

ACCESS TO JUSTICE RESEARCH METHODOLOGY



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Access to Justice Research Methodology

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1. Understanding of the Concept - “Access to Justice”

The term access to justice refers to the ability to acquire just resolution of justiciable problems¹ and to uphold rights in accordance with human rights standards and in case of need with adequate legal assistance.²

Access to justice can be analyzed through different lenses, such as, legal, sociological and public management perspectives. Political framework (so-called social justice approach) on access to justice can also be discussed separately.³

Legal concept of access to justice is significant, as appropriate legislation needs to be adopted in accordance with that concept, embedded in the principles of equality and rule of law. Legal concept of access to justice implies that each individual, regardless of their social or economic status, gender, ethnic, religious affiliation or other status, will have the right to access and use the justice system. In other words, laws need to be accessible and inclusive, legal norms have to be in place, which will ensure equal access to justice system and that public agencies treat all equally and with respect.

Sociological concept of access to justice tries to determine social needs of specific groups and society in general and those structural reasons that may be the basis of these problems (poverty, problems of housing, healthcare and education systems etc.). Therefore, sociological approach is mostly focused on social, economic and cultural barriers for access to justice. This can include various issues, such as: average income, indicators of inequality, economic structures, urbanization, ethnic homogeneity/heterogeneity of the population, nationality, religion, family structure, level of education etc. For example, lack of financial and human resources allocated for the functioning of the justice sector is the basis for ineffective and unfair functioning of this system. This approach aims to identify social needs and barriers and determine how they correlate with the aims of equal and fair access to the justice system.

Combination of legal and sociological concepts enable us to discuss public management approach to access to justice, which is predominantly derived from the concept of social and legal state. Eventually, the objective will be translation of existing needs with regard to access to justice first into rights, and then into public goods. In this direction, public management

1 The term “justiciable” is used to describe problems that raise legal issues, whether or not this is recognized by those facing them, and whether or not lawyers or legal processes are invoked in any action taken to deal with them.

2 Legal Needs Surveys and Access to Justice, Open Society Foundations, OECD Publishing, 2019, p. 24.

3 See: Bolivar René Njupouen, Access to justice for the poor, what role for bar associations? The case of Cameroon, 2005, Chapter 2: Access to Justice – Literature Review.

approach implies resolution of challenges related to access to justice through financing of legal aid services/relevant programs/strategies.

Political approach matters as access to justice is not merely an issue of legal needs, rather this concept promotes individual and collective legal and/or political empowerment, development of agency of persons in political and rights domains etc. In this sense, access to justice is still closely connected to the idea of legal empowerment.⁴

Aspects of each of these approaches is vital for comprehensive identification of access to justice problems and future strategic planning. It is also to be noted that access to justice has different layers. To fully analyze access to justice, one should consider several state institutions such as legal aid, police, prosecution system, courts etc.

⁴ See for example:

1) Stephen Golub, What is Legal Empowerment? An Introduction, 2010, p. 4, Available at: <https://bit.ly/35Ne4oS>, Accessed on: 03.06.2021.

2) Pilar Domingo and Tam O'Neil, The politics of legal empowerment, 2014, p. 13, Available at: <https://bit.ly/3qsTl39>, Accessed on: 03.06.2021.

2. Elements of Access to Justice

More comprehensive approach to access to justice, developed in the 2000's, uncovered the multifaceted nature of the concept, entailing various economic, structural and institutional factors, such as complexity of legal proceedings and related costs, length of legal proceedings, geographic or other physical obstacles. Majority of the population, especially vulnerable and marginalized groups, not only have limited recourse to legal means of rights protection, but also often do not have knowledge/awareness of legal problems.⁵ Hence, the concept of legal need⁶ is an important component of access to justice, and barriers of access to justice cannot be studied without first determining individual/group legal needs. Accordingly, it is crucial to analyze legal needs of the population and identify those needs, which remain unmet in practice. Thus, precisely the intersection between legal needs of the various components of the population and relevant barriers needs to be the cornerstone of the research methodology.

