

Rule of Law Toolkit

Chapter 5

Access to Justice

Facilitator's Notes

Target Audiences: High School Students; University Students; Law Students
Estimated Time: 2 hours

Participants will learn about various barriers to justice for certain citizens and non-citizens, and how ensuring open access to the justice system promotes a healthy rule of law. Participants will study national and international laws that mandate access to justice, including access to attorneys and courts. They will also learn about the ways that civil society organizations work to increase access to justice for all citizens, especially minorities and poorer individuals who cannot afford to hire lawyers.

Key Learning Objectives

Participants will:

- Define “access to justice.”
- Understand the importance of access to justice to the rule of law.
- Read and analyze laws that provide international standards for access to justice.
- Identify barriers to access to justice.
- Discuss the strategies nations are using, or may implement, to improve access to justice.

Glossary of Terms:

- **Rule of law:** A general legal concept according to which all laws and legal decisions are enforced and applied equally to all persons, without any discrimination.
- **Access to justice:** The ability of individuals or groups to receive fair and just remedies under the law. This includes equal opportunities for all individuals to defend themselves in court, as well as equal access to free or low-cost legal representation if they cannot afford it themselves.
- **Adjudication:** The court's process of evaluating the facts of a case and providing a judgment, usually binding for the parties involved.
- **Bar association:** An organization for lawyers, and sometimes judges, that seeks to regulate elements of the profession, such as codes of professional conduct, ethics, and education. Bar associations also serve to promote the legal profession and advance the rule of law.
- **Legal aid:** A systematic program that provides free or low-cost legal representation or advice to individuals facing legal issues who are in need of assistance and otherwise would be not able to pay.
- **Litigation:** The act of bringing charges or a claim into a court system for a judgment.

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- **Public interest law:** Various types of law, such as civil rights, anti-corruption, or freedom of expression, that seeks to protect and promote the fundamentals of the rule of law.
- **Pro-bono:** A public service practice of forgoing professional fees, such as a lawyer's fee for services, to provide expertise to an individual or group that would be otherwise unable to pay.
- **Tribunal:** A group of judges that oversees and judges a particular type of claim or charge. An example is the International Criminal Tribunal for Rwanda.

Handouts

- Handout I: Background Paper on Access to Justice
- Handout II: Barriers to Justice

The Background paper (Handout I) should be provided to the participants prior to meeting. It should be discussed briefly at the start of class, and will also be used as a frame of reference for group activities and discussions following the activities.

Activity 1—Brainstorming Barriers to Justice

The purpose of this activity is to engage participants in “Mock Trial Scenarios” that will demonstrate the importance of ensuring that everyone who is charged with a crime has equal access to a lawyer.

Begin by staging a mock trial scenario using Handout II: Barriers to Justice. Select participants to play the roles:

- Defendant, or accused suspect
- Plaintiff, or accuser
- Lawyer for the plaintiff
- Witness 1
- Witness 2
- Police officer
- Judge (1 or a panel of judges)

Mock Trial Scenario 1

1. Individuals not assigned a specific role should join either the legal team for the plaintiff or the defendant to assist with activities.

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2. Provide the paragraph in Handout II to the lawyer's team for the plaintiff. Explain to the team the background of the case, and using the handout, give them a short overview of the witness interviews, relevant case law, and penal statutes in question.
3. Provide the defense team with the same information about the case plus the police statement of the accused.
4. Do not give the individual playing the role of the accused any additional information.
5. Ask each team to examine the case and create arguments to make in an opening statement.
6. Begin to act out the mock trial scenario, starting with the prosecution bringing allegations of theft against the accused person. In this scenario, the accused cannot afford to hire an attorney and therefore must defend himself against the criminal allegations.
7. The judge then asks the prosecution and the person accused to present the defense.
8. The judge then renders a decision.

Mock Trial Scenario 2

1. The same scenario is played again before a second degree court (a court of appeal). This time, a free lawyer is appointed to defend the accused person. This lawyer makes an argument to the court.
2. The judge hands down a judgment.

Discussion Questions

1. Debrief the mock trials with the following discussion questions:
 - What happened in the mock trial scenario? What case was being tried?
 - Were the suspect, victim, and witnesses treated fairly during the process? Why or why not?
 - Do you agree with the judges' rulings in each case? Why or why not?
 - Did you feel disturbed by the first scenario or the second? Why?

