

Chapter 6. Governance frameworks to ensure equal access to justice and citizens' legal empowerment

This chapter illustrates ways in which equal access to justice enables the implementation of compensatory and control mechanisms in society to achieve all other SDGs. At its core, effective access to justice is central to ensuring the effectiveness of the rule of law, and promotes good public governance, policy design and regulatory performance. Strong, well-functioning justice systems reduce the scope for policy capture, corruption and mismanagement in the public sector. They increase trust in government and support governance systems that are conducive to achieve the SDGs. More broadly, access to justice and legal empowerment initiatives are necessary elements to achieve policy outcomes such as better health, education, gender equality, employment and housing.

Access to justice and legal empowerment supports inclusive growth and effective SDG implementation

The inclusion of access to justice in the 2030 Agenda is a recognition of the intrinsic links between access to justice and the ability of people and businesses to receive equal treatment under the law and have their rights protected (SDG target 16.3). At its core, effective access to justice is central to ensuring the effectiveness of the rule of law, and promotes good public governance, policy design and regulatory performance. Strong, well-functioning justice systems reduce the scope for policy capture, corruption and mismanagement in the public sector. They increase trust in government and support governance systems that are conducive to achieving the SDGs.

More broadly, equal access to justice enables the implementation of compensatory and control mechanisms in society to achieve all other SDGs. Access to justice and legal empowerment initiatives are necessary elements to achieve policy outcomes such as better health, education, gender equality, employment and housing. As such, they are at the centre of inclusive and sustainable growth strategies.

The inability to access legal and justice services can be both a result and a cause of disadvantage, poverty, and inequality in income and employment opportunities, educational attainment and health conditions.

Interactions between access to justice and legal empowerment and the SDGs

The law underlies nearly every aspect of people's lives, and the majority of people will experience legal and justice problems routinely over the course of their lifetime, whether they are related to family or the consumer, land-related, linked to employment, community/neighbourhood or other issues. Legal needs are not exclusive to a category of citizens, households or companies. Yet, some population groups (women, elderly, the disabled, single parents, internally displaced people, and indigenous communities) are particularly vulnerable to and affected by legal problems.

Failure to resolve legal problems can perpetuate what is known as a "cycle of decline", where even a trivial legal matter, if left unresolved, can stretch an individual's or family's capacity and lead to additional problems, adversely affecting other socio-economic determinants of well-being.

Conversely, meeting particular legal needs and effectively providing legal assistance and access to justice programmes to people can deliver cost savings and positive impacts on well-being. Access to justice and legal empowerment can contribute to improvements in areas across all SDGs. They can support better housing (SDG 11.1), enable equality and diversity (SDGs 5 and 10), support inclusion, enhance consumer and financial protection, facilitate access to healthcare (SDG 3.8), support child welfare and families, deliver positive outcomes for migrants and immigrants, reduce domestic violence, recidivism, enhance victim support, and promote employment (SDG 8.5) and access to education (SDGs 4.2 and 4.3).

There are numerous barriers for the implementation of the SDG 16.3. For example, there is limited data to monitor progress and to draft effective policies and programmes. Justice partners are still searching for common strategies to identify priorities and turn this target into reality.

In many cases, stronger political will to invest in access to justice is needed, especially for vulnerable and marginalised groups, who are the most exposed to legal and justice problems and at the core of the 2030 Agenda principle of leaving no one behind. (Box 6.1). There is also limited understanding of the costs and benefits of delivering access to justice in terms of social and economic outcomes. The solution to current shortcomings is creating a strategy for people-centred access to justice.

Box 6.1. The Riga Statement - “Investing in Access to Justice for all!”

The 2018 OECD Policy Roundtable on Equal Access to Justice featured a high-level panel on “Investing in Access to Justice for all!”. The event called for action in investing in access to justice for all in order to implement national commitments under the 2030 Sustainable Development Agenda and to foster inclusive growth.

High-level participants adopted the Riga Statement, in which they called for greater measuring and monitoring progress in access to justice as part of the implementation of SDG target 16.3. They underlined the importance of understanding and meeting legal needs of individuals (e.g., women, girls and boys, youth and older people, indigenous communities and other vulnerable communities), communities and business, especially small and medium enterprises (SMEs) and called on the international community to develop tools and guidance to support countries’ efforts to better understand and address legal needs.