Analyzing legal needs means to investigate the experience of justiciable problems from the perspective of those who face them (a 'bottom-up' perspective), rather than from that of justice professionals and institutions (a 'top-down' perspective). Access to justice needs to combine two fundamental values - equality before the law and rule of law.⁷ Accordingly, access to justice implies that two crucial objectives of the legal system are accentuated:

1. Legal system needs to be equally accessible to all;
2. Legal system needs to create opportunity for securing individual and social justice.⁸

In the absence of a uniform conception of access to justice, often its features and elements are differently categorized. However, generally six elements of access to justice are underlined: 1. Legislative framework; 2. Legal knowledge and awareness of the population; 3. Legal aid/consultation; 4. Access to the justice institutions; 5. Fair proceedings and outcomes achieved through such proceedings; 6. Enforceability of judgements.⁹ Combining these elements, some scholars see access to justice as a three-layered process. First layer is access to courts,

5 Open Society Foundations, *Leveraging the SDGs for Inclusive Growth: Delivering Access to Justice for All*, Issues Brief, 2016, p. 7.

6 Legal need - Deficit of legal capability that requires legal support to appropriately address a justiciable problem. See: OECD & Open Society Justice Initiative. *Legal Needs Surveys and Access to Justice*. Paris: Organisation for Economic Co-operation and Development, 2018, p. 22.

7 Sagit Mor, *With Access and Justice for All*, *Cardozo Law Review* (Vol. 39), 2017.

8 Bryant G. Garth & Mauro Cappelletti, *Access to Justice: The Newest Wave in the Worldwide Movement to Make Rights Effective*, 27 *Buff. L. Rev.* 182, 1978.

9 American Bar association, *Access to Justice Assessment Tool*, 2012, p. 3.

second is access to legislation, and third are the barriers related to the outcome of legal proceedings.¹⁰

These layers constitute legal, political and social aspects of access to justice, and each is aimed at eliminating various forms of inequality and enabling individuals to influence creation and implementation of legal norms.¹¹

¹⁰ Sagit Mor, *With Access and Justice for All*, *Cardozo Law Review* (Vol. 39), 2017, p. 614.

¹¹ *Ibid.*, p. 635.

3. Barriers to Access to Justice

Barriers to access to justice are identified on the level of each of the abovementioned layers. They are intersectional, and contain both substantive and procedural aspects. Similar to the absence of a uniform concept of access to justice, there is not an exhaustive list of barriers; however, as a rule they are categorized in the following way:¹²

- ▶ Institutional and legislative barriers;
- ▶ Barriers related to legal awareness and empowerment;
- ▶ Physical, infrastructural and geographical barriers;
- ▶ Financial barriers;
- ▶ Societal and cultural barriers.

These categorizations are somewhat theoretical and artificial. However, they are employed in order to situate barriers to access to justice within wider structures of society, culture and economy, and to capture the complexity of the different obstacles. In practice, barriers operate simultaneously and have reciprocal effects on each other that intensify their negative impact.

3.1. Institutional and Legislative Barriers

Institutional barriers include the capacity, structure and operation of a country's justice system, which impacts access to justice. Legislative barriers address the overall quality of legal framework of the country, which makes it either harder or easier to access the justice system in the country. The existence of a set of written rules enabling individuals to bring legal proceedings at justice institutions that deal with a wide range of justiciable events and thus enhance accessibility of justice.

The following aspects of institutional and legislative barriers should be analyzed to see the whole picture of access to justice in the country.

- ▶ Clarity of the rules and standards – The legislation should avoid vagueness of the legal framework. Firstly, individual can only fully enjoy the right to access to justice when he or she is aware about the laws which regulate a specific justiciable event. In general, rules

¹² American Bar association, Access to Justice Assessment Tool, 2012, see also: Open Society Foundations, Leveraging the SDGs for Inclusive Growth: Delivering Access to Justice for All, Issues Brief, 2016; Sagit Mor, With Access and Justice for All, Cardozo Law Review (Vol. 39), 2017.

and standards might be called void for vagueness when an average individual cannot generally determine what relations are regulated by them, to whom there are addressed, and what the final outcome of the regulation will be. Secondly, vagueness of the legal framework might lead to arbitrary decision-making, therefore it appears to be one of the major obstacles of access to justice.

