Justice Policy Series, Part 2

Open Justice

Open Government Partnership Global Report

DEMOCRACY BEYOND THE BALLOT BOX

Open Government Partnership

Table of contents

Acknowledgements 4
About OGP and Justice 5
Introduction 8
- What is justice and the justice system? 8
- What is open justice? 9
  - Other dimensions of justice 9
- Why open justice? 9
  - What do open justice reforms look like? 9
- Open Justice in OGP 11
- Objectives and contents 12

Courts 15
- Open Court Data 16
- Judicial Officers—Appointment and Accountability 22
- Court Modernization 30

Police 35
- Open Police Data 36
- Oversight and Monitoring of Police 42

Prosecutors 49
- Prosecutors 50

Legal Aid 57
- Legal Aid 58

Corrections Systems 65
- Pretrial Detention 66
- Prisons—Transparency and Accountability 72

Acknowledgements

Sanjay Pradhan,
Chief Executive Officer

Author

- Jessica Hickle, Research Associate

Contributors

- Sandy Arce, Program Officer
- Renzo Falla, Senior Research Officer
- Joseph Foti, Chief Research Officer
- Maha Jweied, OGP Justice Consultant
- Mia Katan, Research Associate
- Amalia Pleake-Tamm, Consultant
- Peter Tuths, Research Associate

Copy Editor

- Lora Bolton

Graphic Design

- Nicol Regan

Special thanks

- Adna Karamehic-Oates, OGP
- Joseph Powell, OGP
- Pathfinders for Peaceful, Just, and Inclusive Societies

Additional Thanks

Reviewers:

- Rachel Aicher
- David Anderson
- Aparna Basnyat
- Harry Cheng
- Lara Deramaix
- Gipsy Escobar
- Helen Fair
- Cherise Fanno Burdeen
- Anna Giudice
- Danielle Hirsch
- Anika Holterhof
- Liz Komar
- Venkatesh Nayak
- Rachel Neild
- Rebecca Neusteter
- Sven Pfeiffer
- Olivia Rope
- Rebecca Shaeffer
- Roberta Solis Ribeiro Martins

Experts Consulted:

- Pablo Cruz
- Michelle Deitsch
- Amy Gryskiewicz
- Pablo Hilaire
- Gaurav Jain
- Aristotle Jones
- Jennifer Lewis
- Sarah Long
- Mikaela Rabinowitz
- Katie Robertson
- Supriya Sankaran
- Andrew Solomon
- Bethany Young

About OGP and Justice

The Open Government Partnership (OGP) provides an opportunity for government and civil society reformers to make government more transparent, participatory, inclusive, and accountable. Working together, government and civil society co-create two-year action plans with concrete commitments across a broad range of issues. All commitments are then monitored by OGP's Independent Reporting Mechanism (IRM). Recently, thanks to increased global activity around justice, many governments and civil society leaders are expressing growing interest in better linking justice with open government.

This paper is the second of three in a series on justice released as a part of the *Open Government Partnership Global Report*. In 2019, OGP released the series' first installment, *Access to Justice*, which focused on how open government can help people identify and address their legal needs. In the coming months, the OGP will issue the third installment on justice as a means to enforce open government.[1] The series aims to show how open government can make accountable, credible improvements to justice systems. The aim of this report is to inspire countries to adopt policies and activities suggested here and adapt them for their own national and local context. Working closely with international and domestic partners, the OGP Support Unit will use this research to help OGP members continue to develop and implement strong justice commitments.

The *Access to Justice* paper can be found here. The Global Report can be found here.

More information about the Open Government Partnership and how it works can be found here.

Please contact research@opengovpartnership.org with any additional comments or inquiries.

Key Takeaways

- **Open justice is a first step to fairer justice systems.** Open justice reforms, including those that make justice system actors more transparent and accountable to citizens, can serve as a first step to addressing issues of fairness and independence.

- **A full set of justice reforms will need to move beyond courts.** Opening the justice system requires proactive work on the part of many actors, including courts, police, prosecutors, legal aid providers, and pretrial and corrections services.

- **Existing OGP commitments tend to focus on transparency.** As in other areas, most OGP open justice commitments focus on making justice institutions more transparent. OGP members can build on these initiatives with commitments that also guarantee accountability mechanisms that strengthen the justice system's independence, impartiality, and integrity.

The Open Government Partnership provides an opportunity for government and civil society reformers to make government more transparent, participatory, inclusive, and accountable. Working together, government and civil society co-create two-year action plans with concrete commitments across a broad range of issues. All commitments are then monitored by OGP's Independent Reporting Mechanism (IRM).[2] Thanks to increased global activity around justice in the last few years, a growing number of OGP members have begun to use their action plans to focus on reforms in the justice sector. Among these reforms, the largest subset focuses on making justice actors and institutions more transparent and subject to public scrutiny and monitoring.

Photo by: NatJag

Community policing in Conakry. Photo by: Anne Kennedy, UNDP

Introduction

What is Justice and the Justice System?

Although the concept of justice itself has several definitions, this article focuses on legal justice – that is, the idea that all people should receive the benefits, protections, and rights granted by law. The justice system, then, is the network of actors and institutions tasked with ensuring that justice is upheld. At a minimum, the justice system includes courts, judicial officials, and police. However, in most countries, the justice system also includes administrative tribunals and organizations around them – whether dealing with tax, immigration, or other issues. In some countries and regions, traditional or religious leaders may be part of the justice system. This paper is largely focused on the **formal elements** of the justice system. Yet it is important to keep these broad definitions in mind, as some administrative bodies – such as immigration courts – might be exempted from transparency and oversight practices common in the judiciary.

Though each of these actors is equally important in the communities they serve, it would be impossible to cover them all in one paper. Instead, this paper focuses on challenges and possible solutions for six actors that tend to be universal – and universally powerful – across legal systems. These actors are:

- Courts and judicial officials
- Police
- Prosecutors
- Legal aid
- Pretrial services
- Corrections

What is Open Justice?

Open justice applies the principles of open government – transparency, civic participation, and public accountability – to the justice system. These principles are not only important for courts, but also for the many other actors that play a role in the delivery of justice services.

Other dimensions of justice

This paper is the second of three in a series on justice released as a part of the *Open Government Partnership Global Report*. While each installment focuses on a distinct dimension of justice, all three elements are closely linked. The other papers in the series are as follows:

- Access to Justice: focuses on how open government can help people identify and take action to address their legal needs.
- **Justice for Enforcing Open Government**: covers the ways in which the justice system can enforce the open government values of transparency, civic participation, and public accountability.

Why Open Justice?

The principles of open government – transparency, civic participation, and public accountability – are essential to a fair and effective justice system for several reasons that can be divided into two main categories:

Normative and Legal

- **The principles of open justice are woven through international law and standards.** The right to due process is enshrined in Article 14 of the International Covenant on Civil and Political Rights (ICCPR)[3] and Articles 9–11 of the Universal Declaration of Human Rights (UDHR).[4]
- **An open justice system helps ensure that other civil and political rights are respected.** When justice actors and processes are opaque and closed off from public scrutiny, the public are less able to verify that they effectively uphold citizens' rights or identify violations of those rights. An open, independent, and impartial justice system serves as a foundation for better access to justice by fulfilling all people's civil liberties and allowing individuals to more effectively protect their rights.

Instrumental

- **Open justice underpins the rule of law.** Justice actors and processes that are transparent and subject to independent oversight enable rule by law and help ensure an orderly and fair society.[5]
- **Open justice supports equitable growth and development.** In strengthening the rule of law, open justice can help countries achieve economic and social progress by curbing corruption, limiting abuse of power, and guaranteeing access to key public services.[6]
- **An open justice system allows for peaceful and reliable conflict resolution mechanisms.** Open justice reforms improve the quality of justice and make justice institutions fairer, in turn, increasing their legitimacy in the eyes of the public. People can depend on these institutions to resolve conflict peacefully rather than by resorting to violence.

What do open justice reforms look like?

Each of the three principles of open government presents specific implications for the operations of justice system actors. OGP staff discussed the issue with dozens of OGP partners (through interviews and consultations), scoured OGP results, and undertook a significant process of review and revision. Drawing on the information uncovered through these steps, this paper identifies some of the most important reforms, examples of which follow. Each section of the paper will offer examples of these reforms from countries inside and outside of OGP. Briefly, definitions and examples of open justice reforms following each of the open government principles are as follows:

Transparency: Government disclosure of information or improvement of the quality of information disclosed to the public. Provisions and activities to ensure transparency in the justice system could include the following:

- Open data
- Clear, publicly available operating procedures
- Public access to decisions and opinions
- Information about public officials

Civic Participation: The ability of the public to inform or influence government processes and decision-making. Provisions and activities to ensure civic participation in the justice system could include the following:

- Processes for public complaints about justice system actors
- Citizen and/or publicly observable independent oversight boards
- Participatory budgeting processes
- Legal aid providers and other members of civil society that make information about the justice system and justice processes more accessible

Public Accountability: Opportunities to hold officials answerable or subject them to sanctions for their actions. Provisions and activities to ensure public accountability in the justice system could include the following:

- Processes for public complaints about justice system actors
- Citizen and/or publicly observable independent oversight boards
- Fair disciplinary processes that allow for sanctions and removal, the details of which are publicly available

Note: In the case of justice actors, and especially judicial officials, increased accountability must be carefully balanced with considerations of impartiality and independence. Public accountability reforms must not jeopardize judicial independence.

GOOD TO KNOW

Partners working on open justice

The following are some of the organizations and international bodies working on open justice topics:

- Namati: Namati and its partners in the Legal Empowerment Network advance access to information about law and justice processes through grassroots legal empowerment.
- Task Force on Justice: Launched in 2018 as an initiative of the Pathfinders for Peaceful, Just and Inclusive Societies, the Task Force on Justice brings together UN member states, international organizations, civil society, and the private sector to build people-centered justice institutions and accelerate delivery of the SDG targets for peace, justice, and inclusion.
- The United Nations Office on Drugs and Crime (UNODC): UNODC's guidance and rules set the international standard on a variety of justice system topics, including policing, judicial independence and conduct, legal aid provision, and prison conditions, especially for women and children.
- World Justice Project (WJP): WJP's Rule of Law Index evaluates countries on a variety of indicators, including on police and criminal and civil justice institutions. Additional special reports use survey data to analyze perceptions of criminal justice institutions, for example in Afghanistan.

Open Justice in OGP

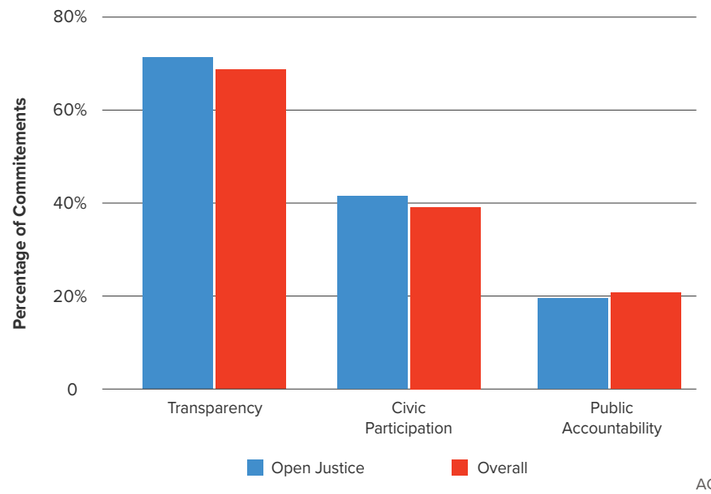
- **Justice is one of the most common areas of focus in OGP action plans.** Justice has grown as an area of focus in OGP action plans over the last several cycles thanks to growing global momentum for action and innovation in the justice sector.[7] As of July 2020, OGP members have collectively made nearly 300 commitments that focus on making justice more accessible, open, and effective.
- **Among justice commitments, the largest subset (137 commitments) are related to topics in *open justice*.** To date, most of these commitments have focused on transforming the courts (see Figure I) and fewer have aimed to make improvements to other important justice system actors.
- **Open justice commitments are disproportionately concentrated in the Americas.** Fifty percent of all open justice commitments are from members in the Americas region while the Americas only represent a third of commitments overall.
- **Open justice commitments tend to be more effective than other commitments.** In terms of results, according to data from IRM reports, 25% of open justice commitments have led significant improvements in government practice. This is higher than other justice commitments overall (21%) and OGP commitments overall (19%).
- **The majority of open justice commitments focus on the transparency of justice institutions by making information and data more accessible.** This pattern mirrors trends in OGP commitments overall (see Figure 2). These reforms are too rarely coupled with measures that allow civil society and the public to monitor these actors and hold them accountable when they take actions that could harm the citizens they serve.

FIGURE 1. **Open Justice Commitments by Actor**

Actor*	Number of Commitments
Courts	72
Police	18
Prosecutors	13
Pretrial Services & Corrections	9
Legal Aid	7

**Categories are not mutually exclusive since one commitment might affect multiple actors.*

FIGURE 2. **Commitment Relevance to OGP Values**



Objectives and Contents

This paper suggests a way forward in an area that faces several complex and growing challenges. In 2020, the rule of law has declined in more countries than it has improved in, continuing a three-year trend.[8] In many countries, corruption is on the rise while respect for fundamental rights and constraints on government power continue to deteriorate.[9]

Open justice reforms can serve as an antidote to these concerning developments. As the data in the previous section indicates, OGP commitments often make significant improvements to governance outcomes. However, to continue this momentum, more governments across all regions must make justice – and in particular, open justice – a priority in their action plans. Recognizing that each justice system is different and various actors within these systems face unique challenges, the international community must propose adaptable solutions that address countries' needs.

This paper responds to these concerns by offering emerging guidance, examples, and recommendations for the types of open government reforms justice systems may undertake to advance open justice in their institutions. The paper will be useful to practitioners and reformers in government or civil society looking for ideas to tackle some of the issues their justice system faces and case studies, as well as success stories from other countries. In the longer term, the paper seeks to encourage more OGP members to commit to open justice reforms in their action plans, so in this way, the paper is especially relevant to members of the OGP community. However, the suggestions and examples are also applicable to a broader audience of reformers interested in justice.

Importantly, this paper is not exhaustive, and many examples and approaches may be missing from the pages that follow. Similarly, the guidance provided here is not comprehensive and therefore should not be viewed as an instruction manual or best practices guide for open justice reforms. Instead, this paper will be most useful to reformers as a foundation for brainstorming ideas, an entry point for peer learning, and a starting point for seeking further resources.

This paper comprises nine chapters, covering the justice system actors and topics listed in the previous section. Each chapter begins with the following:

- An overview of the topic and its relevance to open government
- A discussion of the reasons open justice reforms stand to improve the function of the justice institution in question.

The body of each chapter includes the following sections:

- Examples of OGP commitments on the topic
- Case studies from around the world of unique and/or successful reforms
- Relevant international and regional guidance
- Recommendations and example reforms

Endnotes

1 In June 2020, OGP also released Transparency and Accountability on the Frontlines of Justice in light of recent instances of police brutality and the increasing number of protests around the world for racial justice. The paper offers case studies and recommendations on the right of citizens to freely assemble, accessible legal aid, and transparent and accountable policing.

2 Open Government Partnership, Democracy Beyond the Ballot Box (Washington, DC: 2019), https://www.opengovpartnership.org/wp-content/uploads/2019/06/OGP-Brochure_Democracy-Beyond-Ballot-Box.pdf.

