Open Justice: An Innovation-Driven Agenda for Inclusive Societies

Coordinator: Sandra Elena

Ministerio de Justicia y Derechos Humanos
Presidencia de la Nación

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ARGENTINE MINISTER OF JUSTICE AND HUMAN RIGHTS

GERMÁN C. GARAVANO

SECRETARY OF JUSTICE

SANTIAGO OTAMENDI

UNDER-SECRETARY OF JUSTICE AND CRIMINAL POLICY

JUAN JOSÉ BENITEZ

COORDINATOR OPEN JUSTICE PROGRAM

SANDRA ELENA

COORDINATOR

SANDRA ELENA

COMPILER

JULIO GABRIEL MERCADO

INDEX

page

page

page

page

page

page

SECTION FOUR:
OPEN JUSTICE FROM A CIVIL SOCIETY PERSPECTIVE

page

SECTION FIVE:
AN ACCESS TO JUSTICE PERSPECTIVE

SECTION SIX
JUSTICE, GENDER AND DATA

page

PROLOGUE

For over three years, the Ministry of Justice and Human Rights, through its Justice 2020 Program, has been promoting the comprehensive modernization of the justice system, with a view to fostering the adoption of new technologies by all institutions involved and achieving greater levels of transparency, access to information, citizen participation and effective accountability mechanisms.

For this purpose, we are determined to commit ourselves to a series of specific actions to face the challenges imposed by reality, with the idea in mind that the service provided by the judiciary improves when citizens are given the possibility of playing an active role in the design, evaluation and oversight of the outcomes.

By fully undertaking these working guidelines, the Ministry was able to adopt an Open Justice paradigm, which simply entails translating the Open Government philosophy into the institutions of the justice system. The Open Justice paradigm consists of implementing a public governance standard which deems justice to be a people-centered public service which must provide quality, prompt and efficient answers.

Justice 2020 is a clear example of public policy design and implementation, with the purpose of achieving a modern, transparent and independent justice that will come closer to the community and foster participation and transparency. It is a participatory platform for in-person, on-line dialogue, in which different teams promote and ensure active transparency and citizen and institutional participation in the drafting, implementation and follow-up of public policies, projects and legislative initiatives for judicial innovation and modernization.

Justice 2020 is the best example of State and civil society co-creation in the Latin American justice sector. At present, 59,000 people are participating in the platform's teams that are discussing over 53 initiatives to reform the justice sector.

As a part of the initiative, the Open Justice Program focuses on fulfilling the principles of Open State, transparency, access to information and accountability. A fundamental pillar is the Justice-related Open Data Portal (datos.jus.gob.ar). Open Justice ensures free access in open formats to a broad spectrum of relevant data and information for the sector.

Open Justice works with over 50 institutions within the national and provincial judiciaries so as to make available to society, data and information concerning the judiciaries and public ministries from across Argentina, from a federal and integrated perspective.

Another initiative is the Ministry's access to justice policy which works as a tool for the legal empowerment of the inhabitants and as a means to settle disputes, supplemented by the Open Justice policies which improve services to citizens.

A community with accessible justice can question the system's institutions, co-create and participate in the processes, take ownership of and use active transparency tools made available to them. In this regard, the Ministry currently has 89 centers for access to justice across the country, so as to ensure the legal empowerment of the population from a federal, integrated perspective.

As a Ministry, we actively participate in the main international forums to discuss the scope and contributions of this new Open Justice perspective to the creation of fairer, more inclusive societies.

We are determined to support fulfillment of the United Nations 2030 Agenda and the Sustainable Development Goals in the field of justice, for which Open Justice policies can mean a significant contribution in this regard. We are a part of the multilateral initiatives such as Pathfinders for Peaceful, Just and Inclusive Societies, from where we co-chair a Task Force on Justice, urging the States to play a more active role in materializing an agenda on effective policies for change.

We, moreover, participate in the Open Government Partnership (one of the main organizations in the world promoting open government reforms) to make the Open Justice paradigm gain ground, with regard to reforms promoted as well as with regard to the international discussion agenda.

These are only a few examples of the work carried out so far and that this publication seeks to reflect. Likewise, the Open Justice Program wishes to set the grounds for the improvement of judicial practices in the future, by applying an Open Justice paradigm.

There is an invisible bond in the quest for more open governments and the legal system: if we want an Open Government, we also need an Open Justice system. People need an efficient justice system to implement their rights. It is essential for the Judiciary to be open to the public, providing information, ensuring transparency and access to all people, especially the vulnerable groups.

The future of justice is linked to the design and implementation of evidence-based public policies to improve the achieved outcome, increasing levels of trust and improving the relationship between justice and society. We need to build a different bond, in which justice is again placed in the central role it must play within a democratic community.

I wish to thank the authors, Argentines and foreigners, who accepted the invitation to collaborate in this compilation which I hope will be useful to nurture the debate on the future of Open Justice policies in Latin America and the world.

Germán C. Garavano
Argentine Minister of Justice and Human Rights

FOREWORD

For too many people around the world government is seen as a distant, unresponsive and sometimes corrupt institution which is not on the side of ordinary citizens. In one of the biggest public polling exercises ever conducted, of nearly 10 million people as part of the My World survey to help inform the new Sustainable Development Goals, having an honest and responsive government was ranked as the fourth highest priority, after education, jobs and healthcare. To achieve this goal, having an open judiciary, with equal access to justice for all, and legal empowerment to help people to understand and enforce their rights and thereby participate meaningfully in society, is essential.

For open government advocates, this is a particularly important moment to embrace the open justice movement. In 2017, democracy faced its most serious crisis in decades, according to independent watchdog Freedom House, as fundamental human rights, the rule of law and civil society came under attack around the world. Hard-won gains were eroded in many countries, and the political champions for openness on the global stage struggled to face down attacks on independent accountability institutions, rights organizations, and citizen advocates. Responding to this political moment will be challenging, but it is essential we try to step up to the task, and that must be done with allies and coalitions from across society and in all branches of government.

Within the Open Government Partnership (OGP) we are seeking to scale up our open justice work as a new thematic priority, and to encourage our member governments to commit to specific reforms within their context that remove barriers to a fair and open justice system. Already we have examples, from South Africa's training of community-based paralegals, to Colombia's promotion of accountability within the judicial branch and facilitation of public access to information on justice services, that are leading the way. The challenge is now to build our evidence base and strengthen our argument as to why and how transparency, accountability and participation can advance access to justice.

First, we should make the argument that to achieve open government, people must be empowered to respond to injustices that affect their lives. People must be able to access information about the law and obtain redress and remedy. The government should also be accountable to the people for institutional failures, including when justice is denied on a mass scale due to entrenched corruption, discrimination or impunity, and when there is a failure to protect people's life and property.

Second, an open and transparent judicial system is needed to effectively enforce laws that enhance open government. In many OGP countries progress has been made on legislation to enforce freedom of information, anti-corruption measures, transparency over the ultimate owners of companies and other areas that tackle vested political interest. It is essential these laws are enforced, and that people feel empowered to use the courts and other justice institutions for redress and remedy. Finally, the case needs to be made that access to justice improves public service delivery, including health, education and water resources, and gives people a say in how their government is run. Given poor public services disproportionately affect people living in poverty, legal empowerment is particularly important to help people access what they are entitled to from their government. More widely, people should have the right to participate freely in society, including to influence decisions, associate and speak out, underpinned by basic rights to a legal identity, property, and safe and dignified labour.

Of course, it will not be an easy task to build momentum for further progress on open justice issues. For example, the judiciary itself has the potential to be a great force for progressive change, but the reality is in many countries that is not the case. This means reformers in civil society and executive branch must think of better strategies to engage leaders in the judicial system, and explain to them the value in opening up, despite the risks it may entail. We also need governments to invest more in access to justice. Every signatory to the SDGs should have a legal needs census (civil and criminal), the appropriate legal framework for legal services, and take commitments to ensure fast, easy, cheap, and predictable dispute resolution. In addition, Ministries of Justice should be invited into spaces such as the OGP to learn and share how they are undertaking reforms in their contexts. Civil society also has a critical role to play, in highlighting the problems that exist and then working with government to craft reforms that can expand access to justice.

