

Justice Policy Series, Part II

Open Justice

Introduction – Full paper forthcoming

The Open Government Partnership, October 2020



Acknowledgements

Sanjay Pradhan, Chief Executive Officer

Author:

Jessica Hickle, Research Associate

Contributors:

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

Additional Thanks:

Reviewers:

Rachel Aicher
David Anderson
Aparna Basnyat
Harry Cheng
Lara Deramaix
Gipsy Escobar
Helen Fair
Cherise Fanno Burdeen
Anna Giudice
Danielle Hirsch
Anika Holterhof

Liz Komar
Venkatesh Nayak
Rachel Neild
Rebecca Neusteter
Sven Pfeiffer
Olivia Rope
Rebecca Shaeffer
Roberta Solis

Experts Consulted:

Pablo Cruz
Michelle Deitsch

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

About OGP and Justice

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

This document is a summary of, and introduction to *Open Justice*, the second of three parts in a series on justice released as a part of the *Open Government Partnership Global Report*. In 2019, OGP released the series' first installment, *Access to Justice*, which focused on how open government can help people identify and address their legal needs. In the coming months, the



OGP will issue the third installment on justice as a means to enforce open government.¹ The series aims to show how open government can make accountable, credible improvements to justice systems. The aim of this report is to inspire countries to adopt policies and activities suggested here and adapt them for their own national and local context. Working closely with international and domestic partners, the OGP Support Unit will use this research to help OGP members continue to develop and implement strong justice commitments.

The *Access to Justice* paper can be found [here](#). The *Global Report* can be found [here](#).

More information about the Open Government Partnership and how it works can be found [here](#).

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

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



Introduction

Key Takeaways

- **Open justice is a first step to fairer justice systems.** Open justice reforms, including those that make justice system actors more transparent and accountable to citizens, can serve as a first step to addressing issues of fairness and independence.
- **A full set of justice reforms will need to move beyond courts.** Opening the justice system requires proactive work on the part of many actors, including courts, police, prosecutors, legal aid providers, and pretrial and corrections services.
- **Existing OGP commitments tend to focus on transparency.** As in other areas, most OGP open justice commitments focus on making justice institutions more transparent. OGP members can build on these initiatives with commitments that also guarantee accountability mechanisms that strengthen the justice system's independence, impartiality, and integrity.

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

What is justice and the justice system?

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

Though each of these actors is equally important in the communities they serve, it would be impossible to cover them all in one paper. Instead, this paper focuses on challenges and possible

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



solutions for six actors that tend to be universal – and universally powerful – across legal systems. These actors are:

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

What is open justice?

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

Other dimensions of justice

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

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

Why open justice?

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

Normative and Legal

- **The principles of open justice are woven through international law and standards.** The right to due process is enshrined in Article 14 of the International Covenant on Civil and Political Rights (ICCPR)³ and Articles 9–11 of the Universal Declaration of Human Rights (UDHR).⁴
- **An open justice system helps ensure that other civil and political rights are respected.** When justice actors and processes are opaque and closed off from public scrutiny, the public are less able to verify that they effectively uphold citizens' rights or identify

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

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



violations of those rights. An open, independent, and impartial justice system serves as a foundation for better access to justice by fulfilling all people's civil liberties and allowing individuals to more effectively protect their rights.

Instrumental

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

What do open justice reforms look like?

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

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

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

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

- Processes for public complaints about justice system actors
- Citizen and/or publicly observable independent oversight boards
- Participatory budgeting processes

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

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



- Legal aid providers and other members of civil society that make information about the justice system and justice processes more accessible

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

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

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

Partners working on open justice

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

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

Open Justice in OGP

- **Justice is one of the most common areas of focus in OGP action plans.** Justice has grown as an area of focus in OGP action plans over the last several cycles thanks to growing global momentum for action and innovation in the justice sector.⁷ As of July 2020, OGP members have collectively made nearly 300 commitments that focus on making justice more accessible, open, and effective.
- **Among justice commitments, the largest subset (137 commitments) are related to topics in open justice.** To date, most of these commitments have focused on transforming

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



the courts (see Figure I) and fewer have aimed to make improvements to other important justice system actors.

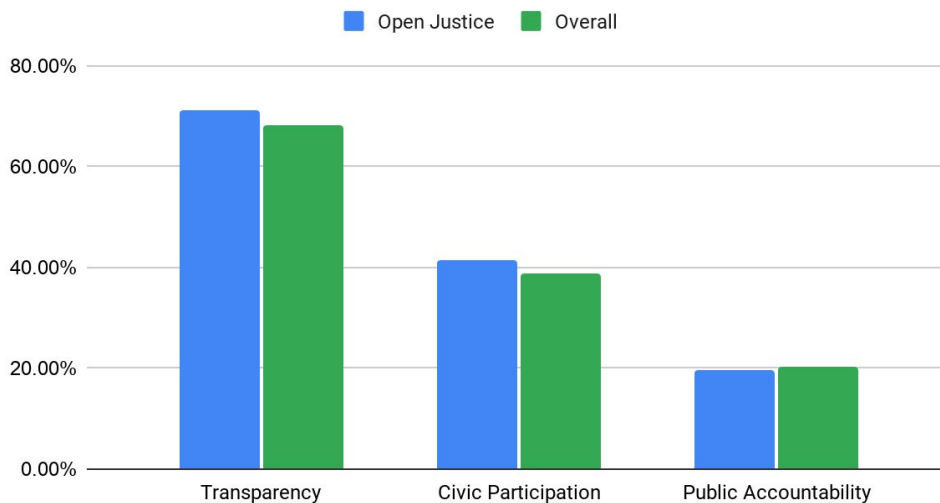
- **Open justice commitments are disproportionately concentrated in the Americas.** Fifty percent of all open justice commitments are from members in the Americas region while the Americas only represent a third of commitments overall.
- **Open justice commitments tend to be more effective than other commitments.** In terms of results, according to data from IRM reports, 25% of open justice commitments have led to significant improvements in the communities they affect. This is higher than other justice commitments overall (21%) and OGP commitments overall (19%).
- **The majority of open justice commitments focus on the transparency of justice institutions by making information and data more accessible.** This pattern mirrors trends in OGP commitments overall (see Figure 2). These reforms are too rarely coupled with measures that allow civil society and the public to monitor these actors and hold them accountable when they take actions that could harm the citizens they serve.

Figure I. Open Justice Commitments by Actor

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

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

Commitment Relevance to OGP Values



Objectives and Contents

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

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

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

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

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

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

The body of each chapter includes the following sections:

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

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

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