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2. Next, ask participants to think about the term “access to justice,” and read the definition aloud from the Glossary of Terms.
3. Begin brainstorming possible barriers to justice. What might prevent someone from having access to justice? Possible answers should include:
 - Age
 - Gender
 - Religion
 - Economic status
 - Occupation
 - Lack of education
 - Geographic location
 - Lack of courts
 - Corrupt courts
 - Ineffective or unenforceable laws
 - Political beliefs
 - Corrupt law enforcement officials
 - No access to legal counsel
 - No due process
 - Inefficient legal system
 - Out of date courts and legal facilities
 - Shortage of legal professionals
 - Citizenship
 - Language
4. Ask participants to look at their list of possible barriers to justice, and think back to the mock trial scenario that was just presented to them:
 - Which, if any, of these barriers to justice were present at the mock trial?
 - How did these factors prevent the defendant from having access to justice?
 - How might the outcome of the mock trial have been different had these barriers to justice not been present?

Activity 2—Analyzing International Laws for Access to Justice

Before this activity, the facilitator will need to make copies of the documents listed below. The facilitator should make enough for each member of the group. Remember to print documents in languages as needed, depending upon the languages of the participants.¹

- Universal Declaration of Human Rights, available at:

¹ For more detailed information on the existing access to justice and legal aid environment in the MENA region, as well as the supporting legal framework, see the ACJLS White Paper, *Access to Justice and Legal Aid in the Arab World*, available upon request and online at the ACJLS website.

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<http://www.un.org/en/documents/udhr/>

- International Covenant on Civil and Political Rights, available at: <http://www2.ohchr.org/english/law/ccpr.htm>
- Basic Principles on the Independence of the Judiciary, available at: <http://www.juecesdemocracia.es/pdf/temasinteres/princBasicosIndep.pdf>
- Arab Charter on Human Rights, available at: <http://www1.umn.edu/humanrts/instree/arabhrcharter.html>

1. Divide participants into 4 groups.
2. Assign each group 1 of the 4 documents listed above. Give each member of the group a copy of the assigned document.
3. Ask each group to read the document, and then, as a group, to look for statements in it that promote access to justice as the law. Give the groups ample time to examine carefully the documents.
4. Next, ask each group to present its document to the entire class with analysis of how its language promotes access to justice.
5. Following the presentations, raise the following discussion questions:
 - What are some of the common themes relevant to access to justice?
 - Was one document more important than another for promoting access to justice?
 - How do these documents promote the rule of law?

Activity 3—Public Education about the Law

Insufficient knowledge of the law, the legal system, and the court system is a common barrier to justice. Ask participants to list what they believe to be the 5 most important things about the legal system in their country, as if they were planning a public education class for people in their country. Participants should present their answers to the class and explain why they selected them.

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Handout I: **Background Paper on Access to Justice**

Access to justice relates to the availability of legal assistance services to minority groups, the poor, and other disenfranchised segments of society. The lack of legal assistance for these groups is a critical problem facing both developed and developing countries around the world. The United Nations Development Programme defines access to justice as “the ability of people to seek and obtain remedy through formal or informal institutions of justice and in conformity with human rights standards.”² This means all people have an equal opportunity to participate fully in the justice system, regardless of social class or economic wellbeing.

Many countries have achieved significant progress in providing equal access to competent legal services to all citizens. The first step in improving access to justice is to identify existing barriers. These obstacles can include: prohibitive costs of the court system, such as administrative fees; lack of quality, affordable representation; lack of knowledge on how the legal system functions; confusing laws that ordinary people cannot understand; lack of enforcement of laws; and gender and racial biases in the law or application of the law.³ These barriers are prevalent throughout the world and are particularly harmful vulnerable groups such as women, children, and the poor.

Legal Aid

Legal aid is the most common way to increase access to justice. Governments, non government organizations, bar associations, and private attorneys can work together to provide legal services to the poor. Governments can play a role in offering legal aid and regulating and assuring its quality. Some countries have enacted specific laws establishing and regulating legal aid services. The governments of Algeria, Iraq, Jordan, Qatar and Tunisia have each passed laws ensuring aid services.

In the absence of formal procedures, some Middle Eastern and North African countries provide legal aid through exemptions from or reductions of court fees. Judges are often granted the authority to offer such exemptions. This informal process is crucial to the legal systems of countries, such as Lebanon and Morocco, where court fees are very high.⁴ In many countries, the

² United Nations Development Programme (“UNDP”), *Programming for Justice: Access for All* (Bangkok 2005)

³ *Access to Justice: Practice Note*, United Nations Development Programme’s Democratic Governance Group, 2004, http://www.undp.org/governance/docs/Justice_PN_En.pdf: 4.