To take on this difficult task we need the readers of this book to be action-oriented, and to work within their countries to push for access to justice reforms. OGP provides a ready-made 80 country platform for these actions to be taken, and a forum for government and civil society to come together and discuss the toughest issues facing society, including why people feel excluded from the justice system and why some judicial systems remain so closed. It also provides accountability for action, via our Independent Reporting Mechanism, so that when governments commit to enhancing open justice there is

a way to track that progress. OGP's global and regional summits can shine a light on those that have innovations and successes (or failures) to share, and can connect peers from across the world to inspire each other. Finally, OGP can be an implementation arm of the SDGs, helping ensure the commitments made on access to justice under Goal 16 do not remain on paper only, but are translated into real country-level reform that makes progress towards the goal.

This book is therefore a timely contribution in providing practical examples and ideas for taking this movement forward, and inspiring us all to believe that a more open and accountable justice system, with access for all, is possible.

Joe Powell
Deputy CEO, Open Government Partnership[1]

(1) The Open Government Partnership (OGP) is an international multi-stakeholder initiative which aims to secure concrete commitments from government to improve transparency, accountability, and public participation in policy-making. OGP brings together government and civil society at the same table to determine concrete reforms that are implemented through action plans that follow a two-year implementation cycle and are independently monitored. Today there are 76 national governments, 20 local governments, and thousands of civil society organisations that are part of this network.

INTRODUCTION

It is with great pride and pleasure that we present the second enlarged edition of *Open Justice: An Innovation-Driven Agenda for Inclusive Socieocieties*, a publication in which we have compiled 28 articles from a wide spectrum of authors, addressing the need to promote a substantive Open Justice agenda in support of a better operation of the sector's institutions and a better justice service delivery.

This publication is the work of the Ministry of Justice and Human Rights, which three years ago undertook the commitment to make the Open Justice agenda come true in Argentina, within the framework of a broader process of State modernization and openness. We believe that by taking ownership of the Open Government principles, the Justice sector will update, renew and transform itself effectively into what it should be to support the needs of a more complex society, with challenges that the Judiciary must be ready to face.

I wish to thank all authors who participated in this book, as well as the Open Justice Program team, particularly Gabriel Mercado for helping with editing and compiling the articles. My gratitude also goes to the Argentine Legal Information System for their support in editing and publishing this compilation, and to the Secretariat of Justice and the Under-Secretariat of Justice and Criminal Policies for their continuous assistance throughout the process.

This second, English version of *Open Justice* was prepared and published with kind financial support from the United Nations Development Program (UNDP) in Argentina, within the framework of support to the implementation of Sustainable Development Goal number 16 ("Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels"). Our most special thanks go to Nora Luzi and Natalia Pérez Riveros, Coordinator and Program Associate from the Democratic Governance Area, Argentina Country Office.

Sections

The articles included in *Open Justice: An Innovation-Driven Agenda for Inclusive Socieocieties*, are divided into six sections.

In the *first section,* we have included theoretical research about the notion of Open Justice, addressing essential matters that cut across its implementation, such as the application of a justice-related open data philosophy, the use of international platforms as, for instance, the Open Government Partnership, to push forward the agenda, the particularities of public innovation in the justice sector, and the challenges posed by the need to ensure personal data privacy standards.

The *second section* of the book brings together experiences implemented in Argentina that we believe can be framed in the Open Justice paradigm. We have included herein initiatives of the Ministry of Justice and Human Rights (Open Justice Program; Justice 2020 Program; the use of plain language in justice; promoting orality in civil justice; and the case of the National Statistics System on Sentence Enforcement), as well as of other Judicial institutions (Public Prosecutor's Office in Buenos Aires City and the use of artificial intelligence tools; Criminal and Contraventions Court No. 10, Buenos Aires City, and how it uses ICTs to come closer to society).

In the *third section* of the book we include examples of innovative Open Justice experiences in other countries, featuring examples from Africa (South Africa), Asia (Sri Lanka and the Philippines), Europe (the Netherlands and the Balkan region) and Latin America (Costa Rica, Colombia and Mexico).

The *fourth section* of the book addresses the role that civil society plays in building the Open Justice agenda in Argentina. In this regard, we have included inputs on the current national and sub-national outlooks (the latter, regarding Santa Fe province).

The *fifth section* of the book focuses on exploring access to justice, a citizen-empowering factor that we deem is necessary to fully harness Open Justice tools. In this volume, we have included two dimensions: on the one hand, momentum provided by the Ministry of Justice and Human Rights (mostly through its Access to Justice Centers and Legal Aid Hospital); and, on the other hand, worldwide momentum through the Open Government Partnership.

Finally, the *sixth section* of this book explores the possibilities of Open Justice as a tool to have justice institutions adopt a gender perspective, appropriately showing the contribution this approach can make to addressing femicides, by developing common standards measuring the latter and using open data.

Chapters by Sections

Section One: What is Open Justice?

In "A Theoretical Approach to Open Justice" (Chapter 1), together with Julio Gabriel Mercado, we present a theoretical and practical approach to the Open Justice paradigm, and how Open State principles are applied to the justice

sector. Therein we explain the values of this paradigm, while surveying the different international institutions that recognize and promote the adoption of this agenda in the international arena, and more specifically, in Latin America.

In "Open Data Contributions to Justice" (Chapter 2), I examine the contributions of open data use to the justice sector, future prospects and challenges stemming from a philosophy that is expanding in this sector, although it is not that common and is still at an incipient stage despite its huge potential.

In the chapter "Furthering Open Justice in the Open Government Partnership: Updating the Findings" (Chapter 3), together with Julio Gabriel Mercado, we have carried out a global analysis of commitments linked to the justice sector reform within the framework of OGP, in which we weight its role as a tool to promote this agenda, while also outlining a few possible future trends for the development thereof.

In this new edition's Chapter 4 on "Justice and Innovation: the Need for an Open Model", authored together with Julio Gabriel Mercado, we propose a model that could be useful to interpret and develop public innovation initiatives for the justice sector, based on the need to have an open model in which all of the sector's organizations interact to provide a better user-centered service.

In "Ensuring Privacy and Access to Justice-related Information: a Possible Way Ahead" (Chapter 5), Carlos Gregorio explores different facets regarding fulfillment of the judicial openness principle, as well as its linkage with personal data protection, the right to access public information and open data policies for the sector.

Section Two: Open Justice in Argentina

In "Open Data and Justice: The Open Justice Program" (Chapter 6), together with Alejandra González Rodríguez, we present the Open Justice Program of the Ministry of Justice and Human Rights, seeking to explain the political and institutional context that gave rise to the Program, its components and work carried out with the provinces and civil society.

In "Justice 2020 Program: Achieving Open Justice Through Citizen Participation and Transparency" (Chapter 7), Héctor Mario Chayer and Juan Pablo Marcet account for the Justice 2020 Program, an initiative of the Ministry of Justice and Human Rights, with a view to bringing justice closer to society, streamlining the judicial service and making the justice system transparent.

In Chapter 8 on "Justice in Plain Language: The Argentine Legal Information System (SAIJ)", Silvia Iacopetti explores the different initiatives addressed from the Ministry of Justice and Human Rights to apply the principles of plain language to Argentine justice by developing services to bring justice closer to people.

In Chapter 9 on "Oral Civil Procedures as a Channel for Open Justice: Analysis of the Argentine Judicial Reform Project", Héctor Mario Chayer & Juan Pablo Marcet explain the project to generalize oral hearings in civil proceedings promoted, aimed at achieving substantial improvements in providing justice services by reducing the terms of the proceedings, improving the quality of jurisdictional decisions and increasing users´ satisfaction.

