

Opening justice:

Access to justice, open judiciaries, and legal empowerment through the Open Government Partnership

A collaborative resource from:

- Peter Chapman, Open Society Justice Initiative
- Sandra Elena, Ministry of Justice, Government of Argentina
- Surya Khanna, Georgetown University
- Open Government Partnership staff

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1. Overview: Justice in the OGP community

The Open Government Partnership provides a great opportunity to join reformers from government and civil society in working toward progress. While justice has always been a key part of our work, there is growing momentum to link justice with open government. This is driven by governments, civil society leaders, and multilateral organizations. On the international level, there has been a commitment to Sustainable Development Goal 16, which seeks “Peaceful and Just Societies” and “equal access to justice for all.” Access to justice and legal empowerment enable people and communities to advance their rights, push for legal and regulatory protection, shed light on corrupt practices and effectively participate in governance processes.

Importantly, change agents at all levels of society are working to promote access to justice. These actors have their roots in different constituencies, from judicial institutions to labor and environmental movements. Consequently, they can have both shared and varying goals. They have constituents, and strategies. What unites them is the recognition that the law and legal processes are fundamental to guaranteeing open government.

At this moment in OGP’s evolution, justice merits greater attention. Justice institutions and community-level legal assistance play a pivotal role in translating open government commitments to concrete reform. While the number of justice commitments in OGP action plans continues to grow, there are still too few justice-related commitments overall. Where commitments exist, many of them are potentially high-impact, but in the aggregate, those commitments could achieve an even higher level of relevance to each country’s national challenges. Consequently, as an international partnership, we seek to support commitments that open justice systems, strengthen community engagement, and secure justice.

We welcome the diverse interest in access to justice, legal empowerment and open justice across the OGP community represented by the growing number of commitments and the contributions of the authors in this paper.

To help support the dialogue and mutual support between different communities of practice, we offer a furtive, if crude, typology of approaches to open government and justice. We hope it will lower barriers to entry for those who are new to the issue of access to justice by explaining some of the more technical terminology. Further, we hope it will help those already active in the field to better understand complimentary actors, identify common goals, divide labor efficiently, and coordinate strategies at a national and global level.

Justice-related commitments have broad goals within the open government community:

1. **Opening justice institutions:** Making justice institutions more transparent, accessible, and free of corruption.
2. **Legal empowerment:** Ensuring that all people and communities are able to understand, use and, ultimately, shape the law.
3. **Enforcing open government:** Enforcing open government laws and rules, including fighting corruption.

In the spirit of welcoming these different communities, we assemble here a series of contributions on how OGP can strengthen access to justice, open judiciaries, and advance legal empowerment. Ultimately, the decision to include justice commitments in OGP action plans will be the result of countries’ priorities. A strength of OGP is that local priorities can evolve and benefit from the successes and mistakes of colleagues overseas.

First, we have a “State-of-Play” by Sandra Elena and Julio Gabriel Mercado of the Government of Argentina. Using primarily quantitative methods, they lay out the broad growth of justice-related commitments in OGP, focusing on the Americas. The trajectory is

positive but the question remains whether we have the right mix of commitments to actually tackle core justice issues in OGP countries.

The contribution by Peter Chapman and colleagues from the Open Society Justice Initiative, Namati and the Global Legal Empowerment Network makes progress in this direction. It captures commitments promising to improve not only the courts, but the entire legal system for the poorest and most marginalized via access to justice and legal empowerment. It identifies some of the strongest elements of OGP action plans, as well as highlights some deficiencies.

Finally, Surya Khanna, of Georgetown University, lays out a vision of how OGP action plans can best promote access to justice. The nature of justice institutions is such that they are slightly different than the traditional “head of state” engagement where OGP is strongest. As a consequence, there are special considerations for ensuring that open justice commitments advance in the US.

As an international partnership, OGP welcomes the continued engagement of these actors. We hope to see accelerated cooperation in 2018 with the engagement of multiple governments (including, but not limited to, Georgia, France, Argentina, and Jordan), strong international networks (such as the [Global Legal Empowerment Network](#) and the [Judicial Integrity Network](#)), and groups addressing specific sectors, such as the [Access Initiative](#), which strengthens access to justice in environmental matters.

More importantly, OGP looks forward to more ambitious, credibly-implemented commitments beyond opening justice institutions, legal empowerment, and promoting open government. Rather, the long term success of more open government relies on action across all three.

2. What we mean by “opening justice” and why it matters

Definition of terms

What is access to justice?

Access to justice is defined as the ability of people to seek and obtain a remedy through formal or informal institutions of justice for grievances.¹ It applies to civil, criminal, administrative, and human rights law. Access to justice should be predictable, transparent, effective, non-discriminatory, and accountable. Access to justice is both a goal in and of itself and a means to assuring other rights, including rights that are central to OGP such as the right to information and participation.

What is legal empowerment?

The United Nations Secretary General has defined legal empowerment as “the process of systemic change through which the poor are protected and enabled to use the law to advance their rights and their interests as citizens and economic actors.” It is much broader than solely seeking redress for harms; it seeks to help people and communities understand, use, and shape the law. Part of this is through improving access to justice. It is also about ensuring that people can protect their own labor, property, and businesses.

Elements of this approach is reflected in The Sustainable Development Goals (SDGs) which include a target to “[ensure equal access to justice for all](#)” as both a developmental priority as well as a tool to strengthen inclusive and sustainable development.

The OGP process can help achieve these goals by developing shared commitments to make justice institutions more open, accountable, and responsive to all people. In recent years, governments and civil society have increasingly [begun to use](#) the OGP platform to drive justice reforms.

Why justice matters for the open government agenda

Access to justice is integral to poverty reduction

Law impacts nearly every aspect of life, including health, employment, education, housing and entrepreneurship. Opaque processes, unequal access, and discrimination across sectors create barriers to economic and social opportunity, especially for marginalized groups. Such civil justice problems have significant and disproportionate impacts on the poor. Around the world, common civil justice issues include consumer rights, public benefits, employment and labor issues, land and property, family matters, and debt. These are the most frequent—and often most pressing—legal problems people and communities face. Problems include families facing eviction; women seeking child support from absent husbands; Roma men being denied health services due to discrimination; day laborers not receiving wages as promised; and communities fighting for recognition of their indigenous land rights in the face of investment.

Barriers to legal and justice services can be both a result and a cause of poverty. People who are vulnerable to social exclusion report more justice problems than other groups. Legal problems tend to trigger and attract other legal and non-legal problems; these same groups appear to experience an increased rate of non-legal challenges as well. Data show that legal

problems create other problems, thus contributing to a cycle of decline which inhibits opportunity.

Access to justice and legal empowerment provide concrete avenues for people to understand and enforce their rights and thereby participate meaningfully in society. Access to justice should be a key priority for OGP members as it advances numerous OGP priority themes, including civic engagement, anti-corruption and service delivery.

1. Justice empowers citizens

Access to justice and legal empowerment advance meaningful and concrete civic engagement. To achieve open government, people must be empowered to respond to injustices that affect their daily lives. This requires not only guaranteed access to information about laws and regulations, but also effective assistance whenever discrimination, corruption, violence, or lack of resources obstruct legal recourse. People must be able to participate in processes for setting institutional agendas and holding institutions accountable for systemic failures. Partnerships between governments and independent civil society organizations provide productive platforms for collaboration and engagement on access to justice.

2. Access to justice is key to anti-corruption efforts

Access to justice and legal empowerment advance awareness and provide tools for people and communities [to protect their rights](#) against bribery and corruption, expose corrupt practices, push for legal and regulatory protection, and more effectively participate in open government initiatives. Access to justice and legal institutions help ensure effective grassroots monitoring of the integrity of public agencies and officials. Indeed, there are multiple examples where legal empowerment initiatives enabled local people to take the lead in monitoring compliance with anti-corruption and other laws (e.g. environment and education) as well highlight questionable practices by public officials (e.g. paralegals or mediators helping communities challenge corruption to secure access to government services and benefits).

3. Access to justice improves public service delivery

Research shows that access to justice and legal empowerment can improve public [service](#) delivery and access (e.g. health, education, water). Moreover, access to justice and legal aid is impacting different societal elements like improving access to social benefits, education, healthcare, or employment (e.g. [Legal Aid Interagency Roundtable in the United States](#)).

ⁱ UNDP 2004. “Access to Justice Practice Note.”

http://www.undp.org/content/dam/aplaws/publication/en/publications/democratic-governance/dg-publications-for-website/access-to-justice-practice-note/Justice_PN_En.pdf

3. How can the OGP contribute to opening justice?

OGP is a multilateral, multistakeholder partnership, where individual governments co-create and implement unilateral commitments toward the common aim of opening government. In practical terms, this means that the heart of OGP is domestic reformers improving their policies and practices at home and then capitalizing on the international community for feedback, celebrating successes, adapting others' innovations, and learning from failures.

The Action Plan

Platform for government – civil society collaboration

All OGP-participating countries and localities develop action plans. During the planning process, government, civil society and other stakeholders co-create priority commitments in two-year [Action Plans](#). These plans provide opportunities to identify priority reforms, strengthen reformers within and without government, gain trust and approval for reforms, and convene and collaborate with stakeholders in expanding access to justice and legal empowerment.

Built-in accountability

An [Independent Reporting Mechanism](#) (IRM) promotes accountability within the framework by producing annual independent progress reports for each OGP participant. These reports are conducted by national experts and vetted by an internationally-approved method. The aim of the IRM reports is to stimulate dialogue and promote accountability between member governments and their populations.

Strengthening linkages across sectors

The OGP process provides opportunities for justice reformers to connect with relevant government agencies and civil society organizations. The action plan process is multi-sectoral and access to justice advocates are able to engage with diverse reformers in government to describe why access to justice should be an open government priority. In several countries, ministries of justice are the OGP [Point of Contact](#), thereby playing an important leadership role in articulating and coordinating OGP's broader governance efforts. Despite misconceptions in some countries, OGP never was intended as an Executive or Heads-of-State only initiative.

Beyond the Action Plan

Global recognition and leadership opportunities

OGP offers opportunities to mobilize high-level political support and increase visibility of access to justice efforts. OGP also provides direct links to civil society and multilateral partners who provide technical support for implementation and dissemination.

A peer network of reformers in government and civil society

OGP connects government and civil society reformers to senior officials from other governments implementing similar reforms to discuss common challenges and share innovations. Ministries of justice, judiciaries, and access to justice officials are playing increasingly visible role in the OGP process.

4. Toward open justice: Justice-related commitments in OGP action plans

Sandra Elenaⁱⁱ

OGP is gaining momentum in implementing judicial reforms. During the last three years, justice-related commitments became more significant across the Partnership's regions; between 2011 and 2017, 100 OGP commitments addressed the justice sector. In the Americas and Africa, 3 out of 4 countries that enacted National Action Plans have included justice-related commitments. Increasingly, commitments are addressing access to justice, open relevant data, and violence against women.

Introduction

This paper presents updated findings and conclusions from our 2015 research on Open Government Partnership's justice-related commitments, published under the title "Promoting Open Justice: Assessment of Justice Related Commitments in OGP Action Plans."ⁱⁱⁱ

Although only three years have passed since our first assessment, some significant changes have occurred regarding the use of OGP commitments as leverage for promoting judicial reform by participating countries.

Despite the key role the justice sector plays in the development and operation of democratic systems, as well as in ensuring the rule of law, it has received only marginal attention from institutions advocating for open states. Instead, policy has focused on the executive and legislative powers, more permeable and accessible to reforms.

As pointed out by Jimenez-Gomez, the judiciary presents enormous internal resistance to structural changes, such as promoting open governments, which necessitates cross-cutting strategies of change.^{iv} These strategies involve a wide array of state institutions and civil society actors in order to formulate policy reforms based on consensus; OGP is ideal for providing this platform. Justice-related commitments provide the judiciary an opportunity to increase their levels of legitimacy, update and enhance internal processes, and improve service delivery to citizens.

This study assesses justice-related commitments contained within National Action Plans. What proportion of commitments are justice-related and of those, how many are starred commitments? Are certain countries keener to deliver justice commitments? What are the success stories? What are the trends? These are some of the questions that our research will answer.

Justice-related commitments are gradually gaining relevance in OGP work, not only increasing in number, but also being used by governments as starting points for implementing novel work streams. This paper provides updated data and analysis to support these assertions.

Methodology

The 2015 analysis used the OGP Explorer as the main source to examine National Action Plan commitments. In this analysis, an Excel spreadsheet of all current commitments (provided by OGP) was used as the primary source. The cause for this is that the OGP Explorer was offline for modifications during this research.

Justice-related commitments were identified through a search on the Excel spreadsheet, using keywords both in English (e.g. judicial, justice, judiciary, law, court) and in Spanish (e.g. justicia, judicial, ley, corte). Careful reading of each result followed this preliminary search, accounting for the tags placed on each commitment regarding the sectors for which the commitment is relevant (e.g. law enforcement and justice, judiciary).

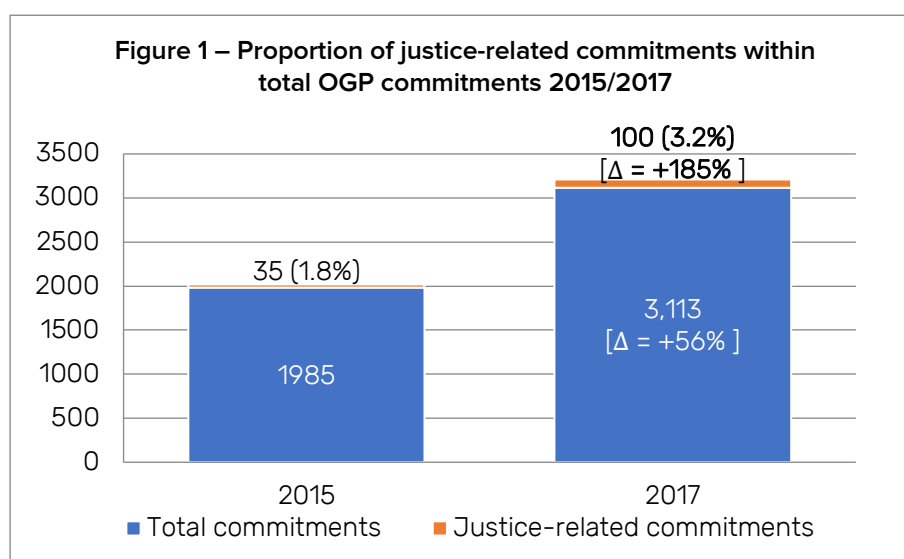
If the justice relevance remained unclear after this two-step analysis, the National Action Plans' documents were consulted in order to examine the full text of each commitment. This third step served to discard some commitments in which justice institutions were mentioned merely as executors of policies addressing sectors different from the judiciary.