⁴ “The State of the Judiciary in some Arab Countries [Arabic],” United Nations’ Development Programme, 2005, <http://www.pogar.org/publications/judiciary/sherif/jud-independence.pdf>: 38.

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authority to grant exemptions and postponement of fees is often dependent upon the type of dispute or the circumstances surrounding a particular case. For instance, Jordanian⁵ and Qatari⁶ labor laws exempt workers who make less than a minimum amount of money from paying court fees. The United Arab Emirates provides similar exemptions to plaintiffs in suits against governmental entities, as well as to defendants who face the possibility of capital punishment for a criminal conviction.⁷ Qatar⁸ and Kuwait,⁹ also exempt individuals from paying court fees in certain circumstances.

Non-Governmental Organizations

A number of non-governmental organizations (NGOs) provide legal services to poor individuals, including legal counseling and representation in court. Recently, several Middle Eastern and North African universities have opened legal clinics, in which law students provide free legal services to members of the public, under the supervision of law faculty. Examples include the Legal Assistance Center for Human Rights at the University of Hassan II – Mohammedia, Morocco; and the Al-Quds Human Rights Clinic at Al-Quds University, Palestine.

The Al-Quds clinic focuses on human rights issues and violations and provides legal assistance to Palestinians who would otherwise be unable to obtain legal services. The Al-Quds law faculty has formed important links with Palestinian human rights NGOs, so that students enrolled in the clinical program can partner with these NGOs to provide legal services throughout the Palestinian community. The clinic has a Jerusalem Legal Services Project in Jerusalem, where students represent clients in disputes concerning their legal status and residency. Clinical programs similar to these are utilized world-wide to teach law students practical legal skills and

⁵ *Jordanian Labor Law, No. 8, Art 13*, provides: “The cases submitted to the Magistrate shall be exempted of the fees in full including the fees related to the judgments issued by the same.” Jordan Economic & Commerce Bureau, 1996, http://www.jordanecb.org/pdf/Labor_Law.pdf

⁶ *Qatari Labor Law, No. 14, Art. 10*, states: “All lawsuits filed by the workers or their heirs claiming the entitlements accruing under the provisions of this law or the service contract shall be dealt with urgency and shall be exempted from judicial fees.” Embassy of the State of Qatar in Washington DC, 2005, http://www.qatarembassy.net/Qatar_Labour_Law.asp. See also ACLJS White Paper, *Access to Justice and Legal Aid in the Arab World*, *supra* note 1 at 37-38.

⁷ *UAE Civil Procedure Law, No. 179*. Under the Qatari Criminal Procedures Code, a defendant has a right to request government-provided counsel in all cases involving capital punishment or possible life imprisonment, regardless of whether he is financially able to hire counsel. “Qatar: 2006 Country Reports on Human Rights Practices,” US Department of State, 6 Mar 2007, <http://www.state.gov/g/drl/rls/hrrpt/2006/78861.htm>

⁸ *Qatar Civil and Commercial Procedure Law, No. 13, Art. 17 & Art. 551*. 1990.

⁹ Kuwaiti Law No. 17, art. 14 (judicial fees) 1973.

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professional responsibility, as well as to provide legal aid services to meet the needs of the poor and underrepresented in the community.¹⁰

Pro Bono Work

It is common throughout the world for attorneys to provide *pro bono* services, which are free legal services offered by private attorneys to people who cannot afford them. The government may offer attorneys tax deductions or non-monetary benefits to do *pro bono* work. This increases the availability of legal services for poor members of society. Lawyers also have an ethical obligation to promote access to justice, and *pro bono* work is an effective way to fulfill this obligation.

How can *pro bono* work support access to justice initiatives?

Various types of *pro bono* work increase access to justice. Examples include activities that focus on: promoting legal empowerment, promoting access to the courts, public interest litigation; the creation of small claims tribunals, and alternative dispute resolution.

