

Measuring Access to Human Rights

Working group on access to justice
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Measuring access to justice methodology

- Developed by Tisco with funding from Hague Institute for Internationalization of Law, EU Emcod, City of the Hague and in cooperation with Hague Rule of Law Network
- We measure people's experiences with paths to justice
- Users of processes can assess the costs and quality of justice
- A path to justice is the main unit of analysis, defined as:
 - “Commonly applied process designed to deliver just solutions to legal problems”
- An effective legal system must provide accessible and fair path to justice for the serious and/or frequently occurring problems.
- Not every problem needs a legal solution but an effective path to justice guarantees the “Shadow of the law” effect

Central research questions

- What indicators do people use when they assess their experiences with justice?
 - What is important for them?
 - What is relevant for them in which setting?
 - What are universal indicators that can be applied across settings, cultures, countries?
- How to measure these indicators?
- How to valorize the knowledge on the costs and quality of paths to justice into better and more accessible justice processes?
 - Evidence based access to justice
 - Dispute system design

Areas where methodology is applied

- Human rights: discrimination, fair trial, prison conditions (Cameroon, Poland, Canada)
- Informal tribunals (Afghanistan, refugee camps Thailand, Rwanda, Cambodia)
- Personal injury, administrative procedure (Netherlands)
- Labour rights (Bulgaria)
- Family disputes in courts and mediation (Netherlands, Senegal)
- Sexual violence (Bulgaria, Netherlands, Australia, Nepal)
- Consumer problems (Netherlands)
- ID procedures (Bolivia)

1. Suggestions on the business case

Usefulness of indicators/concrete experiences/obvious needs?

- Access to justice is key for
 - Human rights protection
 - Conflict prevention (World Development Report 2011)
 - Economic growth and well being (property rights protection and security)
- Measuring of concrete experiences of citizens with justice system is key for monitoring, comparing, improving the processes that give access to justice
- Current methods allow comprehensive measuring for around €100.000 per country (so 2 yearly monitoring EU wide can be done for less than €2 million/year)

2. Suggestions on key indicators for topic

What areas / aspects (or actual indicators) would be the most 'defining' ones for access to justice?

- Select 10 most frequent/serious legal problems for which access to justice is urgent:
 - Divorce/domestic violence/rights of children; Labour rights; Personal injury/right to health; Neighbor conflict/violence; Property/tenure house and land; Theft of property; Detention/criminal defence; Consumer complaints goods/services (Source: Legal needs/justiciable events studies and victim surveys conducted in 30 + countries)
- Map actual experiences of 100 citizens with access to justice for each problem

3. Suggestions on limitations of existing indicators

In which areas of access to justice indicators are data most readily available ?

- Many input indicators (numbers of courts, lawyers, budgets, laws etc.): Cepej
- Many indicators of perceptions of independence of courts, etc: Transparency Int, Governance Matters, World Justice Project

But research suggests:

Access to justice is weakly related to inputs (Botero et al. Judicial Reform 2003; Beenstock et al. 2004) and structure (laws, institutions on paper, see law and development evaluations)

4. Suggestions on gaps in data collection

Actual experiences of citizens seeking access to justice

- Some expert evaluations of hypothetical cases: Doing Business, Cepej, WJP
- Some data from legal needs/justiciable events studies
- Some customer satisfaction surveys courts, but
 - Satisfaction with court can be moderate or high but overall costs and quality access to justice can be problem
 - Most access to justice is not obtained through adjudication but “in shadow of litigation”

Gap:

- Data on actual justice and costs experiences of citizens seeking access to justice in their urgent problems

5. Suggestions on roles

EU relevance, FRA role, Key stakeholders, Strategic partnerships

- Stakeholders in standardized access to justice measurement
 - EU Consumer affairs, World Bank, UNDP, Global Justice Institute The Hague
 - National Legal Aid boards
 - NGO's working on access to justice
 - Ministries of justice willing to set performance standards for their courts and legal profession
- Problem: Incentives on courts, legal profession to let their performance be evaluated independently

Indicators of the Costs and Quality of Access to Justice

1. Costs of Justice

How much the users of justice have to pay in order to reach a fair solution to their problem?