In Chapter 10, "Justice 4.0: use of artificial intelligence to bring justice closer to citizens", Juan Corvalán and Gustavo Sa Zeichen refer to the possibilities offered by artificial intelligence tools to develop different layers of "assisted opening", within the framework of a justice that favors innovation based on the use of disruptive technologies, without losing its inclusive nature.

In "Social Networks and Open Justice: the case of Court No.10 in Buenos Aires City" (Chapter 11), Pablo Casas, Yasmin Quiroga and Antonela Mandolesi provide details on the innovations implemented by a Buenos Aires City court in which the use of social networks, data openness and co-creation, among other Open Justice measures, are a part of the daily processes.

In "Open Data on the Penitentiary System: National Statistics System on Sentence Enforcement" (Chapter 12), Hernán Olaeta presents this system (SNEEP) as a public access tool through which the Ministry of Justice and Human Rights offers data and information on persons deprived of their freedom in Argentina.

Section Three: Open Justice Worldwide

In "The Open Government Partnership: A South African civil society organization perspective" (Chapter 13) Boroto Ntakobajira describes first-hand the process for developing and implementing a justice-related commitment to access justice, which was a part of the South African National Action Plan 2016-2018; and also, the challenges to be overcome so as to reinforce OGP as a platform for fulfilling the Sustainable Development Goals in South Africa.

In "Opening the Doors of Justice in Costa Rica" (Chapter 14), Sara Castillo and Ingrid Bermudez Vindas refer to progress made in implementing Open Justice in Costa Rica's Judiciary, with a view to making it more accessible and capable of facing new challenges, while adding value to the service it renders to citizens.

In Chapter 15 on "Open Justice in Colombia", Alice Berggrun and Sebastián Canal account for the different instances for applying Open Justice standards to the Colombian justice system, putting in place active transparency and accountability practices seeking to increase citizens' trust in the system.

In "The Mexican Experience in Implementing Open Government policies to Justice Administration" (Chapter 16), María Silva Rojas addresses the Open Government policies implemented to justice administration in Mexico, highlighting a few of the good practices, as well as the main challenges faced by Open Justice in that country.

In "Women, Legal Empowerment and Access to Justice. Case Study on Sri Lanka's First Open Government Partnership National Action Plan" (Chapter 17), Shyamala Gomez depicts changes underway in Sri Lanka, supported by OGP, and that entail profound amendments to laws and public policies affecting women's empowerment and access to justice.

In "Philippine Case Study: Transparency and Civic Participation in the Selection of Supreme Court Justices", (Chapter 18) Marites Dañguilan Vitug and Marlon Manuel thoroughly describe the implementation and legacy of a new initiative called SCAW (Supreme Court Appointments Watch), a mechanism made up of NGOs that has worked on ensuring a more transparent and participatory judicial appointment process in the Philippines.

In "Open Justice in the Netherlands: an overview" (Chapter 19), Mortaza S. Bargh, Sunil Choenni and Niels Netten describe the Dutch experience with regard to the use of open and semi-open justice system data, outlining a vision into the future of transformations undergone by this practice, with a view to implementing a Smart Justice model in the Netherlands, a groundbreaking country in this field.

In "Open Judicial Data in the Balkans" (Chapter 20), Stevan Gostojić and Marko Marković provide an overarching outlook on the implementation of open judicial data initiatives in this European region, analyzing the cases of Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Greece, Kosovo, Montenegro, North Macedonia, Serbia, and Slovenia, and proposing specific actions for a more effective and efficient opening of this kind of datasets.

Section Four: Open Justice from a Civil Society Perspective

In Chapter 21, on "Contributions to Combat Corruption in Open Justice", Renzo Lavín and Marcelo Giullitti Oliva weight the necessary advocacy of civil society organizations to materialize a judicial reform based on fulfilling the right to access to public information.

In "Sub-national Open Justice: the Santa Fe Province Experience from the standpoint of Civil Society" (Chapter 22), Tristán Álvarez analyzes the status of compliance with the province's commitment within the Open Government Partnership to promote access to judicial information.

Section Five: An Access to Justice Perspective

In Chapter 23 on "Inclusive Justice: Contributions to the Openness of Access to Justice Policies", María Fernanda Rodríguez assesses the importance of having core access to justice policies so as to combine them with Open Justice policies, ensuring fulfillment of rights.

In "First legal aid hospital in Argentina" (Chapter 24), María Fernanda Rodríguez and Karina Carpintero depict this new public policy initiative of the Argentine Ministry of Justice which is targeted to providing greater access to justice, based on a new user-centered approach.

In Chapter 25 on "Priority Commitments of the Open Government Partnership for Access to Justice and the Legal Empowerment", Peter Chapman uses specific examples to examine the role of OGP in furthering an open justice and access to justice reform agenda.

Section Six: Justice, Data and Gender

In Chapter 26 on "Data from a Gender Perspective on the Argentine Justice-related Open Data Portal", together with Juan Manual García, we reflect on the importance of having open data from a gender perspective, just like we do on the Open Data portal datos.jus.gob.ar. Furthermore, we emphasize the importance of this kind of data for designing public policies from a gender perspective.

In "New Standards for Publishing Data on Justice and Gender-based Violence" (Chapter 27), Silvana Fumega, Fabrizio Scrollini and Gabriela Rodríguez refer to the efforts made with a view to achieving a standard to allow effective gathering of and work with femicide-related data.

Finally, in Chapter 28 on "Femicides: Experience of the Buenos Aires Province Public Ministry in their Measurement", Leandro Gaspari outlines the legal approach to femicides in this province, which entails introducing a gender perspective in the production and analysis of criminal information.

Sandra Elena
Coordinator, Open Justice Program
Argentine Ministry of Justice and Human Rights

SECTION ONE:
WHAT IS OPEN JUSTICE?

A THEORETICAL APPROACH TO OPEN JUSTICE

SANDRA ELENA* - JULIO GABRIEL MERCADO**

1. What is Open Justice

Public institutions are currently facing a crisis in their relationship with citizens. This crisis seems to be leading to a change in the nature of their operations and is portrayed in a widespread questioning of institutions, together with a call for greater openness, more transparency in policy formulation and greater accountability regarding the use of public resources. Within the context of the fourth industrial revolution, regulators are challenged to an unprecedented extent by better informed and more demanding citizens, who have been empowered by technological tools. The ability of governments to adapt to this new scenario is what will ultimately determine their survival (Schwab, 2017).

The outcomes of the latest measurements by Transparency International through the Global Corruption Barometer (2018) indicate that failure to control corruption is leading to a general loss of confidence in governments around the world. In this regard, according to *Latinobarómetro's* last measurement (2017), the prevailing attitude towards public institutions in the region seems to reflect a lack of trust: none of them (whether it is government, municipalities, congress, trade unions, courts or even big corporations) has been assessed with a score of under 7 on a scale where 0 means "not at all corrupt" and 10 "very corrupt".(1)

(*) Coordinator, Open Justice Program, Ministry of Justice and Human Rights, Argentina. selena@jus.gob.ar

(**) Advisor, Open Justice Program. jmercado@jus.gob.ar

(1) The overall outcomes of the 2017 Latinobarometro Report on the perception of corruption at the different institutions were as follows: government, 7.5; municipalities, 7.4; Congress, 7.4; trade unions, 7.1; courts, 7.4; big corporations, 7.1.

Public institutions have found a path to try and reverse this situation. It entails a shift towards greater openness, aiming at a greater participation of citizens in the evaluation and oversight of government management results. This brings about the need to develop a new government philosophy, targeted to more transparent, participatory and responsible public management.

