IV is limited, to the extent possible, to studies deploying rigorous impact assessment methodologies, in particular experimental designs. However, this literature has several limitations as a basis of inference of the general benefits of expanding access to justice.

First, although the reviewed studies cover a large number of countries, OECD countries and in particular the United States are largely over-represented. This bias underscores the need for developing the experimentation and rigorous assessment of access to justice projects and policy measures in other countries, and particularly in the global South.

Second, impact evaluations are not adapted to capturing the indirect effects of access to justice interventions, in particular when they trigger long-term social, political and institutional transformations. In order to compensate this shortcoming, the White Paper reviews a number of case analyses that illustrate the capacity of access to justice to trigger structural change.

Finally, as already indicated, the scope of this White Paper does not extend to some important aspects of access to justice, such as the systematic failure of justice institutions and the exclusion of certain persons from the coverage of the law. The White Paper also leaves aside issues of criminal justice, although it does consider the exposure of people to violence within the context of a legal problem. Importantly, its definition of access to justice does not include the substantive rights enshrined in the law and in the functioning of the justice system. The White Paper therefore does not address the extent to which justice institutions and the law itself perpetuate inequality and exclusion.

The costs identified in this White Paper are only a fraction of the burden imposed on societies by the lack of access to justice, just as the interventions that it promotes are only a fraction of the advances required to “ensure equal access to justice for all”.

III. Assessing the lack of access to justice

This section reviews some of the key findings of legal needs surveys conducted in recent years. The focus is on findings that are common to groups of countries rather than in-depth analysis of country specificities.

Legal needs surveys have become an increasingly widespread tool to collect information about access to justice issues. Large-scale national surveys have been conducted in numerous OECD Member Countries in recent years, including Australia, Canada, Colombia, Japan, the Netherlands, New Zealand, Slovakia, the United Kingdom and the United States.⁵⁵

Private institutions have also undertaken a number of projects to measure legal needs, one prominent example being the Hague Institute for Innovation of Law (Hiil)'s work in countries such as Ukraine, Jordan, Uganda, Tunisia, United Arab Emirates, Lebanon, Bangladesh and Mali.⁵⁶ The Open Society Foundation estimates that as of the end of 2018, legal needs surveys (whether national or sub-national, stand-alone or as a component of larger, general-interest surveys) have been conducted in more than 100 countries.⁵⁷

The review of the results of these surveys is complemented and supported by descriptive analyses of data from the World Justice Project (WJP)'s 2017 General Population Poll (GPP). The GPP was launched in 2017 as the first legal needs survey with a global reach (see Box 1). Its key advantage is to deploy the same methodology in all countries.

Analyses of the WJP data in this section are systematically restricted to problems that the respondents report as having a certain level of seriousness, which are referred to as justiciable problems,⁵⁸ on the assumption that trivial problems might not have a legal remedy.

Box 1 – Methodology of the the World Justice Project's General Population Poll

The General Population Poll was initially conducted in 45 countries in 2017, including seven low-income, 11 lower middle-income, nine upper middle-income and 18 high-income countries.⁵⁹ 17 of the surveyed countries are OECD members.

In each country, the GPP is based on a randomised sample of about 1,000 inhabitants⁶⁰ of the three largest cities. Respondents are asked if they have experienced any problem in a wide range of problems of a potentially legal nature (related to housing, property, public services, consumption, family, domestic violence, health, education, etc.) in the past two years. Those who report problems are requested to choose one and asked questions addressing access to legal advice, actions taken to solve the problem, manners of conclusion, outcomes and finally impacts of the problem on their physical and mental health, private relationships, employment and income, and use of alcohol and drugs. This information is complemented with data on the respondent's gender, age, ethnicity, and socio-economic status (employment situation, income level, etc.).

The 2018 edition of the GPP has been extended to 100 countries and based on a nationally representative sample in 49 of these.

⁵⁵ Pleasence (2016).

⁵⁶ See "Current Projects" on the Hague Institute for Innovation of Law's website www.hiil.org.

⁵⁷ Open Society Foundation (2018).

⁵⁸ Respondents to the GPP are asked to attribute a level of seriousness to their legal problems on a scale going from 0 to 10. This White Paper designates problems having a seriousness score of 4 or higher as "justiciable problems".

⁵⁹ See World Justice Project (2018).

⁶⁰ From 992 (Afghanistan) to 1100 (Honduras) respondents in all countries, except for Pakistan (1840 respondents).

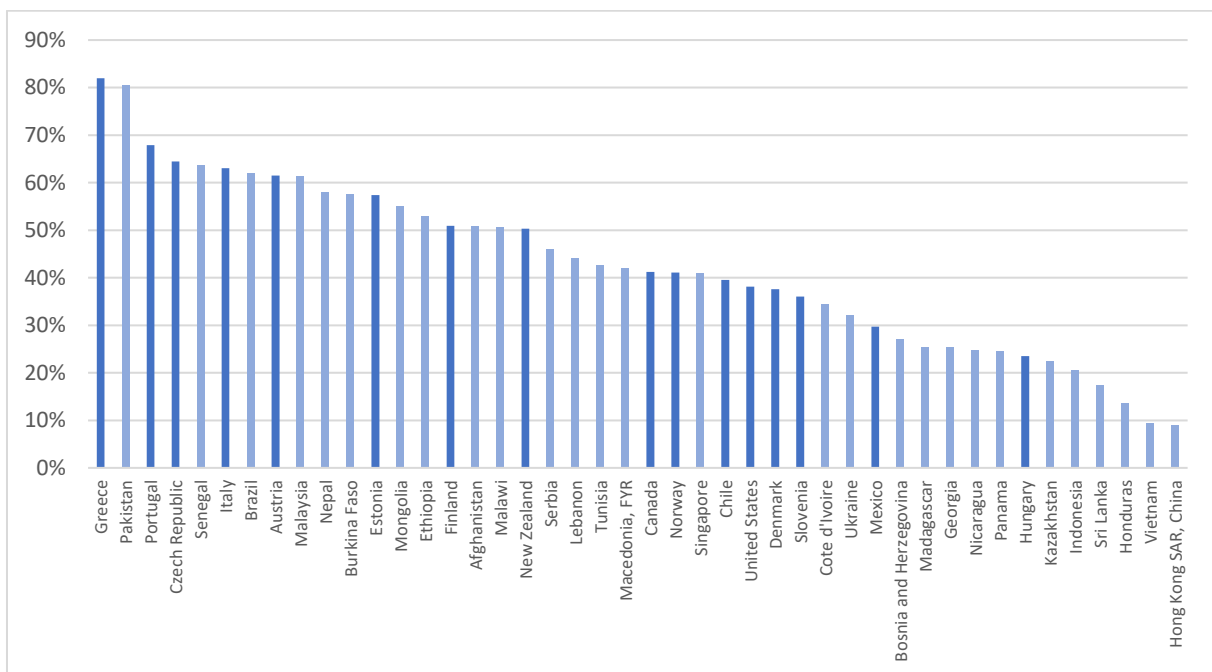
Finding 1. Legal problems are highly prevalent in almost all countries

Prevalence of legal problems

Most legal needs surveys find a high level of prevalence of legal problems, even after filtering for trivial issues. For instance, 48% of the adult Canadian population reported having experienced “at least one everyday legal problem that they consider to be serious and difficult to resolve” in the three-year period covered by the 2014 survey.⁶¹ In the Australian 2008 LAW survey, 27% of respondents reported having experienced at least one “substantial” (as opposed to “minor”) legal problem in the past 12 months.⁶² In the Colombian 2013 national survey, 40% of respondents declared having experienced a conflict in the previous four years, 82% of which had medium to high levels of severity.

This finding also applies to most countries covered by the WJP GPP. In three quarters of the surveyed countries, the proportion of the sample having experienced at least one justiciable problem in the past two years exceeds 30% (see Figure 2). This includes all surveyed OECD countries except Hungary.

Figure 2. Share of respondents who report at least one justiciable problem



Problems with a level of seriousness of 4 or more. OECD member countries appear in darker colours.

Source: World Justice Project, General Population Poll 2017 + calculations by the author.

The share of respondents who report having faced at least one justiciable problem varies considerably from one country to the other, ranging from 9% in Hong Kong to 82% in Greece. The share is particularly high in Southern European countries (Greece, Italy, Portugal), and somewhat lower, but still consistently above 50%, in Northern European countries (Denmark, Estonia, Finland, Norway). In South Asia, East Asia and Sub-Saharan Africa, it is highly disparate.

Countries where respondents report justiciable problems more often tend to be also the ones in which they report a higher number of justiciable problems, but there are exceptions – the most notable being the United States (see Figure 18 in annex). On average, US respondents who report a justiciable problem have faced a total of 6.4 problems in the past two years, against 1.2 for the respondents from Hong Kong.

⁶¹ See Farrow et al. (2016), p. 6.

⁶² Coumarelos et al. (2012).

Types of legal problems

The most common categories of legal problems addressed in surveys are: consumer protection; debt; land; housing and neighbourhood disputes; employment disputes; family disputes, domestic violence and child protection; healthcare and health insurance; accidental illness and injury; rights, citizenship and immigration; and access to public services and benefits. However, the typology of legal problems can vary from one legal needs survey to the other, so that comparisons between surveys should be made with care.

In high-income and upper-middle-income countries, the most common types of problems are those related to consumer protection, debt, housing, employment and social benefits. Consumer and housing issues are among the top three types of legal problems reported by respondents in all 27 high income and upper-middle income countries covered by the WJP GPP except one.⁶³ In the Australian national survey, consumer issues are reported by 21% of respondents, and housing issues by 12% (two-thirds of which consist of neighbourhood issues).⁶⁴ In the Canadian survey, the corresponding figures are 23% and 12% (including 10% of neighbourhood issues).⁶⁵

In the United States, the 1994 Comprehensive Legal Needs Study also identified finance/consumer and housing/property issues as the most common concerns.⁶⁶ Debt- and housing-related issues have remained highly prevalent in recent years, not least because of the persistent effects of the Great Recession, which led to the eviction of many indebted homeowners or tenants.⁶⁷ However, more recent surveys (albeit not on national scale) indicate that healthcare issues (medical care cost recovery, access to health services) have surged in the past two decades and possibly represent the most common source of legal problems in the country.⁶⁸ The incidence of healthcare problems is also high in Colombia (14%), mainly in relation to cases of denial of service.⁶⁹

In the Europe, in addition to consumer and housing-related problems, two of the most prevalent sources of legal problems are public services and accidental illness and injury: both categories affect at least 10% of respondents (and sometimes considerably more) in Austria, the Czech Republic, Denmark, Estonia, Finland, Greece, Italy, Norway, Portugal. This distinguishes EU and EEA member countries from all other countries surveyed by the WJP.⁷⁰

Although less widespread, family-related issues are prevalent in almost all high-income countries. They are, for instance, reported by at least 7% of respondents in all 18 high-income countries of the WJP GPP except Hong Kong, Hungary and Slovenia.⁷¹

Consumer, neighbourhood and family issues are also widespread in low and lower-middle income countries. One of the distinctive features of some of developing countries with a high share of rural population, however, is the prominence of land issues. For example, in a 2015 survey by HiiL in Uganda, 37% of respondents reported experiencing land disputes and, specifically, disputes with neighbours over boundaries, rights of way or access to property; this was followed by family disputes (36%), crime (33%),

⁶³ These are Austria, Bosnia and Herzegovina, Brazil, Canada, Chile, the Czech Republic, Denmark, Estonia, Finland, Hong Kong, Hungary, Italy, Kazakhstan, Lebanon, Macedonia, Malaysia, Mexico, New Zealand, Norway, Panama, Portugal, Serbia, Singapore, Slovenia, the UK and the US. The only exception is Greece, where consumer and housing issues are respectively the second and fourth most widespread types legal problems. See World Justice Project (2018).

⁶⁴ Coumarelos et al. (2012), p. 40.

⁶⁵ Farrow et al. (2016), p. 8.

⁶⁶ American Bar Association (1994).

⁶⁷ Legal Services Corporation (2017).

⁶⁸ Wiggins et al. (2015); Henry J. Kaiser Family Foundation (2017).

⁶⁹ La Rota et al. (2013), p. 27.

⁷⁰ World Justice Project (2018).

⁷¹ World Justice Project (2018).

and disputes with neighbours (25%).⁷² In Yemen in 2014, 40% of respondents reported experiencing issues related to crime, 37% neighbourhood disputes, and 36% land disputes.⁷³ In Bangladesh in 2018, conflict with neighbours (40%) was identified as the most prevalent legal problem, followed by land disputes (29%), crime (21%) and family disputes (12%).⁷⁴ The WJP GPP also finds prevalence rates of almost 20% for land issues in Afghanistan, Mongolia and Nepal.⁷⁵

It should be noted that high rates of crime-related issues are not specific to low-income countries. In Australia, crime is the second source of legal problems (reported by 14% of respondents).⁷⁶ In Colombia, theft and fraud represent the first category of legal problems (19%).⁷⁷

The same applies to rights and citizenship disputes. According to the World Justice Project, the share of persons having experienced a citizenship or ID-related problem reached 12% in Burkina Faso, 10% in Italy, 11% in Lebanon, 26% in Pakistan, 35% in Senegal and 10% in the United States.⁷⁸

Finally, legal needs surveys have established that certain types of legal problems tend to be correlated, forming problem “clusters”.⁷⁹ The Australian legal needs survey finds evidence of three such clusters: consumer, crime, government and housing; debt, family and money; and employment, health, personal injury and rights.⁸⁰

In some cases, clusters are the result of causal linkages that ensnare individuals in a vicious circle of legal problems. In the United States, every year 25 million adults (mainly the poor, the elderly and other vulnerable groups) are victims of consumer fraud, which in cases such as mortgage scams and abusive debt collection practices can lead to homelessness, bankruptcy, tax problems and law suits.⁸¹ The Canadian survey also documents such “trigger effects” resulting primarily from consumer and employment issues.⁸²

Finding 2. Legal problems affect more certain disadvantaged groups in the population

Legal needs surveys have also shown that across countries, legal problems tend to affect in different ways people from different social groups.⁸³

Differences between genders

As reported in national legal needs surveys, gendered differences in the experience of legal problems vary from country to country, often with more disparity between men and women in types of problems experienced than in the prevalence of problems.⁸⁴ This reflects in particular constraints on women’s participation in public life. For example, if women are less likely to work in formal positions, run businesses, and handle family finances, they are also less likely to report employment, consumer, or financial legal problems.

⁷² Piest et al. (2016).

⁷³ Barendrecht et al. (2014).

⁷⁴ Kind et al. (2018).

⁷⁵ World Justice Project (2018). Note that the prevalence of land problems is also close to 20% in a high-income (Greece) and an upper-middle-income country (Macedonia) that have large shares of rural population.

⁷⁶ Coumarelos et al. (2012), p. 40.

⁷⁷ La Rota et al. (2013), p. 27.

⁷⁸ World Justice Project (2018).

⁷⁹ For an overview, see Pleasance (2016), p. 11.

⁸⁰ Coumarelos et al. (2012), pp. xiv-xv.

⁸¹ White House Legal Aid Interagency Roundtable (2016).

⁸² Currie (2016).

⁸³ Gramatikov (2012).

⁸⁴ Pleasance (2016), p. 10.

In the WJP GPP, most countries have strikingly similar shares of women and men reporting at least one justiciable problem, and only a handful display significant differences between genders – the most notable cases being Finland and Norway, where men’s rate is higher, as well as Georgia and Ukraine, where women’s rate is higher (see Figure 19 in annex).

Most countries also display similar patterns of response between men and women when it comes to the average number of justiciable problems. In several countries, however, men report significantly higher numbers of justiciable problems than women: Canada, Kazakhstan, Macedonia, Madagascar, New Zealand, Portugal, Singapore and United States. The difference is striking in the US, where men report almost twice as many justiciable problems as women. Denmark is the only country in which women report a significantly higher number of justiciable problems than men.

An additional factor to consider, when interpreting these results, is that women tend to under-report the problems that they are facing, particularly when these are related to domestic violence and/or in countries where women have limited agency.⁸⁵ Other vulnerable groups are also known not to report the true extent of their problems, sometimes to a considerable extent. In such cases, the results of legal needs surveys under-estimate both the general prevalence of the problem and its unequal distribution in the population.

Differences based on economic status and education

People with high socio-economic status or levels of education experience more legal problems, although the precise conditions seem to vary from country to country. In Uganda, for instance, people with higher levels of education do not report facing legal problems more than people with lower levels, but the number of problems that they report is higher.⁸⁶ In Colombia, by contrast, the prevalence of legal problems increases with income and education levels, but so does the share of legal problems that are not recurrent.⁸⁷

People with higher socio-economic status also tend to experience different legal problems than the rest of the population. In Bangladesh, respondents with high incomes and/or high levels of education are more likely to be affected by crime-related and consumer problems, while low-income, low-education respondents experience more land disputes and social welfare problems.⁸⁸

Most countries covered by the WJP GPP, and particularly OECD countries, also have a higher prevalence of justiciable problems in low-income than in high-income groups. The differences are typically limited in all but a handful of countries: Chile, Finland, Pakistan, Norway and Hungary, where average prevalence among low-income responders is more than 10% higher than among high-income responders, and Mexico, where the opposite holds (see Figure 20 in annex).

Differences in the frequency of justiciable problems (number of problems per respondent reporting a problem) are also limited, except in Canada and the US, where high-income respondents respectively report experiencing two and four justiciable problems more on average than low-income respondents.

The most consistent difference between income groups across countries concerns the average level of seriousness of legal problems. In the vast majority of countries, lower-income respondents report legal problems that are significantly more serious, on average, than high-income respondents (see Figure 3). This is particularly the case in Mongolia, Norway, Pakistan, Panama, Sri Lanka and Ukraine.

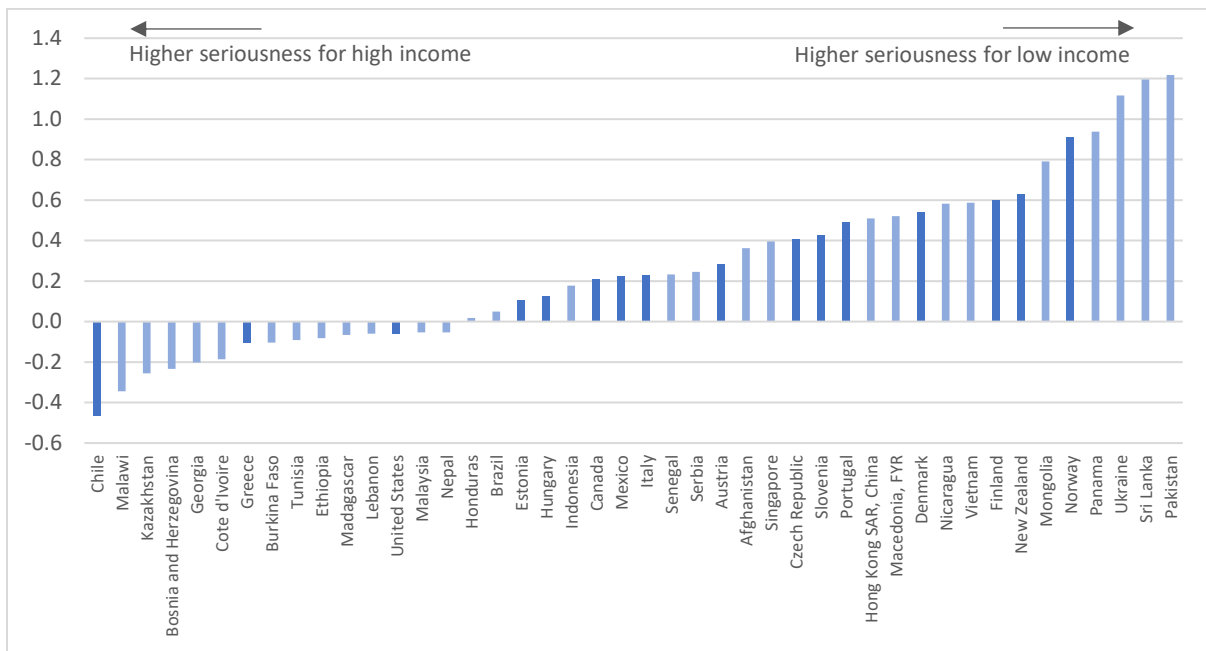
⁸⁵ European Union Agency for Fundamental Rights (2015). See also Kind et al., p. 138. on the under-reporting of cases of domestic violence in Bangladesh.

