

## *Overview of legal needs surveys and access to justice*

### **Inclusive development and access to justice**

Access to justice and the rule of law contribute to inclusive development in numerous ways. Effective access to justice helps, for example, to resolve employment and land disputes, promotes government accountability and allows businesses, large and small, to confidently enter into and enforce contracts. Enforcing legal entitlements and effectively and equitably resolving disputes are not just issues of law and rights; effective enforcement of legal entitlements are enablers and outcomes of inclusive development.

In September 2015, United Nations (UN) member states adopted a global development framework that recognises access to justice as both a development goal as well as an enabler of other development priorities such as health, the environment, and social development. In Sustainable Development Goal (SDG) target 16.3, member states agreed to “promote the rule of law at the national and international levels, and ensure equal access to justice for all,”<sup>1</sup> thereby highlighting the need for more effective measures of civil justice.

The addition of access to justice into the SDGs reflects an emerging consensus that access to justice is central to inclusive development.

For example, the World Bank’s 2011 *World Development Report: Conflict, Security, and Development* found that politically fragile or conflict-affected countries failed to achieve even a single Millennium Development Goal (The World Bank, 2011, p. 1). The report argued that injustice and barriers to access to justice were critical obstacles to a population and country’s overall development and stated “strengthening legitimate institutions and governance to provide citizen security, justice, and jobs is crucial to break cycles of violence” (The World Bank, 2011, p. 2). Similarly, the UN Women’s 2011 report *Progress of the World’s Women: In Pursuit of Justice* found that even with the global trend of expanding women’s rights and legal entitlements across development sectors, there was an urgent need to invest in women’s access to justice. Investing in access to justice will serve to “accelerat[e] progress on gender equality and ensur[e] that excluded women and girls are not left behind” (UN Women, 2011, p. 121). The Human Rights Council’s *Expert Mechanism on the Rights of Indigenous Peoples* declared that access to justice is “essential for the protection and promotion of all other human rights” for indigenous peoples.<sup>2</sup> The Council recommendations suggest that “family law, child protection law and civil law” are critical to address socioeconomic disadvantage.<sup>3</sup>

Problems of access to justice and inclusive development are not just limited to developing countries and fragile socio-political contexts; legal problems and disputes are pervasive in many contexts. We live in an increasingly “law-thick” world (Hadfield, 2010, p. 133), where processes of “juridification” (Habermas, 1987). have “institutionalised in civil law a large share of the routine stuff of life” (Sandefur, 2016, p. 445). Legal rights, responsibilities and protections provide frameworks for behaviour in the spheres of, for

example, consumerism, education, employment, children and families, health, housing, land, access to natural resources and welfare.

As legal entitlements and responsibilities expand, so too does the need for access to justice. Cappelletti and Garth famously argued “the possession of rights is meaningless without mechanisms for their effective vindication” (Cappelletti and Garth, 1978, p. 185). Thus, alongside this growth of national and supranational law there has arisen a great interest in whether populations have effective access to justice; both in terms of the means available to people, and obstacles they face in seeking to resolve “justiciable” problems (i.e. problems raising legal issues, whether or not these are recognised as such by individuals facing them, and whether or not action taken to deal with them involves lawyers or legal process) (Genn, 1999, p. 12).<sup>4</sup>

In 2008, the United Nations Commission on Legal Empowerment of the Poor estimated that four billion people live outside the protection of the law, and that “the majority of humanity is on the outside looking in [...] on the law’s protection” (UN Commission on Legal Empowerment of the Poor, 2008, p. 3). In the face of these challenges, the United Nations Development Programme (UNDP) argues that access to justice is “a basic human right as well as an indispensable means to combat poverty, prevent and resolve conflicts” (United Nations Development Programme, 2004, p. 3). The Organisation for Economic Cooperation and Development (OECD) speaks of the inability of significant proportions of the population to resolve appropriately disputes and problems, which “diminishes access to economic opportunity, reinforces the poverty trap, and undermines human potential and inclusive growth” (OECD, 2016, p. 1). According to the OECD:

*“Many legal and justice services remain fragmented, uncoordinated, underdeveloped thus limiting justice sector productivity, sustainability and value for money.” (OECD, 2016, p. 1)*