Within this context, new public governance models have emerged, which are reflected in the implementation of innovative public decision-making systems (Swyngedouw, 2005). These are models based on a more decentralized notion of public management, in which deliberate interactions between governmental and non-governmental stakeholders (Aguilar, 2006) meet the aspirations and expectations of citizens with regard to a government that is becoming more efficient and effective in its operation, as well as more capable of meeting the different, changing needs of an increasingly complex society (Rhodes, 1997; Sorensen & Torfing, 2007; Moore & Hartley, 2010).

The context of Latin America and other regions lead to propose a governance model that bears in mind the persistent inequalities in terms of access to and use of information. Those inequalities might, if not duly addressed, seriously compromise the model's very success (Ramos Chávez, 2015). Whichever public governance model we design must take them into consideration, harnessing available resources and tools foreseen for its implementation through an inclusive approach.

An example of a new public governance model is that of an "Open State", an expression coined for the first time (in Latin America) by Oscar Oszlak (2013), as an option to the broadly used notion of "Open Government" (according to the author, a more limited concept when it comes to encompassing the very broad variety and diversity of instances within the state machinery).

According to Oszlak, the shift from "Open Government" to "Open State" entails taking into consideration the great complexity existing therein and that can be seen in the dense fabric of entities that coexist under the same umbrella (e.g. public companies, universities, mixed public bodies and all kinds of decentralized agencies, state and non-state, but financed to a greater or lesser degree with public funds).

An Open State can ultimately be defined as a government philosophy reflecting the following:

> … [a] willingness formally expressed by governments, parliaments, courts, public oversight agencies or other state or parastate institutions to promote openness of their data repositories, citizen access to information, social participation in the different public policy cycles, accountability and, overall, public management oversight by citizens…. (Oszlak, 2017, p. 212).

Innovation and the use of new technologies (that according to Oszlak are enablers of the above-mentioned principles) play a remarkable role in this

government philosophy. In fact, the Open Government Partnership[2] includes innovation among its principles, as a pillar for designing and assessing governments' reform-oriented commitments within the organization.

As a part of the state machinery, the judiciary is another organization that shows disconnection with its users and people in general (Jiménez-Gómez, 2017). Together with Oszlak, we also believe that it is necessary to understand the full complexity of the state, and that the justice system cannot be considered a monolithic institution but instead a constellation encompassing a series of players: many judiciaries (a national judiciary and several sub-national ones, as in the structure stemming from federal countries), public ministries and a great number of state agencies, without leaving out those involved in the operation of justice that report to the Executive Branch (Garavano & Chayer, 2015).

Revisiting the data provided by the last *Latinobarómetro* report (2017), it can be noted that only 1 out of every 4 Latin Americans have some degree of trust in the judiciary. Trust in government is also at a low level (25%) only slightly above that of Congress (22%) and the political parties (15%).

Another contribution to the analysis on the current status of justice in the region arises from the most recent global Rule of Law Index (2019) produced by the World Justice Project (WJP).

This organization appliess a global index to measure progress in the Rule of Law in 126 countries, assigning values from 0 to 1 (0 entailing the non-existence of the Rule of Law and 1 the optimal situation) based on the analysis of a series of quantifiable factors (constraints on government powers, absence of corruption, government openness, fulfillment of fundamental rights, public order and security, regulatory enforcement, functioning of civil and criminal justice systems).

For some regions included in the index, we have calculated a regional weighted mean, taking into consideration the values assigned by WJP to each country and the population's weighting of each of them. For Latin American and Caribbean countries included in the Index, this mean resulted in a value of 0.53/1. The regional weighted mean for Sub-Saharan African countries featured in the Index was 0.47/1. Meanwhile, 0.45/1 was the regional mean for South Asian countries and 0.50/1 for both the Eastern Europe/Central Asia and the Middle East/North Africa regions. These figures place these regions in a position that is not too favourable, well below the countries with the

(2) The Open Government Partnership is an international initiative co-headed by governments and civil society organizations that worldwide promotes the adoption by national and sub-national governments of commitments in support of openness, citizens' empowerment, the fight against corruption and the use of new information technologies and knowledge to strengthen governance. This publication includes a chapter that specifically analyzes the commitments for justice sector reform. See https://www.opengovpartnership.org/

highest values (Denmark, 0.90/1 and Norway, 0.89/1), and even below the world average of 0.56/1.[3]

Some recommendations for justice institutions to address this situation were included in a Transparency International report (2017), urging reforms towards more transparent processes for appointing judges, stronger institutions participating in the detection, investigation and conviction of corruption-related crimes, or a greater use of the Internet to disseminate their rulings, among other suggestions.

In this regard, several sources agree on recognizing the existence of flaws in the operation of justice systems that were not solved by the latest wave of reforms in this sector (DeShazo & Vargas, 2006; Oré & Ramos, 2008; World Bank, 2011; Oyanedel, 2016). All this leads to understanding and sizing the situation to be addressed, as it is based on this analysis that we propose the implementation of an Open Justice paradigm.

We define Open Justice as the application of an Open State philosophy to justice-related institutions. This philosophy translates into the implementation of a set of mechanisms and strategies that constitutes a public governance paradigm for justice, based on the principles of transparency and access to information, accountability, participation and collaboration, innovation and use of new technologies.

2. Open Justice principles

When addressing a description of the principles governing the Open Justice paradigm, it is necessary to firstly pay special attention to two issues regarding its implementation. The first issue is the customary opacity of the justice system, a condition that is anchored in its history and in the need the sector has had throughout time to defend its independence with regard to other state powers. The second issue is the need to guarantee at the same time open access to information and people´s privacy, all of which entails seeking a balance between the need to achieve the greatest possible openness of data and the protection of people's safety and intimacy.

With regard to the first matter, in a Republican system, the judiciary has traditionally been the most conservative, formal and hierarchical branch. The implementation of this new Open Justice paradigm seems to make two allegedly anti-tethical values clash, as are the need to protect judicial independence on the one hand, and on the other, the need to provide transparency to its ac-

(3) Data of the 2019 Rule of Law Index and list of countries can be checked at: http://data.worldjusticeproject.org/. Population data for weighting purposes were taken from the World Bank database (https://data.worldbank.org/indicator/SP.POP.TOTL). The following formula was used to calculate the weighted population mean:

$$\overline{x} = \frac{\sum_{i=1}^{n} xi\ wi}{\sum_{i=1}^{n} wi} = \frac{x1\ w1 + x2\ w2 + \cdots + xn\ wn}{w1 + w2 + \cdots + wn}$$

tions and make it accountable. In this sense, it is important to consider judicial independence as an instrument; that is to say, it aims at providing the system with the capability of working without interferences, safeguarding people's fundamental rights in a truly impartial manner within the framework of the law (Pérez-Perdomo, 2000). Likewise, when the judiciary establishes accountability mechanisms within the context of an Open State it, in fact, reinforces its independence, since the obligation of providing information depicting its functioning and justifying its actions actually reduces its vulnerability vis-à-vis potential external influences that may disrupt its normal operations (Hammergren, 2002).

Judicial independence is not meant to be merely invoked by decision-makers within the judiciary, but instead harnessed so that justice can develop, in the best way possible, the service it is meant to deliver. Far from representing a threat for judicial independence, the application of an Open Justice paradigm has no other purpose than to improve judicial services, provide better access to justice for citizens and upgrade its internal operations.

Independence and openness are whilst promoting a greater user participation to add legitimacy and predictability to the system, internally the Open Justice paradigm aims at generating the necessary data and information flow for creating a specific knowledge management network for the public sector (Dawes, Cresswell & Pardo, 2009). This knowledge management network can operate at an intra-organizational level (that is to say, establishing connections among different units of the justice system), and at an inter-organizational level, among institutions that are in the same or different jurisdictions, sectors or government levels. It can also give rise to better evidence-based public policies on justice, helping to update and improve processes as well as final outcomes.(4)

Within this context, independence and openness are values that are meant to coexist. This will ensure a quality judicial service as well as an improved bond between judicial institutions and the people they are actually serving.

