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Priorities for the Justice System: Responding to the Most Urgent Legal Problems of Individuals

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Abstract

At some points in their lives, people experience legal problems that induce justice needs: they need protection by outside norms or interventions that structure the conduct of other persons. In this paper, we attempt to identify the most prevalent and urgent legal problems of individuals.

We start with an intuitive list of twelve categories of legal problems that frequently occur in the law and development literature and in access to justice research. Then we use six approaches, each with their own strengths and blind spots, that give indications of the frequency and urgency of these legal problems: (1) information regarding the frequency of the problems from legal needs surveys conducted in eight countries; (2) data from these surveys about the typical impact of these problems on people's lives; (3) court specializations in sixteen countries; (4) estimates of the value of the interests that individuals wish to protect against threats from outsiders; (5) estimates of the typical costs of self-protection; and (6) estimates of the typical size of specific investments that a person will lose if he leaves the threatening situation. These approaches (not representing a rigorous empirical methodology) give some guidance for the process of setting priorities in justice systems that aim to be responsive to these needs.

We discuss the policy implications for governments, donors in the area of law and development, and private suppliers of norms and interventions. In particular we speculate about the types of norms that may be an answer to the categories of legal problems, the types of interventions that may fit these legal problems, the possible consequences for specialization of court and other legal services, as well as the capacity that may be needed to deal with each category of legal problems. Our exploration of urgent legal problems and the most effective ways to meet justice needs suggests that there are many gaps between the type of protection that individuals need, and what legal systems are able to deliver.

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I. INTRODUCTION

A. *Rule of Law and Access to Justice: Setting Priorities*

The rule of law and access to justice are a matter of principle, but they can also be seen as scarce goods that have to be supplied to the people who need them. Insofar as the market is not able to supply law and justice, state intervention will be necessary. Government resources are likely to be limited, however. So priorities have to be set. In this paper, we take the perspective of the beneficiaries of rule of law and access to justice: what are their most important legal problems likely to be?

The rule of law is generally seen as a set of objectives regarding government. It includes principles such as that governmental authority is exercised only in accordance with written, publicly disclosed laws and enforced in accordance with established procedure. Other elements of the rule of law are separation of powers, legal certainty, legitimate expectation and equality of all before the law. Establishing and delivering the rule of law is notoriously difficult, however (Samuels 2006, Carothers 2006). Parliaments, elections, courts, the police and legal services have to be set up, ran and monitored. Such institutions are costly and difficult to run. Efficiency is hard to achieve. They may be exposed to corruption.

Making the rule of law operational for every citizen, by granting him effective access to justice, is even more troublesome. In the words of the Commission for Legal Empowerment of the Poor, hosted by the United Nations Development Programme (UNDP), legal protection and the economic opportunity connected to it are often “the privilege of the few” and “not the right of all.” Even in developed economies, access to justice is difficult to achieve for at least some groups in some situations, as legal needs surveys tend to show (ABA 1994, Genn 1999, Genn & Paterson 2001, Van Velthoven & Ter Voert 2004, Pleasence et al. 2004, Coumarelos et al. 2006).

Developing economies, with their very limited funds for governance, will have to decide how much they spend on which institutions. This is especially true for post conflict situations, where institutions have broken down, and swift decisions have to be made regarding the most urgent institutional needs. Developed economies have to make similar judgments, for instance when they decide to subsidize the legal system in order to deal with certain problems. Such subsidies are common and come in various ways: legal aid, free mediation, funding of adjudication that is not paid for by the parties via court fees, and granting permits or documents for fees lower than the cost price of providing that service. Many countries, for instance, spend up to 80% of their legal aid funds on defending suspects in the criminal justice system.

In this article, we assume that the most pressing legal needs of citizens are among the criteria that should guide these choices. This “demand-oriented” or “empowerment” perspective is one of the main trends in the recent literature on rule of law and access to justice efforts (Golub 2003, Samuels 2006, Carothers 2006). Too many programs, this literature tells us, try to build up legislation, police departments, courts, or legal aid offices, sometimes in a western style. The focus should be more on what these institutions will accomplish for the population. Moreover, there is an increasing call for making the justice system more accountable, to justify investments in it, and to monitor the results of investment programs. Attempts have been undertaken to develop indicators for the performance of formal procedures and other “paths to justice” (Barendrecht et al. 2006), as well as for legal systems in general (Vera Institute 2003, ABA 2007).

The demand oriented approach assumes that we can somehow establish which tools and processes are most important for the beneficiaries of the legal system. However, there is hardly any agreement as yet on the ways in which the legal system contributes to human development, to economic growth, or to well-being more in general. Legal needs have been

surveyed in some countries, but we do not know of any attempt to systematically establish which norms or possibilities of interventions citizens need, and in what order of urgency.

So, which items should be on the list of most important legal problems and what can we say about their relative urgency?

B. Approach

In order to explore this issue, we depart from a preliminary, intuitive list of legal problems of individuals. We then apply six approaches from the many possible ways to establish legal problems and the justice needs connected to them.

Methods to identify needs in the area of law and justice are likely to be similar to the ones that psychologists use when they identify basic human needs, or to the questions that marketing people ask when they look for new ways to satisfy preferences of potential customers. The psychological literature on basic human needs suggests various possible methods to answer this type of questions, each with their own problems and limitations (Mooke 1997, 13; Reeve 2005, 8). The literature regarding legal problems and justice needs has followed in these steps, using some of these approaches.

- Ask people what they need is the first option. Unfortunately, most people do not have a clear picture of all their needs and preferences, so this approach is not often applied in its purest form in order to determine basic psychological needs (Reeve 2005, 9). Similarly, most people have other things to think about than their latent needs for outside help to protect them. They have to be helped identifying these needs, so it is not surprising that legal problems and justice needs have not been classified yet – at least not that we know of – by just questioning people what type of rules or interventions they need most.
- Needs, and human motivation more in general, can be traced back to the physical processes in the brain, and sometimes even be located in specific parts of the brain (Reeve 2005, 9). We seem to be rather far, however, from finding evidence of desires for concrete forms of protection against other people in the nervous system of humans.
- Observe their behavior. In what situations do they take action? What are the apparent aims of these actions? What is their willingness to pay or do things for reaching those aims? (Reeve 2005, 8). Psychologists have delivered a considerable body of empirical research regarding human needs, both from experimental set ups and from observing or surveying real life situations. Experimental research, where people have to react to situations and may show behavior from which legal needs can be inferred, has not yet been done, at least not to our knowledge. Legal needs research mostly consists of surveys regarding experiences with real life problems. This is information we will use. One of our six approaches is to look at surveys regarding the frequency of legal problems that people experience (1). Some legal needs surveys also attempt to establish how severe the impact of these problems is on people's lives (2).
- Look at the supply side. This is not a common line of attack in psychological research, but economists use it: they infer preferences from services or goods that meet these preferences. Similarly, if access to justice is actually provided for certain situations, this may be an answer to a legal need. The problem is, however, that there are countless procedures and paths to justice on offer. Which of those meet the most urgent legal problems and justice needs remains uncertain. Nonetheless, as we will show, the setting up of specialized courts may be an indication of a category of urgent legal problems (3).
- Theorize about needs. A theoretical explanation for a need is sometimes possible. It is not so difficult to explain the need for food and water by referring to the processes that make the human body work. A need for protection by the police can be explained by reference to the basic human need for security, and back to the impulses to stay free

from pain, or to avoid stress that psychologists have identified. Allocating property rights and protecting them, say economists, stimulates investments. We can also look more closely to what happens in relationships, for instance with the help of social psychology. For legal problems and justice needs, we may have to consider why one party is exploited, or hurt by the other party. In those situations, needs may be assumed. Coumarelos et al. propose that the concept of legal needs should be examined within the broader psychosocial context (Coumarelos et al. 2006, see also Baker & Barrow 2006). In this article, we develop three theoretical perspectives based on 4) the value of interest at stake in situations with a need for outside protection, (5) the costs of self-protection in such a situation, and (6) the costs of leaving that situation.

The six approaches are discussed in detail in Section II. For each approach we first explain the method we use. Then we compare the resulting indications of legal problems (and their importance) with the categories on the initial list. Finally we explain the limitations of each approach. The six approaches all have serious flaws, and are incomplete in many respects. At this stage we cannot present a rigorous methodology for measuring the urgency of legal needs. With the data we found to be available, or that could be made available against reasonable costs, that is beyond our capacities. For instance, we have far more survey data about legal systems in developed economies, and about systems with a Western culture, than about the way individuals in developing economies experience legal problems. Together, however, we feel these six approaches give a more informed impression of what legal systems can accomplish for people, than more intuitive ways to establish this.

In Section III, the resulting indications regarding the relative importance of legal problems are discussed for each category on the initial list. In this section, we also discuss the policy implications. In particular, we speculate about the types of norms that may be an answer to the categories of legal problems, the types of interventions that may fit legal problems, the possible consequences for specialization of court and other legal services, as well as the capacity that may be needed to serve each category of legal problems. Section IV contains general conclusions. It discusses the universality of legal problems, summarizes the policy implications, and the possibilities for improving it the analysis.

C. Legal Problems and Justice Needs

We define a legal problem as ‘a situation in which a person may develop a need of a person for protection by outside norms or interventions that structure the conduct of another person that he may encounter or has a relationship with (justice need).’ We focus on the legal problems of individuals, who may have experience such problems in relationships with other individuals, with corporations, and with government agents. The legal system – conceived broadly and encompassing the formal legal system, informal justice systems, and other social structures and processes – may help to protect them against actions of other people that harm them (prevention) or may enable them to receive from others what they are entitled to (compensation, licenses, documents, restorative justice, or other remedies).

The most important means by which the legal system achieves this are norms and interventions. Promulgating legal norms may bring order into relationships, and the same can be achieved by social norms. However, many issues that come up in relationships with others cannot be decided by a straightforward application of norms. Moreover, some people will not observe norms voluntarily. In both situations, interventions by officials, police, judges, and other neutrals may become necessary.

As is clear from the preceding analysis, the concept of a legal problem is problematic, because law is not the only way of protecting people. The legal system competes with other ordering mechanisms. Much ordering is accomplished by the desire to keep up a good reputation, and by fear of retaliation (reciprocity). Formal rules exist next to informal, social norms. Interventions by neutral state officials can be unnecessary, because peers become involved, or because disputants are pressed to find their way to village elders. The existence of these private ordering mechanisms can even be threatened by ordering through formal legal systems.

In this paper, we avoid this issue of competition with other ordering mechanisms. We just aim to identify the situations in which individuals need external ordering of their relationships. Whether the norms, interventions, or other ordering mechanisms should preferably come from the state or from other third parties is something we do not deal with.

Legal problems vary from person to person and from setting to setting. In order to determine priorities, however, governments, donors sponsoring rule of law and access to justice programs, and legal professionals may want to determine which problems are most urgent for most people. We therefore try to establish the legal problems of people with a median household income. In many countries, the income distribution is so skewed that people with a median household income live in circumstances that are very similar to the living conditions of persons with a relatively low income. Legal needs studies, however, show that the legal problems of the poorest 10 to 20% of the population may be different in some respects (Currie 2007). Where we find evidence of differences in legal problems of citizens with a median income and the issues that are important to the poor, we will report this explicitly, in particular in Section III of this paper.

This paper discusses the legal problems and justice needs of individuals, in a broad sense. We have also looked at their needs as owners or participants in small to medium sized enterprises (SME's). The legal problems and justice needs of large corporations are not included in our analysis.

In this paper, we assume that legal problems are similar in different cultures and in different stages of development. There are likely to be enormous differences, however. In some countries, like our own, scarcity of water is not a source of conflict and thus interventions in water conflicts are not an urgent legal problem. For other countries this will be a priority. The conflict of interest between parents/employers and children regarding child labor has been an issue in Western Europe during the second half of the nineteenth century, but this justice need has been fulfilled during the twentieth century so protection of children against child labor is not urgent anymore. Still we depart from the assumption that legal problems are uniform over the world, because our approaches depend on comparing data from a number of jurisdictions and discovering general patterns in these data. In Section IV we will come back to this issue and discuss whether this assumption of uniform legal problems makes any sense at all.

D. Preliminary List of Legal Problems

Table 1 shows a preliminary list of legal problems of individuals in which a need arises for outside norms or intervention in their relationships to others. For placement on this initial list, we formulated three conditions.

First, we imagined legal problems as they are likely to present themselves for a person demanding access to justice. The problem had to represent an interest of sufficient importance to warrant the cost and effort of invoking the intervention of a third party. This condition stands for our desire to identify the demand for justice, not the supply of it. Thus, we were not satisfied with suggestions for legal problems formulated in the form of broad categories of law such as enforcement of contract, tort law, or protection against unfair treatment by government. We required at least some indication of the type of non-legal interests that those rights would cover. Of course we do not imply that a general strategy of enforcing contracts or protection against torts is not useful. It is just not helpful if we want to identify priorities.

Secondly, the legal problem should be sufficiently general. Large groups of citizens, if not the majority, should feel the accompanying justice need at some moment in their lifetime, and with a sufficient degree of urgency. We even tried to take a universal point of view and looked for legal problems that may be present across cultures, continents, and stages of development.

The third restriction is that we excluded the needs for particular types of decision-making procedures. Once citizens have a need for third party intervention, they are also likely to want

the intervention to be fair. Moreover, they are likely to want “voice” in the procedures they need in which neutrals decide on their problems with other people. Needs for democratic participation, and for procedural justice in situations where an authority can impose decisions are not included in the present analysis, however. We focus on situations that create a need for interventions, not on the need for a particular way of intervening.

There were other issues we had to consider. An important one was whether some problem can qualify as a legal problem if there is serious discussion about the desirability of protecting these interests through the legal system. Employment protection legislation is an example. Too restrictive rules for dismissal, too complicated procedures, or too high levels of severance pay can have undesirable effects on the functioning of labor markets. From our perspective of employees demanding access to the legal system in order to protect their interests, however, this is surely an important legal problem. We treat the level of employment protection legislation as a matter of the fairness and efficiency of the rules and procedures, and do not question the desire of employees to be protected. Similarly, we do not take into account whether legal solutions might crowd out other forms of protection, like social norms. We just look at the need for protection, by any mechanism.