3 United Nations Office of the High Commissioner for Human Rights, International Covenant on Civil and Political Rights, General Assembly Resolution 2200A, December 16, 1966, https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx.

4 United Nations, Universal Declaration of Human Rights, General Assembly Resolution 217A, December 10, 1948, https://www.un.org/en/universal-declaration-human-rights/.

5 For a definition of "rule of law," see World Justice Project (WJP), "What Is the Rule of Law?" accessed October 12, 2020,, https://worldjusticeproject.org/about-us/overview/what-rule-law.

6 United Nations, "What Is the Rule of Law?" United Nations and the Rule of Law, accessed October 12, 2020, https://www.un.org/ruleoflaw/what-is-the-rule-of-law/.

7 In large part, this is thanks to the inclusion of justice topics in the United Nations 2030 Agenda for Sustainable Development.

8 WJP Rule of Law Index 2020, World Justice Project, accessed October 14, 2020, https://worldjusticeproject.org/our-work/research-and-data/wjp-rule-law-index-2020.

9 WJP Rule of Law Index 2020, World Justice Project, accessed October 14, 2020, https://worldjusticeproject.org/our-work/research-and-data/wjp-rule-law-index-2020.

Courts

Open Court Data

Judicial Officers – Appointment and Accountability

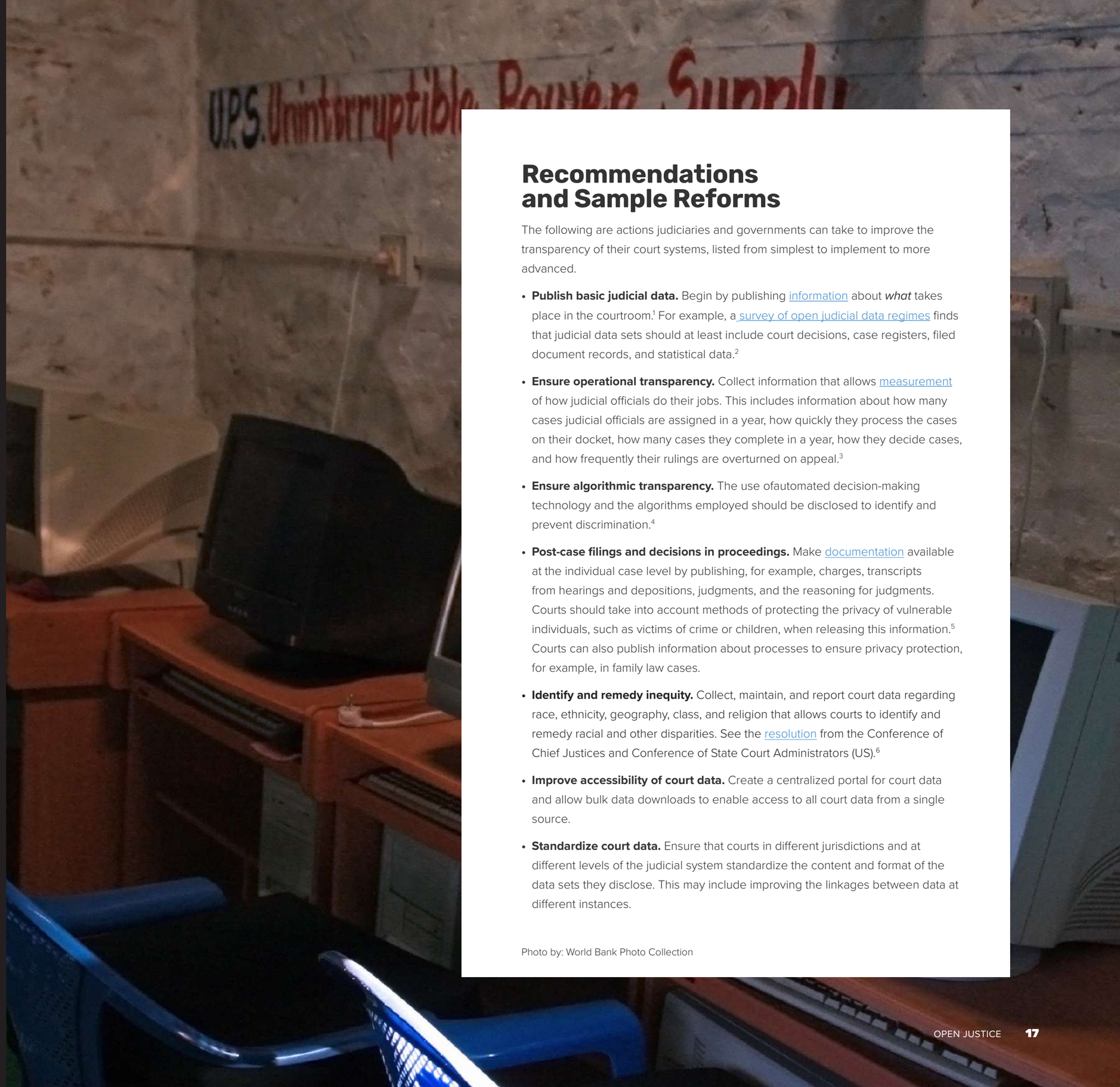
Court Modernization

Open Court Data

Overview

As the branch of government that is least responsive to changing public opinion, judiciaries have also been slow to embrace the institutional transparency that has increasingly become the expectation in many countries. Efforts to maintain judicial independence and protect courts from undue political influence often result in a dearth of publicly available court information.

Yet as open access to government data becomes the norm across societies, the courts are increasingly inundated with data requests and are falling behind on their disclosure obligations. These requests may be better served by proactively releasing court data, for example, data related to case status, charges, pleadings, motions, judgments, and sentencing. Additionally, as more courts use algorithms to automate processes such as pre-trial risk assessments and sentencing decisions, proactive algorithmic transparency can help identify and prevent instances of bias and discrimination. Proactively publishing these data can improve the responsiveness of the justice system, incentivizing fair and efficient court activity. It also promotes public trust in judicial institutions, which is crucial for the rule of law.



Recommendations and Sample Reforms

The following are actions judiciaries and governments can take to improve the transparency of their court systems, listed from simplest to implement to more advanced.

- **Publish basic judicial data.** Begin by publishing information about *what* takes place in the courtroom.[1] For example, a survey of open judicial data regimes finds that judicial data sets should at least include court decisions, case registers, filed document records, and statistical data.[2]
- **Ensure operational transparency.** Collect information that allows measurement of how judicial officials do their jobs. This includes information about how many cases judicial officials are assigned in a year, how quickly they process the cases on their docket, how many cases they complete in a year, how they decide cases, and how frequently their rulings are overturned on appeal.[3]
- **Ensure algorithmic transparency.** The use ofautomated decision-making technology and the algorithms employed should be disclosed to identify and prevent discrimination.[4]
- **Post-case filings and decisions in proceedings.** Make documentation available at the individual case level by publishing, for example, charges, transcripts from hearings and depositions, judgments, and the reasoning for judgments. Courts should take into account methods of protecting the privacy of vulnerable individuals, such as victims of crime or children, when releasing this information.[5] Courts can also publish information about processes to ensure privacy protection, for example, in family law cases.
- **Identify and remedy inequity.** Collect, maintain, and report court data regarding race, ethnicity, geography, class, and religion that allows courts to identify and remedy racial and other disparities. See the resolution from the Conference of Chief Justices and Conference of State Court Administrators (US).[6]
- **Improve accessibility of court data.** Create a centralized portal for court data and allow bulk data downloads to enable access to all court data from a single source.
- **Standardize court data.** Ensure that courts in different jurisdictions and at different levels of the judicial system standardize the content and format of the data sets they disclose. This may include improving the linkages between data at different instances.

Photo by: World Bank Photo Collection

LESSONS FROM REFORMERS

Buenos Aires criminal courts publish a repository of decisions

Criminal Courts 10 and 13 both created an open data repository with all judgments organized by the type of felony, the type of punishment, a description of the case, and a link to the complete decision. The court makes special efforts to anonymize the data to address privacy concerns. Court 13 also publishes plain-language versions of its decisions. Both courts open hearings to the public and publish a schedule of hearings in advance.

LESSONS FROM REFORMERS

Colombia improves judicial services through court transparency

After a 2015 declaration by the Council of State (Colombia's highest administrative court) to improve transparency and accountability in the justice system,Colombia established the Transparency and Accountability Commission, which was tasked with taking up this initiative. As part of its work, the commission led a 2015 OGP commitment through which they began to publish court data and information, including court memoranda and decisions, information about the court's officials, and the court's agenda.[7] As part of the commitment, the Council of State also published procedural manuals for a variety of court processes, such as the *tutela*, a constitutional rights protection claim available to all citizens. These measures helped the Council of State become more transparent than ever before. Still, corruption and distrust of justice institutions continued, and Colombia extended its efforts into its subsequent action plan. The Council of State's 2017 commitment aims to implement a variety of digital tools to further increase the court's transparency, including technological tools that allow citizens to monitor the magistrate election process, a mechanism for citizens to submit complaints and claims online, and better documentation of court processes and requirements.[8]

Other OGP Commitments

Czech Republic: Publish all district, regional, and high court decisions in a searchable online database (2018–2020).

Greece: Create a publicly accessible case-law database including anonymized decisions of all administrative courts (2019–2021).

Paraguay: Create an open justice data portal (2018–2020).

Slovakia: Create a system to ensure uniform reporting of all judicial decisions (2015–2017).

Uruguay: Publish video recordings of all public hearings, as well as statistical information from the judicial branch (2016–2018, 2018–2020).

GUIDANCE AND STANDARDS

The National Center for State Courts – National Open Courts Data Standard (NODS)

In 2018, two US civil society organizations – the National Center for State Courts and Measures for Justice – partnered to create the **NODS**.[9] The project seeks to provide publicly available standardized, case-level court data to improve court system transparency and improve public policy. NODS includes case-level reporting in a variety of areas, such as the following:

1. Case status and details
2. Litigant and lawyer information
3. Pleadings
4. Motions, filings, and orders
5. Charges
6. Judgments
7. Sanctions

United Nations Office on Drugs and Crime Resources (UNODC)

UNODC and its Global Judicial Integrity Network provide guidance on how judiciaries can improve and strengthen their systems for the management of courts and cases, maintenance of records, and transparency in the judicial system, in particular through the Implementation Guide and Evaluative Framework for Article 11 of the United Nations Convention against Corruption[10] and the Resource Guide on Strengthening Judicial Integrity and Capacity.[11] The Network also promotes peer learning and information sharing on these topics through various activities, including podcasts, opinion editorials, and webinars.

Endnotes

1 UNODC Resource Guide on Strengthening Judicial Integrity: https://www.unodc.org/documents/treaties/UNCAC/Publications/ResourceGuideonStrengtheningJudicialIntegrityandCapacity/11-85709_ebook.pdf

2 "Judicial Open Data: A Comparative Analysis" https://journals.sagepub.com/doi/abs/10.1177/0894439318770744

3 UNODC Resource Guide on Strengthening Judicial Integrity: https://www.unodc.org/documents/treaties/UNCAC/Publications/ResourceGuideonStrengtheningJudicialIntegrityandCapacity/11-85709_ebook.pdf

4 https://www.epic.org/algorithmic-transparency/crim-justice/

5 UNODC Resource Guide on Strengthening Judicial Integrity: https://www.unodc.org/documents/treaties/UNCAC/Publications/ResourceGuideonStrengtheningJudicialIntegrityandCapacity/11-85709_ebook.pdf

6 Resolution from Conference of Chief Justices and Conference of State Court Administrators (US): https://ccj.ncsc.org/__data/assets/pdf_file/0029/42869/07302020-Racial-Equality-and-Justice-for-All.pdf

7 OGP commitment: https://www.opengovpartnership.org/members/colombia/commitments/CO0053/

8 OGP commitment: https://www.opengovpartnership.org/members/colombia/commitments/CO0071/

9 The National Center for State Courts, National Open Courts Data Standard: https://www.ncsc.org/nods#reference

10 UNODC Implementation Guide and Evaluative Framework for Article 11 of the United Nations Convention against Corruption: https://www.unodc.org/ji/en/resdb/data/2015/_220_/the_united_nations_convention_against_corruption_implementation_guide_and_evaluative_framework_for_article_11.html

11 UNODC Resource Guide on Strengthening Judicial Integrity: https://www.unodc.org/documents/treaties/UNCAC/Publications/ResourceGuideonStrengtheningJudicialIntegrityandCapacity/11-85709_ebook.pdf

Judicial Officers—Appointment and Accountability

Overview

Judicial officers – including judges, magistrates, and other officials with powers to facilitate and decide legal disputes – have the authority to protect human rights, make wrongs right, and resolve intractable conflicts. As such, their appointment (or election where applicable) must be transparent, based on objective criteria, and free of corruption so that the public has faith in their independence, impartiality, and integrity. Transparent appointments also help the public hold appointing authorities accountable in selecting qualified judicial officers.

Once judicial officers have assumed their role, their conduct and track record matter. Justice systems can make judicial officers' decisions or rulings publicly available (except in cases when privacy must be considered) to ensure the fairness and predictability of the system.[1] More generally, judicial officers must abide by relevant standards of professional conduct and act with independence, impartiality, and integrity. If they fail to meet these standards, judicial officers should be accountable through a complaints procedure that allows for a review of their conduct by an independent oversight authority capable of fair proceedings and discipline, including removal. The outcomes of complaints and any disciplinary proceedings should be made publicly available and transparent.

Importantly, countries considering reforms in this area should take into account that accountability mechanisms for judicial officers should not in any way threaten judicial independence and should therefore differ from accountability mechanisms for other branches of government. In particular, promotions, terminations, and disciplinary actions should never be determined on political grounds and must be shielded from undue influence by the executive branch (see Principles 11–20 of the *Basic Principles on the Independence of the Judiciary* referenced later in this chapter).

Recommendations and Sample Reforms

OGP members can take the following actions to improve meritorious, transparent judicial appointments:

- **Publish necessary qualifications and examination standards.** If recruitment occurs via examinations, they should be established by the state with common, transparent standards and given anonymously.[2] Ensure that standards are nondiscriminatory and gender and ethno-culturally neutral.
- **Publish term limits and appointment terms.** Transparent term limits, mandatory retirement ages, or lifetime appointments insulate the judiciary from political purging.
- **Require transparent nominations.** If recruitment occurs via nomination and appointment, the procedure should be fully transparent to reveal the candidate's qualifications vis-à-vis other publicly announced candidates to avoid political favoritism.[3]
- **Publicly vet candidates.** Consider publicizing interviews of candidates. Allow feedback on candidates from the legal profession and civil society to hear external evidence of a candidate's fitness. Publicize reasons for final appointments.
- **Require judicial officials to declare assets and financial interests.** This includes outside activities, employment, investments, assets, and substantial gifts and benefits from which a conflict may result.[4]
- **Publicize and report on measures to diversify judicial officers, through recruitment, retention, and training.** Take measures so that judicial officials reflect the gender balance and social diversity of the country.[5]

The following are actions judiciaries and governments can take to improve judicial accountability and independence:

- **Publish a judicial code of conduct.** Write and publish codes that support a learned, independent, and impartial judiciary. Making these codes publicly accessible allows citizens to hold the judiciary accountable by filing suit for egregious errors. See the Global Judicial Integrity Network's "Guide on Resource Guide on Strengthening Judicial Integrity"[6] for more guidance.
- **Involve justices in developing standards.** Invite judicial involvement in creating and updating codes of conduct. Ownership of ethical standards promotes compliance.