⁸⁶ Piest et al. (2016), p. 41.

⁸⁷ La Rota et al. (2013), pp. 33-34.

⁸⁸ Kind et al. (2018), p. 40.

Figure 3. Differences in the level of seriousness of legal problems – lower vs. higher income groups



Difference in the average level of seriousness of problems between respondents reporting an income level in the lower 40% of the survey's scale and those reporting an income level in the higher 40%. Limited to respondents who report at least one problem with a level of seriousness of 4 or more. OECD member countries appear in darker colours.

Source: World Justice Project, General Population Poll 2017 + calculations by the author.

Differences affecting vulnerable groups

Certain vulnerable groups have been consistently observed to undergo more frequent and more complex legal problems: persons living on public benefits, persons with disabilities, single parents, displaced persons and victims of crime.⁸⁹

In Australia, the disabled, unemployed, single parents, indigenous people, people living in disadvantaged housing and those whose main income was government benefits were found to have a significantly higher prevalence of legal problems.⁹⁰

In Colombia, the rate of prevalence of legal problems is almost two-thirds for those living in extreme poverty and 60% for the disabled, compared to 50% for the general population. In addition, disabled persons with low incomes face recurrent legal problems more often.⁹¹

The WJP GPP leads to similar conclusions in most surveyed countries. In all countries except Chile, Hong Kong and Mexico, recipients of public benefits experience justiciable problems more often than the rest of the population (Figure 4). In Cote d'Ivoire, Hungary, Serbia, Tunisia and the United States, the difference of prevalence exceeds 20%. In addition, public benefit recipients face a higher average number of justiciable problems and the problems that they face are more serious (Figure 21 in annex).

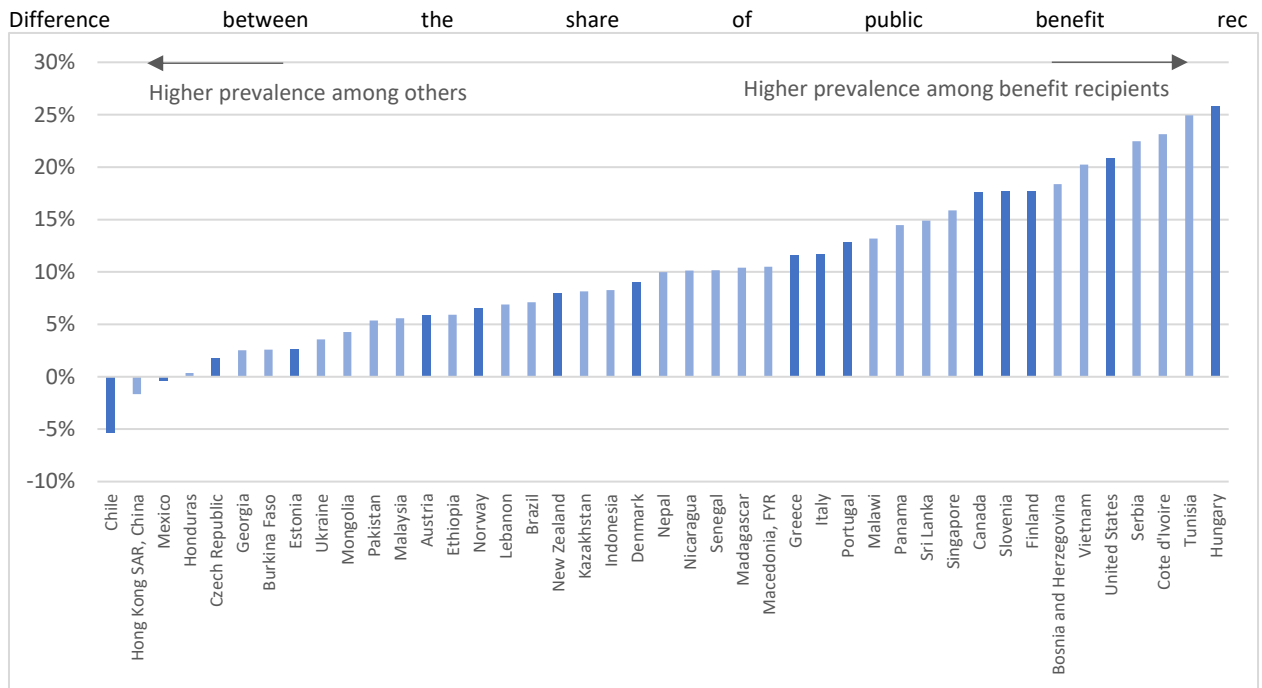
The unemployed also appear to be more likely to experience justiciable problems than the rest of the population in a majority of countries, most notably in Canada, Norway and Ukraine (Figure 5).

⁸⁹ Pleasance (2016), pp. 9-10.

⁹⁰ Coumarelos et al., p. xv.

⁹¹ La Rota et al. (2013), pp. 23 and 33.

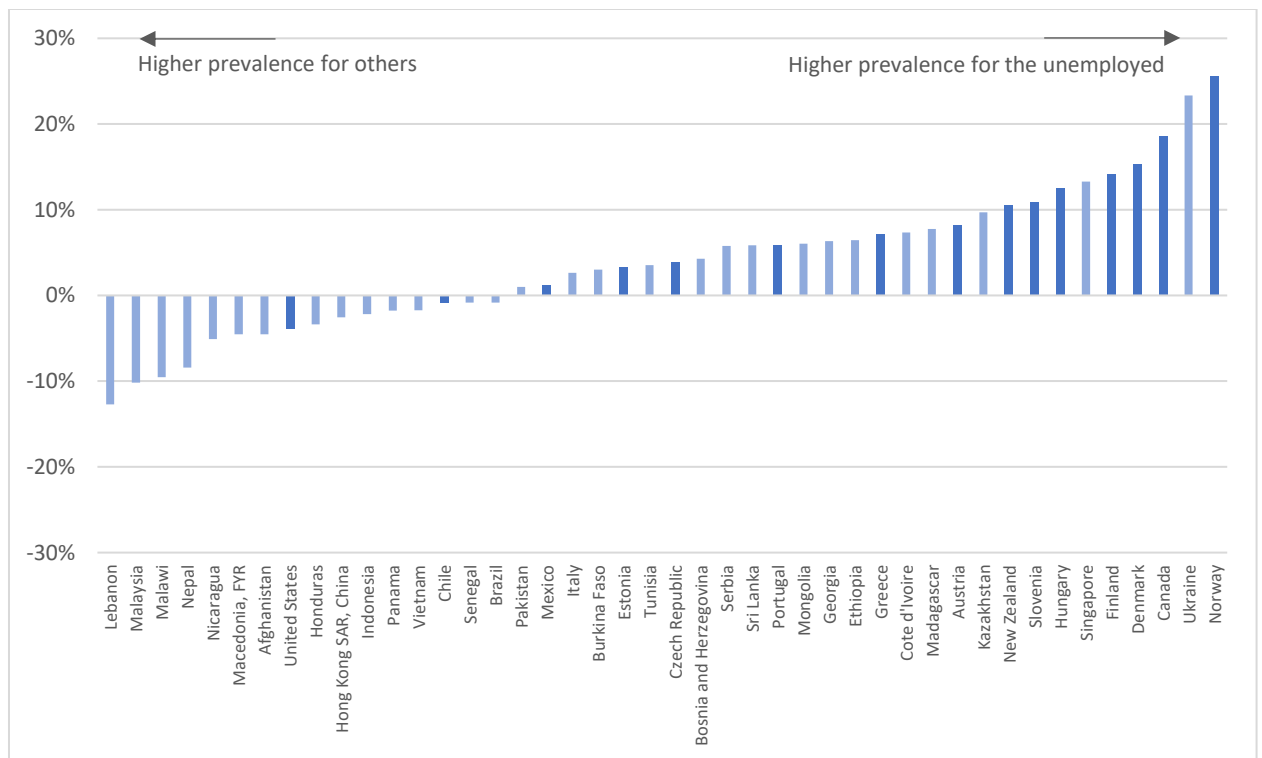
Figure 4. Differences in prevalence of justiciable problems – benefit recipients vs. others



Recipients and the share of other respondents reporting at least one problem with a level of seriousness of 4 or more. OECD member countries appear in darker colours.

Source: World Justice Project, General Population Poll 2017 + calculations by the author

Figure 5. Differences in prevalence of justiciable problems – unemployed vs. others



Difference between the share of unemployed persons and the share of other respondents reporting at least one problem with a level of seriousness of 4 or more. OECD member countries appear in darker colours.

Source: World Justice Project, General Population Poll 2017 + calculations by the author

Finding 3. Unresolved legal problems are often associated with severe consequences

There appears to be an important connection between experiencing legal problems and broader issues of health, social welfare and economic well-being.

For example, in Canada 8% of people reported losing their job and 3% their home as a direct result of experiencing a legal problem. Additionally, 65% reported consulting a healthcare specialist for a physical health problem caused by their legal problem, and 40% for stress or emotional consequences.⁹²

In Australia, high shares of respondents reported experiencing stress-related illness (20%), physical ill health (19%) and relationship breakdown (10%) as a consequence of their legal problems.⁹³ Prevalence rates for these effects are comparable in Great Britain (at respectively 24%, 8% and 6%).⁹⁴ A survey conducted in a middle-sized city of the United States finds that nearly half of the respondents attribute negative consequences such as the experience of verbal or physical violence, loss of income, and damage to physical or mental health to their legal problems.⁹⁵

In low- and lower-middle-income countries, the experience of legal problems appears to be correlated with personal injury. For example, in Indonesia, 48% of respondents who reported a legal problem said they sustained personal injuries as a result of it.⁹⁶ In Bangladesh, the share reaches 58%, and even 66% in the particular case of land disputes.⁹⁷

Suffering secondary impacts as a consequence of legal problems is also commonplace in most countries covered by the WJP GPP. For instance, in half of the surveyed countries, 30% or more of the respondents reporting a justiciable problem say that they have undergone a loss of income or employment (Figure 6). In almost all countries, this type of consequence is reported more by people whose legal problem remains unresolved.

Other secondary impacts that affect large numbers of people in most countries include physical or psychological illness (Figure 22 in annex) and relationship breakdowns (Figure 23 in annex).

Secondary impacts are very unevenly distributed in the population of most countries. Illness tends to affect principally women (Figure 24 in annex) and lower income groups (Figure 25 in annex), with only a few exceptions across countries. The loss of income and employment affects more men and (again) lower income groups.

These adverse consequences are partly due to the fact that legal problems expose people to violence. In Bangladesh, respondents declare that they have experienced violence in 31% of land dispute cases and 20% of cases of other legal problems.⁹⁸ Ugandan women report that in 18% of cases, legal problems have resulted in the use of violence against them, and in 7% against members of their family.⁹⁹

In 33 of the 44 countries surveyed by the WJP in 2017, more than one in 10 respondent who reported a justiciable problem had been exposed to violence either at the source of the problem or as its consequence (Figure 7). Six of the seven countries in which the highest levels of violence are reported are OECD countries: Austria, the Czech Republic, Mexico, New Zealand and the United States.

⁹² Farrow et al. (2016), p.18.

⁹³ Coumarelos et al. (2012), p. xvi.

⁹⁴ Pleasence, Balmer and Denvir (2015).

⁹⁵ Sandefur (2014).

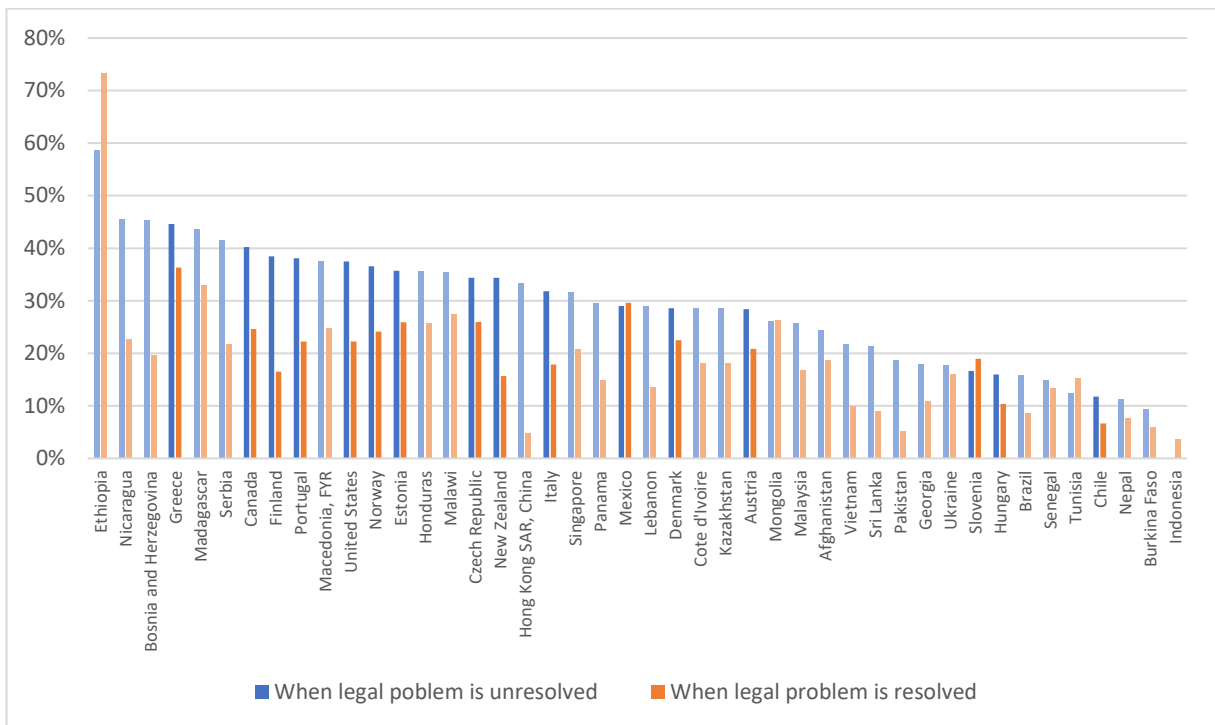
⁹⁶ Gramatikov et al. (2014), p. 35.

⁹⁷ Kind et al., pp. 52 and 153.

⁹⁸ Kind et al. (2018), pp. 153.

⁹⁹ Piest et al. (2016), p. 55.

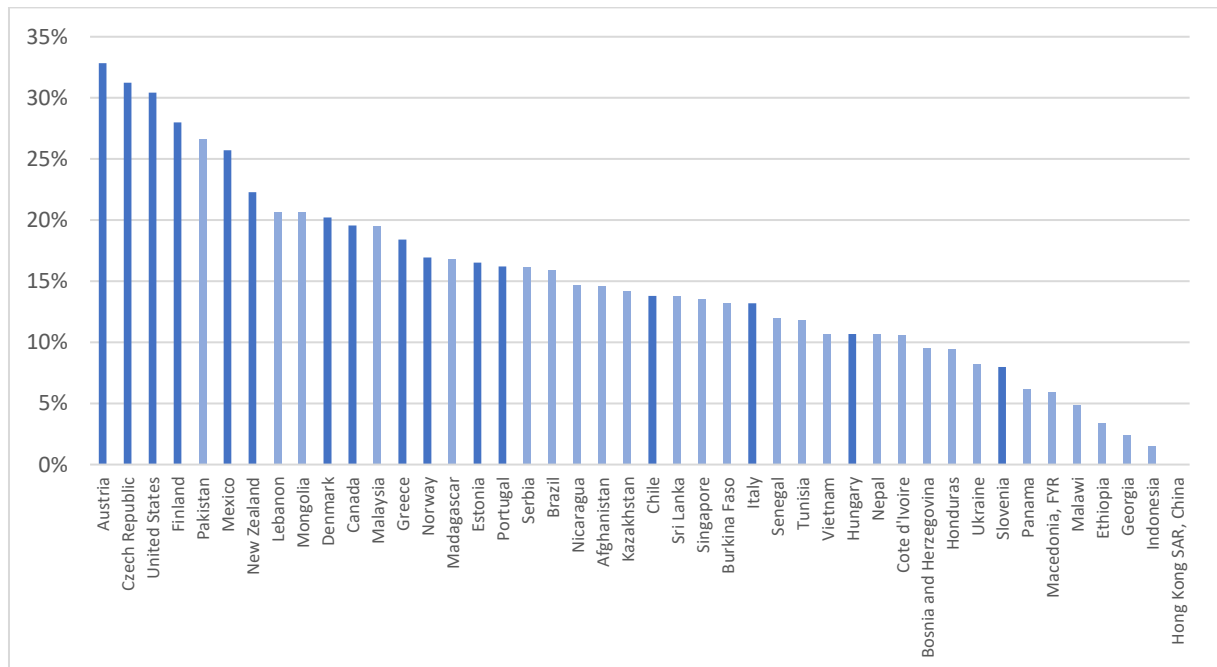
Figure 6. Share of respondents reporting the loss of income or employment as a consequence of a justiciable problem



OECD member countries appear in darker colours.

Source: World Justice Project, General Population Poll 2017 + calculations by the author

Figure 7. Share of respondents exposed to violence in the context of a justiciable problem



OECD member countries appear in darker colours.

Source: World Justice Project, General Population Poll 2017 + calculations by the author

Finding 4. Legal problems generate large costs for individuals, states and societies at large

The costs generated by legal problems can be apprehended from a variety of standpoints, from that of the individuals and households experiencing the problems to that of local and central governments facing their consequences for their tax revenues or their expenditures, and that of societies at large. Legal needs surveys have started to investigate the consequences of legal problems and steps taken by respondents in order to address these consequences. Empirical studies have used this data in order to evaluate some of the costs of legal needs.

Cost categories

The most direct type of cost sustained by individuals and families is the opportunity cost of the time and resources that they have to mobilise in order to face and address their legal problem by, e.g., filing a complaint or an administrative appeal, understanding the intricacies of the law, seeking a compromise with the other party, hiring a lawyer, going to court, etc. The opportunity cost of these time and resources is the value that individuals attribute to the uses that they would prioritise if they were not confronted with a legal problem. In practice, however, these costs are usually estimated through the actual expenses that individuals have to incur, such as the costs of transport or legal representation, or court fees.

Further, legal problems have impacts on persons and families, which generate additional costs. As discussed earlier, some of the impacts that are commonly considered in legal needs survey are physical and mental health damage; relationship breakdowns and family problems, including domestic violence; the loss of housing, income or employment; the abuse of drugs or alcohol; deteriorated perceptions of personal safety or self-confidence. Again, while these impacts should in principle be evaluated in terms of opportunity costs, for practical reasons, estimates are rather based on monetary losses (e.g. income) or on the cost of restorative services that individuals have to resort to (e.g. healthcare costs, the cost of shelters, etc.). For instance, based on the reactions to physical or psychological impacts that respondents reported to the Canadian legal needs survey, it is estimated that legal problems led to an additional 1.7 million visits to the health care system in 2012, which generated a cost of CAD 100 million.¹⁰⁰

A final category of costs concerns the broader and longer-term consequences incurred by individuals and households. For instance, the loss of a home has a documented impact on the chances of falling into a poverty trap.¹⁰¹ Likewise, the psychological damage caused by domestic violence on victims, particularly children, is known to have long-term consequences for their welfare. Because of the lack of reliable quantitative estimates, however, these effects are usually not integrated in cost evaluations.

The costs generated by legal problems are not uniformly distributed by the population. Disadvantaged groups (such as low-income earners, disabled or visible minority groups) are, as described under Finding 3, more exposed to the adverse consequences of legal problems. In addition, because of their vulnerability, they are more likely to suffer extreme stress, emotional problems or long-term health impacts.