- **Monetary costs** – all out-of-pocket expenses incurred on a path to justice i.e. legal fees, court fees, remuneration of expert witnesses, production of evidence but also cost of travel, communication etc.

- **Opportunity costs** – time spent on a path to justice, foregone earnings, depreciation of assets etc.

- **Intangible costs** – stress, negative emotions, damage to important relationships



Indicators of the Costs and Quality of Access to Justice

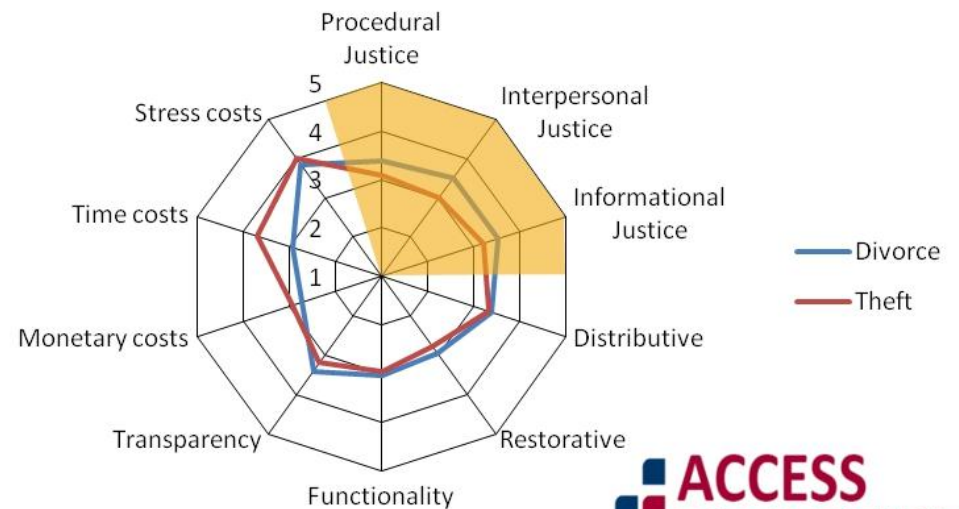
2. Quality of the Procedure

How the users of justice experience the justice process?

- **Procedural justice** – perceived fairness of the procedure through which outcomes are derived. Research persistently finds that people value procedures which are impartial, objective, inclusive, accurate, allow adequate voice as well as process and outcome control.

- **Interpersonal justice** – people want to be treated with respect and dignity.

- **Informational justice** – amount and content of process-related information affects the perceptions of justice.



Indicators of the Costs and Quality of Access to Justice

3. Quality of the Outcome

How the users of justice assess the end-result of the traveled path to justice?

- **Distributive justice** – people want to receive fair amount of the disputed value. Depending on context and type of dispute people use one of three rules to assess the distributive effect: equity (contribution, just desert), equality or need.



- **Restorative justice** – a fair and just outcome has to repair the pecuniary, non-pecuniary and relational damage suffered.

- **Functionality** – the outcome has value only to the extent to which it solves the problem. A functional outcome provides tangible solution, can be enforced and/or the parties are likely to comply with it.

- **Transparency** - the outcome has to be well motivated and explained to the users of¹² justice.

Methodology for Measuring the Costs and Quality of Access to Justice Step by Step

- Step 1** Identify the path to justice
- Step 2** Define the sampling frame
- Step 3** Select a research instrument and adapt to the specific path to justice
- Step 4** Collect data