The Chief Justice of Kenya David Maraga confers with Mexican Elections Tribunal Head of International Relations Alberto Guevara Castro. Photo by: International Development Law Organization

- **Perform comprehensive evaluations.** The United Nations Office on Drugs and Crime (UNODC) provides a list of data that should be collected[7] to assess a court system, including which sources can provide pertinent information and what questions should be asked when analyzing this information. Note: Evaluations should not include successful appeals against judicial officials' rulings, as this might affect their decision-making.
- **Implement and publish court self-evaluations.** Self-assessment mechanisms, such as the one offered by the *UNODC Implementation Guide and Evaluative Framework for Article 11 of the United Nations Convention against Corruption*[8] and the International Consortium for Court Excellence,[9] can help courts maintain accessible, efficient, and innovative services.
- **Use and publish disciplinary measures.** Facilitate accountability by accepting feedback from both judicial members and the public. Ensure that disciplinary standards address all judicial integrity issues, including cases of gender bias, sex discrimination, and sexual misconduct. Disciplinary measures should be proportionate to the offense and might range from internal written warnings to public acknowledgment of ethical deviations to removal from office.[10]
- **Adopt continuing education programs.** Programs can discuss legislative developments, judicial ethics, docket management, technology use, and international developments. This education should be accessible to all judicial officials and include various learning methods (e.g., self-learning, in-person, or interactive learning).[11]
- **Facilitate judicial integrity networking.** For example, the Global Judicial Integrity Network offers networking opportunities at the local, regional, and global level. Limit initial meetings focusing on judicial integrity to only judicial officials to allow for free and open peer-to-peer discussion before inviting public participation.
- **Publish judicial decisions.** Access to the country's laws and judicial decisions should be free. Some decisions may need to be withheld or anonymized to protect privacy concerns, including the identity of juveniles.[12]

LESSONS FROM REFORMERS

Kenya initiates judicial vetting

In 2010, Kenya approved a new democratic constitution by public referendum. In response to years of government corruption, including at high levels of the judiciary, the framers sought to enshrine democratic institutions and the rule of law in the new constitution. To do so, they included a provision that stipulates all judicial officials and magistrates appointed under the previous constitution undergo vetting by an independent board. The details of this provision are affirmed in a 2011 law that the judicial official and magistrate vetting board would comprise nine members, including six citizens, three of whom must be lawyers. Following this legislation, Kenya made an OGP commitment in 2012 to implement the newly required processes. Throughout 2012, the board vetted dozens of judicial officials at various levels of the judiciary and determined that several officials were unfit to serve. Putting the judiciary under the microscope in this way helped restore citizen trust in and legitimacy to the institution in a new era. However, while innovative, this approach was not without controversy, and civil society raised concerns that lawyers on the board were too lenient on some judicial officials alleged to have engaged in corruption while removing other judicial officials without legitimate reasoning.

LESSONS FROM REFORMERS

Slovak Republic legislates transparent selection of judicial officials

The Slovak Republic used its 2017 action plan to help address weak judicial independence and a lack of public trust in judicial decisions.[13] Among other reforms, the country passed legislation that standardized selection procedures for judicial officials and established a committee that will oversee such processes in the future. Information about these procedures – including lists of candidates and their résumés – is now publicly available online, which allows for public scrutiny of the candidates as well. Over time, reforms like this one can help build public trust in judicial institutions.

LESSONS FROM REFORMERS

Denmark establishes whistleblower portals for justice system employees

Following revelations in 2018 that senior justice officials had withheld key documents in an investigation of police misconduct during a 2012 protest against Chinese President Hu Jintao's state visit, Denmark made an OGP commitment in 2019 to improve accountability for justice system officials.[14,15] The commitment seeks to establish a whistleblower scheme in the Ministry of Justice, prosecutor service, police, and prison service, among other justice system institutions. The new procedures will provide mechanisms through which employees or partners of any of these institutions can report individual or systemic wrongdoing. The online portal will also allow whistleblowers to file their complaints anonymously and enable the authorities investigating the complaints to communicate with whistleblowers while maintaining their anonymity. This system could allow for great accountability for justice system officials and, ultimately, the provision of fairer justice services.

Other OGP commitments

Argentina: Publish information about selection processes, complaint mechanisms, and disciplinary procedures for judicial officials (2017–2019).

Costa Rica: Develop an online "judicial observatory system," which enables citizens to monitor how long open cases take to be concluded (2019–2021).

Jalisco, Mexico: Implement safeguards to avoid judicial officials' conflicts of interest by working with citizens to review and update the system for selecting expert witnesses during trials (2019–2021).

Paraguay: Publish accusations and disciplinary procedures against judicial officials more transparently for citizens through an online digital system (2018–2020).

GUIDANCE AND STANDARDS

The United Nations – Basic Principles on the Independence of the Judiciary

The UN Basic Principles on the Independence of the Judiciary,[16] adopted by the UN Congress on the Prevention of Crime and the Treatment of Offenders and endorsed by the UN General Assembly in 1985, lays out 20 principles to secure and promote the independence of the judiciary.

- Principle 10, related to qualifications, selection, and training, provides the following:
  - *10. Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection shall safeguard against judicial appointments for improper motives. In the selection of judicial officials, there shall be no discrimination against a person on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status, except that a requirement, that a candidate for judicial office must be a national of the country concerned, shall not be considered discriminatory.*
- Principles 17–20, related to discipline, suspension, and removal, provide the following:
  - *17. A charge or complaint made against a judicial official in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure. The judicial official shall have the right to a fair hearing. The examination of the matter at its initial stage shall be kept confidential, unless otherwise requested by the judicial official.*
  - *18. judicial officials shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties.*
  - *19. All disciplinary, suspension, or removal proceedings shall be determined in accordance with established standards of judicial conduct.*
  - *20. Decisions in disciplinary, suspension, or removal proceedings should be subject to an independent review. This principle may not apply to the decisions of the highest court and those of the legislature in impeachment or similar proceedings.*

The United Nations – Bangalore Principles of Judicial Conduct

The Bangalore Principles of Judicial Conduct,[17] developed in 2002 by the Judicial Integrity Group and endorsed by the Economic and Social Council of the United Nations in 2006, establish standards for the ethical conduct of judicial officials and revolve around six values necessary for an effective and principled judiciary: independence, impartiality, integrity, equality, propriety, and competence and diligence. The Bangalore Principles are accompanied by a detailed Commentary published in 2007, which, among others, touches upon the issues of qualifications, selection, and training (paragraph 10) or conditions of service and tenure (paragraph 11).

The Global Judicial Integrity Network

Officially established in 2018, the Global Judicial Integrity Network[18] was launched by the UN Office on Drugs and Crime. The network aims to promote peer learning and support activities, facilitate access to relevant tools and resources related to judicial integrity, and support the further development and effective implementation of principles of judicial conduct and the prevention of corruption within the justice system. Among its outputs, the Global Judicial Integrity Network has developed several knowledge products and tools addressing pertinent integrity-related topics, such as the development and implementation of codes of judicial conduct,[19] gender-related issues,[20] judicial officials' use of social media,[21] and judicial ethics training.[22]

Endnotes

1 For more on this point, see the "Open Court Data" chapter of this paper.

2 *UNODC Resource Guide on Strengthening Judicial Integrity* (New York: United Nations, 2011), https://www.unodc.org/documents/treaties/UNCAC/Publications/ResourceGuideonStrengtheningJudicialIntegrityandCapacity/11-85709_ebook.pdf

3 *UNODC Resource Guide on Strengthening Judicial Integrity* (New York: United Nations, 2011), https://www.unodc.org/documents/treaties/UNCAC/Publications/ResourceGuideonStrengtheningJudicialIntegrityandCapacity/11-85709_ebook.pdf

4 Judicial Integrity Network, "Strengthening judicial integrity through financial disclosure systems for judges," United Nations Office on Drugs and Crime (UNODC), accessed October 30, 2020, https://www.unodc.org/dohadeclaration/news/2017/02/strengthening-judicial-integrity-through-financial-disclosure-systems-for-judges.html

5 *UNODC Resource Guide on Strengthening Judicial Integrity* (New York: United Nations, 2011), https://www.unodc.org/documents/treaties/UNCAC/Publications/ResourceGuideonStrengtheningJudicialIntegrityandCapacity/11-85709_ebook.pdf

6 The Global Judicial Integrity Network, *How to Develop and Implement Codes of Judicial Conduct*, (Vienna: United Nations Office on Drugs and Crime (UNODC), 2019), https://www.unodc.org/ji/en/knowledge-products/drafting-codes-of-conduct.html

7 UNODC, *Access to Justice: The Independence, Impartiality, and Integrity of the Judiciary* (New York: United Nations, 2006), https://www.unodc.org/documents/justice-and-prison-reform/cjat_eng/2_Independence_Impartiality_Integrity_of_Judiciary.pdf

8 *UNODC Implementation Guide and Evaluative Framework for Article 11 of the United Nations Convention against Corruption* (New York: United Nations, 2015), https://www.unodc.org/ji/en/resdb/data/2015/_220_/the_united_nations_convention_against_corruption_implementation_guide_and_evaluative_framework_for_article_11.html

9 The International Consortium for Court Excellence Framework, "Home," accessed on September 1, 2020, http://www.courtexcellence.com/

10 The Global Judicial Integrity Network, "The Main Factors Aimed at Securing Judicial Independence," February, 2020, https://www.unodc.org/e4j/en/crime-prevention-criminal-justice/module-14/key-issues/1--the-main-factors-aimed-at-securing-judicial-independence.html

11 *UNODC Resource Guide on Strengthening Judicial Integrity* (New York: United Nations, 2011), https://www.unodc.org/documents/treaties/UNCAC/Publications/ResourceGuideonStrengtheningJudicialIntegrityandCapacity/11-85709_ebook.pdf

12 The Global Judicial Integrity Network, "The Main Factors Aimed at Securing Judicial Independence," February, 2020, https://www.unodc.org/e4j/en/crime-prevention-criminal-justice/module-14/key-issues/1--the-main-factors-aimed-at-securing-judicial-independence.html

13 " Draft Legislation to Ensure Public Scrutiny of Judges (SK0114)," (OGP, 2017), https://www.opengovpartnership.org/members/albania/commitments/sk0114/

14 Søren Poulsen, "Denmark to Re-open Inquiry into Authorities Conduct over Tibet Demonstration" *The Local Denmark*, June 7, 2018, https://www.thelocal.dk/20180607/denmark-to-re-open-inquiry-into-authorities-conduct-over-tibet-demonstration

15 "Anonymous Whistleblower Portals for Justice System Employees (DK0070)," (OGP, 2019), https://www.opengovpartnership.org/members/denmark/commitments/DK0070/

16 *UNODC, Basic Principles on the Independence of the Judiciary*, (Milan: UNODC, 1985), https://www.ohchr.org/en/professionalinterest/pages/independencejudiciary.aspx

17 *The Bangalore Principles of Judicial Conduct* (The Hague: UNODC, 2002), https://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf

18 "The Judicial Integrity Network," UNODC, https://www.unodc.org/ji/en/about.html

19 The Global Judicial Integrity Network, "Guide on How to Develop and Implement Codes of Judicial Conduct," (Vienna: UNODC, 2019), https://www.unodc.org/ji/en/knowledge-products/drafting-codes-of-conduct.html

20 The Global Judicial Integrity Network, "Gender-Related Issues in the Judiciary," (UNODC, 2020), https://www.unodc.org/documents/ji/knowledge_products/Gender_Paper_FINAL_DOHA.pdf

21 The Global Judicial Integrity Network, "Non-binding Guidelines on the Use of Social Media by Judges," (UNODC, 2019), https://www.unodc.org/ji/resdb/data/2019/non-binding_guidelines_on_the_use_of_social_media_by_judges.html?lng=en&match=social%20media%20guidelines

22 "Judicial Ethics Training Package," The Global Judicial Integrity Network, accessed September 1, 2020, https://www.unodc.org/ji/en/judicial_ethics.html

Court Modernization

Overview

To ensure accessibility and fairness and to protect against corruption, courts must be able to manage cases efficiently and reliably. Although not a requirement for an efficient court system, digital technology has become an increasingly popular tool to modernize courts and achieve these outcomes. In particular, tools such as online case management systems and the availability of virtual court proceedings can help improve access to information about court processes and simplify court services. These tools can encompass a variety of services, including e-filing, case tracking, automatic notices to appear in court and hearing date reminders, online dispute resolution services, and the publication of digital recordings of court proceedings.

These features, when integrated into an online platform, improve access to information about justice processes, allow citizens to engage with the system remotely – especially those who have traditionally lacked access to such processes – and reduce wait times by freeing up judicial officials' and other court employees' time. Furthermore, in the midst of the COVID-19 pandemic, online court processes can help courts avoid inefficiencies and increase the accessibility of their services while mitigating public health risks.

Recommendations and Sample Reforms

The following are actions for governments implementing or considering implementing online case management systems to ensure that they maximize the transparency and accountability of the court system.

- **Ensure that automation is an appropriate response to court system needs.** Often court backlogs can result from a variety of issues, including corruption among court officials or a lack of communication and trust between justice sector institutions. While court automation can improve efficiency, it will not solve these underlying issues.
- **Engage potential users early on to encourage trust and transparency in the new system.** Court automation often presents major changes to how courts operate. Transparency about these changes and the potential improvements that may result could help combat skepticism, among court staff, litigants, lawyers, bar associations, and the general public. User-test technology with the public during development. Verify that the system meets user needs by ensuring accessibility, use of plain language, and availability in all languages commonly spoken among the population that the system serves.[1]
- **Standardize the collection and presentation of information.** Ensure that courts across different jurisdictions and across various levels of the system collect the same information to allow for cross-comparison.
- **Provide access to information to litigants and the public.** Automated systems have great potential to lower barriers to access to public information. Records requests, information on pending litigation, and notices of disposition can be substantially streamlined by automation.
- **Extend court modernization to other parts of the court system.** Court modernization is often piloted in one or a few courts. If pilots are successful, justice systems can begin implementation across the system to specialized courts, other jurisdictions, and other levels of the court system.
- **Focus on interagency communication and interoperability within government.** Courts can conserve significant resources by designing systems that facilitate efficient communication with other courts, correctional facilities, and agencies that manage identity, financial, and land records.

Photo by: mnirat

- **Consider how e-court processes can improve efficiency during the Covid-19 pandemic.** Processes such as e-filing, online dispute resolution, digital case look-up, and/or remote hearings can enable courts to continue proceedings in light of the ongoing public health risks of conducting such processes in person.[2]
- **Conduct training for judicial officials and court staff.** Court automation systems will work best if court staff use and maintain them properly. Comprehensive training, often including training on basic computer skills, can improve uptake.
- **Implement effective monitoring and evaluation processes.** Monitoring is an important accountability mechanism to ensure that the investment in court automation is used effectively to serve citizens by improving access to justice. These could include backlog reduction indicators and court user surveys that could help courts evaluate citizens' engagement with the new system.

LESSONS FROM REFORMERS

Kenya's commercial courts are transitioning to e-court processes.