Nor are the costs of legal problems entirely born by individuals. Depending on the availability of public and private support schemes, part of these costs can be transferred to social security organisations, governmental agencies, insurance companies or legal aid services. The Canadian legal needs surveys estimated that close to 80,000 individuals became entitled to receiving social assistance because of their legal problems annually, which represents CAD 27 million of additional social assistance expenditure for the State.¹⁰² Naturally, the type of insurance and assistance mechanism available to those facing the consequences of legal problems directly affect the eventual distribution of the burden of these problems within the population.

¹⁰⁰ Farrow et al. (2016), pp. 18-19.

¹⁰¹ Tunstall et al. (2013).

¹⁰² Farrow et al. (2016), pp. 17.

In addition to the costs of social benefits and legal aid provided to people facing a legal problem, government have to incur the loss of tax resources in cases where economic activity is reduced.

Although data is limited and there is no common methodology to measure impacts of legal problems on businesses, anecdotal evidence suggests that impacts such as the loss of income, damage to business relationships, loss of reputation and damage to employee relations can generate substantial costs. This is an area for further research.

Cost estimates at country level

Social costs estimates based on the methodology of cost-benefit analysis focus on welfare losses incurred by society as a whole, irrespective of the way in which these losses are distributed between agents. In the area of legal needs, such evaluations should therefore ignore transfers between agents, such as payments of lawyer fees or the provision of public benefits to beneficiaries, and focus on establishing, to the extent possible, a systematic account of the components of social costs, including:

- the opportunity cost of the time and resources devoted to the resolution of legal problems;
- the cost of secondary impacts caused by legal problems, e.g. on health, housing or employment.

Some legal needs surveys include questions on the expenditures induced by legal needs. In the Canadian legal needs survey, respondents report that they have spent CAD 6,100 on average to try and resolve their problems. Extrapolated to the entire population, this represented an annual expenditure of CAD 7.7 billion in 2012, close to 0.5% of the Canadian GDP.¹⁰³

Some legal needs surveys have also started to investigate some of the financial costs associated with the secondary impacts of legal problems. The Canadian survey, for instance, included a cost of justice component in which respondents reporting secondary impacts were asked further questions regarding their expenditures and/or the social benefits that they received as a consequence. Among the people declaring that they had lost their employment as a result of their legal problems, for instance, one third said that they had received employment insurance, for an average of 21.6 weeks. Among the people reporting health impacts, between 40% and 81% said that they had visited a healthcare facility as a consequence, with an average cost estimated (conservatively) at CAD 60 per visit.¹⁰⁴

The WJP GPP did not collect information on the direct costs and costs of secondary impacts experienced by respondents in 2017.¹⁰⁵ For illustrative purposes,¹⁰⁶ however, let us consider simply the respondents reporting a heavy financial burden, health impacts or the loss of income or employment as a consequence of their legal problem, and assume that:¹⁰⁷

- for people who declared that they had to spend amounts that were “difficult” or “almost impossible” to finance in order to solve their problem, the direct costs of dealing with their justiciable problem represented on average one month of income; the cost was equivalent to one half of a month of income when the respondent indicated that it was “somewhat easy” to finance, and negligible when it was deemed “easy” to finance;
- employment or income impacts cost on average one month of income;
- physical and psychological health impacts generated on average costs equivalent to 1 day of income.

¹⁰³ Farrow et al. (2016), p. 13.

¹⁰⁴ Farrow et al. (2016), pp. 17-18.

¹⁰⁵ However, new questions have been added to the 2018 edition of the GPP to this effect.

¹⁰⁶ Let us pinpoint again that cost estimates that are based on responses to a survey cannot constitute a rigorous assessment of the impact of legal problems.

¹⁰⁷ These assumptions are conservative extrapolations of the average costs estimated by Farrow et al. (2016), which are themselves deemed conservative by the authors.

Since the GPP provides information about the (self-reported) income level of respondents, by applying these assumptions, we can compute average costs per respondent for the three cost categories in each country (see Figure 26 in annex).

Average costs are the highest when both the prevalence of adverse impacts and levels of income are high (Canada, Denmark, Finland, New Zealand, Norway, Singapore, United States). In general terms, however, the influence of income levels dominates, so that with one or two exceptions, the average costs of high-income countries dwarf those of other countries. As expected, the costs generated by direct expenditures and by the loss of income or employment dominate.

By extrapolating from each country's sample to its all of its adult population, one can then derive a total estimate of direct costs, employment and income impacts and health impacts of legal problems for the country. The results are presented below in % of GDP (Figure 8).¹⁰⁸

The estimated costs of legal problems for the individuals facing them range from 0.1% of GDP in Indonesia to 3.2% of GDP in Lebanon. Lost employment and income opportunities represent the majority of the costs in most countries.

Among the seven low-income countries included in the survey, five (Ethiopia, Madagascar, Malawi, Nepal and Senegal) are affected by costs exceeding 2% of their GDP. All OECD countries except Chile have cost levels above 0.5% of their GDP. The costs are particularly high in South European (Greece, Italy, Portugal) and North American (Canada, United States) countries.

These estimates are very likely to under-estimate the real costs of legal problems for individuals, as:

- the individual cost assumptions are conservative;
- the direct costs incurred by respondents who report having not experienced financial challenges are equated with 0;
- the costs of secondary impacts other than employment and income loss and illness are not considered.

In addition, the cost of legal problems for others and for society at large are not considered here.

Finding 5. Many people facing a justiciable problem do not have adequate legal capability

People are considered to be legally capable when they are able to recognise legal issues, navigate the law and justice services and processes, and deal with law-related problems.¹⁰⁹ Legal needs surveys have mainly addressed legal capability indirectly, by asking people about their confidence in being able to resolve their problem in a satisfactory way. A few surveys have investigated the issue directly. They typically conclude that legal capabilities tend to vary according to types of problems; that people often over-estimate their knowledge of the law; and that inaction in the face of a legal problem is often associated with the perception that the problem is due to bad luck.¹¹⁰

The Canadian legal needs survey asked respondents to self-report their legal capability on five dimensions.¹¹¹ Of those who experienced legal problems, the majority reported not having any legal capability on any dimension. In EU countries, a 2013 study found that 34% of respondents were not well informed about what to do if they had to go to court, and 37% about alternatives to court.¹¹²

¹⁰⁸ Average costs per respondent are thus multiplied by the population aged above 15 years in order to provide total costs for the country, divided by two in order to represent annual figures, and expressed in % of the GDP.

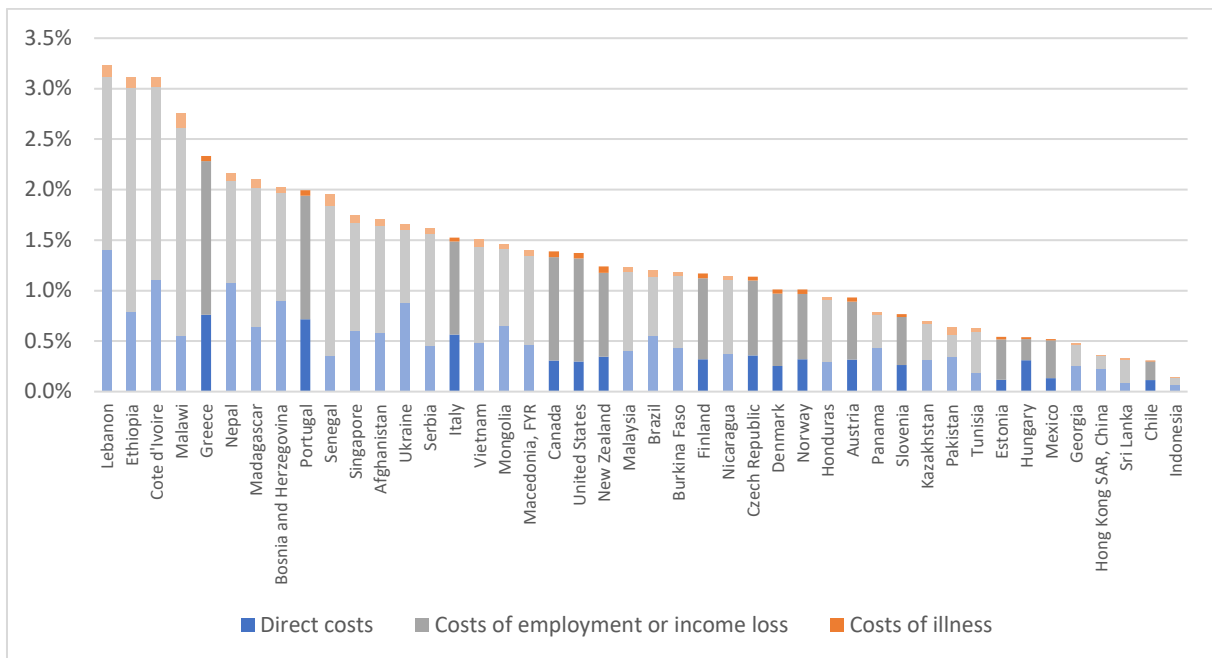
¹⁰⁹ Pleasence et al. (2018), p. 51.

¹¹⁰ Pleasence (2016), p. 12.

¹¹¹ The five dimensions of capability were: understanding the seriousness of the problem, awareness of the legal implications, knowing where to obtain reliable information, knowing what sort of assistance was needed, and having the knowledge to deal confidently with the problem. See Currie (2016).

¹¹² European Commission (2013).

Figure 8. Annual costs of legal problems in % of GDP



Average costs per respondent are extrapolated to the population aged above 15 in each country, divided by two to account for the period covered by the survey, and divided by the GDP. OECD member countries appear in darker colours.

Source: World Justice Project, General Population Poll 2017 + calculations by the author.

The English and Welsh Civil and Social Justice Panel Survey, in particular, evaluated different facets of legal capability in 2010 and 2012. Based on their assessment of a fictive case, most respondents were found to have a fair understanding of the law on employment and housing matters, but not on consumer matters. 55% considered that they understood their own legal position only partly or not at all; among the rest, 25% considered that they understood their position completely, but this was contradicted by the results of their assessment of the fictive case. Finally, only 11% characterised their problem as legal, while 47% considered it as a product of bad luck.¹¹³ In Uganda, people were more confident in their ability to resolve domestic disputes and problems with neighbours than disputes with public authorities and employers.¹¹⁴ In Australia, respondents were significantly more likely to take no action for rights/discrimination, employment, health, debt and government problems.¹¹⁵

The WJP GPP addresses capability through various questions, including by asking people if they knew where to obtain information and assistance on how to resolve their problem. It should be noted that what a respondent considers as relevant information and assistance depends on the context; this makes it particularly difficult to compare response patterns between countries with widely different income levels and cultural traditions. With this caveat in mind, this White Paper considers as an indicator of legal capability whether a respondent, when facing a justiciable problem, knows where to obtain assistance and does engage an action to resolve his or her case.

The lack of legal capability concerns at least 20% of respondents in all countries except one (Figure 9). It is particularly low in Hong Kong, Hungary, Indonesia and the United States. It is very high (above 50%) in Bosnia Herzegovina, Brazil, Burkina Faso, Senegal and Tunisia.

There are no significant differences of legal capability between women and men in most countries (Figure 27 in annex). There is however a group of countries where the lack of legal capability affects more

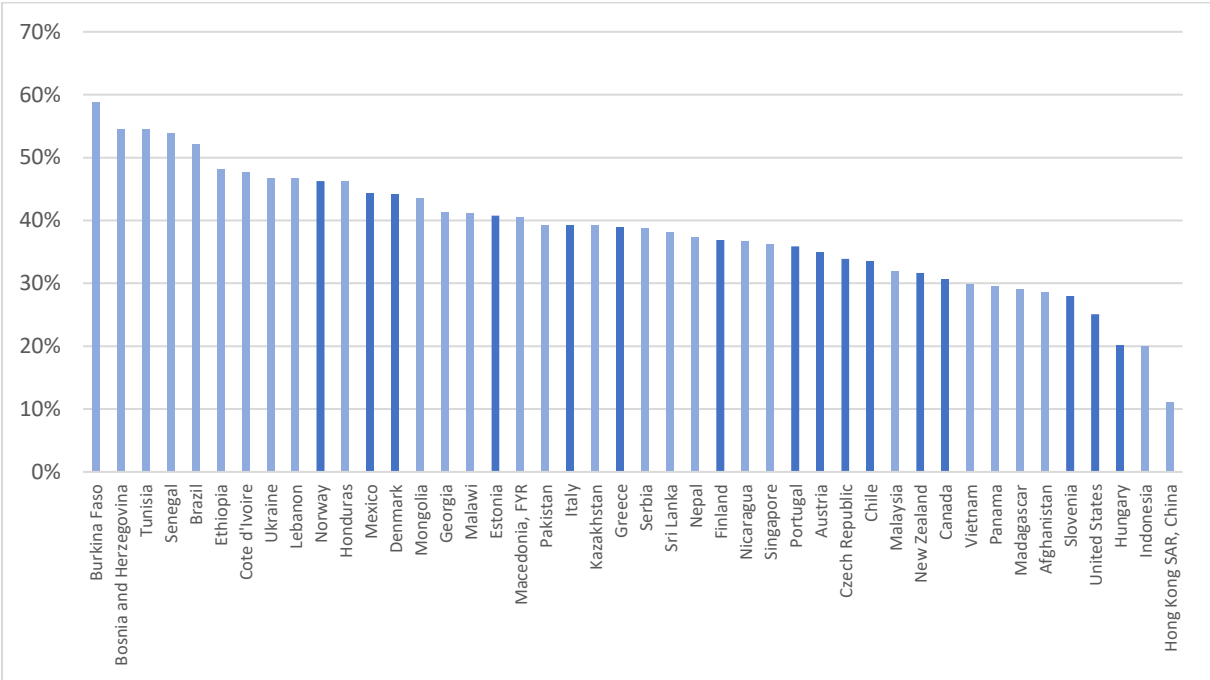
¹¹³ Pleasence et al. (2015).

¹¹⁴ Piest et al. (2016).

¹¹⁵ Mac Donald and People (2014).

women, which includes Afghanistan, Burkina Faso, Georgia, Macedonia, Nepal, Pakistan and Panama. The only countries in which men are at a significant disadvantage are Estonia, Kazakhstan, and Slovenia.

Figure 9. Share of respondents lacking legal capability to address a justiciable problem



Share of respondents disagreeing or strongly disagreeing with the statement “ I knew where to get good information and advice about resolving my problem”. OECD member countries appear in darker colours.

Source: World Justice Project, General Population Poll 2017 + calculations by the author

By contrast, the unequal distribution of legal capabilities between income groups is striking in most countries, irrespective of the country’s level of income (Figure 10). Income-based differences in legal capability are particularly strong in Burkina Faso, Georgia, Hungary, Malawi, Mongolia and Pakistan.

Barriers to legal capability

One of the key reasons why individuals have less capability to face certain types of problems than others is the complexity of the relevant legal framework. Two major impediments in this regard are the use of legal jargon that is not accessible to the broader population and limitations to the provision of legal information – particularly in forms that are accessible to vulnerable groups of population. For instance, the numbers of residents who do not fully master the official language(s) has increased in recent years in most OECD countries, notably as a result of migration. The Australian legal needs survey found that people whose main language was not English and people with low education levels were among the least likely to take action to address their legal problems.¹¹⁶

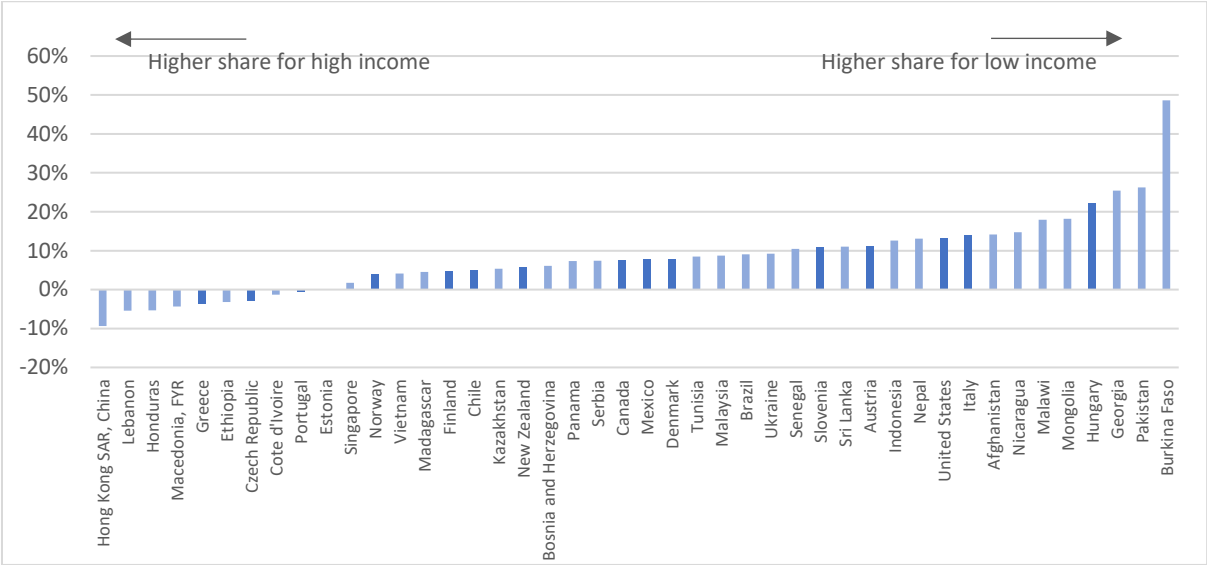
Preferences and ability to understand the law and use different legal services are also influenced by technology and by the way in which services are structured. IT-based solutions have been powerful enablers of access to justice in recent years. It should be noted, however, that they can present significant challenges for those with lower capability, multiple or complex legal problems, or specific cultural backgrounds.¹¹⁷ In New Zealand, for instance, the 2006 national legal needs survey found multiple barriers of this sort for ethnic minorities: Maori people preferred face-to-face contact when accessing

¹¹⁶ Coumarelos et al., p. 103. For example, 30% of people whose main language was not English took no action, compared to 18% for the rest of the population; and when they did, only 37% sought advice, compared to 52% for the rest of the population.

¹¹⁷ See, for example, Lawler et al. (2009); Giddings and Robertson (2003).

legal services while within Pacific peoples, some subgroups clearly preferred to use the telephone.¹¹⁸ In Canada, only 33% of respondents used the internet while attempting to resolve their legal problem; of these, 40% did not find the results helpful. These findings could be due to the poor quality of information available on the internet, lack of computer literacy, or even difficulty discerning what is appropriate and relevant from a large volume of search results – in other words simpler and better-designed IT solutions might address a number of challenges.¹¹⁹ However, some people with poor literacy, communication and/or problem-solving skills may also struggle to resolve complex legal problems with any form of support that falls short of full representation.¹²⁰

Figure 10. Differences in the share of respondents lacking legal capability – Lower vs. higher income groups



Difference in the percentage of low-income and high-income respondents reporting that they did not know where to obtain information and assistance to resolve their justiciable problem. Low income is defined as the bottom 40% of the survey’s scale and high income as the top 40%. OECD member countries appear in darker colours.

Source: World Justice Project, General Population Poll 2017 + calculations by the author

Psychological barriers can have an important impact on legal capability from the first stage of problem resolution. For example, in Ukraine, among the people who did not take action to resolve their problems, 56% felt helpless and did not believe their actions would change anything, 27% thought that it would be too stressful, and 8% declared that they were afraid.¹²¹

Specific groups, such as vulnerable workers, the homeless, people with debt problems, people with mental illness, marginalised youth and prisoners have lower levels of psychological readiness to resolve legal problems. Studies have reported feelings of being overwhelmed, hopeless, unworthy or undeserving of justice, intimidated or distrustful of the justice system among these groups.¹²²

Finding 6. Only a small minority of people receives professional assistance

When facing a legal problem, behaviours regarding the search for advice and information vary considerable from country to country. Schematically, people in high-income countries tend to turn

¹¹⁸ Reported by Hill (2009).
¹¹⁹ Currie (2016), p. 22.
¹²⁰ See, for example, Genn (1999); Giddings and Robertson (2003); Buck et al. (2007); Hunter et al. (2007); Balmer et al. (2010); Barendrecht (2011); Forell and Gray (2009) and Lawler et al. (2012).
¹²¹ Kobzin et al. (2011), p. 58.
¹²² Coumarelos et al. (2012), p. 30.