Table 1: Initial List of Possibly Urgent Legal Problems

| <i>Category</i> | <i>Examples</i> |
|---|--|
| 1 Subsistence problems | Problems regarding access to basic survival needs such as food, water, heating, urgent health care. |
| 2 Basic personal security | Crimes related to the person. Unfair detention. Personal injury. |
| 3 Property rights protection | Crimes related to property. Registration of property. Property disputes. Expropriation. |
| 4 Identity issues and documents | Acknowledgement of identity and nationality. |
| 5 Problems in land use relationships | Eviction. Problems in relation to land use or house leases. |
| 6 Problems in employment relationships | Dismissal. Employment conditions. Safety in the workplace. |
| 7 Problems in family relationships | Divorce. Domestic violence. Exploitation of women or children. |
| 8 Problems in neighbor relationships | Disturbances. Environmental damage. |
| 9 Problems with sellers of goods and services | Issues regarding quality of goods or services. |
| 10 Business problems | Problems with setting up businesses. Unfair regulation. Unfair taxation. Problems between participants in enterprise. Problems with suppliers. |
| 11 Debt problems | Unpaid debts. |
| 12 Problems with financial services | Savings. Insurance. Pensions. |

The reasons for placement of these 12 categories on the initial list are the following. Subsistence problems are related to basic physiological needs (Reeve 2005, 74), for which people may depend on others. Thirst, hunger, and urgent health care may cause problems between people, in particular in situations where water, food or health care are very difficult to obtain or too costly. Personal security is another obvious human need. As the dangers for personal safety mostly come from other people, it is a potential category of legal problems leading to justice needs as well.

Property rights protection is not only a central issue in the law and development literature (De Soto 1989, De Soto 2000, Ayalew Ali, Dercon, and Gautam 2007), but there is also agreement among economists that it improves the functioning of markets. We may therefore expect it to represent a category of urgent legal problems.

Birth registrations, and more broadly registrations of citizenship, are an issue in the access to justice literature (Piron 2004, Harrington 2005). Without access to documents proving one’s identity, it may be hard to obtain access to education, healthcare, and to the opportunities of the market economy.

Another category of potential urgent legal problems arises from the basic notion that in general people will only invest adequately in relationships if they feel confident to do so. Investments in relationships are essential for human development. Cooperation is the main road to personal and economic growth and the network of relationships determines the quality

of a society. People may carefully select partners, but the trust that is necessary to make relationships work can be increased by the legal system, offering interventions that can resolve problems in a reasonable manner. Satisfactory relationships are also a need in themselves, as is shown by the well-documented psychological need of “relatedness” (Reeve 2005, 121). We identified four ubiquitous, and key long-term relationships that may require some form of ordering. Relationships regarding the use of land and housing are a first category. They certainly have a significant influence on (personal and societal) economic development as well as personal well-being. Employment relationships are likely to lead to important legal issues as well. Then there are family relationships, with their division of labor, care, and the shared use of assets that form the economic basis for most humans, as well as their obvious contribution to fulfillment of the psychological need of relatedness. Finally, we distinguish relationships with neighbors, including the ones with neighboring businesses. They are also likely to be long-term relationships and issues of nuisance and environmental damage arise wherever people live close to each other.

Finally, we chose four categories of potential legal problems that are related to participation in the broader market economy. Consumer complaints about goods and services are a rather obvious category, because they occur so frequently. Businesses are essential for any economy and interventions in business relationships will be sometimes be necessary. Interventions that make people pay their debts are a potential justice need for small and medium businesses and debt issues are also likely to pose problems for debtors. Issues about financial services seem to be an increasing category of problems, both in the area of lawmaking in the form of financial services legislation protecting consumers, as in dispute resolution now that claims of dissatisfied investors begin to clog the courts. We thought it would be interesting to investigate whether this tendency reflects a category of urgent legal problems, or should be seen as a form of legal luxury

II. APPROACHES TO ESTABLISH THE URGENCY OF LEGAL NEEDS

A. Legal Needs Surveys: Frequency of Problems

1. Approach

Since the 1930s, empirical research concerning access to justice and legal needs has been carried out in several countries. During the last decade, a number of nation-wide studies have been conducted into needs of people who experience a legal problem. The central issues in this line of research have been: the nature and number of situations individuals or households face that raise legal issues; the steps people take in dealing with those situations; the outcomes of such steps; the kinds of legal services provided for the needs that have been brought to the legal system; the level of public awareness of the legal services available; the reactions of those who have had contact with the civil justice system. One of the main outcomes was that these needs strongly relate to common problems people experience in day-to-day life (Pleasence 2004, 1; Coumarelos 2006, 1; Currie 2007, 1).

These legal needs studies report the frequency of the legal problems people experience. Comparing their results in a meta-study could in theory be an attractive method to establish whether there are more or less universal legal needs, and which ones. Unfortunately, their methodologies differ (Coumarelos 2006, 8-15). For instance, they use different categorizations of legal problems, different time frames, and different target groups. Data collection methods that were used for the surveys are telephone interviews, in-person interviews, or internet questionnaires. Response rates vary as well among studies. If people solve an issue through self help with some reference to the legal system, this is in some studies counted as a legal problem and in others it is not.

For these reasons, we used a rather simple methodology for comparing the studies. From each of the studies, we took the top 10 categories of problems with the highest frequency. We choose eight nation-wide relatively recent studies. For the US a study carried out by the American Bar Association (ABA) 1994; for Canada Currie 2007; for Australia (New South Wales) Coumarelos et al. 2006; for China Michelson 2007; for the UK Pleasence et al. 2004;

for Germany Hommerich & Kilian 2007, and for the Netherlands Van Velthoven & Ter Voert 2004. For Bulgaria we obtained data from a survey that has not yet been published (Gramatikov 2007). These eight surveys cover different continents, and may be regarded as leading studies in the field of access to justice research.

The eight surveys reviewed by us measure how frequently respondents experienced certain categories of legal events. Table 2 shows the incidence of the most frequently experienced legal problems as percentages of the total number of legal problems, with the exception of the ABA study from which we could deduce a top 10, but not with the percentages.

Unfortunately, the problem categories used in the studies differ, thus complicating a detailed comparison. Some problem categories are more general than others, some combine several categories measured in other studies. For example, different categories of housing (rented and owned) are used in some studies whereas others put housing in a group together with neighborhood issues. "Government" and "criminal" are other very general problem groups used in some studies, which are split into several categories in others. We did not attempt to make the categories comparable. First, this would create the risk of inaccurate reproduction of the outcomes and percentages. Secondly, we deemed it not necessary for the goal of our study, which is to get a general idea of the areas in which most problems arise. Instead, we used our own categorization (the preliminary list of legal problems) and counted the overlap between these categories and the categories in the eight studies.

2. Outcomes

Table 2: Top 10 Most Frequent Issues in Legal Needs Surveys

| United States (ABA 1994) | % | Netherlands (Van Velthoven & Ter Voert 2004) | % | United Kingdom (Pleasence et al. 2004) | | Germany (Hommerich & Kilian 2007) | |
|-----------------------------------|----------|---|----------|---|------|--|------|
| 1 Personal finance/consumer | | 1 Employment | 21,5 | 1 Consumer | 13,3 | 1 Traffic law | 18 |
| 2 Housing and real property | | 2 Consumer | 21,3 | 2 Neighbors | 8,4 | 2 Family | 16 |
| 3 Community and regional | | 3 Money | 13,1 | 3 Money/debt | 8,3 | 3 Employment | 12 |
| 4 Employment | | 4 Owned real estate | 11,9 | 4 Employment | 6,1 | 4 Part. legal transactions | 12 |
| 5 Personal/economic injury | | 5 Rented housing | 7,8 | 5 Personal injury | 3,9 | 5 Rented housing | 11 |
| 6 Estate planning/settlement | | 6 Family | 5,9 | 6 Rented housing | 3,8 | 6 Debts | 6 |
| 7 Family/domestic difficulties | | 7 Health | 3,9 | 7 Owned housing | 2,4 | 7 Social security | 6 |
| 8 Wills, estates, etc. | | 8 Discrimination, etc | 3,4 | 8 Welfare benefits | 2,3 | 8 Criminal law issues | 5 |
| 9 Health-related | | 9 Other | 3,3 | 9 Relation/b.down | 2,2 | 9 Wills, estates | 4 |
| 10 Small business | | 10 Rented real estate | 2,1 | 10 Divorce | 2,2 | 10 Owned real estate | 3 |
| Bulgaria (Gramatikov 2007) | % | Australia NSW(Coumarelos et al. 2006) | % | Canada (Currie 2007) | | China (Michelson 2007) | |
| 1 Consumer problems | 22,7 | 1 General crime | 15,1 | 1 Consumer | 22 | 1 Neighbor | 17,6 |
| 2 Problems neighbours | 15,1 | 2 Housing | 11,7 | 2 Debt | 20,4 | 2 Water use | 10,2 |
| 3 Welfare benefits | 11,2 | 3 Consumer | 11,0 | 3 Employment | 17,8 | 3 Agricultural tax | 9,6 |
| 4 Buy/own real estate | 8,1 | 4 Government | 10,9 | 4 Wills/pow.attorney | 5,2 | 4 Household/elderly care/prop. | 9,1 |
| 5 Employment | 7,1 | 5 Accident/injury | 9,6 | 5 Relation/b.down | 3,6 | 5 Major consumer | 8,7 |
| 6 Money related | 7,0 | 6 Wills/estates | 7,4 | 6 Personal injury | 2,9 | 6 Housing, land, property rights | 6,9 |
| 7 Family problems | 6,0 | 7 Employment | 7,2 | 7 Police action | 2,0 | 7 Family planning | 5,8 |
| 8 Leasing a house | 5,2 | 8 Credit/debit | 6,6 | 8 Discrimination | 1,9 | 8 Property damage/loss | 5,2 |
| 9 Restitution real estate | 5,0 | 9 Family | 5,1 | 9 Housing | 1,7 | 9 Collecting Wages | 5,2 |
| 10 Refusal public service | 4,1 | 10 Education | 3,9 | 10 Hospit. treatment | 1,6 | 10 Contracting local gov.nment | 5,2 |

Comparing the top 10's from each country, we can note some regularities. Some categories come back in each of them: problems related to owned property; family related problems; housing (rented or owned); debt or money problems; problems with purchased consumer goods or services. These problems seem to be rather universal. Employment related problems are also frequent, although employment problems take the form of wage issues in China. Personal injury (including health issues) are also present everywhere, but they do not appear in the study carried out in China.

Some categories score particularly high in almost every study. Problems which score at least 4 times a top 5 ranking are problems related to consumer purchases (1,2,1,4,1,3,1,5),

problems related to debt and money (1,3,3,6,6,8,2) and employment related problems (4,1,4,3,5,7,3,9). Personal injury and housing problems also occur as problems in the top 5.

Some lists show interesting peculiarities. The findings on legal problems in China are somewhat unique, probably because it is the only emerging and non-western economy included. In that study, property related issues appear several times in the list of frequently occurring problems. The importance of these issues for emerging economies is also reflected in the study for Bulgaria. Other categories occur only in the list for China, such as water use, agricultural taxation, and contracting with local government. Compared to the other studies, China is also remarkable because debt collection (money), health and personal injury are not present in the top 10. The US, Australian (NSW), and Canadian studies report high rankings for wills, estates, and estate-planning, categories that do not appear in the other studies, although the China study reports property division in the household as an issue.

Some differences may be caused by the method of categorization followed in each study. In some countries problems with rented and owned housing were taken together. This category may also include neighbor problems.

We may summarize the results of this approach, by counting the number of times a category shows up in the top ten of problems of the studies.

Table 3 Frequency in Top 10 of Categories

| <i>Category</i> | <i>N top 10</i> | <i>Remarks</i> |
|---|-----------------|--|
| 1 Subsistence needs | 4 | 1 Water use China. 3 welfare benefits UK, Bulgaria and Germany |
| 2 Basic personal security | 6 | Personal injury (health). Police action. Criminal |
| 3 Property rights protection | 7 | Real Estate. Property Rights |
| 4 Identity issues and documents | 0 | |
| 5 Problems in land use relationships | 7 | |
| 6 Problems in employment relationships | 8 | China collecting wages. 4 times in top five. |
| 7 Problems in family relationships | 8 | |
| 8 Problems in neighbor relationships | 4 | |
| 9 Problems with sellers of goods/services | 8 | 8 times in top five |
| 10 Business problems | 2 | |
| 11 Debt problems | 7 | Not in China. 4 times in top five. |
| 12 Problems with financial services | 0 | May be hidden in 9 or 11 |
| Other: Wills, estates | 3 | |

3. Limitations

How reliable is this approach? Legal needs surveys may not give a realistic picture of legal problems, because subjects may not recognize issues that they encounter as legal issues. Researchers have followed different strategies to cope with this problem. Initially, most studies asked subjects whether they had needed legal services during a certain period of time (Schetzer & Buanamano 2002; Baker & Barrow 2006). Such surveys may not include all legal problems, however. Some legal problems may not be recognized as requiring legal services, or legal services might not be appropriate to solve the problem. Therefore, the more common approach has become to inquire about “legal issues” (Coumarelos et al. 2006) or “a matter that raised legal issues” (Genn 1999). However, the respondent may also be unaware of his problem raising a legal issue. The survey approach is thus still built on the assumption that parties recognize their problem as a legal problem, or at least realize that their problem has a legal side to it. Respondents may fail to report legal issues that are dealt with in other ways, or that remain unresolved. The reports of the respondents may also be biased towards the legal problems that are typically brought to legal practitioners, although researchers try to correct for such biases, and also try to include legal events for which no legal service was used, or that was solved outside the sphere of lawyers and courts. One way to do this is to use a list of typical problems. Nowadays, these studies typically use a list of 30 to 60 categories of issues that are dealt with by the legal system. What they thus show, is the incidence of legal problems falling in these categories.

Another problem associated with using legal needs studies for this purpose is that they do not cover problems that will not materialize, because the adverse events that would have led to legal problems are prevented by a well functioning legal system. For example, a legal system that effectively prevents personal injury will score a lower incidence of legal problems in this area. Finally, legal problems appearing in surveys are not likely to reflect the general needs for protection against crime in a sufficient way. If people are asked about their legal problems, they are likely to understand this as being asked about a problem with a particular other person, not with protection against crime in general. For the same reason, subsistence problems may not appear as frequent as they are felt.