Findings

Commitments by countries

Out of a total 3,113 OGP commitments, 100, or 3.2%, are justice-related. *See Annex at the end of this paper for a full list.*

In our 2015 assessment, justice-related commitments represented 35 out of 1,985 commitments (1.8%). While the overall number of commitments has increased 56%, justice-related commitments has almost tripled, growing 185%. *See Figure 1.*



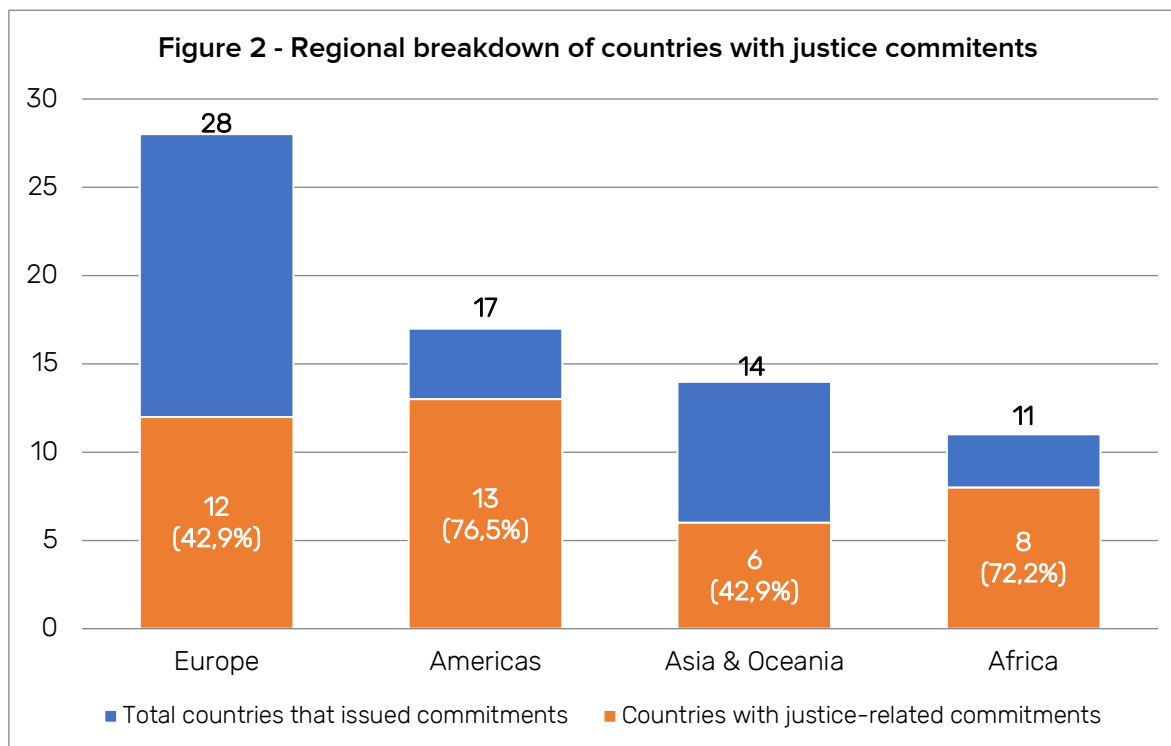
Although the proportion of justice-related commitments remains small, their number is growing faster than the overall number of commitments issued within OGP.

Europe is OGP's most active region in terms of total commitments (28 countries have delivered 1,220 commitments), followed by the Americas (17 countries, 1,158 commitments), Asia and Oceania (14 countries, 500 commitments) and Africa (11 countries, 235 commitments).

However, if we look at solely justice-related commitments, the situation is different: America is the most active with 13 countries, followed by Europe (12 countries), Africa (8 countries) and Asia and Oceania (6 countries).

Countries in the Americas are the most likely to have justice commitments with 76.5% of American countries including justice commitments followed by Africa (72.2%) and Europe and Asia (both with 42.9%). *See Figure 2.*

The significance of OGP as a platform for delivering judiciary reform seems to be greater among American and African countries, although OGP's relevance remains significant in Europe and Asia. This demonstrates the role that OGP plays in convening civil society and government officials to form and implement judicial reform,^v most strongly in the Americas and Africa.^{vi}

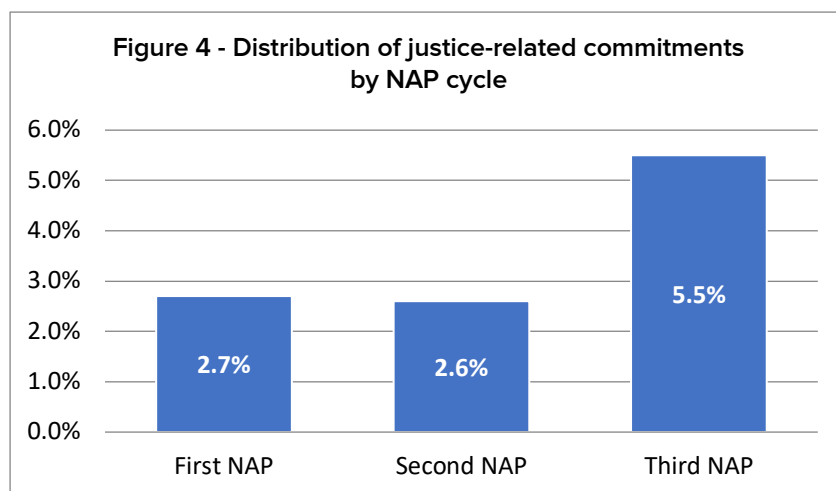


Regional champions are: in the Americas, Colombia (7) justice-related commitments), Argentina and Costa Rica (6 each); in Africa, Burkina Faso and Liberia (4 each); in Europe, Albania (6) and Spain (5); and in Asia, Georgia (8) and Jordan (5). See Figure 3.



Commitments by National Action Plan cycle

Out of the one-hundred justice commitments, 37 were delivered within a 1st National Action Plan (NAP); this represents 2.7% of total-sector commitments (1,371) delivered in initial NAPs. Of commitments delivered in second-round NAPs, 24 out of 934 (2.6%) addressed judicial reforms. Thirty-nine (5.5%) out of 713 third-round commitments addressed judicial reform while no justice commitments were included in fourth-round NAPs.^{vii} See Figure 4.



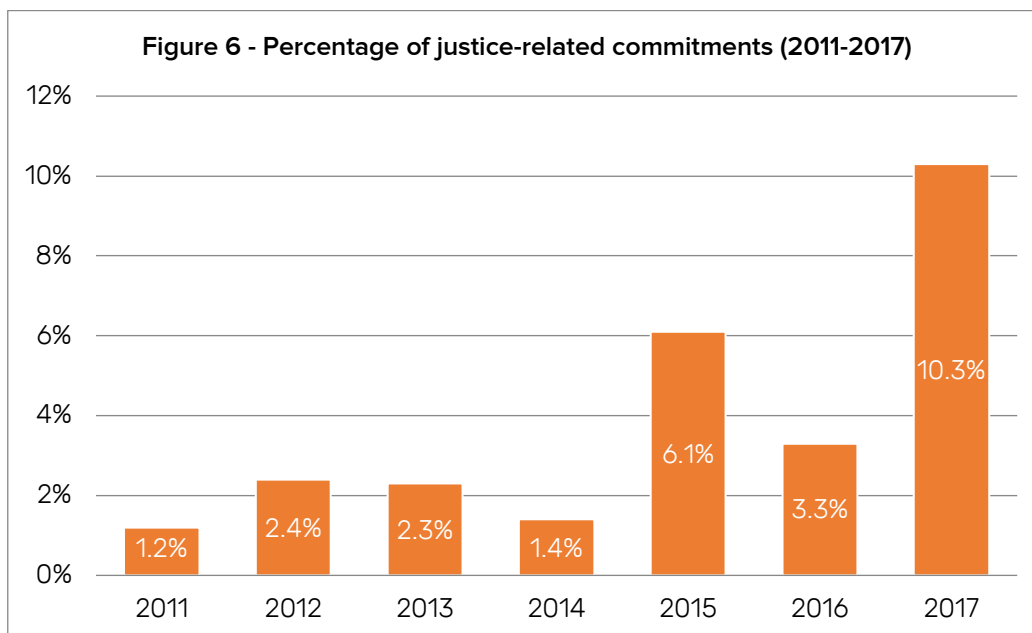
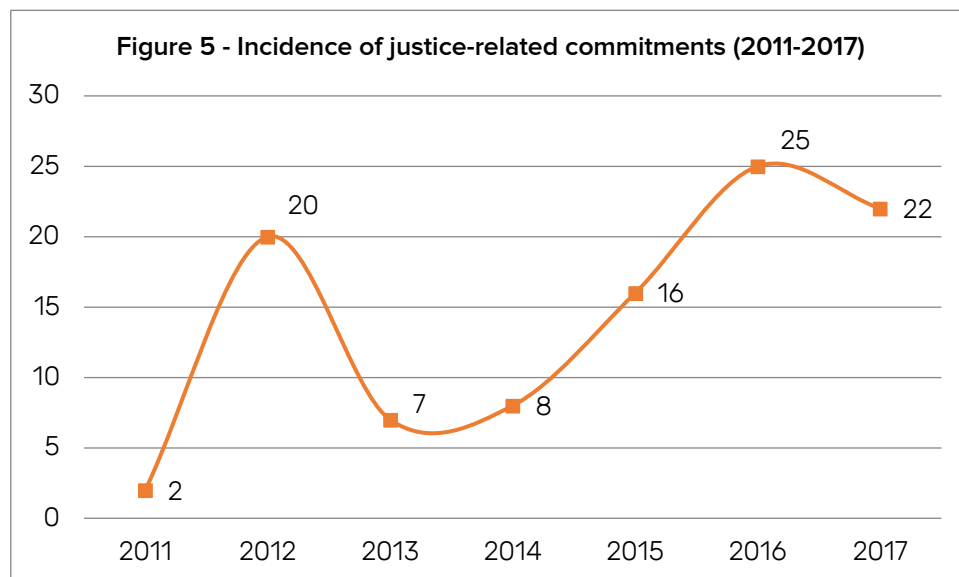
Commitments by year

The number of justice-related commitments grew erratically between 2011 and 2017. 2011 had only two justice-related commitments, 1.2% of total commitments. This grew to 20 in 2012, a year with commitment increases across sectors.

The number of justice-related commitments jumped again in 2015, doubling 2014's 8 commitments to 16 commitments, or 6.1% of total commitments. The increase continued in 2016 with 25 commitments (3.3%) and in 2017 with 10.3% of all commitments addressing justice. See Table 1 and Figures 5 and 6.

Table 1 – Justice-related commitments and total OGP commitments (2011-2017)

Year	Justice commitments	Total commitments	% justice commitments
2011	2	170	1.2%
2012	20	821	2.4%
2013	7	303	2.3%
2014	8	584	1.4%
2015	16	262	6.1%
2016	25	760	3.3%
2017	22	213	10.3%
Total	100	3113	-



Starred commitments

“Starred commitment” is an OGP label for a model commitment in National Action Plans. Starred commitments are incentives for governments and civil society organizations and enable peer-learning between countries. The Independent Reporting Mechanism (IRM) labels commitments as “starred” if they meet the following criteria:

- **Concrete:** the specificity of the commitment (medium or high);
- **Ambitious:** its potential impact (moderate or high);
- **Clearly relevant:** the relevance of the commitment to one or more of OGP’s core values; and
- **Complete:** the commitment is either complete or has achieved substantial progress.^{viii}

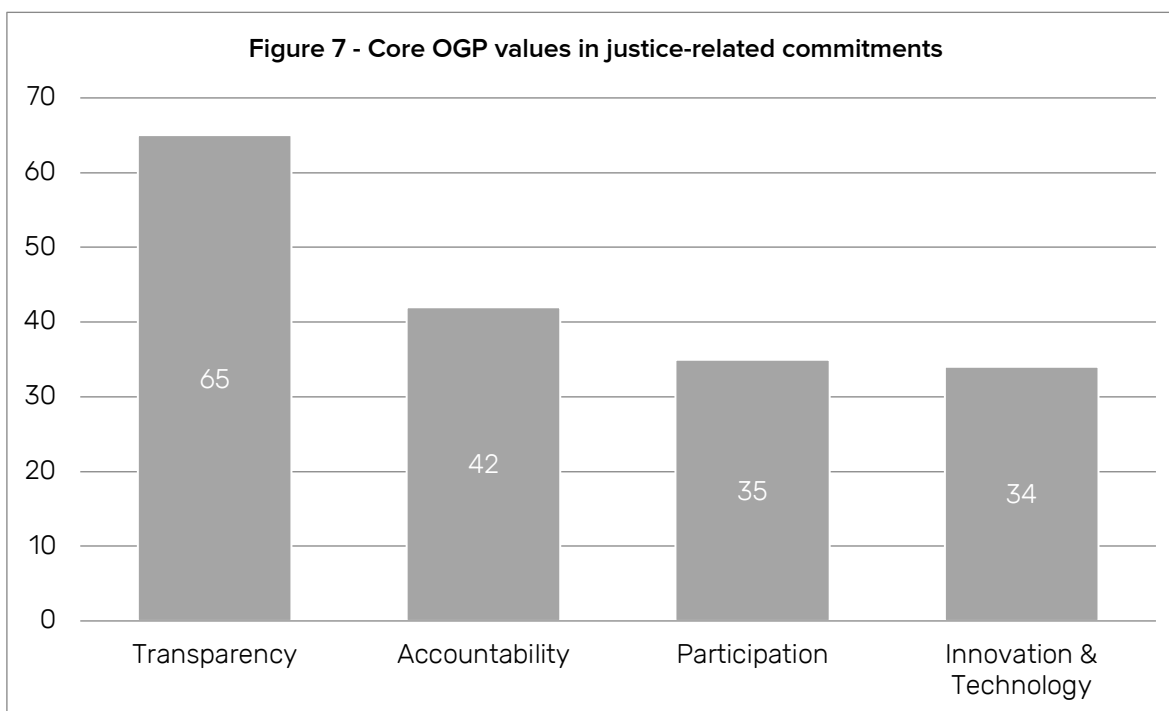
Out of the 100 justice-related commitments, IRM labeled a total of 13 as starred commitments led by Colombia (3) and Albania (2). *See Table 2.*

