

Chapter 1. People-centred justice services: An actionable policy for inclusive growth

This chapter provides the rationale for the report, its objectives and the methodological approach to data collection.

Introduction

This report highlights the ways in which equal access to justice can contribute to inclusive growth and sustainable development. It identifies the main drivers for developing policy processes and institutional frameworks that can identify and respond to the legal and justice needs¹ of individuals, families, communities, small and medium-sized enterprises (SMEs) and others. It highlights active measures to advance equal access to justice and provides actionable recommendations to governments which are supported by examples of good practices from OECD and partner countries. The report also proposes common criteria for the design and delivery of people-centred legal and justice services based on current knowledge of what works to meet the population's legal and justice needs.

Rationale of the report

Access to justice² is an important dimension of inclusive growth according to the United Nations' 2030 Agenda for Sustainable Development (SDG Agenda) and its Sustainable Development Goals (SDG). Many OECD countries recognised access to justice as a fundamental and/or human right. Growing evidence sets forth effective access to justice as a compelling means of tackling inequality and as a contributor to individual and societal well-being. The inability to access legal and justice services can be both a result and a cause of disadvantage, poverty and inequality, both in income and non-income scenarios such as employment opportunities, educational attainment and health conditions, all of which are important determinants of sustainable growth.

Cross connections are uncovered between meeting the legal needs of the community, facilitating people's ability to participate fully in the economy and impact their productivity, health, employment and relationships in order to achieve inclusive economic growth. Growing evidence shows that tailoring justice services to the specific needs of the population matters not only for better access to justice but also for achieving policy outcomes that go beyond the justice sector (e.g. better healthcare, education, gender equality, employment, housing and good governance, including broader trust in government).

Justice is seen as both a right and a vital public service that upholds laws, defends human rights and supports institutions in a manner consistent with human rights, such as the right to equality and non-discrimination. Effective access to justice is enshrined in numerous international, regional and national³ constitutional instruments as a fundamental human right⁴ and is widely recognised as such in both national⁵ and international⁶ jurisprudence – although varying in nature and intensity and usually in the form of the right to a fair trial. The human rights approach to access to justice encompasses the individual's right to have recourse to judicial and non-judicial dispute resolution bodies to obtain a remedy in case her/his rights have been violated, and to have the right to a fair trial with independence and impartiality, availability, accessibility, affordability, timeliness and effective means of redress or remedies. The long-standing international standard of prohibition of denial of justice is a corollary of access to justice establishing that justice is to be administered with minimal standards of fairness (Paulsson, 2005^[1]).

Access to justice serves as an enabler of the rule of law and good governance. It has been on the policy agenda of OECD Member and partner countries for many years. This report aims to facilitate the implementation of country commitments to enable equal and inclusive access to justice under the SDG Agenda, specifically, SDG 16, Target 3 to

“promote the rule of law at the national and international levels and ensure equal access to justice for all”. Goal 16 is a catalyst for achieving other SDGs.

In recent decades, successive waves of reforms sought to improve access to justice in countries. Initially, these reforms focused on improving access to formal justice: courts and lawyers. Courts have been and continue to be seen as the central suppliers of justice. They are crucial in establishing “the shadow of the law” in which everyday activities and transactions occur. Early reforms, therefore, focused on improving access to justice through establishing legal aid and similar services that improve access to courts and representation for those in financial need.

Subsequent waves of reforms focused on structural inequalities within justice systems, including attempts to simplify judicial and court processes and improve the information available to assist citizens’ participation in justice processes. These reforms often used more informal approaches, including the establishment of administrative tribunals and ombudschemes and alternative dispute resolution (ADR) mechanisms.