- ▶ Participation/involvement of vulnerable groups in policymaking/law-making process - Participation is one of the five principles of “good governance”.¹³ It strengthens the legitimacy of policies through inclusivity and wider ownership of the outcomes. Participatory consultations enable the public, civil society and interested stakeholders to be involved at the different stages of drafting of policy concepts or legislation.¹⁴ The consultations need “to be backed up by a commitment to transparency with clear, consistently applied time-frames that provide enough space for all interested parties to study policy concepts, to review draft laws, and to be able to provide informed feedback and recommendations”.¹⁵
- ▶ Non-discriminatory and inclusive legal framework – Legal framework should provide equal opportunities for all, including women, people with disabilities, ethnic and religious minorities, LGBT community, etc. Laws may not discriminate against disadvantaged groups. They should neither ignore the special needs of certain groups, nor prevent them from seeking justice through the formal system.¹⁶
- ▶ Existence of legal remedies - Legal remedies enable people to protect themselves from possible harm caused by others when involved in justiciable events or/and involve the measures which aims to redress this harm, such as, for example, restitution and compensation.
- ▶ Availability of Public Defender/Ombudsman institution – In general, the Ombudsman oversees the observance of human rights and freedoms, advises the government on human rights issues while analyzing the state’s laws, policies and practices in compliance with the international standards, and provides relevant recommendations, handling the complaints and investigations on their own initiative and collecting information about

13 Five principles of “good governance” is highlighted in the White Paper on European Governance of European Commission. See: European governance - A white paper/COM/2001/0428, Available at: <https://bit.ly/2SyFbKI>, Accessed on: 03.06.2021.

14 Council of Europe, Code of Good Practice for Civil Participation in the Decision-Making Process, Available at: <https://bit.ly/35TbUnH>, Accessed on: 03.06.2021.

15 Civil Participation in Decision Making in the Eastern Partnership Countries, Part Two: Practice and Implementation, Regional Project Civil Participation in Decision Making in the Eastern Partnership Countries, Council of Europe, Strasbourg, France, April 2017, p. 11.

16 Programming for Justice: Access for All, A Practitioner’s Guide to a Human Rights-Based Approach to Access to Justice, UNDP, 2005, p. 157.

the functioning of public administrations. Therefore, the Ombudsman institution has a vital function in addressing such systemic problems as access to justice.

- ▶ Availability of professional legal advice and/or representation – While private lawyers, pro bono services, legal clinics and civil society organizations can provide legal aid services and even target specific disadvantaged groups, basic legal aid services should be provided by the State for those who need it but cannot afford it. Insufficiency of state resources necessitates certain restrictions for access to free State legal aid and to prioritize it by the case type (e.g. criminal cases) and by the service receiver (e.g. economically vulnerable groups). However, due to inappropriate legal provisions and other institutional factors, people who need legal advice/representation often find themselves denied free legal support (public legal aid services) if they do not meet the criteria enshrined in law. Therefore, eligibility criteria may have a crucial impact on citizens affected by justiciable events and appropriately establishing them is of vital importance.¹⁷ The following components should be used to evaluate institutional and legislative barriers.
 - The nature of the Legal Aid Service institution;
 - Level of training and expertise of legal assistance providers;
 - Quality of service;
 - Admissibility criteria for public legal aid services free of charge.
- ▶ Availability and fairness of formal/informal alternative dispute resolution mechanisms – Some believe that using amicable, non-adjudicatory mechanisms for conflict resolution is the best way to enhance access to justice institutions. Therefore, it may seem appropriate to strengthen alternative dispute resolution mechanisms. However, alternative dispute resolution is not a “panacea” for access to justice for all and on the legislative level it should be evaluated in conjunction with other institutional set ups.¹⁸
- ▶ Difficulty of preparing legal documents to be submitted to court – Legal writing can be challenging even for lawyers, therefore, it may be one of the major obstacles for a party to present cases to the court. Especially, in the situation where there is no professional legal assistance.
- ▶ Competence, independence, impartiality, autonomy and accountability of judges/judicial system – These characteristics (e.g. independence guaranteed by law; transparent appointment process, etc.) are crucial for the functioning of the judicial system. To guarantee fair and impartial justice it is vitally important while carrying out their judicial

¹⁷ Ibid., p. 7, see also: p.143.

