Chapter 8

Trust and access to justice

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Justice is an area of public policy that exemplifies the need for a strong trust relationship between public institutions and citizens. This chapter looks at how trustworthiness is grounded in an understanding of users’ legal needs and how to respond to them through a continuum of legal assistance and justice services. Integrating legal and justice services with other social services (e.g. health, employment), establishing simple gateways (“one-stop shops”) and providing targeted and timely legal assistance services to those facing the most severe problems will maximise social return on investment. Expanding ICT-enabled justice services and processes further helps meet specific needs (e.g. remote communities) and address new policy challenges (e.g. self-representation). Finally, developing transparency and outreach measures (e.g. legal empowerment) will support the development of legal capabilities and improve openness.

The conclusions of this chapter are under the Secretariat’s responsibility and do not in any way imply a mandate from Members to pursue work on this area.
Introduction: How trust affects policy outcomes in legal and justice services

Trust in legal and justice services matters for trust in government, by providing citizens with recourse mechanisms to protect their rights and access to other public services such as education or health. In turn, access to and satisfaction with these services are important contributors to trust in government more broadly. Moreover, these protection mechanisms create safeguards against possible misbehaviour by different actors in society, and in strengthening integrity make possible trust in fellow citizens, businesses and other public institutions. Trust in the justice system, in theory, reduces transaction costs and accelerates many kinds of economic and social interactions. Many of the issues raised in previous chapters relating to open government, stakeholder engagement and voice, and effective service delivery recur with respect to the provision of justice services.

Yet, understanding the links between trust and justice give rise to empirical, conceptual and institutional challenges for policy makers.

Unclear and unreliable evidence from surveys

Survey respondents tend to amalgamate various justice institutions, concepts or agencies. Citizens may view the justice system as a homogenous entity and make trust judgements directed towards the whole set of justice institutions without differentiating among branches of justice (e.g. criminal justice and civil justice), the entities involved (e.g. public prosecutor, court or prisons) or among the different roles and processes (e.g. investigation and adjudication).

Existing surveys and research on trust and justice are often based on perception and rarely on citizens’ experience with legal and justice services. The role of exogenous drivers such as media and the wider historical context of a country are also essential for understanding the relationship between perceived and actual citizens’ trust with the justice services.

Little known about trust in civil justice

Literature and empirical research on trust in justice institutions primarily focus on judicial trust and criminal justice. Yet, citizens experience civil legal problems more frequently. It is not certain that what holds true for criminal justice also holds true for the civil branch and entities of the justice system.
Trust in ADR mechanisms rarely investigated

Little evidence exists on the levels of trust in alternative dispute resolution (ADRs) or the implications for the broader justice system, despite increasing use of ADR as a means to resolve legal disputes.

Legal and justice services and the drivers of trust

According to Government at a Glance (OECD, 2015), “direct experience of citizens in justice services affects their satisfaction with these services and more broadly their trust in public institutions”. As with other services, improving access to and the responsiveness and quality of justice services will likely lead to greater satisfaction and trust in the institutions that deliver these services. Yet, justice services have their own specificities. In terms of the institutional elements found to have an impact on trust in justice, empirical research points to the following key relationships between justice services and trust:

• **Effectiveness of the justice system** (i.e. whether a justice system achieves its objective of ruling a dispute based on law or enabling law enforcement) is seen as a necessary yet not sufficient generator of trust. It may be identified by such indicators as the national and perceived crime rates and the clearance rate of cases (given that performance-based improvement margins may differ among different branches). The quality of processing in general – absence of delays, annual public budget to legal aid – is seen as having a positive correlation to trust.

• **Reliability of the justice system** is seen as a potential driver of trust, by minimising uncertainty in terms of length of the proceedings, fostering consistency in court decisions, stability of legislation and efficiency of the justice system. With a reliable justice system, citizens have the feeling they can depend on the justice system to provide them with a service.

• **Degree of responsiveness to the needs of citizens** – e.g. responding to local concerns and being open to public suggestions – is also found to be directly correlated to the level of justice trust by encouraging close connection and dialogue with citizens and adapting the judicial system’s functioning to local needs.