To a large extent, these reforms were driven from within the formal justice system. While directed at what was understood to be in the public interest and in order to meet people’s and businesses’ justice needs, these reforms were often based upon assumptions about what their legal needs were and what citizens did when confronted with a legal or justice problem; i.e. problems that raise legal issues and the most effective ways to address those needs (Mulherin, 2016^[2]).⁷ By the late 1990s, some OECD and partner countries began to recognise that traditional justice system institutions and processes might not always be appropriately structured and focused in order to provide access to justice from peoples’ views and experience (Macdonald, 2001^[3]). The shift towards a people-centred perspective is perceived as the guiding principle that links the inclusive growth and justice agenda. People-centricity acknowledges that specific population groups, and in particular people living in conditions of disadvantage (e.g. low-income earners, women, minorities, indigenous persons, disabled people, the elderly), may have additional legal needs and face extra barriers in resolving their legal and justice problems.

To this end and to respond to the needs of different groups of people, OECD and partners countries are increasingly incorporating people-centred perspectives when determining legal and justice service needs and developing responsive, integrated approaches and services to meet these needs. Evidence concerning good practices and “what works” is emerging yet far from complete and there are few avenues for comparative exchange. Even rarer is the opportunity to systematically review good practices. Having comprehensive evidence is particularly important given the complexity of justice problems and of accessing resolutions as well as the intricacies of justice and inclusive growth. Furthermore, there can be tension between a more expansive concept of access to justice and a lack of growth in resources to meet legal needs. The tension may be particularly profound in the context of great inequalities, rising income inequality and unequal access to public services. This trend reinforces the need for a robust business case for people-centred legal and justice services, in order to understand what works and to ensure that legal and justice services are cost-effective and beneficial to the user.

Objectives

This report aims to identify key trends across OECD countries and provide guidance for good practices on:

- **Identifying the links between access to justice** and other dimensions of inclusive growth and the well-being of individuals, families, SMEs and communities. Why does access to justice matter? What do we know about the dynamics of unmet legal and justice needs? How does justice fit into modelling inclusive growth? What evidence do we have concerning unmet legal needs and meeting these needs? How can we increase our capacity to understand and measure the important bi-directional relationships between socio-economic inclusion and access to justice?
- **Identifying and measuring needs.** What are the stages of planning for people-centred legal and justice services? What approaches and methodologies can be employed to identify and measure legal and justice needs? Why are these measurements important? What steps can be taken to overcome limitations in data? What tools can be used to ensure inclusivity in identification and measurement processes?
- **Mapping legal and justice needs.** What purpose does the mapping of legal needs serve? What approaches and methodologies can be employed to map justice needs? At what level of detail should mapping occur? What tools can be used to ensure inclusivity in mapping processes?
- **Designing people-centred legal and justice services.** What types of services work to meet legal and justice needs and contribute to inclusive growth? What is the range of legal and justice services? What guiding principles can assist in designing effective services? What are the lessons from other sectors that can assist in this design process? What tools can be used to ensure inclusivity in policy and service design processes?
- **Delivering people-centred legal and justice services.** How can institutional frameworks be used to plan the effective delivery of services? How can these strategies be maximised to contribute to inclusive growth and sustainable development? How can people-centred legal and justice services be evaluated? What tools can be used to ensure inclusivity in planning and evaluation processes?

Methodology and content

The report is informed by findings from OECD Roundtables on Equal Access to Justice convened in 2015, 2017 and 2018; advisory sessions organised in 2017 and 2018;⁸ joint OECD-OSJI events held in 2015, 2016⁹ and 2018; a joint workshop with the Task Force on Justice of the Pathfinders of Just, Inclusive and Peaceful Societies in 2018, as well as a wide range of international events dedicated to promoting access to justice for all. These events collectively established a platform for dialogue to deepen our understanding of effective access to justice and the crucial role it plays as a contributor to inclusive and sustainable growth. The report draws from crosscutting expertise and country practices in evidence-based policy tools, as well as criteria pertaining to people-focused access to legal and justice services. It also collates evidence that seeks to underpin cost-effective policies in the field of justice.

This report further draws on OECD mapping (prepared through desk research) of country practices on what works to foster effective access to justice in OECD countries. The mapping was developed through content-research of various websites, including those of governments, academic institutions and international organisations.