Table 2 – List of starred justice-related commitments

Country	Year	NAP	Commitment title
Albania	2012	1	Audio and video recording of judicial hearings
	2012	1	Portal www.gjykata.gov.al
Chile	2014	2	Strengthen Environmental Democracy
Colombia	2017	3	Construcción de confianza y consolidación de transparencia y rendición de cuentas en el Consejo de Estado
	2015	2	Accountability of the judicial branch and more information on justice services (LEGALAPP)
	2015	2	Transparency and accountability in the Council of State for a better justice service (CONSEJO DE ESTADO)
El Salvador	2013	2	Acompañar el esfuerzo de reforma a la Ley del enriquecimiento ilícito que impulsa la oficina de Probidad de la Corte Suprema de Justicia para proponer que las declaraciones patrimoniales de los funcionarios sean públicas
France	2015	1	Further expand the Opening of Legal Resources the Collaboration with Civil Society on Opening the Law
Georgia	2014	2	Proactive Publication of Surveillance Statistics
Jordan	2012	1	Establishment of a Constitutional Court
Kenya	2012	1	C Improving Transparency in the Judiciary 2 a Public Vetting of Judges and Case Allocation System
Liberia	2015	2	Implementation of the new jury law
USA	2015	3	Build Safer and Stronger Communities with Police Open Data

Commitments by OGP values

An evaluation of justice-related commitments by core OGP values shows a preeminence of commitments aim to increase transparency in the justice sector (65 commitments). Close to half of the commitments (42) aim to strengthen accountability. Participation and the inclusion of innovation and technology are less frequent, although still relevant (35 and 34, respectively). *See Figure 7 and the Annex at the end of this paper for a full list of values within each commitment.*

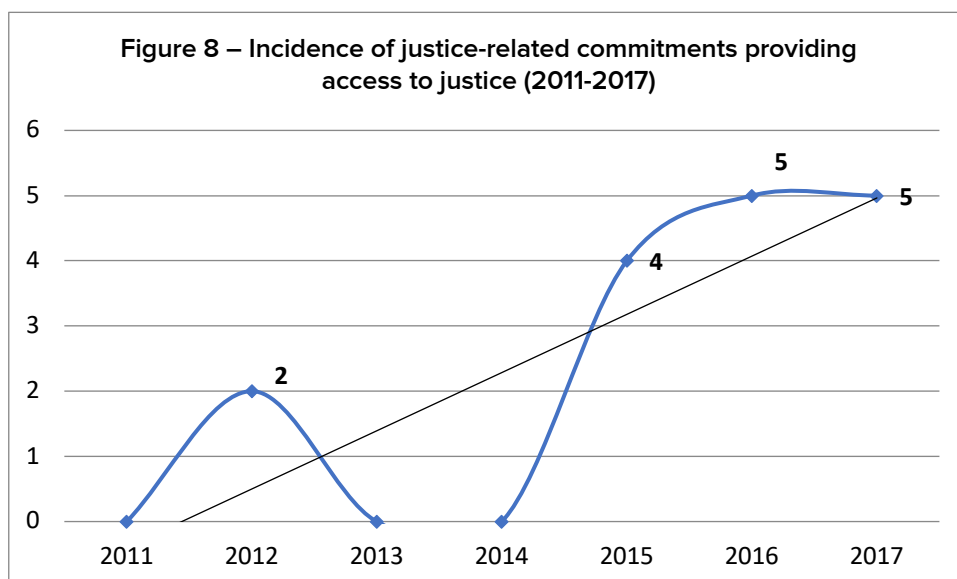


Latest trends

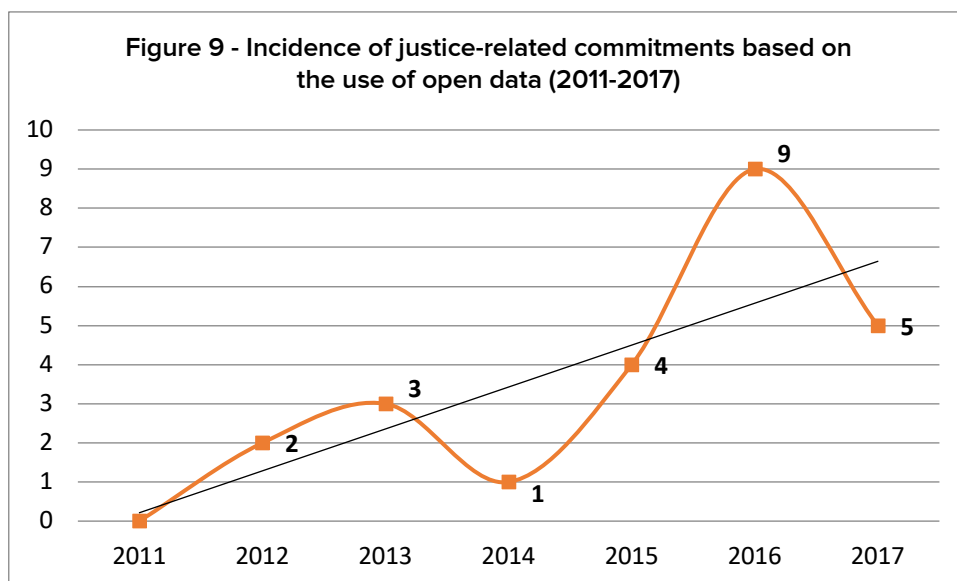
Fostering access to justice (i.e. the effective availability of institutional channels for the protection of citizens' rights and for the resolution of legal conflicts) is a trend in justice-related commitments, particularly during the last three years.

In 2016, the OGP community underscored the importance of access to justice. In the Paris Declaration, enacted during the 4th Open Government Summit, OGP countries called to "lay the foundation for wider collaboration on the use of open government to support the rule of law and access to justice," thus addressing the guidelines set by the UN's 2030 Agenda for Sustainable Development in their Goal 16.^{ix}

A total of 16 commitments are aimed at this purpose, 14 of which were delivered between 2015 and 2017. *See Figure 4; see Annex 1 for a list of highlighted commitments aimed at increasing access to justice.*



Likewise, initiatives addressing open data for promoting judicial reform are a growing trend, reflecting the increasing popularity of open data commitments in the overall OGP context.^x Out of a total 24 open data-based, justice-related commitments, 18 were delivered between 2015 and 2017. See Figure 9; see Annex 1 for a list of highlighted commitments based on open data.



Lastly, in 2017, 3 justice-related commitments specifically addressed violence against women. The delivery of more women-centered commitments will likely continue to grow in the near future, with OGP's formal collaboration with the Canadian government on the Feminist Open Government initiative.^{xi}

One of these commitments was delivered by Afghanistan in their first National Action Plan ("Establishing Special Courts to address Violence against Women (VaW) Crimes in 12 Provinces of the Country"), while the other two are from Costa Rica's third NAP ("*Plataforma Digital de Acceso a Información sobre Planes, Programas y Mecanismos de Protección de Derechos de las Mujeres*") and Spain's third NAP ("Information on gender-based violence").

In summary, we can conclude that while transparency and access to information were the focus of justice-related commitments, access to justice, open data, and gender are emerging trends.

ⁱⁱ Gabriel Mercado has been was the research assistant for this paper.

ⁱⁱⁱ Sandra Elena, “Promoting Open Justice: Assessment of Justice Related Commitments in OGP Action Plans” (published i. In *Advancing Open Government and Evaluating its Impact. Research papers by the winners of the OGP IDRC research grant*, ed.ited by OGP (Washington DC: OGP - Hivos - IDRC, 2015), 18-31),
http://www.opengovpartnership.org/sites/default/files/working_groups/IDRC%20OGP%20Research%20Papers.pdf.

^{iv} Carlos Jimenez-Gomez, “Open Judiciary Worldwide: Best Practices and Lessons Learnt” (published in. In *Achieving Open Justice through Citizen Participation and Transparency*, ed.ited by Carlos Jimenez-Gomez and Mila Gasco-Hernandez (Pennsylvania: IGI-Global, 2017), 1-15.)

^v Fabrizio Scrollini and Ursula Durand Ochoa, “Perspectives on Open Government in Latin America”, (published in *London School of Economics IDEAS - Strategic Update 15.1* (January 2015)),
<http://www.lse.ac.uk/ideas/Assets/Documents/updates/LSE-IDEAS-Open-Government-Latin-America.pdf>.

^{vi} For a further insight into the key role that OGP is currently playing in Africa, see *vid.* Winnie Byanyima, “OGP: Shaping an African agenda on open government reform” (, *The Huffington Post*, 5 May 5, 2017),
https://www.huffingtonpost.com/winnie-byanyima/ogp-shaping-an-african-ag_b_9845380.html.

^{vii} It must be noted that only three countries have so far issued 4th cyclea fourth action plan Action Plans (El Salvador, the Philippines and Indonesia).

^{viii} Joseph Foti, “Independent Reporting Mechanism. Technical Paper 1” (Washington DC: OGP, 2014), p. 21-23,. https://www.opengovpartnership.org/sites/default/files/attachments/Technical%20paper%201_final.pdf.

^{ix} “Supporting Justice for All through a focus on measurement and data collection” (OGP 16 Paris Declaration, accessed 10 Jul. 2018), <https://paris-declaration.ogpsummit.org/topic/58205ea22fd812b46ab9fa96>.

^x Sonia Khan and Joseph Foti, “Aligning Supply and Demand for Better Governance: Open Data in the Open Government Partnership” (Washington DC: OGP, 2015), p. 9,.
<http://www.opengovpartnership.org/sites/default/files/IRMReport-OpenData.pdf>.

^{xi} Jacqueline McGraw, “We Can't Co-Create Without Women” (, Open Government Partnership, 7 April 7th, 2017,
<https://www.opengovpartnership.org/stories/we-cant-co-create-without-women>.

5. Priority commitments for access to justice and legal empowerment

Peter Chapman^{xii}

Access to justice and legal empowerment are critical to opening government. This paper highlights the links between access to justice and open government, takes stock of existing commitments and describes how governments and civil society can use the OGP platform to advance access to justice and legal empowerment.

Access to justice and legal empowerment are important tools to advance transparency, accountability, and citizen participation—essential goals of the Open Government Partnership (OGP). The Sustainable Development Goals (SDG) include a target to “[ensure equal access to justice for all](#)” as both a developmental priority as well as a tool to strengthen inclusive and sustainable development. OGP members are increasingly acknowledging the links between access to justice, inclusive development, and open government.

Access to justice and legal empowerment enable people and communities to advance their rights, push for legal and regulatory protection, shed light on corrupt practices, and effectively participate in governance processes. The OGP process can help strengthen access to justice by developing shared commitments to make justice institutions more open, accountable, and responsive to all people.

In recent years, governments and civil society have [begun to use](#) the OGP platform to drive justice reforms. As Sandra Elena and Julio Gabriel Mercado describe, OGP National Action Plans (NAPs) are increasingly being used to advance judicial transparency, open justice data, and combat violence against women.^{xiii} The frequency of justice commitments has grown significantly since 2011 and in 2017, more than 10% of all NAP commitments were related to justice.

Priorities areas for action

When governments and civil society incorporated justice into NAPs in the early years of OGP, these commitments tended to focus on judicial information systems, case management, combatting judicial corruption, and civil participation in conflict resolution.^{xiv} Commitments related to access to justice and open justice data initiatives have increased in the last two years.^{xv}

OGP members can build on these reforms to strengthen access to justice and legal empowerment.

1. Effective justice policies

NAP processes can help identify, develop, and implement more effective and inclusive access to justice efforts. This section describes four priorities for countries wishing to incorporate access to justice into NAPs.

Expand access to civil justice

Governments regularly focus on core elements of the criminal justice system in planning and budgeting—the police, courts, and prisons. While the effectiveness of these institutions is vital, OGP members must prioritize policies that expand access to civil justice to strengthen access to justice for open government. Civil justice problems are [frequent](#), more [likely to impact](#) poor and marginalized communities, and fundamental for advancing open government. NAP processes can enable new government – civil society partnerships to respond to civil problems and strengthen access to civil justice.

South Africa: Sustaining legal support at the community level

In South Africa, Community Advisory Offices (CAOs) are community-based institutions with a long history of organizing access to legal assistance at the community level. CAOs are staffed by non-lawyer community members and operate with the support of legal assistance organizations. Unfortunately, CAOs haven't always had sufficient resources to keep their work scalable and sustainable. A lack of institutional recognition by the Government of South Africa has hindered CAO work. However, in 2016, civil society colleagues in South Africa engaged with the government to secure a commitment for the institutionalization of CAOs as part of the wider justice network. The NAP commitment seeks to ensure that CAOs are a permanent feature at the grassroots level, with sufficient funding and skills to further advocacy, communications, and policy reform. Read more about South Africa's commitment to CAOs and civil justice [here](#).

Establish a legal basis for and support non-lawyer contributions

Countries should provide a clear legislative basis for the contributions of community paralegals and non-lawyers and ensure that their services are both independent and high-quality, by ensuring clear standards and effective oversight. OGP members should establish legislation, regulation, and policies that allow and recognize independent paralegals. Paralegals should be able to contribute to justice and governance processes that include judicial and administrative functions in both criminal and civil law.

Global legislative innovations

Recent years have seen a wave of regulations seeking to expand how non-lawyers' and paralegals' role can contribute to strengthening access to justice. From high to low-income countries, a range of government and civil society actors are institutionalizing new models to expand primary justice services.

- In Canada, the province of Ontario supports a [province-wide network](#) of independent Community Legal Clinics to provide community-based and client-oriented services including legal information, legal advice, referrals, brief services, and legal representation to individuals, clients and to eligible groups.
- In Indonesia, a [2011 legal aid law](#) enshrines established a role for community paralegals – ordinary community members trained in the basics of the law – in strengthening access to justice.
- In Sierra Leone, a [2012 legal aid bill](#) established created a mixed model of criminal and civil legal aid, from legal information and mediation services through to representation in court. This aid is , to be provided through by a public/private partnership of government and civil society.
- In Ukraine, the Ministry of Justice partners with [Community Law Centers](#) (CLCs) run by non-governmental organizations that provide free legal information and counselling (primary legal aid), with funding from by local municipalities and donors.

Improve transparency and access to information

A significant portion of NAP commitments have focused on improving transparency in the justice system or “open justice”. Recent years have seen commitments focused on strengthening access to information and the promotion of open justice data. Information about laws, regulations, and policies should be accessible and governments should work with civil society to ensure that people are aware of their rights. NAPs should prioritize measures to strengthen access to information at a community level, including mechanisms to ensure regular preparation and

dissemination of guides and charters. These aids facilitate public engagement with government processes.

Global access to information innovations

Recent years have seen a wave of regulations seeking to expand how non-lawyers and paralegals can contribute to strengthening access to justice. From high to low income countries, a range of government and civil society actors are institutionalizing new models to expand primary justice services.

- In Argentina, the 3rd NAP includes a [host of significant commitments](#) by the judiciary, the executive and civil society to strengthen the transparency of judicial institutions and processes.
- In Colombia, the 2nd NAP includes the commitment to [expanding access to online information](#) on how to access justice institutions.
- In Indonesia, 3rd NAP [sought to promote](#) transparency, accountability, and public responsiveness in the police and public prosecution service.
- In Kenya, the 1st NAP includes a [focus on improving transparency](#) of the judiciary.