Without a system for electronic filing, court records in Kenya have been maintained in libraries of thousands of often-disorganized paper documents. This makes it challenging for court officials to keep track of cases, leading to debilitating backlogs for judicial officials and delayed judgments for citizens. In 2012, Kenya made an OGP commitment to modernize the judiciary with the goal of improving the courts' efficiency, transparency, and accountability.[3] Among the initiatives included in the commitment, Kenya implemented software that would allow case proceedings and judgments to be made available online, enabling Kenyans to access and download cases and judgments online for the first time. The government also hoped to implement software that would randomly assign new cases to judicial officials to avoid bias and conflicts of interest in judgments, although this was not achieved by the end of the action plan. This has allowed scholars to identify significant ethnic bias in judicial decisions, pointing to the need to improve recruitment and training in high courts.[4]

Building on these initiatives, in 2017, Kenya continued attempts to digitize and automate certain court processes to address case backlogs and delays.[5] In a pilot carried out at the Commercial and Tax division of the High Court, the Kenyan judiciary began digitizing case files and centralizing them using case management software.[6] The system also includes a variety of other functions aimed at making court information more accessible and proceedings more efficient. For example, a public-facing case-tracking portal allows court users to check the status of their case online, and an e-payment platform helps citizens navigate the previously complex fee payment processes.

Other OGP Commitments

Albania: Implement an online inspection, make judicial hearings available online through their integrated case management system, and digitize court files to simplify transferring information between court levels of the judiciary (2012–2014).

Brazil: Implement an electronic system for judicial proceedings in the electoral courts to reduce court delays (2016–2018).

Costa Rica: Create an online observatory to ensure efficient management of cases and reduce delays in delivering decisions (2019–2020).

Greece: Implement an electronic system to monitor the status of all pending cases and allow electronic submission of documents for all parties (2016–2018).

Montenegro: Establish the National Administrative Fee Collection System in order to simplify the payment of court fees for citizens and improve monitoring of outstanding payments (2018–2020).

GUIDANCE AND STANDARDS

United States: The National Center for State Courts – Consolidated Case Management Functional Standards

The installation of case management software will not on its own ensure greater efficiency and openness. It must also be sustainable and user-friendly and collect the right information. The National Center for State Courts in the U.S. published its **Consolidated Case Management Functional Standards** in 2006.[7] These standards describe general capabilities that courts' systems should support in a variety of categories, including the following:

- Scheduling
- Docket management
- Document creation and tracking
- Records management
- Court proceedings recording

Endnotes

1 National Center for State Courts, "Guiding Principles for Post-Pandemic Court Technology," July 16, 2020, https://www.ncsc.org/__data/assets/pdf_file/0014/42332/Guiding-Principles-for-Court-Technology.pdf.

2 Ibid.

3 "Improving Transparency in the Judiciary: 2.A. Public Vetting of Judges and Case Allocation System (KE0007)," (OGP, 2012), https://www.opengovpartnership.org/members/kenya/commitments/KE0007/.

4 Danny Choi, Fiona Shen-Bayh, and J. Andrew Harris "Ethnicity and Judicial Decision-Making: Evidence from the Kenyan High Courts," (paper presented at the American Political Science Association Annual Meeting, Washington DC, 2019).

5 Maya Gainer, "How Kenya Cleaned Up Its Courts," *Foreign Policy,* July 9, 2016, https://foreignpolicy.com/2016/07/09/how-kenya-cleaned-up-its-courts/.

6 International Development Law Organization, "E-Court Processes in Kenya Promote Access to Commercial Justice," January 31, 2020, https://www.idlo.int/news/story/e-court-processes-kenya-promote-access-commercial-justice.

7 National Center for State Courts, Consolidated Case Management Functional Standards, (Williamsburg, VA: National Center for State Courts, 2006), https://www.ncsc.org/~/media/Files/PDF/Technology/Consolidated_CMS_Functional_Standards_v_0_20.ashx.

Resources and Partners

Resources

- The International Consortium for Court Excellence publishes the Court Excellence Self-Assessment Questionnaire, which enables courts to evaluate their performance in seven areas.
- The National Center for State Courts produces resources for using technology in courts and case flow management.
- USAID's Designing and Implementing Court Automation Projects outlines key considerations for court modernization.
- UNDP's Judicial Integrity Self-Assessment Checklist is a useful tool to help judiciaries assess their courts.
- The Global Judicial Integrity Network's resources include a guide on How to Develop and Implement Codes of Judicial Conduct.
- UNODC's Resource Guide on Strengthening Judicial Capacity and Integrity outlines best practices for a variety of court processes, including court transparency, judicial official recruitment, evaluation, selection, and disciplinary measures.

Organizations

- Center for Court Innovation
- Global Judicial Integrity Network (established by UNODC)
- International Consortium for Court Excellence
- National Center for State Courts (NCSC) (United States) and NCSC International
- United Nations Office on Drugs and Crime (UNODC)

Police

Open Police Data

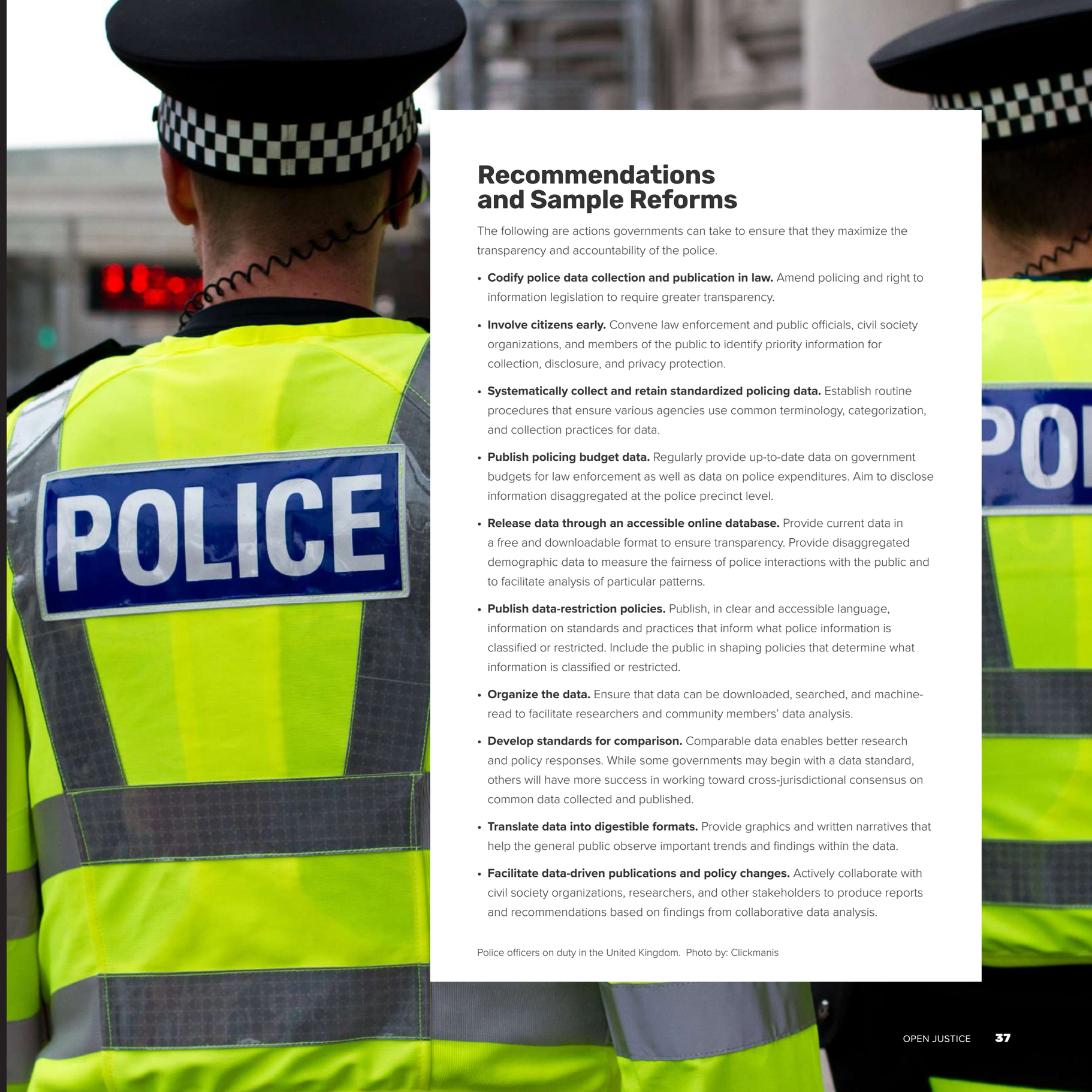
Oversight and Monitoring of Police

Open Police Data

Overview

A lack of transparent or comparable police data inhibits the public and policymakers' ability to fully understand and address problematic police practices and their consequences. OGP members are increasingly taking the initiative to open police data with the ultimate aim of evidence-based police reform.

Transparent data on police-citizen interaction is a vital tool to assess the efficacy and fairness of interactions between citizens and the police. Open data in areas like public complaints, officer-involved deaths, and use of force provides the foundation for informed research, policy reforms, and oversight. Specifically, open data enables evaluation of law enforcement's fairness in their interactions with the public. Separately, the publication of police department budgets and expenditures ensures that public funding of law enforcement meets the needs of all citizens. Therefore, requiring police departments to provide accessible data is an essential first step toward strengthening public accountability and building public trust. Of course, police departments must also be cautious to protect individuals' right to privacy and need to have fair, well-publicized processes for ensuring that open data respects the rights of victims, witnesses, and the accused.



Recommendations and Sample Reforms

The following are actions governments can take to ensure that they maximize the transparency and accountability of the police.

- **Codify police data collection and publication in law.** Amend policing and right to information legislation to require greater transparency.
- **Involve citizens early.** Convene law enforcement and public officials, civil society organizations, and members of the public to identify priority information for collection, disclosure, and privacy protection.
- **Systematically collect and retain standardized policing data.** Establish routine procedures that ensure various agencies use common terminology, categorization, and collection practices for data.
- **Publish policing budget data.** Regularly provide up-to-date data on government budgets for law enforcement as well as data on police expenditures. Aim to disclose information disaggregated at the police precinct level.
- **Release data through an accessible online database.** Provide current data in a free and downloadable format to ensure transparency. Provide disaggregated demographic data to measure the fairness of police interactions with the public and to facilitate analysis of particular patterns.
- **Publish data-restriction policies.** Publish, in clear and accessible language, information on standards and practices that inform what police information is classified or restricted. Include the public in shaping policies that determine what information is classified or restricted.
- **Organize the data.** Ensure that data can be downloaded, searched, and machine-read to facilitate researchers and community members' data analysis.
- **Develop standards for comparison.** Comparable data enables better research and policy responses. While some governments may begin with a data standard, others will have more success in working toward cross-jurisdictional consensus on common data collected and published.
- **Translate data into digestible formats.** Provide graphics and written narratives that help the general public observe important trends and findings within the data.
- **Facilitate data-driven publications and policy changes.** Actively collaborate with civil society organizations, researchers, and other stakeholders to produce reports and recommendations based on findings from collaborative data analysis.

Police officers on duty in the United Kingdom. Photo by: Clickmanis

LESSONS FROM REFORMERS

Open Police Data Initiative in the United States

The United States government undertook the Open Police Data Initiative[1] as part of its 2015 National Action Plan to address high levels of distrust and tension between police and the public.[2] The initiative encourages local police jurisdictions to proactively extract and publish policing data. The project is managed collaboratively by the Department of Justice's Office of Community Oriented Policing Services and the nonprofit organization, the National Police Foundation. The initiative increased access to information by creating a centralized database that comprises over 130 jurisdictions and 405 data sets as of June 2020, including cities such as New York, Los Angeles, and Detroit. The website also provides tools to extract, analyze, and publish data. This repository has led to published data sets in numerous areas, including on police use of force and officer-involved shootings. However, agency participation is voluntary, and the adoption rate remains low. Additionally, there is a need to improve data standardization and ensure regular updates. Recent unrest across the United States has reignited interest in open police data as reformers call for greater police transparency. This initiative demonstrates a viable process to further open police data with the ultimate aim to reduce bias and unnecessary use of force in policing tactics and increase public trust.

LESSONS FROM REFORMERS

Legislating policing transparency in India

In 2009, India's Parliament amended the Criminal Procedure Code to include a requirement that all police departments disclose information about arrests made. The law mandates that the information be published daily at the district level and include the names of arrested individuals and the names and designations of the police officers who arrested them. While this information raises concerns about privacy protections, it can be an important step for minimizing pretrial detention that does not comply with due process rights, especially in contexts where institutional protections against abuse of power and for access to justice may be weaker. Additionally, police headquarters must regularly collate this information at the state level, as well as information about the offenses for which arrested individuals were charged. All of this information is publicly available in the form of databases on the official websites of each state's police department. For example, see Kerala State Police's portal.[3] Separately, India's National Crime Records Bureau has published the annual Crime in India Report since 1953, which contains crime data from across the country, including cases registered and persons arrested.[4]

Other OGP Commitments[5]

Austin, United States: Translate annual crime data file into accessible formats for the general public, such as written narratives and interactive maps (2019–2021).

Liberia: Provide live police data on Liberia's Open Data Portal that would include the location of police depots, actions against unprofessional police conduct, and crime maps (2015–2017).

Mexico: Create a standardized prisoner registration system to more effectively keep track of arrests, sentences, and time spent in detention (2013–2015).

United Kingdom: Bring police records under legislative control through the Public Records Act of 1958 to ensure long-term preservation and access (2013–2015).

GUIDANCE AND STANDARDS

The UN Office of Drugs and Crime (UNODC) – Handbook on Police Accountability, Oversight, and Integrity

The handbook offers OGP countries several tangible actions to build a culture of transparency and accountability, as well as reliable statistics on police performance, integrity, and public confidence.[6] It encourages police reforms to be developed through public-police participation and not be simply prescriptive. Furthermore, the handbook gives guidance for external police oversight mechanisms:

- The mechanism should be required to issue regular reports to the government and the public on its activities.
- It should maintain a website with easily accessible information.
- It should respond in a timely fashion to citizen complaints.
- It should maintain detailed data on police abuses. Civilian oversight mechanisms are uniquely placed to conduct statistical or general reviews of patterns in police killings, including their causes, and should do so.
- Its budget and expenses should be publicly reported.[7]

The United States – Final Report of the President's Task Force on 21st-Century Policing

Released in 2015, this report recommends that agencies should collect and make aggregate data publicly available.[8] Specific action items for police forces include the following:

- Collect, maintain, and report data to the federal government on all officer-involved shootings;
- Develop policies on what types of information will be released, when, and in what situation, to maintain transparency;
- Make public the demographic data regarding the composition of their force;
- Collect, maintain, and analyze demographic data on all detentions (stops, frisks, searches, summons, and arrests); and
- Disaggregate data by school and nonschool contacts.

Organizations for Security and Cooperation in Europe (OSCE) – Guidebook on Democratic Policing

The 2007 guidebook serves as a reference for police practitioners and policy-makers working to strengthen democratic policing and covers topics such as "policing ethics, and human rights standards; the essential nature of police accountability to the law and to the society they serve; as well as the need for their co-operation with the communities."[9] In particular, the guidebook discusses key aspects of data oversight and disposal (sections 49–51) and police oversight (sections 84–94), including through data generated by citizen complaints.

Endnotes

1 Police Data Initiative. "Home." Accessed November 9, 2020. https://www.policedatainitiative.org/.

2 "Build Safer Communities with Police Open Data (US0088)," (OGP, 2015), https://www.opengovpartnership.org/members/united-states/commitments/US0088/.

3 "Official Website of Kerala Police." Accessed November 9, 2020. https://keralapolice.gov.in/page/arrest-thiruvanan-thapuram-city.

4 "Crime in India," National Crime Records Bureau, accessed September 1, 2020, https://ncrb.gov.in/en/crime-india.