With regard to defending the privacy of people whose data and information are published, measures must be taken to help avoid any potential evil use. Although a criterion for the greatest possible openness should prevail, certain limitations must be established on judicial data and information disclosure, particularly in those cases in which publication thereof may subvert effective justice administration, or pose threats to the safety or privacy of the parties to the trial (Winn, 2003).

This matter must be taken seriously when outlining an active data and information publication policy, by using anonymization strategies and safeguarding certain sensitive data. It is necessary to reach a balance that allows suc-

(4) We will later refer to the notion of "open innovation" as a cross-cutting value underlying the other three principles of Open Justice (transparency and access to public information; accountability; participation and collaboration).

cessful openness as well as citizen protection from malicious or inappropriate use of their information.

As pointed out in the definition provided above, the application of an Open State philosophy to the justice system requires the adoption of specific principles, on which a series of mechanisms and strategies can be drawn. These principles are: transparency and access to information, accountability, participation and collaboration, and open innovation and the use of new technologies.(5)

Hereafter we will define the contents of each of these principles, as well as how they can apply to justice.

2.1. Transparency and Access to court case information

In an Open State paradigm, the transparency principle is aimed at making all kinds of public data, information and knowledge repositories available to citizens. This is done in an open, complete, timely, free and easily accessible manner. An Open State is, in a nutshell, one that "provides information on what it is doing" (Cruz-Rubio, 2011, p. 8), setting as a maximum aspiration that citizens can have at their disposal practically the same information as government operators do (Anderica, 2014).

Transparency means fulfilling the right to access to public information through simple, easy-to-access resources in an expeditious, enforceable and cost-free manner (or at least at the lowest cost possible), only considering the possibility of demanding fulfillment of a few basic requirements (OAS, 2015).

In the last decade, for instance, Latin America experienced a strong momentum in the creation of legal frameworks to guarantee the full right of citizens to access to public information (Herrero, 2014), so much so that the lack of pertinent regulations is currently an almost exceptional situation.(6) Ensuring the right to access public information through active transparency policies (i.e. providing and publishing public data and information, regardless of any requirement in this regard) already became the floor, not the ceiling, by which a growing number of data and information catalogues are being provided and enriched throughout time, as people's specific interests and needs are identified (Pérez, Santagada, *et al.*, 2017).

According to Lee and Kwak (2014), the following are the guiding principles of a transparency policy within an Open State:

(5) These four principles were defined on the basis of the methodology used by the Open Government Partnership (Jiménez-Gómez 2017 & 2014; Lee & Kwak, 2011 & Elena & Van Schalkwyk, 2017).

(6) The status of laws on access to information is compiled by the Global Right to Information Rating prepared by the Centre for Law and Democracy. According to the latter, at present, 21 countries in Latin America and the Caribbean have regulations on access to public information. Data can be found at: http:// www.rti-rating.org/country-data/by-section/

- the publication of government data and information on the implemented processes and policies;
- emphasis on high-value, high-impact data and information (for instance, budgetary data or management indicators);
- the existence of continuous improvement processes, under the criteria of accuracy, consistency and timeliness, bearing in mind the need for user feedback with regard to data quality and usefulness;
- the (limited) use of social networks to keep citizens informed;
- use of management process- and quantitative-centered metrics.

Reforms ensuring transparency and access to information are an essential tool to improve the institutional capacity and control by citizens of the justice system, helping in turn to combat corruption and to reinforce its legitimacy and authority vis-à-vis other political system actors. Through these reforms, those debates inherent to the judiciary have been shifted into a broader context, thus providing society with the necessary information for understanding how the justice system works and, moreover, what challenges and limitations it is facing (ADC, 2014). This shift towards openness increases citizens' trust in its decisions, in a process in which data publication must go hand-in-hand with an institutional change helping to reduce existing information asymmetries (O'Hara, 2012).

For over a decade, the Justice Studies Center of the Americas (JSCA) periodically calculates an Index of Web-based Access to Judicial Information (IAcc). This Index's unit of analysis are the judicial bodies of the countries in the Americas (broken down into judiciary branches and public ministries), seeking to compare the different levels of existing active transparency. The analysis of the global trend included in the last edition of the index shows in the long-term an increasing trend of active transparency standards (both encompassing some setbacks as well as steps forward).[7]

Since 2016, the Argentine Ministry of Justice and Human Rights has been implementing the principle of transparency and access to public information through an Open Justice Program. This Program accompanies the Open Data Plan established by Argentina's Presidency for ministries, secretariats and decentralized agencies of the Executive Branch.[8] The Open Justice Program works with different Ministerial areas, as well as with over 50 national and provincial justice institutions (Judiciaries, prosecutors' offices and Judicial Councils) in adopting policies to improve data publication, update and accessibility, both of primary data (unprocessed, granular data) as well as statistics (ag-

(7) The 2017 study (prepared on the basis of 2016 data) states that Chile, Guatemala, Paraguay and Costa Rica are four countries with "very high" levels of access to judicial information. Results can be found at: http://cejamericas.org/

(8) Data Openness Plan, Decree 117, dated 12 January 2016. Available at: http://servicios.infoleg.gob.ar/infolegInternet/anexos/255000-259999/257755/norma. htm

gregate data for interpretation and comparison purposes). The Program has thus developed Argentina's first Open Judicial Data Portal, *datos.jus.gob.ar*, where, following the philosophy of open data, information is published in a free, downloadable and reusable format.(9)

What kind of potentially publishable data and information are produced by the sector following an Open Justice paradigm? We establish three types: judgments and rulings, jurisdictional data and structural data.(10)

- **Cases, court judgments and rulings** at all levels and across all jurisdictions (including a search engine by subject-matter, applicable legislation, court hierarchy and jurisdiction, date, and key words).
- **Jurisdictional data:** data regarding aspects directly and strictly related to cases or matters to be resolved or addressed by justice sector institutions.

For the purpose of this classification, the following are considered jurisdictional data:

  - the system's management indicators (primary data and statistical information on cases filed, resolved and pending, mediation, kind of event and trial, procedural milestones, litigation by subject-matter, type of perpetrator involved, characteristics of perpetrators, resources, case number, court and prosecutor's unit, recorded facts or claims, interventions, seized assets, weapon carrying permits);
  - schedules and track record of court hearings;
  - court case files and information related to their circulation (especially when dealing with particularly relevant social cases or those linked to alleged crimes of corruption by public servants);
  - public information on judges, senior and operational staff (salaries, career background, disciplinary processes, property tax returns, gifts and trips paid by third parties);
  - Information on the meetings of high-level officials (place, date and time, purpose, participants, topics discussed, defended positions, decisions, conclusions);
  - Requests filed with judicial institutions to access public information;
  - Wanted persons, arrest warrants, inmates at penitentiary facilities, etc.

- **Structural Data**: these are data and information on the financial, administrative and internal functioning of justice sector institutions. This information should be public with only a few exceptions regarding specific sensitive data (ADC, 2014). Structural data focus on public funds managed by the sec-

(9) This publication includes a chapter describing in further detail the experience of the Open Justice Program, Ministry of Justice and Human Rights.

(10) This characterization was outlined based on ADC (2014), JSCA (2017) and World Bank (2011) data.

tor's institutions but must also include regulations governing their activities, as well as information on the public servants performing their duties (with whom they meet and for what reason, what assets or gifts they receive and from whom, whether they receive any compensation for performing another duty, academic, for instance, etc.).

Based on this classification, the following are considered structural data:

- regulations (legislation, internal rules, decisions and instructions);
- organization charts;
- physical and material resources (infrastructure, technological resources);
- detailed budget (of each institution, as allocated for the current year and as delivered for the prior year);
- call for bids for procurement and open competitions (goods and infrastructure, external services);
- information on the regime for accessing the institutions and the judicial career, selection and appointment processes.