B. Legal Needs Surveys: Indications of Severity

1. Approach

Some of the legal needs studies also give indications of the impact of the matter on people's lives. We use the general term 'severity', because there are several direct and indirect methods to establish the possible impact on people's lives. The following methods to establish this impact have been used in legal needs studies:

- Impact assessment by users (scale 1-5). In the Dutch survey (Van Velthoven & Ter Voert 2004), the respondents were asked to rate the experience on a five point scale of 'severity'.
- Asking the respondents about the importance of an issue and its effect on their lives. Currie uses two approaches in his study in order to collect information about the significance of problems. First, he asks his respondents to rate on a 1-4 scale the importance of solving an issue, which may indicate the extent to which it is troubling people. The second approach he used is letting people indicate the impact of an issue on their lives (the extent to which it is disrupting daily life). The two answers combined lead to an indication of severity (Currie 2007, 9).
- How well people remember the issue (memory decay). Pleasence et al. used the difference in rates of events that were reported in the near past and in the more distant past. They hypothesized that the better people recall an event the higher the impact. Using this method, they found that divorce, immigration issues, domestic violence, homelessness, unfair police treatment, domestic violence, and relationship break down have high impacts. Such problems show little or no evidence of memory decay and are most likely to be the most important or salient (Pleasence 2004, 177).
- Size of value at stake. Pleasence et al. also assumed that the likelihood of response increased with the seriousness of the problem. In addition to the above, there was evidence that the likelihood of respondents having sought advice increased along with the seriousness of the problems they faced. (Pleasence 2004, 59). The amount of money involved was regarded as an indicator, but the relationship to income may be important as well. An illustration is the finding that for consumer issues, particularly the respondents with lower income report a relatively high impact.
- Have people really taken certain types of legal action? The perceived importance of the problem seems to determine whether people search for legal intervention (Pleasence 2004, 93). The same thing may be said for inaction; in the ABA survey, for instance, parties gave as a reason for inaction that they did not find it worth the effort or money (ABA 1994).

2. Outcomes

Table 4 shows indications of severity for the categories of legal needs on the initial list as they were found in the eight legal needs survey studies we reviewed. Two studies give clear indications of severity, as it was an element that was particularly asked for (Van Velthoven et al. 2003 and Currie 2007), whereas the method of memory decay Pleasence used also provides relatively clear indications. In the ABA study, the percentage of people that took action in a particular category of problems was used as an indication of severity.

Table 4: Indications of 'Severity' in Legal Needs Surveys

| Category | United States | Neth. | UK | Canada | N Severity Indications |
|--|----------------------|--------------|-----------|---------------|-------------------------------|
| 1 Subsistence needs | | | | | 0 |
| 2 Basic personal security | X | X | X | X | 4 |
| 3 Property rights protection | | | | | 0 |
| 4 Identity issues and documents | | | | | 0 |
| 5 Problems in land use relationships | X | X | X | | 3 |
| 6 Problems in employment relationships | X | X | X | X | 4 |
| 7 Problems in family relationships | X | X | X | X | 4 |
| 8 Problems in neighbor relationships | | | | | 0 |
| 9 Problems with sellers goods/services | | | | | 0 |
| 10 Business problems | | | | | 0 |
| 11 Debt problems | | | | | 0 |
| 12 Problems with financial services | | | | | 0 |

Here, a rather unambiguous pattern emerges. Personal security (personal injury and general crime) issues appear to be experienced as relatively 'severe'. The same is true for problems in three categories of long-term relationships: family related matters (relationship breakdown, problems with children), employment issues, and rented housing. Other issues, like debt and consumer problems do keep people occupied but generally do not seem to disrupt life (Van Velthoven and Ter Voert 2004; Currie 2007).

3. Limitations

Each method used to indicate severity has its weaknesses. The method of asking people to rate their experiences on a scale indicating its severity may easily results in subjective judgments. (Currie 2007). People who rate on a scale without having a frame of reference may be overrating a matter (for instance, a consumer problem may be rated high, but if people would be asked to compare it to a personal injury problem, it may be rated much lower). The approach building on the ability to recall problem situations may be influenced by tendencies to document certain events (such as registration issues) more than others (such as problems in employment relationships). Or, for instance, by discussions in the media about similar situations which refreshed the memory. Whether people take action on a problem may be influenced by factors that are not necessarily related to the experienced severity of a problem. Inquiry regarding reasons for inaction, as performed by Currie, shows which factors are relevant in this respect. From the respondents that replied they had a particular reason not to respond, 45% mentioned uncertainty of rights, not knowing that something can be done, or not knowing what to do. Others responded inaction was influenced by the price of taking legal action, and other costs, such as the expectation that it would do damage to a relationship, stress or fear (Currie 2007, 13).

Furthermore, we do not have indications of severity from other than western and developed countries. And the other limitations of this approach, discussed in the preceding paragraph, apply as well. In particular, legal needs surveys are not likely to show needs for protection in general, like the one persons and their property against crime, or for interventions in life threatening situations where help can come from any direction, but not from one person in particular (subsistence needs).

C. Specialized Courts

1. Approach

Examining the supply side could give us insight in the prevalence and urgency of legal problems as well. If specialized access to justice is actually provided for certain issues, this may be an indication for the existence of a legal need. Straightforward economics teaches us that without demand, there will be no supply. We examined the legal systems of eight countries in the European Union (England, Germany, Spain, France, the Netherlands, Poland, Hungary and Estonia) and eight other countries (Vietnam, New Zealand, Peru, Brazil, South Africa, Malawi, United States). We looked at the existing specializations of courts. For example, four of the examined countries have a specialized Family Court. These courts examine a broad range of issues: divorce and alimony issues, matrimonial matters, issues

concerning children and issues concerning wills. If such a specialization exists in many countries, this may be an indicator that the protection of interests and investments in family relations is an important legal need.

We defined specialized courts as “tribunals of narrowly focused jurisdiction to which all cases that fall within that jurisdiction are routed” (ABA CEELI, 1996). Such specialization may not only imply that judges in the court have more (thorough) knowledge of the subject matter, but also that the back office and the structure of the procedure are tailored.

Many legal systems do not (only) have specialized courts, but also specialized judges with exclusive jurisdiction over certain issues, following specialized procedures. For example, the Netherlands does not have a specialized employment court, but the cantonal judge has exclusive jurisdiction for individual employment issues. These specialized jurisdictions are outside our definition of specialized courts. The Dutch cantonal judge not only has exclusive competence for issues resulting from employment relations, but also for issues concerning leasing of residential and business premises, commercial agency contracts, agricultural leasing, and hire purchase agreements. Since the jurisdiction of the Dutch cantonal judge is not narrowly focused, it is unlikely that the organizational structure is especially fit for all these issues. The existence of a specialized court is a stronger indicator of a legal need than a special procedural arrangement.

We thus limited our research to existing specialized courts. Recent developments can give useful additional information on the urgency of legal problems, however. In England, an experiment with specialized domestic violence courts was initiated in 2005 (Her Majesty's Courts Service, Crown Prosecution Service & the Home Office, 2005). This clearly reflects a need for protection of interests and investments in family relations and protection of basic personal security. In South Africa, specialized car hijacking courts have been considered, which reflects a need for property protection and protection of basic personal security (Francis, 2001). Both are currently urgent social and legal problems, it seems. These recent developments also seem to support the validity of our approach; the judicial system adjusts to legal the existence of legal problems through specialization of courts.

As we discussed, we did not include existing special procedures, although these could give an indication of a legal need as well. Several examined countries have a special procedure for small, uncontested claims. These reflect the need for procedures concerning debt collection. Another example is the existence of special insolvency procedures that keep creditors of individuals a distance and enable them to deal with their debts. These protect the subsistence needs of people with too many debts, as well as the interests of businesses in collecting debts. However, specialized procedures are not always an indicator of a common legal problem. They may also result from special interests, leading to a tailored substantive legal arrangement with a specialized court. They may also reflect the difficulty of the legal regime, requiring the hiring of specialist judges or arbitrators, rather than a frequent legal problem. Finally, it is difficult to determine what counts as a specialized procedure. Is one different procedural rule for a certain category of cases sufficient? Should we include specialized ADR services or procedures? And how could we obtain a reliable picture of all the specialized procedures of a legal system? Thus, although such an approach would certainly yield useful information, we did not succeed in developing a method that derives indications of strong legal needs from procedural specialization that is sufficiently practicable.

2. Outcomes

Table 5 gives, for each category of potential legal problems, and for each of the 16 countries we examined, an overview of the existing specialized courts. We counted the number of countries that have specialized courts for a certain category. For the United States, we mention a specialization if it exists in one or more States. In Annex 2, we give more detailed information regarding the jurisdiction of the specialized courts in the table.

The table shows that criminal courts are a universal specialization, which points to a high priority for the need to obtain personal security. Specialization in issues arising out of long-term relationships is also common. Labor problems and family issues have specialized courts in the majority of the countries we compared. For land use relationships, specialization is less

common, but we have to note that civil law countries may have copied the French system where these problems are dealt with by Justices of the Peace (juge de paix, cantonal courts) together with employment issues and other small claims, which show at least some form of specialization in this area. For neighbor problems, we only found one legal system with a more or less specialized court.

Consumer issues are not dealt with by specialized courts, which is surprising, taking into account their high frequency reported in legal needs surveys. Commercial courts, dealing with business issues, are more frequent. For problems with financial services only Vietnam offers a specialized court: in the area of pension problems.

We continue to concentrate on the legal problems of individuals. Other specializations exist as well. For example, court specialization in patents courts and trademarks is common. Most likely, they reflect a demand for intellectual property rights protection of (large) companies and therefore we do not take these into account. Tax courts exist as well in many jurisdictions.

Table 5: Specialized Courts

| <i>Legal problems</i> | <i>England</i> | <i>Germany</i> | <i>Spain</i> | <i>France</i> | <i>Netherlands</i> | <i>Poland</i> | <i>Hungary</i> | <i>Estonia</i> | <i>Japan</i> |
|---|-----------------------------------|------------------------|---------------------------------|---|--------------------------|--|-----------------------|-----------------------|-----------------------|
| 1 Subsistence problems | | Sozialgericht | Juzgados de lo Social | Tribunal des affaires de sécurité sociale | Centrale Raad van Beroep | Labour and Social Security Division | | | |
| 2 Basic personal security | Criminal Court | Criminal Court | Criminal Court | Criminal Court | Criminal Court | Criminal Court | Criminal Court | Criminal Court | Criminal Court |
| 3 Property rights protection | | | | | | Land and Property Register Division | | | |
| 4 Identity issues and documents | | | | | | | | | |
| 5 Problems in land use relationships | | | | Tribunal paritaire des baux ruraux | | | | | |
| 6 Problems in employment relationships | | Arbeitsgericht | Juzgados de lo Social | Conseil des prud'hommes | | Labour Division | Labour Court | | |
| 7 Problems in family relationships | High Court Family Division | Familiengericht | Juzgados de Familia | | | Family and Juvenile Division | | | Family Court |
| 8 Problems in neighbor relationships | | | | | | | | | |
| 9 Problems with sellers of goods/services | | | | | | | | | |
| 10 Business problems | Commercial Court | | Juzgados de lo Mercantil | Tribunal de Commerce | | | | | |
| 11 Debt problems | | | | | | | | | |
| 12 Problems with financial services | | | | | | | | | |

Courts described in bold typeface cover most of the legal needs in the category, courts mentioned in normal typeface cover only part of the legal needs in the category.

Continued

| <i>Legal problems</i> | <i>Vietnam</i> | <i>New Zealand</i> | <i>Peru</i> | <i>Brazil</i> | <i>South Africa</i> | <i>Malawi</i> | <i>United States</i> | <i>Total N</i> | <i>Remarks</i> |
|---|--|-------------------------|-----------------------|--|---|-----------------------------------|---|----------------|---|
| 1 Subsistence needs | | | | | | | Homeless Court | 6 | Mostly social security |
| 2 Basic personal security | Criminal Court | Criminal Court | Criminal Court | Criminal Court Police Court | Criminal Court Sexual offences Court | Criminal Court | Criminal Court Mental health Court Traffic Court | 16 | |
| 3 Property rights protection | | Maori Land Court | | | Land claims court | | Land Court | 4 | |
| 4 Identity issues and documents | | | | | | | | 0 | |
| 5 Problems in land use relationships | Agrarian reform court Rent court | | Agricultural Court | | | | Housing Court | 4 | |
| 6 Problems in employment relationships | Labour Court | Employment Court | Labour Court | Labour Court | Labour Court | Industrial relations Court | Workers compensation Court | 12 | |
| 7 Problems in family relationships | | Family Court | Family Court | Family Court | Family Court | | Family Court Adoption Court Probate Court | 10 | |
| 8 Problems in neighbor relationships | | | | | Water Court | | Environmental Court Community Court Water Court | 1 | |
| 9 Problems with sellers of goods/services | | | | | | | | 0 | Many countries have small claims procedures |
| 10 Business problems | | | | | Commercial crime Court | Commercial Court | Commercial Court | 6 | |
| 11 Debt problems | | | | | | | | 0 | Default judgments can be obtained in many countries |
| 12 Problems with financial services | Court of pensions | | | | | | | 1 | |

3. Limitations

If we look at the supply side to induce legal problems, we have to reckon with many confounding variables. Specialization of courts may have other reasons than a frequent and urgent legal need. It may reflect specializations of lawyers, or preferences in another country, from which procedural rules were copied long ago. Feelings about the legal system's integrity can play a role as well. Countries may not have a separate code for labor law or consumer law, because lawyers feel that the legal rules that apply to employment or consumer issues are an integral part of private law.

Moreover, specialization may not reflect the current legal needs. Many specializations exist for a long time already. The judicial system only gradually adjusts to social change. Specialized courts that were once established cannot easily be abolished. The importance of the French specialized court for issues arising from agricultural leasing is likely to have decreased, with the decrease of agricultural activities in France. Interestingly, their existence may still point to frequent legal problems in other countries. It is plausible, for instance, that in countries at a more or less comparable stage of economic development as early twentieth century France, this legal problem is present now with a comparable urgency as it once had in France.

D. Interests for which Protection Is Needed

1. Approach

The fourth perspective is a theoretical one. It assumes that the needs for protection vary with the value of the interests at stake. Each of the preliminary categories of legal problems may be associated with certain assets and other interests, for which the average individual in that situation will need protection. We can try to get a sense of the median value of these interests, and this can serve as an indication of the urgency of the particular category of legal needs.

The most important assets people hold are probably their life and health. These correspond to a need for personal security, as well as basic subsistence needs. For these interests it is rather easy to get an idea of the possible value. The research on the statistical value of life shows the implicit willingness to pay for safety measures in order to save a life is in the order of \$ 7 Million in the US. This valuation of life lies in the range of 100 to 200 times annual average income in other countries (Kip Viscusi & Aldy 2003).

The next categories of interests are the various forms of tangible assets people hold. Household surveys conducted in developed economies show what median households may own: land, a house, vehicles, other movable property, as well as financial assets. Similar studies have been conducted in some developing countries (Deaton 1997) and from these a more or less clear picture can be obtained of the average possessions that individuals hold.

Individuals also have skills and knowledge in which they invest and which they can use to advance their well-being. They build up human capital (Becker 1964). Investments in skills and knowledge can be measured in many ways, for instance by calculating the value of time spent on education instead of work (Psacharopoulos 1994).