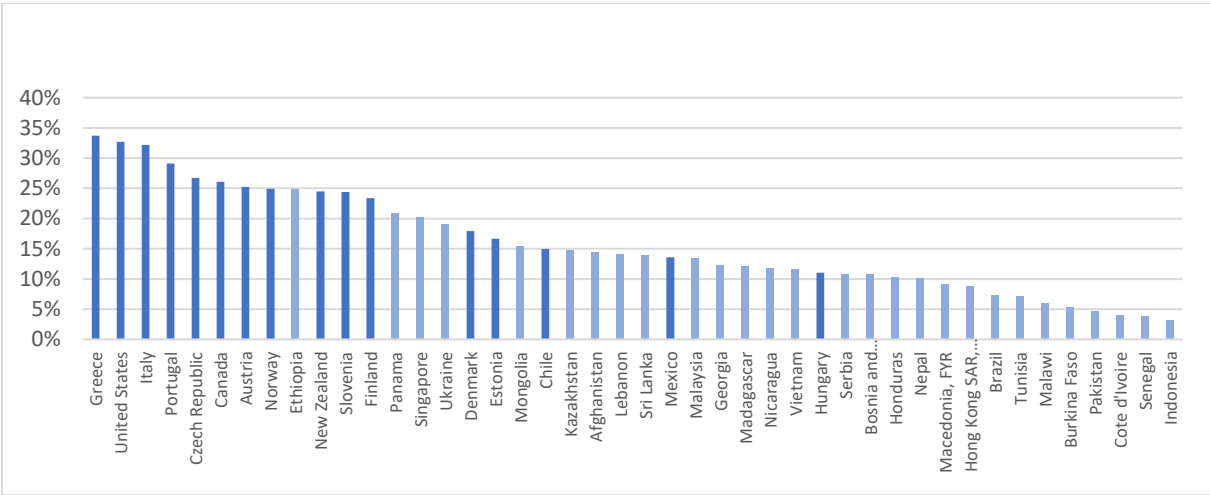
primarily to formal sources of advice, while people in lower-income countries tend to face their problems alone or with the support of their friends and relatives. What is common, however, is that only a small minority seek advice from law professionals.

In the Australian LAW survey, for instance, people’s response to a legal problem primarily consisted in seeking advice (51% of all cases and 62% of justiciable problems), followed by handling the problem alone (31% and 26% respectively) and taking no action (18% and 12% respectively). For advice, people turned to law professionals (lawyers or not-for profit legal services) in 30% of cases and to other sources (mostly the police, doctors, insurance brokers and government agencies) in 70% of cases.¹²³

In Indonesia, 43% of respondents considered that they did not need any assistance or did not know where to find information, and another 38% sought advice from their friends and family; only 20% turned to the local government, their community leaders or the police.¹²⁴ In Yemen, 64% of respondents sought advice from their relatives and 61% from friends, compared to 21% from the police, 11% from lawyers and 8% from government agencies.¹²⁵

The same general patterns emerge from the WJP GPP surveys. In all but three countries, less than 25% of respondents facing a justiciable problem obtain assistance by a professional lawyer, a legal aid office, a judiciary or administrative body (Figure 11).

Figure 11. Share of respondents receiving professional advice to address a justiciable problem



Share of respondents facing a justiciable problem and reporting having received advice from a professional lawyer or advisor, a governmental legal aid office, a court, a government body or the police, a health or welfare professional, a trade union or employer, a civil society organisation or a charity. OECD member countries appear in darker colours. Source: World Justice Project, General Population Poll 2017 + calculations by the author

Countries in which legal assistance is relatively widespread are high-income countries (Austria, Canada, the Czech Republic, Greece, Italy, Portugal, Slovenia and the United States) with the exception of Ethiopia. Legal assistance is extremely scarce in Burkina Faso, Brazil, Cote d’Ivoire, Hong Kong, Indonesia, Malawi, Pakistan and Senegal.

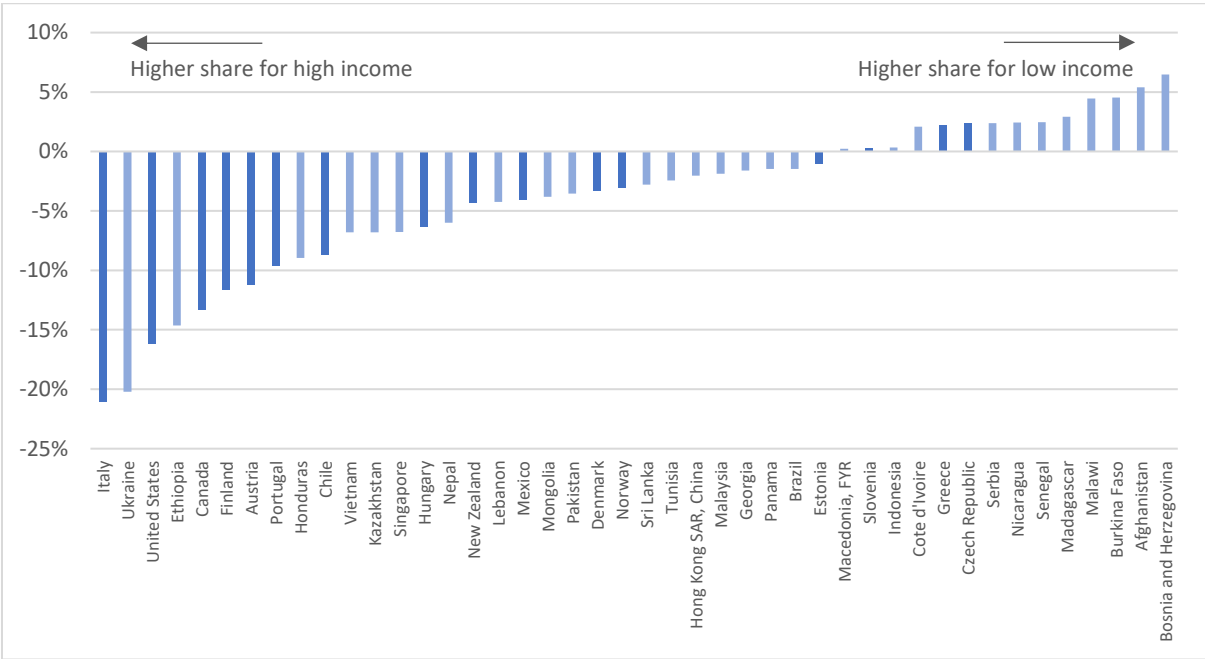
Gender differences in access to legal assistance are rather common, but they can go in both directions. They are favourable to women in Afghanistan, Austria, Finland and Panama; and to men in Greece, Honduras and Vietnam.

¹²³ Coumarelos et al. (2012).
¹²⁴ Gramatikov et al. (2014), p. 36.
¹²⁵ Barendrecht et al. (2014), p. 29.

Access to legal assistance increases with income in a large majority of countries (Figure 12). Differences of access to professional assistance between low-income and high-income groups are particularly large in Austria, Canada, Finland, Ethiopia, Italy, Ukraine and the United States. Afghanistan and Bosnia Herzegovina are two countries in which the rate of legal assistance (slightly) decreases with income.

It is important to note that in most countries wherever the average rate of legal assistance is high, it increases with income. Greece and the Czech Republic are notable exceptions, however. In some cases (e.g. the Czech Republic), the lowest income group has significantly better access to assistance than the second lowest and middle-income groups.

Figure 12. Differences in the share of respondents receiving professional advice – Lower vs. higher income groups



Difference in the percentage of low-income and high-income respondents reporting that they received advice from a professional lawyer or advisor, a governmental legal aid office, a court, a government body or the police. Low income is defined as the bottom 40% of the survey’s scale and high income as the top 40%. OECD member countries appear in darker colours. Source: World Justice Project, General Population Poll 2017 + calculations by the author

Barriers to legal assistance

Fragmentation and limited coordination in legal service delivery are reported as structural barriers in some countries. Much like the medical profession, the complexity of justice systems and the range of areas of law have resulted in a degree of specialisation among lawyers. In Australia, for example, the legal profession is reported to have become more specialised according to subject matters and jurisdictions. In other words, services tend to be more problem-focused than client-focused. At the same time, research shows that as legal problems cluster and can span multiple aspects of a person’s life, legal service providers increasingly need to be “sufficiently coordinated to deal with connected but disparate legal issues”.¹²⁶

Uneven geographical accessibility of legal and justice services is also reported as a frequent barrier, in particular to those living in remote areas, who also tend to have higher vulnerability to legal problems. Still in Australia, the legal needs survey indicates that people from remote, non-urban areas, often among

¹²⁶ Coumarelos et al. (2012), p. 219.

the most disadvantaged, had to travel long distances for face-to-face consultations which can act as a barrier to resolving their problems.¹²⁷

The cost of legal assistance is also a major barrier. In many countries, the typical hourly cost of retaining a lawyer is high and increases rapidly if a matter is contested. This leads many people not to pursue a case at all or to self-represent. Where legal aid is available, access is restricted based on financial eligibility and the subject matter of the dispute. For example, in Canada, as in many countries, legal aid is only available for those with relatively modest means, and while some civil matters are covered, most everyday legal problems are not eligible.¹²⁸ There are also indications that those in the middle-income range might be worse off because while they do not qualify for legal aid, they are unable to afford to independently pay for legal services.¹²⁹ Our analysis of the WJP GPP data showed that in several countries, the lowest income group has significantly better access to assistance than the second lowest and middle-income groups (see Finding 5).

Finding 7. Justice institutions and alternative settlement processes are seldom used

People's levels of action or inaction when facing a legal problem also vary considerably from country to country, from 71% of inaction in Indonesia,¹³⁰ 44% in Ukraine¹³¹ and 41% in Colombia¹³² to 22% in Yemen,¹³³ 18% in Australia¹³⁴ and only 5% in Canada¹³⁵.

Whether people act or not, however, the vast majority of justiciable problems are resolved outside the formal justice system. The Australian legal needs survey, for instance, found that only 3% of legal problems were resolved through proceedings in a court or tribunal, 1.5% through formal dispute resolution and 2% through a complaint-handling process. The rest had an agreement with the other side (30%), did not pursue it further (30%), sought a decision from another agency such as a government body (15%) or sought the help of someone else (5%).¹³⁶

These trends are confirmed by the WJP GPP data. In all countries, people facing a justiciable problem do not engage any settlement process involving a third party in the vast majority of cases (see Figure 13).

On average across countries, only 11% of respondents with justiciable problems have recourse to formal justice institutions, and another 4% through other processes (including mediation and arbitration). The countries with the highest rates of use of justice institutions either have low (Afghanistan, Ethiopia) or high levels of income (United States, Slovenia, Greece), while some of the lowest rates of use can be observed in middle-income countries (Georgia, Indonesia, Malaysia, Mongolia).

Differences of use between genders are usually not important, with the exception of Canada, the Czech Republic, Slovenia and the United States, in which rates of use among men are 6 to 9 points higher than among women. In several upper-middle- and high-income countries (Mexico, Panama, Austria, Canada and the United States), rates of use of justice institutions increase with the level of income. In Canada and the United States, the progression is dramatic. In Madagascar, Malawi and Norway, on the contrary, recourse to justice institutions decreases as the level of income raises.

¹²⁷ Coumarelos et al. (2012), p. 216.

¹²⁸ Action Committee on Access to Justice in Civil and Family Matters (2013).

¹²⁹ Coumarelos et al. (2012), p. 38.

¹³⁰ Gramatikov et al. (2014).

¹³¹ Hiil (2016), p. 69.

¹³² La Rota et al. (2013).

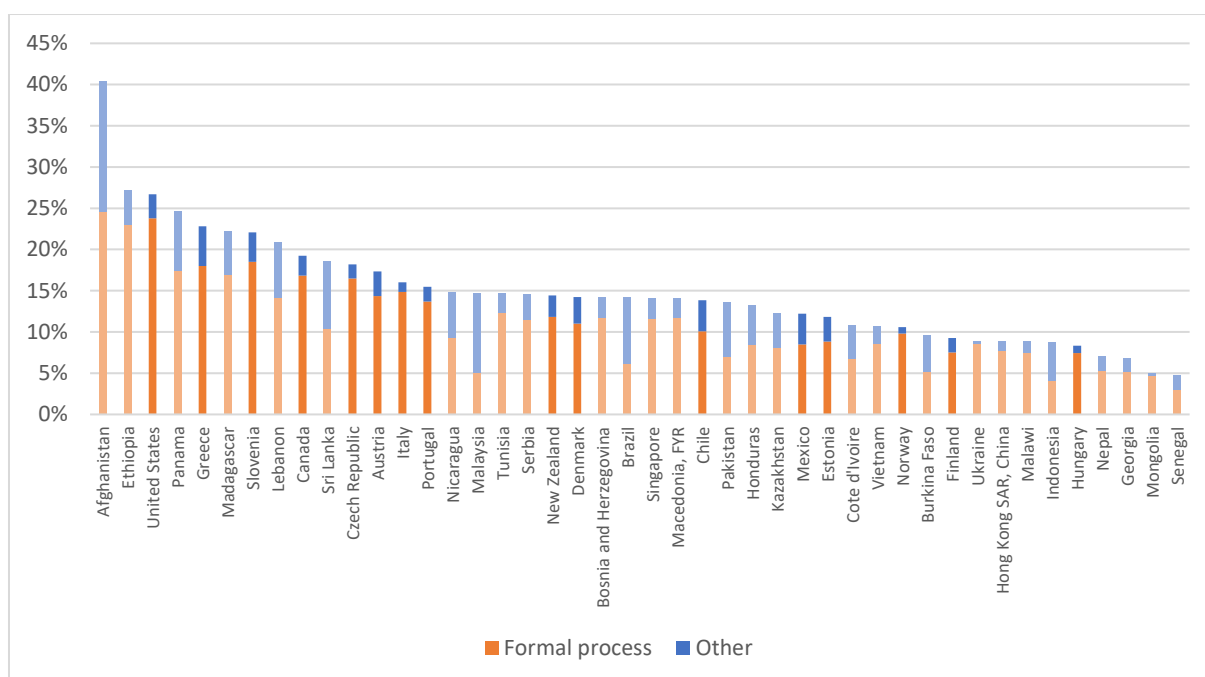
¹³³ Barendrecht et al. (2014), p. 29.

¹³⁴ Coumarelos (2012), p. 93.

¹³⁵ Farrow et al. (2016), p. 9.

¹³⁶ Coumarelos et al. (2012), p. 140.

Figure 13. Share of justiciable problems for which a settlement process has been engaged



Share of justiciable problems for which action has been initiated in front of a court, a government body or the police, or a formal complaint has been made in any other way. OECD member countries appear in darker colours.

Source: World Justice Project, General Population Poll 2017 + calculations by the author

Barriers to the use of courts

The costs of seeking justice, which include the time spent and the financial costs incurred, can be prohibitive. In Canada, 21% of respondents who reported a legal problem indicated that they decided not to engage any action partly due to cost considerations.¹³⁷ In addition, judicial procedures can stretch out over months and years, and impose high opportunity costs, for instance in the form of lost income or employment opportunities.¹³⁸

For businesses, the duration, cost and complexity of some litigation procedures are also reported as important barriers. In the European Union, 76% of the companies that had used courts to resolve a dispute were dissatisfied with the duration, and 67% with the cost. There are indications that SMEs are more affected by financial barriers to the access to courts: 24% of SMEs report satisfaction with the cost of a court procedure, versus 51% of large enterprises; in the case of an alternative dispute resolution mechanism, the rates are 49% for SMEs versus 72% for large enterprises.¹³⁹

Finding 8. There are considerable unmet legal needs in almost all surveyed countries

As explained in subsection II.d, legal needs are considered unmet when a person with inadequate capability to address a justiciable problem does not receive appropriate support.¹⁴⁰ However, when seeking to appreciate if a respondent does not have adequate capability and has not received appropriate support, many factors can come into play, including: whether the person was confident she could resolve her problem without any external support, whether the problem was resolved, and how satisfactory the resolution process was. Because of the multiple dimensions involved, there is still debate on how unmet legal needs should be measured in a legal needs survey.

¹³⁷ Farrow et al. (2016).

¹³⁸ Semple (2016).

¹³⁹ European Commission (2012).

¹⁴⁰ Pleasance et al. (2018), pp. 52-5.

The OSJI-OECD Guidance Document on Legal Needs Surveys recommends evaluating the extent to which legal needs are met in a country through either one (or a combination) of two indicators:

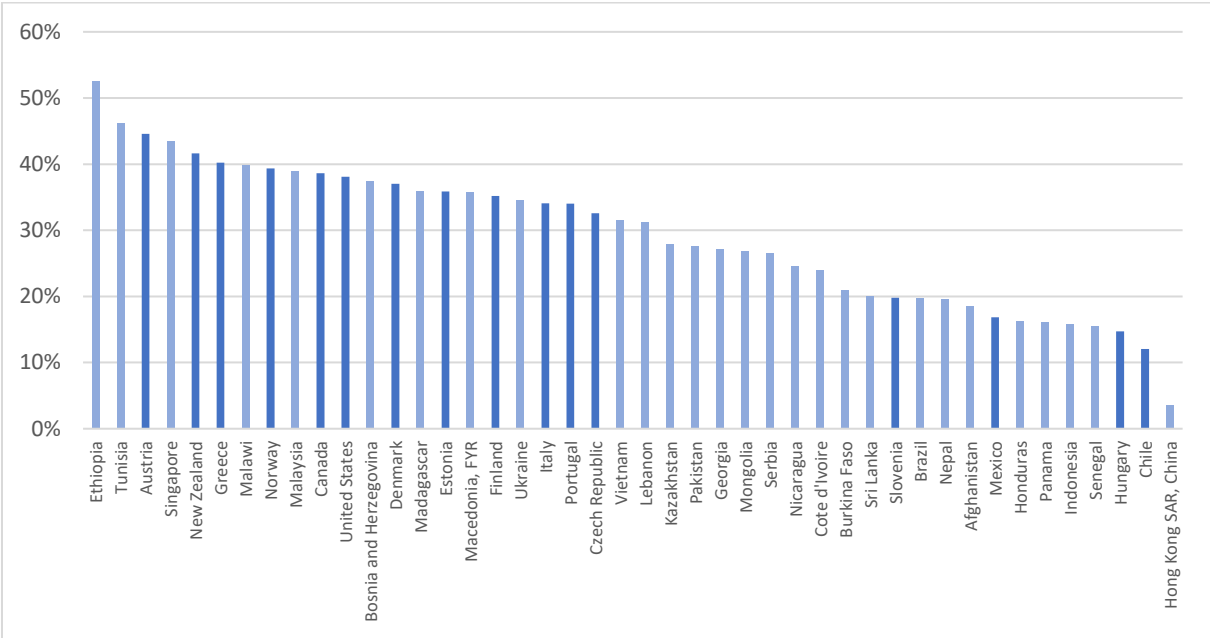
- the proportion of disputes experienced in the past 24 months resolved through a process considered fair by the disputants;
- the proportion of disputes experienced in the past 24 months in respect of which disputants received adequate support to make informed decisions and pursue a fair outcome;

where, for practical matters, disputes are understood as justiciable problems.¹⁴¹

The second indicator focuses on legal assistance, which was analysed under Finding 5. Based on evidence from national surveys and from the WJP GPP, it was shown that access to professional legal assistance varies between countries, but concerns only a small minority of respondents in all countries. Furthermore, the distribution of legal assistance penalises lower income groups in most countries, in some cases to a considerable extent.

To analyse the first indicator, consider first the rate of resolution of justiciable problems as reported in the WJP GPP. In a majority of countries, at least 30% of problems remained unresolved (Figure 14).