Promoting civic space

Current judicial challenges require shared solutions. The OGP can play an important role in protecting and advancing civil space.^{xvi} Government agencies, civil society organizations, communities, and marginalized groups should all contribute to the prioritization and implementation of meaningful efforts to advance access to civil justice. Governments should protect the independence of civil society to operate and effectively fundraise.

II. Expanding and diversifying financing for access to justice

A key constraint for strengthening access to justice and legal empowerment is a lack of sufficient and sustained financial support. The OGP NAP process provides a platform for justice and judicial agencies to collaborate with other government and civil society actors to secure and sustain diversified financing.

Public Financing and Sectoral Partnerships

OGP members should measurably expand national funding for independent civil legal assistance. Burkina Faso has specifically called for increased financing for legal assistance and numerous others have used the OGP process to strengthen partnerships legal service delivery. Sustainable financing is a [crucial constraint](#) for frontline legal service providers and the OGP platform is an important space for stakeholders to discuss how to ensure sufficient resources.

Burkina Faso: Improve the access of vulnerable persons to the legal aid fund

The first NAP of Burkina Faso includes a commitment to increase financing for legal assistance. The NAP calls for doubling financing for the legal aid fund to double the number of people receiving government assistance. Read more about Burkina Faso's commitment to expanding financing for access to justice [here](#).

Subnational and Local Government Support

Alongside national commitments, OGP members should adopt strategies that encourage local and municipal funding of independent legal assistance as an element of poverty reduction and social spending. National governments can expand funding of key justice sector agencies and budget for access to civil justice by forming sectoral partnerships to identify new funding sources from agencies working on issues of labor, environment, and health.

United States: Expand access to justice to promote federal programs

The United States' Third NAP commits the Federal Government to expanding Access to Justice to Promote Federal Programs. The NAP states that "equal access to justice helps lift individuals and families out of poverty, or helps to keep them securely in the middle class, and bolsters the public's faith in the justice system." The NAP incorporates the White House Legal Aid Interagency Roundtable's work to improve federal coordination and identify new sectoral financing opportunities for access to justice. Read more about the United States' commitment to expanding financing for access to justice [here](#).

III. Monitoring, measurement and accountability of access to justice

The NAP process is ultimately about shared commitments and shared accountability. The OGP platform provides important opportunities to strengthen the ways in which governments and civil society are tracking progress in ensuring [equal access to justice for all](#).

Advancing Commitment 13 of the Paris Declaration

During the 4th Open Government Summit in Paris in December 2016, more than 20 contributors from governments, civil society organizations and multilateral organizations endorsed commitment 13 of the [Paris Declaration](#). Commitment 13 priorities improving access to justice [through a focus](#) on measurement and data collection, particularly in the context of the Sustainable Development Goals. The Paris Declaration is an opportunity for governments to expand measures of access to civil justice.

Accountable Access to Civil Justice

OGP members should commit to increasing understanding of access to civil justice. OGP members should measure access to civil justice, as envisioned by the SDGs framework, through the inclusion of core legal needs questions in national household surveys. Too few governments undertake regular surveys to understand the legal needs that people experience in daily lives, where people go for assistance and the ways in which these issues get addressed, if at all. Legal needs surveys can play a critical role in shaping legal aid frameworks, national development planning and poverty reduction strategies. Administrative data generated through justice processes should be used to strengthen service delivery and promote systematic reform. Insights from individual cases can provide valuable information on structural problems people and populations face. These insights should be systemically analyzed and organized in order to address structural as well as individual problems.

Focus on marginalization and disparate impacts

In monitoring and measuring access to civil justice, OGP members should prioritize the experiences of marginalized and socially-excluded. Marginalized and socially excluded populations are more likely to experience civil legal problems than other groups. In the United States, for example, people from low-income households were approximately 30% more likely to

have civil justice problems than those with high income. The World Justice Project's [Global Insights on Access to Dispute Resolution](#) module confirms findings across countries.

Increase participation and monitoring for justice accountability

In addition to improving transparency of the justice system, the OGP platform also has been used to strengthen monitoring and participation. Liberia's 2nd NAP, for example, includes a focus on [enhancing citizen monitoring of the justice system](#) to advance participation and build trust.

Jordan: Strengthen Improve access to justice the facilities available for persons with disabilities

Jordan's 3rd National Action Plan includes a commitment to "enable persons with disabilities to access information related to the use of the justice system." This commitment established a multi-stakeholder group to carry implement this work.forward implementation. Read more about Jordan's commitment to expanding access to justice for persons with disabilities [here](#).

Reinforcing global commitments

Global mechanisms and forums, including the United Nations [High-Level Political Forum](#), with its regular meetings and consensus-building tools, provide important opportunities for learning and mutual accountability regarding access to justice and legal empowerment. Countries can join the efforts of many other in the context of the work of the Task Force on Justice, an initiative of the Pathfinders for Peaceful, Just and Inclusive Societies.^{xvii} The [United States' third NAP](#) identified opportunities for their NAP could open government efforts under the OGP to support the United States' broad commitments to global sustainable development. OGP members should use the NAP process to contextualize global commitment to prioritize and advance access to justice and legal empowerment.

^{xii} This paper was written Peter Chapman of the Open Society Justice Initiative with contributions from Abigail Moy and Stacey Cram of Namati and inputs from Maaïke de Langen of the Pathfinders Justice Taskforce and inputs from members of the [Global Legal Empowerment Network](#), Open Society Justice Initiative and Namati.

^{xiii} See draft Sandra Elena, "Justice Related Commitments in OGP Action Plans: Updating the Findings" (March 2018), building on Sandra Elena, Promoting Open Justice: Assessments of Justice Related Commitments in OGP Action Plans (2015) available at http://www.opengovpartnership.org/sites/default/files/working_groups/IDRC%20OGP%20Research%20Papers.pdf

^{xiv} See Sandra Elena, Promoting Open Justice: Assessments of Justice Related Commitments in OGP Action Plans (2015) available at http://www.opengovpartnership.org/sites/default/files/working_groups/IDRC%20OGP%20Research%20Papers.pdf

^{xv} See draft Sandra Elena, "Justice Related Commitments in OGP Action Plans: Updating the Findings" (Draft, March 2018).

^{xvi} Open Government Partnership, the Right Tools for the Right Job: How OGP can help win the fight for civic space (2017), available at https://www.opengovpartnership.org/sites/default/files/Right-Tools_Civic-Space_20180508.pdf

^{xvii} Pathfinders for Peaceful, Just and Inclusive Societies, The Roadmap for Peaceful, Just and Inclusive Societies – A Call to Action to Change our World (2017) available at <http://www.cic.nyu.edu/pathfinders>.

6. Lessons for how to improve open justice commitments in OGP

Surya Khanna, Georgetown University

The purpose of this guide is to provide a strong understanding of what Open Justice is – its value, its status quo, and its potential future – and of how countries can craft effective OGP commitments related to Open Justice. The guide will begin by providing a definition of Open Justice as well as the value proposition of Open Justice reforms. It will then delve into current OGP commitments related to Open Justice in order to identify emerging typologies and trends. Finally, it will assess the qualities that define strong Open Justice commitments and the factors that help ensure their success. The guide will ground these qualities and factors within specific examples to provide helpful context.

I. Overview

Open Justice represents a tiny fraction of OGP commitments. As of 22 December, 2017, there were 2,076 IRM-reviewed OGP commitments with only 74 commitments (3.56%) related to Open Justice. Only 31 countries, or around half, of all those who have made OGP commitments, have made Open Justice commitments. Despite this fact, Open Justice commitments tend to be of a higher quality than OGP commitments overall according to metrics like progress report performance. With the transformative potential of Open Justice commitments validated by OGP's IRM, there exists a strong rationale for countries and sub-national governments to make Open Justice commitments.

This guide seeks not only to make the case for Open Justice but also to provide insight into the current state of Open Justice and, perhaps more importantly, best practice tips for how to craft and implement strong Open Justice commitments. In addition to case studies and examples of strong commitments, the guide focuses on six best practice recommendations that, if followed, will better ensure successful Open Justice commitments.

1. Prioritize **country-specific issues** through inclusive and collaborative engagement.
2. Figure out the **accountability-independence balance** for the justice institution in relation to the other branches of government.
3. Prioritize **five essential rights**:
 - a. right to identity;
 - b. right to property;
 - c. right to buy and sell labor;
 - d. right to own, operate, and transact businesses; and
 - e. basic civil rights like the freedom of association.
4. **Create 'just' efficiencies** saving time and money without infringing on the procedural rights of citizens.
5. Ensure that Open Justice commitments are **public-facing**.
6. **Focus on good design** to help ensure effective reform implementation. By carefully defining the problem, the status quo ante, and the desired status quo post, implementers can improve impact.

I. What is Open Justice?

Despite the relative newness of the term, "Open Justice" has managed to acquire several different yet, for the most part, compatible meanings based on proposed context. For instance, some view Open Justice as simply a 21st century iteration of a broader historical movement to render court

proceedings more transparent and judiciaries more accountable. Others view it as a relatively new component of the broader Open Government movement designed to leverage new technology and innovation to add judicial and crime statistics to the burgeoning ranks of open data. This Open Justice data could then be analyzed and used by all sectors of society and government to create or advocate for more effective public policy targeting not only problems related to the judiciary but to all branches of government and civil society.

Distilling the core elements of both versions provides a strong, inclusive working definition of Open Justice for the purposes of this guide. By this definition, Open Justice refers to reforms designed to foster greater accountability and transparency in justice systems often through leveraging technology and innovation along with civic participation. The twin principle aims of Open Justice are to increase access to justice and to ensure fairness in application by promoting a universal rule of law in a manner consistent with the values of the majority while safeguarding especially the rights of the minority. Ultimately, among the many desired outcomes of Open Justice are greater governmental legitimacy and associated increases in public trust toward governmental institutions.

Deliberately inclusive, this guide's definition of Open Justice seeks to capture as wide an array of relevant justice system reforms as possible given how new and unrefined Open Justice is within the greater context of Open Government. Grounding reforms in principle Open Government values (i.e. transparency, accountability, and civic participation) can help prevent such inclusivity from leading to overbroad interpretation. As Open Justice begins to take form and define itself as a movement, researchers, analysts, and policymakers may choose to focus on and formally flesh-out its boundaries and internal divisions (e.g. police-related reforms vs. judiciary reforms) or to treat open justice reforms as interconnected efforts within the context of the justice system as a whole. As such a discussion falls outside its scope, this guide will remain neutral in its stance toward such decisions.

II. What problems facing today's justice systems do Open Justice reforms target?

Open Justice reforms, like all Open Government reforms, seek to increase the legitimacy of and public trust in government institutions. These reforms accomplish these two goals by targeting the underlying problems and their sources.

A. Principal problems:

1. Access to justice

The UNDP defines access to justice as “the ability of people to seek and obtain a remedy through formal or informal institutions of justice for grievances in compliance with human rights standards.”¹⁸ The broadness of the definition reflects the extent to which standards for determining access vary across countries given the diversity of legal systems, societal values, and economic contexts. Nevertheless, strong examples exist across a wide array of countries indicating that access to justice when ensured correlates highly with stronger development. Within the Philippines, for instance, the Asian Development Bank conducted a survey; the results indicated that communities with stronger access and enforcement of regulatory reforms related to labor, contracts, and environmental standards benefited from higher levels of farm investment, productivity, disposable income, and income overall.¹⁹

Problems related to access to justice can consist of relatively basic issues like:

- Lack of physical infrastructure (e.g. too few court rooms);
- Insufficient number of judicial actors (e.g. judges, prosecutors, administrators, and public defenders);

- Inadequate training and poor performance of judicial actors;
- Poor training and conduct of police forces;
- Limited access to modes of identification (e.g. I.D. cards/birth certificates);
- Weak or non-existent judicial enforcement, contempt, and subpoena power;
- Judicial and police bias against minority groups; and
- Collusion amongst judges.²⁰

However, problems related to access to justice can also consist of issues like:

- Lack of representation of women and marginalized groups in judiciaries and police forces;
- Insufficient legal aid resources for poor and marginalized communities; and
- Inadequate constitutional empowerment of judiciaries, which prevents their serving as a sufficient check to overreaches by the executive and legislative branches. (Such overreaches can harm and infringe upon the rights of citizens to seek and receive relief especially those from poor and marginalized communities.)

High and low-income countries both suffer from these two sets of problems even though they do so to different degrees. In fact, even some high-income countries with strong rule of law and legal traditions like the United States have suffered from access to justice issues normally associated with low-income countries (e.g. police accountability issues along with fragmented and underfunded legal aid systems). In the United States, there is a significant “justice gap” – the difference between high and low-income individuals who seek legal remedies when confronted by civil legal problems. Among OECD countries, 19% of low-income and 16% of high-income residents take no legal action compared to 30% and 7% respectively in the United States.²¹ The existence of common access to justice problems creates the relatively unique opportunity for countries of all income levels to co-create, share, adapt, and benefit from common solutions.

Ultimately, adopting an Open Government approach to access to justice involves viewing it through multiple lenses. First, access to justice serves as a desired end from the perspective of empowering citizens and fulfilling the social contract by ensuring citizen’s legal rights and rendering governments more accountable. However, just as importantly, access to justice also acts as a powerful means to achieve more equitable growth and shared prosperity by opening up economic opportunities previously out of reach to those without it. For instance, the ability of the poor to have their property, transactional, and other socio-economic rights recognized and upheld within a consistent, formal legal framework could mean the difference between a potential entrepreneur from a poor background accumulating capital to start a small business or continuing to languish in poverty. It is this second lens of access to justice as a means of inclusion that potentially holds the greatest transformative impact in reducing poverty and one to which this guide will return to flesh out in section V.

2. Fairness in application

Fairness in application means that all individuals are equal in the eyes of the law and exists when a country upholds the rule of law consistently. The rule of law has many different definitions often depending on the values of the organization defining it. Some, like the World Justice Project, define the rule of law broadly and incorporate normative elements with respect to the substantive laws themselves; their “four universal principles” consist of accountability, just laws, open government, and accessible/impartial dispute resolutions.²² Fairness in application refers to the final element: “impartial dispute resolution.” By this definition, fairness in application means consistent application of the law to all stakeholders equally according to due process.

Problems related to fairness in application include:

- Arbitrary or biased disposition of cases;
- Delays in case management or outright refusal of judicial functionaries to process cases; and
- Inconsistent police enforcement of the law.

B. Sources of problems

1. Corruption and bias

After analyzing their corruption perceptions index for 2017, Transparency International concluded that while attempts at combatting corruption around the world have yielded some successes since 2012 (e.g. Côte d'Ivoire, Senegal, and the United Kingdom), the majority of countries made "little or no progress in ending corruption."²³ Corruption and bias in judiciaries cut twice as hard against a country's progress because a corrupt and biased judiciary threatens access to justice and rule of law not only regarding judiciaries but also the remaining branches of government under judicial scrutiny. Like white blood cells for an immune system, an uncorrupt and unbiased judiciary can be crucial for eliminating corruption and bias throughout the rest of a government.