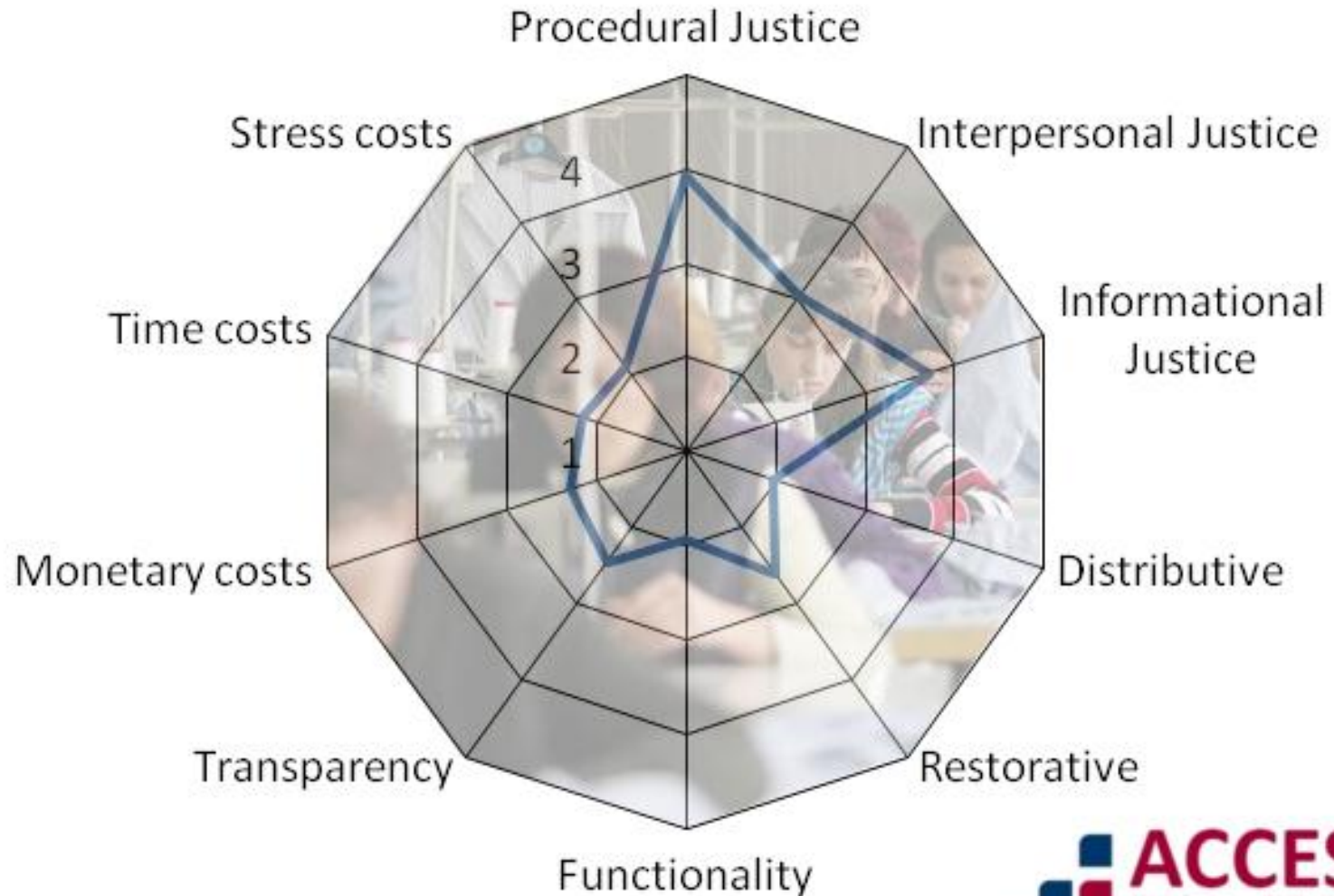


- Step 5** Analyze the path to justice, visualize the main findings

- Step 6** Propose actions for improvement and redesign of paths to justice. Draft policy recommendations