Figure 14. Share of justiciable problems that have not been resolved



Share of problems that were considered resolved in all problems considered to be closed, whether resolved or not. OECD member countries appear in darker colours.

Source: World Justice Project, General Population Poll 2017 + calculations by the author

Women had fewer chances than men to resolve a justiciable problem in many low and lower-middle income countries, including Afghanistan, Côte d'Ivoire, Madagascar, Nicaragua and Vietnam), but also (albeit in to a lesser extent) in all Northern European countries (Denmark, Estonia, Finland, Norway). Resolution chances were on the contrary higher for women in countries such as Bosnia Herzegovina, Brazil, the Czech Republic, Kazakhstan, Lebanon, Nepal, Pakistan, Portugal and Slovenia.

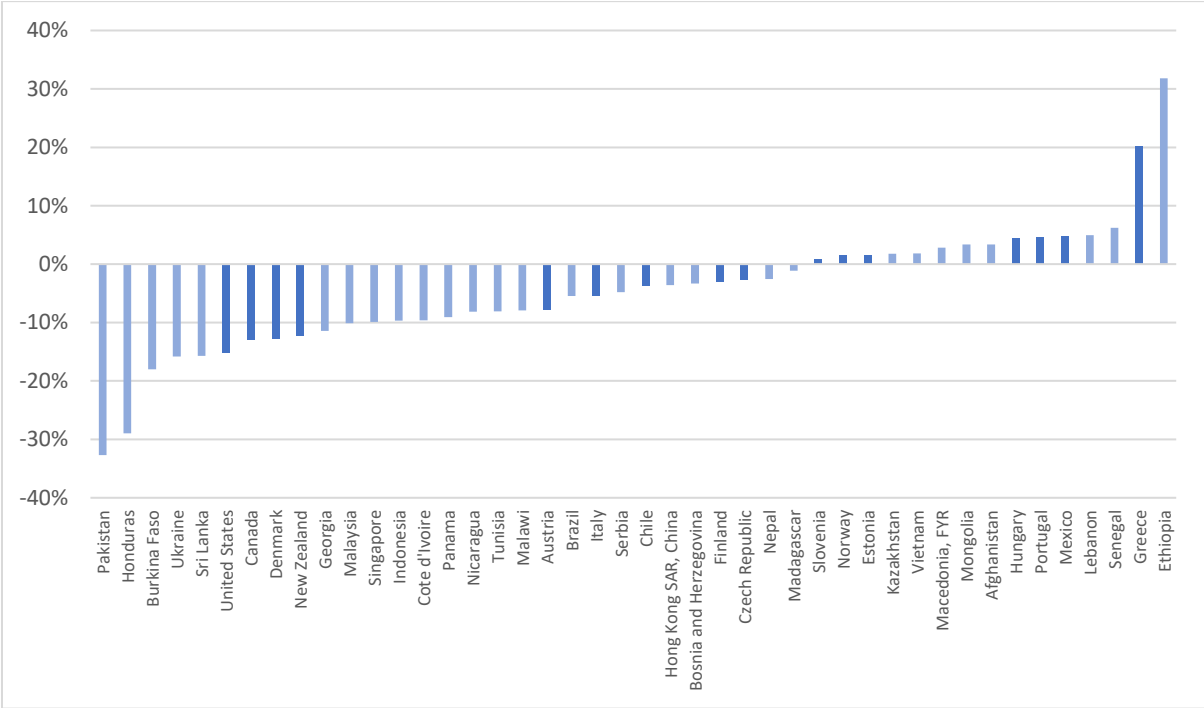
The chances to resolve a justiciable problem are strongly biased in favour of higher-income groups of the population (Figure 15). In 11 countries, higher-income respondents had at least 10% more chances to resolve a justiciable problem than lower-income respondents (Burkina Faso, Canada, Denmark, Georgia,

¹⁴¹ Pleasance et al. (2018), p. 105.

Honduras, Malaysia, New Zealand, Pakistan, Sri Lanka, Ukraine and the United States), while the opposite applied in only two countries (Ethiopia and Greece).

Disadvantaged groups such as the unemployed also have lower chances than the rest of the population to resolve a justiciable problem in most countries.

Figure 15. Difference in chances to resolve a justiciable problem – Lower- vs. higher-income groups



Difference in the percentage of low-income and high-income respondents reporting that they had resolved a justiciable problem. Low income is defined as the bottom 40% of the survey's scale and high income as the top 40%. OECD member countries appear in darker colours.

Source: World Justice Project, General Population Poll 2017 + calculations by the author

The first indicator of access to justice also addresses the fairness of the settlement process. Perceptions of fairness and trust in formal institutions vary across countries, partly depending on the jurisdiction's political context and the outcomes that individuals received. In Canada, 46% of respondents with resolved problems thought their outcome was unfair. And 70% said the outcome did not achieve all their objectives.¹⁴² In Ukraine, 66% of respondents did not trust the court system and 72% thought that courts protect the interests of the rich.¹⁴³ Indonesian respondents had similar perceptions with 63% agreeing or strongly agreeing that courts protect the interests of the rich. Trust in formal institutions (about 48%) was also significantly less than trust in informal means of dispute resolution (about 93%).¹⁴⁴

The share of justiciable problems resolved through a process deemed unfair by the respondent varies considerably between countries covered by the WJP GPP; it is above 40% in fourteen countries, nine of which have high levels of income (Figure 28 in annex).

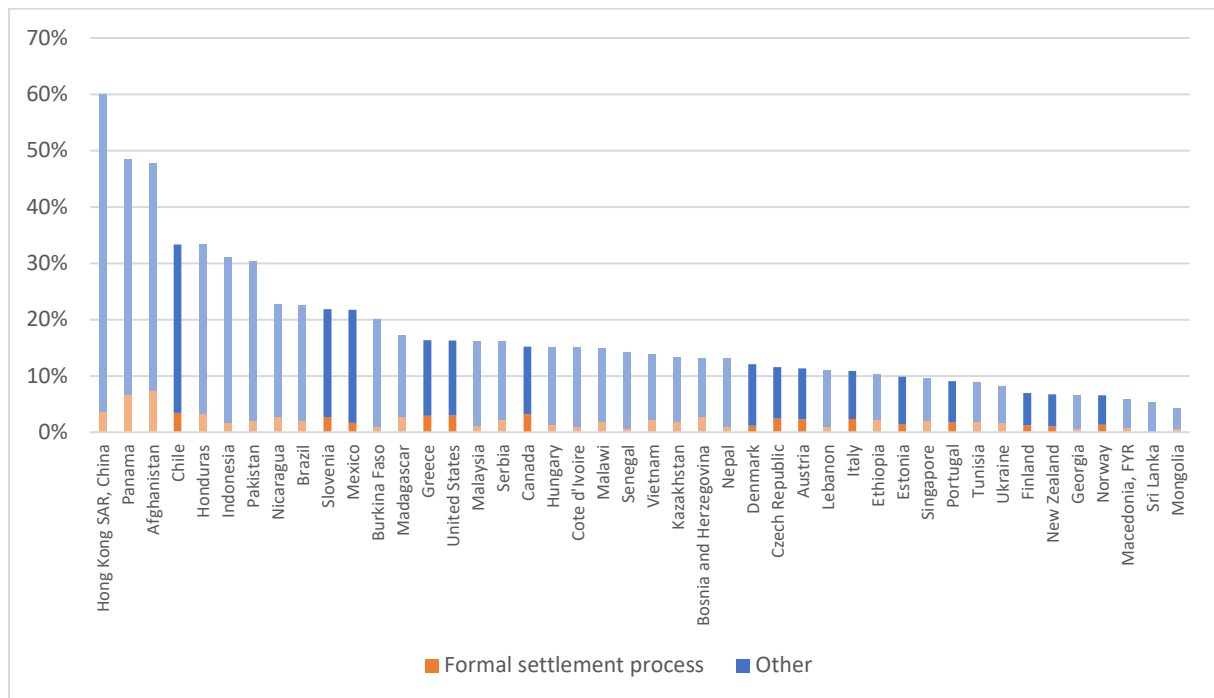
As, in addition, the use of settlement processes is very limited (Finding 6), the overall result is that less than 15% of respondents report having solved a justiciable problem through a process that they deemed fair (Figure 16). When the focus is limited to formal justice institutions, this share falls under 5% in all surveyed countries but two.

¹⁴² Farrow et al. (2014), p. 11.

¹⁴³ Hiil (2016), p. 142.

¹⁴⁴ Gramatikov et al. (2014), p. 69.

Figure 16. Share of respondents who have resolved a justiciable problem through a process that they deem fair



OECD member countries appear in darker colours.

Source: World Justice Project, General Population Poll 2017 + calculations by the author

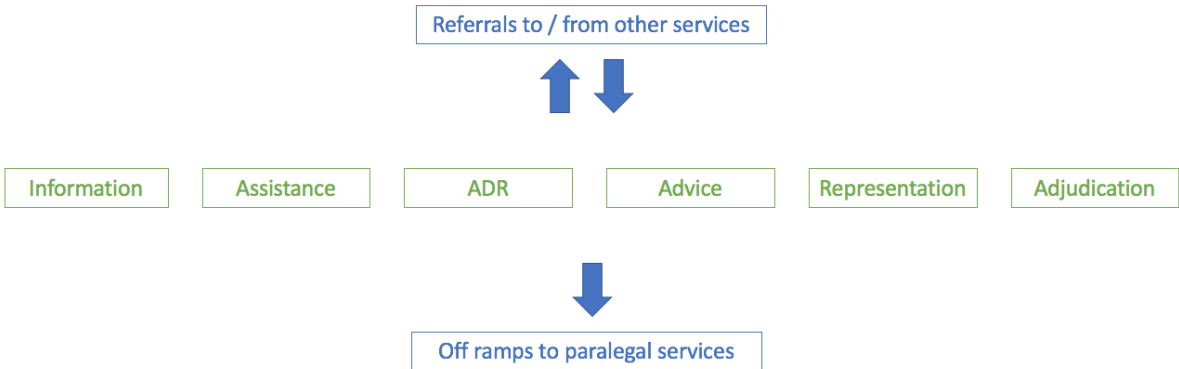
Both indicators of access to justice therefore point towards the existence of considerable unmet legal needs in virtually all countries surveyed by the WJP GPP.

IV. Understanding the benefits of investment in access to justice

Neither the concern over lack of access to justice nor the search for policy responses are new, but in recent years, both have been increasingly guided by the practical experiences of people. As a result, the spectrum of legal empowerment, assistance and representation services proposed by public and private organisations has become more varied and better adapted to the needs and constraints of citizens, in particular those facing the greatest challenges in accessing traditional judiciary institutions.¹⁴⁵

These services range from the provision of information on people’s rights and obligations to limited forms of legal representation (“unbundled” legal assistance) to full representation and adjudication (see Figure 17). Activities that have developed on the margins of the judiciary system include alternative dispute resolution mechanisms such as mediation and online dispute resolution; paralegals and community advice services; public legal education; collaborative and integrated service provision; and restorative approaches. The mode of delivery varies, from in person to online¹⁴⁶ and via telephone. Face-to-face delivery models can range from centralised services such as citizens advice bureaux and legal clinics to mobile outreach, and partnership models such as those between legal aid clinics and hospitals (medical-legal partnerships). In addition, structural reforms and modernisation efforts within the judiciary have also sought to better address the legal needs of society.

Figure 17. A wide range of justice services



Source: Adapted from Currie (2009).¹⁴⁷

At the same time, the development of empirical studies – increasingly based on rigorous experimental designs – has dramatically improved our understanding of the type and magnitude of effects that can be expected from these interventions in particular circumstances.¹⁴⁸ The use of randomised controlled trials, in-depth qualitative investigations and systematic reviews has helped uncover and address many biases affecting previous evaluations, and impact assessments have gained in both breadth and robustness. Admittedly, many issues deserve further empirical investigation, considering in particular the spread of new types of intervention.¹⁴⁹ The current literature is also largely polarised on high-income countries, particularly the United States; its findings are therefore difficult to generalise to other institutional, socio-economic and cultural settings.

¹⁴⁵ OECD (2019, forthcoming).

¹⁴⁶ For example, MyLawBC, an interactive tool to step individuals through the process of separation, divorce, and wills, and help them deal with foreclosure and family violence in Canada. <https://mylawbc.com/>

¹⁴⁷ Currie (2009).

¹⁴⁸ See Houseman and Minoff (2014); Abel and Vignola (2010); Albiston and Sandefur (2013); Greiner and Pattanayak (2012).

¹⁴⁹ Greiner (2018).

This section reviews the literature on the efficacy and benefits of interventions seeking to improve access to justice, with particular emphasis on those targeting population groups with specific legal needs. The identified effects are discussed under four headings: reductions in the burden imposed on citizens by legal problems, whether directly or indirectly; contributions to more inclusive societies; reductions in violence and its associated costs; and positive effects on governance and the functioning of institutions.

Finding 9. Investing in access to justice alleviates the burden of legal problems on citizens

In most countries, legal problems impose severe burdens on people (Finding 3) and generate substantial direct and indirect costs (Finding 4). Yet large fractions of people face these problems without having adequate legal capability (Finding 5) or the benefit of professional assistance (Finding 6). The vast majority of legal problems either remains unresolved or is resolved in a manner not deemed fair by the disputant (Finding 8). A vast body of literature provides evidence on the capacity of targeted interventions along the justice service continuum to improve people's access to justice and alleviate the costs of legal problems.

Legal information and assistance

Advocacy for better access to justice has traditionally focused on the provision of lawyer services. Empirical analysis indeed indicates that in numerous areas, full legal representation leads to better outcomes both for the claimants and for society as a whole (in the form of increased welfare for families, efficiency gains for courts, etc.).¹⁵⁰ For example, the Boston Bar Association's Civil Gideon Task Force¹⁵¹ and the Shriver Pilot Projects in California¹⁵² have established multi-year projects to evaluate the experience of persons who have full legal representation in a variety of court-based processes, in comparison to those who receive more limited forms of assistance.¹⁵³ Early results from the Boston project indicate that people who receive full legal representation fare much better in court-based processes, in terms of both legal and socio-economic outcomes.

In recent years, however, studies have shown that in certain conditions, full representation is less effective and more costly than more limited forms of legal assistance.

In complex disputes such as divorce or child protection cases, representation by a lawyer remains the form of assistance that is deemed most effective. For instance, an evaluation in the state of Philadelphia showed that representation by a (pro-bono) attorney made the filing and resolution of divorce cases considerably faster: 54% of the treatment group, as opposed to 14% of the control group, had a divorce case on record after 18 months; and 45% of the treatment group, as opposed to 8% of the control group, had achieved a termination of marriage within three years.¹⁵⁴

Other studies have shown that legal aid enabling representation improves reunification rates and helps the retention of parental rights. For example, in cases related to custody disputes, one study found that providing legal representation to parents increased the likelihood that spousal support or alimony would be awarded. Another study found that when one party in a contested custody case is represented by an attorney and the other is not, it is more likely that sole custody will be awarded to the party with legal representation.¹⁵⁵

¹⁵⁰ See Greiner and Pattanayak (2012); Steinberg (2011) .

¹⁵¹ For background to this project see Boston Bar Association (2008) and updates on www.bostonbar.org.

¹⁵² The California Sargent Shriver Civil Counsel Act Pilot Programs are funded by the California legislature to provide legal services, including direct representation, to low income self-represented litigants in select areas including housing, child custody and guardianship.

¹⁵³ Greiner, Pattanayak and Hennessy (2012).

¹⁵⁴ Degnan, Ellen and Ferriss, Thomas and Greiner, Daniel James and Sommers, Roseanna (2018).

¹⁵⁵ Smith, K. and J. Brewer (2011).

Full representation has shown to be less beneficial when the area of the law and the case itself are less complex, when the client has greater capability, or when courts are supportive of self-representation. For example, an analysis of unemployment insurance disputes in the US found that access to representation did not improve the chances of a positive outcome for the claimant, while it increased the time to reach a resolution by two weeks on average.¹⁵⁶

Recent years have seen the development of a variety of legal assistance services that fall short of full representation, going from the provision of advice on legal issues such as debt, employment and housing, to specialised assistance in areas such as family and domestic violence law. Empirical analysis has shown that these forms of legal assistance are efficient in supporting families in their applications for benefits and administrative tasks; enforcing child support orders; explaining education laws and school discipline policies to help keep children in school; and advising and representing parents of children with special needs in schools. By helping to address legal issues affecting vulnerable families, such as those related to immigration, debt, housing, or domestic violence, legal assistance has been shown to improve family outcomes and children's welfare and education.¹⁵⁷

Partly as a response to the reduction of legal aid budgets in recent years, a trend towards greater use of self-help tools can also be observed in several countries including Australia, Canada, the United Kingdom and the US.¹⁵⁸ Legal self-help might lead to improvements in various non-outcome-based indicators, such as helping debt collection defendants to attend court and avoid a default judgment.¹⁵⁹ They have limitations, however. A study carried out in 2012 in the US indicated that that users tend to find them more useful when the legal tasks to perform are essentially administrative; when legal processes require limited personal skills; when little is left to their discretion; and when the legal issue at hand is not emotionally straining. Users expressed lower satisfaction about self-help resources for proceedings that require comprehensive personal skills and legal knowledge and give them wide discretionary power, as in child protection cases. Moreover, certain legal resources, although available, were deemed unpractical due to the complexity of the legal matter and the knowledge required to use the tool.¹⁶⁰

Alternative dispute resolution

ADR mechanisms have also been extensively studied, and their benefits have shown to vary according to the area of law, the complexity of the case, the type of mechanism used, and design and implementation conditions such as the availability of safeguards to ensure fair treatment, the system's trustworthiness and accessibility etc. ADR can be highly efficient, but is not adapted to all contexts, and may in some circumstances lead to negative outcomes.

For example, mediation has been shown to lead to positive results, especially when parties were willing participants and of relatively equal strength.¹⁶¹ In Canada and the US, civil-mediated cases have been observed to take 5 months less to be resolved, to save 60 hours of court staff time and to cost USD 16,000 less per case on average than non-mediated cases.¹⁶² With respect to workplace mediation, a study in the US indicates employment opportunity complaints handled through ADR mechanisms were resolved from 50 to 127 days faster than those going through the formal procedure.¹⁶³

Significant savings can also result from the use of legal aid in family-mediated cases compared to non-mediated cases. In the UK, "the average cost of legal aid in non-mediated cases is estimated at GBP 1,682,

¹⁵⁶ Greiner and Pattanayak (2012).

¹⁵⁷ White House Legal Aid Interagency Roundtable (2016).

¹⁵⁸ Moorhead (2003); Goldschmidt (2002); Lawler, Giddings and Robertson (2012).

¹⁵⁹ Greiner, Jimenez and Matthews (2015).

¹⁶⁰ Lawler, Giddings and Robertson (2012), p. 223.

¹⁶¹ Eisenberg (2016); PRA Inc. (2007); Thoennes (2001); Gatowski et al. (2005); Hann and Baar (2001).

¹⁶² Lawrence, Nugent and Scarfone (2007).