- (a) **Acts of corruption and bias within the judiciary can take myriad forms ranging from bribery to conflicts of interest and can exist on many levels from isolated actors to pervasive, systemic elements.** For instance, corruption could stem from individual judges occasionally accepting bribes or from entire judiciaries routinely accepting bribes, in effect, as a matter of unwritten policy or collusion. Both problematic scenarios would benefit from transparency and accountability mechanisms to root them out; however, understanding which problem applies to a particular justice system remains necessary to help guide the scope of the policy solution.
- (b) **Acts of corruption and bias outside of the judiciary can also take similar forms heavily affecting access to justice and the rule of law.** For instance, a corrupt or biased police department could refuse to enforce a decision to protect minority land rights or a majority faction within a legislative assembly could pass laws granting resource extraction rights to their donors in exchange for financial support. The role of the judiciary in preventing corruption and safeguarding rights, especially for minority groups, requires that the judiciary be empowered *de jure* – by laws, regulations, and constitutions – and *de facto* – by resource allocation generally from legislatures and enforcement generally from the executive branch. Only when such empowerment exists, can a judiciary act as a real check on abuses of power by the other branches of government.

It remains important to note that political systems and separations of power vary across countries and not all judicial bodies are part of a separate branch of government. Nevertheless, the same problems and sources that exist within separate judiciaries exist in quasi-judicial bodies like tribunals and arbiters though they can actually be worse within a quasi-judicial context. Some administrative tribunals, for instance, are not bound by precedent and remain vulnerable to interference from the rest of the executive branch. The question of balancing judicial body independence with greater oversight to monitor judicial corruption is a profoundly important one that the guide will address in a subsequent section.

2. Lack of justice system capacity

- (a) **Lack of supply: Where governments possess insufficient resources to sustain an effective justice system, access to justice and the rule of law can suffer tremendously.** Insufficient justice system resources stem from insufficient fiscal allocation, which in turn originates in a lack of political and policy support for justice systems, a lack of overall and available government revenue, or both at the same time. The revenue problem may be compounded

when insufficient justice service delivery and unchecked government corruption lead to lower institutional legitimacy and a greater likelihood of tax evasion.²⁴

- (b) **Unmet demand: In addition to a lack of supply, insufficiencies in justice system resources also stem from an unmet demand for justice system services.** While a high unmet demand for justice system services could arise from an underlying litigious nature of a country, generally it arises from inefficiencies in the justice system that limit its capacity. These inefficiencies can stem from different sources from excessive judicial procedures to inefficient administrative protocols to poor training of justice system actors.

Attempts at Open Government reform that target justice system capacity often focus on shifting case management online in an attempt to streamline processes and allow parties to track the progress of their cases. However, this can backfire when additional system capacity is created at the cost of due process. A strong example of this is the recent attempt by the United Kingdom's Ministry of Justice to create online courts for low-level offenses by allowing offenders to plead guilty and pay fines online. Critics argued that this would lead to a rise in unrepresented parties submitting pleas without fully understanding their implications.²⁵ Finding the balance between freeing up resources to increase access to justice while ensuring due process for parties already participating requires an open dialogue between governments and the rest of society to maintain a country's underlying legal and ethical values.

3. Poor enabling environment

- (a) **Where countries lack robust civil societies and an independent media, the dialogue necessary for creating and maintaining an effective and accountable justice system often cannot occur.** Returning to the last example, the UK's Ministry of Justice correctly considered public criticism and altered the program to permit a "cooling off" period, where parties could rescind their pleas. It did so after considerable pressure from media outlets like The Guardian along with various think tanks and the charity, Transform Justice. While the end result still has its critics, the fact that an independent media and a robust civil society were able to challenge the government, coupled with the fact that the Ministry of Justice responded with a meaningful policy improvement, illustrates the power that such a dialogue has in promoting effective and accountable justice systems.
- (b) **Justice systems lack integrity when governments do not preserve and uphold fundamental rights along with necessary checks and balances between the branches of governments.** Many expansive rights derive from values unique to a particular culture and thus appropriately receive different levels of protection or enforcement among different countries and regions. However, certain fundamental rights, both substantive and procedural, remain universally necessary for preserving a justice system's basic integrity. The guide will delve into the importance of preserving and upholding fundamental rights within the context of human rights and legal empowerment in section V.
- (c) **Where countries and subnational entities do not legally enshrine and enforce checks and balances between branches of government, government accountability suffers.** The ability of different branches of government to act as effective checks on one another involves formally defining their respective roles in a way that disperses power and avoids overlap. Often, countries and subnational entities legally preserve these checks and balances in overarching legal institutions like constitutions, which can be difficult to change and thus have a higher degree of permanence and independence than normal laws passed by legislatures. The guide will return to separation of powers in section V.

III. What Benefits do Open Justice reforms provide?

By helping solve the problems outlined in the previous section, Open Justice reforms provide immense value to all sectors of society. Some examples of this value include:

For governments:

- **Fulfil the social contract:** Reforms that empower the judiciary to fulfill its obligations in safeguarding fundamental rights against all threats, including those from other branches of government, enable fulfillment of the social contract between governments and the parties they govern.
- **Comply with international obligations:** UN-member states came to an agreement in September 2015 to “promote the rule of law at the national and international levels and ensure equal access to justice for all.” The Sustainable Development Goal 16:3 “recognizes the intrinsic links between access to justice, poverty reduction and inclusive growth.”²⁶ Open Justice reforms directly target those SDG obligations.
- **Improve service provision:** In conducting their functions, justice systems act as public service providers. Therefore, the benefits of Open Justice reforms can reflect the benefits of Open Government efforts within the context of public service delivery overall.²⁷ Moreover, reforms that add a crowdsourcing element to, for instance, judicial audits, enable more non-governmental sources of scrutiny. The additional sources can provide additional, granular layers of accountability in ways that would be infeasible for governments to do internally due to cost and logistics.
- **Open up new channels for insight:** Reforms that open policy feedback mechanisms to the public allow for new insight that can inform subsequent policy agenda-setting. In addition to creating the possibility of valuable insight, these reforms can also give voice to previously unheard and marginalized populations.

For businesses:

- **Face lower transaction costs:** Less indeterminacies in case disposition leads to more informed decision-making for businesses and a greater likelihood of profitable transactions.

For the media, civil society organizations, law firms, and think tanks:

- **Gain access to crucial data sets:** Reforms that open up previously hidden or restricted justice system data, related, for instance, to arrest statistics and case dispositions, provide invaluable opportunities for researchers and advocates in civil society to inform themselves and refine their efforts. The ability to identify positive and problematic trends in the justice system can enable advocacy groups to use their resources more effectively to target issues of greater relevance backed by solid evidence.
- **Better represent and ensure justice for clients:** Robust case management systems that enable litigants and their counsel to track the progress of their case give law firms and advocacy organizations crucial tools to ensure their clients receive due process and appropriate relief.

For citizens:

- **Gain understanding of relevant information:** As members of society desiring to inform themselves and engage in political action, citizens benefit from reforms that open up justice system data by presenting information regularly in understandable ways. As litigants, citizens benefit from reforms that create understandable, easy-to-use case management systems that can inform them of their rights at each stage of their case.

- **Empower citizens as valuable participants in collective action:** Reforms that create effective citizen feedback mechanisms help channel citizen input and interactions with government in constructive ways that lead to greater trust through creating better public policy. These reforms can change the dynamics between governments and their citizens from antagonistic to collaborative.

For all justice system stakeholders:

- **Ensure judicial integrity and overall government accountability:** Reforms that increase scrutiny of judicial actors like judges, prosecutors, ombudsmen, and court administrators help ensure judicial integrity and overall accountability.
- **Create channels for more inclusive engagement across all sectors of society:** When reforms create mechanisms for scrutiny and feedback from previously disenfranchised groups (for example in matters such as police conduct or judicial bias) they permit more inclusive engagement of justice system stakeholders. Such inclusive mechanisms can take the form of greater democratic representation either in helping to determine the values and standards underlying a justice system or in monitoring “gaps” and addressing “loop-holes” in its implementation.²⁸
- **Foster greater social trust and economic activity among justice system stakeholders:** When reforms assure equal and consistent access to justice and the rule of law, all sectors of society are more on par to interact and transact with one another. This creates greater trust between all societal stakeholders with less resentment arising from perceived favoritism within the justice system. The economic and social benefits that arise from the greater trust and transactions can then accrue to all sectors of society as well.

IV. What types of Open Justice reforms exist among current OGP commitments?

In analyzing the current Open Justice OGP commitment landscape, this guide follows up on Sandra Elena’s 2015 study “Promoting Open Justice: Assessment of Justice Related Commitments in OGP Action Plans.” A key difference in approach between Elena’s research and this guide is that the former used a much narrower scope in defining Open Justice commitments by reviewing only those that addressed the judiciary. While her methodology incorporated a pre-selection process that used both the “judiciary” tag and the “law enforcement and justice tags,” Elena ultimately cut out commitments that did not focus on the judiciary specifically.²⁹ Because it deliberately takes a much more inclusive view of Open Justice reform, this guide does not make such a cut and first takes into consideration any commitment related to the justice system that falls under either the “law enforcement and justice” or the “judiciary” tag in the OGP explorer. It then considers any OGP commitment under the tag “human rights” and “anti-corruption” that relates to access to justice or the rule of law. In order to avoid casting too wide a net, and essentially including any commitment related to accountability whatsoever, the guide finally cuts out any commitment that does not deal with legal complaint processes or conduct oversight by or of justice system actors. With respect to legal complaint processes, for example, commitments dealing with increased access of low-income individuals to ombudsmen for legal advice prior to lawsuits would survive the cut but internal non-justice system related executive agency audits would not. With respect to conduct oversight, again for example, commitments that create mechanisms ensuring executive compliance with judicial orders or holding police departments accountable for discrimination and bias would both survive the cut.

Commitment Trends

As of 22 December 2017, there are 2,076 IRM-reviewed OGP commitments with 74 commitments related to Open Justice as defined by the criteria of this guide. While the OGP consists of 75 countries, only 60 have submitted IRM-reviewed OGP commitments. Unlike in Elena's study, this guide uses the latter figure as a reference statistic when assessing questions like regional trend representation (i.e. region by region, how many countries that have made OGP commitments made Open Justice commitments).

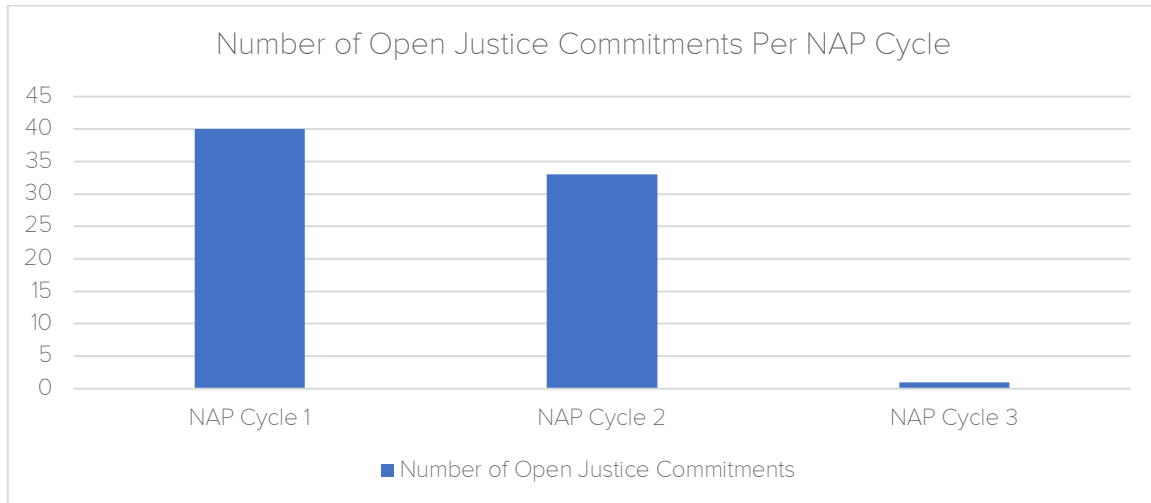
Only 31 countries, or around half, of all those who have made OGP commitments, have made Open Justice commitments. The country with the most Open Justice commitments is Albania with 9 commitments followed by Colombia and Brazil each with 8 commitments. These commitment values are outliers though with the mode number of commitments being only 1 per country and with 74%, or 23, of the 31 countries having only 2 or less commitments. The mean number of commitments is about 2.39 per country and the variance is about 4.88.

I. Regional trends

Latin America leads in terms of the percentage of countries in a region with OGP commitments that have made at least one Open Justice-related commitment. 71%, or 10 out of 14 Latin American countries have made Open Justice-related OGP commitments (Argentina, Brazil, Colombia, Costa Rica, El Salvador, Guatemala, Mexico, Panama, Paraguay, and Peru). On the other end of the spectrum, Europe has the lowest number of Open Justice-related commitments with only around 43% or 12 out of 28 countries (Albania, Bulgaria, Croatia, France, Georgia, Macedonia, Montenegro, Norway, Romania, Spain, UK, and Ukraine). In the middle of the pack are Africa, with 50% or 3 out of 6 countries (Ghana, Kenya, and Liberia), and Asia/Oceania, with about 67% or 6 out of 9 countries (Armenia, Azerbaijan, Indonesia, Israel, Jordan, and Mongolia). The small sample size in terms of number of countries, along with the unequal amount of countries in each region, prevents robust inference regarding the significance of these percentage differences.