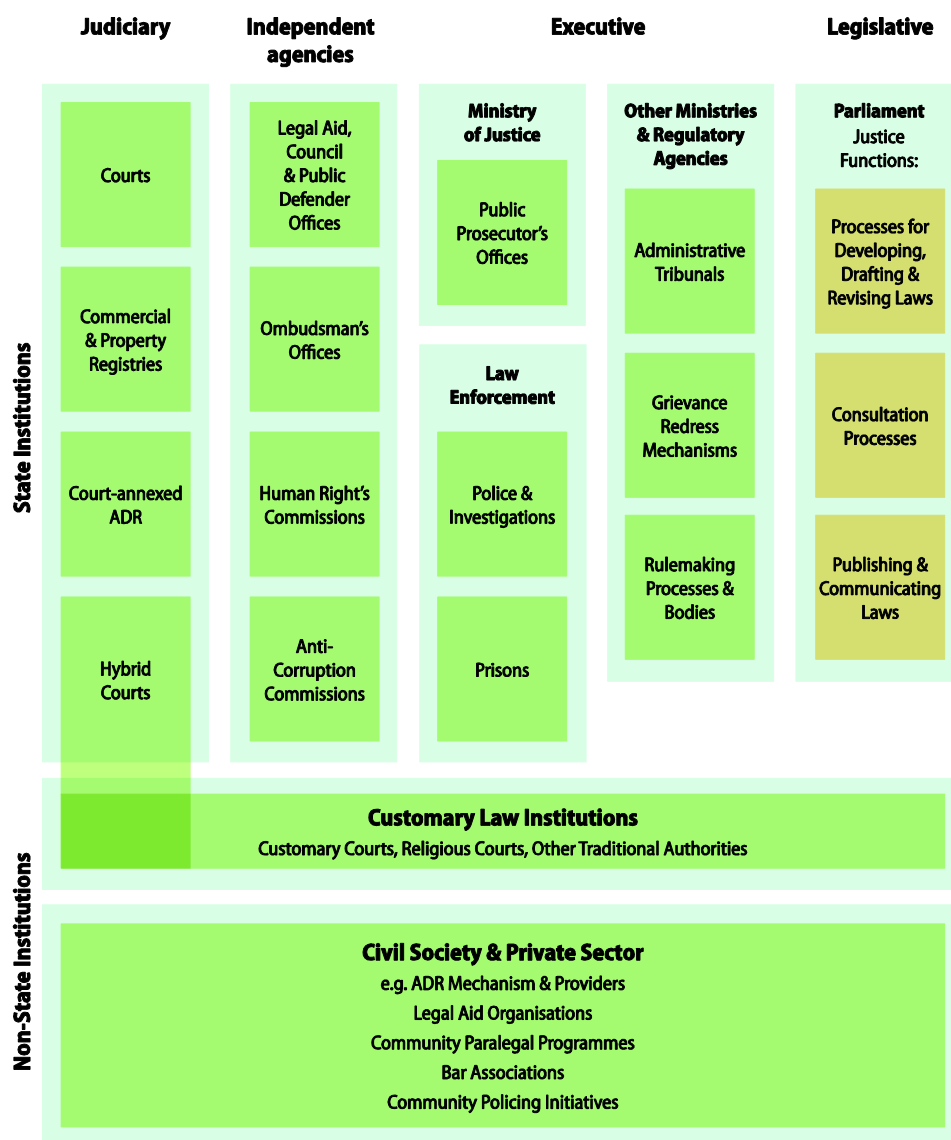
As attention to access to justice has increased, those responsible for planning and budgeting have focused primarily on criminal justice processes. Although the SDGs adopt a broad articulation of the linkages between access to justice and development, the global indicators selected to measure progress are restricted to criminal justice. These indicators measure access to justice through the reduction of “unsentenced detainees as proportion of overall prison population”<sup>5</sup> and increases in the “proportion of victims of violence in the previous 12 months who reported their victimisation to competent authorities or other officially recognised conflict resolution mechanisms.”<sup>6</sup>

When civil legal issues are explored in planning and budgeting, it is primarily through a focus on administrative data, such as total numbers of cases and time required to resolve particular legal issues. Such administrative data generated in courts and justice sector institutions provides a narrow perspective of access to justice. People and organisations seek justice from a range of judicial, legislative, executive, customary and civil society organisations (Figure 1). Yet, current national and global measures privilege administrative data within the court system.