Another category of assets is social capital: "the aggregate of the actual or potential resources which are linked to possession of a durable network of more or less institutionalized relationships of mutual acquaintance and recognition" (Bourdieu 1983, 249). Social capital is what we invest in relationships because we can increase our well-being by profiting from relationships in many ways. "To possess social capital, a person must be related to others, and it is those others who are the actual source of his advantage" (Portes 1998, 3). Social capital is now often studied at the level of groups (Putnam 1993), but it may also be seen as an attribute of individuals (Portes 1998, 4; Glaeser, Laibson & Sacerdote 2000). It has become customary to see elements of a relationship that can do damage to a person as negative social capital. Examples are the exclusion of a person from a group (discrimination) or a lack of respect for a person by somebody else (Portes 1998, 15). Measuring social capital is done by surveying the level of trust in others that people have, or

by collecting evidence on organization membership, but it is uncertain whether these indicators sufficiently cover the amount of social capital a person possesses (Glaeser, Laibson & Sacerdote 2000).

Table 6 describes the interests that are likely to be at stake in each of the problem categories. Because we are trying to find an indication of the importance of those interests, we added a rough estimate of the value of these items of capital for average persons. In Annex 1, we expressed them in units of Gross National Income (GNI) per capita, using broad categories. This yields very rough indications of value that we put on a scale from 1 (not very important) to 5 (very important). Annex 3 explains the concrete estimates. There we also show how more precise estimates of value could be obtained by establishing the market-prices of the assets people hold, using the willingness to pay approach for interests that are not tradable (life, health), and by calculating the value of the time invested in human capital (skills and knowledge) as well as social capital (contacts, relations, networks). All these values can be expressed in GNI per capita in order to allow comparison between categories of legal needs and between countries.

Table 6: Interests at Stake

| <i>Category</i> | <i>Description of Interests at Stake</i> | <i>Indication Aggregate Value</i> |
|--|---|-----------------------------------|
| 1 Subsistence needs | Immediate needs for food, water, and urgent health care (5). | 5 |
| 2 Basic personal security | Protection of life itself and protection against violent interferences with person and close relatives (5) | 5 |
| 3 Property right protection | Immovables: Land, house, but also the value of specific investments in making land more useful (preparation for cultivation, seeding), and specific investments in making a house more comfortable to live in (decoration, painting) (4). Movables: Furniture, vehicles, tools, clothes and other personal belongings, money and other valuables (3) | 4 |
| 4 Identity issues and documents | Access to health care, human capital (education), the market economy. | 4 |
| 5 Problems in land use relationships | Investments in immovable property (land and house), investments in social capital (neighborhood) | 3/4 |
| 6 Problems in employment relationships | Human capital (work skills, earning capacity, work knowledge) and social capital (contacts, relationship know how, respect and self-esteem) vested in relationships with employer, colleagues, customers. | 4 |
| 7 Problems in family relationships | Common immovable and movable property. Human capital (personal skills, knowledge) and social capital (contacts, relationship know how, respect and self-esteem) vested in relationships between wife, husband, and children, other family members (intimacy, love, knowledge about other persons, knowledge about practical cooperation patterns). | 4 |
| 8 Problems in neighbor relationships | Human capital and social capital vested in relationships with neighbors, friends, associations. | 3 |
| 9 Problems with sellers of goods or services | Interests to use the goods or services that a person buys. | 1/2 |
| 10 Business problems | Investments in business assets. Human capital and social capital vested in relationships with business partners, suppliers, customers, employees. | 4 |
| 11 Debt problems | Debts unpaid | 2/4 |
| 12 Problems with financial services | Return of money invested in bank accounts, insurance, pensions, shareholdings. | 3 |
| <p>The value of interests is expressed in terms of the local average yearly income (Gross National Income per Capita), using the following rough categories for the estimates:</p> <p>1 = < 0.2 GNI per cap 2 = 0.2 GNI per cap to 1 GNI per cap 3 = 1 GNI per cap to 3 GNI per cap 4 = 3 GNI per cap to 10 GNI per cap 5 = > 10 GNI per cap</p> | | |

2. Outcomes

Following this approach, we see subsistence needs and personal security stand out as the categories with the highest value at stake. Then follow property right protection, problems in family relationships, problems within employment relationships, and issues regarding business relationships. Members of families join to build houses, save income, learn, and form social capital that makes their relationships work. A similar pattern of mutual and linked investments holds for employment relationships and business relationships. Land use agreements (leased land or housing) also represent valuable interests. For the first time we also find a confirmation of the importance of identity registration and documents. If people have no access to them, they may not be able to be educated, and not have access to the official market economy, which reflects important interests.

Consumer problems and debt problems are less prominent under this approach, because the average value of assets at stake is much lower. Debt problems, however, can become more problematic if they accumulate. Neighbor problems rank lower in this

3. Limitations

Obviously, our very rough estimates of the value of interests at stake have to be taken as first approximations of the average value of these interests. As we discussed, there is ample room for improvement of this approach for finding indications of the most serious legal problems. However, even these rough estimates put the other indications in perspective.

E. Costs of Self Protection

1. Approach

For each of the categories of problems, it is also possible to investigate the situations in which people may be threatened by others and their possibilities to protect themselves against these threats. Systematic analysis of threats may be possible, for instance by using data from crime surveys, and from research about risk and risk management-strategies of the population, in particular in developing countries (see Dercon 2002 and Fafchamps 2004). We identified the human threats in an intuitive manner, however.

In order to achieve personal security, for instance, people will seek protection against violence and against negligent conduct. This type of threats can come from different sides, and it therefore seems difficult to categorize them. Aggression is not a random affair, however, because most people will have no motives to become violent towards another person. Violent crime often occurs within relationships between family members, relatives, friends, and acquaintances. This type of aggression may be caused by frustrated basic human needs, within the current relationship, or within previous relationships, in combination with other factors which increase the odds of aggression taking place (Staub 2003). Violence between groups (gangs, clans, ethnic groups) is another category of risks, with different backgrounds and different coping strategies. A third category of threats to personal security is violence motivated by the desire to take away somebody's property: robbery, extortion by organized crime, or by authorities. Here, not only personal security, but also property interests are at stake.

Property interests of most people will be vested in land, a house, furniture, vehicles, clothes and other personal belongings, money, and other valuables. Threats to interests in immovable property are most likely to come from people claiming or pretending better rights, in particular if property rights are not well defined. Tenants will invest in the land or house they rent, in order to improve the prospects of cultivating crops. They face losing those investments if they can be evicted easily. Moreover, farmland and land with primitive housing built on it can be a target for developers and authorities with plans to build roads, apartment blocks, or office buildings. Threats to movable property (theft) will often come from outsiders to the community, or from disadvantaged insiders.

Although investments in human capital and social capital will suffer from crime as well, the main risks for these investments come from partners in relationships. Being fired by your employer not only causes a loss of income, but also of the opportunity to use acquired skills

and contacts. Some protection against unfair dismissal is therefore welcome. Most people invest large amounts of social capital in their family life, which explains the need for protection in this type of relationships. For money in the bank, shareholdings, or other financial investments the main sources of risk are fraud and careless actions of the other party in the relationship.

Let us now look into the possibilities for self-protection against these threats. In order to protect against robbery, a person may hire guards or build fences. Alternatively, he can avoid investing in types of property that are an easy target for criminals. In order to prevent accidents caused by the negligence of other parties, the potential victim may take preventive measures, or avoid potentially dangerous situations. In such a way, every interest and indeed every right may be enforced by some type of self-help. Moreover, almost any danger can be prevented by being cautious.

Table 7: The Costs of Self Protection

| <i>Category</i> | <i>Threats</i> | <i>Self protection</i> | <i>Indication Costs Self Protection</i> |
|---|--|--|---|
| 1 Subsistence needs | Scarcity | | |
| 2 Basic personal security | Aggression by outside groups, robbery, detention, negligence | Army, guards, fences, investing less, caution. | 5 (3 for negligence) |
| 3 Property right protection | Robbery, thieves, claims on property by others, expropriation by government or private developers. | Guards, policing, investing less, collective action against development | 5 (2 for movable goods) |
| 4 Identity issues and documents | Bureaucratic authorities, individuals opposing registration | Setting up private registrations | 5 |
| 5 Problems in land use relationships | Landowner asking high share/rent or eviction | Force, collective action, investing less. | 4 |
| 6 Problems in employment relationships | Employer offering low wage, labor conditions, unfair dismissal. | Force, collective action, investing less. | 4 |
| 7 Problems in family relationships | Domestic violence, unfair treatment/exploitation of women and children | Self defense, investing less. | 4 |
| 8 Problems in neighbor relationships | Disturbances, environmental damage, neighbor violence | Self defense, collective action. | 4 |
| 9 Problems with sellers of goods/services | Fraud, low quality goods. | Buying from trusted (close) sources, information gathering | 3 |
| 10 Business problems | Untrustworthy or problematic business partners, government exploitation, extortion by criminals, bureaucracy | Selecting the right partners, guards, paying for protection, corruption, investing less. | 4 |
| 11 Debt problems | Debts not paid | Selecting creditworthy customers, cash payment | 2/3 |
| 12 Problems with financial services | Fraud, conflicts about performance. | Information gathering, caution, risk spreading. | 3 |
| We express the costs of self protection again in terms of the local average yearly income (Gross National Income per Capita), using the following rough categories: 1 = < 0.2 GNI per cap 2 = 0.2 GNI per cap to 1 GNI per cap 3 = 1 GNI per cap to 3 GNI per cap 4 = 3 GNI per cap to 10 GNI per cap 5 = > 10 GNI per cap | | | |

The costs of such self-protection, however, are the problem. They are generally high for the person protecting himself, and sometimes also for the persons from which he seeks protection. A man may protect his interests by using (physical) power in the relationship with his wife, but the wife will suffer from the threat of violence. Guards and fences may provide shelter for one person, but they make it more likely that others in the neighborhood become a victim of crime, and sometimes one person's guards are a direct threat to other persons.

The legal system may protect interests at lower costs to the owner, and to the other persons involved. Policing and other forms of crime-prevention by the state can be a less costly way of catering for interests in movable goods. Self-defense, with its costs and tendency to degenerate into fighting, is more expensive than a system of procedures that deal with property claims.

2. Outcomes

Table 7 lists the interests involved with examples of the major threats to these interests, together with the possibilities for self-defense, with an indication of the costs of self-protection. Again, we estimated the order of magnitude of these costs in broad categories, expressed in units of GNI per capita, which were translated into a scale from 1 (very low costs of self-protection) to 5 (very high costs of self-protection).

For subsistence needs, it is difficult to indicate self-protection measures which are an alternative to interventions by the legal system and to estimate their costs. Saving money (an obvious measure) may not be possible or be insufficient.

Under this approach basic personal security and property right protection are special categories, because the threats can come from various directions. For some threats within a category self-protection may be less costly than for others, but generally the costs of self-protection are high for these categories.

Self-protection in categories of legal needs that are linked to relationships is less complicated, because the source of the threat is usually one person or a limited number of persons. Costs of self-protection are thus generally somewhat lower. For market transactions self-protection may be achieved by gathering information about the trustworthiness of trading and business-partners.

Another way to protect oneself is to invest less in assets and in relationships. Valuable assets attract thieves. Investments in a relationship, as we will discuss in the next paragraph, may make one vulnerable to exploitation. So it may be wise not to deliver goods or services without upfront cash payment and to avoid dependence on others more in general. Here we clearly see the relationship between sufficient legal protection and the investments that are so necessary for economic and human development.

3. Limitations

Surely, the costs of self-protection are an interesting indicator of the value of legal protection. An effective legal system makes forms of self-protection unnecessary, or less costly. Again this analysis is very preliminary and unsophisticated. We may have overlooked obvious, or less obvious forms of self-protection. The approach could also be improved upon by collecting more precise data on the magnitude of the costs of self-protection. A more thorough analysis would also take into account that the costs of self-protection are not static, because technological improvements may reduce them. In a sense, protection through the legal system competes with forms of self-protection, and the price of both will determine whether legal protection is needed.

F. Costs of Leaving the Situation: Specific Investments

1. Approach

A prominent way of protecting interests is to leave the situation that is threatening. An obvious way to do this is to migrate to a safer environment. Likewise, the threats coming from a partner in an unsatisfactory relationship can be avoided by terminating that relationship.

Leaving a dangerous situation may be costly, though. Somebody fleeing from a dangerous environment, or even migrating to another country, faces a trade-off: possibly a better future, but a loss of what he has built up in the country he leaves. He may be able to sell his house, but he will not be able to recover all he has invested in painting and decorating it. He will have to change jobs, leave family and friends behind, and abandon his local networks.

The same mechanism applies to terminating a relationship. Leaving an employer or divorcing a husband means that some of the investments in the relationship will be lost, because they are specific to the relationship. Labor economists talk of specific human capital, when they mean the skills that are useful for this job in particular and not for jobs in general. Similarly, some social capital is useful in this particular employment relationship and not in others: contacts with colleagues and specific customers, for instance.

More generally, transaction costs economists use the concept of relationship specific investments (Williamson 1985) or “asset specificity” (Boerner & Macher 2001). If specific investments have been high, the costs of leaving the situation will be high as well. High specific investments increase the dependency on the other person in the relationship. If one of the parties cannot realistically terminate the relationship, this will increase the risk of exploitation by the other party. In particular if one party has made more specific investments than the other one, the playing field for negotiations within the ongoing relationship is not level anymore. If divorce is no option, the husband can get what he wants from the spouse who may have invested more in the family. He can use his threat to leave her, whilst her threat to leave him is not credible. If the employee is tied to the employer because he has invested in specific knowledge for this job, lives in a house owned by the employer, and has a social network linked to this, the employer can set wages more or less at will, using his far more realistic threat of termination.

Many studies show that relationships vary in the ratio of general versus specific investments. Contracts governing relationships requiring more specific investments have been found to contain more legal protection for the investing party. For instance, the contracting parties are then more likely to introduce mechanisms to arrive at reasonable prices for goods or services delivered. Similarly, labor law will regulate the working hours, the number of vacation days, and the mechanisms for setting wages. This is a more general point: situations with high specific investments create a need for legal norms and for the possibility of legal interventions in the relationship. Moreover, the legal system can diminish the threat for the party with more specific investments of the stronger party terminating the relationship. Divorce proceedings, for instance, diminish the losses for women, men, and children if the family relationship is terminated. Employment protection regulation, with notice periods or severance payments, lowers the costs of being terminated for employees.

Both rules regulating long term relationships with high specific investments and rules regarding the termination of such relationships are very common. Therefore, the size of the specific investments may be an indicator of legal needs.

2. Outcomes

For each category in our preliminary list of legal needs, we first identified the most likely option of leaving the threatening situation or relationship. Then we tried to estimate the average size of specific investments that may have to be left behind in case of termination. Table 8 shows the outcomes of this approach.