Participants also recognised that unequal access to justice generates significant costs for individuals and societies and called on international partners to continue their efforts to deepen the empirical foundations of the business case for investing in effective access to justice and legal empowerment.

Source: OECD (n.d.^[1]), Equal Access to Justice - OECD Roundtable, Latvia, 2018, <https://www.oecd.org/gov/equal-access-to-justice-oecd-expert-roundtable-latvia-2018.htm>.

Key elements for promoting people-centred access to justice in support of the SDGs

A shift towards a people-centred perspective is perceived as a guiding principle in many OECD countries. They are looking to centre their justice system on the specific needs of people and business. As such they are looking to tailor the justice services to these needs not only for better access to justice, but also for achieving policy outcomes that go beyond the justice sector. Governments have set out specific objectives to strengthen access to justice as part of their SDG strategies (Box 6.2).

Box 6.2. The Jakarta Recommendations on the Sustainable Development Goals, Access to Justice and Legal Aid in ASEAN

In 2016, the ASEAN Regional Consultation on the Sustainable Development Goals, Access to Justice and Legal Aid was organised. This meeting provided an opportunity to discuss challenges and opportunities of institutions and mechanisms to effectively implement SDG 16 on both national and local level in ASEAN countries. Countries shared best practices, strategies and initiatives using legal and policy frameworks for achieving equal access to justice for all.

Participants made commitment to improve collaboration and co-operation to advance national commitments on SDG 16 and strengthen the rule of law, access to justice and legal aid. It resulted in the adoption of the Jakarta Recommendations on the Sustainable Development Goals, Access to Justice and Legal Aid in ASEAN.

The Jakarta Recommendations set the following action points:

- Engage all justice stakeholders, including legal aid providers, central and local government, Parliaments, judiciary, bar associations, civil society, laws schools, academia, and private sector in the development, implementation and monitoring of national justice plans and policies.
- Ensure that equal access to justice for all is fully integrated into and properly funded through national plans and policies for implementation of the SDGs.
- Ensure that equal access to justice for all and the right to legal aid are included in national and regional level indicators for the achievement of the SDGs, and progress on these indicators is shared in an inclusive manner.
- Establish a Thematic Working Group to strengthen access to legal aid in ASEAN, co-operating and collaborating with existing platforms including the ASEAN Intergovernmental Commission on Human Rights (AICHR), Council of ASEAN Chief Justices, ASEAN Senior Law Officials Meeting (ASLOM), ASEAN Law Ministers Meeting (ALAWMM) and civil society.
- Encourage development partners and international organisations to provide support and technical assistance to all relevant stakeholders in the implementation of the above recommendations.

Source: ASEAN (2016^[2]), Association of Southeast Asian Nations (ASEAN) Regional Consultation on Sustainable Development Goals, Access to Justice and Legal Aid, <https://namati.org/resources/association-of-southeast-asian-nations-asean-regional-consultation-on-sustainable-development-goals-access-to-justice-and-legal-aid/>.

