

Measuring Access to Justice

Rule of law programming in developing countries and countries in political or post-conflict transition often identifies access to justice (A2J) as a principle objective for justice reform initiatives or specific legal services for the poor. This issue of Co-Praxis examines various methodologies for measuring and assessing how citizens access justice.

JGG Experience in Access to Justice

JGG consultants have experience in training development practitioners, monitoring obstacles to A2J, and measuring the results of A2J programs. Since 2006 we have collected and systematized A2J assessment methodologies and studies due to our frustration with a lack of clear definitions and indicators in A2J development projects.

Common Elements in A2J Measurement Tools

Values: Assessment tools are based on both procedural and substantive A2J values that provide the basis for quantitative and qualitative indicators. Stated or inferred A2J values include:

- equitable laws and procedures that are free from discrimination
- independence and efficiency in dispute resolution procedures
- availability of mechanisms that help the population resolve everyday problems
- adequacy of physical and human resources in legal and court services
- quality of procedures (e.g. fairness)
- quality of outcomes (e.g. the effectiveness of remedies)
- citizens' ability to exercise constitutionally protected rights

Rationale and Use: In development cooperation programming A2J assessments are generally used to support the design of justice reform projects. They are also used to: increase transparency and accountability; evaluate institutional performance; support evidence-based decision-making; and monitor justice reform progress.

Indicators: Early justice reform initiatives sponsored by international financial institutions did not always focus on the poor's access to justice. Indicators were generally quantitative, with a focus on the supply side (resource allocation and efficiency of procedures). In the last several years qualitative measures have been incorporated into assessment tools, and effort has been made to survey justice users and collect information on the respondents' education, income, sex, ethnicity, and age without introducing user-specific questions or indicators in surveys. Most tools group both types of indicators according to factors or themes that reflect the conceptual basis and scope of the tool itself.

Examples of Quantitative Indicators: the ratio of professionals (judges, prosecutors, lawyers, police) to population; infrastructure (e.g. the number of court houses or police stations); the number of cases in courts and number resolved; institutional performance indicators (the number of arrests by police, the number of criminal convictions obtained by Prosecution); public budget allocations; monetary and other costs assumed by users (e.g. loss of time or loss of opportunities).

Examples of Qualitative Indicators: compliance with due process measures (e.g. length of pre-trial detention, availability of legal representation disaggregated by sex, ethnicity, region); users' perception of fairness; users' confidence in an institution; intangible costs assumed by the user (e.g. stress); enforcement of remedies; equality-based measures (e.g. ethnic profile of detained individuals, convicted individuals and those with custodial sentences); users' satisfaction with court or alternative dispute resolution processes.

Measurement Tools and Methodologies Reviewed

- American Bar Association, *Access to Justice Assessment Tool* (2012)
- Hague Model of Access to Justice/Tilburg University, *Handbook for Measuring the Costs and Quality of Access to Justice* (2009)
- Legal Services Board, United Kingdom, *Evaluation: How can we measure access to justice for individual consumers?* (2012)
- World Justice Project, *Rule of Law Index, Methodology* (2011)

Publications Reviewed

- Commission on Legal Empowerment of the Poor, *Making the Law Work for Everyone* (2008)
- Hague Institute for the Internationalisation of Law, *Measuring Access to Justice in a Globalising World* (2010)
- International Development Law Organization, *Accessing Justice: Models, Strategies and Best Practices on Women's Empowerment* (2013)
- PEKKA/AusAID, *Access to Justice: Empowering female heads of household in Indonesia* (2010)
- Sida, *Equal Access to Justice – A Mapping of Experiences* (2011)
- Matthew Wills, *Indicators used internationally to measure indigenous justice outcomes* (2010)
- World Bank (K. Himelein et al), *Surveying Justice: A Practical Guide to Household Surveys* (2010)
- World Bank (V. Maru), *Access to Justice and Legal Empowerment: A Review of World Bank Practice* (2009)
- World Bank, *Justice Surveys*

Methods: Assessment of de jure A2J through a legislative review is a common (but incomplete) method. In order to collect information on the actual experience of users and key justice actors, survey questionnaires are regularly used with households, court users, legal professionals or experts. Less frequently, specialized surveys of marginalized groups such as women, indigenous peoples, or minority groups are used. Additional methods of A2J assessment include: collection and analysis of institutional data, focus groups, in-depth interviews or case studies, hypothetical civil or criminal procedures, and diaries maintained by litigants. These additional methods are designed to help understand the quality of procedures and outcomes and the context within which the users access justice systems.

Synthesis of the Challenges and Solutions in Measuring A2J

Relevancy of indicators: A2J indicators that are based on international norms, Western rule of law values, or problems that have been defined externally by donors or the media, don't necessarily capture the national and local socio-political context. The World Bank suggests mapping out the justice landscape from citizens' perspectives rather than importing assumptions about what a justice system should be.