• **Degree of transparency, outreach and visibility** of the justice system is also seen as a driver of trust, through fostering the transparency,
accessibility and clarity of court decisions and justice procedures for media outreach and an informed and engaged public.

- **Fairness and integrity** contribute greatly to building trust in justice. Procedural justice is concerned with making and implementing decisions according to fair processes. People feel affirmed if the procedures that are adopted treat them with respect and dignity, making it easier to accept outcomes, even those they do not like. Implementation of fair processes, a perceived lack of using office for private gain, due process of law and rights of the accused are indicators that can induce trust. Perception of corruption significantly erodes trust.

- **Access to justice services** is seen as likely to influence trust in the justice system, although further empirical research is needed in this area. Effective access to justice requires legal institutions capable of rendering independent, impartial, binding and enforceable decisions, and is influenced by length of proceedings (existence of fast track or not), the level of legal costs (right to legal aid) and limitations of access to victims (opening to 3rd parties).

Finally, citizens’ trust in the justice system depends on multiple factors that reside outside the system: the cultural and economic context in which the justice system is embedded; the influence the media can have on public opinion; social demographics that include ethnicity, education, political affiliation, income, age and gender; cultural or societal differences in trust or distrust; and trust people have in other than the judicial institutions, such as trust in government or a predisposition to trust institutions in general.

**Why trust is important in justice services**

*Decrease in unresolved legal problems and enhanced inclusive growth* – Citizens who trust justice institutions will more likely address their legal problem and resort to its protection mechanism to enforce their right to public services. Legal problems appear to have significant impacts on health, employment, housing, relationships and other dimensions of people’s lives. While limited, there is increasing evidence that addressing legal problems and accessing justice can contribute to inclusive growth by creating jobs, reducing work days missed due to legal problems, providing stable housing, resolving debt issues, and stimulating business activities.

*Compliance and co-operation with justice institutions* – In countries where citizens report low levels of confidence with police and judges, there may result under-reporting or choosing not to report crime or co-operate, by
giving evidence for instance. Yet, an incomplete evidence base limits the 
capability of the criminal justice system to effectively prevent and fight 
crime, and may reduce the effective allocation of resources and inhibit rule 
of law.

Most OECD countries undertake policy measures to build citizen trust in 
legal and justice services. Current debates in some countries point to several 
emerging policy examples for developing citizen-centred approaches to 
delivering legal and justice services.

Responsive, reliable, open and fair: Practical steps to trustworthy 
justice services

Improving responsiveness

Understanding the determinants of trust in different branches of the 
justice system – Citizens engage differently with criminal justice, civil 
justice, administrative justice, police, etc. Each system bears its own 
challenges and issues and affects trust levels differently. For instance, in 
France, public consultation on justice sought to understand citizens’ opinion 
on the role of judges in the areas of civil and criminal justice.

Understanding citizens’ legal needs at the national and sub-national 
levels – Implementing effective justice policy starts with a clear 
understanding of the country’s legal needs. Many countries have relied on 
“legal needs surveys” to identify the legal and justice needs of citizens 
(evenly in civil, family and administrative justice). Such surveys have 
now been carried out in more than twenty-five advanced and emerging 
economies, including at least nine OECD member states, as well as a 
number of developing countries. Other countries, such as Mexico, have used 
an extensive consultation process to identify the everyday legal needs of 
citizens across every state.

Understanding citizens’ justice pathways and experience – Some 
countries are mapping real experiences of citizens and carrying out regular 
user satisfaction surveys to better align services with citizens’ expectations. 
In turn, countries are expanding dispute resolution options within and 
outside courts and tribunals, making courts and tribunals multi-service 
centres, developing specialised tribunal- and/or community-based triage 
systems.
Improving reliability, openness and integrity

Continuum of legal assistance and justice services – Several countries are shifting away from the more traditional focus on “access to a lawyer and a judge in a court”, and toward seeing access to legal and justice as entailing a continuum of services. These include access to understandable legal information, to legal representation, to appropriate non-legal support, as well as support to participate in a range of alternative mechanisms that suit the needs and the capabilities of individuals in a cost-effective way. Examples follow.