As the table shows, the costs of leaving the unsatisfactory situation may be very high. Emigration may be a way to protect oneself against threats of violence, or bureaucratic government, and it may be seen as an alternative to property rights protection, but it is very costly. Specific investments in house and land, as well as in human and social capital in employment, family and neighborhood are likely to be lost.

The wish to protect investments, in particular if they consist of specific adjustments to the current situation, may explain why neighbor disputes, employment contract rights, tenants rights, divorce (and other family disputes) are high on the “intuitive” legal needs agendas. Specific investments in employment relationships will not always be high, however. Waiters and shop-attendants will need a limited amount of specific skills and social capital to do their jobs and there are many similar jobs available in cities. For the countryside, and for other types of jobs, this may be different.

It is interesting to note that the focus on specific investments also changes the perception that law protects people who are intrinsically “weak.” Women, tenants and employees may not be

weak, but may need more protection because they invested more in marital relationships, rental agreements, and employment contracts than their counterparts. Their switching costs in case they want to leave the relationship and build up a similar one elsewhere are generally higher. This means that they can more easily be exploited within the relationship. The law can help them with rules that protect them against such exploitation. Moreover, the legal rules guiding the division of assets in case of termination can help them to save some of their investments when the relationship breaks down.

Table 8: The Costs of Leaving (Specific Investments)

| <i>Category</i> | <i>Threats</i> | <i>Options of Leaving the Situation</i> | <i>Costs of Leaving (Likely Loss of Specific Investments in:)</i> | <i>Value Spec. Inv.</i> |
|---|--|---|---|-------------------------|
| 1 Subsistence needs | Scarcity | - | - | - |
| 2 Basic personal security | Aggression by outside groups, robbery, detention, negligence | Emigration to safer living environment | Land and house; Human and social capital in employment, family, neighborhood | 4 |
| 3 Property right protection | Robbery, thieves, claims on property by others, expropriation by government or private developers. | Emigration to safer living environment | Land and house; Human and social capital in employment, family, neighborhood | 4 |
| 4 Identity issues and documents | Bureaucratic authorities, individuals opposing registration | Moving to less bureaucratic environment | Land and house; Depending on alternatives: Human and social capital in employment, neighborhood | 4 |
| 5 Problems in land use relationships | Landowner asking high share/rent or eviction | Leaving land use relationship | Land and house; Depending on alternatives: Human and social capital in employment, neighborhood | 4 |
| 6 Problems in employment relationships | Employer offering low wage, labor conditions, unfair dismissal. | Leaving employment relationship | Human and social capital in employment; Depending on alternatives: Land and house, Human and social capital in neighborhood | 3/4 |
| 7 Problems in family relationships | Domestic violence, unfair treatment/exploitation of women and children | Leaving family relationship | Common land and house; Human and social capital in family | 4 |
| 8 Problems in neighbor relationships | Disturbances, environmental damage, neighbor violence | Leaving neighbor relationship | Land and house; Human and social capital in neighbor relationship | 4 |
| 9 Problems with sellers of goods/services | Fraud, low quality goods. | Accepting low quality | Value of low quality goods compared to good quality goods | 1/2 |
| 10 Business problems | Untrustworthy or problematic business partners, government exploitation, extortion by criminals, bureaucracy | Leaving business | Investments in immovables and movables; Human capital and social capital vested in relationships with business partners, suppliers, customers, employees. | 4 |
| 11 Debt problems | Debts not paid | Writing off debt | Outstanding debt | 1/2 |
| 12 Problems with financial services | Fraud, conflicts about performance. | Writing off investments | Value of investments | 3 |
| <p>We express the costs of leaving the unsatisfactory situation again in terms of the local average yearly income (Gross National Income per Capita), using the following rough categories:</p> <p>1 = < 0.2 GNI per cap 2 = 0.2 GNI per cap to 1 GNI per cap 3 = 1 GNI per cap to 3 GNI per cap 4 = 3 GNI per cap to 10 GNI per cap 5 = > 10 GNI per cap</p> | | | | |

In consumer relationships and in commercial transactions the specific investments will tend to be lower. They will mostly take the form of upfront payments or delivery before payment is guaranteed.

3. Limitations

Asset specificity may be an interesting indicator of the need for legal protection, but our estimates of the average size of such investments are very crude. Asset specificity has

proven to be difficult to measure (Boerner & Macher 2001). Most research has been carried out in relation to business transactions. These studies tend to measure asset specificity indirectly, by using proxies for it such as physical proximity between the partners, characteristic investments, product complexity, or the joined specialization of both firms. One reason for these difficulties is that asset specific elements of capital are often not goods or services bought on the market for a price, but items that have to be developed by the people inside the relationship. So the investments consist of time spent by people. And this time is difficult to distinguish from time spent on other activities. What is the time invested in developing a relationship, with future returns, and what is the time spent on a concrete transaction with immediate rewards?

Furthermore, it may be very hard to distinguish properties of goods, skills, or investments in relationships that are only of use in the specific relationship and that can be used more generally. Some scholars even argue that there are hardly any items of human capital that are only useful in one relationship. A more realistic view might be that all skills are general: there are always other firms that use each of the skills. But firms use them in different combinations and with different weights attached to them. This is called the "skill-weights" view (Lazear 2002). This weighted approach can probably be extended towards other forms of human capital and social capital, such as knowledge, contacts, and relations with customers. Whether it makes measurement easier is doubtful, however.

At the current stage of research into asset specificity, it does not seem to be possible to rely on precise data on the amount of specific investments that people put into a relationship. But the order of magnitude of specific investments can be determined. For instance, we can estimate and compare the number of hours invested in relationships with our husbands, wives, children, customers, or employers. Even if determined in this rough and ready manner, the amount of specific investments at stake in situations in which interests are threatened by other people can be an important indication of the need for legal protection.

III. MEETING JUSTICE NEEDS: POLICY IMPLICATIONS

In this section, the results of the six approaches of Section II are compared. For each category of legal needs, we discuss what we learnt about their frequency and urgency from each of the six approaches. Table 9 summarizes the results of the six approaches.

Table 9 Overview of Results

| Category | Examples | Threats | N Top 10 Frequency Leg.N. (max =8) | N of Severity. Indicat. (max=4) | N Count. Special. Courts (max=16) | Value Interest at Stake (max=5) | Costs of Self Protect. (max=5) | Value Specific Investm. (max=5) |
|---|--|--|------------------------------------|---------------------------------|-----------------------------------|---------------------------------|--------------------------------|---------------------------------|
| 1 Subsistence needs | Problems regarding access to basic survival needs such as food, water, heating, urgent health care. | Scarcity | 4 | 0 | 6 | 5 | - | - |
| 2 Basic personal security | Crimes related to the person. Unfair detention. Personal injury. | Aggression by outside groups, robbery, detention, negligence | 6 | 4 | 16 | 5 | 5 (3) | 4 |
| 3 Property rights protection | Crimes related to property. Registration of property. Property disputes. Expropriation. | Robbery, thieves, claims on property by others, expropriation by government or private developers. | 7 | 0 | 4 | 4 | 5 (2) | 4 |
| 4 Identity issues and documents | Acknowledgement of identity and nationality. | Bureaucratic authorities, individuals opposing registration | 0 | 0 | 0 | 4 | 5 | 4 |
| 5 Problems in land use relationships | Eviction. Problems in relation to land use or house leases. | Landowner asking high share/rent or eviction | 7 | 3 | 4 | 3/4 | 4 | 4 |
| 6 Problems in employment relationships | Dismissal. Employment conditions. Safety in the workplace. | Employer offering low wage, bad labor conditions, unfair dismissal. | 8 | 4 | 12 | 4 | 4 | 3/4 |
| 7 Problems in family relationships | Divorce. Domestic violence. Exploitation of women or children. | Domestic violence, unfair treatment/exploitation of women and children | 8 | 4 | 10 | 4 | 4 | 4 |
| 8 Problems in neighbor relationships | Disturbances. Environmental damage. | Disturbances, environmental damage, neighbor violence | 4 | 0 | 1 | 3 | 4 | 4 |
| 9 Problems with sellers of goods/services | Issues regarding quality of goods or services. | Fraud, low quality goods. | 8 | 0 | 0 | 1/2 | 3 | 1/2 |
| 10 Business problems | Problems with setting up businesses. Unfair regulation. Unfair taxation. Problems between participants. Problems with suppliers. | Untrustworthy or problematic business partners, government exploitation, extortion by criminals, bureaucracy | 2 | 0 | 6 | 4 | 4 | 4 |
| 11 Debt problems | Unpaid debts. | Debts not paid | 7 | 0 | 0 | 2/4 | 2/3 | 1/2 |
| 12 Problems with financial services | Savings. Insurance. Pensions. | Fraud, conflicts about performance. | 0 | 0 | 1 | 3 | 3 | 3 |

For each category of legal problems, we will also speculate on the possible policy implications for those who are in the business of fulfilling justice needs. These explorations may be relevant for governments, for courts organizations, for donors in the area of law and development, and for private suppliers of norms and interventions. What we present is not more than an educated guesses about the priorities. Thus, issues we will explore are:

- What can we say about the types of norms that may be an answer to this category of legal problems? In particular, we will investigate the norms that are relevant in relation to the major categories of threats to interests that we have identified in Section II.E.
- What can we say about the types of interventions that may fit justice needs? For some categories of legal problems a more formal legal procedure may be suitable (protection against unfair detention). For others, a negotiation or dispute resolution process in the shadow of an intervention by a neutral court or other arbiter may be a more likely way of dealing with the problem, in particular in case of conflicts in an ongoing relationship (family, employment, neighborhood). What types of specialization make sense for courts and for private suppliers of justice?
- How much court (or legal services) capacity may be needed for meeting these justice needs? The capacity of the legal system that is necessary to fulfill justice needs in a certain category will depend on the number of issues that may be expected and on the likely difficulty of dealing with this issue. The order of magnitude of the number of issues can be estimated on the basis of legal needs surveys. The likely time and effort to be spent on resolving the issue are much more difficult to predict. They depend not only on the problem, but also on the processes that deal with this type of problem in a certain legal system.

Table 10, at the end of this Section, summarizes the policy implications we mention in the text.

A. *Subsistence Needs*

Subsistence needs are very urgent human needs. This is reflected in a high value of the interests at stake. In legal needs surveys, however, they show up sparingly. They appear as social security issues in Germany, Bulgaria and the UK, but not very high in the list, and without indications of severity. A minority of countries has specialized courts for social security issues.

A possible explanation for this mixed picture may be that subsistence needs cause urgent problems for people, but that legal norms or neutral interventions are not very likely to alleviate these problems. These needs are problems of everyday life, but law can only indirectly contribute to solving them, in particular by supporting human and economic development.

Once a country has a social security system in place, conflicts about entitlements may arise, but they do not seem to be very frequent or especially burdensome. Probably governments that are taking care of subsistence needs are likely to do that in a compassionate way, so that relatively few conflicts and legal issues arise.

If social security issues are recognized as legal problems with a certain priority, setting up a legal system that deals with disputes about entitlements seems to be rather straightforward. Norms are needed that specify entitlements. A social security system will have to outline these norms anyhow, so it . A procedure that settles disputes. This will probably have the form of a procedure for complaints, with thereafter an attempt at settlement, and a neutral judge who decides the remaining issues.

A class of conflicts that is difficult to categorize is the one of water conflicts, which is prominent in the survey of legal needs in China. We will come back to these conflicts when we discuss conflicts between neighbors.

B. Basic Personal Security

Basic personal security shows up in legal needs studies in several categories: general crime (unfair treatment by police, criminal charge, problem with bail, police failing to respond to crime, victim of stolen property), and personal or economic injury. Personal security is generally not very high in the top 10's of most frequent issues. However, all the other indicators for the urgency of legal problems in this study show maximum scores. This category of problems is rated as severe by the average person who has experience with it. Specific procedures that deal with this type of interests are criminal prosecution of violent crime, a category of legal procedures that exists everywhere. The value at stake is very high, the costs of self-protection are prohibitive, and moving to a safer environment entails very high costs as well.

As discussed, the rather average score in the approach of frequency of legal problems may have to do with what people see as a matter that raises legal issues. General security may not always be perceived as a justiciable problem, because it is not a problem with a specific other individual, at least not until the threat to personal security materializes into a criminal act. That it is a big problem for many people, however, is also clear from household crime surveys. So, we may conclude that personal security is a category of very urgent legal needs.

The types of norms that are needed are rather self-evident in relation to the threat of violent crime. Norms prohibiting murder, manslaughter, and other forms of interpersonal violence are part of any legal system, and of any system of social norms. These rules may be unclear in some exceptional situations (self-defense, assisted suicide, abortion etc.), but for the most common threats to personal security they are unproblematic.

Designing and setting up interventions to protect against violence are another matter. It may be appropriate to distinguish between two broad categories: aggression by outsiders (inter-group violence, robbery) and by insiders (intra-group violence). For the first category, prevention of violent crime requires a broad strategy of policing, peace-keeping, poverty reduction and many more measures that can contribute to building a safe living environment. Bringing criminals to justice is (at best) one of many ways to reduce violence. Our approaches tell us that crime reduction is a high priority, but it gives no indications about how much to invest in criminal justice compared to other prevention strategies. Once crimes are committed, however, victims will have a need for retributive and/or restorative justice, taken broadly as any neutral reaction to the crime from punishment to helping the victim to cope with the consequences.

Most violent crime is committed by people rather close to the victim, at least in countries at a higher stage of development. Prevention strategies for violence between members of the same family or community may include treatment of people with psychiatric disorders, norms for behavior within close relationships, early warning systems, and dispute resolution mechanisms that alleviate the tension in relationships before they may escalate. Once such a crime has been committed, there is again the need for retribution and/or restorative justice, with the latter becoming more important because perpetrator and victim come from the same community. We found no specific indications of such a need in legal needs surveys, but this may well be an unintended consequence of the categories used in surveys. Moreover, violent crime is probably not so prevalent in the countries surveyed that it reaches large proportions of the population. Retributive and restorative justice is likely to correspond to an urgent legal problem, though, and it is one of the undisputed core businesses of any legal system.

Unfair detention and other forms of unfair treatment by the police are another threat to human security. Here, the processes that fit the justice needs are clearly indicated by human rights treaties. Norms for police conduct and a simple procedure with access to a neutral who can give a judgment on the appropriateness of police conduct will be necessary.

A slightly lower priority on the justice needs list seems to be warranted for the norms and interventions that prevent negligent conduct leading to losses of lives or to personal injury. Here, there are more possibilities for self-protection at lower costs. There are also no signs of specialized proceedings for tort claims in the legal systems we reviewed. On the other hand,

in legal needs surveys, they show up as a rather frequent situation where legal interventions are necessary, and also as a rather severe legal problem. To give an indication, the number of personal injury claims in the Netherlands related to road traffic accidents is 40.000 yearly, which is (in a population of 16 million), 2.5 per 1000 of population. Add other accidents due to negligence to this, and take into account the relatively safe Dutch roads, and the number may generally be in the order of 5 per 1000. This, however, includes small claims for consequences of injury which are only temporary.