5 See also **Colombia:** Improve access to information, increase police services for people with disabilities, and strengthen citizen oversight and citizen-police communication (2017–2019), and **Georgia:** Publish national phone-tap data according to the nature of the crime and geographic area (2016–2018).

6 United Nations Office of Drugs and Crime (UNODC), *Handbook on Police Accountability, Oversight, and Integrity* (New York: United Nations, 2011), https://www.unodc.org/pdf/criminal_justice/Handbook_on_police_Accountability_Oversight_and_Integrity.pdf.

7 Ibid, 7.

8 The President's Task Force on 21st Century Policing, *Final Report of The President's Task Force on 21st Century Policing* (Washington, DC: Office of Community Oriented Policing Services, 2015), https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

9 The Organization for Security and Cooperation in Europe (OSCE), Guidebook on Democratic Policing, (Vienna: OSCE, 2008), https://www.osce.org/secretariat/23804#:~:text=Guidebook%2C%20written%20and%20compiled%20by,develop%20and%20strengthen%20democratic%20policing.

Oversight and Monitoring of Police

Overview

Recent civil unrest in the United States and around the world has exposed high levels of public distrust toward police. This distrust is particularly strong among marginalized communities, who often face discrimination and disproportionate use of force at the hands of police around the world.[1]

There are a variety of means by which civil society groups and communities can hold police accountable for their actions. These mechanisms include the following:

- **Independent and citizen oversight bodies** give citizens a voice in how they are policed and in designing new ways to hold police accountable. They may operate at the local or higher levels. Oversight bodies may have a broad mandate, focus on controversial practices, or review police-citizen interactions and complaints.

- **Partnerships** are flexible tools that can be adapted to fit their unique context. The goal of public-police partnerships is to bring police and community organizations and individuals together in order to build trust and improve public safety. They may often be part of community-oriented policing. The partnership approach has several goals that are consonant with principles of open government — collaboration, participation, and engagement. It is the most popular type of OGP policing commitment.

- **Additional accountability mechanisms**, such as complaints tools, ombudsman's offices, and improving liability regimes can improve how individuals or groups seek corrective action for mistreatment by police, for example disproportionate use of force, illegal arrest, or prolonged detention.

- **Participatory budgeting** is a process through which the public determines the priorities and functions of public offices. As public attention has shifted to the militarization of the police, budgeting processes have come to be seen as increasingly important in addressing crime, policing, and housing or mental health discrimination.

Across their various forms, oversight mechanisms need to be transparent in how members of the public can use them, who is a part of the decision-making, and the results of citizen input. They must have a clearly defined mandate to direct police strategies and practices. When granted such authority, oversight bodies provide a vital form of police accountability and can help ensure policing strategies reflect citizens' needs and priorities.

Recommendations and Sample Reforms

Basic transparency

- **Operating procedures:** At a minimum, governments should make police operating procedures public, especially around practices such as use of force, search and seizure, and control of protests.
    - Several non-governmental organizations in Eastern Europe are using Freedom of Information requests to gain access to police operating procedures.[2]
- **Incident data:** See the "Open Police Data" section for detailed data on incidents.
- **Incident disposition data:** In addition, internal investigations should make final determinations public and transparent. All presumptions should be toward disclosure, with narrow and rare cases for privacy protection. Policies that determine which data is cleared for publication should be publicly available and searchable.

Independent oversight bodies are local or higher-level bodies that give citizens a voice in how they are policed and in how police officers are held accountable.

- **Practice and policy-level review**
    - **Capacity building:** Community panels may require advanced skills, such as data analysis and legal understanding, to best interpret appropriateness of policies. In other cases, training might be needed for facilitation, rule-setting, and documentation of decisions and notes. Community oversight bodies may have authority to review standard police operating procedures as well as practices that require additional scrutiny (e.g., use of force, search and seizure, and control of protests).
    - **Membership:** Membership should be competitive, based on transparent criteria. Those criteria should aim for social representation, especially from groups who have historic or ongoing issues with policing and other traditionally underrepresented groups as well as those with the capacity to oversee police (such as lawyers or community organizations).
    - **Example:** An example of a public commission to oversee a particular practice was the Stop and Search Scrutiny Panel in the West Midlands, UK. Commissions operate across each of the 10 local policing units of the region. These bodies meet independently and collectively.[3]

Photo by: ifeelstock

- **Complaints and officer-citizen interaction**
  - **Mandate:** Oversight bodies at the local level may oversee issues including excessive force, harassment, discrimination, theft, and failure to provide adequate or timely police protection.
  - **Public complaints:** Citizens can file a complaint to a citizen review board (or to internal investigative affairs) to review incidents. Barriers to do so should be low, including for individuals with few resources or low literacy. Tracking and disposition of complaints should be available to the individual.
  - **Review powers and authorities:** Citizen oversight bodies may hold a mix of powers, including the ability to solicit, receive, consider, investigate, and publish determinations on public complaints. Such bodies need power to compel testimony and subpoena evidence to be fully effective. They should also be able to recommend various remedies, including mediation, arbitration, restoration, disciplinary action, or civil or criminal prosecution.
  - **Membership:** Membership of such panels should be open and competitive, based on transparent criteria, which aims for social representation, especially from groups who have historic or ongoing issues with policing as well as those with the capacity to oversee police (such as lawyers or community organizations).
  - **Ombudsmen and citizen advocates.** A special office can be created to advocate on behalf of the public. Representatives from this office may be members of an oversight body or may be independently or commission-appointed.
  - **Example**: Newark, New Jersey's (US) Civilian Complaint Review Board collects and investigates concerns from the public regarding the police department.[4] It also has the power to review disciplinary decisions and the department's policies and practices.

Public-police partnerships and councils bring together police with community organizations and individuals in order to build trust and improve public safety. This may be one aspect of community policing.

- **Communication and interaction:** One element of community policing is having the police be present within the community and operating from a decentralized location.
- **Engagement and collaboration:** Police should engage with local agencies, organizations, and institutions to ensure that policing reflects community safety goals. Engagement may focus on the safety of communities that have historically experienced discrimination at the hands of police, such as migrants, racial and ethnic minorities, members of the LGBTQI+ community, people with disabilities, victims of sexual assault, youth, or people experiencing homelessness.
- **Example:** In South Africa, Community Policing Forums (CPFs), composed of community members, organizations, and government authorities, monitor the effectiveness of the police and promote local police accountability.[5]

Police accountability mechanisms – these can include complaints tools, ombudsman's offices, and other liability regimes.

- **Standards and justiciability:** Clear standards for policing can be laid out as part of the legal regime governing police-citizen interaction. This may cover use of force, harassment, discrimination, theft, and failure to provide adequate or timely police protection. Clear rules and procedures on standing, materiality, forums, and the cost for bringing these complaints need to be detailed, publicly available, and easily discovered.
- **Civil liability:** Civil liability mechanisms establish processes for remedy and redress between plaintiffs and police agencies. Actions in this area would create and enhance standards and processes and allocate resources to ensure that there is accountability for agencies that cause harm.
- **Criminal liability:** Jurisdictions can establish processes to make individual officers criminally liable for serious violations of the law, especially in cases of violent crime. It is also important to establish command and control responsibility for managers and senior officers for illegal orders. Finally, governments may create special offices independent of prosecutors' offices, as prosecutors can be conflicted by their regular reliance on the police.
- **Independent forums:** OGP members can take steps to strengthen or establish independent forums to hear legal challenges to police operations. These will be more effective if they are independent of internal police review bodies, regular prosecutorial officers (who depend on police for investigations and prosecutions), and the executive branch. All decisions to decline or pursue charges against officers should be disclosed to the public, along with their reasoning.

Open and participatory budgeting is a process through which the public determines the priorities and functions of public offices.

- **Determining allocation of services:** At the time of publication, there is increasing discussion on resource allocation in the United States, specifically moving resources to conflict resolution, mental health, social work, and homelessness services. Some of this is being done through open city council meetings, as has happened with the People's Budget[6] in Nashville, (US).[7] In other cases, participatory budgeting mechanisms have been used to discuss shifting resources, as in Los Angeles, New York, and Boston.[8]
- **Including affected communities:** Participatory budgeting without intentional outreach might overlook those most affected. Positive examples include communities working on responding to crime in Merseyside, UK, and working with citizens reentering the community from incarceration in Canada.[9] These can empower people at the center of police-citizen interaction.
- **Ample time for public voices:** An important element of participatory budgeting is that grassroots community members can speak for the majority of budget conversations. Studies show that this significantly affects the quality and outcomes. A key part of this has been the development of people's budgets, which are budget proposals by various grassroots organizations.

There are a number of OGP commitments exclusively focused on partnerships and community-oriented policing. At this time, there are no commitments on oversight bodies (at any level), nor are there specific justice mechanisms to encourage public oversight of police actions. Examples of these mechanisms from outside of OGP are included in the previous section of this chapter ("Recommendations and Sample Reforms").

OGP Commitments

Afghanistan: Expand Public-Police Partnership Councils to all remaining provinces after initial success in 23 provinces (2017–2019).

Georgia: Establish local councils composed of representatives from law enforcement, municipalities, legal organizations, and nongovernmental organizations to coordinate crime prevention measures (2016–2018).

Panama: Create advisory councils made up of the National Police, citizen security organizations, and representatives of civil society to create and strengthen new citizen security programs (2015–2017).

Ukraine: Train law enforcement officers in community policing practices, launch a complementary public awareness campaign, establish citizen advisory groups, create online resources for police-community coordination, and implement a "schools and police" project (2016–2018).

Jalisco, Mexico: Create spaces for dialogue and coordination between neighborhood councils and local police in the Lomas De Polanco neighborhood in Guadalajara, Mexico, to improve citizen trust in police (2017–2019).

GUIDANCE AND STANDARDS

United Nations Office on Drugs and Crime (UNODC) – Handbook on Police Accountability, Oversight, and Integrity

This 2011 handbook covers a variety of internal and external mechanisms to strengthen police accountability, oversight, and integrity.[10] Specifically, the report offers recommendations regarding complaints against the police, independent oversight and complaint bodies, internal accountability, accountability to the state, and engaging the public. It is based on international standards and practices.

UNODC and the Office of the High Commissioner for Human Rights (OHCHR) – Resource Book on the Use of Force and Firearms in Law Enforcement

The 2017 UNODC and OHCHR *Resource Book on Use of Force and Firearms in Law Enforcement*[11], which builds on international human rights law and the *UN Basic Principles on the Use of Force and Firearms*, covers the international legal framework, a human-rights approach to policing, the responsibility of law enforcement (command and control and human resources management), instruments of force, policing situations, and accountability for use of force and firearms.

The Leadership Conference on Civil and Human Rights – New Era of Public Safety: A Guide to Fair, Safe, and Effective Community Policing

This 2019 US report includes recommendations on community policing, responding to crises, the US First Amendment and free speech, accountability, and police data.[12]

Organization for Security and Cooperation in Europe

OSCE offers guidebooks on *Good Practices in Building Police-Public Partnerships* (2008),[13] *Democratic Policing* (2007),[14] and *Human Rights Education for Law Enforcement Officials* (2012).[15] In particular, the *Guidebook on Democratic Policing* highlights the role of various types of oversight institutions in police accountability, including the functions of internal and public oversight mechanisms (sections 84–94).

The National Association for Civilian Oversight of Law Enforcement –"What are the features of an effective police oversight body?"

NACOLE (US) recommends several key features for effective public oversight, including sufficient independence, funding, authority, access to information and decision-makers, transparency, and community outreach.[16]

US Department of Justice, Office of Community Oriented Policing Services

The 2019 *Law Enforcement Best Practices: Lessons Learned from the Field* report provides guidance for implementing a community policing approach.[17] The 2009 *Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice* focuses on internal complaint review and resolution processes.[18]

Human Rights Watch – Shielded from Justice: Police Brutality and Accountability in the United States

This 1999 report investigates patterns of police abuse and accountability across 14 American cities.[19] It highlights obstacles to successful civil and criminal lawsuits regarding police misconduct.

Endnotes

1 Vera Institute of Justice, "The Model Police Officer: Recruitments, Training, and Community Engagement," (2018), https://www.vera.org/publications/the-model-police-officer.

2 Open Government Partnership, "Seven OGP Countries Addressing Assembly," May 29, 2019, https://www.opengovpartnership.org/stories/lessons-from-reformers-seven-ogp-countries-addressing-assembly/.

3 "Stop and Search Scrutiny," West Midlands Police, accessed October 30, 2020, https://west-midlands.police.uk/your-options/stop-and-search.

4 "Civilian Complaint Review Board," City of Newark, accessed September 1, 2020, https://www.newarknj.gov/departments/ccrb.

5 Community Police Forum, "The effectiveness of Community Policing Forums (CPFs) in addressing crime at local level: Practical perspectives," accessed September 1, 2020, https://www.saps.gov.za/resource_centre/publications/mr_tj_masilela_presentation_effective_policing_practical_perspective.pdf.

6 "Nashville People's Budget Coalition," Nashville People's Budget Coalition, accessed September 1, 2020, https://nashvillepeoplesbudget.org/.

7 Dionne Searcey, John Eligon and Farah Stockman, "After Protests, Politicians Reconsider Police Budgets and Discipline," *The New York Times,* June 8, 2020, https://www.nytimes.com/2020/06/08/us/unrest-defund-police.html.

8 Laura Bliss, "The Movement Behind LA's Decision to Cut Its Police Budget,: *Bloomberg CityLab*, June 4, 2020, https://www.citylab.com/equity/2020/06/defund-police-reform-peoples-budget-racism-city-funding/612517.

9 Jez Hall, "Pushing at the limits: Participatory Budgeting and prisoner rehabilitation in Canada," *Participatory Budgeting Network*, March 8, 2019, https://pbnetwork.org.uk/pushing-at-the-limits-participatory-budgeting-and-prisoner-rehabilitation-in-canada/.

10 United Nations Office on Drugs and Crime (UNODC), *Handbook on Police Accountability, Oversight, and Integrity* (New York: United Nations, 2011), https://www.unodc.org/pdf/criminal_justice/Handbook_on_police_Accountability_Oversight_and_Integrity.pdf.

11 United Nations Office on Drugs and Crime (UNODC) and the Office of the High Commissioner for Human Rights (OHCHR), *Resource Book on the Use of Force and Firearms in Law Enforcement* (New York: United Nations, 2017), https://www.unodc.org/documents/justice-and-prison-reform/17-03483_ebook.pdf.

12 *New Era of Public Safety: A Guide to Fair, Safe, and Effective Community Policing*, The Leadership Conference on Civil and Human Rights, accessed June 1, 2020, https://policing.civilrights.org/report/Policing_Full_Report.pdf.

13 *Good Practices in Building Police-Public Partnerships* (Organization for Security and Cooperation in Europe, 2008), https://www.osce.org/spmu/32547.

14 *Democratic Policing* (Organization for Security and Cooperation in Europe, 2007), https://www.osce.org/spmu/23804.

15 *Human Rights Education for Law Enforcement Officials* (Organization for Security and Cooperation in Europe, 2007), https://www.osce.org/odihr/93968.

16 National Association for Civilian Oversight of Law Enforcement, "What Are the Features of an Effective Police Oversight Body?" accessed November 9, 2020. https://www.nacole.org/police_oversight.

17 US Department of Justice, *Law Enforcement Best Practices: Lessons Learned from the Field,* (Washington, DC: Office of Community Oriented Policing Services, 2019), https://cops.usdoj.gov/RIC/Publications/cops-w0875-pub.pdf.