This report also rests on several legal needs surveys carried out across a spectrum of countries at the national and subnational levels. The surveys were conducted by international organisations such as the World Justice Project and the Hague Institute for Innovation of Law (HiIL) and by countries with the participation of government officials in collaboration with national and international organisations.

Literature reviews were conducted to explore the conceptual and practical implications central to access to justice considerations, and to trace the diversity of practices concerning interventions on legal and justice services. The economic and political science literature offered insights on the existence of a relationship between economic development and the presence of robust public institutions, including justice systems, while at the same time underlining the role of positive externalities such as poverty reduction and improved governance in fostering growth.

Scope

The report outlines a comprehensive, holistic and people-centred approach to access to justice. The concept captures citizens' and businesses' paths to justice (focusing on formal justice and dispute resolution processes), legal needs, barriers in accessing justice (complexity, cost, length of proceedings, alternatives, etc.), the mechanisms available to meet justice needs and the sectoral as well as high-level social and economic impacts of unmet legal needs. As mentioned, comprehensiveness, as well as user perspective, are particularly important. The concept of access to justice is studied from a bottom-up view, placing the focus on the people and organisations that need justice. This approach recognises that justice needs are intricate phenomena implying complex individual and social processes. The bottom-up approach acknowledges that access to justice is rarely a linear process but rather iterative and a highly entangled sequence of steps that impact the person's experience with access to justice.

Strengths and limitations

Table 1.1 summarises the strengths and limitations of the report.

Table 1.1. Strengths and limitations of the report

Strengths	Limitations
Good-practice examples and guidance to policymakers who are designing or redefining their justice agenda to foster inclusive growth.	Good practices and "what works" are emerging but are far from complete.
The analysis draws on both original data collected by the OECD and existing data collected by other organisations.	Potentially incomplete picture due to the limitations of publicly available information (given that websites and other sources may not be up to date and comprehensive).
Information is cohesively gathered on what we know works in identifying, measuring, mapping, designing, delivering and evaluating people-centred legal and justice services into a preliminary outline of common criteria.	The data necessary to measure access to justice in a holistic manner does not yet exist, thus rendering difficult to assess the effectiveness of justice and legal interventions.
Provides a comprehensive overview of tools and strategies for delivering people-centred legal and justice services and institutional frameworks that can be used to plan the effective delivery of services.	

Organisation of the report

The report is structured as follows: Chapter 1 provides the rationale for the report, its objectives and the methodological approach to data collection; Chapter 2 highlights the elements of costs and impacts associated with unmet legal needs and provision of legal and justice services; Chapter 3 introduces a framework for planning people-centred legal and justice services and identifies good practices for identifying and measuring the needs for these services; Chapter 4 highlights the main approaches to mapping legal needs as a method to better understanding legal and justice needs, where and when they are needed, and the location of service providers; Chapter 5 reviews principles and good practices for designing people-centred legal and justice services and provides an overview of evidence of “what works” in meeting legal and justice needs; Chapter 6 continues to consider “what works” and provides an overview of good practices for delivering and evaluating these services consistent with the goals of contributing to inclusive growth and enhanced individual and community well-being. A concluding section consolidates what we know works in identifying, measuring, mapping, designing, delivering and evaluating people-centred legal and justice services into a preliminary outline of common criteria. Examples from OECD and partner countries are highlighted throughout the report and potential future steps to close evidence and policy gaps are identified.

Notes

¹ “In broad terms, legal need arises whenever a deficit of legal capability necessitates legal support to enable a justiciable issue to be appropriately dealt with. A legal need is unmet if a justiciable issue is inappropriately dealt with as a consequence of effective legal support not having been available when necessary to make good a deficit of legal capability” (OECD-OSJI, 2019^[4]).

² While there are no internationally agreed upon definitions in this area this report adopts a broad and multidimensional definition of access to legal and justice services, which covers access to legal information and legal services, including counsel and representation to access to formal (such as courts) and alternative dispute resolution, and their enforcement mechanisms.

