

## **Panel B: Access to Justice: Bridging the Gap between Principle and Practice**

### **Setting the Context**

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### **What are the main aspects of Access to Justice?**

The modern legal foundation for the right to access to justice can be found in international treaties such as the European Convention on Human Rights (Article 6) and the International Convention on Civil and Political Rights (Article 14). This codification of access to justice signifies that "the right to court" is a fundamental right much like freedom of speech and freedom of religion. However, as with so many human rights, there is a gap between the ideal of access and the reality of practice.

As the demands of modern **life** grow increasingly complex, our legal system is following suit, developing a plenitude of new forms of legal expression. Individuals interact more and more with constructs like contracts, permissions, and legal obligations. As the number of regulations increases, interference between different parts of our legal system is becoming a source of conflict in and of itself.

Access to justice is based upon the basic principle that people should be able to rely on the correct application of law. However, is this principle true in every day life? If not, do individuals have recourse to formal avenues for achieving justice? Research shows that there are disadvantaged sectors of society who neither know the law and nor recognize its applicability to their own lives. On the other hand, there are also citizens with easy access to justice who are familiar with their own rights and who are able to use their rights effectively for their purposes in daily life. This is one striking inequality that must be addressed.

Several problems with access to justice emerge from practice. The first is perhaps the most obvious: some citizens do not know their rights and cannot afford legal aid to advocate on their behalf. A second challenge is complexity of adjudication: legal proceedings are lengthy and costly. The third problem is fairness of access: when the people involved in legal proceedings are not voluntary participants, as in the case of criminal prosecutions. Each of these obstacles to access to justice requires its own solution.

A more general methodological question we must also pose is whether solutions to lack of access should be tailored to individual cases or applied to the legal system as a whole. There is a difference between the goals of legal aid for one concrete case and reliable systemic legal aid provision. On the whole, systemic solutions tend to be more effective for strengthening access to justice. On the other hand, implementation of such sweeping reform can be time-consuming and costly enough to deprive individuals of the immediate assistance they need.

**What do you want to address in this panel, given the conference topic?**

Access to justice is closely linked to adjudicative procedures, public procedures before courts, and private procedures (for instance, arbitration). These procedures consume time, energy, and money. In recent years, there has been a tendency to settle cases by bypassing these procedures. The advantage of such settlements, beyond the resolution of legal disputes, is the improvement of relations among plaintiffs as they compromise with one another outside of court. This may be one route to improving the legal justice system as a whole.

This idea of uniting community members around the table for legal justice is strikingly illustrated in the Overt Drug Market Strategy case we will hear today. Traditionally, drugs dealers have been subject to trial and punishment, but once they are released from prison, they return to their criminal activities. To avoid this recidivism and to find a more holistic, community-based approach to drug traffic policing, the citizens of High Point sought systemic intervention. The solution they found was a courtroom in the home, incorporating families and neighbors in the identification and rehabilitation of drug dealers. The overall effect has been a remarkable improvement in the safety and security of disadvantaged neighborhoods in High Point, North Carolina.

The case of Waste Recyclers in the city of Bogota, Colombia is an example of lobbying for access to justice as a means to combat systemic discrimination. Poor families with children were active in Bogota as waste recyclers. On the occasion of a strike of corporate waste recyclers, they united to form cooperatives and other non-profit groups to bid for waste management contracts and improve their standards of living. However, as on non-profit cooperatives, the Waste Recycler associations could not apply for public contracts with the city of Bogota. By demanding respect for their human rights and by lobbying for their legitimate interests, the obstacles for their entry into the formal legal system were removed.

The Nyayagrah Program for Mass Community-Based Legal Aid of the state of Gujarat in India illustrates the importance of an effective legal aid system. The police filed 4,500 cases of riot-related violence between the Hindu majority and Muslim minority, which were closed without trial. This implied legal protection for perpetrators of ethnic violence. The Supreme Court granted a petition to reopen these cases and with the cooperation of individual professionals the offenders were brought to justice. The most important effect was that victims of ethnic violence were empowered and the state was forced to obey the law.

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