II. Action Plan Cycles

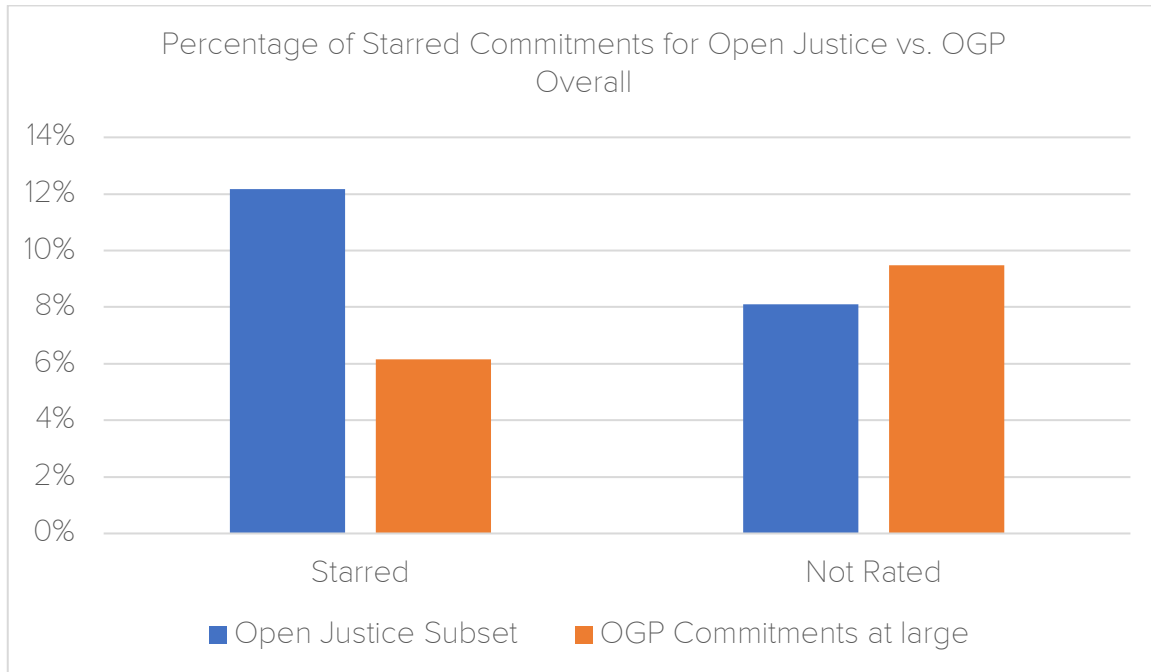
Countries participating in the OGP create their commitments within national action plans (NAPs) in a collaborative, "co-creation" process with civil society.³⁰ NAP cycles last two calendar years with no gap period between them in order to ensure continuity of effort. The OGP has clearly defined the basic and advanced standards for creating, implementing, and reporting on NAPs, which the guide will touch upon in a subsequent section. Of the 74 Open Justice commitments, 40 were identified in a country's first action plan cycle, 33 in a second action plan, and only one in a third action plan (Indonesia).



III. Quality of Commitments

The IRM recognizes the quality of OGP commitments by evaluating different metrics including specificity of the commitment, its potential and actual policy impact, its relevance to OGP values, and its progress. In addition to providing these metrics, the IRM, beginning in 2014, has awarded stars for model commitments. In 2015, the criteria was adjusted and now stipulates that starred commitments must (1) be of medium or high specificity; (2) be relevant to at least one of the OGP values of Access to Information, Civic Participation, or Public Accountability; (3) be of transformative potential impact should it be fully implemented; and (4) receive a ranking of substantial or complete progress during the action plan implementation period.³¹ For OGP commitments overall, 6.16% received stars in their interim progress reports and 2.50% received stars in their end-of-term reports. By contrast, 12.16% of OGP Open Justice commitments received stars in their interim reports, however, only 1.35% received stars in their final reports.

A chi-square goodness-of-fit test³² at the 10% level reveals that the discrepancy in progress report performance remains significant with a chi-square value of 4.65. The low frequency of starred reports expected and observed in final reports do not lend themselves to analysis by chi-square. Using an exact goodness-of-fit test reveals that the final report discrepancies in star performance are not significant at the 10% level (p value of .1105). That Open Justice commitments perform better than overall commitments in their progress reports could arise from a variety of factors including their highly transformative potential as reforms in a historically opaque space and their strong relevance to OGP values like accountability in the eyes of the IRM.



Additionally, in the end-of-term report, the IRM also evaluates the commitment's concrete impact on opening government. Of all the OGP Open Justice commitments, only one commitment, from Georgia, was rated as successfully opening government.

Box 1: Looking at a model Open Justice OGP commitment - Georgia

According to the IRM, Georgia's commitment 17 – "Proactive Publication of Surveillance Statistics" – effectively opened government to the point of earning a star rating. The guide will return to evaluating the commitment's design and language but for now, it will simply provide a summary and brief commentary.

The Georgian public had long demanded greater transparency with respect to government phone tapping of private citizens. In January 2014, the Supreme Court of Georgia responded to this demand by collecting statistics on the number of motions by prosecutors to permit phone surveillance, as well as those granted by judges. However, the data was reserved for internal use only until the Georgian government accepted input from NGO members of the national OGP multistakeholder forum, extended their action plan until the end of 2014, and allowed the proactive publication of Supreme Court data. From 2015 onward, the Court began publishing quarterly statistics in an accessible manner via a direct link from their website and in an accessible format (.pdf). It balanced the need for transparency with that of privacy for those surveilled by protecting their personal information.

Though this particular commitment only related to the OGP value of Access to Information, the strong commitment opened the way for subsequent iterations related to values like accountability. Its strength starts in the process by which the stakeholders created it. Through constructive engagement, government and over 100 civil society groups joined forces to create policy solutions. This transformed a potentially antagonistic relationship into a profoundly collaborative one that addressed an issue that the public considered very important. Moreover, the commitment that resulted from collaborative agenda-setting tackled a specific problem with a specific solution in an ambitious, ultimately transformative way.

IV. *Subject matter*

Elena et al. classified Open Justice commitments by dividing them into four categories: those attempting to (a) improve access to judicial information systems; (b) improve case management systems; (c) fight against judicial corruption; and (d) promoting civic participation in conflict resolution.³³ Given the greater inclusivity of the guide's methodology, these categories need to expand to include non-judiciary justice system actors. The subject matter categories for this guide are thus: (1) improving access to justice system information; (2) improving complaint and case management systems; (3) empowering the justice system to tackle corruption even within the justice system itself; and (4) promoting civic participation in conflict resolution. Please note these categories are not mutually exclusive as commitments can touch upon multiple different themes.

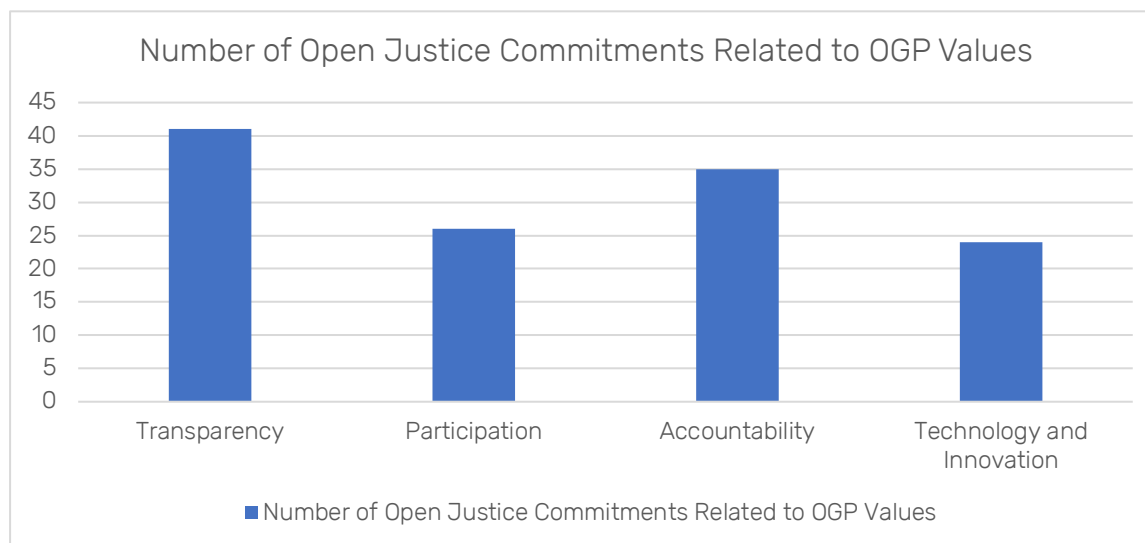
- (1) **Improving access to justice system information:** Commitments in this category focus on dissemination of information related to courts, crime, and the conduct of government officials that implicate the justice system (e.g. police brutality or formal bribery accusations against government agents). Usually this information was not being collected, published externally, mandated to be in an open data standard, or published in an accessible, single source. Reforms that target increasing informational access often begin with commitments to create favorable law and regulatory change and then utilize coordinated web portals and open data standards to increase access to justice system data.
- (2) **Improving complaint and case management systems:** Commitments in this category create new channels for complaints to be heard, usually by ombudsmen or judges, or they improve current channels by putting case management systems online. These commitments often allow litigants or those accused of criminal offenses to track their cases online, file pleadings, and inform themselves of their rights and legal options.
- (3) **Empowering the justice system to tackle corruption or fighting corruption within the justice system itself:** Commitments in this category often take the form of legally empowering attorney generals, ministries of justice, and executive branch officials to pursue corruption cases against government members. However, commitments also exist in this category that permit judges, especially on the supreme court, to proactively investigate corruption and fraud, both internally and externally.
- (4) **Promoting civic participation in conflict resolution.** Commitments in this category include efforts to broaden access to justice by, for instance, increasing community involvement when their interests are implicated, either as official parties (e.g. class members) or unofficial commentators (e.g. amicus brief submitters). These commitments often touch upon specific fields of law related to human rights and the environment.

V. *OGP values*

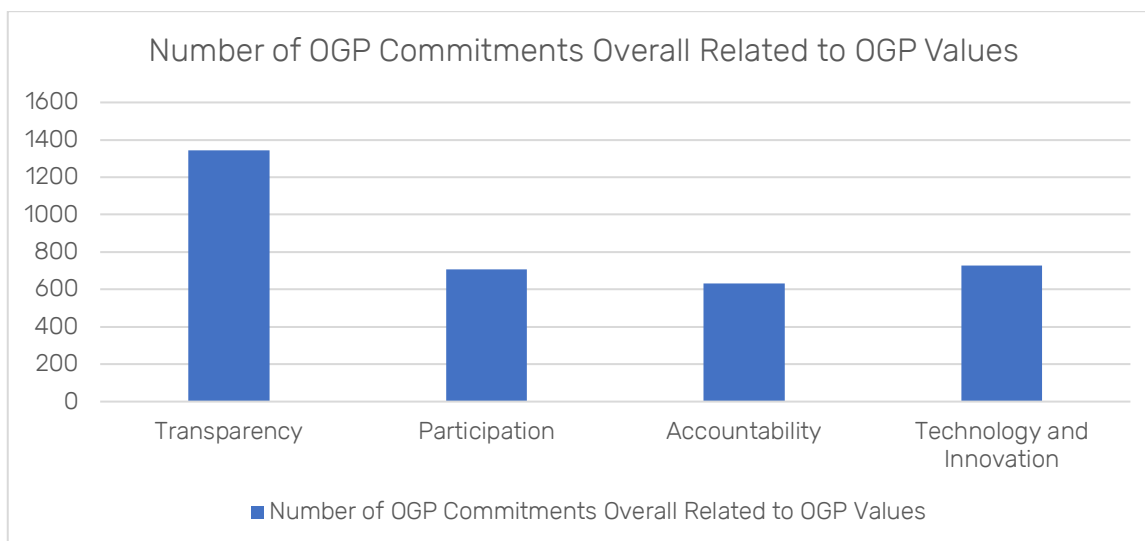
Each commitment is required to fulfill at least one of three cornerstone OGP values of transparency, participation, accountability, and technology/innovation. Historically, the Open Government movement saw a focus on transparency reforms through technology and innovation in part because those reforms often required the least amount of multistakeholder involvement for governments and allowed them to avoid the difficult intricacies involved in managing policy consensus with the public. However, slowly but surely, the Open Government agenda transitioned first from just releasing data to releasing information in standardized formats to releasing information in ways made accessible and understandable to the general public. The movement now is transitioning to a greater focus on closing the feedback loop through greater focus on assuring government accountability through civic participation in agenda setting, implementation, and outcome auditing.³⁴

Within the context of Open Justice OGP commitments, transparency continues to lead the way with 41 commitments but accountability follows not too far behind with 35 commitments.

Participation and technology have 26 and 24 commitments respectively, perhaps reflecting the unique difficulties of enacting civic participation within the context of judiciaries and the fact that many of the transparency initiatives focus slightly more on removing legal hurdles to disclosure than on information and communication technologies enabling data dissemination.



The overall distribution of OGP commitments contains 1,345 commitments (64.79%) relating to transparency, 708 (34.10%) related to participation, 633 (30.49%) related to accountability, and 729 (35.12%) related to technology and innovation.



In comparing the Open Justice subset of OGP commitments to OGP commitments overall, a chi-squared goodness-of-fit test reveals that the Open Justice commitments do not act as a random sampling of the OGP Commitments overall in terms of the distribution of their category variables (i.e. the proportion of commitments related to each OGP theme differs for Open Justice commitments when compared to OGP commitments overall). With three degrees of freedom, a chi-square critical value of 8.035 emerges with a p-value of around .04, which is notable given a significance level of .05. With the majority of the chi-square critical value coming from the difference between the expected value of accountability, derived from OGP commitments as a

whole, and the actual value observed in the subset, it becomes clear that the thematic focus on accountability is higher in Open Justice commitments than in OGP commitments overall.

****Important Overall Note:** While other Open Justice OGP commitments exist, the guide did not take them into account in this section because they have not yet received IRM-reviewed status. The guide will return to a few examples in a later section to discuss their potential strength.*

IV. How do countries craft and implement strong OGP Open Justice commitments?

As with all OGP commitments, all Open Justice commitments do not, and indeed should not, follow the same template in their design and implementation. That said, several fundamental principles exist that can guide countries toward stronger Open Justice commitments. Many of these principles come from decades of research and refinement in other OGP contexts and, with some alteration, remain relevant within an Open Justice context. Indeed, Hughes, Scott, and Maassen's "Improving Public Services: Guidance for Developing OGP Commitments" heavily influenced this section of the guide.³⁵

1) Prioritize country-specific issues through inclusive and collaborative engagement:

Inclusive and collaborative engagement has multiple, powerful effects that render Open Justice commitments strong. First, inclusive engagement seeks to empower all communities by taking their voices into account when crafting, implementing, and evaluating policy. This inclusivity can lead to greater support for, and perceived legitimacy of, Open Justice commitments – especially among historically marginalized communities that tend to suffer from inadequate access to justice and rule of law issues in the first place. Second, collaborative engagement seeks to take the gains of inclusive engagement in adding civil society to the conversation and expand upon them by having that engagement actively drive the agenda-setting and policy-development conversation. Through both inclusive and collaborative engagement of civil society at all stages of the commitment-development process, governments can ensure that the justice issues they tackle are actually relevant to the concerns of their people. While such mechanisms may involve greater coordination and associated upfront expenses, they ultimately offset such costs with the gains by efficiently targeting issues of importance to a specific country or sub-national area.

Civic participation in Open Justice agenda-setting is especially important because it remains one of the few areas where civil society can play an oversight role of the justice system without risking inappropriate interference and the resulting infringements on judicial independence. By allowing civic participation to help guide problematic priorities and solutions, good, relevant Open Government policy can emerge with respect to justice issues.