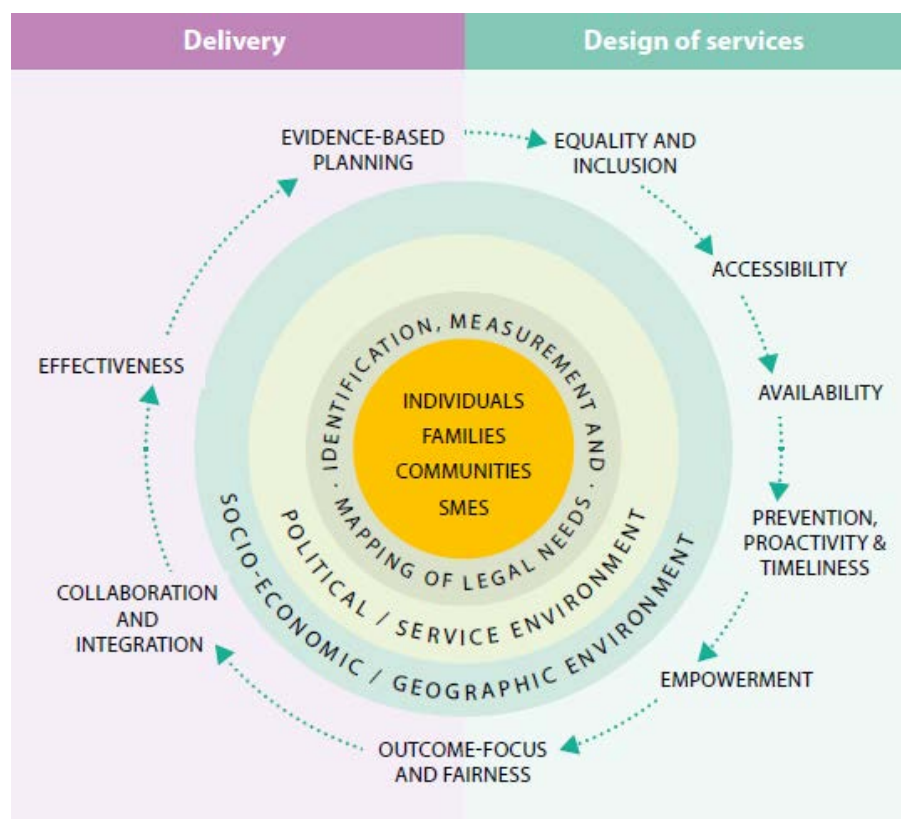
Legal and justice services are seen as people-centric and effective when they are provided in a seamless, coordinated and inclusive manner, available to everyone equally while focusing on specific, vulnerable groups. These services are matched to people's needs and help build empowerment, prioritise proactivity, prevention and timeliness, and focus on substantive outcomes and fairness (Figure 6.1).

Justice as a public service

People-centricity flows from and reinforces the concept of justice as a public service. A shift toward people-centred legal and justice services and justice as a public service is key to meeting legal needs in a way that contributes to inclusive growth and individual and community well-being. This approach reflects the OECD Serving Citizens' Framework, which highlights governments' responsibility to provide public services, which that should be designed to meet the expectation and needs of their citizens in terms of access, responsiveness and reliability/quality. In the justice sector, it highlights that public services, courts and alternative dispute resolution mechanisms should reflect the interests and needs of users.

There is growing recognition that tailoring justice services to the specific needs of the population, providing a sense of fairness to individuals and others in their interactions in the justice system can help build trust and confidence in the justice system. Increasingly, national SDG strategies are incorporating access to justice targets and indicators.

Figure 6.1. Criteria for people-centred legal and justice services



Source: OECD (2019^[31]), *Equal Access to Justice for Inclusive Growth: Putting People at the Centre*, <https://dx.doi.org/10.1787/597f5b7f-en>.

Understanding of people's legal needs and experiences

Meaningful understanding of access to justice is crucial for the development of effective civil justice policies, models and financing. Indeed, exploring and understanding legal needs is at the heart of people-centred access to justice. It is crucial to know what people's problems are; what methods respond to them; for what type of clients and under what

conditions; and which legal and justice services are effective in which circumstances. This is crucial to ensure that people’s perceptions and experiences in accessing justice are included in the policy-making processes. This evidence-informed approach ensures that provision extends to the ‘right’ mix of services, to the ‘right’ clients, in the ‘right’ areas of law and in the ‘right’ locations and at the ‘right’ time.

One of the best means of obtaining the understanding of legal needs are legal needs surveys (Box 6.3). They have now been carried out over time and across a spectrum of countries, jurisdictions and legal traditions, illuminating consistent patterns and dynamics. They provide an important evidence-base for recognising and specifically addressing people’s legal and justice needs, including marginalised groups, as a central strategy for achieving socio-economic inclusion according to the national SDG strategy.

Legal needs surveys contribute greatly to the understanding of the prevalence of legal problems and to the short and long-term negative consequences of unresolved legal problems. This approach can be complemented by other data sources such as administrative data to present a more complete picture of access to justice in a given country. Such exercises can be tailored to the specific priorities laid out by national SDG strategies.