¹⁸ Pathways to Justice, Access to Justice with a focus on Poor, Women and Indigenous People, UNDP, p. 3.

function that judges are free from any improper influence coming from external sources (e.g. litigants, the media) or, more importantly, from other branches of government. The latter can cause the disruption of the constitutional and administrative balance between the executive, legislature and judiciary. Therefore, independence of the judiciary must be guaranteed by law. However, that does not necessarily ensure independence. An impartial, autonomous and competent judicial system can only be based on the continuous progressive enhancement of the knowledge and skills of judges, especially in the modern world when ever more complex and sensitive issues arise in the litigation processes, which require judges to adapt their knowledge to new challenges.

- ▶ Opportunity for party to present case – This component contains several factors which should be well regulated and proportionate not to hinder access to justice. These factors include:
 - Rules on jurisdiction;
 - Legal standing (especially in Appeals and Supreme Courts) - Legal standing (entitlement to sue) is the crucial departure point for access to justice. Rules on standing can be classified into three categories: Restricted rules on standing limit the ability of individuals to address the court about their grievances. In contrast, loose standing rules, often known as *actio popularis*, enable persons to address the court on behalf of third parties. A more middle-ground approach to standing defines a circle of persons with certain interest in a particular case falling under the field of their expertise, which could be NGOs, trade unions etc.
 - Time limits – The legally established timeframe for filing a claim has to be reasonable so that the person harmed is in fact capable of bringing his/her case to court.
- ▶ Fair procedures during hearing – Access to justice extends to the nature of proceedings, namely for meaningful access to justice a person must benefit from due process guarantees. Certainly, this does not mean a guarantee of a favorable judgment, rather a fair and impartial process unaffected by economic or social status.
- ▶ Time required for case resolution – For meaningful access to justice a reasonable length of proceedings is also crucial. European Court of Human Rights standards point out that for a process not to be merely theoretical and illusory, a resolution of a dispute needs to be achieved in a reasonable timeframe. A remedy delayed for an excessive period of time may have a similar effect as the denial of justice.¹⁹

19 Edel, F. *The Length of Civil and Criminal Proceedings in the Case-Law of the European Court of Human Rights*, Strasbourg: Council of Europe Publishing, 2007. See also Calvez, F., *Length of court proceedings in the Member States of the Council of Europe based on the Case Law of the European Court of Human Rights*, Report adopted by European Commission for the Efficiency of Justice (CEPEJ) at its 8th plenary meeting, Strasbourg: CEPEJ, 2006, Available at: <https://bit.ly/3zY1hxL>, Accessed on: 03.06.2021.

- ▶ Judicial caseload – Caseload of courts may excessively hinder access to justice, as it can result in unreasonable length of legal proceedings, on the other hand, unreasonably accelerated judicial procedures may lead to poor quality of decision-making process.
- ▶ Fairness/Reasonability of Judgements – A decision needs to be based on application of law to relevant facts, its rationale must be clear, and all traits of partiality or other kinds of external pressure must be lacking. Regardless of the outcome, this element guarantees that resolution of a legal problem follows a predictable logic and the final ruling can be evaluated vis-à-vis some standards.
- ▶ Enforceability of judgments – This component relates to the implementation of court decisions or other final orders emerged from formal legal proceedings. Institutional setting of enforcement systems has vital importance in ensuring accountability and minimizing impunity, thus preventing further injustices.²⁰ It contains these aspects:
 - Existence of procedures, established by law, providing for decisions to be enforced;
 - Ability to use coercive power to enforce decisions.
- ▶ Availability of services for people from culturally and linguistically diverse backgrounds – It is crucial, that people from culturally and linguistically diverse backgrounds have the same guarantees and opportunities during the court hearing stage as well as at the legal counselling stage. This is impossible without these aspects:
 - An adequate number, quality and availability of interpreters;
 - An appropriate level of awareness by the public, service providers and the legal profession of the role and use of interpreters.