¹⁶³ Nabatchi and Stanger (2013).

compared with GBP 752 for mediated cases, representing an additional annual cost to the taxpayer of some GBP 74 million".¹⁶⁴

The Canadian Forum on Civil Justice conducted a study on lawyer preferences and the relative costs of four different processes in resolving family law problems: collaboration, mediation, arbitration and litigation. The study estimated the social return on investment for the four processes in the case of low-intensity and high-intensity family disputes. In low-intensity cases, rates of return were higher for collaboration and mediation than for arbitration and litigation (CAD 2.06 and 2.78 versus CAD 0.57 and 0.39 respectively for every dollar spent). Similar results were observed in relative terms for high-conflict disputes, although the rates of return are lower in absolute terms, and smaller than one for arbitration and litigation (CAD 1.12 and 1.00 versus 0.38 and 0.04).¹⁶⁵

The success of mediation in commercial disputes depends on many factors, including take up, trustworthiness, and encouragement by courts. A study on the use of mediation in commercial and construction disputes in the UK, which was carried out after the introduction of the Civil Procedures Rules,¹⁶⁶ showed that under certain circumstances, mediation was more likely to lead to a timely and cost-effective settlement than litigation. It was also found to allow parties to focus on and narrow the issues in dispute.¹⁶⁷

Like mediation, business-to-business arbitration has been shown to lead to a number of favourable outcomes under appropriate conditions: a majority of users perceive commercial matters as being simpler, cheaper, fairer¹⁶⁸ and faster¹⁶⁹ than under litigation. Similarly, a study of conciliation services in employment tribunals showed that more than half of the claims brought to conciliation were settled at that stage.¹⁷⁰

Specialised courts and court modernisation

Modernisation and digitalisation have become important tools for improving the performance and responsiveness of justice institutions. While the results of these efforts are dependent on design, implementation, and institutional and human capacity, they are generally found to improve court productivity and generate positive client outcomes. For example, a recent evaluation of video courtrooms (through which counsel can remotely represent clients) in the rural areas of the US concluded that it increased access to legal assistance and to courts, and consequently saved resources.¹⁷¹ The introduction of video conferencing also appeared to facilitate pro bono representation in Australia, as attorneys were more willing to provide assistance if they did not have to travel large distances.¹⁷²

With the recent shift from paper files archived in courts to electronic files stored in a records management system, court participants increasingly submit materials to the court in electronic form (e-filing). e-filing aims to overcome the need for individuals to physically take documents to the court, streamline the paperwork, facilitate the claims process and ultimately increase court efficiency. Indeed, some studies of individuals courts observed that the benefits can be significant, with e-filing being approximately 40% to 50 % more efficient than paper submission processes. In one case, the time spent

¹⁶⁴ National Audit Office (2007).

¹⁶⁵ Roundtable, 2018.

¹⁶⁶ The 1999 Civil Procedure Rules introduced a requirement for courts to use active case management, which includes encouragement and assistance to the parties in the use of alternative dispute resolution – as appropriate. See Brooker and Lavers (2005).

¹⁶⁷ Brooke and Lavers (2005).

¹⁶⁸ In terms of fairness and equity of the process compared to litigation, 80 % of attorneys and 83 % of businesses feel that arbitration is a fair and just process. Naimark and Keer (2002).

¹⁶⁹ About 63% of respondents agreed that arbitration saves time relative to litigation, 51% believe it saves money. Rand Institute for Civil Justice (2011).

¹⁷⁰ Downer et al. (2016).

¹⁷¹ Lynch (2015).

¹⁷² National Pro Bono Resource Centre (2014).

by clerks and judges in preparing an order was reduced from three and a half hours to 45 minutes. Such productivity gains, to the extent that they lead to reduced pendency rates and disposition times and a more efficient use of resources, can largely contribute to better access to courts.¹⁷³

Similarly, a study of the courts of Bari and Naples has demonstrated a performance improvement partly as a result of the modernisation process of the justice system through novel management approaches and IT investments.¹⁷⁴ In Costa Rica, court modernisation through training and IT equipment led to an average increase of 5% in case clearance rates and a cost saving of USD 75 per disposed case, which represents a 10% reduction of the baseline rate.¹⁷⁵

Mobile justice services, in particular mobile courts, can also help to overcome geographic barriers to access. A UNDP study carried out in Sierra Leone, Democratic Republic of the Congo and Somalia, found that mobile courts are efficient instruments to re-establish the formal justice system in post-conflict contexts with a shortage of judges. In particular, the mobile courts made it possible for local customary courts applying traditional laws to transfer cases outside of their jurisdiction (e.g. sexual and gender-based violence cases) and for litigants to have their appeals of local court decisions heard. The mechanism appeared to be more effective when accompanied by formal agreements with national partners.¹⁷⁶

Greater specialisation appears to enhance the overall effectiveness and efficiency of judicial institutions although, in this area too, the empirical evidence is still limited.¹⁷⁷ Amongst the reported benefits are improvements in the quality of judicial decisions, more efficient court processes due to the greater familiarity of judges and counsels with subject matters, and reduced backlogs in generalist courts.¹⁷⁸ In family interventions, for example, a study of the Collaborative Divorce Project, an intervention designed to assist the parents of children six years old or younger as they begin the separation process, shows lower conflict, greater father involvement, and better outcomes for children than the control group.¹⁷⁹

The use of specialised courts can also have downsides, however, including heavy upfront investment requirements that reduce the resources available for general courts. Decisions to introduce greater specialisation should therefore be based on the careful consideration of expected costs and benefits, considering in particular the expected number and nature of cases.

Finding 10. Investing in access to justice contributes to more inclusive societies

Disadvantaged groups of the population are often more affected by justiciable problems (Finding 2) and by their consequences (Finding 3), at the same time as they tend to have lower legal capabilities (Finding 5), a more limited access to professional assistance (Finding 6) and smaller chances of resolving their problems (Finding 8) than the rest of the population. A range of interventions have been shown to be effective in improving the access of these groups to justice, thereby contributing to a fairer and more inclusive society.

Full representation

Many studies have found positive impact of counsel in a vast range of legal and administrative proceedings involving vulnerable clients, including eviction and debt collection cases.¹⁸⁰ The type of proceeding involved has varied from uncontested to claims adjustment, mediation, arbitration, various

¹⁷³ Jackson et al. (2016).

¹⁷⁴ Lepore, Metallo and Agrifoglio (2012).

¹⁷⁵ Soares and Sviatsch (2012).

¹⁷⁶ UNDP (2014).

¹⁷⁷ Ministry of Justice of British Columbia (2016); Gramckow and Walsh (2013).

¹⁷⁸ Freiberg (2001).

¹⁷⁹ Pruet, Insabella and Gustafson (2005).

¹⁸⁰ Engler (2010), p. 115.

types of administrative adjudications, and court proceedings (including specialised courts of limited jurisdiction).

Similarly, a 2009 study found that more tenants with full representation in court maintained their homes in a tenancy dispute compared with tenants who received limited or no representation (55% against 18% and 14% respectively).¹⁸¹ In Massachusetts, legal assistance that helped individuals delay or avoid evictions was estimated to have saved the community more than USD 8.4 million in shelter costs.¹⁸² A more recent study of eviction representation in Massachusetts based on a randomised controlled trial by the Harvard Access to Justice lab found that tenants with lawyers were 25 to 35% less likely to have to vacate their apartment and saved between 2 and 12 months of rent relative to unrepresented tenants.¹⁸³

For immigrants facing deportation, the presence and participation of a counsel at the hearings has been estimated to result in more secure custody hearings (44% of cases) and releases (44%) than when immigrants represent themselves (18% and 11% respectively).¹⁸⁴

An analysis of the outcomes of the legal aid system in Australia shows that legal representation is important in cases when clients face compounding legal and social issues and when the legal system is difficult to navigate.¹⁸⁵

“Unbundled” legal assistance and legal empowerment

There is strong evidence on the benefits of unbundled legal advice services in situations where full representation is not available or affordable. Generally, clients report feeling more empowered and confident in their ability to deal with legal problems.¹⁸⁶ They achieve positive outcomes that can range from accessing benefits and obtaining child custody to avoiding homelessness and alleviating poverty.¹⁸⁷ For example, in the case of low-income tenants facing eviction, unbundled or limited legal services from lawyers, in the form of ghost-writing basic documents or even making brief court appearances, led to a lower number of default judgments against tenants and more valid, meritorious defences.¹⁸⁸ Doctors with outreach services on their premises providing welfare rights advice also report improved health and well-being of their patients.¹⁸⁹

At the same time, not all types of legal problems seem to be suited to these forms of delivery¹⁹⁰ and some methods may disadvantage certain parts of the population.¹⁹¹ For example, an evaluation of partial legal services in housing-related cases in California finds that the aid did not secure more *actual* relief for its client population compared to those who did not consult a lawyer, even though it allowed low-income litigants to avoid default judgment and formulate valid defences.

¹⁸¹ Steinberg (2011).

¹⁸² Granberry and Albelda (2006).

¹⁸³ A2J Lab.

¹⁸⁴ Eagly and Shafer (2015).

¹⁸⁵ <http://webjcli.org/article/view/468/685>

¹⁸⁶ In Ecuador, clients of legal aid clinics, mostly poor women and their children, reported a positive change in their lives after having benefited from the services of the clinics, with 83% reporting that their living situation was better, 77% said they felt safer and 66% indicated that their self-esteem had improved. See Open Societies Justice Initiative (2012).

¹⁸⁷ Pennsylvania IOLTA Board (2012); Michelle et al. (2014).

¹⁸⁸ Steinberg (2011); Greiner, Pattanayak and Hennessy (2012).

¹⁸⁹ Law and Justice Foundation (2009).

¹⁹⁰ For example, in the case of legal assistance phone lines, outcomes for housing and consumer cases were rated more favourably than family cases. Pearson and Davis (2002).

¹⁹¹ In the case of legal assistance hotlines, clients who were white, English-speaking, educated or married rated outcomes more favourably than clients who were Hispanic, Spanish-speaking, had low education levels or were separated from their spouse.

At the community level, a cost-benefit analysis of community legal centres in Australia¹⁹² calculates that every dollar spent by government on funding the program returns an average benefit to society of 18 dollars.¹⁹³ Citizens Advice Bureaux in England and Wales were estimated to save local and national governments up to GBP 361 million a year in 2014/15¹⁹⁴ and, for a particular regional group of Bureaux, the social return on investment was conservatively estimated at GBP 33 for every pound spent over a five-year period.¹⁹⁵ In New Zealand, the Institute of Economic Research calculated that the Community Law network is “delivering up to USD 50m worth of free legal services each year to vulnerable New Zealanders for an annual investment of only USD 11m”.¹⁹⁶ Similarly, in South Africa, the cost-benefit assessment¹⁹⁷ of community advice offices, which provide free basic legal and human rights information, advice and services to marginalised groups of people, found a positive net value for its services (if minimal public funding is provided).¹⁹⁸

Integrated legal advice to vulnerable groups

An additional study of the medical-legal partnership Legal Health found that the provision of legal services to cancer patients resulted in reduced stress and improved compliance with treatment.¹⁹⁹ Similarly, a randomised controlled trial of incorporated medical-legal services for families of new-borns at the Boston Medical Centre showed that it granted low-income families greater use of preventive health care and greater access to support.²⁰⁰ Another study shows that the provision of integrated justice services (police, juvenile justice, housing, health) resulted in reduced levels and severity of challenging behaviours and a decrease in dependency on multiple services overall (such as unplanned hospital use and criminal justice services). It also led to improved self-assessment of health and increased participation in employment and education.²⁰¹

Some OECD countries are also integrating legal aid in their active labour market programmes. There is also an increasing trend in OECD countries of providing legal insurance as a form of protection in case of a significant legal need. In these cases, legal aid can help employees secure wages and benefits, ensure workplace safety or address discriminatory treatment, and support vulnerable groups in their job searches when legal issues are involved (e.g. reinstating a suspended driver’s license or obtaining a rehabilitation certificate). In the United States, the Workforce Innovation and Opportunity Act supports American Job Centers in offering legal aid services to job seekers.²⁰² Further efforts to explore the impacts of these programmes on accessing employment and other related outcomes will help to understand their effectiveness, sustainability and return on investment.

Specialised courts

Specialised programmes have been found to generate positive outcomes for indigenous groups, although these depend on the design, implementation and level of resources. The benefits of these courts therefore have to be compared to the significant investments that they require. For example, in Canada

¹⁹² CLCs are not-for-profit organizations that provide legal information, advice, casework, education and law reform services, particularly targeted at those who are disadvantaged or with special needs.

¹⁹³ Stubbs and Associates (2012).

¹⁹⁴ Citizens Advice (2015).

¹⁹⁵ Michelle et al. (2014).

¹⁹⁶ http://img.scoop.co.nz/media/pdfs/1710/The_value_of_investing_in_Community_Law_Centres__An_economic_investigation.pdf

¹⁹⁷ The methodology was based on a contingent valuation willingness to pay (WTP) approach to CAO users.

¹⁹⁸ Towards a sustainable and effective Community Advice Office sector in South Africa: A Cost Benefit and Qualitative Analysis, commissioned by the National Alliance for Community Advice Offices (NADCAO) and the Technical Support & Dialogue Platform (TSDP), a project of SGS Consulting.

¹⁹⁹ Retkin, Brandfield and Bacich (2007).

²⁰⁰ Sege et al. (2015).

²⁰¹ McDermott, Fisher and Gleeson (2009).

²⁰² White House Legal Aid Interagency Roundtable (2016).

the Court Workers programme was found to be flexible and responsive to the needs of indigenous people and contribute to “a more fair, just and culturally relevant treatment of indigenous people before the court by promoting alternative and restorative measures that improve outcomes for clients,” although consistency of service delivery across the courts and communities was found to be constrained by time and resource limitations.²⁰³

Finding 11. Investing in access to justice reduces violence and its associated costs

Violence is one of the key factors that aggravates the lack of access to justice and its negative consequences (Finding 3). Interventions that help the victims of violence restore their security and cope with their trauma, prevent the further use of violence and reduce recidivism are therefore also important from the standpoint of access to justice.

Legal assistance

There is a growing body of evidence that providing legal services to victims of domestic violence can reduce prevalence and the associated costs. For example, one study found that a victim’s capacity to successfully obtain a restraining order against an abusing party increased from 55% to 69% when she was supported by a legal advocate.²⁰⁴

In Canada, a recent evaluation of the legal aid system for persons facing the possibility of incarceration shows that the absence of legal aid may lead to a greater number of guilty pleas, harsher sentences, and higher costs for the justice system (as a result of more appearances and adjournments and more delays).²⁰⁵ Similarly, a study conducted for the Legal Services Society of British Columbia highlights that enhanced duty counsel services can lead to system-wide efficiency gains, such as reduced number of appearances in court.²⁰⁶ Another study also shows that representation may help preclude court congestion by reducing the number of court hearings, and enable a more efficient allocation of resources by reducing the time spent by court staff on cases.²⁰⁷

A growing number of countries are integrating legal assistance components in their programmes to support victims of crime (abuse, domestic violence, forced labour, *etc.*) in improving their health, social and employment outcomes, especially when the victims belong to vulnerable segments of the population. Legal assistance in these cases has been found to help meet victims’ short-and long-term needs in stabilising their lives (e.g., secure housing, medical assistance, public benefits, immigration relief, education, employment, and child custody orders).²⁰⁸

For example, in the area of legal-medical partnership, an evaluation of Legal Health’s Legal Assistance for Victims Program in the United States has shown the positive changes in the well-being of victims of domestic violence, sexual assault, and stalking as a result of free or low-cost civil legal and advocacy services.²⁰⁹ Among the services provided are education programmes for victims regarding their rights and ways to preserve their safety, as well as training modules for criminal justice professionals (police, prosecutors, and judges and other court personnel). Beneficiaries indicated that their living situation, their perception of safety and their financial conditions improved as a result of the support (respectively 84%, 77% and 49% of respondents).²¹⁰

²⁰³ Department of Justice Canada (2018).

²⁰⁴ Elwart et al. (2006).

²⁰⁵ <http://justice.gc.ca/eng/rp-pr/cp-pm/eval/rep-rap/2016/lap-paj/elap-epaj.html>

²⁰⁶ Legal Services Society (2012).

²⁰⁷ Eagly and Shafer (2015).

²⁰⁸ White House Legal Aid Interagency Roundtable (2016).

²⁰⁹ Institute for Law and Justice (2005).

²¹⁰ Institute for Law and Justice (2005).

Restorative approaches

Restorative processes, which can be defined as processes “whereby parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for the future”, have been observed to lead to positive outcomes in criminal justice.²¹¹ In the UK, for instance, a conferencing method applied to offenders and their victims in order to prevent re-offending has been reported to reduce re-offense rates by 14%²¹² to 18%²¹³, and arrests and convictions by 7% to 45%.²¹⁴

Restorative approaches have also been introduced in drug and mental health courts. Drug courts, which are “specifically designated to administer cases referred for judicially supervised drug treatment and rehabilitation within a jurisdiction”,²¹⁵ are generally found to have the potential to reduce recidivism and incarceration rates, and generate positive outcomes such as a reduction of alcohol or drug dependency and an improvement of community reintegration prospects. For instance, a meta-analysis of 60 drug court outcome evaluations in New Zealand showed that Alcohol and Other Drugs Councils reduced recidivism by an average of 13% in pre-adjudication and 10% in post-adjudication.²¹⁶ A study of specialised Family Treatment Drug Courts for families affected by drug addiction found that the court achieved better outcomes for mothers with drug addictions, and that mothers were more likely to attend substance abuse treatment services and to complete a treatment episode than in non-specialised courts. The study also documented a positive impact on child welfare as mothers were more likely to be reunited with their children.²¹⁷

Studies also show that since incarceration is far costlier than treatment, drug courts save money even after accounting for administrative costs. A study of the Oregon drug court in the US found that over a two-year period and a total of 440 cases, the court had achieved USD 2.5 million in criminal justice cost savings. Additional savings outside the criminal justice system (due to reductions in victimization, theft, public assistance, and medical claims) were estimated at USD 10 million.²¹⁸ Similar observations are made in numerous other studies of drug courts in European countries, Canada and the US.²¹⁹

In the long term, the effectiveness and cost efficiency of drug courts appear to depend on their capacity to establish an appropriate incentive system for offenders. A randomised controlled trial found that Baltimore’s city drug treatment court (US) relied heavily on incarceration in case of noncompliance with its sentences or expectations, to the point that treatment subjects eventually spent the same number of days behind bars as subjects who had chosen not to participate; this eliminated the short-term cost savings expected from the programme and jeopardised the willingness of offenders to participate in the longer term.²²⁰

Mental health courts, which address criminal cases involving persons with mental illness, also have a range of documented positive impacts, including decreased substance use, decreased likelihood of reoffending and fewer arrests.²²¹ A study of the Broward County Mental Health Court (US) found that in addition to substantially reduced prison sentences and the associated cost savings, the court’s action led

²¹¹ Marshall, T. (1999).

²¹² Green Paper Evidence Report: Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders, Ministry of Justice. December 2010, para 5.59; Ministry of Justice, RJU0061

²¹³ Alan Mackie *et al*, Youth Restorative Intervention Evaluation Final Report, Get the Data, 2014

²¹⁴ Strang *et al*. (2013).

²¹⁵ National Association of Drug Court Professionals, US.

²¹⁶ Meehan, Thom and Mills (2013).

²¹⁷ Courtney and Hook (2012).

²¹⁸ Carey and Finigan (2004).

²¹⁹ Department of Justice Canada (2016); Downey and Roman (2010); Gutierrez and Bourgon (2009); Koehler *et al*. (2013); Latimer, Morton-Bourgon and Chrétien (2006); Shaffer (2006); Shaffer (2011).

²²⁰ Gottfredson, Najaka and Kearley (2003).

²²¹ O’Keefe (2006); James and Glaze (2006); Cosden *et al*. (2003); McNeil and Binder (2007); Rossman *et al*. (2012).

to a decrease in self-reported acts of violence at the end of an eight-month follow-up period.²²² A study of the Brooklyn Mental Health Court showed that its clients demonstrated improvements in a number of outcome measures (although not always statistically significant), including homelessness, substance use, criminal recidivism, hospitalizations and psychosocial functioning, thus potentially leading to decreased dependence on other services such as shelters and prisons.²²³

Finding 12. Investing in access to justice is a channel towards better governance

As mentioned above (subsection II.b), enabling people to claim their rights through better access to justice is increasingly understood as an effective way of reforming the way in which justice works and enhancing the rule of law in practice. Numerous examples testify that legal empowerment initiatives have the potential to change local attitudes and power relations that generate situations of injustice, reduce the gap between formal and actual rights and even trigger institutional and legal reforms.