One-stop shops – To facilitate navigation across multiple justice pathways, some countries are developing simple gateways into the system of legal service – e.g. family justice centres and in France le service d’accueil unique des justiciables. Those initiatives help to overcome the fragmentation of legal services and to better meet the legal and justice needs of citizens. In Australia a number of legal hotlines provide legal triage, such as LawAccess NSW and various hotlines operated by Legal Aid and community legal centres (CLCs). These hotlines vary in their scope and services, such as the extent to which they provide direct caller access to a lawyer, comprehensive referral to legal and non-legal services, and follow-up ancillary services (e.g. face to-face advice and written information). In addition, various CLCs provide generalist legal services and to some extent provide a triage service. The Dutch Legal Aid Board (Rechtwijzer website) and the British Columbian online Civil Resolution Tribunal (CRT) are other examples of innovations in this area. In Scotland the development of a single gateway and point of contact for legal complaints (SLCC, the Scottish Legal Complaints Commission) aims to build trust and confidence in legal services.

Joined-up legal, justice and other social services – In many OECD countries – such as Australia, Belgium, Germany, Italy, Poland and the Netherlands – joined-up services aim to deal with interdependent clusters of legal and non-legal problems. This ties in with findings that low-income or vulnerable groups – e.g. women, the elderly, refugees and indigenous peoples are often dealing with multiple related legal (relationship breakdown, housing, debt and government payments) and associated health, economic and social problems.

In the United States the Legal Aid Interagency Roundtable brings together 18 federal agencies in collaboration with the White House Domestic Policy Council to evaluate current programmes and practices and improve outcomes in a wide array of fields – including health services, housing, education, employment, family stability and community well-
being, and developed a Toolkit. At the state level, the Elder Access to Justice Roundtable brings together diverse representatives of the community to “raise awareness, prevent, identify and address elder abuse, neglect and exploitation by enhancing communication, identifying systemic problems, sponsoring training, and improving access to justice and services”. Representatives include members of the “police force, the County Sheriff, the District Attorney and Public Defender’s offices, health care and senior providers, legal advocates for seniors, hospitals, community advocates, judges from several judicial systems, the Recorder of Deeds, and members of the Office on Aging, Departments of Health, Veterans Affairs and Coroner’s office”. Family courts and problem-solving courts in Australia, the United Kingdom, Canada and the United States also provide examples of joined-up legal and human services.

**Targeted, timely and appropriate legal assistance services and approaches** – Targeted services (to those most in need, e.g. women, refugees, migrants and the elderly) aim to ensure limited public funds are first used to assist those facing the most severe problems and least able to otherwise access help, thus maximising social return on investment. Targeted services also require recognition that justice and legal needs are tied to an individual’s life circumstances (e.g. problem-solving courts dealing drug and alcohol abuse, domestic abuse). The US Federal Government’s Legal Aid Interagency Roundtable and the Elder Access to Justice Roundtable are cases in point. The emphasis on early intervention (to prevent problems occurring or escalating) reflects the recognition that legal problems, particularly if left unaddressed, can bring about and exacerbate other legal and non-legal problems (and entrench social disadvantage). This often requires building a robust early resolution services system. The appropriateness of legal services calls for tailoring the mode of service delivery, location and level of assistance to reflect client capability. The aim is to support efficiencies by migrating users to the least expensive services that adequately meet their needs. Other examples include the Australian Government’s initiatives to target specific disadvantaged groups as well as local efforts to improve access to better targeting, such as civil and family law outreach services to culturally and linguistically diverse communities (Box 8.1), or Homeless Persons Legal Service Clinics.

**Openness and transparency**

All OECD countries are taking steps to open and make available justice statistics. Twenty-seven OECD countries also participate in the biennial data collection exercise of the European Commission for the Efficiency of Justice. Key judicial indicators cover court organisation and performance,
ADR, gender distribution, and information and communications technology (ICT).