Institutional and legislative barriers can be evaluated through desk research on relevant legislation; analyzing policy documents, strategies and action plans, FOI letters, existing reports and other secondary sources; conducting interviews/focus groups with major NGO's and with the population.

²⁰ Programming for Justice: Access for All, A Practitioner's Guide to a Human Rights-Based Approach to Access to Justice, UNDP, 2005, p. 7.

3.2. Barriers Related to Legal Awareness and Empowerment

Many issues that will at face value seem difficult to identify as legal ones may in fact be justifiable.²¹ In this regard, access to justice also means awareness of those concerned to legally frame their concerns coupled with the actual ability to raise those issues before the judicial system or through access to administrative bodies or other relevant aid. It involves the degree of people's knowledge of the possibility of seeking redress through the justice system, whom to address and how to start a legal proceeding.²² Such legal capability is intrinsically linked with legal empowerment that ultimately is a precondition for realizing rights, first and foremost access to justice.²³ One of the relevant aspects is certainly education, which affects individuals' legal awareness as well as economic opportunities, ultimately affecting the capacity to access justice.²⁴

The following aspects has vital importance in analyzing citizens' legal awareness.

- ▶ The amount and quality of legal information available to citizens - It is crucial for citizens to know their basic human rights and rights/duties under law, and how to obtain solutions for their problems in the justice system.
- ▶ Citizens' awareness about state legal aid system, its role and functions – State Legal Aid system has a great value in providing necessary legal services for people who are disadvantaged in society, such as economically vulnerable. For this reason, it is crucial that awareness about state legal aid system is high among the most marginalized parts of society.
- ▶ Citizens' awareness rate of mechanisms available to solve common legal problems and institutions/services they can use for that purpose - All the institutions within the formal justice system have a responsibility to educate and inform the people who rely on their services. So, it is important that relevant institutions have means and resources enough to serve this goal.
- ▶ Extent to which legal information is produced in local languages – In a society with ethnic and linguistic minorities it is important that legal information is produced in relevant

21 Legal Needs Surveys and Access to Justice, Open Society Foundations, OECD Publishing, 2019.

22 Programming for Justice: Access for All, A Practitioner's Guide to a Human Rights-Based Approach to Access to Justice, UNDP, 2005, p. 7.

23 Access to Justice, Justice Policy Series, Part I, Open Government Partnership Global Report – Democracy Beyond the Ballot Box, p. 9.

24 Beqiraj and L McNamara, International Access to Justice: Barriers and Solutions (Bingham Centre for the Rule of Law Report 02/2014), International Bar Association, October 2014, p. 17.

languages. The principle of equality and social responsibility of the state means that legal system and policies should be inclusive and accessible for all.

- ▶ State policies/mechanisms used to enhance legal knowledge among citizens/level of information dissemination by the state – People won't be legally empowered if the state has no proper policies and long-term vision how justice should be accessible for all, especially for those who are poor and marginalized. State policies should be comprehensive in this sense, and consider wide social problems, for example poor levels of education and literacy.
- ▶ Usage of media/internet services in communicating awareness raising and legal empowerment messages by state institutions - Using popular educational and empowering methods will provide that legal knowledge-building programs achieve maximum impact and reach the widest audience.²⁵ Some popular education methods are: public radio or television shows, information kits/flyers on how to initiate legal action for those who cannot afford to hire a lawyer, internet resource pages, etc.²⁶
- ▶ Type and usefulness of legal information citizens obtain from internet/media for better understanding or resolving the justiciable problem:
 - Information about rights and/or the law;
 - Information about ways to resolve a problem;
 - Forms or other documents;
 - Contact details for source of help, dispute resolution process or relevant authority.