C. Property Rights Protection

Threats to interests in the category of property protection include prevention of crime related to property, disputes about property ownership, which may result from poor registration of property rights, and fair compensation in case of expropriation. Tables 2 and 3 show that housing and real estate related problems are present in most of the top 10's derived from legal needs surveys. However, in the surveys this category is usually more broad, and includes other housing related problems, for instance those of a landlord in relation to his tenant. Indications of severe problems are lacking, so property rights issues do not seem very urgent.

However, the legal needs studies on China and Bulgaria, as well as the literature on property rights protection, indicate that in developing countries property disputes are still very common. This is confirmed by Table 4, indicating a relatively high value of the interests at stake, in particular for property rights related to immovable goods. Possibilities for self-protection are limited, and effective self-protection is likely to be very costly. Specific investments in property are huge, because they include the investments in family- and work-relationships that are likely to be lost in case of migration to another living environment.

It may be that the perceived urgency of this legal problem is highly related to context. In western countries, with high-quality registrations for immovable property, property conflicts are likely to be less common, and there may be well-established procedures for compensation and expropriation. Developing countries, which still struggle with their registration systems, may also have high levels of migration from countryside to cities. They also may feel the consequences of internal displacements because of civil wars. In such settings, property rights can be much more problematic. Another cause for a high volume of property conflict can be the transition from a planned to a market economy. A sudden surge in the acceptance of credit instruments related to property may also put pressure on the legal system.

The norms that are required to protect property rights are self-evident again in the area of property crime. Here, as is the case with violent crime, the interventions are the real problem, not the norms. Keeping property crime in check requires implementation of a broad range of prevention strategies, and building the capacity for criminal prosecution and punishing thieves.

Registration procedures for property tend to be difficult to organize, due to the very high capacity needed, and to the relative complexity of registration (at least in comparison with other registrations, such as the ones regarding personal identity and status). Property registration requires reliable maps, landmarks, and measurement skills. Moreover, the quality of the registration depends on the willingness of owners to cooperate, which may be lacking if registration is costly, cumbersome, leads to tax-bills, or seems unnecessary because there are no plans to transfer property in the foreseeable future.

For property conflicts, and for expropriation, the norms that are required have to make clear who will get the ownership rights and how much compensation the other party gets. In situations of competing claims based on different types of documents, long term usage, or property taken from individuals who fled from it, the norms can be unclear, or they lead to results that are not acceptable and likely to be challenged. For these situations procedures will be necessary that enable settlement of the conflict, and if necessary lead to a judgment on these claims.

D. Identity Issues and Documents

At the beginning of their lives, people need to be recognized as an individual with a name, parents, and a place of birth. This will determine their nationality and give them access to entitlements: health care, education, and benefits conferred to the nationals of a certain state. Moreover, registration facilitates (or is even a necessary condition for) access to formal property rights. It may be essential to set up a business. Children who lack proper registration may not be able to claim support from their parents and may not inherit from them. Marriage documents, and later death certificates, are also essential, because they may be necessary to prove the co-ownership of assets.

Access to this registration does not show up in the top 10 of legal problems identified in legal needs surveys. In our (limited) investigation we did not find specialized courts that deal with registration issues. The approach based on interests shows why this category of potential legal problems may not show up in these approaches. Unlike the other categories, the right to register is generally not a form of protection against threats coming from other persons. It is mostly a matter of a well-functioning bureaucracy. Only in exceptional cases there will be opposition against a registration. Examples are the situations resulting from children born out of wedlock and groups that are denied citizenship. This may translate into pressure on bureaucrats not to register these persons, but the norms of international law and human rights are pertinent on this: every individual has the right to be registered. So the main threat is the bureaucracy itself.

The need for registration is very difficult to fulfill through self-protection. Setting up a private information system, with registrations of personal details that will be acceptable to other organizations, will be very costly. Terminating the relationship with the bureaucracy, by leaving the country for one with better registration possibilities, is very costly. So both these indicators point to an urgent legal problem.

There are other possible explanations why this legal problem does not show up in surveys or in court specializations. In developed and stable economies, the registration services will probably work in a satisfactory manner. They may have simple and fairly efficient complaint procedures for difficult issues, and the remaining number of problems is not sufficiently high to organize a specialized court.

The problem will typically be more substantial for developing economies, which will have to struggle to find funds for this government service. It is also a service that will become less costly over time, because birth registrations become more reliable if parents are already registered. Countries with high levels of internal and external immigration may also find it more difficult to provide effective registration services. Registration services will be relatively easy to administer, but very high volume. If each birth, marriage, and death are properly registered, this is 2,5 registrations on every lifetime, so (taking an average life span of 75), around 30 registrations per 1000 of population. So efficient “mass production” will be the main challenge here.

E. Problems in Land Use Relationships

In the legal needs studies, rented housing turns up 7 times out of 8 in the lists of 10 most frequently experienced problems. Three out of four studies that reported the impact of legal problems, qualify problems with rented housing as severe. We found also support for this in countries where rental agreements are an issue for specialized courts.

This pattern fits the outcomes of the theoretical approaches. Investments in rented property represent relatively valuable interests. Tenants can be vulnerable in their relationship towards the owner, because they make high specific investments. Making a house suitable for living, and tailoring it to one’s needs, is time-consuming and costly. Investments in local relationships and knowledge can be substantial as well. This is even more so for land used for agricultural purposes. People using land owned by others often lack alternatives. They may not have the resources to start a new life renting property elsewhere or buying property instead of renting it. For most owners of leased property, however, the transaction is just a source of income and finding another lessee is much less costly for them than switching to

another living environment is for their tenant. This structural imbalance in the relationship may lead to pressure on the tenant to accept unreasonably high rents, to accept poor maintenance by the owner, or to suffer other forms of exploitation. Self-protection against this form of maltreatment, for instance by joining forces with other tenants against owners, may be very difficult to organize.

Norms that normalize land use agreements may be an answer to this justice need. Such norms may protect the tenant against unreasonable raises in the rent, and regulate the maintenance obligations of the owner. Moreover, rules will be necessary that protect the tenant against termination, or at least minimize the consequences of it. But, once the law intervenes in the relationship, and protects the tenant, there is also a need for rules that reflect the interests of the owner. An owner should be able to evict the tenant in case of serious problems with timely payment of the rent and should be protected against conduct of the tenant that diminishes the value of his property.

F. Problems in Employment Relationships

For employment relationships, the indications of legal problems are similar to the ones for land use relationships. Court specialization for employment matters is much more common, however, than for land use relationships. The specific investments in employment relationships are likely to be more variable.

So employment issues represent a category of urgent legal problems. But what type of norms are an appropriate answer to this justice need? Employment Protection Legislation, rules protecting employees against dismissal, is highly controversial. Norms regarding workers safety, rules regarding working hours, minimum wages, and other elements of labor law may protect employees that cannot easily switch to other employers. These rules can also become a barrier to development, for instance because they protect middleclass, middle-aged, and male employees to the detriment of disadvantaged groups, or because they can make it difficult for business to be competitive by matching the right people to the right jobs against the lowest possible wage. The optimal level of protection for interests of employees is thus disputed.

There can be no hesitation, however, that simple and fast dispute resolution procedures are necessary to deal with the issues that arise during an ongoing employment relationship and that cannot always be resolved through negotiations between two parties that are highly dependent on each other. The legal needs surveys suggest that such procedures are likely to be confronted with many disputes. For the Netherlands a country with 16 million people, where prior approval of termination by the employer is necessary, the yearly case load for dismissal cases is around 160.000, that is 10 per 1000 of inhabitants.

G. Problems in Family Relationships

Problems in family relationships score high in every respect: legal needs surveys, courts specializations, interests at stake, possibilities of self-protection, and specific investments. A specific category that was not included in the initial list is the one of problems around inheritance. Like divorce, it presents a situation where family assets have to be divided and thus a possible source of conflict.

Appropriate norms for regulating conduct in family relationships are even more controversial than norms for employment. Generally, legal systems tend not to interfere with what goes on inside a marriage or in relationships between parents and children. However, social norms and legal rules that prohibit domestic violence, restrain child labor, and tell parents to send their children to school, are examples of forms of ordering that will address this justice need. Social and legal norms that encourage fair division of labor and income between men and women are important tools to improve these relationships as well. For extreme cases of exploitation or of domestic violence possibilities of outside interventions should exist.

Once the family relationship is ended by one of the parents, or terminates because a partner deceases, there seems to be a justice need for rules about the division of assets, about continuing maintenance obligations, and about the future relationship with children. Such

family issues need good conflict resolution procedures as well. The ongoing relationship is important, so adversarial procedures may be less suitable than cooperative ones. The caseload for divorce will be in the order of 2 per 1000 population yearly (taking the Netherlands, with a divorce-friendly climate, and around 40.000 yearly divorces on a population of 16 million, as an anchoring point).

H. Problems in Neighbor Relationships

The next category relates to protection against neighbor disturbances and environmental damage. It only appears in the top 10 in four out of the eight legal needs surveys, but when it appears, it is usually high on the list. For China, it even tops the list of conflict sources. There may be some under-representation because of the categorization chosen. In the Netherlands, for instance, problems with owned real estate may include a large proportion of neighbor conflicts. On some other indicators, however, neighbor conflicts have a lower score. There are no indications of a particular severe impact of such conflicts and hardly any specialized neighborhood conflict courts. Only one of the countries we examined has specialized courts for this type of legal problem (the U.S.). We may conclude that neighbor conflicts present somewhat less urgent legal problems. Still, self-protection in the form of using force is undesirable and the costs of leaving the situation are high.

With respect to environmental issues, there is no indication that these are high on the list of urgent and frequent individual legal problems. The China study may be an exception because it mentions conflicts about water use as a rather frequent issue. Environmental problems may still affect people's lives in important ways, but they probably are not sufficiently spotted by our approaches, because they are more issues of collective action, than of seeking protection as an individual.

Norms that provide an answer to justice needs in neighbor relationships will probably focus on acceptable levels of nuisance and sharing of scarce resources like water and land. In cities, they may relate to shared use of buildings; in the countryside rules may be necessary regarding common use of grazing and fishing grounds.

Settlement of local conflict is one of the core businesses of traditional justice in villages. City suburbs, however, may miss the infrastructure for dealing with such conflicts. Again, because the relationships will tend to be ongoing ones, cooperative procedures that lead to settlement are probably more useful than adversarial ones. If neighbor conflicts turn into violence, forms of restorative justice will become necessary.

I. Problems with Sellers of Goods and Services

Consumer problems are in the top three of most frequent problem categories everywhere, with the exception of China where the category of major consumer problems ranks fifth. The other indicators show that the problem resides in their high incidence, not so much in the severity of each individual case. Although in some countries consumer complaint committees seem to work quite effectively, we found no special courts for consumer issues. Self protection is possible here, as consumers may explore information about the quality of products before they buy them, ask advice, and use trusted sources. Reputation mechanisms are incentives on sellers and producers to take complaints seriously. The investments in the relationship are not high. Stepping out of it may mean a loss of the investment in the product, but other investments in the relationship are generally low. Thus, problems related to purchasing a good or service seem to be a nuisance, but they generally do not disrupt people's lives.

Meeting these legal needs is likely to be mostly a matter of making transparent the quality standards for products and services. In this way, consumer expectations can become more realistic and the market can sort out bad quality from good quality. Dealing with the high number of conflicts requires strengthening complaint handling by businesses. Once the conflict persists, however, it may not be easy to sort out the problem in a legally satisfactory manner. Expert advice and evidence by witnesses may be necessary in order to establish whether a consumer obtained what he reasonably could expect. This is especially true for more complicated consumer transactions, such as the ones related to building of houses, or

professional services. Efficient procedures may well have to use experts and will be difficult to organize. Settlement is a good thing in this type of conflicts as well as in any other, but there is less need to keep the relationship going, so if this contributes to low cost dealing with these conflicts, a more adversarial type of procedure with a swift neutral decision may work in this area as well.

The expectation of a high case load is confirmed by the high number of consumer complaints that was found in the Dutch legal needs survey. The survey indicated that 44% of the 18+ population experienced such a problem in a 5 year time span, that is more than 50 per 1000 of population each year. So, as a remedy against becoming overburdened, or making access to justice for this type of claims illusory, legal systems may have to aim at enhancing the settlement capacities of their populations for this type of issues as well.

J. Business Problems

Threats to business interests of individuals can come from many directions. Small and medium sized enterprises may have problems with setting up businesses, they may suffer from unduly burdensome regulation, be unfairly taxed by the authorities, may have to endure corruption, be extorted by criminals, or have to solve conflicts in the relationships with suppliers, clients, or business partners. The needs of businesses for a legal infrastructure are relatively well researched and attract much attention in the law and development literature. Entrepreneurship is of great importance for development and prosperity. Threats to the business climate are well known. Moreover, most of our approaches are not very suitable for detecting the legal problems of businesses, because they focus on the individual, not on the business as the unit of analysis. So we stick to a few remarks.

Problems that individuals have with running their businesses are not very prominent in the legal needs surveys. Only in the US they do make the top 10 and in Germany they form an unknown proportion of the broader categories of employment and participation in legal transactions. Specialized commercial courts are rather common, though, and the three theoretical indicators show that legal problems surrounding businesses are relatively urgent.

The literature on meeting legal needs of businesses tends to concentrate on fighting corruption and bureaucracy. There is much less attention for the settlement of disputes in business relationships, which are often treated as just another issue of contract enforcement. Many long term business relationships, however, have the same pattern of specific investments and interdependency as the four types of relationships that determine much of the quality of the lives of individuals. So they may need similar solutions: cooperative procedures that leave the relationship intact, or minimize the damage from terminating the relationship.

K. Debt problems

Debt issues are a problem for SME's that try to recover prices payable for goods and services delivered and also for individuals who cannot pay their debts. In legal needs surveys, debt problems show up frequently, but there are no signs of a high impact. Presumably, debt problems are a fact of life for a relatively large category of people, but only a really big problem for a small majority. Seen from the perspective of SME's, debt collection is not a very urgent legal problem when we use the interests at stake, costs of self-protection, and specific investments indicators. These indicators use the individual relationship of creditor and debtor as the unit of analysis, however, and this may lead to understatement of the problem. Both for creditors and debtors the problem is likely to be not one unpaid debt, but a multitude of defaulting debtors or a multitude of angry creditors.