2) Figure out a context-specific external accountability/independence balance:³⁶

Finding the balance between holding judiciaries and quasi-judicial bodies accountable and simultaneously keeping them independent remains perhaps the most critical, unique, and country-specific factor to the success of a justice system. Perfectly striking this balance requires creating and upholding a consistent constitutional, legal, and regulatory framework that encourages effective external checks and balances between different branches and levels of government (e.g. federal, state, and local).³⁷ It requires dispersing power within and between each branch and level of government in a way that grants each their own specific, generally non-overlapping roles as well as the authority and resources necessary to fulfill them. It also requires strong internal mechanisms of accountability within justice systems (e.g. bar associations that disseminate and enforce best practice).

Because each country and municipality varies in their histories, existing frameworks, and cultural values, determining an appropriate accountability/independence balance remains extremely contextual.

The first step for targeting the accountability and independence balance would be to assess where important problems in the justice system exist or have historically existed, and which branches and levels of government are, or historically have been implicated. Based on this initial assessment, reformers can then begin to determine the judiciary's role (e.g. the source, the perpetuator, or neutral actor) and its appropriate role in the solution. Next, reformers should look at viable entry points for OGP solutions and consult affected stakeholders in order to arrive at effective solutions with as much consensus as possible. In many cases, relatively-fixed factors – those that remain difficult, if not impossible, to alter feasibly (e.g. constitutions and budget constraints) – guide the scope of justice system reform while relatively-variable factors – those easier to change – serve as the entry points themselves. Determining these factors will help effectively allocate resources to more viable targets for policy reform.

Box 2: Example of targeting the accountability/ independence balance – Jordan

In the last two decades under King Abdullah II, efforts at economic liberalization and democratization have undergone a great proliferation. While analysts disagree on the success or ultimate meaningfulness of such democratization efforts, these movements represent a positive step toward dispersing power and targeting the accountability/independence balance. Indeed, Jordan serves as a good example of a country targeting the accountability/independence balance through OGP Open Justice commitments as all three of its Open Justice commitments dealt with different facets of accountability balancing in the justice system. In commitment 2.3.3, Jordan established a constitutional court to act as a check on laws passed by the legislature. Commitment 2.3.4 then created an administrative court to oversee public sector performance complaints, further dispersing power and allowing the judiciary to develop specialized benches. Finally, commitment 1.4 increased the independence of the Jordanian Ombudsmen Bureau and permits it to join international organizations, thereby enabling the Bureau to learn best practices in increasing access to justice.

3) Promote fundamental human rights and legal empowerment:

Open Justice commitments can vary to adapt to different cultures, political systems, and economic situations, but they should all strive to protect, or at the very least not infringe upon, fundamental human rights both procedural and substantive. Protecting fundamental human rights legally empowers members of society and remains crucial to lifting citizens out of poverty. The UNDP fleshed out the concept of legal empowerment in their piece entitled “Making the Law Work for Everyone” and arrived at four pillars: the rule of law and access to justice, property rights, labor rights, and business rights.³⁸ Building off of this list and adapting the pillars slightly to its conceptual framework, the guide proposes five rights that strong OGP Open Justice commitments should promote, or at least not undermine (in addition to ensuring rule of law and access to justice):

Access to identity rights:

- a. **The right to identity:** In its most basic, uncontroversial form, this refers to the right of everyone to a legal identity registered at birth. However, it can extend to citizenship. Residents, having fulfilled the requirements of citizenship, should acquire the legal status of citizenship in the eyes of the state with all its rights and obligations. It also refers to the right of everyone in a country to any and all

identification documents necessary to protect their rights in accessing the justice system.

Transactional rights

- b. **The right to property:** This includes the right to own property and engage in property transactions without undue government interference. It also refers to the legal system's protection of such rights and upholding such transactions, when they are valid and in accordance with the law.
- c. **The right to buy and sell labor:** As with the right to property, the right to buy and sell labor requires the legal system's protection beyond simply its permission. This right also refers to the ability of buyers of labor and sellers of labor to transact without undue government interference.
- d. **The right to own, operate, and transact businesses:** As the third member of the transactional rights family, business rights serve to increase access to assets and to markets. Business rights may also include more expansive rights like the right to separate personal and business assets by defining legal persons to include legal liability companies.

Civil rights:

- e. **The right to free association:** The right to free association refers to the ability of people to organize themselves in the form of CSOs, businesses, and other organizations in order to pursue their interests and advocate for themselves in open civic space.

4) Create only 'just' efficiencies:

Whether efficiencies are made through simplifying procedures or speeding up legal processes by putting them online, it remains important that they not come at the expense of rights. For example, raising pleading standards for civil suits may weed out superfluous cases and free court resources for cases with merit. But taken too far and this efficiency can potentially bar valid cases from being heard and meritorious parties from receiving the legal relief to which they are entitled.

5) Craft and implement public-facing elements:

Commitments that increase data access among justice system actors can have tremendous benefits for efficiency and internal transparency/accountability. However, in and of themselves, such commitments rarely constitute true Open Government policies since they do not open government to the public. Public-facing elements like data portals and case management systems can both serve as strong public-facing elements in Open Justice commitments if they, for instance, open up meaningful information to the public. Often times, countries make Open Government commitments with both internal and public-facing transparency elements but only implement the internal element, which severely limits the commitment's value in terms of opening government. Ultimately, the goal of commitments should not be token efforts at transparency but rather policy that is meaningful and transformative.

6) Follow good design features to help ensure effective implementation:

Strong commitments (OGP and otherwise) tend to follow the SMART acronym in their design.³⁹ First, their designs focus on **specific** goals done in specific ways. The greater the specificity in design, the less potential uncertainty that can emerge in implementation. Second, their impact is **measurable**. Measurability does not only ensure accountability; it also enables course corrections in future iterations. Third, they are **answerable** and **achievable**. Answerable refers to incentives and sanctions that ensure accountability while achievable refers to commitment feasibility. While the goal of OGP commitments is

transformative impact, transformations are relative to each country's status quo; overambitious commitments often fail because they ignore country-specific feasibility concerns. Fourth, they are **relevant** to the broader values and goals of a country's people. Civic participation in agenda-setting and problem-targeting plays a crucial role in ensuring the relevance of commitments. Finally, they are **time-bound**. By creating specific, enforceable deadlines, designers put pressure on implementers to fulfill commitments. Dividing large commitments into smaller discrete tasks each with their own deadlines can prevent implementers from procrastinating when they may be psychologically overwhelmed by the work involved in fulfilling the commitment overall.⁴⁰ Ultimately, the results from the 2014-2016 action plans illustrates that good design predicts good results, so using SMART design can help ensure strong implementation and positive, meaningful impact.⁴¹

Box 3: The Georgian example revisited and problem-solution orientation

In addition to good commitment design, effective language remains crucial to a commitment's success. Moreover, the IRM evaluates commitments and awards stars based on the submitted commitment language, so tailoring language to the IRM criteria will increase the odds of receiving a star. The full text of a starred Georgian commitment gives us an idea of strong commitment language:

"With the aim to ensure transparency of surveillance information and reaching uniform practice in this regard, a letter signed by more than 100 civil society organizations was sent to all OGP governments on 17 December, together with the recommendations on the issue. One of the recommendations prepared by the Forum member NGOs in the process of elaboration of the Action Plan also referred to proactive publication of surveillance statistics.

The Georgian Government shares the opinion of the civil society on the importance of proactive publication of surveillance statistics. Accordingly, the Supreme Court of Georgia started maintaining statistics on hearing the motions regarding operative investigative activities since 2014, in order to ensure transparency and accountability of law enforcement agencies. However, those statistics is not available for public. Pursuant to Article 7 of the Law on Operative Investigative Activity, a covert investigative action such as phone tapping is only possible under the permission of the court order. Thus the courts have the possibility to maintain and publish statistics of surveillance proactively. From September of 2014 the Supreme Court of Georgia will publish statistics on surveillance quarterly, which will be followed by the annual publication from 2015."

The first strength of this commitment's language is that it clearly provides the information necessary for the IRM to evaluate the three criteria of potential impact.⁴² The commitment clearly defines the status quo ex ante, the problem to be solved, and the desired status quo ex post. The second strength is that the commitment interprets specificity as referring to details necessary to ensure verifiability as opposed to endless minutia that, while important for a country to keep in mind for implementation, can obscure the overall commitment language. Finally, the commitment defines its results in terms of meaningful behavior changes on the part of government towards citizens. Through this commitment, governments will now engage more openly with citizens in giving them relevant information concerning their privacy rights.

Box 4: As with all commitments, strong Open Justice commitments adhere to open data features:

In 2012, the Open Knowledge Foundation determined several features that remain key to ensuring that data is truly open:⁴³ **(i) Accessibility.** Open Government policymakers should strive to ensure all justice system information – whether related to court rulings, crime statistics, or budgetary and administrative information – be available in their entirety, preferably online, and at a reasonable reproduction cost. **(ii) Non-discrimination.** Similar to accessibility, non-discrimination refers to preventing discrimination against groups and purposes for which information may be used, reused, and redistributed. Addressing monopolies in legal publishing, existing copyrights over legal information, and other access restrictions may be necessary to ensure equitable access to legal information. **(iii) Reusability.** Reusability generally refers to conveying information in “formats that enable reuse, redistribution, and intermixing with other datasets, to enable interactive use of the information.” The point of reusability is to discourage information silos and to encourage interoperability of open government efforts.⁴⁴ **(iv) Sustainability.** Sustainability is often among the most overlooked characteristics by Open Government policy designers despite the fact that it arguably remains one of the most important factors in a policy’s long-term success. Sustainability refers first to efforts to regularly update published information on a standardized, widely-understood schedule as well as whenever new or corrected data emerges. Secondly, sustainability refers to preserving published data even after the associated Open Government policy interventions that initially opened the data have ended. Ensuring the data’s longevity can also help preserve the utility of the information as, for instance, a reference point for evaluating future changes in justice system policy and their relative impact.

In order to ensure the integrity of the data itself, the guide suggests adding two additional features based on best practices: **(v) Relevance and (vi) Proactive corrections.** Simply dumping data regardless of relevance squanders resources and undermines the integrity of the data sets, as a high volume of useless data wastes time and resources of users. Moreover, publishing incorrect or unverified data can cause serious harm as policy-makers, journalists, researchers, and every-day citizens use this data to guide their respective recommendations and decision-making. The fight against fake news begins not just with open data but with correct data; open data can do a tremendous disservice to society when unverified and potentially false. Achieving these two features requires mechanisms that encourage proactive corrections by the organizations managing the data as well as mechanisms that create channels for outside entities to voice concerns about the data, provide context for understanding the underlying information, and fix incorrect data.

V. Case Study: The Beginning of Transformational Changes in the Kenyan Judiciary

Perhaps one of the best existing Open Justice case studies, “Transforming the Courts: Judicial Sector Reforms in Kenya, 2011–2015” remains a must-read for Open Government policy makers, practitioners and researchers alike. The author, Maya Gainer, chronicles the efforts of Kenyan judicial reformers, led by newly-appointed Chief Justice Willy Mutunga, to tackle problems within the Kenyan justice system. A relatively brief overview follows.

The problems (status quo ante):

At the time of Mutunga’s appointment in 2011, Kenya’s justice system faced myriad, heavily-entrenched problems. Kenya’s lack of judicial resources in 2011 – with only 53 judges and 330 magistrates for a population of 41.4 million people – coupled with a profound lack of accountability

on the part of judges and judicial officers lead to a backlog “estimated as high as 1 million cases.”⁴⁵ In fact, litigants often waited years just to receive hearings dates. When they did have their cases heard, litigants often faced tremendous pressure to pay bribes for favorable case dispositions or even to have their case processed by judicial officials (over 43% of Kenyans had reported having paid bribes for judiciary services according to Transparency International’s 2010 Global Corruption Barometer).⁴⁶ Overall, the Kenyan justice system consisted of inefficient, haphazard procedures and widespread political bias, corruption, and incompetence of judicial system actors like magistrates and prosecutors, who were often police officials with no formal legal training.

The solutions (OGP commitment and otherwise):

The initial impetus for change came in the form of the new 2010 Kenyan constitution, which formally established the obligation for courts to “deliver justice to all Kenyans regardless of economic or social status and without delay or undue regard for technicalities.”⁴⁷ The new constitution addressed several accountability/independence balances necessary for rendering the Judicial Service Commission and the judiciary’s budget independent from the executive branch’s control. The constitution also created the Supreme Court as the highest court of appeals and empowered it to create and oversee judicial reforms. With the constitutional, legal, and institutional frameworks in place, all backed by popular consensus, a grueling public vetting process began to select the chief justice, after which, the president appointed, and parliament approved, Willy Mutunga as the new chief justice of the Supreme Court.

Mutunga set about pragmatically implementing the many existing recommendations from internal reports that had already garnered considerable consensus as good policy within the justice system. He framed his reforms in terms of four pillars. The first pillar dealt with access to justice. It included public and stakeholder engagement to help root out problems as well as the simplification of court procedures and establishment of customer care desks to lower entry barriers to the legal system. The second pillar dealt with changing the institutional culture of the judiciary by clarifying responsibilities and improving training. The third pillar sought to enlarge the court system’s capacity by increasing its resources and budget. The fourth and final pillar sought to increase the usage of information and communication technology.

Against this backdrop, the Kenyan Information and Communications Technology (ICT) Authority submitted an OGP national action plan in February 2012. The NAP only included those projects already in progress and was meant to serve as an “outside push” “to sustain open data and to expand [Kenya’s] work on transparency.”⁴⁸ The reforms in the OGP NAP included: (1) hearing cases on a “first filed, first heard” basis through a random case allocation system to prevent corruption and inefficiency; (2) putting case management systems online; (3) hiring legal researchers to assist judges and some magistrates; (4) no longer hiring prosecutors from the police department; and (5) creating public vetting mechanisms, such as broadcasting on television interview sessions with potential judiciary candidates and discovering potential conflicts of interest.⁴⁹

The successes and setbacks (status ex post):

With such widespread and entrenched problems, from which many corrupt individuals and entities benefited, Mutunga’s efforts met with considerable resistance and setbacks within the justice system, especially initially. Kenya’s 2012 Open Justice reforms were no exception. While progress on public vetting was substantial by the final 2012 IRM report, no evidence existed to corroborate progress on the other reforms. Ultimately, having arisen from solely existing internal reforms with little external civil society collaboration, the OGP commitment did not have the broad support necessary to truly succeed. That said, its impact in furthering the discussion on Open Justice received recognition from Kenyan judiciary reformers.⁵⁰

Later reforms created the Performance Management Directorate, which developed a case-tracking system that enabled the monitoring of delays and workloads on a nationwide scale. The

creation of the Office of the Judiciary Ombudsperson, along with stronger Court User's Committees, added new channels for citizens to file complaints, offer suggestions, and receive responses. While these reforms may not initially seem that ambitious, the transformation comes from the fundamental changes in the justice system's behavior and interactions toward Kenyan citizens. Through a new constitutional mandate, additional resources, and strengthening internal will, judicial reformers have begun in earnest the process of making the justice system transparent, accountable, and consistent for all Kenyans.