18 US Department of Justice, *Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice,* (Washington, DC: Office of Community Oriented Policing Services), accessed June 1, 2020, https://cops.usdoj.gov/RIC/ric.php?page=detail&id=COPS-P164.

19 Human Rights Watch, "Shielded from Justice: Police Brutality and Accountability in the United States," 1998, https://www.hrw.org/legacy/reports98/police/index.htm.

Resources and Partners

Resources

Global

- The Centre for Human Rights and the Institute for International and Comparative Law in Africa at the University of Pretoria publishes The Law on Police Use of Force Worldwide, an index of national and international policing laws.
- The Institute for Security and Democracy (Instituto para la Seguridad y la Democracia) report, *Transparency: Pathway to Effective and Legitimate Public Policing* (Transparencia: Ruta para la Eficacia y Legitimidad en la Función Policial), offers recommendations for police transparency.

Europe

- The Open Society Justice Initiative's *Reducing Ethnic Profiling in the European Union: A Handbook of Good Practices* provides recommendations to address racial profiling by police in the EU.

United States

- The Leadership Conference on Civil and Human Rights' *New Era of Public Safety: A Guide to Fair, Safe, and Effective Community Policing* provides recommendations on handling data and video footage among other topics.
- US General Services Administration, Office of Evaluation Sciences' 2016 Community Action Deck: A discussion support tool for empowering communities to take action on the recommendations of the President's Task Force on 21st Century Policing outlines actions community reformers can take to further implementation of recommendations from the President's Task Force on 21st Century Policing.
- Campaign Zero lists policy recommendations for community oversight of police and provides several databases aggregating and visualizing relevant police data:
- Use of Force Project aggregates data on use of force policies across the United States, including comprehensive reporting requirements.
    - California Police Scorecard Project grades police agencies based on several indicators, including police accountability and civilian complaint outcomes.
    - Mapping Police Violence aggregates data on police-involved killings along with whether the officer was charged with a crime.
- Olugbenga Ajilore offers concrete recommendations in the article "How Civilian Review Boards Can Further Police Accountability and Improve Community Relations."
- The Opportunity Agenda provides recommendations regarding various mechanisms for police accountability.
- The American Civil Liberties Union's Fighting Police Abuse: Community Action Model provides action-oriented guidance for community reformers.

Organizations

- African Police Civilian Oversight Forum (APCOF)
- Center for Policing Equity (United States)
- Commonwealth Human Rights Initiative (CHRI)
- Igarapé Institute (Latin America)
- Instituto para la Seguridad y la Democracia (insyde) (Mexico)
- Instituto Sou da Paz and Fórum Brasileiro de Segurança Pública (Brazil)
- Campaign Zero (United States)
- National Association for Civilian Oversight of Law Enforcement (United States)
- National Initiative for Building Community Trust & Justice (United States)
- The Office of the UN High Commissioner for Human Rights (OHCHR)
- Open Society Foundations
- Vera Institute of Justice (United States)
- United Nations Office on Drugs and Crime (UNODC)

Prosecutors

Prosecutors

Overview

Given their often far-reaching authority and discretion, prosecutors' decisions can shape a variety of trends in the criminal justice system. In addition to their role in determining which cases to prosecute, in some jurisdictions, prosecutors may also investigate crimes or supervise investigators, dictate bail and plea agreements, determine which cases are diverted to alternatives to prosecution, and influence sentencing decisions.[1] Often, this work occurs outside of the public eye to protect prosecutors' independence and integrity. However, in at least some countries, this lack of transparency has contributed to problematic trends, such as mass incarceration,[2] disproportionate effects of prosecution on minority communities,[3] and executive capture of public prosecutors.[4]

In order to guard against these harms and in line with the United Nations Office on Drugs and Crime's (UNODC) and the International Association of Prosecutors' (IAP) *The Status and Role of Prosecutors*, prosecutors must be subject to rigorous standards of professional conduct and made accountable to the state and the public. To enable this accountability, data tied to prosecutors' practices should be collected and made publicly available to guard against bias during points of prosecutorial decision-making. Civil society, the public, and other public officials should have opportunities to hold prosecutors accountable through clear, accessible complaints procedures that allow for a review of their conduct by an oversight authority with fair disciplinary proceedings.

Recommendations and Sample Reforms

Governments can take the following steps to improve prosecutorial transparency and accountability.

- **Ensure prosecutorial policies are written and available to the public –** in particular, policies regarding training, internal oversight and discipline, and ethics compliance and policies involving the due process rights of the accused.
- **Convene multistakeholder advisory groups.** Convene civil society, experts, and members of the public to identify priority information for collection and disclosure by prosecutorial offices. Allow communities to have a say in the types of crime prosecutors prioritize.
- **Collect and disclose case data.** Prosecutors' offices should collect and disclose data related to the demographics of defendants and prosecutors' decisions to charge, seek pretrial detention and bail, allow for diversion or alternatives to incarceration, and offer plea bargains (where applicable) and the sentences they seek (including parole or probation).
- **Disclose data on resource allocation.** In accordance with international guidelines, require prosecutorial offices to regularly and comprehensively disclose their activities and expenditures to the legislature. In addition, make these reports publicly available.
- **Ensure impartiality.** Where relevant, prohibit elected prosecutors from accepting donations or endorsements from interested parties, including police unions.
- **Create an independent unit for monitoring and oversight.** Establish an independent body with the power to examine cases for prosecutorial misconduct, wrongful conviction, unjust sentencing, or possible disparities in charging patterns based on particular areas or the demographics of the individuals being charged, such as race or ethnicity. Allow the body to review prosecutors' decisions for adherence to internal guidelines.
- **Implement a civilian oversight mechanism.** The body should ensure direct accountability to the community, such as via a civilian advisory board within the office or an external civilian review board.

Photo by: mnirat

LESSONS FROM REFORMERS

Philadelphia, Pennsylvania district attorney launches public data dashboard

In 2019, the Philadelphia District Attorney's Office (DAO) launched a new public dashboard for criminal justice data. The DAO Dashboard, which was created in consultation with prosecutors, data experts, and academics, is updated daily and presents data on key outcomes in the criminal justice system, including arrests, charges, bail, case outcomes, and case length. The Dashboard responds to the widespread lack of prosecutorial data that makes it hard to identify and address problematic trends in the system. In particular, Philadelphia District Attorney Larry Krasner expects that the newly available data will help his office curb mass incarceration in the district. Since the Dashboard is publicly available and user-friendly, it also enables civil society and members of the public to observe and monitor trends in the data for themselves. The DAO also encourages users to share their findings, feedback, and concerns with its office.

LESSONS FROM REFORMERS

Slovak Republic improves transparency and accountability of prosecutors' affairs

Since 2014, the Slovak Republic has worked to address a lack of transparency in the Prosecutor General's Office using its OGP action plans. In 2014, reports by the Group of States against Corruption and the Council of Europe raised concerns about the absence of publicly available information about prosecutors, including their names, and the inability of the public to request such information, even through Freedom of Information requests. In 2016, following its 2015 commitment, the Prosecutor General's Office began publishing a regularly updated list of prosecutors.[5] Recognizing that this list is only a first step toward greater openness, in 2017, the Slovak Republic took steps to make prosecutors more accountable to citizens by conducting an analysis of selection and disciplinary procedures for prosecutors.[6] The analyses would ultimately inform draft legislation that would require these processes to be more transparent. While the Prosecutor General's Office completed the analyses, they did not make the resulting reports publicly available. If they had done so, the reform could have increased transparency around prosecutors' affairs and improved civil society organizations' ability to monitor potential misconduct or corruption by prosecutors.

Other OGP Commitments

Mexico: Create a criminal investigation website that electronically notifies crime victims of the status of their cases to make the process more transparent (2012–2014).

Moldova: Facilitate greater access to information about electronic justice services, including through a system for recording interviews between individuals and their probation counselors to ensure transparency (2018–2020).

GUIDANCE AND STANDARDS

United Nations Office on Drugs and Crime (UNODC) and the International Association of Prosecutors (IAP) – The Status and Role of Prosecutors

In 2014, the UNODC and IAP published a guide based principally on both of these guidelines and standards: *The Status and Role of Prosecutors.*[7] Building on earlier elements of international law that establish the role of prosecutors, the manual guides governments in writing prosecutorial rules based on these standards. The two key elements are independence and accountability. Requiring written instructions between the government and the prosecutor's office can reveal influences and encourage transparency. Accountability can include filing reports, responding to inquiries, being a respondent in hearings, maintaining statistics, and cooperating with oversight committees. In turn, prosecutors must hold government officials accountable, including overseeing legal investigations and initiating proceedings against parties responsible for improper detentions.

UNODC – Implementation Guide and Evaluative Framework for Article 11 of the United Nations Convention against Corruption

In 2015, the United Nations Office on Drugs and Crime published the *Implementation Guide and Evaluative Framework for Article 11 of the United Nations Convention against Corruption*, which provides guidance to governments on how to strengthen integrity and prevent opportunities for corruption in the recruitment, training, and work of the prosecution services.[8] It also includes considerations for disciplinary measures for prosecutors.

Endnotes

1 United Nations Office of Drugs and Crime and International Association of Prosecutors, ***The Status and Role of Prosecutors*** (New York: United Nations, 2014), https://www.unodc.org/documents/justice-and-prison-reform/14-07304_ebook.pdf.

2 Vera Institute of Justice, "Unlocking the Black Box of Prosecution," accessed September 1, 2020, https://www.vera.org/unlocking-the-black-box-of-prosecution.

3 Vera Institute of Justice, "Promoting Racial Equity in Prosecution," accessed September 1, 2020, https://www.vera.org/securing-equal-justice/promoting-racial-equity-in-prosecution.

4 Veronica Michel, ***Prosecutorial Accountability and Victims' Rights in Latin America*** (New York: Cambridge University Press, 2018).

5 "Publish List of Names of Prosecutors (SK0055)," (OGP, 2015) https://www.opengovpartnership.org/members/slovak-republic/commitments/SK0055/.

6 "Participatory Analysis of Prosecutor's Affairs (SK0117)," (OGP, 2017), https://www.opengovpartnership.org/members/slovak-republic/commitments/SK0117/.

7 United Nations Office on Drugs and Crime and the International Association of Prosecutors, ***The Status and Role of Prosecutors*** (New York: United Nations, 2014), https://www.unodc.org/documents/justice-and-prison-reform/14-07304_ebook.pdf.

8 United Nations Office on Drugs and Crime, ***Implementation Guide and Evaluative Framework for Article 11 of the United Nations Convention against Corruption*** (New York: United Nations, 2015), https://www.unodc.org/ji/en/resdb/data/2015/_220_/the_united_nations_convention_against_corruption_implementation_guide_and_evaluative_framework_for_article_11.html.

Resources and Partners

Resources

- Urban Institute's analysis *Collecting and Using Data for Prosecutorial Decisionmaking* presents findings from their 2018 survey of state prosecutors' offices in the United States.
- The Vera Institute's report, "Unlocking the Black Box of Prosecution," discusses the ways a lack of transparency in prosecutorial offices can contribute to mass incarceration in the United States.
- The UNODC and the International Association of Prosecutors' guide on *The Status and Role of Prosecutors* outlines expectations for the independence and accountability of prosecutorial offices.

Organizations

- Fair and Just Prosection
- Global Judicial Integrity Network (established by UNODC)
- International Association of Prosecutors
- United Nations Office on Drugs and Crime (UNODC)
- Urban Institute (United States)
- Vera Institute of Justice (United States)

Legal Aid

Legal Aid

Overview

Legal aid is a critical component to ensuring access to justice. Indeed, it is a human right in criminal cases and a component of the fundamental right to a fair trial as recognized in the International Covenant on Civil and Political Rights. Whether in criminal or civil matters, access to legal aid for individuals with limited means or who are in situations of vulnerability is critical to achieving fair and just outcomes. The provision of legal aid services reinforces the accountability of the justice system and safeguards the rights of individuals.

The provision and scope of legal aid services differs across countries. In some countries, legal aid is a public service provided by government-funded lawyers or private lawyers who are contracted with or appointed by a public authority to provide their services. In other instances, legal aid is provided by civil society organizations – sometimes funded by the government and sometimes by nongovernmental sources. Law school clinics, community paralegals, and community leaders might also provide services, as might private sector lawyers offering legal help *pro bono*. While all of these actors play important roles and can provide crucial services in their communities, this section will focus on legal aid providers in the context of the formal legal system.

The transparent and accountable administration of legal aid can help strengthen these services and ensure that they are accessible to all who need them. For example, transparency around the criteria that legal aid providers' use to determine who is eligible for their services (also called a means test) allows individual beneficiaries, civil society groups, and the government to monitor and ensure equity in the provision of these services and see whether sufficient resources have been allocated to them.

Likewise, as with other justice system stakeholders, legal aid providers should be independent and subject to rigorous standards of professional conduct. If they fail to meet such standards, disciplinary complaints should be promptly investigated and adjudicated in accordance with professional codes of ethics before an impartial body and subject to judicial review (see Principles 12 and 13 of the *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*, which also appear later in this chapter). Grievances or complaints related to a legal aid provider's conduct and any disciplinary proceedings that might ensue should be handled in a fair and transparent process.

Recommendations and Sample Reforms

The following list includes measures countries can take to improve access to and the quality of legal aid.

- **Establish or strengthen the legal aid authority.**[1] Create an independent legal aid authority that can establish, fund, staff, regulate, and evaluate the legal aid scheme. Consider a multistakeholder approach, bringing in legal professionals, civil society, and representatives from underserved communities. The authority should establish a body that can impartially investigate complaints against legal aid providers and put in place a suitable mechanism for evaluating and improving the quality of services.
- **Establish training for legal aid providers.**[2] Fund and launch training programs for legal aid lawyers, paralegals, and pro bono volunteers to improve their legal skills and knowledge to better understand the needs of low-income and underserved individuals. Providers should be trained on their professional obligations and relevant codes of conduct.
- **Establish minimum practice standards for legal aid providers.**[3] Establish and publicly disclose minimum requirements for training and practical experience that legal aid service providers must meet. Establish clear disciplinary procedures for violations of these codes. All procedures should be developed in consultation with legal aid providers and made public in advance of their use.
- **Establish a fair means test for services.**[4] When a country uses a means test to determine eligibility for legal aid, the criteria should be widely publicized and consistently followed. Persons who are denied services should have the right to appeal the decision. According to the *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*, people in urgent circumstances, such as police stations and detention centers, or in courts should be provided legal help even when their eligibility is being determined. Importantly, children should always be exempt from a means test.
- **Expand provision of quality legal aid.** Expand access to quality civil and criminal legal aid to hold the state accountable to respect citizens' rights by giving citizens' access to legal help and information. This may include identifying communities or areas with disproportionate legal needs or that traditionally lack access to legal aid, expanding the provision of legal aid for problems that might not have adequate funding, and developing partnerships with civil society organizations offering legal assistance. Empower legal aid organizations to address the consequences of coming into conflict with the law, such as job loss and homelessness. Increase

Namati works with inspiring groups in many countries, including Sierra Leone, to deploy front line legal advocates. Photo by: Aubrey Wade/Namati

funding to existing legal aid services, and establish new offices and services to reach isolated or underserved communities.