According to the World Justice Project, access to justice is “the ability of all people to seek and obtain effective remedies through accessible, affordable, impartial, efficient, effective and culturally competent institutions of justice”; For the European Union Agency for Fundamental Rights, “the right of access to justice encompasses the right to a fair trial and the right to an effective remedy as guaranteed by Article 47 of the EU Charter of Fundamental Rights, Articles 6 and 13 of the ECHR, and Articles 2 (3) and 14 of the International Covenant on Civil and Political Rights”. “Access to justice includes not only the rights of the accused in the criminal process and respondents in the civil process, but also the rights of victims and claimants. It is not only a right in itself, but an enabling right in that it allows individuals to enforce their substantive rights and obtain a remedy when these rights are violated”. UNDP defined access to justice as “the ability of people to seek and obtain a remedy through formal or informal institutions of justice for grievances in compliance with human rights standards”. “There is no access to justice where citizens, especially marginalised groups, fear the system, and see it as alien; where the justice system is financially inaccessible; where individuals have no lawyers; where they do not have information or knowledge of rights; or where there is a weak justice system. For UNDP, access to justice involves normative legal protection, legal awareness, legal aid and counsel, adjudication, enforcement, and civil society oversight” (UNDP, 2005^[5]).

³ The European Convention of Human Rights, Article 6, Paragraph 1 and Article 13; the Universal Declaration of Human Rights, Article 10; the International Covenant on Civil and Political Rights, Article 14, Paragraph 1; the European Union Charter of Fundamental Rights of the European Union, Article 4, Paragraph 2 and Article 47.

⁴ 6th amendment of the United-States Constitution.

⁵ See for instance, in the United States, *Snyder v. Massachusetts*, 291 U.S. 97, 116-17 (1934); *Lisenba v. California*, 314 U.S. 219, 236 (1941).

⁶ See for instance, the Court of Justice of the European Union (CJEU), Joined cases C-128/09, C-134/09 and C-135/09, *Antoine Boxus and Others v. Régions wallonnes*, 2011; C-506/04, *Graham J. Wilson v. Ordre des avocats du barreau de Luxembourg*, 2006; the European Court of Human Rights (ECtHR), *Golder v. the United Kingdom*, No 4451/70, 1975; *Ibrahim Gürkan v. Turkey*, No. 10987/10, 2017; the United-Nations Human Rights Committee, *Wolf v. Panama*, Communication No. 289/1988, U.N. Doc. CCPR/C/44/D/289/1988 (1992) (the accused refused attendance to relevant proceedings); *Thomas v. Jamaica*, Communication No. 272/1988, U.N. Doc. CCPR/C/44/D/272/1988 (1992) (the accused was not informed of his appeal date until after it had taken place).

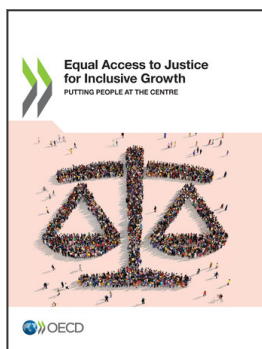
⁷ See also: discussion in Access to Justice Taskforce (2009_[6]); Macdonald (2001_[3]).

⁸ OECD, Advisory stream meetings, “Measurement of Access to Justice” (2016), “Identifying What Works in Terms of Strategies, Programmes and Legal and Justice Services Models” (2017), “Exploring the Links between Access to Justice and Inclusive Growth” (2018) on justice in 2016, 2017 and 2018.

⁹ OECD-OSF, “Delivering Access to Justice for All,” New York, September 2016; OECD-OSJI (2016), “Understanding Effective Access to Justice”, Technical Workshop, 3-4 November 2016; joint sessions; OECD-OSJI Technical Workshop – Paris, 3-4 November 2016; OECD-OSF high-level event – New York, September 2016.

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