VI. Commitments to watch

Jordan commits to increase access to justice for persons with disabilities

Limited access to justice systems for those with physical or mental disabilities remains an issue across many countries, yet almost no Open Justice commitments deal specifically with this highly relevant issue. Seeking to create a much-needed, potentially transformative change in the lives of a marginalized sector of society, the Jordanian Ministry of Justice added Commitment 2 to their 2017 action plan. In it, they pledged to provide persons with disabilities information necessary to manage the litigation process, "applicable procedures, the necessary signs and information on how to use court facilities in a comprehensible way."⁵¹ Mechanisms to reach this diverse group, representing almost 11% of the Jordanian population, include providing information in braille or in simplified formats. It also seeks to make information accessible online though it does not specify whether the information will be accessible across agency websites or consolidated in one portal.

Buenos Aires adds its own effort to Argentina's Open Justice reform movement

In addition to two national Open Justice commitments, Argentina has a strong subnational justice-related commitment for its capital, Buenos Aires. In it, the High Court of Justice seeks to create an open data website with sentencing information, electoral data, and other publications, all to be published in open formats and coded according to international best-practice standards.

This commitment, made in conjunction with civil society, addresses a lack of trust in the justice system by the residents of Buenos Aires. It sets highly specific, easily verifiable milestones of (1) creating a website within three months of implementing the commitment, and then (2) releasing at least three datasets per trimester. The data released will include court rulings and electoral data.

¹⁸ United Nations Development Programme. 2004. "Access to Justice Practice Guide." New York, UNDP.

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Expert Organizations

- [Asociación Civil por la Igualdad y la Justicia](#)
- [Dejusticia](#)
- [Open Society Justice Initiative](#)
- [Namati](#)
- [Global Legal Empowerment Network](#)
- [The United Nations Development Programme, Access to Justice and Rule of Law](#)
- [HiiL Innovating Justice](#)

8. Annex: Open justice commitments

Compiled and analyzed by Sandra Elena

All 100 justice-related commitments found in National Action Plans enacted between 2011 and 2017 are listed in this annex. They are ordered alphabetically by country (from Afghanistan to Uruguay). The **No.** column assigns numbers to each commitment solely for use of this list. From left to right, the following information can be found: **Year** (year of enactment of the NAP that delivers the commitment); **NAP** (cycle that NAP represents for that country); **Commitment title** (title given to the commitment in the NAP; English version of the title is used, unless unavailable); **OGP values** (relevance of the commitment in term of OGP's core values, i.e. Transparency, Accountability, Participation, Innovation and Technology); and **Focal Areas** (relevance of the commitment in terms of the latest identified trends for justice-related commitments, i.e. Access to Justice, Open Data and Violence Against Women).

JUSTICE-RELATED COMMITMENTS					OGP VALUES				FOCAL AREAS		
Country	No.	Year	NAP	Commitment title	TRANSPAR.	ACCOUNT.	PARTIC.	INNOV. & TEC	Access to Jus	Open Data	Viol. against Wo
Afghanistan	1	2017	1	Establishing Special Courts to address Violence against Women (VaW) Crimes in 12 Provinces of the Country	X	X	X		X		X
Albania	2	2012	1	13 Online inspections of courts and judicial hearings	X	X		X			
	3	2012	1	14 Digitalization of the file transfer process	X	X		X			
	4	2012	1	17 Amendment of the law on the right to information for official documents	X		X				
	5	2012	1	21 Online citizens claims in the judiciary system		X		X			
	6	2012	1	24 Audio and video recording of judicial hearings	X	X		X			
	7	2012	1	27 Portal www.gjykata.gov.al	X	X		X		X	
Argentina	8	2017	3	Openness to information about judge selection processes	X		X			X	
	9	2017	3	Openness of public information on disciplinary proceedings for judges	X		X			X	
	10	2017	3	Second Stage of datos.jus.gov.ar Portal	X	X	X	X		X	
	11	2017	3	Openness of information of the Judiciary	X		X	X		X	
	12	2015	2	Justice2020	X		X	X			
	13	2013	1	2 7 Bill to reform the Judiciary	X						

JUSTICE-RELATED COMMITMENTS					OGP VALUES				FOCAL AREAS		
Country	No.	Year	NAP	Commitment title	TRANSPAR.	ACCOUNT.	PARTIC.	INNOV. & TEC	Access to Jus	Open Data	Viol. against Wo
Brazil	14	2016	3	Implement a unified and open format computerized prison inspection system, ensuring civil society participation in its development and management.	X		X	X		X	
	15	2016	3	Deploy the Electronic Judicial Proceedings at the Electoral Court.				X			
	16	2013	2	3 9 Open Data in the Ministry of Justice	X			X		X	
	17	2013	2	2 12 Dissemination of the public open data culture to the local governments	X			X		X	
Bulgaria	18	2016	3	6 The Bulgarian government will continue to publish public information in open format and take steps to improve the quality of published datasets and promote public engagement in data usage	X		X	X		X	
	19	2015	2	14. Introducing the Concept and Practice of Problem Solving Courts in Bulgaria	X		X		X		
Burkina Faso	20	2017	1	Respect time limit required for issuing legal acts, in accordance with order No. 2014-022/MJ/CAB of June 25, 2014	X	X					
	21	2017	1	Improve the access of vulnerable persons to "Fonds d'assistance judiciaire" [legal aid fund]	X				X		
	22	2017	1	Operationalizing specialized judicial areas in the punishment of economic and financial crimes	X	X					
	23	2017	1	Build the capacities of disciplinary committees	X	X					
Chile	24	2014	2	12 Strengthen Environmental Democracy	X		X				
	25	2012	1	4 1 Citizen Participation on the Environment	X	X	X		X		
Colombia	26	2017	3	Participación Ciudadana en la consolidación del componente de Justicia Comunitaria en el Sistema de Estadísticas de Justicia (SEJ)			X	X			
	27	2017	3	Construcción de confianza y consolidación de transparencia y rendición de cuentas en el Consejo de Estado	X	X		X			
	28	2015	2	Better access to services and procedures in justice, health, education, environment and social inclusion	X		X	X	X		
	29	2015	2	Accountability of the judicial branch and more information on justice services (LEGALAPP)	X	X		X		X	

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Country	No.	Year	NAP	Commitment title	TRANSPAR.	ACCOUNT.	PARTIC.	INNOV. & TEC	Access to Jus	Open Data	Viol. against Wo
	30	2015	2	Transparency and accountability in the Council of State for a better justice service (CONSEJO DE ESTADO)	X	X				X	
	31	2012	1	2 7 Mayor transparencia de información del sistema de justicia	X			X		X	
	32	2012	1	2 9 Participación en la formulación de políticas		X	X	X			
Costa Rica	33	2017	3	PLATAFORMA DIGITAL DE ACCESO A INFORMACIÓN SOBRE PLANES, PROGRAMAS Y MECANISMOS DE PROTECCIÓN DE DERECHOS DE LAS MUJERES	X		X	X	X		X
	34	2017	3	OBSERVATORIO DEL MARCO JURÍDICO VIGENTE EN MATERIA DE GOBIERNO ABIERTO	X	X	X				
	35	2017	3	POLÍTICA DE JUSTICIA ABIERTA	X	X	X		X		
	36	2015	2	Dissemination of Citizen Participation Policy of the Judicial Power			X				
	37	2015	2	Draft bill for the access to the public information	X	X					
	38	2013	1	3 2 3 Presentar a la Asamblea Legislativa un proyecto de Ley de Acceso a la Información Pública	X		X				
El Salvador	39	2014	3	Strengthening of public probity	X						
	40	2013	2	2 10 Acompañar el esfuerzo de reforma a la Ley del enriquecimiento ilícito que impulsa la oficina de Probidad de la Corte Suprema de Justicia para proponer que las declaraciones patrimoniales de los funcionarios sean públicas	X						
France	41	2015	1	Further expand the Opening of Legal Resources the Collaboration with Civil Society on Opening the Law	X		X	X		X	
	42	2015	1	Strengthen Mediation and Citizens Ability to Act in Matters Relating to Justice			X		X		
Georgia	43	2016	3	10 Establishing unified regulations to publish court decisions	X	X	X			X	
	44	2016	3	12 Improvement of the database of the convicted and transfer of the penitentiary department entirely onto the electronic workflow management	X	X		X		X	
	45	2016	3	13 Publication of phone tapping data according to the nature of the crime and geographic area	X	X	X			X	
	46	2016	3	16 Adoption of the Environmental Assessment Code	X	X			X		

JUSTICE-RELATED COMMITMENTS					OGP VALUES				FOCAL AREAS		
Country	No.	Year	NAP	Commitment title	TRANSPAR.	ACCOUNT.	PARTIC.	INNOV. & TEC	Access to Jus	Open Data	Viol. against Wo
	47	2014	2	Commitment 27 Interactive Statistics and Crime Mapping				X			
	48	2014	2	Commitment 17 Proactive Publication of Surveillance Statistics	X						
	49	2012	1	1 1 Public Service Hall Hub of Public Services				X			
	50	2012	1	3 3 Citizens and Justice			X				
Ghana	51	2013	1	4 Human Rights and Anti-Corruption		X	X				
Greece	52	2016	3	Accountability and Settlement of Disputes between the citizens and the Public Sector		X					
	53	2016	3	Enhanced statistical data of justice open to the public	X	X		X		X	
	54	2016	3	Provision of open data for Justice	X	X		X		X	
Guatemala	55	2014	2	Increase Public Integrity	X	X					
Hungary	56	2013	1	5 Dissemination of information on anticorruption and integrity	X	X				X	
Indonesia	57	2011	1	4 Police	X	X		X			
Ireland	58	2016	2	Improve Access to Justice	X	X			X		
	59	2016	2	Judicial Council legislation will be published and enacted		X					
Italy	60	2016	3	1 Shared national agenda for the enhancement of public data	X	X		X		X	
	61	2016	3	10 Transparency of data on penitentiaries	X		X	X		X	
Jordan	62	2016	3	2 Strengthen the facilities available for persons with disabilities to access the justice system	X			X			
	63	2016	3	4 Launch and enhance the complaints registration system and follow up mechanisms to deal with complaints in a serious manner and to refer them to the judiciary (a) Complaints and grievances related to violations committed against citizen	X	X					
	64	2016	3	4 Launch and enhance the complaints registration system and follow up mechanisms to deal with complaints in a serious manner and to refer them to the judiciary (b) Complaints related to governmental services and the surrounding environment of its provision	X	X		X			

JUSTICE-RELATED COMMITMENTS					OGP VALUES				FOCAL AREAS		
Country	No.	Year	NAP	Commitment title	TRANSPAR.	ACCOUNT.	PARTIC.	INNOV. & TEC	Access to Jus	Open Data	Viol. against Wo
	65	2012	1	2.3.3 Establishment of a Constitutional Court							
	66	2012	1	2 3 4 Establishment of an Administrative Court							
Kenya	67	2012	1	C Improving Transparency in the Judiciary 2 a Public Vetting of Judges and Case Allocation System	X			X			
Liberia	68	2017	3	Citizen Monitoring and Support for the Justice System		X			X		
	69	2017	3	Implement A Feedback Mechanism to Build Accountability of the LNP	X	X					
	70	2015	2	Enhance citizen monitoring of the justice system		X					
	71	2015	2	Implementation of the new jury law			X				
Malawi	72	2016	1	National Integrity System and Fight Against Corruption	X	X					
Mexico	73	2016	3	Diseñar e iniciar la ejecución de una ruta de acción para la política pública nacional en materia de desaparición forzada y por particulares con la participación de la sociedad civil y víctimas	X	X			X		
	74	2011	1	29 Criminal Investigation Site	X	X	X	X			
Moldova	75	2012	1	4 1 Amend Law No 1264 XV to make income and property declarations of senior officials judges prosecutors and civil servants public	X						
Mongolia	76	2014	1	3 3 3 2 Create a united information database on law enforcement activities crimes and violation records and ensure that the database is accessible to relevant bodies	X						
Nigeria	77	2017	1	Improved compliance of public institutions with the Freedom of Information Act (FOIA) in respect to the annual reporting obligations by public institutions and level of responses to requests	X		X				
	78	2017	1	Improved compliance of public institutions with the Freedom of Information Act (FOIA) with respect to the Proactive disclosure provisions, stipulating mandatory publication requirements	X		X				
Panama	79	2017	3	Observatorio Ciudadano Anticorrupción	X		X				
	80	2015	2	Develop proposal to establish participatory mechanisms of election: Judges, prosecutors, magistrates and Administrative prosecutors	X		X				

JUSTICE-RELATED COMMITMENTS					OGP VALUES				FOCAL AREAS		
Country	No.	Year	NAP	Commitment title	TRANSPAR.	ACCOUNT.	PARTIC.	INNOV. & TEC	Access to Jus	Open Data	Viol. against Wo
Paraguay	81	2012	1	9 Servicio de información legal (e-legal)	X			X			
Peru	82	2015	2	Institucionalizar y fomentar la participación de los ciudadanos y ciudadanas y otras entidades públicas en los acuerdos plenarios de la Corte Suprema de la República			X				
	83	2012	1	2 g Acuerdos plenarios supremos			X				
	84	2012	1	3 e Subsistema especializado en delitos de corrupción		X					
Romania	85	2016	3	12. Improve transparency in the management of seized assets	X	X					
	86	2012	1	Commitment B 1 B 1 a The Public Procurement Electronic System SEAP B 1 b The Electronic Allocation System for Transports SAET ... B 1 e Developing electronic tools to manage subpoenas and facilitate access to information regarding legal proceedings...B 1 g Developing electronic tools to manage the procedures related to the creation of non-profit legal persons B 1 h The Integrated System for Electronic Access to Justice SIAEJ	X			X	X		
Sierra Leone	87	2016	2	9 Access to Justice	X				X		
Slovakia	88	2015	2	Open Justice	X			X			
South Africa	89	2016	3	Institutionalisation of Community Advice Offices as part of the wider Justice network		X	X	X	X		
South Korea	90	2016	3	Disclosing high-demand and high-value national data first	X	X		X			
Spain	91	2017	3	Support for open government initiatives abroad	X	X	X				
	92	2017	3	Push Open Data as an instrument for Open Justice in Spain	X	X	X			X	
	93	2017	3	Information on gender-based violence	X		X				X
	94	2014	2	Commitment No 7 Portal of the Administration of Justice	X			X		X	
	95	2012	1	5 e justicia				X			
Ukraine	96	2014	2	11. Corruption risk assessment methodology		X	X				
USA	97	2015	3	Build Safer and Stronger Communities with Police Open Data	X	X				X	
	98	2015	3	Expand Access to Justice to Promote Federal Programs			X		X		
Uruguay	99	2016	3	3 1 Transparencia de información estadística del Poder Judicial	X	X					
	100	2016	3	3 2 Proceso para canalizar demanda de información del Poder Judicial	X		X				