The legal system can contribute to solving debt issues by having an easily accessible facility that gives creditors a title upon summary evidence of their claim and by enabling enforcement. For debtors fulfillment of this legal need may be a matter of creating the possibility to negotiate payment in installments and, for situations of insolvency, proceedings that balance the interests of creditors and that of a debtor to make a fresh start.

L. Problems with Financial Services

This category does not show up yet in the legal needs surveys, but this may have to do with the problem categorization used in these surveys. For instance, problems with insurance, pensions, or investments may be seen as consumer problems, or as money issues. A low priority was confirmed by the other approaches, however. We found one specialized pension court, and also the other indicators do not point towards a very urgent legal need, at least not for average individuals.

Table 10 Meeting Justice Needs

| Category | Threats | Urgency Indications | Norms Needed (Issues to be Regulated) | Interventions Needed (Processes) | Caseload | Likely workload per case |
|--|--|---------------------|---|--|--|--------------------------|
| 1 Subsistence needs | Scarcity | | Not effective | Not effective | | |
| | Welfare benefits not paid by agency | Medium/low | Entitlements | Complaint, settlement, judgment. | Medium | Low |
| 2 Basic personal security | Aggression by outside groups, robbery | High | Self-evident | Prevention strategies (peace-keeping, policing, poverty reduction, etc.), retributive/restorative justice | Low/high (in post-conflict situations) | High |
| | Aggression by insiders (family members, neighbors) | High | Self-evident | Prevention strategies (psychiatric treatment, early warning, better dispute resolution), restorative justice | Medium (if prevention is successful) | High |
| | Unfair detention and treatment by police | High | Conditions for pretrial detention, police conduct | Complaint, judgment | Low | Low |
| | Negligence (accidents) | Medium | Safety rules, liability rules, damages scheduling | Prevention strategies, tort claims settlement, judgment | Rather high (5/1000) | High |
| 3 Property rights protection | Property crime | High | Self-evident | Prevention strategies, criminal (retributive) justice | High | Medium |
| | Insufficient property registration | High | Self-evident | Registration procedures. | Very high | Medium |
| | Claims on property by others | Medium | Ownership in ambiguous situations | Property claims settlement, judgment | Medium to high | Medium |
| | Expropriation by government or private developers. | Medium | Determining fair compensation | Determining compensation | Medium | Medium |
| 4 Identity issues and documents | Bureaucratic authorities, individuals opposing registration | Rather high | Self-evident | Registration procedures, complaint procedures. | Very high (30/1000) | Low |
| 5 Problems in land use relationships | Landowner asking high share/rent | Rather high | Norms on rent and maintenance | Incentives to follow norms, procedures to settle issues | Medium | Medium |
| | Eviction | Rather high | Norms on termination and its consequences | Settlement of termination issues, judgment | Medium | Medium |
| 6 Problems in employment relationships | Employer offering low wage, labor conditions. | High | Norms on employment conditions | Incentives to follow norms, settlement of employment issues, judgment | High | Medium |
| | Unfair dismissal | High | Employment protection norms | Settlement of termination issues, judgment | High (10/1000) | Medium |
| 7 Problems in family relationships | Domestic violence, unfair treatment/exploitation of women and children | High | Norms prohibiting violence | Interventions in extreme cases, restorative justice | Low | High |
| | Termination | High | Norms for division of assets and other consequences | Cooperative settlement of divorce issues, inheritance issues, judgment | High (2/1000) | Medium |
| 8 Problems in neighbor relationships | Disturbances, environmental damage, neighbor violence | Rather high | Norms for nuisance and shared use | Settlement of neighbor issues, judgment, restorative justice | High | Medium |

| | | | | | | |
|---|--|--------------------------|---|---|--------------------------|--------------------------|
| 9 Problems with sellers of goods/services | Fraud, low quality goods. | Medium/high | Norms for quality and consumer information | Fact-finding on quality issues, settlement, judgment. | Very high (50/1000) | Rather high |
| 10 Business problems | Untrustworthy or problematic business partners | Insufficient indications | Default rules for business transactions | Settlement of business conflicts, judgment | Insufficient indications | Insufficient indications |
| | Government exploitation | | Transparent tax rules | Tax procedures, anti-corruption strategies | | |
| | Extortion by criminals | | Self-evident | Prevention strategies | | |
| | Bureaucracy | | Self-evident | Strategies to improve bureaucratic procedures | | |
| 11 Debt problems | Debts not paid | Medium/high | Self-evident | Debt collection, enforcement, insolvency procedures | Very high | Low |
| 12 Problems with financial services | Fraud, conflicts about performance. | Medium/Low | Norms for pre-contractual information, norms for loss sharing | Settlement of damages, judgment | Insufficient indications | Insufficient indications |

IV. DISCUSSION AND IMPLICATIONS

A. *The Most Urgent Legal Problems?*

In this paper, we tried to establish the most urgent legal problems and justice needs: needs of a person for protection by outside norms or interventions that structure the conduct of another person that he may encounter or has a relationship with. We used six perspectives, all with their limitations. Legal needs surveys use rather broad categories which may hide the real legal needs. Moreover, they have been conducted in limited number of countries, and only in one emerging economy (China). Legal needs surveys count the number of problems, but only a few of them tried to measure the impact of problems. Court specializations are an indirect way to uncover legal problems, because they tell us what court systems have done to meet justice needs, rather than giving indications of legal problems directly themselves. We used three theoretical perspectives to complement these approaches. First, for each category of potential legal problems we estimated the typical value of interests that individuals wish to protect: their personal security, as well as investments in property, human capital, and (individual) social capital. Then, for each category, we assessed the main threats against which protection is needed and made rough estimates of the costs of self-protection against these threats, assuming that protection by the legal system can be seen as a lower cost alternative to self-protection. Finally, we estimated the average costs individuals will experience when leaving threatening situations. This can be a very costly alternative, in particular if specific investments in assets and relationships are high: people adjust their property, their knowledge, their skills, and their individual social capital to the particular personal and contractual relationship. The amount of specific investments at stake is therefore a useful indicator of the urgency of legal problems.

So, what is the general picture? The first conclusion might be that meeting justice needs is not a matter of following some straightforward prescriptions, such as, for instance, protecting property rights and enforcing contracts. Legal needs surveys show a broad variety of legal problems, with a focus around certain key relationships, and our theoretical approaches offer explanations for this. People have different kinds of interests: security, assets, human capital, and social capital, which are bound in various types of relationships. Threats may come from different directions, but they not entirely random. The abilities of people to respond to these threats vary, but form patterns as well. Sometimes self-protection is possible, as in the case of insurance against theft, and sometimes very costly as in the case of protection against armed robbery. Specific investments vary, so the losses people incur when they leave an unfavorable situation as well, but some relationships tend to have higher levels of specific investment than others.

Thus, our approaches give some indication of the most important legal problems for average individuals. Arguably, they are related to basic personal security (aggression from outsiders as well as members of the community) and to the two most important forms of relationships in which people invest: their family and their employment. Investments in these relationships may lead to mutual dependency, and sometimes to a power imbalance. This interdependency may lead to conflict, can make it hard to arrive at reasonable results in negotiations, and creates a need for mechanisms that ensure that such a relationship can be terminated on fair terms. Protection of property rights, in particular the rights in land and housing that protect another important category of investments of individuals, is also high on the list of justice needs. This seems to be particularly true for post conflict situations and for situations where property rights are uncertain because of large scale migration to cities, and/or poor registration. Once property rights are generally respected and accepted, they become less of a problem.

Slightly less urgent are problems arising out of land use agreements, as well as identity issues and documents. Then follow neighbor relationships, including water rights, the

communal sharing of other resources like grazing area or fishing grounds, and prevention of accidents (negligence).

Next in line come consumer-problems and problems associated with debt. Complaints about the quality of goods and services are very frequent, but on average they do not disrupt life. The same is true for debt problems, unless they are so overwhelming that they lead to insolvency.

Individuals sometimes own small businesses, but our methods were unlikely to spot legal needs in this area. That small and medium sized businesses need certain forms of protection by the legal system is an issue that has been confirmed many times by using other methods, however.

For financial services, we did not find indications that they are important issues for average individuals or for a substantial minority. Subsistence needs, the immediate needs for food, water, and safe and healthy housing, are certainly important human needs. But they are not primarily legal needs, that is needs for protection. In some legal needs surveys, however, issues about welfare benefits show up, though usually not among the most frequent or serious problems.

For each of the six methods we used to get indications of legal needs, we discussed the limitations. We should warn again that we do not present a rigorous methodology for establishing the urgency of legal problems. It may well be that we underestimated or overlooked important categories of legal problems, in particular for developing economies, although the combination of several methods to find the most urgent legal problems decreases this risk. Examples of issues that may have to be considered more closely are issues of access to services and markets. Discrimination of women, or certain groups of the population, may represent a class in itself. It is covered by many of our categories, in particular when the discrimination issues arise in family and employment relationships, but discrimination may also be a barrier to access to the labor market, or to health care. Another category that may have to be scrutinized more closely is the relationship with government in general.

B. Universal Legal Needs?

We have not looked for, or found, indications of cultural differences in legal problems people experience. It may very well be that the approaches to establishing the urgency of legal problems we chose, with an emphasis on individual needs and on protection of investments, caused us to overlook justice needs in cultures that are more collective and focus less on investments in assets, knowledge and social capital. Different family structures, or different religious norms, may also impact the incidence of needs for norms or neutral intervention.

What we can say, however, is that there are signs of differences in legal needs in various stages of economic development. In low income or unstable, post-conflict situations, personal security through peace-keeping will have a very high priority. Property rights protection and access to registrations will have a very high priority in developing economies. In legal needs surveys from Western countries these needs do not show anymore, most likely because protection and registration systems have become so effective that property rights are generally respected and accepted.

The legal needs survey regarding China suggests that issues between neighbors, including community sharing issues, like water rights, common use of grazing land, and exploitation of fishing grounds, may also be more prominent in developing economies. In developed economies, these issues are more likely to be settled by regulation or by allocation of exclusive ownerships rights and contracts.

Historically, the protection of tort law and safety rules against accidents has come rather late and in many emerging economies this protection is probably still very rudimentary. Consumer protection through the legal system is probably also a relative luxury, something for more advanced stages of development. This is certainly true for protection in the area of financial

services and pensions, which can only become a high priority justice need if many people start saving substantial amounts of money.

C. Meeting Legal Needs: Policy Implications

We also explored how justice needs can be met. This may be an issue for politicians, for justice ministries, for court organizations, and for legal aid boards, who will have to decide how to spend the scarce resources for running the legal system.

The first conclusion from this part of the analysis seems to be that different categories of legal needs require different approaches. Meeting security needs is likely to be a matter of a broad strategy of preventive measures, organizing retributive and restorative justice, as well as protection against unfair detention and police treatment. For employment issues and family problems a major contribution to meeting justice needs is likely to come from norms that suggest how to make relationships more equitable. Rules regarding domestic violence, sharing of work in the family, working hours, and safety at the workplace provide a focal point for negotiations within relationships, also if it is accepted that almost no women or employee will take her partner or employer to court relying on these norms in an ongoing relationship. Complaint mechanisms may help to “enforce” these norms, though. Moreover, such relationships need mechanisms for termination with a fair sharing of the consequences. It is important to note that these norms and termination procedures are not merely attempts to help weaker parties at the expense of stronger ones, but are also contributions to personal development and economic growth by improving the climate for specific investments in such relationships. A similar strategy of providing sharing rules, complaint procedures, and termination processes is likely to be appropriate for land use agreements, for business relationships, and for neighbor relationships (although termination is not an issue here). Consumer issues, though, will have to focus on quality norms and simple complaint procedures. Personal injury settlement requires damages scheduling and procedures that promote swift settlement. For debt problems, the focus should be on enforcement, whilst for identity issues and property registration the administrative procedures will have to improve.

In particular, our approaches suggest that general strategies to improve law enforcement and to enhance access to courts or to legal aid may not be appropriate. Targeting specific categories of legal problems, and tailoring the processes to specific categories of legal needs, seems to be promising.

More in particular, an adversarial legal system with formal complaints about wrongful acts, defenses and extensive fact-finding, is unlikely to be a perfect fit for important categories of legal problems. Court specializations for issues related to employment, family, land use, neighbor conflict, and business relationships exist already and they make sense. Interventions in these areas are likely to be better suited to the needs of disputants if they aim on settling issues, improve the relationship for the future, and focus on the consequences of termination.

This is also a matter of costs. Adversarial court proceedings will be too expensive for average individuals with these types of conflict, and the yearly caseload in these matters is far too high to even consider subsidizing courts and legal aid for them. This is the more true for consumer conflicts and debt collection, where the number of cases that can be expected is even higher, and the value at stake lower. Even the criminal justice system of the richest country of the world cannot afford adversarial proceedings for most of the crimes committed, and has to resort to a procedure that aims for settlement as the standard solution (plea-bargaining).

The number of cases that can be expected also sheds light on the issue whether formal justice or informal justice is to be preferred. Our analysis suggests there is no way to deal with the caseload except by settlement of a very large proportion of cases. This implies that the major question facing officials in charge of the justice system may have to be: “How to produce fair outcomes, in particular in settlements?,” and not: “How to produce judgments?” For each category of legal needs, the optimal relationship between formal and informal justice will be different. Consumer complaints, for instance, can be dealt with by obliging suppliers of consumer goods and services to have a complaint procedure and neutral mediation or

arbitration according to standards set by legislation. Divorce issues may be dealt with by requiring the partners to get together and agree about the consequence of the divorce, with the option of letting the court decide about the remaining issues for a fee. Such a system, if designed well, will stimulate the partners to consult a mediator first, so that the majority of cases can be settled.

If we turn to norms, our exploration of the ways to meet justice needs also leads to some conclusions that may be surprising. Many norms that deal with the core legal needs of individuals are self-evident. Secondly, rules that are particularly helpful for many categories of legal problems are the ones that spell out the consequences of termination and the ones that decide what is fair during an ongoing relationship. Thirdly, there is again the issue of division of labor between the formal and the informal justice system. It is open to debate whether the legal system is particularly good at providing this type of rules. These are not the norms you will find in civil codes or treatises on contract law. Some of the relationships of individuals may be governed by written contracts, but it is questionable whether this is often the case, in particular for family relationships, but also for employment relationships and land use relationships. So this part of the answer to justice needs may have to be given by social norms, by default rules, or (for employment relationships) by collective bargaining processes between employers and trade unions.

To sum up, the exploration of urgent legal problems and the most effective ways to meet justice needs suggests that there are many gaps between the type of protection that individuals need, and what justice systems deliver. That in itself is a puzzling issue: what explains this apparent mismatch between the demand for justice and the supply of it? We leave that question for another time.