Tackling local situations of injustice

In Sierra Leone, community paralegal work was developed to support rural and marginalised populations by conducting legal literacy campaigns, providing legal advice and consultation to address the scarcity of lawyers and legal institutions, especially outside of the capital. A study conducted by the World Bank in 2009 found that the paralegals helped overcome the lack of access to justice by resolving disputes that would otherwise go unsettled. The interviewed clients considered that the services were accessible, helped meet their needs and empowered communities.²²⁴

A meta-study of legal empowerment and literacy initiatives (such as training on access to information or advocacy support) documented evidence on a range of positive effects, including increases in the participants' willingness and ability to act, enhanced legal knowledge, and improved access to remedy, entitlement or information.²²⁵ The reviewed studies also show that legal empowerment initiatives contribute to improved health, strengthened education and increased income, as well as more effective and transparent institutions.

Paralegals and organisations working on legal empowerment can have a key role in improving the functioning of informal justice institutions. Informal justice systems such as customary courts play a fundamental role in administering justice in low-income countries where judicial resources and legal services are limited and usually concentrated in the capital. However, in the absence of strong accountability mechanisms, these systems can also be plagued by corruption and the undue influence of local elites. As examples in Bangladesh and Sierra Leone show, paralegals and CSOs can exert a strong influence to control such abuses by empowering local nonelites (including women) and leveraging their knowledge of the formal law and justice system.²²⁶

In Liberia, a randomised controlled trial analysed the effects of a training in alternative dispute resolution dispensed to 15% of the adult population of 86 municipalities.²²⁷ The study found evidence of modified dispute resolution behaviours which resisted one year after the training: higher rates of resolution of land disputes, lower rates of violence, spill-overs to untreated residents, but also more extrajudicial punishment and more non-violent disagreements. The improvements in informal bargaining and enforcement behaviour are particularly impactful in the context of a weak state.

²²² No difference was observed in the broader category of aggressive acts, however. See Christy et al. (2005).

²²³ O'Keefe (2006).

²²⁴ Dale (2009).

²²⁵ Goodwin, and Maru (2014).

²²⁶ Golub (2014).

²²⁷ Blattman, Hartman and Blair (2013).

Closing the gap between formal and actual rights

Paralegals can also be instrumental in helping newly established rights to be implemented and enforced in democratic and post-conflict transitions. A review of paralegal work in six countries (Indonesia, Kenya, Liberia, the Philippines, Sierra Leone and South Africa) shows that paralegals have the greatest impact in situations of power imbalance (citizens vs. the state or vs. large corporations) and of systematic biases in existing justice institutions (e.g. against women's rights).²²⁸ Paralegals also help raise legal issues that individuals and communities might not raise because of cultural or awareness barriers.

Gender disparities, in particular, can persist for a long time after legislation establishing equal rights has been enacted, for instance when it comes to inheriting and owning land. Women often lack the legal capability and do not have access to enforcement mechanisms to claim and safeguard their formal rights. Community-based legal aid programs can address this gap and generate lasting benefits for women's rights. An evaluation of a one-year community-based legal aid program in the Kagera Region of north-western Tanzania observed that treatment women in smaller villages attended legal seminars and were more knowledgeable and positive regarding their legal access to land.²²⁹

Triggering legal and institutional reform

Access to justice initiatives can also pinpoint inadequacies in the legal and institutional framework and lead to important reforms.

In Botswana, for instance, women's rights groups have scrutinised the implementation of gender equality principles in the national court system for nearly three decades, and have triggered fundamental changes. In 1992, their successful challenge of discriminatory statutory citizenship laws in the Unity Dow case led to important reforms of the citizenship law, family law, and even the Constitution. In 2013, through the Mmusi vs Ramentele case, they challenged the customary law practice of favouring male heirs for contradicting constitutional principles of equality, and won again.²³⁰

Citizens' voices are most effective in strengthening and expanding rights when they are heard, encouraged and leveraged by actors within the justice system. The most promising results in generating institutional change have been achieved through strategic approaches that combine empowerment initiatives to justice sector reforms in areas such as audit and anti-corruption, information access, ombudsman offices, etc.²³¹

In India, for instance, a field experiment compared four strategies for New Delhi's slum dwellers to apply for food ration cards in the context of India's Right to Information Act (RTIA): simply filing their ration card application (control group); submitting a letter of support from a local NGO with their application; submitting their paperwork to a middleman within the office, and paying him a bribe; following the application, asking the information officer under the RTIA about its status and the average processing time in the district.²³² The results show that using rights to information under the RTIA was almost as effective as bribery. The authors attribute the effectiveness of the RTIA strategy to the concern of bureaucrats that non-compliance with the law may slow their professional advancement. They conclude that "greater transparency and voice lowers corruption even in highly hierarchical and unequal societies".

Across a large number of countries, CSOs working on legal empowerment develop such strategies of combined bottom-up and top-down action, in particular by advocating for the adoption of national justice plans addressing key justice issues at country level as part of the effort to achieve SDG 16 and the 2030 Agenda for Sustainable development.²³³

²²⁸ Maru and Gauri (2018).

²²⁹ Mueller et al. (2018).

²³⁰ Tazeen and Tanzer (2013).

²³¹ Fox (2015).

²³² Peisakhin and Pinto (2010).

²³³ Cram et al. (2017).

V. Conclusion

To build the business case, this White Paper reviewed evidence on the magnitude of limitations in access to justice in both OECD and non-OECD countries, and the costs that they impose on individuals, families and societies at large, on one hand; and on the benefits of access to justice interventions that accrue to individuals, families and societies at large on the other.

This evidence shows that the lack of access to justice – understood as the extent to which civil legal needs are left unmet by otherwise functioning justice systems – is pervasive in almost all countries; that its costs can be conservatively estimated in a range going from 0.5 to 3 % of GDP in most countries; and that the lack of access to justice has a disproportionate impact on lower income groups, recipients of public benefits and other disadvantaged individuals.

At the same time, the impact assessment literature shows that well targeted access to justice interventions can entail considerable benefits in terms of alleviated costs of legal problems, contributions to more inclusive societies, reductions in violence and its effects, and support for legal and institutional reform and better governance. The key to these benefits is to address the needs of those who are least able to vindicate their rights, first and foremost through adapted support and empowerment actions.

Further research in several areas would help fill some of the gaps left by this White Paper and consolidate the business case for investment in access to justice.

First, the analysis of in-depth national surveys can provide a wealth of information about the constraints and expectations behind individual choices, helping to better understand the realities of legal capabilities and access to justice services and further refine our understanding of unmet legal needs. In some cases, these surveys also include more detailed information about the direct and indirect costs generated by legal needs. As such in-depth surveys have only been conducted in a handful of countries, they did not provide a relevant basis of investigation to further the analysis carried out in this White Paper. Developing these instruments in new contexts in both OECD and non-OECD countries appears as a priority area of research. To address this need, the OECD is currently conducting consultations in order to develop a series of case studies based on in-depth legal needs surveys conducted in different economic, institutional and cultural contexts.

Second, high income (and in particular North American) countries are strongly over-represented in the review of the benefits of access to justice interventions proposed in this White Paper (with the exception of the benefits in terms of legal, institutional and governance reform). While some of the vast literature on this topic has necessarily escaped our attention, this also reflects the need to experiment more, evaluate more and publish more on access to justice interventions in other countries, particularly in a variety of low-income and lower middle-income countries.

Third, a related issue concerns the transferability of promising solutions to promote access to justice. While one of the key messages of this White Paper is that efficient responses to the lack of access to justice have to start from the people and their specific needs, the emergence of these responses would be facilitated by a clearer understanding of which ideas and concepts can be shared among which concepts. To date, this question has not been adequately explored in the literature.

Fourth, by focusing on the capacity of established justice systems to address the civil legal needs of populations, this White Paper did not investigate important components of the justice gap, namely contexts in which justice institutions are systematically deficient, the situations of people who are not protected by the law, e.g. because of the lack of a legal identity, and finally criminal legal needs. Extending the business case to such contexts and situations requires different tools than those mobilised in this White Paper, and constitutes an important task for future research on access to justice.

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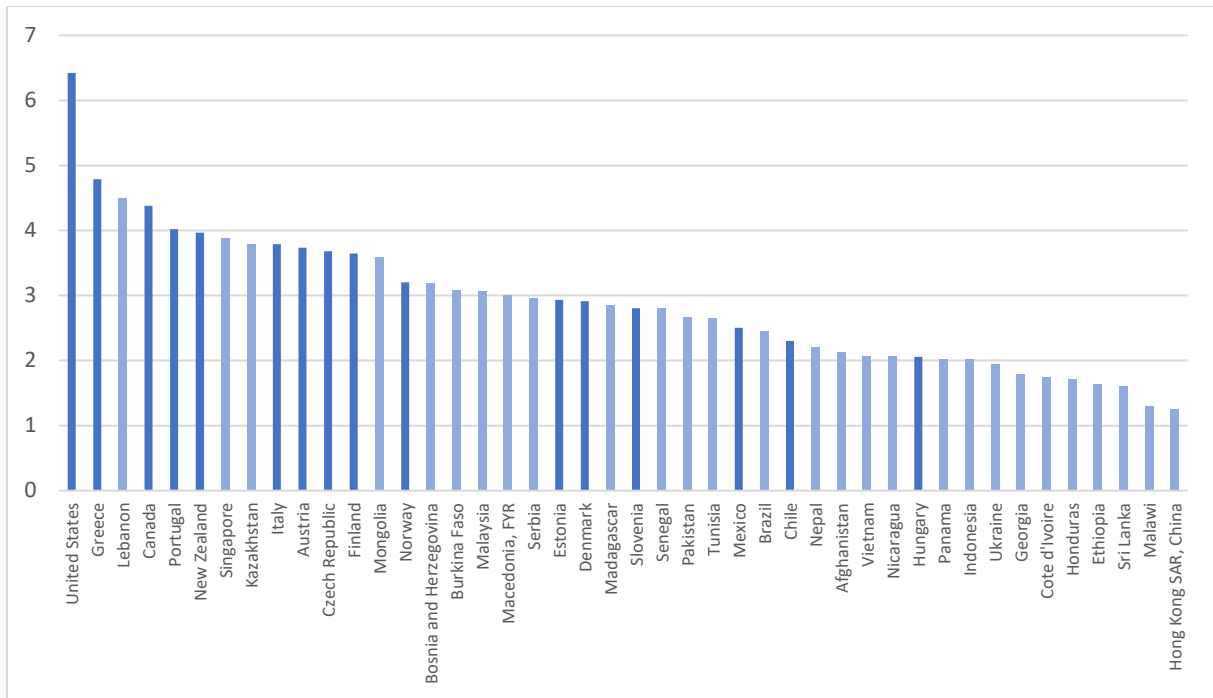
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VII. Annex

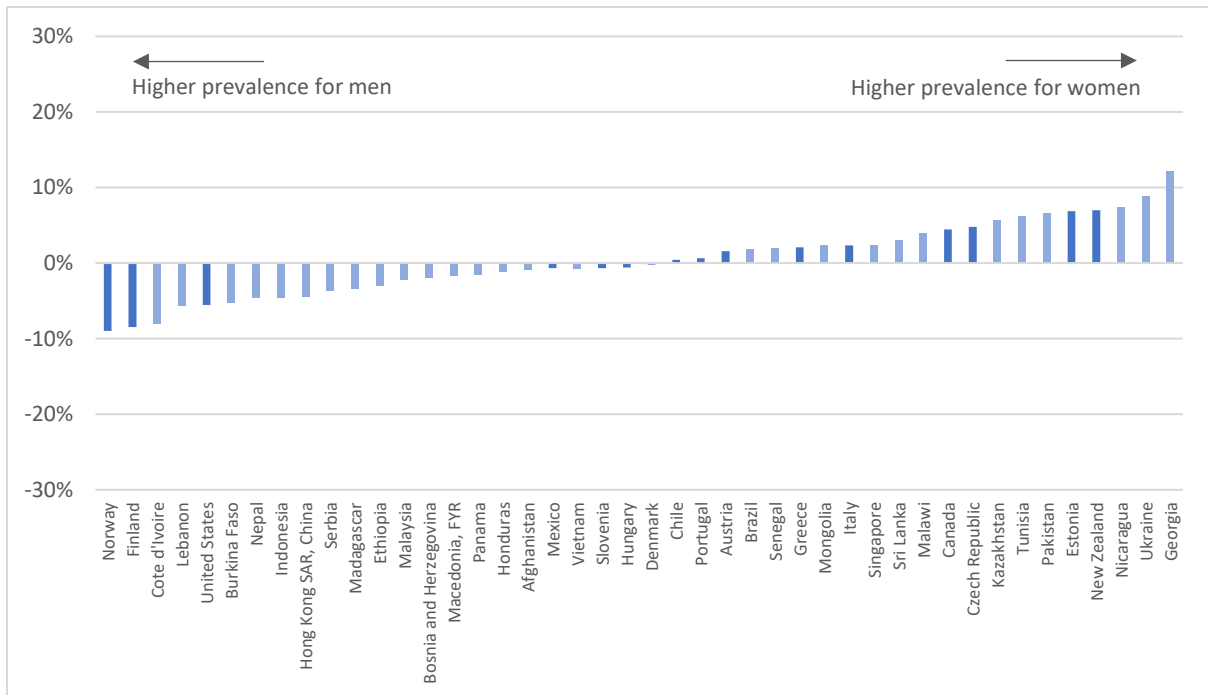
Figure 18. Average number of justiciable problems



Respondents who report at least one problem with a level of seriousness of 4 or more. OECD member countries appear in darker colours.

Source: World Justice Project, General Population Poll 2017 + calculations by the author

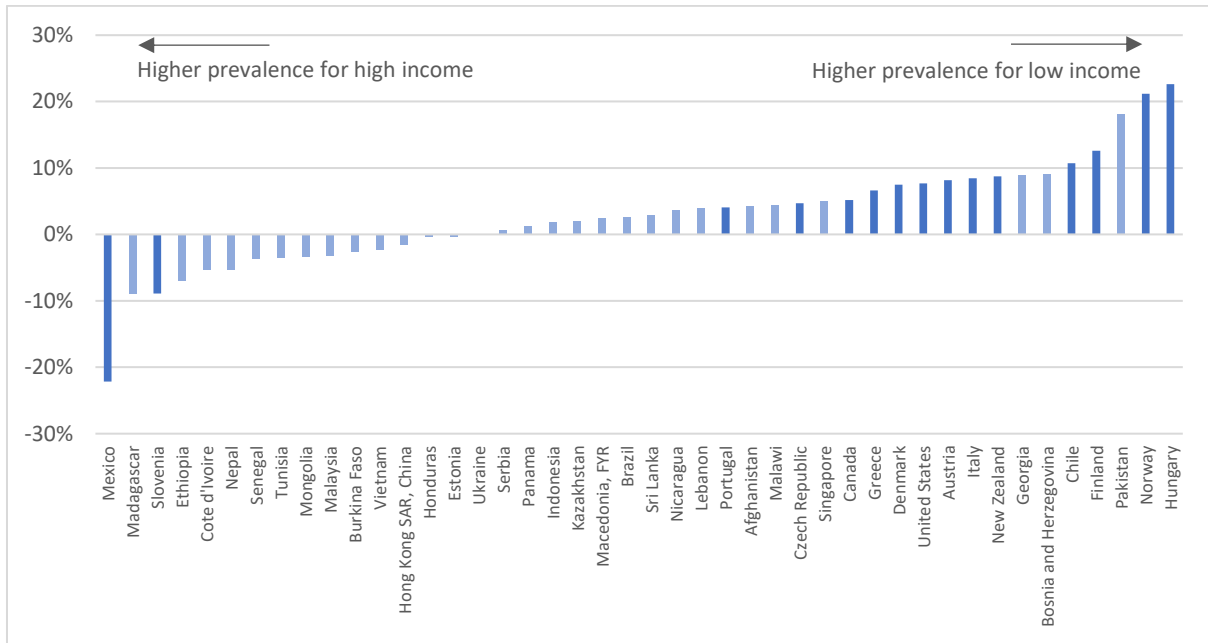
Figure 19. Differences in prevalence of justiciable problems – women vs. men



Difference between the share of women and the share of men reporting at least one problem with a level of seriousness of 4 or more. OECD member countries appear in darker colours.

Source: World Justice Project, General Population Poll 2017 + calculations by the author

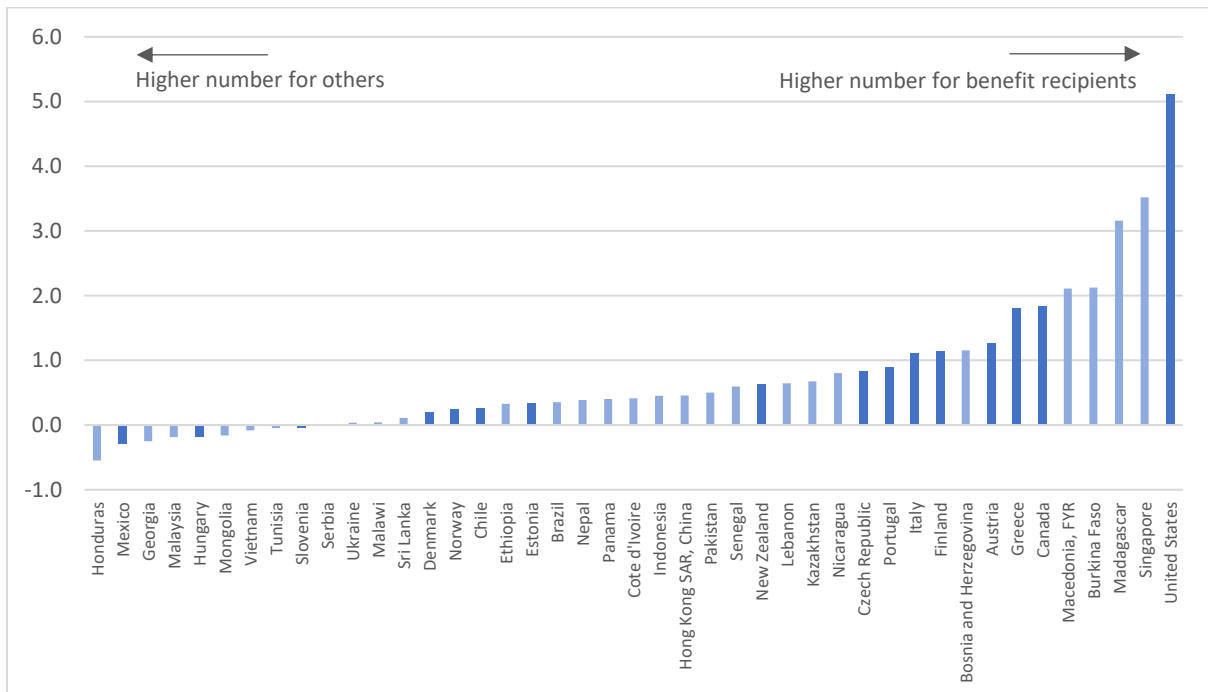
Figure 20. Differences in prevalence of justiciable problems – lower vs. higher income groups



Difference in average prevalence between respondents reporting an income level in the lower 40% of the survey's scale and those reporting an income level in the higher 40%. Limited to respondents who report at least one problem with a level of seriousness of 4 or more. OECD member countries appear in darker colours.