This is beginning to shift. Numerous countries have begun to bring broader planning for access to justice into their development and strategic plans. In Colombia, the Department of National Planning has developed an access to justice index (*Índice de Acceso Efectivo a la Justicia*), making it another element of inclusive development.<sup>7</sup> In South Africa, Statistics South Africa has adapted their victims of crime survey into a broader Governance, Peace, Security and Justice Survey that aims to improve understanding of the scope of legal needs, sources of information and advice and strategies that people rely

on to resolve them. In 2017, the Inter-Agency and Expert Group (IAEG), the UN-body responsible for developing global indicators to measure progress towards the SDGs, recognised a global need to supplement criminal indicators with an indicator focused on “access to civil justice”.<sup>8</sup>

Figure 1. Components of justice system



Source: Adapted from World Bank (2012).

Legal needs surveys are a critical way for planners, policymakers and advocates to understand meaningful progress towards access to justice. In the same way that victimisation surveys promote understanding of crime and violence from the perspective of people as opposed to institutions,<sup>9</sup> legal needs surveys reveal the frequency and diversity of legal problems, as well as the range of official and unofficial institutions

people use to seek resolution. Such surveys cut across and go beyond the plethora of government and other administrative data, to provide a multidimensional picture of the ways in which access to justice can be secured, and so help to improve development outcomes.

This Guide offers a strategy and methodological framework for justice and development policymakers to understand progress towards greater access to justice.

## Purpose of this document

This document seeks to assist planners, statisticians, policymakers and advocates to develop, administer and use legal needs surveys in more effective ways. Such surveys are designed differently in different jurisdictions, but there are common methodological elements which can be articulated and refined. At their core, legal needs surveys address shared research questions concerning peoples' experience of justiciable problems, the support they obtain, the processes that are involved in resolving problems, and problem outcomes. This Guide builds upon the lessons and experience in the use of legal needs surveys over the past 25 years to propose effective strategies for measuring access to justice at local, national and global levels. It discusses common pitfalls, key lessons, and effective practice in implementation. The Guide answers common questions in developing, deploying and using legal needs surveys:

1. What are the essential elements of legal needs survey methodologies?
2. How should justiciable problems be defined, and what problems should surveys include?
3. What period of time should surveys cover?
4. How can we capture the types of legal and social support that people do (or do not) seek and receive?
5. How can the processes and institutions involved in resolving problems be best identified?
6. What forms of outcome and impact associated with legal issues should be measured?
7. Are there common elements that can be used in surveys across jurisdictions and in different contexts?
8. How can surveys contribute to create indicators to measure progress on access to justice?

In seeking to answer these questions, the Guide sets out a framework for the conceptualisation, implementation and analysis of legal needs surveys. The time available to explore questions varies considerably between surveys and contexts; so, this document approaches issues in a modular way, providing guidance that could be incorporated into different types of surveys.

This Guide does not seek to prescribe a template for measuring access to justice. A narrow template approach would constrain assessments, which should be “tailor[ed ...] to the specific contexts of each country, the diversity of needs and uniqueness of each individual case” (United Nations Development Programme, 2012, p. 2, p. 9). However, legal needs surveys are a distinct form of access to justice assessment, grounded in a very particular approach and set of concepts that will benefit from greater collaboration and

consistency. While unique approaches and survey questions will be necessary in relation to unique research questions, there are good reasons for fostering greater coherence in relation to shared legal needs research questions. Many surveys continue to ignore and overlook important lessons learned from the last 25 years of experience, and the methodological framework offered by this document will help improve the quality and replicability of legal needs surveys.

In addition to supporting local and national planners, statisticians, policymakers and advocates, this Guide seeks to contribute to global discourse on measuring access to justice. As noted previously, the IAEG is committed to developing broader global indicators on “access to civil justice”, and legal needs surveys can be a powerful tool for meaningful measurement. Similarly, the UN Statistical Commission’s Praia City Group on Governance Statistics is evaluating the status of global governance statistics, and legal needs surveys will be an important source of data for access to justice.