Box 6.3. Taking into account citizens’ legal needs in Colombia

One of the most comprehensive legal needs surveys to date was implemented in **Colombia**. Building from legal-needs methodologies tested by the Colombian civil society organisation Dejustica, a national survey was carried out in collaboration between the Department of National Planning and National Statistical Office in 2016. The survey data can be disaggregated by geographical area, by gender and other identity characteristics.

Based on the survey results, Colombia developed an Effective Access to Justice Index (Índice de Acceso Efectivo a la Justicia) to inform their long-term justice plan. The Index explores six dimensions of access to justice: favourable environment (which is concerned with structural and institutional barriers to justice that lie outside of the justice system); legal capability; legal assistance; fair procedure; compliance with judicial decisions; and access to institutions. The legal needs module of the Colombian National Quality of Life Survey contributes to ten of twenty-four indicators, focusing on legal capability, legal assistance, access to justice institutions, procedural fairness and enforcement. Availability of legal aid is a crosscutting factor.

In addition to the Index, Colombia is using the survey data to close the gaps between supply and demand; identify the barriers for access to justice of vulnerable population; develop a ten-year justice plan; plan and design appropriate, timely, integrated and targeted justice services, sustainability reforms, and indicators for monitoring evolution.

Source: OECD/Open Society Foundations (2019^[4]), *Legal Needs Surveys and Access to Justice*, <https://dx.doi.org/10.1787/g2g9a36c-en>.

A spectrum (or “continuum”) of services, processes and procedures

Offering a range of legal assistance, social services and representation can improve access to justice and allow citizens to find legal services that are better tailored to their needs and capacity to pay. Such an approach is part of a people-centred approach to justice services. There is a growing spectrum of processes and procedures in addition to formal judicial and

non-judicial proceedings: alternative mechanisms for dispute resolution such as mediation, online dispute resolution; paralegals; public legal assistance and education providers (Box 6.4); community advocates, collaborative service provision from legally-trained and other professionals. In some cases, a justice service operates as a standalone service (e.g., a specialised mediation process) and in other cases a range of justice services are provided by one entity (e.g., problem-solving courts, justice access centres).

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

In terms of time and cost saving and under specific circumstances, mediation has been shown to lead to positive results for both the court and the users (especially when parties were willing participants and of relatively equal strength). In **Canada** and the **United States**, civil-mediated cases have been observed to take 5 months less to be resolved, to save 60 hours of court staff time and to cost USD 16,000 less per case on average than non-mediated cases. With respect to workplace mediation, a study in the US indicates employment opportunity complaints handled through alternative dispute resolution (ADR) mechanisms were resolved between 50 to 127 days faster than those going through the formal procedure. Regarding business-to-business mediations under appropriate conditions, a majority of users perceive commercial matters as being simpler, cheaper, fairer, and faster than under litigation. Similarly, a study of conciliation services in the employment tribunal showed that more than half of claims brought to conciliation were settled at that stage (OECD, forthcoming^[5]).

Box 6.4. Measures to enhance the use of mediation in selected OECD countries

To enhance the use of mediation, many countries introduce various forms of cost incentives or sanctions. In **New Zealand**, in 2014, major changes were made to the family justice system, including requiring mediation before parents could apply to the Family Court and removing lawyers from the early stages of some court proceedings. While these reforms aimed at helping people resolve parenting disputes without having to go to court, the Minister of Justice has asked an Independent Panel to examine the changes and consider how they have impacted separating families and their children.

In **Netherlands**, the first hours of mediation were provided with a financial grant. Similarly, **Austria** provided a financial support in family cases. Between 2005 and 2009, a total of 1,716 mediations were offered with a financial aid. In Sacramento County, **California (USA)**, the first three hours of mediation are offered with financial aid covered by the court budget. The sessions are held by court-recognised mediators with a fixed rate of USD 200. In **England**, parties may face cost sanctions for rejecting mediation without a good reason. A party that rejects to engage in alternative dispute resolution can be held liable for the costs of litigation even when his application is successful.