Subjectivity of the quality of outcome indicators: Assessment of the fairness and quality of outcomes (decisions) is naturally subjective. The Hague/Tilburg model assesses quality of outcome through indicators reflecting different theories of justice (restorative, distributive, corrective, retributive, transformative, and so on). The fairness of an outcome from a distributive justice paradigm is particularly challenging. The Hague/Tilburg model seeks to resolve this issue by asking all parties to a civil process the same questions: Were your needs met? Did you get the piece of the pie you deserved? Did you deserve an equal portion of the pie? Responses differ according to gender, personality, and other social characteristics. The American Bar Association (ABA) tool does not seek to understand the quality or fairness of the outcome but queries the enforceability of the decision.

Mixed methods: Closed-ended survey questionnaires do not necessarily lend themselves to external validity (the ability to generalize results across data sets). A mixed methods approach increases external validity and reliability and permits qualitative analysis of smaller or disaggregated data sets.

Sampling groups: A2J tools emphasize the need for a sufficiently large sample group to ensure validity and reliability and to allow for disaggregation of data. Accessing justice users in conflict zones and isolated rural areas is particularly challenging but important to do.

The cost and importance of periodic measurement: Funds should be allocated for a large survey sample and multiple assessment methods in order to increase validity and reliability and to ensure that recurrent measurement feeds into reform efforts. Recurrent surveys help to monitor performance and behavioural change in a specific group of justice providers and users and thus help track progress and identify specific reform initiatives.

Politics of justice reform and national ownership: Justice reform that seeks to ensure A2J for all citizens is a political

process; change that disrupts the benefits of privileged sectors is often met with resistance. Justice reform needs to be nationally driven and sustained over the long term. Donors' expectations of quick outcomes do not always recognize that sustainable change in the justice landscape may take decades or generations to achieve.

Research and ethical issues: The ABA tool notes the challenges to conducting A2J interviews and accessing court procedures during an assessment. The ABA also observes that lack of a prior relationship between researcher and respondent may limit the breadth of information provided to the researcher by citizens, especially poor or marginalized individuals. The World Bank warns that household surveyors in a conflict-affected country should guarantee confidentiality of responses and security for participating households.

JGG's Reflections

A2J for poor and disadvantaged groups: The review of tools and other publications revealed that while equality and non-discrimination are fundamental A2J values, minimal attention is given to specific indicators or sampling issues related to specific sub-groups of justice users unless the tool or survey is designed for a "justice for the poor" or group-specific A2J initiative. A2J barriers are multidimensional and thus assessment indicators, data collection methods and analysis need to consider economic, social, and cultural practices as well as gender, ethnic, capacity/disability and language factors in order to identify the de facto barriers to A2J.

Ethical issues of external researchers and evaluators: JGG's practical experience echoes some of the ABA and World Bank concerns. For example, access to information rules or common practice may prohibit researchers from conducting questionnaires, observing courtroom hearings, or reviewing court records and judicial decisions. Access may be at the discretion of judicial authorities without formal protocol. Additionally, if a specific case is being used to study A2J in detail the litigants, lawyers, and court officials should each provide their consent for information to be shared due to concerns related to solicitor-client confidentiality. Some donor agencies do not ensure confidentiality of sources, which may restrict the application of open-ended questionnaires with justice providers and users.

Formal justice bias: While some of the measurement tools recognize the prevalent use of customary and other community-based justice systems, especially in regions of a country where state authority and legitimacy is reduced, the tools generally have few or no indicators to capture the degree of access to these systems. Additionally, tools that assess non-state justice systems often rely on indicators that are based on formal justice concepts. The use of external standards in the assessment of customary justice systems is problematic given that such systems have distinct values of social cohesion, collective responsibility for individual conduct, and restorative principles.

Availability of information in the formal justice system: Accessing and maintaining regular data to assess A2J requires human resources and institutional information systems. In countries where institutions have not consolidated case management and information systems, A2J measurement may be ad hoc and performed by donor agencies. Initial investments in justice reform in countries emerging from conflict or in political transition can support the opportune establishment of information and case management systems that incorporate A2J-appropriate data. Ideally, the design and application of consistent terminology and indicators across justice institutions such as the police, prosecution, criminal courts, and prisons, and the integration of gender equality and other characteristics, will improve decision makers' ability to tailor justice policy, laws, and services.

JGG Contact Information

website: www.justgovernancegroup.org

email: info@justgovernancegroup.org

skype: [JustGovernanceGroup](https://www.skype.com/JustGovernanceGroup)

facebook: www.facebook.com/JustGovernanceGroup