### Structure of this document

Chapter 1 defines access to justice and legal needs, and then explores the nature, history, purpose, limitations and impact of legal needs surveys. In doing this, Chapter 1 describes how legal needs surveys are a unique and essential tool for understanding access to justice, reviews the general scope of surveys, and illustrates how legal needs surveys have shaped policy to improve outcomes.

Chapter 2 establishes a methodological and conceptual framework for the conduct of legal needs surveys, and offers illustrative taxonomies of legal problems, sources of help and dispute resolution processes with multiple levels of detail. Chapter 2 also addresses how surveys can be used to measure legal needs.

Chapter 3 provides a series of models containing core questions, along with explanations of their form. It then situates these model questions within an illustrative short-form questionnaire, explaining its contents and format.

Chapter 4 describes how the methodologies of legal needs surveys can contribute to indicators of access to justice, including their use in the SDG framework.

Annexes provide an annotated summary of model survey questions, an illustrative long-form questionnaire, expanding upon the short-form questionnaire in Chapter 3, and a list of topics addressed by legal needs surveys conducted in the past 25 years.

## Notes

<sup>1</sup> Target 16.3, as detailed in Resolution 70/1 of the UN General Assembly, 25 September 2015, entitled “Transforming our World: The 2030 Agenda for Sustainable Development”.

<sup>2</sup> United Nations A/HRC/24/50, “Access to justice in the promotion and protection of the rights of indigenous peoples: Study by the Expert Mechanism on the Rights of Indigenous Peoples” (2013), Para 3, available at <http://undocs.org/A/HRC/24/50>.

<sup>3</sup> United Nations A/HRC/24/50, Access to justice in the promotion and protection of the rights of indigenous peoples: Study by the Expert Mechanism on the Rights of Indigenous Peoples (2013), Annex. Expert Mechanism advice No. 5 (2013), available at <http://undocs.org/A/HRC/24/50> notes that: “Historical injustices contribute to multiple contemporary disadvantages for indigenous peoples, which in turn increase the likelihood of indigenous peoples coming into contact with the justice system. The relationship of indigenous peoples with domestic criminal justice systems cannot, therefore, be considered in isolation from historical factors or the current economic, social and cultural status of indigenous peoples. Moreover, there are other areas of law, including family law, child protection law and civil law that have an impact on this relationship. Solutions include not only reforms to criminal justice systems themselves but also measures addressing the socioeconomic situation of indigenous peoples and all human rights of indigenous peoples which are interrelated, interdependent and indivisible”.

<sup>4</sup> Genn’s definition reflects her focus on the United Kingdom’s national legal framework. In a global context, a definition of “justiciable” problems might include explicit reference to issues of international law and situate the definition, as with access to justice, in a broader context of international human rights law. See also n. 25 below.

<sup>5</sup> SDG 16.3.2 available at <https://unstats.un.org/sdgs/indicators/indicators-list/>.

<sup>6</sup> SDG 16.3.1 available at <https://unstats.un.org/sdgs/indicators/indicators-list/>.

<sup>7</sup> See Colombia’s Department of National Planning:

<http://dnpsig.maps.arcgis.com/apps/Cascade/index.html?appid=b92a7ab2fe6f4a06a6aec88581d6873e>.

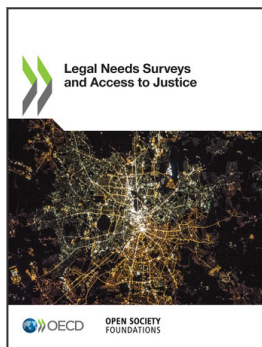
<sup>8</sup> See Report of the Inter-agency and Expert Group on Sustainable Development Goal Indicators, E/CN.3/2017/2 (2016) annex V available at <https://unstats.un.org/unsd/statcom/48th-session/documents/2017-2-IAEG-SDGs-E.pdf>.

<sup>9</sup> The UNODC-UNECE Manual on Victimization Surveys (2009) available at:

[https://www.unodc.org/documents/data-and-analysis/Crime-statistics/Manual\\_on\\_Victimization\\_surveys\\_2009\\_web.pdf](https://www.unodc.org/documents/data-and-analysis/Crime-statistics/Manual_on_Victimization_surveys_2009_web.pdf).

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