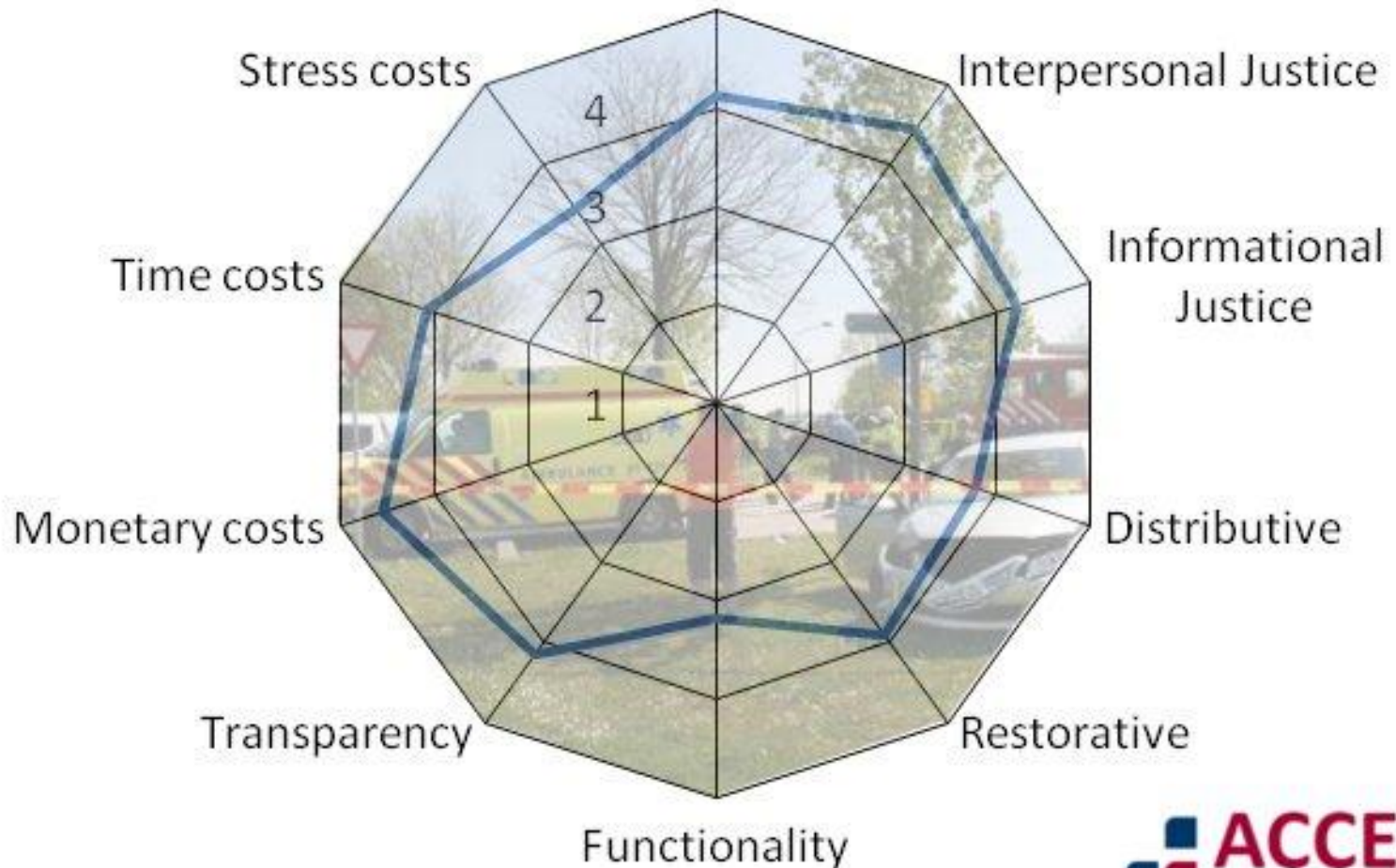


Labour Dispute|Bulgaria



Personal Injury | Netherlands

Procedural Justice



Populational Sample | Refugee Camps Thai-Burma Border



Value of measurement

Measuring access to justice enables:

- Development of performance standards and benchmarks
- Facilitation of constant monitoring of paths to justice designed to respond to fundamental rights
- Learning tool – identification and explanation of best practices
- Quality improvement mechanism
- Transparency and accountability of courts and legal systems
- Comparison of paths to justice within and between jurisdictions
- More informed choices for the users of justice
- Policy monitoring and analysis
- Project and program evaluation tool

www.measuringaccesstojustice.com

Here you will find:

- Handbook (downloaded 6000 times)
- Questionnaires in English, Russian, Bulgarian, French, Mandarin, (soon also in German, Polish, Spanish, Serbo-Croatian)
- Data from projects
- Papers with research and literature reviews that underly the methodology