Barriers connected to legal awareness should be evaluated through analyzing FOI letters, relevant legal provisions, in-depth interviews, focus groups, public surveys and other information. For calculating the average rate of legal awareness different variables, such are average level of education and literacy (also computer literacy) rates among the population and level of internet access, should be analyzed. Moreover, analyzing curriculum of civil education programs at school could also be helpful.

²⁵ Access to justice assessment tool, a guide to analyzing access to justice for civil society organizations, American Bar Association (ABA), 2012, p. 12.

²⁶ Ibid.

3.3. Physical, Infrastructural and Geographical Barriers

Access to justice is heavily dependent on physical and geographic accessibility of courts. If courts are situated far from the concerned population and appropriate transportation is not accessible, certainly, this will act as a barrier to justice. Mostly, geographic factor is relevant for persons in rural areas, while physical accessibility will matter for persons with special needs.²⁷

- ▶ Number and allocation of justice institutions throughout country - A state must have an adequate number of sufficient functioning justice institutions so that citizens do not have to travel long distances to resolve their disputes.²⁸ Moreover, inconvenient opening hours/difficulty getting an appointment with these institutions may hinder access to justice. For the purposes of this research, it is important to identify the following institutions:
 - Legal Aid Service;
 - Law foundations or NGOs providing free legal service;
 - Community legal clinics;
 - Pro bono lawyers;
 - Bar association;
 - Independent practicing lawyers (not bar members)/other legal consultation bodies;
 - University student legal clinics;
 - Courts.

- ▶ Access to public transportation, road conditions and travel costs, which may hinder accessibility to the justice institutions - In order for citizens to use a justice institution to solve their problems or disputes, citizens must be able to travel to the justice institution. The more difficult it is for people to travel to justice institutions, the less likely it is that they will think it is worth using the justice system to resolve their legal problems.²⁹

- ▶ Physical adaptability of the justice institutions – The low level of physical adaptability of justice institutions creates a lot of barriers, the most obvious difficulty is to gain physical access to services for those with mobility problems. In addition to the normal range of legal issues encountered by any member of society, those with a physical disability may

27 Programming for Justice: Access for All, A Practitioner's Guide to a Human Rights-Based Approach to Access to Justice, UNDP, 2005, p. 158.

28 Access to justice assessment tool, a guide to analyzing access to justice for civil society organizations, American Bar Association (ABA), 2012, p. 22.

29 Ibid.

face discrimination in employment and other areas as well.³⁰ The problem is similar to people with other forms of disabilities, so it is crucial that the state takes all the necessary steps to make justice institutions accessible for all.

- ▶ Ability to submit and access court documents online, including the system's ability to process and make available documents electronically (average computer skills and access to computers and internet by the population should be calculated to analyze this barrier).

Physical, infrastructural and geographical barriers should be evaluated by conducting in-depth interviews; analyzing public surveys/information. Moreover, mapping of these institutions could be useful to measure distances from the populated places, which are covered by their jurisdiction.

3.4. Financial Barriers

To pursue a judicial proceeding is expensive for average citizens, therefore unaffordability of legal costs (counsel and court fees) is a common barrier to access to justice. The prospect of incurring significant costs will disincentivize individuals from initiating legal proceedings, particularly if the rule is that losing party will have to cover the costs of the winning one. Both the financial standing of an individual and the final outcome will be factors for determining full or partial exemption from legal costs.³¹

The following types of costs may hinder access to justice institutions.

- ▶ Direct costs – Direct costs are those fees and other expenses which are necessary for the party to present a case or to participate in legal proceedings, such as:
 - Payment to a legal consultant/representative;
 - Charge to file a case;
 - Procedural costs – e.g. expert fees; evidence and information collection costs;
 - Decision enforceability costs;
 - Communication related costs;
 - Childcare costs or other costs for taking care of someone who is under supervision of a case party when in court;

30 Louis Schetzer, Joanna Mullins and Roberto Buonamano, *Access to Justice & Legal Needs*, Law & Justice Foundation of New South Wales, 2002, p. 20.