2.2. Accountability

The application of the accountability principle consists in the implementation of those mechanisms that are necessary for Open State institutions to undertake responsibility, explain and generate traceability of their actions vis-à-vis citizens. These accountability mechanisms provide citizens with channels to demand (and receive) information from institutions on how a service has been rendered, why a service or public policy has failed, or what has been done to improve it, giving governments the possibility to be politically, administratively or legally accountable for their actions (Solís Ribeiro, 2017).

Schedler made the following comment with regard to the rationale underlying the adoption of accountability mechanisms:

> The realities of power provide a raison d'être to accountability. Its mission is to reduce power uncertainties, constrain arbitrariness, prevent and remediate abuses, make its implementation predictable, keep it within certain pre-established rules and procedures. It makes no sense to talk about accountability without power and the powerful, without decision-making capacities and the related capability to assign responsibilities.... (Schedler, 2011, p. 90).

It is necessary to make a caveat when focusing on the justice sector. While the principle of independence is related to the *ex-ante* of judicial institution functioning (in other words, what influence can external forces actualy have on decision-making), accountability comprises *ex post* control, allowing institutions to describe and explain their administrative and functional operations as well as the outcome of their decisions (Hammergren, 2002).

In fact, judicial officials are already accountable to their peers and superiors for their actions and decisions. It is a kind of disciplinary accountability which resorts to a series of formal mechanisms that can be triggered in the presence of faults or misconduct, depending on each system's specific regulations and procedures.

Open Justice opens the door to a different level of accountability, based on the governance of data and information generated by the sector's institutions, thus leading to assessing their performance systematically and reflexively, including citizens in the process. One of this evaluation's goals focuses on justice institutions' productivity, on the degree of diligence and faithfulness when implementing established procedures, particularly addressing the time element of actions.

Considering Binder's definition (2014), according to which the judicial system should be deemed as "a great administrator of procedural forms", this new accountability notion should entail the contribution of other external actors (jurists, civil society organizations, members of other institutions within the system, citizens, etc.), to carry out a qualitative evaluation of justice sector officials' performance, taking into consideration their skills, creativity and clarity,[11] at the individual as well as collective levels.

For instance, in Latin America the standard model for judgments comes closer to a final opinion found in an administrative summary than to a decision settling a conflict: normally, irrelevant information is included, cryptic expressions are used and there is a lack of concern as to effective communication of whatever is to be conveyed (Binder, 2014). Resorting to qualitative assessment mechanisms and fostering the quality and consistency of decisions stemming from the justice system should be part of an Open Justice paradigm. This should overcome the closed model of judicial institutions divorced from society; they must be subjected to oversight so as to improve the quality of their decisions.

What recommendations can be made within the context of application of an Open Justice mechanism to improve the sector's accountability? In other words, for what purposes can the published data and information be used?[12]

- Regular management reports on the results and activities of the justice sector institutions.
- Continuously updated public records of court proceedings allowing their follow-up.
- Transparent, public mechanisms to select judges and assign cases.

(11) European Networks of Councils of the Judiciary (ENCJ) uses the term *craftmanship* to refer to the specific skill of justifying court decisions.

(12) The list of recommendations for accountability purposes was drawn up based on Hammergren (2002), ENCJ (2017) & Binder (2014).

- Availability of complaint procedures, with open, appealable dispute resolution mechanisms.
- Codes of judicial ethics – including advisory mechanisms.
- Public records on external functions and financial interests of officials and judges.
- Regular contact with the mass media following pre-established regulated procedures.
- Recording and broadcast of hearings.
- External review mechanisms of judgments and rulings of justice institutions.
- Evaluation of clarity of actions and judgments issued by court officials, taking into consideration the special characteristics of the recipients (those self-represented in litigations, minors, disabled, foreigners). Training mechanisms using easy-to-understand and effective language.
- Management audits with the participation of civil society.

Following the principle of transparency and access to information described above, this information should be published preferably and when possible as primary data, in open, freely accessible formats. In this way, accountability would entail the use of published information for effective citizen control of the judiciary and of the quality of the justice-related public service offered to citizens.

2.3. Participation and collaboration

In an Open State paradigm, the principle of participation and collaboration deals with the establishment of mechanisms and instances for citizen contributions and advocacy towards better public policy and service delivery. This requires the outlining of shared responsibilities, mechanisms to formulate and receive comments and ideas, thus establishing collaborative dynamics between citizens and state institutions. Ultimately, the application of this principle is meant to give citizens the possibility of no longer being mere recipients of policies and services, but instead becoming direct participants in their formulation (Solís Ribeiro, 2017; Hilgers & Ihl, 2010).

With regard to the motivations for putting in place these participatory stages, Oszlak (2013) points out the following:

> ... citizens' participation not only takes place because the inhabitants are invited by the government to do so. There must be an opportunity that does not depend solely on the existence of enabling channels at state level. The most favourable occasions are usually those in which a sector of the population is threatened by a policy which undermines or endangers its current status. Citizens are not by nature political actors. They are when they participate, but for this they need to be mobilized by some

> cause or reason. Overall, this justification is related to some sort of economic interest, deeply enrooted value or legitimate right, or a threat by some action by the state or other social actors that have a given level of power. These are also the grounds for collective action... (p. 16).

The current confidence crisis in justice can be an incentive for applying the principle of participation and collaboration within the context of an Open Justice paradigm. In this regard, it is necessary to bear in mind the sector's institutions' inherent characteristics (mainly the above-mentioned need to fulfill the principle of independence), which renders impossible the automatic extrapolation of mechanisms used within the Executive or Legislative Branches (Jiménez-Gómez, 2017).

Just as happened with the application of the accountability principle, for quite some time some justice systems (to a greater or lesser degree, depending on each system's tradition as well as the timelines of their reforms) have had mechanisms that include citizens participation in the fulfillment of their procedures, such as, public hearings, jury trials, the possibility of filing class action claims, the application of alternative dispute resolution methods, restorative justice practices or the *amicus curiae*.

Once again, the Open Justice paradigm provides the possibility of establishing new mechanisms giving a different dimension to the application of this principle. These mechanisms can be based on Abrahamson's (2002) postulate as an essential element for this purpose: hearing people's voices. In order to deliver a better justice service, it is necessary to ensure spaces for dialogue between institutions and citizens, so that their perspectives are gathered and borne in mind. Hearing their voices is a way of ending the justice sector's isolation and connecting it with the people it must serve.

Establishing participatory mechanisms based on listening to people's voices confers upon citizens an institutional role for developing a better justice-related public policy for designing reforms, plans and programs targeted to strengthening the system's independence, as well as its procedures and effectiveness (Rottman, Efkeman, Hansen & Stump, 2002).

The Argentine Ministry of Justice and Human Rights applies the principle of participation and collaboration through the Justice 2020 Program with the purpose of promoting a justice system that is closer to citizens, more modern, transparent and independent. In this regard, it coordinates in-person and on-line dialogue spaces, through thematic working teams that foster and seek to ensure active transparency and citizen and institutional participation in outlining, implementing and monitoring public policies, legislative bills and initiatives for judicial innovation and streamlining, cutting across all policies implemented by the Ministry. Since 2016, the Program has had a platform *justicia2020.gob.ar* that operates as a dialogue forum, open to all citizens for

submitting their proposals and discussing the Ministry's initiatives on judicial reform topics.[13]

What mechanisms can be put into practice to foster public participation and collaboration in the justice sector?[14]

- Open virtual and in-person citizen participation forums (explanation and discussion of the roles, functions and processes of justice institutions, collection of suggestions and discussion of judicial reform initiatives).
- Use of social networks for a better understanding by lay citizens of the processes and decisions arising from the system.
- Dialogue spaces among institutions of all three state branches (Executive, Legislative and Judiciary) to discuss matters of shared interest linked to the performance of the justice sector (public sector knowledge management networks).