- **Legal empowerment** means using law to improve disadvantaged people's control over their lives by educating them about their rights, the law, and legal processes.¹¹
- **Access to courts** work focuses on ensuring that everyone has an equal opportunity to present their legal claims or defenses in court. Usually, attorneys who do this type of *pro bono* work agree to represent clients for free.
- **Public interest litigation** is where lawyers litigate cases that have the potential to reform existing laws and public policies that affect large groups in a society. Litigation that seeks to repeal a discriminatory law forbidding interracial schools is an example of public interest litigation.
- **Creating small claims tribunals** increases many people's access to the courts. These tribunals provide an inexpensive forum for legal disputes over small sums of money. The hearings are generally informal and do not require either party to be represented by an attorney.

¹⁰ K. Buchko, E Rekosh and V Terzieva, eds, *Pursuing the Public Interest: A Handbook for Legal Professionals and Activist, Clinical Legal Education*, (New York: Columbia Law School, 2001), <http://www.pili.org>: 258.

¹¹ *Programming for Justice: Access for All*, United Nations' Development Programme, 2005, <http://regionalcentrebangkok.undp.or.th/practices/governance/a2j/tools/index1.html:137-142>

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- Governments can also encourage formal **alternative dispute resolution** mechanisms, where people can resolve their legal disputes without going through the full-length trial process. These mechanisms are often organized through the judicial system or a government agency, and offer access to justice at lower cost.

In sum, access to justice refers to the ability of all people to participate in the justice system equally, without discrimination on the ground of their gender, income level, or social status. Countries throughout the Middle East and North Africa are continuously strengthening this function through many of the strategies listed above.

Individual attorneys can help improve access to justice by joining legal aid organizations and offering their services on a *pro bono* basis. Governments and courts can help improve access to justice by removing court fees for poorer litigants and providing funding to legal aid organization and clinics. Using these strategies and engaging all sectors in collaboration can improve access to justice for everyone.

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Handout II: Barriers to Justice

Statement of Witness #1: I was waiting to cross the street around 6:30 pm on the night of the crime, when I heard [insert plaintiff's name] yell, "Stop, that's my bag!" I turned to see someone who met the defendant's physical description [insert description of defendant's looks: such as hair color, height, etc.] on the opposite street corner running away from [insert plaintiff's name] with a brown leather bag. I did not see the culprit's face.

Statement of Witness #2: I was hanging my laundry to dry in the alley behind my apartment building and the defendant walked by, [insert defendant's description], he/she stopped to ask me for directions and at the time I did not notice any purse. He/She did have a small brown paper bag. The defendant also seemed calm and relaxed. As the defendant reached the end of the alley, a police car pulled in to block the defendant's way, and two police officers put him/her in the car. This occurred at 7:00 on the night of the crime.

Statement of Accused: I was walking home from a friend's house on the night of the crime, when I got lost on my way home. I was carrying a fresh loaf of bread I'd just bought at the store; it was in a brown paper bag. I asked a resident of the neighborhood how to get back to the center of town and continued on my way when two police officers drove up, told me I was under arrest, and put me into the back of their police car without any explanation. In the car, I asked them why I was being arrested, but they did not respond. They did not take my bag of bread, nor did they ask me what was in the bag until we reached the police station.

Relevant Case Law:

1. Khammash v. Jordan (1991): Defendant Khammash was convicted of stealing a wallet from a bank patron as he was exiting the building. The police arrested Mr. Khammash after he attempted to pawn the wallet two weeks later. The victim positively identified Mr. Khammash after his arrest. No witnesses beside the patron came forward after the event.
2. Mossad v. Jordan (2004): Defendant Mossad was acquitted of stealing a woman's purse as she shopped in the Karak town center. The victim claimed that she recognized Mr. Mossad's jacket, however he did not fit the physical description of the attacker that she had given to police. Nor did Mr. Mossad have any of the victim's stolen items.

Relevant Penal Statutes:

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1. Suspects cannot be detained without being informed of the reason for their detention. At the time of arrest, police must explain why the person is considered a suspect and allow the person to present an argument for why they are innocent. If the arresting officers believe that the individual is guilty, they may continue the arrest.
2. At the time of an arrest, the suspect's property may be confiscated. Property will be returned when the individual is released from custody.

Police Statement: We responded to a reported mugging around 6:45 the evening of the arrest. We later found the stolen bag 2 blocks away in a dumpster. It was empty and missing the plaintiff's wallet, which the plaintiff said contained \$45. We found the suspect in an alley about 8 blocks from the crime scene. He/She seemed confused when we placed him/her in custody, but we did not believe him/her. We explained that there had been a mugging. He/she had forty dollars in his/her wallet and a small bag of bread, which we estimated to be worth five dollars.