- **Publicly report on legal aid access.**[5] Countries that track how many people go unrepresented each year at all levels, along with how many people qualify for legal aid and what percentage actually receive these services, will be able to better target legal aid expansion and show progress.
- **Conduct client satisfaction surveys.** The satisfaction of beneficiaries should be a factor in assessing the overall quality of legal aid schemes.
- **Deepen cooperation to address legal needs.**[6] Launch working groups composed of government and civil society members to identify legal reforms needed to improve justice delivery systems through legal assistance and the courts. Strengthen and institutionalize partnerships, for example between the judicial system, legal aid providers, CSOs, academia, social services, the health-care system, and law enforcement, when appropriate, to better serve underserved communities.
- **Make funding and budgets transparent.** Budgets should be made publicly available down to the individual program level. Expand and diversify financing for legal assistance at national and subnational levels, including public sector partnerships.

LESSONS FROM REFORMERS

Indonesia's effort to increase the availability and quality of legal aid

The Indonesian Legal Aid Foundation ("ILAF") has been providing legal aid in Jakarta since the 1970s. Their services increased dramatically in the 1980s with assisting clients who were not only poor but also marginalized and oppressed.[7] The ILAF's services include litigation, education and empowerment of community members, research, and policy advocacy. In recent years, ILAF has received support from the Open Society Foundations to enhance its provision of legal aid. In 2018, Indonesia committed to creating regulations that guarantee funding for legal aid organizations, allowing them to expand their reach to more remote and impoverished communities while simultaneously strengthening the awareness and legal capacity of individuals who are poor and marginalized.

LESSONS FROM REFORMERS

United States' efforts to develop national-level indicators on Sustainable Development Goal 16.3

In June 2016, the United States committed to developing national-level indicators on Sustainable Development Goal (SDG) 16.3 (the call to ensure equal access to justice) through a working group connected to the White House Legal Aid Interagency Roundtable (which was a separate OGP access to justice commitment[8]) to discuss data collection on access to justice and legal aid, including its impact on federal programs that advance efforts to promote access to health and housing, education and employment, family stability, and public safety. The working group was tasked with assisting the US government in identifying and developing national-level indicators to track achieving Goal 16, SDG to promote the rule of law and ensure equal access to justice for all. The activities of the working group are summarized in this factsheet.[9]

Other OGP Commitments

Burkina Faso: Increase the availability of legal aid for vulnerable community members (2017–2019).

Colombia: Launch a web portal and mobile application called LegalApp to facilitate public access to information on justice services (2015–2017).

North Macedonia: Establish four access-to-justice centers to provide free legal aid to marginalized communities (2018–2020).

Sierra Leone: Expand community-based justice services and increase transparency in local-level structures (2019–2021).

South Africa: Integrate and strengthen Community Advice Offices as a grassroots and permanent part of the wider justice system (2016–2018).

GUIDANCE AND STANDARDS

United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems

The ***UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems***,[10] adopted in December 2012 by the United Nations General Assembly, is a nonbinding legal document that can guide countries on how to build, fund, and structure legal aid systems, primarily in the criminal justice context. The *UN Principles and Guidelines* is the first tool dedicated exclusively to legal aid and based on international human rights law, as well as good practices in strengthening access to legal aid in criminal justice from all over the world. While they recognize that "states employ different models for the provision of legal aid," they can be effective tools in strengthening and growing fairness and access to services in existing criminal legal aid systems throughout the world. Since their adoption, the UN Commission on Crime Prevention and Criminal Justice has continued to encourage governments to strengthen the provision of legal aid through peer-to-peer exchange and collaboration.

The 14 principles include the following:

- Principle 12. – Independence and protection of legal aid providers: *States should ensure that legal aid providers are able to carry out their work effectively, freely and independently. In particular, States should ensure that legal aid providers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; are able to travel, to consult and meet with their clients freely and in full confidentiality both within their own country and abroad, and to freely access prosecution and other relevant files; and do not suffer, and are not threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.*
- Principle 13. – Competence and accountability of legal aid providers: *States should put in place mechanisms to ensure that all legal aid providers possess education, training, skills and experience that are commensurate with the nature of their work, including the gravity of the offences dealt with, and the rights and needs of women, children and groups with special needs. Disciplinary complaints against legal aid providers should be promptly investigated and adjudicated in accordance with professional codes of ethics before an impartial body and subject to judicial review.*

The 18 guidelines provide more practical guidance and detail on the principles, such as how to determine eligibility for legal aid and how countries can establish, fund, staff, and regulate legal aid schemes, including the following:

- Guideline 1. Provision of legal aid: Recommends that States make their eligibility means tests widely publicized and offer an opportunity to appeal ineligibility. In addition, the guideline encourages that persons whose means exceed the limits but who otherwise cannot afford assistance be given assistance. Persons who require legal help urgently – such as at police stations, detention centers, or courts should be provided preliminary legal aid while their eligibility is being determined. Children are always exempted from the means test.
- Guideline 11. Nationwide legal aid system: Recommends that states establish a legal aid body or authority to provide, administer, coordinate, and monitor legal aid services. That institution should be independent and have the necessary powers to establish and oversee legal aid services, including the handling of complaints. The development of a long-term strategy on legal aid in collaboration with justice sector stakeholders and civil society organizations is recommended.
- Guideline 15. Regulation and oversight of legal aid providers: Recommends that states, in cooperation with professional associations, set criteria for accreditation of legal aid providers; ensure that providers are subject to professional codes of conduct with appropriate sanctions when infractions occur; establish rules prohibiting legal providers from requesting payment from beneficiaries of legal aid, except when authorized to do so; ensure disciplinary complaints against providers are reviewed by impartial bodies; and establish oversight of providers to prevent corruption.

For further guidance and details on tools and approaches, see the UNODC/UNDP handbook on *Early Access to Legal Aid in Criminal Justice Processes*[11] and the UNODC *Handbook on Ensuring Quality of Legal Aid Services in Criminal Justice Processes*.[12]

Endnotes

1 *UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems* (New York: United Nations, 2013), https://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidlines_on_access_to_legal_aid.pdf. Principle 13 and Guideline 15.

2 Ibid. Principle 13 and Guidelines 11 and 13.

3 Ibid. Principle 13; Guidelines 11, 15, and 16.

4 Ibid. Guideline 1.

5 Ibid. Guideline 17.

6 Ibid. Guideline 16.

7 The Indonesian Legal Aid Foundation, Namati, accessed September 1, 2020, https://namati.org/network/organization/indonesian-legal-aid-foundation/.

8 "Expand Access to Justice to Promote Federal Programs (US0087)," (OGP, 2015), https://www.opengovpartnership.org/members/united-states/commitments/US0087/.

9 White House Legal Aid Interagency Roundtable, "Efforts to Identify National Indicators on Access to Justice," January 2017, https://www.justice.gov/atj/file/926686/download.

10 *UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems* (New York: United Nations, 2013), https://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidlines_on_access_to_legal_aid.pdf.

11 United Nations Office on Drugs and Crime (UNODC), *Early Access to Legal Aid in Criminal Justice Processes: a Handbook for Policymakers and Practitioners* (New York: United Nations, 2014), https://www.unodc.org/documents/justice-and-prison-reform/eBook-early_access_to_legal_aid.pdf.

12 United Nations Office on Drugs and Crime (UNODC), *Handbook on Ensuring Quality of Legal Aid Services in Criminal Justice Processes* (Vienna: United Nations, 2019), https://www.unodc.org/documents/justice-and-prison-reform/HB_Ensuring_Quality_Legal_Aid_Services.pdf.

Resources and Partners

Resources

- Open Government Partnership Justice Policy Series, Part 1: *Access to Justice* (Sept. 2019)
- The International Legal Foundation's 2016 Report *Measuring Justice* provides recommendations for defining and evaluating criminal legal aid programs.
- *Justice for All: Report of the Task Force on Justice* (2019)
- World Justice Project's 2019 *Global Insights on Access to Justice* report and interactive portal
- United Nations' *Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems* and the UN Office on Drugs and Crime 2016 *Global Study on Legal Aid*

Organizations

- Namati
- National Legal Aid and Defender Association (United States)
- Open Society Justice Initiative
- Pathfinders for Peaceful, Just and Inclusive Societies
- Penal Reform International
- The International Legal Foundation
- United Nations Development Programme (UNDP)
- United Nations Office on Drugs and Crime (UNODC)
- World Justice Project

Corrections Systems

Pretrial Detention

Prisons – Transparency and Accountability

Pretrial Detention

Overview

According to global standards, pretrial detention – the practice of detaining individuals before the start or conclusion of a criminal trial – can be used as a tool of last resort to ensure public safety or when a criminal defendant is deemed a flight risk. However, international law makes it clear that pretrial detention should only be used once all other options have been exhausted and enshrines the right to a fair trial and the presumption of innocence until proven guilty.[1] Still, roughly 3 million people worldwide are held in pretrial detention at any given time, often in conditions and subject to treatment that is far worse than that experienced by sentenced prisoners.[2]

Transparency and accountability around jail (both remand and pretrial) populations is key to ensuring that pretrial detention is used proportionally, effectively, and fairly. Publishing information about detained individuals – such as criminal charges (or that none exist, when that is the case), the status of cases, disaggregated demographic data, the average lengths of pretrial detention, the reasons individuals are held pretrial, and whether they are ultimately convicted – can help government reformers and watchdog organizations identify inconsistencies in the application of pretrial detention. Transparency around the trends in detention and conditions of detention are also important to ensure the public health and safety of individuals being held.

In addition, detainees, civil society, and members of the public should have access to mechanisms through which they can hold courts and jails accountable if they detect irregularities in public information. These mechanisms include accessible complaint mechanisms for detainees, multistakeholder advisory panels that can identify and monitor information for disclosure, and independent bodies (such as human rights commissions or ombudsman offices) that can monitor and inspect detention facilities.

Recommendations and Sample Reforms

The following are actions governments can take to improve transparency of their use of pretrial detention:

- **Create multistakeholder advisory panels.** Convene prison institutions, civil society organizations, and members of the public to identify priority information for collection and disclosure. Importantly, these institutions should include directly affected individuals (former pretrial detainees and their family members) as members.
- **Disclose information about pretrial prison populations.** Provide regularly updated information on the number of and reasons for arrests; the number of people charged and the nature of their charges; the number of people in pretrial detention (both in absolute terms and as a percentage of the overall prison population); the duration of pretrial detention, disaggregated by offense; and the number of pretrial detainees receiving legal advice and representation.[3] In addition, disclose the ratio of charged individuals held pretrial as compared to the number released.
- **Disclose information about the status of detainees' cases.** Provide a public record of the charges for which individuals are detained – broken down by type of offense such as petty and nonviolent offenses, violent offenses, and drug-related crime – and the justification for their detention pretrial (e.g., flight risk, risk of tampering with evidence). Allow exceptions for juvenile detainees and individuals who have received expungements. All information that may lead to the identification of individuals should be withheld from documentation.
- **Disclose demographic information about pretrial detainees.** This includes information about prisoners' gender, age, race, ethnicity, disabilities, and any mental and physical health-care needs. Information such as prisoners' family, economic, and employment status; education level; and criminal record can also help determine whether they can be safely supervised in the community, rather than detained. This information should be anonymized appropriately to protect personal information.
- **Standardize the release of prisoner information across jurisdictions.** Centralize data, and align definitions across jurisdictions and levels of government to provide a full picture of the country's prison population, trends, and analysis of system-wide gaps and needs.
- **Require judicial officials/magistrates to publicly justify detaining individuals pretrial.** Judicial officials should publish a timely and public justification specifying the characteristics of the individual that merit detention. The state has the burden of showing why a less restrictive means will not protect the community and ensure appearance at trial.

Photo by: Thomas

The following are actions governments can take to improve public oversight of the use of pretrial detention:

- **Monitor use of pretrial detention.** Publish clear limits on the duration of pretrial detention and allow oversight institutions, including detention-monitoring bodies, such as national preventive mechanisms, and watchdogs to identify cases of discrimination in the use of pretrial detention and to evaluate prison conditions. Pretrial detainees should not be incarcerated with convicted prisoners, in overcrowded facilities, or under conditions that do not comply with international standards. Men, women, and children should be separated.
- **Set up independent oversight.** Ensure that an independent body – such as a human rights commission, an ombudsman, a national preventive mechanism, or a dedicated prison inspection office – can inspect facilities on demand and unannounced, access prison information and data, and interview detainees privately. This body should publish its findings and recommendations, which are to serve as the basis for constructive dialogue.
- **Establish complaint mechanisms.** Clear mechanisms for lodging complaints should be accessible to all detainees, their families, and legal representatives.
- **Conduct regular reviews of pretrial detainees.** Court authorities should evaluate alleged offenders regularly throughout the course of their case to determine whether continued detention is necessary. The detained and their counsel have the right to be at these reviews.

LESSONS FROM REFORMERS

Afghanistan releases pretrial detainees to reduce COVID-19 risks.

In many countries, the onset of the COVID-19 pandemic posed particular risks to detention and prison populations due to prison conditions and overcrowding that could accelerate the spread of the virus and inhibit adequate responses in the case of outbreaks. Following recommendations from the International Legal Foundation (ILF),[4] Afghanistan took swift action to reduce these risks by reducing the number of people in detention centers and prisons. In March 2020, President Ghani decreed that up to 10,000 prisoners – including women, children, older prisoners, and prisoners with disabilities who do not pose a risk to national security – would be released from prisons and jails within 10 days. A subsequent decree issued in April and August called for the release of an additional 12,000 prisoners. Importantly, the President's Office also directed the attorney general to issue guidance on the release of pretrial detainees (with exceptions for individuals accused of certain violent crimes) and the Attorney General's Office consulted with legal aid providers to improve accountability.[5] The attorney general's guidance emphasizes that prosecutors should avoid detaining suspects and accused individuals pretrial where the law provides for their release. Shortly thereafter, the Supreme Court issued a circular advising Afghanistan's courts to ensure the implementation of the attorney general's guidance – thereby creating oversight and ensuring additional accountability – and use their discretion in granting bail and release on parole.

LESSONS FROM REFORMERS

Mexico created a register of detainees and missing persons.

To increase accountability in the prison system and better ensure that officials adhere to the presumption of innocence in detaining individuals, Mexico used its 2013 action plan to create an electronic registration system for all detainees. The publicly accessible system – called the Detainee Consultation System[6] – allows Mexican citizens to view statistical data on the date individuals were arrested, the reason they are being detained, and the locations where they are being held. The use of the Detainee Consultation System allowed Mexico to improve efficient access to information about detainees. In 2015, when the system was first implemented, information concerning arrests was not available within 48 hours for nearly 90 percent of all cases. By January 2016, a year after the system was fully implemented, the Office of the Presidency of the Republic reported a 12.5 percent decrease – meaning that information for more cases is now made available within 48 hours of an individual's arrest.

Other OGP Commitments

Paraguay: Publish up-to-date data and information on prisons to help address, among other problems, the high number of pretrial detainees on the Penitentiary Management Information System (2018–2020).

GUIDANCE AND STANDARDS

United Nations Standard Minimum Rules for the Treatment of Prisoners

The 2015 *United Nations Standard Minimum Rules for the Treatment of Prisoners*,[7] known as the Nelson Mandela Rules, provide minimum standards for the treatment of prisoners, including pretrial detainees. Transparency reforms could focus on key areas identified in the rules, such as the following:

- Characteristics (and trends) of the prison population
- Reasons for detainees' arrest and detention
- Living conditions, including accommodation and health-care services
- Occupancy rates
- Conditions of confinement

The rules also include minimum standards for ensuring accountability in detention facilities:

- Detainees should be able to file anonymous complaints, such as to the prison director, an inspector, the central prison administration, or a judicial body.
- Complaints should be addressed in a timely fashion and without retaliation, intimidation, or other negative consequences for the prisoner.
- There should be both internal and external systems for prison inspection. External inspection teams should be made up of independent inspectors – including health-care professionals – and may include international or regional bodies, ideally with balanced gender representation.
- Inspectors should be able to access all information on the number of pretrial detainees and their treatment, including their records and conditions of detention. They should be able to make unannounced visits to prisons of their choosing and interview any prisoners privately and confidentially. Written reports with recommendations should follow inspections and ideally be publically available.

