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Problem Lab: Access to Justice

Access to justice is a basic principle of the rule of law. In the absence of access to justice, people are unable to have their voice heard, exercise their rights, challenge discrimination or hold decision-makers accountable. (<https://www.un.org/ruleoflaw/thematic-areas/access-to-justice-and-rule-of-law-institutions/access-to-justice/>)

The concept of ‘access to justice’ has been interpreted in different ways. The traditional understanding of ‘access to justice’ focuses on the first element, *access*, and considers what should be done to lower the threshold for individuals and groups seeking to use dispute resolution mechanisms. This understanding focused at first on access to courts and other formal mechanisms, and the preoccupation was to make it easier in particular for poor people to secure the services of lawyers in order to have their concerns dealt with by the courts. During the 1970s and the 1980s, the focus expanded to include an examination of how to make the judicial system fairer and more efficient. This included managerial reforms (such as case management), judicial specialization and an emphasis on plain language. During the 1980s, ‘alternative’ dispute resolution mechanisms (such as mediation) entered the conversation, as did an emphasis on improving public legal education, legal literacy, dispute prevention and self-help.

A more recent approach to ‘access to justice’ focuses on the *justice* element. Its contribution is to turn attention to the capacity to participate effectively in the drafting of laws and the formulation of legal policy. This approach helps to move the discussion from the individual person needing legal assistance, to the structural inequities that prevent vulnerable groups from not only securing rights, but from having rights in the first place.

In respect of formal dispute mechanisms, access to justice is relevant to criminal law, civil law and administrative law. In criminal law, it concerns not only the victim and the offender, but also the community, since it is relevant to the feeling of security in the community, as well as to confidence in and satisfaction with the agents of criminal justice. Civil law involves issues as diverse as proof of national identity, family and matrimonial rights, child custody, rights of the disabled, property rights, the right to accommodation, the right to fair employment and fair wages, financial and consumer rights, commercial rights and contractual rights. In administrative law, access to justice is a major consideration in exercising rights and securing services, as well as in holding government authorities accountable for their actions.

In work on improving access to justice, consideration needs to be paid to the enabling environment (the existence of remedies), the ‘supply side’ of access to justice (the institutions and human resources that provide justice services, and their outreach to those in need of access) and the ‘demand side’ of access to justice (the ability of persons to seek access to justice).