31 *Pathways to Justice*, *Access to Justice with a focus on Poor, Women and Indigenous People*, UNDP, p. 2.

- ▶ Opportunity costs – While analyzing this barrier, time spent bringing a case before the justice institution rather than earning money should be calculated, for example time spent on travelling, duration of case hearings, time for collecting necessary documentation, etc. Usually, these processes are long and imply the loss of several working days for the parties, therefore opportunity costs appears to be a major obstacle that hinder access to justice.
- ▶ Emotional costs – This barrier involves the emotional impact of problem resolution processes and their impact on everyday life, such as stress, frustration, anger, humiliation caused during resolving justiciable events, etc.

Financial barriers should be evaluated through analyzing FOI letters, comparing data on average income to the average cost of legal proceedings calculated according to the type of the case, conducting in-depth interviews/focus groups.

3.5. Societal and Cultural Barriers

Social and cultural context also plays an important role for accessibility of justice. Income inequality, economic environment, urbanization, ethnic/racial/religious divisions within the state, family traditions, education levels, etc. are to be factored into analysis. Extreme poverty, illiteracy, and wide marginalization often operate in a composite manner and will be the most salient barriers to access to justice.

The following characteristics can hinder accessibility to legal aid services and courts.

- ▶ Distrust of Legal Aid Service or other institutions providing free legal aid - Many citizens may have an instinctive fear or distrust of lawyers, as well as Legal Aid Service overall. People may believe lawyers will not understand them or provide explanations in ways they can understand, or even blame them for their situation.³² For these reasons, some people may choose not to use legal aid services to identify and resolve their legal problem.
- ▶ Distrust of justice institutions - Individuals who have been subject to discrimination and abuse by the police forces or other state authorities, or have experienced unjust outcomes from the justice system, may choose not to rely upon formal legal procedures for the solution of their justice problems. Distrust of the courts is a particularly challenging obstacle because it undermines the chances to resolve disputes within the law, whether those disputes are between private parties or with the government.

³² Access to justice assessment tool, a guide to analyzing access to justice for civil society organizations, American Bar Association (ABA), 2012, p. 17.

- ▶ Insensitivity/ignorance of policemen, lawyers, judges and other justice institutions about issues of discriminatory practices in society as well - Belief that disputes will not be resolved impartially/sensitively by police/court system towards specific marginalized groups appears to be a major obstacle for access to justice. Changing attitudes and behaviors in society takes a long time, and the state need to be involved through active policies to encourage the justice system to be more inclusive. Discriminatory practices are sometimes tolerated even among judges and lawyers, the ones who should be important actors to defend the principle of equality. Alternatively, these professionals may not be aware of the specific needs of marginalized groups or more importantly the institutions may be incapable in addressing their needs through appropriate services.³³

- ▶ Status of socially or culturally vulnerable (women, people with disabilities, ethnic and religious minorities, LGBT community) – Many people are suffering systemic discrimination and exclusion on the basis of their particular social or cultural status. Being historically marginalized and oppressed often means that social and justice institutions are unfamiliar with needs and concerns of the specific group. The state should be the guarantor that membership in a marginalized or vulnerable group does not impact the legal process they experience.

- ▶ Alienation from the state/justice system/society due to being economically vulnerable – Economic vulnerability is one of the basic obstacles to access to justice for most people. The role that money plays in justice system often skews the legal processes in predictable directions. People are often confronted by insurmountable imbalances in power as they face others who have the resources to use the law to their advantage. This can be not only the reason for unjust legal outcomes, but also the reason not to even participate in legal proceedings at all.