Source: World Justice Project, General Population Poll 2017 + calculations by the author

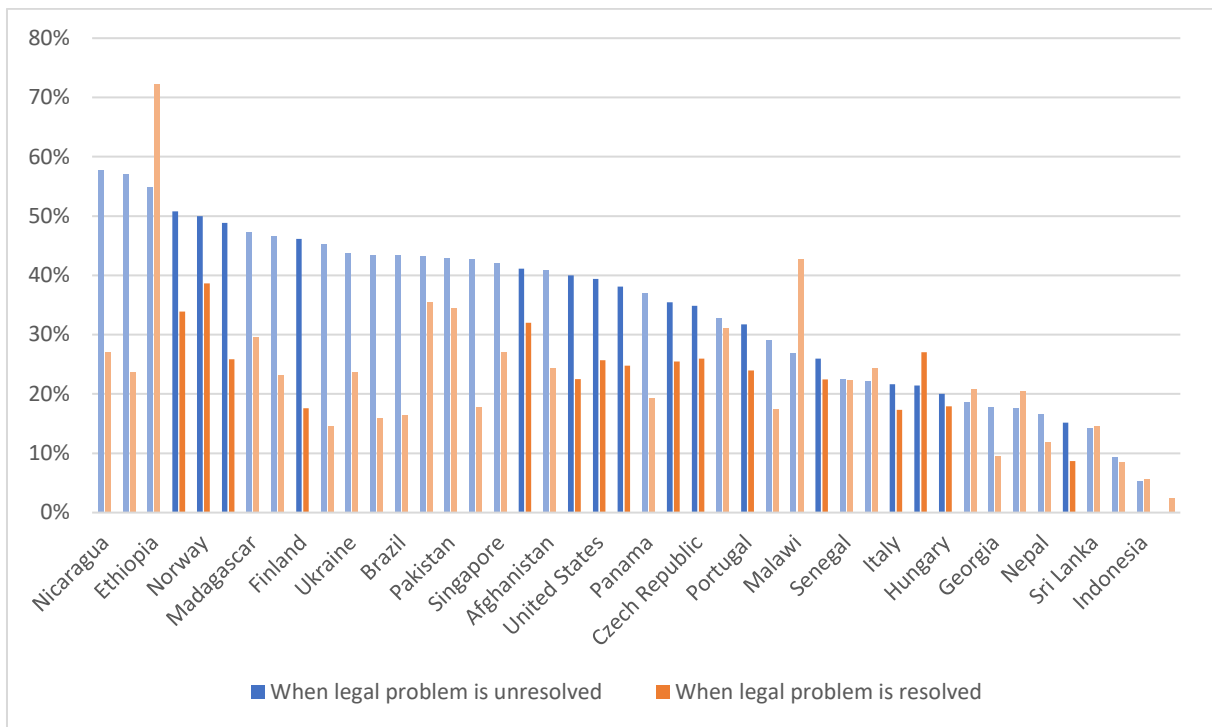
Figure 21. Differences in the average number of justiciable problems – benefit recipients vs. others



Difference in the average number of justiciable problems reported by public benefit receivers and by other respondents. Limited to respondents who report at least one problem with a level of seriousness of 4 or more. OECD member countries appear in darker colours.

Source: World Justice Project, General Population Poll 2017 + calculations by the author

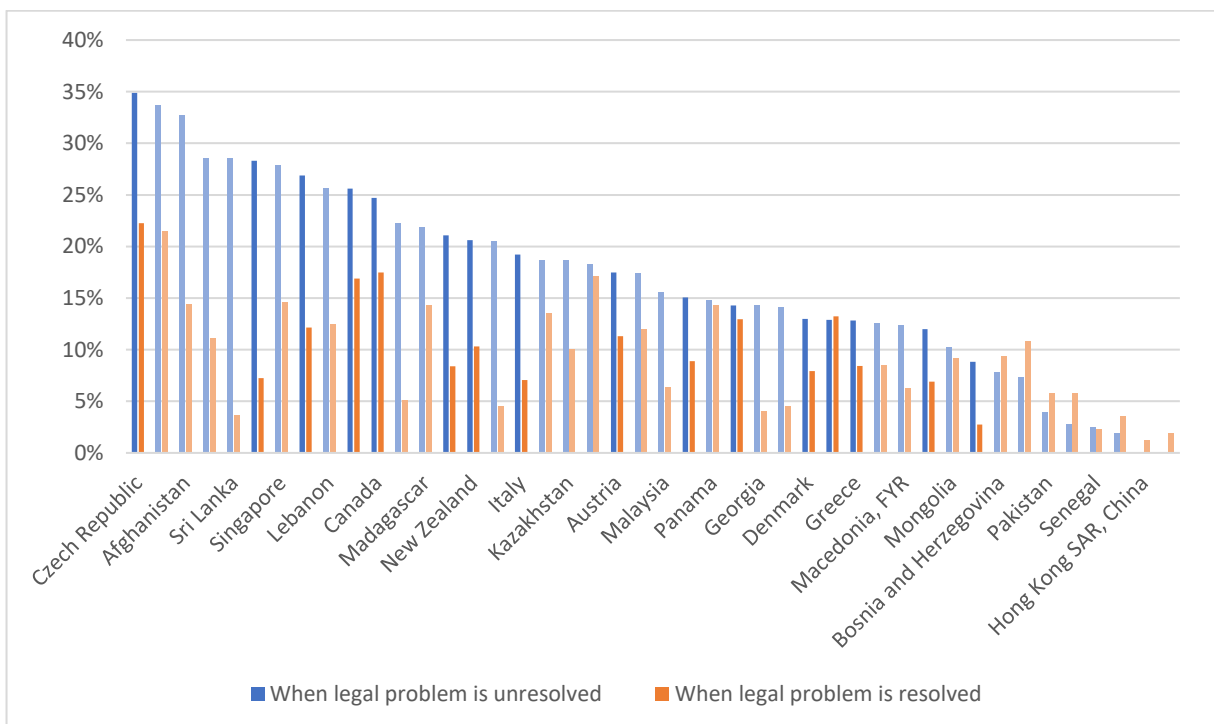
Figure 22. Share of respondents reporting illness as a consequence of a justiciable problem



OECD member countries appear in darker colours.

Source: World Justice Project, General Population Poll 2017 + calculations by the author

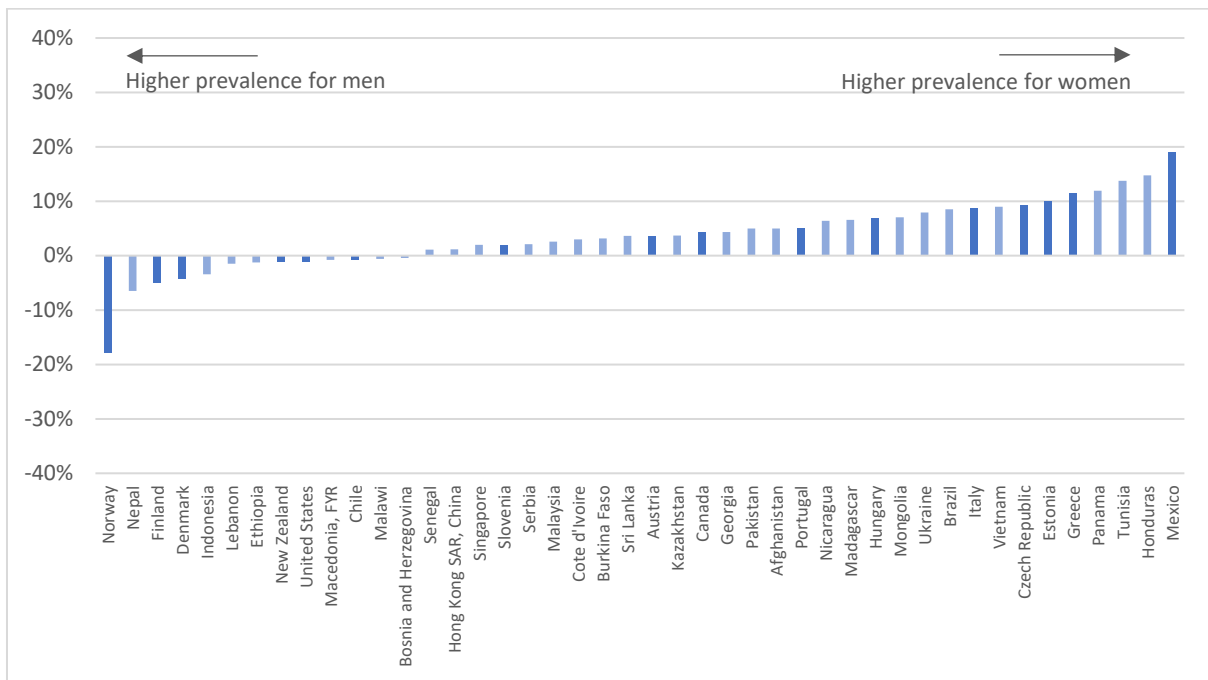
Figure 23. Share of respondents reporting a relationship breakdown as a consequence of a justiciable problem



OECD member countries appear in darker colours.

Source: World Justice Project, General Population Poll 2017 + calculations by the author

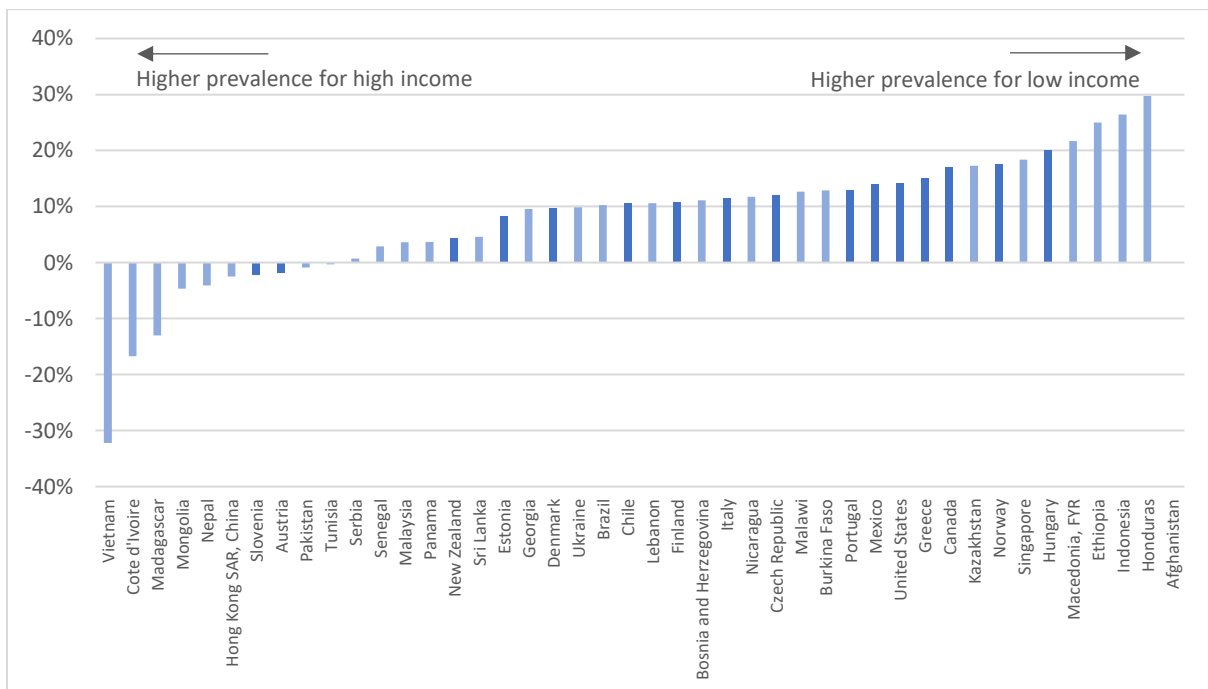
Figure 24. Differences in prevalence of illness as a consequence of a justiciable problem – Women vs. men



Difference in the percentage of female and male respondents reporting illness as a consequence of a justiciable problem. OECD member countries appear in darker colours.

Source: World Justice Project, General Population Poll 2017 + calculations by the author

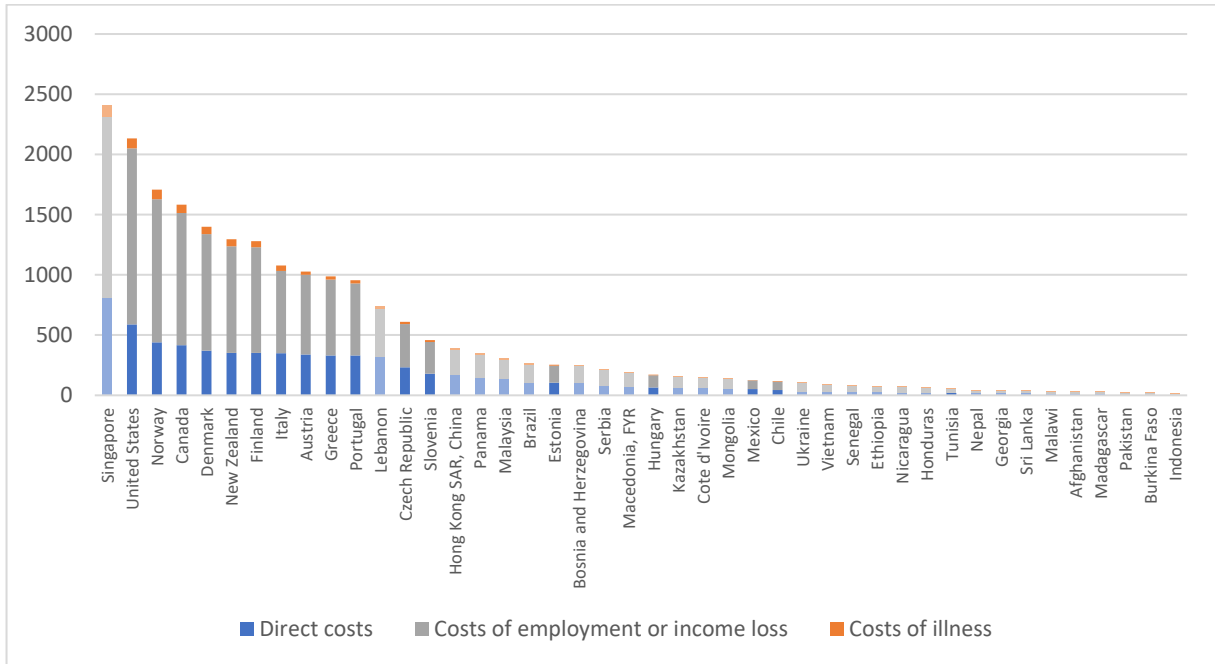
Figure 25. Differences in prevalence of illness as a consequence of a justiciable problem – Lower vs. higher income groups



Difference in the percentage of low-income and high-income respondents reporting illness as a consequence of a justiciable problem. Low income is defined as the bottom 40% of the survey's scale and high income as the top 40%. OECD member countries appear in darker colours.

Source: World Justice Project, General Population Poll 2017 + calculations by the author

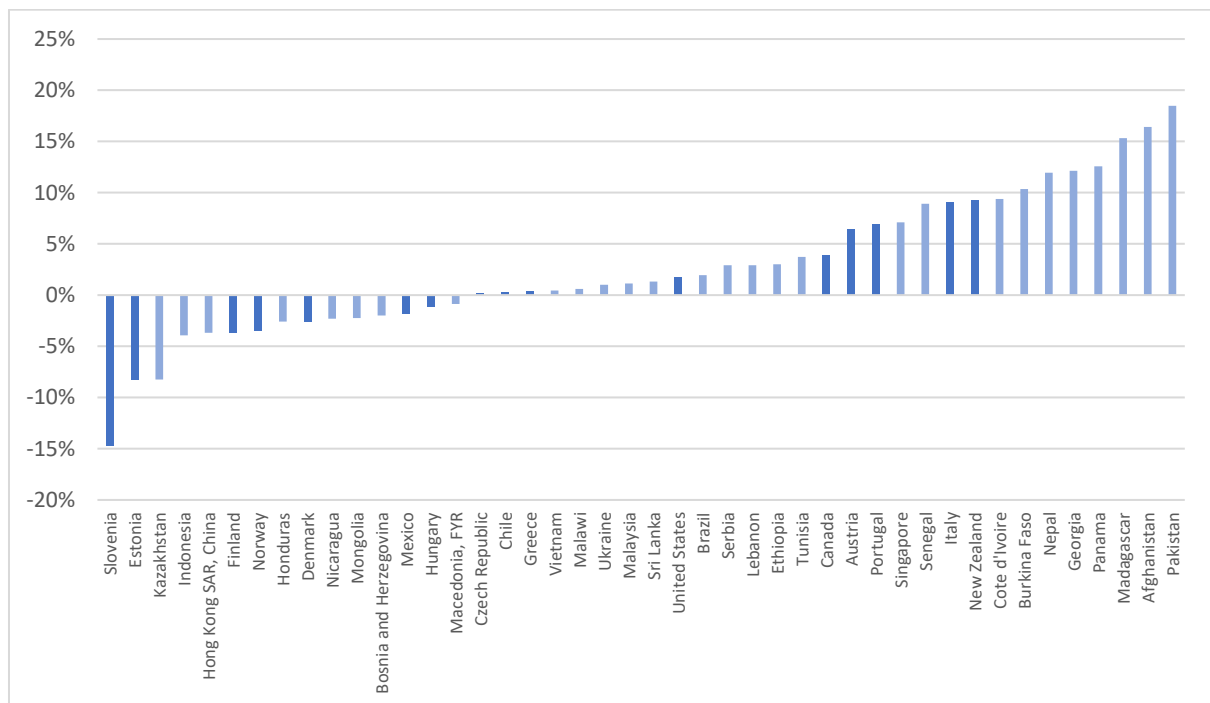
Figure 26. Average costs of legal problems per respondent in USD



OECD member countries appear in darker colours.

Source: World Justice Project, General Population Poll 2017 + calculations by the author

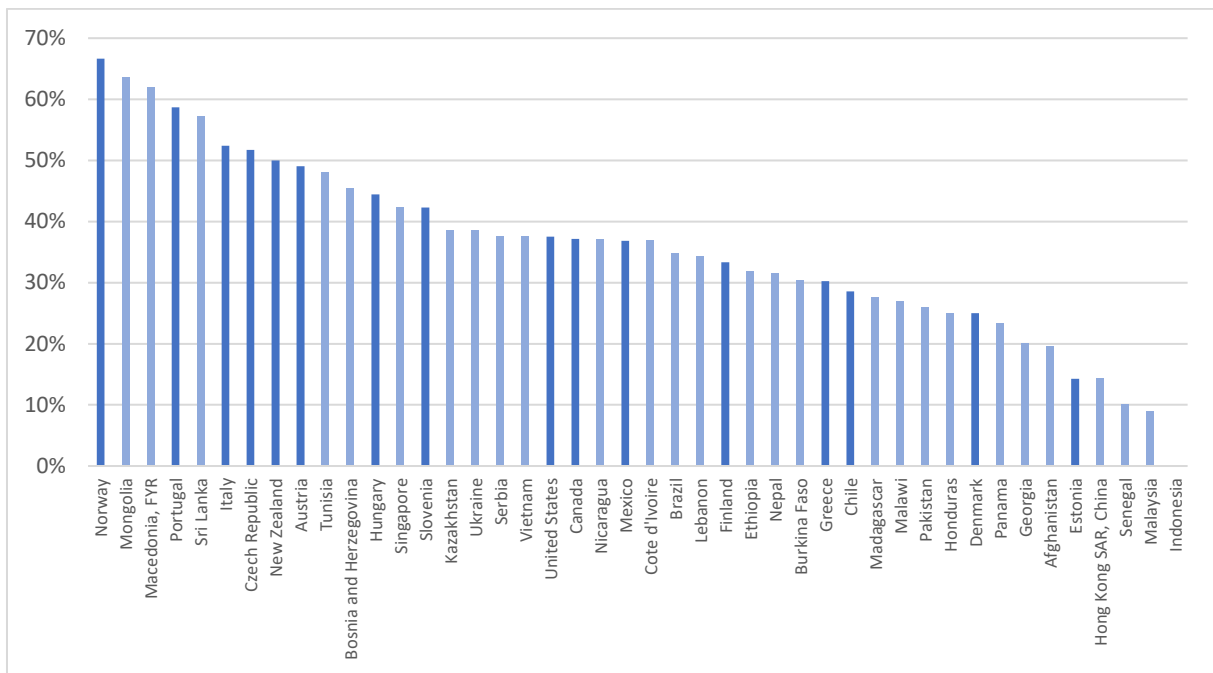
Figure 27. Differences in the share of respondents lacking legal capability – women vs. men



Difference in the percentage of female and male respondents reporting that they did not know where to obtain information and assistance to resolve their justiciable problem. OECD member countries appear in darker colours.

Source: World Justice Project, General Population Poll 2017 + calculations by the author

Figure 28. Share of settlements that are deemed unfair by the respondent



OECD member countries appear in darker colours.

Source: World Justice Project, General Population Poll 2017 + calculations by the author