2.4. Open innovation and use of new technologies in the justice sector

The notion of innovation in the field of public policies and public service management is core to the implementation of the Open State paradigm. Based on the use of new information technologies and knowledge, innovation is introduced as a cross-cutting value that makes implementation of the remaining principles feasible.

For quite some time, the notion of open innovation has been defining a new model in which knowledge management includes third parties outside the organizations and, in which transfer of technology or knowledge is multi-directional, through a coalition of actors devoted to solving common problems. It is ultimately a paradigm that considers institutions can (in the creation of value) harness ideas from the outside, as well as those in-house, in opposition to the traditional paradigm of "closed" innovation that considered innovation should be generated only through in-house processes within the organizations themselves (Chesbrough, 2006; González-Sánchez & García-Muiña, 2010).

Based on Oszlak's work (2013), an updated status chart could be outlined using a few implicit assumptions (according to the author, probably too optimistic) with regard to the use of innovation and new technologies within an Open State, namely: that available technology makes the bond between government and citizens more fluent; that a good use of this technology enables government to open unprecedented dialogue and interaction channels with citizens, thus tapping its potential to improve state management; that citizen-

(13) This publication includes a chapter describing in detail the development and perspectives of the Justice 2020 Initiative.

(14) The list of recommendations on participation and collaboration was drawn up based on Abrahamson (2002), Ienaola (2011) and Blackham & Williams (2013).

ship can also harness the opening of these new channels to actively collaborate in government administration, promoting democracy's deliberation and participation machinery.

In the case of justice, much has been written about its potential and the change brought about by the use of new information technologies and knowledge. However, a clear difference must be drawn between those initiatives framed within e-government projects for justice and those framed within an Open Justice paradigm. There are thus measures aiming at the use of new technologies (Jiménez-Gómez uses, among others, the examples of application of a procedural management e-system or the digitization of documents or court records), but these not necessarily entail greater institutional openness vis-à-vis citizens (Jiménez-Gómez, 2017). A difference must be specifically established between the use of innovation and technology tools produced within the quest for modernizing or upgrading the system (e-justice) and the one applying the Open State philosophy and principles to justice (Open Justice).

The idea underlying the application of an Open Justice paradigm is the implementation of an open innovation model, in which the justice sector interacts and generates exchanges with civil society, as well as with other public and private sector institutions, aimed at creating a better, more efficient, responsible system centered on the recipients of the services it provides.(15)

Table 1. Summary: Open Justice Principles in Practice

Transparency and Access to Information	Accountability	Participation and Collaboration
• Publication of court cases, judgments and decisions. • System management indicators. • Scheduling and track record of court hearings. • Court case files and information on movement of the records. • Public information on judges, senior and operational staff. • Information on meetings of high-level officials. • Requests for accessing public information made to courts • Wanted persons, arrest warrants, inmates at penitentiary facilities, etc.	• Court proceeding records made public and continuously updated. • Public, transparent mechanisms for selecting judges and assigning cases. • Availability of complaint procedures, with open, appealable dispute resolution mechanisms. • Code of judicial ethics. • Public records on external duties and financial interests of officials and judges.	• In-person and virtual forums open to citizen participation. • Use of social networks. • Dialogue spaces between institutions and the three Branches (Executive, Legislative and Judiciary).

(15) Chapter 4 in this book describes a potential open innovation model for the justice sector.

Transparency and Access to Information	Accountability	Participation and Collaboration
• Regulations. • Physical and material resources. • Budget details. • Call for bids for procurement and open competitions. • Information on the regime for accessing the institutions and the judicial career, selection and appointment. • Regular management reports.	• Regular contact with the mass media following pre-eestablished, regulated procedures. Recording and broadcast of hearings. • External review mechanisms for court judgments and decisions. • Evaluation of the clarity of actions and judgments issued by judicial officials. • Management audits with participation of civil society.	.
Innovation and use of new technologies		

3. International dimension of Open Justice

International organizations promoting state reform have recently started guiding their recommendations towards Open State values, including justice matters. Framed within a broader public sector reform, justice institutions can seek inspiration in these principles to achieve a reform allowing medium and long-term objectives to be achieved on the basis of the Open Justice philosophy.

3.1. Open Justice and the 2030 Agenda

In 2015, the United Nations established the 2030 Agenda that proposed a roadmap of 17 Sustainable Development Goals (SDGs) for the next years so as to achieve, among other aims, societies with greater and better levels of access to justice. Sustainable Development Goal 16 (Peace, justice and strong institutions) includes the following among its specific targets: promote the rule of law and ensure equal access to justice for all (Target 16.3); develop effective, accountable and transparent institutions at all levels (Target 16.6); ensure responsive, inclusive, participatory and representative decision-making at all levels (Target 16.7); and ensure public access to information (Target 16.10)[16]

There is a clear correlation of these principles with those of the Open Justice paradigm: consolidating the rule of law and achieving greater equality regarding access to justice are results to be expected from a full application of the Open Justice paradigm. Likewise, the three philosophical principles making up this paradigm (beyond the cross-cutting value of innovation and use of technology), namely, transparency and access to information, accountability and participation and collaboration can be perfectly well translated into a series of recommendations for the sector's institutions, aimed

(16) See https://www.un.org/sustainabledevelopment/es/peace-justice/

at fulfilling SDG 16 targets of promoting fair, peaceful and inclusive societies (see Table 2).

Table 2. Matching SDG 16 targets with Open Justice values

Sustainable Development Goal 16 Targets	Values of the Open Justice Paradigm
16.3 Promote the rule of law and ensure equal access to justice for all.	Transparency. Accountability. Participation and collaboration.
16.6 Develop effective, accountable and transparent institutions at all levels.	Transparency. Accountability.
16.7 Ensure responsive, inclusive, participatory and representative decision-making at all levels	Participation and collaboration.
16.10 Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements.	Transparency (access to information).

3.2. Open Justice and Open Government Partnership

In the case of the Open Government Partnership (OGP), reforms targeted to the justice sector have been gaining ground in the set of reforms committed by participating countries. Whilst in 2011 only 2 out of the 170 commitments undertaken within the framework of the Partnership referred to judicial institutions, in 2018, 32 commitments made reference to a reform proposal of an actor linked to the sector's operations. (17)

OGP is thus turning into a tool to promote judicial reform, which is particularly true in the American, European and African regions. Each year, more countries participating in the Partnership enact at least one commitment to justice reform based on the principles of transparency, participation or accountability.

The fact that reform commitments are agreed upon by consensus with civil society provides OGP with an added value, turning it into an instrument for change, clearly framed within the Open Justice paradigm, whose potential will continue to develop in forthcoming years. The Paris Declaration (issued at the Fourth Open Government Summit in 2016)(18), includes an agenda of specific collective actions to encourage Open Government, among which it is worthwhile highlighting one targeted to making a greater use of Open Government in support of the Rule of Law and access to justice.

(17) This book includes a chapter on judicial commitments that are included in national plans of action outlined within OGP.

(18) See https://www.opengovpartnership.org/paris-declaration

3.3. Open Justice and OECD

The Organization for Economic Cooperation and Development (OECD) is the international organization that currently brings together 36 states to promote policies aimed at improving the economic conditions and quality of life of people. Its work is based on continuous monitoring in member and non-member countries, for which it collects and analyzes data linked to economic performance and drafts public policy recommendations.

OECD considers the promotion of the Rule of Law among its core objectives, aiming at providing equal access to Justice and ensuring the legal system's predictability, reliability and responsibility. Regarding access to justice, the Organization urges its members to provide a people-centered, effective and efficient justice service, reporting not only on legislation and its enforcement, but also emphasizing the capacity of citizens to understand the system's way of working (OECD, 2017a).

