

Prosecutors

Overview

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

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

Recommendations and Sample Reforms

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

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

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LESSONS FROM REFORMERS

Philadelphia, Pennsylvania district attorney launches public data dashboard

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

LESSONS FROM REFORMERS

Slovak Republic improves transparency and accountability of prosecutors' affairs

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

Other OGP Commitments

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

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

GUIDANCE AND STANDARDS

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

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

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

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

Endnotes

- ¹ United Nations Office of Drugs and Crime and International Association of Prosecutors, *The Status and Role of Prosecutors* (New York: United Nations, 2014), https://www.unodc.org/documents/justice-and-prison-reform/14-07304_ebook.pdf.
- ² Vera Institute of Justice, “Unlocking the Black Box of Prosecution,” accessed September 1, 2020, <https://www.vera.org/unlocking-the-black-box-of-prosecution>.
- ³ Vera Institute of Justice, “Promoting Racial Equity in Prosecution,” accessed September 1, 2020, <https://www.vera.org/securing-equal-justice/promoting-racial-equity-in-prosecution>.
- ⁴ Veronica Michel, *Prosecutorial Accountability and Victims’ Rights in Latin America* (New York: Cambridge University Press, 2018).
- ⁵ “Publish List of Names of Prosecutors (SK0055),” (OGP, 2015) <https://www.opengovpartnership.org/members/slovak-republic/commitments/SK0055/>.
- ⁶ “Participatory Analysis of Prosecutor’s Affairs (SK0117),” (OGP, 2017), <https://www.opengovpartnership.org/members/slovak-republic/commitments/SK0117/>.
- ⁷ United Nations Office on Drugs and Crime and the International Association of Prosecutors, *The Status and Role of Prosecutors* (New York: United Nations, 2014), https://www.unodc.org/documents/justice-and-prison-reform/14-07304_ebook.pdf.
- ⁸ United Nations Office on Drugs and Crime, *Implementation Guide and Evaluative Framework for Article 11 of the United Nations Convention against Corruption* (New York: United Nations, 2015), https://www.unodc.org/ji/en/resdb/data/2015/_220_/the_united_nations_convention_against_corruption_implementation_guide_and_evaluative_framework_for_article_11.html.

Resources and Partners

Resources

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

Organizations

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

This module is part of the Justice Policy Series Part II, Open Justice paper which can be found [here](#).