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ANNEX 1 TABLES LEGAL NEEDS STUDIES

- ABA 1994:

Table 2: Types of legal needs

- Van Velthoven & Ter Voert 2004:

Appendix 2 Tabel 1: Problemen naar subcategorien en gemiddelde mate van ernst

Tabel 3.4: Incidentie en frequentie van problemen (screeningsenquête, N= 2,516)

- Pleasence 2004:

Table 2.1: Reported incidence of problem types

Appendix C: Autobiographical Memory and the Seriousness of Problems, Table C 1: Problem category

- Coumarelos 2006:

Table 3.3: Incidence of multiple legal events by broad area of law and legal event group , all six LGAs 2003

- Currie 2007:

Table II: The Incidence of Civil Justice Problems in Canada.

Table III: The perceived seriousness of Civil Justice Problems

- Michelson 2007:

Table A5: Distribution of Grievances by Contextual Characteristics, Rural China, 2002

ANNEX 2 OVERVIEW OF COMPETENCE SPECIALIZED COURTS

A. England

- Commercial Court: deals with complex cases arising out of business disputes, both national and international, like international trade banking, commodity, arbitration disputes. The London Mercantile Court is designed to deal with claims of lesser value and complexity than the Commercial Court.
- High Court Family Division: matrimonial matters, family homes and domestic violence, wardship and adoption. applications, declarations in medical treatment cases, final dissolution matters (Civil Partnerships).

B. Germany

- Sozialgericht: competent for decisions in public disputes in affairs of the social security in its different branches (pensions, patients, accident and nursing care insurance).
- Arbeitsgericht: civil disputes which are so closely connected with an employment relationship that the employment relationship largely determines them.
- Familiengericht: family related matters. These include the following: children's cases, statutory maintenance obligations based on marriage or family relationship, maintenance claims in connection with the birth of a child, matrimonial cases, disputes relating to claims arising from matrimonial property, even if third parties are involved in the proceedings.

C. Spain

- Juzgados de lo Social: issues relating to collective bargaining and complaints concerning social security or the State in the cases in which it is responsible for labour legislation.
- Juzgados de lo Mercantil: commercial contracts (transaction, loan, deposit, commission, mandate, etc.), contracts of distribution (Agency, commission, concession, etc.), insurances, general conditions, retail commerce and sale of personal property on credit.
- Juzgados de Familia: matters relating to judicial separation, annulment, divorce, filiation and paternal authority over minors.

D. France

- Tribunal des affaires de sécurité sociale: issues arising from the application of legislation and regulations regarding social security and agricultural provident schemes.
- Tribunal paritaire des baux ruraux: issues between agricultural lessors and lessees (farm tenancies, share-cropping, etc.).
- Tribunal de Commerce: issues between traders and commercial dealings between persons, disputes between partners in companies and firms and financial difficulties experienced by commercial enterprises (liquidation, receivership, etc.).
- Conseil des prud'hommes: issues arising from individual employment contracts.

E. Netherlands

- Centrale Raad van Beroep: issues relating to social security and social aid.
- F. Poland
- Labour and Social Security Division: issues resulting from individual employment relations and issues concerning social security.
 - Land and Property Register Division: issues resulting from property matters.
 - Family and Juvenile Division: issues resulting from family relations and issues concerning juveniles.
- G. Hungary
- Labour Court: issues originating from employment relationships and legal relationships having the nature of an employment relationship.
- H. Estonia
- I. Vietnam
- Agrarian Reform Court: issues relating to the use of land.
 - Rent Court: landlord tenant disputes.
 - Labour Court: labour related issues.
 - Court of Pensions: pensions related issues.
- J. New Zealand
- Maori Land Court: make recommendations on claims brought by Maori relating to the practical application of the Treaty of Waitangi and to determine whether certain matters are inconsistent with the principles of the Treaty.
 - Employment Court: all matters relating to employment disputes, either direct (in the case of strikes or lockouts) or after the parties have been to the Employment Relations Authority.
 - Family Court: issues resulting from family relationships.
- K. Peru
- Agricultural Court: issues resulting from agricultural relations.
 - Labour Court: issues arising from individual employment contracts.
 - Family Court: issues resulting from family relations
- L. Brazil
- Labour Court: issues arising from individual employment contracts.
 - Family Court: issues resulting from family relations
- M. South Africa
- Sexual Offences Court: rape or any other form of sexual violence.

- Land Claims Court: disputes arising from those laws which underpin South Africa's land reform initiative.
- Labour Court: labour and employment disputes.
- Family Court: issues resulting from family relations.
- Water Court: issues resulting from water problems.
- Commercial crime Court: issues relating to commercial criminality.

N. Malawi

- Industrial Relations Court: labour and employment disputes
- Commercial Court: commercial and business disputes.

O. United States

- Homeless Court: special court sessions held in a local shelter or other community site which help homeless people resolve outstanding misdemeanor criminal warrants
- Mental Health Court: LPS conservatorships and cases which involve psychiatric evaluations, investigations.
- Traffic Court: State courts that hear cases which involve metropolitan area traffic violations.
- Housing Court: landlord tenant disputes.
- Workers compensation Court: issues involving on-the-job injuries.
- Family Court: domestic relations cases including dissolution of marriages, nullification of marriages, legal separations, paternity actions, child custody, child support, visitation arrangements, spousal support and restraining orders; and which offer marriage and family counseling to help couples to reconcile or, if reconciliation is impossible, to reach an amicable agreement on a custody
- Adoption Court: independent adoption of minors, the termination of parental rights in cases of abandonment, and the adoption or guardianship of minors who are dependents of the court.
- Probate Court: regular guardianships, the establishment of decedents' wills, the settlement of decedents' estates, and decisions relating to the administration of the estates of minors and individuals adjudged to be incompetent to manage their own affairs.
- Environmental Court: environmental issues a.o. related to health, housing, building and fire.
- Community Court: local courts whose function is to try cases involving vandalism, disorderly conduct, public intoxication, public urination, shoplifting, trespassing, prostitution and other minor offenses.
- Water Court: specialized courts that hear matters related to obtaining or changing judicially recognized water rights. Water courts are available in only a few states.
- Commercial Court: commercial disputes.

ANNEX 3 INDICATIONS OF VALUE, COSTS OF SELF-PROTECTION, AND SPECIFIC INVESTMENTS

A. Indications of Value (Table 6)

For goods we used the market-prices of the assets people hold. For interests that are not tradable (life, health), the willingness to pay for prevention is an accepted way of measuring the value of the interests. For human capital (skills and knowledge) and social capital (contacts, relations, networks) the amount of time invested gives an indication of the value that people attach to them.

The yearly Gross National Income per capita (GNI) is used as a yardstick that allows comparison between countries. In order to be able to compare prices and willingness to pay with time investment, we assume that 2000 hours of time spent is equivalent to the yearly income per capita.

We used the following rough indications of the size of interests:

1 = < 0.2 GNI per cap

2 = 0.2 GNI per cap to 1 GNI per cap

3 = 1 GNI per cap to 3 GNI per cap

4 = 3 GNI per cap to 10 GNI per cap

5 = > 10 GNI per cap

In the following, we explain how we determined the indications of size for each category of interests:

- Personal security and security of close relatives (Security): 5; Protection of life itself and protection against violent interferences are primary needs many people will mention. Estimates of the statistical value of life, based on the investments in safety measures, invariably are in the range of 100 to 200 times average yearly income. So there can be little doubt that these interests belong to category 5.
- Subsistence interests (Subsistence) 5: immediate needs for food, beverage, sleep, and urgent health care. These interests may vary in value somewhat, in relation to the time frame within these needs can be met. If these needs are not fulfilled, the situation can become life threatening, however, and then certainly fall in category 5.
- Immovables: 4; Land, house, but also the value of investments in making land more useful (preparation for cultivation, seeding), and investments in making a house more comfortable to live in (conversion and alteration costs, decoration, painting). The total of investments of households in buying and owning a land and house is likely to be several times GNI per capita already. On top of this come the interests in other investments in house and land, as well as in costs that are sunk in case of leaving the house (transfer costs, entry fees for utilities, investments in water supply, sewage systems).
- Movables: 3; Furniture, vehicles, tools, clothes and other personal belongings, money and other valuables. These investments will probably not exceed 3 times GNI per capita for the average individual.
- Family human and social capital (Family Hum/Soc) 3/5; Human capital (personal skills, knowledge) and social capital (contacts, relationship know how, respect and self-esteem) vested in relationships between wife, husband, and children, other family members (intimacy, love, knowledge about other persons, knowledge about practical

cooperation patterns). The size of these investments is very difficult to determine, and even to estimate. According to household surveys regarding the time spent by average Dutch citizens, they are likely to spend 20 hours a week caring for their children and family members. That is 1000 hours per year. Thus, average parents are likely to have spent many GNI per capita time equivalents with their children and each other. But how much of this can be counted as an investment?

- Work human and social capital (Work Hum/Soc) 3/4; Human capital (work skills, earning capacity, work knowledge) and social capital (contacts, relationship know how, respect and self-esteem) vested in relationships with employer, business partners, colleagues, customers. Much of the investments in education (years in time and years of foregone earnings) will be oriented towards earning capacity. On top of this come the investments in the specific work environment. That these investments add up to an amount in the range of 1 to 10 GNI per capita (or their equivalent in time) seems to be fairly certain.
- Other human and social capital (Other Hum/Soc) 3: Human capital and social capital vested in relationships with neighbors, friends, associations.
- Consumer interests (Consumer) 2: Interests connected to goods or services that a person buys. Usually, consumer goods will not have a price that exceeds the yearly income per capita. Cars may be an exception.
- Interests in money due by customers 2/4: It is very difficult to estimate the average value of money claims on others that a person has. Business people may have many debtors; others hardly any.
- Financial investments (Financial) 3: Return of money invested in bank accounts, insurance, pensions, shareholdings. Average people will not have high amount of savings. In developed countries, the average savings and pensions may be higher than 3 times GNI per capita.

The types of interests at stake in each category of legal problems are described in column 2 of Table 6. The value estimates in column 3 of Table 6 of the interests at stake in each of the categories of legal problems are obtained by adding the value of the interests from the types of interests listed above. The interests at stake in problems in family relationships, for instance, are the movable (value category 3) and immovable property (4) held by the average family, and the human and social capital vested in these relationships (3/5). This leads to an aggregated value in value category 4.

B. Costs of Self-Protection (Table 7)

We used the same categories:

1 = < 0.2 GNI per cap

2 = 0.2 GNI per cap to 1 GNI per cap

3 = 1 GNI per cap to 3 GNI per cap

4 = 3 GNI per cap to 10 GNI per cap

5 = > 10 GNI per cap

Costs of self-protection will mostly be incurred on a yearly basis (insurance premiums, costs of paying guards). If the legal system offers no protection, self-protection is necessary over time. For our estimates, we used a capitalization factor of 10.

- Effective protection of personal security and property with guards and fences is likely to be beyond the means of almost every person, even more so if aggression from outside groups (warring factions) is the problem: 5
- The loss of well-being caused by investing less in goods that can be stolen is hard to estimate, but it is not likely to be very high. They often can be insured rather easily. Usually, even in developing economies, money can be brought to a bank against rather low costs: 2.
- It is difficult to estimate the costs of effective precautions against negligence of other people on the road, in the work place, and elsewhere. But the resulting loss of time, of earnings, and of well-being caused by taking these protective measures is likely to be rather high: 3
- Insurance against loss of income in case of an accident is expensive and difficult to obtain: 3.
- The costs of limiting investments in immovables, that cannot be protected effectively, are very high as research has shown (De Soto 2000). Organizing an effective defense against private developers and governments that seize property in order to turn it to a use with a higher rate of return is likely to be very costly as well. Usually, however, it can be done at the time the danger materializes, so it is not a yearly recurring expenditure: 3/4.
- The same reasoning applies to caution with investments in an enterprise, in particular in developing countries where many people make their living from small businesses: 3/4.
- In family and other relationships, self-defense or using force to protect one's interests will be very costly. Employees may be able to organize some form of collective action; neighbors sometimes as well. Another (costly) way of protecting one's interests is to invest less in the relationship, with less return on investment (financially and in terms of human and social capital): 4.
- Costs of information gathering for consumers can be substantial. Buying from trusted sources only will have an effect on price and quality obtained: 3
- The measure of selecting only creditworthy partners, or not delivering without cash payment is likely to be not so problematic for the average individual, but increasingly so if he owns a small business: 2/3.
- Caution, risk spreading, for financial services. For the average citizen it will be possible to spread investment risk, for instance by buying mutual funds, by not keeping too much money with one bank: 3

C. Specific Investments (Table 8)

The following descriptions show how we estimated the amount of specific investments for each category of capital. More categories of capital can be at stake in one legal problem situation, however. If a person leaves a situation or a relationship he may have to give up several types of specific investments. A couple who owns a business together, and splits up, loses some of its work-related and its family-related human/social capital. A person leaving his country has to take into account losses in specific investments in immovable property, but also work-, family- and other-related human/social capital. So the value estimates in Table 8 can be an aggregate.

We again used the same value categories for the estimates:

1 = < 0.2 GNI per cap

2 = 0.2 GNI per cap to 1 GNI per cap

3 = 1 GNI per cap to 3 GNI per cap

4 = 3 GNI per cap to 10 GNI per cap

5 = > 10 GNI per cap

- Specific investments in immovables may include: the work done to make land arable; to build a house on it, that cannot be sold easily; investments in sewage; costs of adjusting a house to personal preferences: 4
- Specific investments in movables are likely to be limited in scope, because generally, movables can be taken away from the threatening situation, or sold: 1/2
- As to human and social capital related to work and business, the specific investments may be the costs of job-specific learning and training, the investments in relationships with colleagues, clients and others, as far as relevant for the specific job; there may be costs of moving/living close to the place where the job has to be performed; this depends on the type of job, the availability of similar jobs, and the length of the employment relationship: 3
- Specific investments in family human and social capital are likely to be high. They consist of developing bonds and knowledge about preferences of family members, of learning specific ways of living together, adjusted to the situation in which the family lives; moreover, there are the costs of developing relationships around the core family, with the broader family, with friends and parents of children's friends: 3/4
- Specific investments in human and social capital related to the neighborhood where a person lives are similar in character; they involve finding your way in the neighborhood, developing relationships with retailers, and neighbors: 2/3.
- The specific investments at stake in relationships with sellers of consumer goods and services are likely to be rather limited; they will not exceed the value of the goods, which will generally be much lower than an average yearly income, with the possible exception of investments in cars, or in building services (house improvement): 1/2.
- If debts remain unpaid, the costs of the most common way to 'leave' this situation is writing of the debt; taking into account the amount of credit an average person will have given, these costs are likely to be rather limited: 1/2.
- Writing of more substantial financial investments, like pensions, savings, bank deposits, and the like, is another matter; these costs may well be in the range of several times the yearly income: 3.