United Nations Sustainable Development Goals

UN Sustainable Development Goal 16's Indicator 16.3.2 concerns "unsentenced detainees as a proportion of overall prison population." Countries should consider the methods they use to collect data and report on pretrial detention to ensure that the data they provide to the United Nations is recorded. This will involve enhancing the interface between national statistical agencies and the sometimes decentralized institutions responsible for pretrial detention.

See also:

- *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)* adopted by the UN General Assembly in 2010[8]
- *United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules)* adopted by the UN General Assembly in 1985[9]
- *United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules)* adopted by the UN General Assembly in 1990[10]

Endnotes

1 The Global Judicial Integrity Network, "Topic three - Pretrial alternatives," United Nations Office on Drugs and Crime, accessed September 1, 2020, https://www.unodc.org/e4j/en/crime-prevention-criminal-justice/module-7/key-issues/3--pretrial-alternatives.html.

2 Open Society Justice Initiative, ***Improving Pretrial Justice: The Roles of Lawyers and Paralegals*** (New York: Open Society Foundations, 2012), https://www.unodc.org/documents/congress//background-information/NGO/Open_society_foundation/Paralegals_and_Lawyers-_improving-pretrial-justice.pdf.

3 Open Society Justice Initiative, ***Improving Pretrial Justice: The Roles of Lawyers and Paralegals*** (New York: Open Society Foundations, 2012), https://www.unodc.org/documents/congress//background-information/NGO/Open_society_foundation/Paralegals_and_Lawyers-_improving-pretrial-justice.pdf.

4 The International Legal Foundation, "Justice in Crisis: COVID-19," accessed September 1, 2020, https://www.theilf.org/covid-19.

5 The Islamic Republic of Afghanistan Attorney General's Office, "Primer's Summary for Supporting the Suspects, Accused, and the Convicted during Investigation, Prosecution, and Suspension of Order for Averting the Outbreak of COVID-19 (Coronavirus)," accessed October 15, 2020, https://ee69066d-6f35-44c9-ae54-6d0a2fbf5e5d.filesusr.com/ugd/5213de_6af2d4b4599f4d13926857b-a27926c8a.pdf.

6 Gobierno de México, "Query," accessed November 10, 2020, https://consultasdetenciones.sspc.gob.mx/.

7 ***United Nations Standard Minimum Rules for the Treatment of Prisoners***, General Assembly Resolution 70/175, December 17, 2015, https://undocs.org/A/RES/70/175.

8 ***United Nations Bangkok Rules on Women Offenders and Prisoners,*** General Assembly Resolution 65/229, December 21, 2020, https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf.

9 ***United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules")***, General Assembly Resolution 40/33, November 29, 1985, http://ohchr.org/Documents/ProfessionalInterest/beijingrules.pdf.

10 ***United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules)***, General Assembly Resolution 45/110, December 14, 1990, https://www.ohchr.org/Documents/ProfessionalInterest/tokyorules.pdf.

Prisons—Transparency and Accountability

Policy Overview

As jails and prisons are inherently closed institutions, persons detained in them are particularly susceptible to abuse and human rights violations, violence, overcrowding, sexual assault, and poor living and working conditions. The COVID-19 pandemic has further heightened concern for such abuses as crowded prisons have become hotspots for the virus in many countries while case data related to these outbreaks often remain under wraps. Increased transparency around prisons and prison populations and effective oversight mechanisms can help prevent these harms and safeguard prisoners' human rights.

Increasing prison transparency by publishing information about the basic operation of these systems and demographic information of prisoners and prison staff can help identify policy problems (and their scope) and prevent abuses. For example, basic information about prisoners and prison living conditions can protect those detained by shining a light on human rights abuses and public health crises. In the context of the pandemic, publishing data on infections within prisons helps draw public attention to these crises and ensure that inmates are not put in harm's way and receive the health care they need. Likewise, greater transparency of prison management can enable watchdogs to track spending and flag possible cases of waste or corruption.

Effective oversight is essential to ensure the humane treatment of prisoners, appropriate use of resources, and public accountability for misconduct. Oversight can take many forms, including audits, formal investigations, whistleblowing mechanisms, and external monitoring and inspection. Regardless of the approach, these systems should be independent and public-facing to ensure credible findings. Citizens can also be directly involved, such as through civil society organizations that support prison monitoring efforts.

Recommendations and Sample Reforms

The following are actions governments can take to improve the transparency of their penitentiary systems:

- **Involve citizens in multistakeholder councils or panels.** Convene prison institutions, civil society organizations, and members of the public to identify priority information for collection and disclosure.
- **Publish basic prison management information.** Start by disclosing information that is already being collected, such as prison budgets, spending, contracting, and recruitment.
- **Disclose information on prison practices.** Create a public register of existing prison policies, such as on the use of solitary confinement, prison labor, and social and legal visitation.
- **Disclose information on actual living conditions.** This goes beyond publishing basic data on occupancy rates. It includes documenting cases of violence, such as the use of force (and excessive force) by prison staff, homicides, self-harm, suicides, and other prisoner injuries. Disclose COVID-19 data.
- **Disclose demographic information about prisoners.** This includes anonymized, aggregated data about prisoners' gender, age, race, marital status, level of education, disabilities, and any mental and physical health-care needs.
- **Disclose inmates' case information.** Most importantly, this should include information about the reason for their conviction. Data on pretrial detainees, the length of their detention, and the number of pretrial detainees as a proportion of prison populations should also be noted.
- **Disclose information about prisoner outcomes.** This can include information about in-prison programming, such as opportunities to complete secondary or postsecondary education, vocational training, and the availability of mental health treatment, among other programs. Prison data should also track early release practices and the recidivism rate for those receiving in-prison programming compared to prisoners who do not.
- **Standardize disclosures of prison information.** Ensure that prisons in different jurisdictions and across various levels of government are using standard definitions that enable cross-comparisons.

Photo by: agnomark

- **Extend disclosures to other forms of detention centers.** In some contexts, disclosure requirements could apply to other forms of prisons, such as private prisons and immigration detention centers.

The following are actions governments can take to improve public oversight of their penitentiary systems:

- **Establish complaint mechanisms.** Clear mechanisms for lodging complaints should be accessible to all prisoners, their families, and legal representatives.
- **Ensure whistleblower protections.** Enable prisoners, their families, legal representatives, and prison officers to file confidential complaints without reprisal that are forwarded to authorities that can effect change.
- **Set up independent oversight.** Ensure that an independent body – such as a human rights commission, an ombudsman, a national preventive mechanism, or a dedicated prison inspection office – can inspect prisons on demand and unannounced, access prison information and data, and interview detainees privately. This body should publish its findings and recommendations, which are to serve as the basis for constructive dialogue.
- **Ensure uptake of recommendations.** Prison officials (and relevant ministries) should be required to publicly respond to findings of inspections, outline how they will act on the recommendations, and report on progress made.
- **Use digital technology to improve public oversight.** Ensure that inspectors can still examine prison conditions, especially during the COVID-19 crisis. Continue on-site visits whenever possible. When not, video visitation and cellular devices can facilitate private virtual communication between inspectors and prisoners.
- **Allow monitoring by international institutions.** Members of the UN should ratify the *Optional Protocol to the Convention against Torture* (OPCAT), which requires them to establish a national preventive mechanism to conduct inspections of all places of detention and to allow inspection visits by the UN Subcommittee on Torture.[1]

LESSONS FROM REFORMERS

Italy publishes individual prison sheets

As a result of Italy's 2016 OGP commitment to improve transparency in its penitentiary system, the Ministry of Justice has begun disclosing the transparency sheets of its 190 penitentiary institutions on a new central portal. Each transparency sheet webpage includes information on the institution's structure, capacity, physical characteristics, and policies around work, visitation, and other aspects of prison life. Although progress is slow, this kind of central register of prison information could be an important model for other countries to follow.

LESSONS FROM REFORMERS

Independent prison visitors examine prisons in Western Australia

Independent prison visitors complement the role of inspectors by providing prisoners with information on accessing prisoner services, speaking on their behalf, recording complaints, and documenting their visits.[2] They are appointed by the minister for Corrective Services in Western Australia and serve renewable two-year terms. By law, these visitors can examine any prison at any time and are required to carry out inspections at least every three months. Among the stated goals of the program are to ensure the representation of local interests in prison operations, as well as to maintain a diverse cadre of inspectors in terms of age, gender, experience, and ethnic or socio-economic background.

LESSONS FROM REFORMERS

Open prison data and civil society oversight in Argentina

As part of its 2017–2019 Action Plan, Argentina created a public database of audit recommendations and compliance information from the Federal Prison Service.[3] Government collaboration with academia and civil society to design the database ensured that the final product significantly increased CSOs' ability to monitor the penitentiary system. The government's 2019–2021 Action Plan will further strengthen public oversight of the prison system by establishing a National Penitentiary Diagnosis.[4] This annual study will be collaboratively designed by the government, CSOs, and academia and evaluate the penitentiary system from a human rights perspective.

Other OGP Commitments

Brazil: Work with civil society to develop an open format national database using data from inspections carried out by several actors in the prison system (2016–2018).

Denmark: Establish whistleblower frameworks for employees of the Danish Ministry of Justice, including prison service personnel (2019–2021).

Mexico: Centralize public security information, including data on the entry and exit of prisoners in both federal and military prisons (2019–2021).

Paraguay: Establish a new public prison information system (2018–2020).

Scotland, United Kingdom: Involve CSOs in delivering health and social services to prison patients and develop more transparent reporting on patient outcomes (2018–2020).

GUIDANCE AND STANDARDS

United Nations Standard Minimum Rules for the Treatment of Prisoners

The 2015 *United Nations Standard Minimum Rules for the Treatment of Prisoners*,[5] known as the Nelson Mandela Rules, provide minimum standards for the treatment of prisoners and prison management. Transparency reforms could focus on key areas identified in the rules, such as the following:

- Characteristics (and trends) of the prison population
- Living conditions, including accommodation and health-care services
- Working conditions for prison staff
- Disciplinary sanctions and restrictive measures
- Occupancy rates
- Searches
- Special treatment for prisoners with special needs

The rules also include minimum standards for ensuring accountability in the penitentiary system:

- Prisoners should be able to file anonymous complaints, such as to the prison director, an inspector, the central prison administration, or a judicial body.
- Prisoner complaints should be addressed in a timely fashion and without retaliation, intimidation, or other negative consequences for the prisoner.
- There should be both internal and external systems for prison inspection. External inspection teams should be made up of independent inspectors – including health-care professionals – and may include international or regional bodies, ideally with balanced gender representation.
- Inspectors should be able to access all information on the number of prisoners, places of detention, and prisoner treatment, including their records and conditions of detention. They should be able to make unannounced visits to prisons of their choosing and interview any prisoners privately and confidentially. Written reports with recommendations should follow inspections and ideally be publicly available.

United Nations Bangkok Rules on Women Offenders and Prisoners and United Nations Standard Minimum Rules for the Administration of Juvenile Justice

The 2010 *United Nations Bangkok Rules on Women Offenders and Prisoners*[6] and the *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (Beijing Rules)[7] provide standards for the treatment of women and children in detention, respectively, who are statistically more vulnerable to long-term damage due to imprisonments. To prevent such harm, it is important that justice institutions collect and publish information about detainees, including their age, gender, race, marital status, and mental and physical health-care needs.

In terms of accountability, oversight bodies should consider information about women prisoners and other vulnerable populations when they evaluate whether prison conditions are humane and meet the basic needs of detainees. Accountability reforms could focus on key areas identified in the rules, such as the following:

- The publication of clear and accessible policies and regulations on the conduct of prison staff in relation to women prisoners (Rule 31).
- Complaint mechanisms for women prisoners, including mechanisms for women prisoners to report abuse and support and protection services for women prisoners who report abuse (Rule 25).
- The requirement that all allegations of abuse be investigated by an independent body (Rule 25).
- The inclusion of women members in inspectorates, visiting or monitoring boards, or supervisory bodies (Rule 25).

The 2002 *United Nations Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* establishes the Subcommittee on Prevention, which is charged with visiting prison systems in signatory countries and making recommendations related to the prevention of torture and other cruel, inhuman, or degrading treatment or punishment.[8]

See also the UNODC *Handbook on Women and Imprisonment*[9] and the UNODC *Handbook on Prisoners with Special Needs*.[10]

Endnotes

1 *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, General Assembly Resolution 57/199, December 18, 2002, https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCAT.aspx.

2 Government of Western Australia, Department of Corrective Services, *Policy Directive 39: Independent Prison Visitors – Protocols*, accessed November 10, 2020, https://www.correctiveservices.wa.gov.au/_files/prisons/adult-custodial-rules/policy-directives/pd-39.pdf.

3 "Publication of Audit Recommendations in Argentine Prisons (AR0050)," (OGP, 2017), https://www.opengovpartnership.org/members/argentina/commitments/AR0050/.

4 "Federal Penitentiary Diagnosis (AR0088)," (OGP, 2019), https://www.opengovpartnership.org/members/argentina/commitments/AR0088/.

5 *United Nations Standard Minimum Rules for the Treatment of Prisoners*, General Assembly Resolution 70/175, December 17, 2015, https://undocs.org/A/RES/70/175.

6 *United Nations Bangkok Rules on Women Offenders and Prisoners,* General Assembly Resolution 65/229, December 21, 2020, https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf.

7 *United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules")*, General Assembly Resolution 40/33, November 29, 1985, http://ohchr.org/Documents/ProfessionalInterest/beijingrules.pdf

8 *Optional Protocol to the Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment*, General Assembly Resolution 57/199, December 18, 2002, https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCAT.aspx.

9 United Nations Office on Drugs and Crime (UNODC), *Handbook on Women and Imprisonment* (New York: United Nations, 2014), https://www.unodc.org/documents/justice-and-prison-reform/women_and_imprisonment_-_2nd_edition.pdf.

10 United Nations Office on Drugs and Crime (UNODC), *Handbook on Prisoners with Special Needs* (New York: United Nations, 2009), https://www.unodc.org/pdf/criminal_justice/Handbook_on_Prisoners_with_Special_Needs.pdf.

Resources and Partners

Resources

- Fair Trials' *A Measure of Last Resort?: The Practice of Pretrial Detention Decision-Making in the EU* finds instances of misuse of pretrial detention in the EU and provides recommendations to reduce pretrial populations.
- A report on incarceration during the pandemic by Measures for Justice finds that mass incarceration makes communities more vulnerable to public health crises.
- Penal Reform International's Coronavirus: Preventing Harm and Human Rights Violations in Criminal Justice Systems presents recommendations for protecting human rights in the context of the pandemic.
- The UNODC *Handbook on Women and Imprisonment*
- The UNODC *Handbook on Prisoners with Special Needs*

Organizations

- Center for Court Innovation
- Fair Trials
- The International Legal Foundation (ILF)
- Measures for Justice
- Penal Reform International
- Pretrial Justice Institute
- United Nations Office on Drugs and Crime (UNODC)
- Vera Institute of Justice (United States)
- World Prison Brief

Funded by:

Foreign, Commonwealth & Development Office

UKaid
from the British people