France has a continuum of Public Legal Assistance Services including many that are free to users such as: Points of Access to Law (Points d'accès au droit - P.A.D.) which allow residents, particularly the most underprivileged, to gain access to information in their own neighbourhood on their rights and responsibilities, as well as to assistance; Law and Justice Houses (Maisons de la Justice et du Droit - MJD), which work in the area of preventing and dealing with petty crime, the amicable settlement of disputes, organising themed surgeries and specialised legal consultations; Multi-service Information and Mediation points (Points d'Information et de Médiation Multiservices - PIMMS), which are organisations designed to stem the process of exclusion of the most vulnerable groups in urban districts and to facilitate access to public services.

The **city of Paris** has two additional services, the Bar Solidarity Bus where lawyers hold free, anonymous legal surgeries that guarantee users' confidentiality in the Paris Bar Solidarity Bus on the surgery days and locations. There is also the City of Paris Mediation Service, which provides a mechanism for dealing with complaints from Parisians who are disputing a decision made by one of the departments at City Hall.

Source: OECD (2019^[3]), *Equal Access to Justice for Inclusive Growth: Putting People at the Centre*, <https://dx.doi.org/10.1787/597f5b7f-en>.

Coordination and integration

People-centred legal and justice services should be part of a coherent system that provides seamless referrals and integrated services through collaboration among legal, justice and other human service providers. People get access to all the services they need to solve the legal and related non-legal aspects of their problems holistically regardless of entry point for assistance (Box 6.5).

As mentioned above, justice and social services under a restorative or outcome-based approach can address both people's justice needs and the accompanying social or health issues (e.g. domestic violence, drug and alcohol abuse, mental illness, juvenile delinquency). In the **United States**, for example, a study of a drug court over a 10-year period found significantly reduced recidivism for participants up to 14 years (as compared to those who did not participate), lower investment costs (USD 1,392 less as compared to the business as usual) and total savings of over USD 79 million over the 10-year period as a result of reduced recidivism for participants of the drug court (NPC Research, 2007^[6]).

Focus on vulnerable populations

People-centred legal and justice services go beyond a fair and effective justice system to greater objectives such as inclusive growth, equality, poverty-reduction, social justice and social inclusion. The core of access to justice is equality and social inclusion in the light of the "leave no one behind" imperative of the UN 2030 Agenda for Sustainable Developments.

Legal needs research demonstrates that vulnerable and needy populations (e.g. women, youth, disabled people, low-incomers, indigenous people, immigrants and refugees) are typically those that are most exposed to legal problems. Disadvantaged groups also tend to face greater difficulties in recognising and resolving legal problems. Their limited legal capabilities and awareness as well as lack of individual economic resources reinforce barriers in accessing justice.

The OECD approach on people-centred legal and justice services promotes inclusive and targeted service delivery, responsive to specific access needs of particular groups likely to suffer from social and economic disadvantage or are otherwise marginalised or vulnerable and those with complex needs. Countries have specific services to attend to the needs of vulnerable groups, in line with the 2030 Agenda and their SDG strategies (Box 6.5).

Box 6.5. Justice services to vulnerable groups in The Netherlands and Canada

The **Netherlands** is focusing on reducing barriers to justice for those in the margins of society, specifically those not in possession of legal identification papers who are often also victims of crime. The “*Free In, Free Out*” policy seeks to build trust between such communities and the police by guaranteeing that undocumented aliens who make a statement or report a crime to the police will not be detained for lack of documentation. The Netherlands has also introduced a new prosecutorial policy for victims of human trafficking under which victims will not be punished for illegal acts done while being coerced. Internationally, the Netherlands is working with Argentina, Belgium, Mongolia, Senegal and Slovenia to address a gap in the mutual legal assistance and extradition framework for the most serious international crimes.

In partnership with Indigenous peoples and the provinces and territories, **Canada**, throughout the country (including Justice Canada and many jurisdictions), is learning more about Indigenous legal traditions. In some cases, jurisdictions are working with indigenous communities so that they recover ways of governing themselves including fostering Indigenous legal practices and principles into their approach to justice. There are many examples throughout the country where elders are being included in proceedings and traditional elements such as prayers, smudging ceremonies and blanketing ceremonies have become elements of the process. For instance, the province of Nova Scotia opened a special court on the Wagmatcook First Nation that incorporates Indigenous restorative justice traditions.