- ▶ Lack of knowledge of Georgian language/Illiteracy – Language and literacy appears to be a significant barrier for access to justice. Some vulnerable groups may be intimidated by formal court processes and most importantly they may not be able to communicate in the official language. People who lack knowledge of Georgian could have natural obstacles to access to justice institutions if there are not adequate guarantees of interpreter service in all stages of legal proceedings. Moreover, majority of economically disadvantaged group may be illiterate which poses a huge obstacle, especially due to the fact that access to justice institutions requires preparing legal documents.³⁴

33 Programming for Justice: Access for All, A Practitioner's Guide to a Human Rights-Based Approach to Access to Justice, UNDP, 2005, p. 157.

34 Ibid., pp. 157-158.

- ▶ Lack of anonymity and privacy – Citizens should have guarantees that their participation in particular legal process will be free from undesirable visibility. Lack of anonymity and privacy can be important obstacle for people to address justice problems.
- ▶ Feeling of shame/fear of stigmatization - Factors such as feeling of shame or fear of stigmatization drive particular groups or people away from social and justice system services they need. Stigmatization sometimes even leads to an inability to hold regular employment, low self-esteem etc. More severely, social stigma can be a significant barrier for people from marginalized groups. In the light of the fact that they are already disadvantaged, they may fear that if they access formal system, especially if they oppose the state or someone more powerful, they will face further social pressure, exclusion, blaming or revenge.³⁵
- ▶ Danger of revenge – Danger of revenge, especially in a specific cultural and social environment, may be a serious factor in deciding whether to participate in legal proceedings or not. Fear may cause victims or witnesses to not exercise their right to a remedy even when their rights have been violated or to not fulfill their duty to participate in investigation/court proceedings. They may fear that if they turn to the formal system, not only will they not receive remedies for their grievances but they may face further violence from the offender.³⁶
- ▶ Close relationship with/pitying offender or opposing party - In some cases social and cultural ties and relationships play a big role in deciding whether to resolve disputes by justice institutions or not. These attitudes may be related to the whole structural organization of society, the role of traditions etc.
- ▶ Criminal mentality/belonging to criminal subcultures – Conflicts or disputes are often resolved by non-legal means for dispute resolution, for example by the help of criminal authorities in a specific cultural context. The issue is actually important, as this kind of practice hides structural problems in society, makes the social environment unjust and perilous, hinders access to justice institutions, etc.
- ▶ Non-legal traditions of dispute resolution present in different regions - Citizens have to trust the relevant institutions that can help them address their justice issues. However, a noteworthy number of the conflicts are resolved or managed outside the formal legal system by different kinds of mechanisms (e.g. local authorities, who may resolve such justiciable events based on local culture and customs, which require judicial determina-

³⁵ Ibid., p. 158.

³⁶ Ibid., pp. 157-158.

tion), especially in rural areas.³⁷ Sometimes people are more likely to trust and be familiar with local, informal institutions, than they are with policemen, prosecutors, courts, etc. For example, they may fear the police or prosecutors because of past incidents of abuse or mistreatment.³⁸

- ▶ Impact of religion – Some laws may face opposition from various groups due to the fact that the regulations challenge customary and religious norms. Some values enshrined in the legal framework may seem antithetical to particular culture. Therefore, citizens from such communities and groups may tend to seek help from religious authorities rather than the formal legal system, which highly hinder access to justice.
- ▶ Community norms and other cultural barriers – Sometimes customary norms shape the practices that are used to resolve a legal problem. It is the duty of the state to maintain the right balance between formal means of dispute resolving and non-formal methods that ensure social harmony in the community. Moreover, various cultural practices may have influential impact and therefor seriously hinder access to justice, including pressure from community, family, spouse or religious leaders to abandon claims. It is important to identify and further analyze those barriers to see the whole picture of access to justice in the country.

Societal and cultural barriers should be evaluated by conducting in-depth interviews/focus groups, analyzing public surveys, analytical documents, information provided by community organizations, etc.

³⁷ Pathways to Justice, Access to Justice with a focus on Poor, Women and Indigenous People, UNDP, p. 3.

³⁸ Access to justice assessment tool, a guide to analyzing access to justice for civil society organizations, American Bar Association (ABA), 2012, p. 14.

