

UNITED NATIONS DEVELOPMENT PROGRAMME

ACCELERATING ACCESS TO JUSTICE

FOREWORD

The Hon Justice Michael Kirby AC CMG

Justice of the High Court of Australia

Laureate of the UNESCO Prize for Human Rights Education

I honour the United Nations Development Programme (UNDP) which has initiated this book on Access to Justice as part of the work of its Democratic Governance Group. Over the past twenty years, I have worked closely with UNDP in some of the many activities in which it is engaged, building a better world. When I was Special Representative for the Secretary-General in Cambodia, UNDP helped in many aspects of governance in that post-conflict society. UNDP engaged me in the transition of Malawi to multi-party democracy. In India, I have seen close up the vital work that UNDP does in promoting the involvement of civil society in the struggle against HIV/AIDS. This is a practical, hands-on agency doing noble work. This book is written in the spirit of UNDP's important objectives.

For thirty years I have been a judge. I have seen the law at work. I know its strengths and weaknesses. Amongst the greatest weaknesses are the barriers and impediments to real access to justice. This is the target of this book. It addresses the problem of

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access to justice from the point of view of the poor, the marginalised and the disadvantaged.

In most countries, the justice system serves the wealthy and the powerful quite well. They know that they have rights. They know where to discover their rights. They can soon find the best lawyers. They can pay their fees. They can appeal if they are dissatisfied with the result at first instance. They can pressure into settlements those opponents who are weaker. They can use law and the courts as an instruments for the assertion of power.

But what of the ordinary people? What of refugees? What of women who must seek the permission of their husbands to take any important step in life? What of people living with HIV/AIDS? What of ethnic minorities and the homeless? What of gays, lesbians and other sexual minorities in societies that still criminalise them? What of the disabled and impaired? These groups often look on law with fear - as a mystery, beyond reach. As an instrument of oppression. As an unattainable place of alien people, speaking of mysterious things often in a language that is, or might just as well, be foreign.

How do we develop methodologies to improve the access to justice of these groups so as to realise the Millennium Development Goals of the United Nations? Easier by far to adopt high sounding resolutions in New York or Geneva. Much more difficult to

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translate those noble ideas into action in far away countries where the cards seem stacked and access to justice is but a dream.

In any case, access to justice, of itself, is not enough. Not all problems can be solved by the courts. Sometimes justice must be ensured in other ways - through the political process, through the legislature, through the bureaucracy, through religious bodies and through civil society organisations. The notion that the courts can fix everything up is quite false. Often the courts have their hands tied by antique laws, by inefficient registries, lack of resources or incompetent representation of people in need.

UNDP has been considering these problems for decades. This book is designed to translate emerging ideas into action and to provide methodologies to monitor and evaluate the success of initiatives. Conducting missions, writing reports, securing fine resolutions at international meetings all play a part. But getting the delivery of programmes on the ground in countries rich and poor, is a much bigger ask. Yet that is the objective of this work. As such, it deserves our approbation and support.

Even if access to justice, in its various forms, is improved, that is the beginning and not the end of the project. Sometimes when the poor, the vulnerable and those deprived of rights gain access to the means of justice it is only to find that the law is out of date and unjust. That there is no law reform body to repair the gaps and

defects in the law. That the personnel of the law are uninterested or just too pressured or unwilling to perceive law as it feels on the receiving end. Sometimes the law reflects outmoded attitudes. Sometimes there is just too much stigma so that justice still seems unattainable. I am sure that this is often so for women, ethnic minorities, commercial sex workers, injecting drug users, gays, prisoners and other vulnerable groups. Yet they are all human beings, endowed with fundamental human rights. And if the law does not clothe them with rights, and assure them of access to justice, we have a problem that it is the objective of this book to address and repair.

By grounding this book in the principles of international law, by describing the global movement designed to improve access to the instruments of justice, by examining the challenges in the context of the modern discourse on good governance and by reference to regional experiences, this book affords an excellent diagnostic tool and also stimulus to action.

I honour all those who have participated in the preparation of this work. I encourage all those who will use it to do their best every day, as I try to do, to convert noble aspirations into the reality of human rights and justice for all.

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Michael

Kirby

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Canberra

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