Source: OECD (2019^[3]), *Equal Access to Justice for Inclusive Growth: Putting People at the Centre*, <https://dx.doi.org/10.1787/597f5b7f-en>.

Lessons learned from country experiences

Improving fairness, equity and access to justice contributes to inclusive growth and sustainable development. It is indispensable to achieve the overarching 2030 Agenda objective of leaving no one behind. Access to justice is not only a standalone SDG goal: effective and accessible justice institutions facilitate the implementation of other SDGs and ensure countries deliver public services to, and enhance inclusion of, all sections of the population. Moreover, the impacts of unresolved legal problems (or not meeting legal needs) can bring substantial direct and indirect socio-economic impacts for the people and businesses affected as well as the society as a whole.

Countries are progressing in this field at national and local or federal levels in various ways, regardless of their socio-legal context. One of the most important trends in OECD countries is the shift towards people-centred perspective as the guiding principle. This approach provides important insight into the rethinking of policy-making processes and the

institutional redesign necessary for people-centred legal and justice services to match the different challenges.

In **Australia**, the Law and Justice Foundation of New South Wales, an independent body, aims at advancing access to justice for socially and economically disadvantaged people. The Foundation's legal needs programme conducts research that is used to inform the government, non-government and other community and agencies and stakeholders to design and deliver legal and justice services that are responsive and tailored to specific needs.

In **New Zealand** and **Canada**, special jurisdictions incorporate Indigenous restorative justice traditions. An evaluation of five Indigenous youth courts in New Zealand found that young offenders showed improved behaviour including a better understanding of their responsibilities and communication skills and had established positive relations with the community (Kaipuke Consultants, 2012^[7]).

In **Canada**, the Action Committee on Access to Justice in Civil and Family Matters has identified key priority areas and launched nine Justice Development Goals, which aim to address the access to justice gap in Canada reflective to the 2030 Agenda. Each goal identifies areas for improvement and provides examples of activities to advance. This initiative calls for action, co-operation and collaboration between all stakeholders in the justice system and beyond.

In the **United Kingdom** and the **United States**, domestic violence courts play an important role. The court sessions are characterised by multi-agency information-sharing, fast-tracking of cases and the offering of comprehensive and immediate victim services.

Looking ahead, as part of their SDG priorities, countries also need to consider whether their different mediation and other alternative mechanisms for dispute resolution provide effective support and are sufficiently accessible for the most vulnerable parts of society.

Common challenges also include the problematic fragmentation of accountability, data and evaluation, policy, funding, and delivery in the legal assistance sector. This fragmentation is an understandable product of the incremental evolution of legal and justice policy and service delivery, particularly where there are multiple levels of government responsibility, multi-portfolio government responsibilities, institutional independence within the justice sector and so on. Yet, meeting socio-legal needs requires a multi-sector collaborative response shaped by strategic priorities, available resources and the existing political, socio-economic and service environment of countries. The OECD has been working with countries to advance data-driven people-focused approaches as the best methods of obtaining measures of demand, supply and outcomes.

Box 6.6. OECD contributions to support access to justice in SDG implementation

The proposed Global Hub on the Governance for the SDGs will provide countries with continuous learning and evolution of evidence-based best practices to ensure high quality legal and justice service delivery centred on people. It will work with countries to help them reorient the model of delivering justice for all in order to enable people-centred justice pathways. This can include establishing people-centred justice pathways in a sustainable and effective manner by developing a people-centred justice ecosystem, which encompasses a holistic and comprehensive policy and service continuum providing the right mix of legal and justice services as well as facilitating collaboration between services and among service providers. Specifically, it will promote exchanges of good practices to:

- Inform strategic planning and decision-making by policy-makers and providers of justice, legal assistance and dispute resolution channels.
- Increase public trust in justice institutions.
- Further develop capability within legal and justice institutions through support in the identification, development and promotion of appropriate programmes to develop the expertise of staff and providing mutual support and sharing the experiences.
- Develop innovative approaches to delivery of legal assistance and service issues.
- Support and strengthen both global and national level dialogue with key stakeholders (including business, civil society and representatives of different communities).

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