**Box 8.1. Specialised justice services for indigenous communities**

OECD countries with large indigenous communities have implemented different measures to respond to their legal needs, and adopted specialised judicial mechanisms and courts. In Chile, the *Defensoria Penal Publica* (“Public Criminal Advocacy Office”) is one of the few organisms in the region providing public legal counselling to indigenous people in their own language. It includes one specialised advocacy office (for Mapuche). In Canada, the Access to Justice Services Agreements (AJAs) are funding arrangements between the federal government and Canada’s three territories (Yukon, the Northwest Territories and Nunavut). They are the means by which the government of Canada financially supports the delivery of access to justice services in northern communities, including legal aid (both criminal and civil), Aboriginal courtwork services, and public legal education and information. There are 25 Indian Legal Services offices in the United States (collectively known as the National Association of Indian Legal Services – NAILS) that serve Native Americans both inside and outside Indian country. In New Zealand, the Maori Land Court has jurisdiction to hear matters relating to Maori land, including successions, title improvements, Maori land sales, and the administration of Maori land trusts and Incorporations.

**Legal empowerment and outreach**

As the need for access to processes for the resolution of legal problems is an integral attribute of modern lives, legal empowerment is about making the protections of the law accessible to ordinary people. Countries’ responses to legal needs seem to increasingly recognise the importance of public legal education and prevention aspects – in France *l'accès au droit* – which are increasingly facilitated by the use of technology. Examples of activities may include self-help outlets, such as law clinics, online legal portals or mobile legal apps. In addition, countries are increasingly engaged in outreach activities involving proactive steps to provide some form of legal assistance rather than waiting for service users to come to them (*l'accès à la justice* in France).

**Maximising the use of technology**

ICT is increasingly seen in OECD countries as a key enabler for meeting legal needs and providing citizen-centred services, by enhancing access to information, facilitating provision of legal and justice services, and enabling
integrated access to services in the justice sector. ICT is often being used to automate current processes (e.g. Information Technology Centre for Korean Courts), making them more efficient and accessible to citizens, creating new pathways to justice (e.g. a portal of mediators in Spain), and providing direct access to justice services. After a slow start compared with other sectors, new tools and applications are now appearing at a rapid rate (e.g. smartphone applications allowing citizens to follow judicial cases or to make an inquiry about a document). A number of emerging technologies are proving most useful – examples include online judicial assistance services (Portalis in France), online dispute resolution (ODR in Europe, the United Kingdom and the United States), social media, cloud computing, the aforementioned smartphones (the Ask a Lawyer app in the United States and the ECC-net: Travel app in Europe), mobile software applications and mobile computing.

Conclusion

Trust in legal and justice services is a foothold for trust in public services generally, by providing citizens with recourse mechanisms to ensure their access to all other public services, e.g. education and health. By extension, access to and satisfaction with justice services are fundamental contributors to trust in government overall.

While all OECD countries are taking steps to open and make available justice measurements, various empirical, conceptual and institutional challenges remain when it comes to understanding the links between trust and justice. More specifically, there remain large gaps in the literature and empirical research in the areas of trust in civil justice and trust in alternative dispute resolution (ADR) mechanisms.

To respond to these challenges, the current OECD work on legal and justice services focuses on understanding effective access to justice, including citizens’ experience and legal needs and how these link to other social determinants. This effort is expected to lay the groundwork for maximising the access, reach and quality of justice services, while empowering communities and generating better trust in public services at large. Additionally, this work will support the OECD Inclusive Growth Initiative and the advancement of the UN Sustainable Development Goals Agenda.

While each country is in the best position to identify and define the appropriate public policies in this field, this work underlines the importance of promoting equal access and the responsiveness and quality of legal and justice services as important levers of trust in justice services. Effective
policies start with understanding users’ legal needs and justice pathways, and the ways to respond to these needs through a continuum of legal assistance and justice services. Integrating legal and justice services with other social services (e.g. health, employment), establishing simple gateways (“one-stop shops”) and providing targeted and timely legal assistance services to those facing the most severe problems will maximise social return on investment. Expanding ICT-enabled justice services and processes further helps meet specific needs (e.g. remote communities) and address new policy challenges (e.g. self-representation). Finally, developing transparency and outreach measures (e.g. legal empowerment) will support the development of legal capabilities and address the calls for greater openness in the justice sector overall.
References


Further reading