Fostering the values as well as the effectiveness (deemed to be the quality of the procedures that are followed), reliability (widespread perception by citizens of being able to expect a good service from justice institutions), responsiveness (which includes transparency, accessibility and clarity of decisions issued by justice institutions), and integrity (accountability for decisions made) are considered by OECD to be fundamental in reestablishing citizens' trust in justice (OECD, 2017b). These values talk to one another and are in clear sync with the Open Justice principles.

We must add to this, the last Recommendation on Open Government adopted at the end of 2017, in which OECD proposes a definition that includes the judiciary and says that an Open State exists when:

> ....the executive, legislature, judiciary, independent public institutions, and all levels of government – recognizing their respective roles, prerogatives, and overall independence according to their existing legal and institutional frameworks – collaborate, exploit synergies, and share good practices and lessons learned among themselves and with other stakeholders to promote transparency, integrity, accountability, and stakeholder participation, in support of democracy and inclusive growth (OECD, 2017c, p. 2).

3.4. Open Justice and the Ibero-American Judicial Summit

The Ibero-American Judicial Summit (CJI, in its Spanish acronym) is an organization that coordinates the relationship between the judiciaries of 23 Ibero-American countries, bringing together the top authorities of the Tribunals and Supreme Courts of Justice, as well as the Judiciary Councils.[19]

(19) Institutions from the following countries make up the Ibero-American Judicial Summit (in alphabetical order): Andorra, Argentina, Bolivia, Brazil, Colombia, Costa Rica, Cuba, Chile, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Portugal, Puerto Rico, Spain, Uruguay and Venezuela.

Within CJI there is growing interest in fostering the Open Justice principles which are enshrined in several instruments such as the "Charter of Rights of the People before the Judiciary in the Ibero-American Judicial Space", adopted in 2017. In this Charter, with a starting point in the idea that the judiciary must act in a more open and transparent manner, the Summit advocated for a new justice model: more transparent, understandable, ready to serve all people, responsive to citizens, agile and technologically advanced, protecting the most vulnerable (CJI, 2017a).

That same year, CJI adopted the Principles and Recommendations to Promote Open Justice in all Ibero-American Judiciaries, Judicial Bodies and Agencies, spelling out the objective of "…. Promoting the development of a transparent, participatory and collaborative justice, within the specific context of judicial management, using new technologies and management based on streamlining, public value and good governance…." (CJI, 2017b, p. 5).

Along those same lines, in 2012, CJI adopted the Ibero-American Decalogue for Quality Justice that includes the need "To guarantee transparent justice, ensuring citizen participation" which, according to the Judicial Summit "must be transparent, subject to public scrutiny and accountability for its actions. Participation of organized society in all its forms must be defined through mechanisms that guarantee attention is paid to user aspirations and needs…" (CJI, 2012, p. 5).

3.5. Open Justice and the Latin American Centre for Development Administration

The Latin American Centre for Development Administration (CLAD in its Spanish acronym) is a regional inter-governmental agency focused on the reform and streamlining of public administrations considered strategic elements for the social and economic development of Ibero-American countries.

As a promoter of reforms in the countries within its jurisdiction, CLAD outlined a dogmatic document in 2016 called the Ibero-American Open Government Charter, including a series of principles to serve as a benchmark beyond the Executive Branch, promoting moreover the mainstreaming of the Open State principles in the Legislative Branch and the Judiciary.

Based on principles such as openness, quality of the public service, public ethics and integrity, interoperability, public accountability, co-responsibility with citizens and public innovation, CLAD specifically promotes an Open Justice model for the judiciary and the justice administration bodies. In this regard, it indicates the sector must be transparent and subjected to public scrutiny, fostering the creation of mechanisms for process monitoring through the use of new technologies, transparency in selecting judges, or the use of public files for qualifying, assessing or punishing judges (CLAD, 2016).

4. Final comments

Although throughout the chapter, reference was made to transforming justice sector institutions shifting them towards an Open State paradigm model, an Open Justice not only needs these institutions to be more transparent and participatory but also calls for greater access to justice within the system. An increase in access to justice (not only through formal judiciary institutions and public ministries, but also through other formal and informal access channels), and the legal empowerment of persons are the flipside of open institutions: people who are aware of their rights and are empowered to uphold them are the cornerstone for Open Justice. Broad access to justice and open institutions are two sides of the same coin, and both are absolutely necessary.

The Open Justice agenda is gaining momentum at the international level. This provides a favourable environment for pro-reform actors to reinforce their actions and promotes greater openness of the justice system. It is necessary for the justice sector actors (judges, prosecutors, ministers of justice, reformers, academicians, lawyers, civil society organizations, international foundations, etc.) to join forces at the global level. This can be achieved by strengthening a "Coalition for Open Justice".

During the last Summit of the Open Government Partnership in July 2018, ministers of justice met for the first time to discuss Open Justice. This is a milestone showing the importance of this subject. We still have to incorporate the voice of the Judiciaries at these forums. Ministries of Justice and the Judiciaries must work together in promoting Open Justice. It is necessary to have collaboration models and to establish standards and good practices ensuring the independence of the judiciary as well as substantive progress in the Open Justice agenda.

Strong leadership is needed to open up justice, allowing innovative visions to prevail over and above the culture of opacity. This leadership can be found among innovative judges, prosecutors or ministers of justice. There is not only one "correct" leadership model in this regard. As international experience shows, openness processes can be led either by the Executive Branch or the Judiciary.

The justice sector is the one that lags behind the most in the use of new technologies. The inclusion thereof is an essential element and many times left aside in openness projects for the sector. Justice institutions must promote communication with the leaders of the technology sector to ensure an efficient use thereof. Automation in producing data, public participation platforms, decision-making through the use of artificial intelligence, among other innovations, should not be disregarded in the sector's daily work.

There is still no clear evidence about best practices in institutionalizing Open Justice. It could firstly be stated that the establishment of a National Committee on Open Justice, including representatives from the different justice

institutions at the various levels, could favour processes of change and decision-making.

The inclusion of Open Justice commitments in OGP's National Action Plans is a powerful tool to locally install the openness agenda for the sector, and promote reforms that without international commitment could come to a halt after a change in local leadership. A more thorough analysis should be carried out regarding the impact of these commitments once the Action Plan in which they were proposed comes to an end. The drafting of national plans of action for Open Justice by the ministries of justice and judiciaries also ensures certain continuity in the actions which could then become permanent public policies.

Mainstreaming the gender perspective is closely linked to the existence of Open Justice. There is no theoretical corpus so far or specific evidence of what this mainstreaming entails in terms of commitments and policies. *A priori*, it could be stated that policies on access to justice targeted to preventing gender-based violence, access to justice-related data disaggregated by gender, creation of formal and informal channels specialized in this perspective are no doubt elements of Open Justice.

The implementation of Open Justice policies requires training of the system's actors. The notion of Open Justice is relatively new and does away with a traditional paradigm as to the justice sector. Judges, prosecutors, officials from the judiciaries, ministries of justice and all of the sector's institutions, as well as lawyers must be trained in the meaning of Open Justice. Only then can there be a change in paradigm, with actors who are committed and involved in this change. Our recommendation is to include Open Justice notions in the institutions' training programs.

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OPEN DATA CONTRIBUTIONS TO JUSTICE

SANDRA ELENA*

1. Introduction

Since 2012, Latin America has been playing a leading role in the development of the open data agenda worldwide. The region has the greatest number of countries that have adopted the International Open Data Charter(1) which have, in turn, been very active in defining the Charter's principles (Muente-Kunigami & Serale, 2018). This leading role is not reflected when it comes to data from judicial institutions.

Considering all the fields in which the open data philosophy is currently implemented worldwide, justice continues to be one of the least developed. Beyond some relatively recent experiences, open data repositories within the Judiciaries, as well as within other areas of the justice system(2) are still scarce: compared to those published for the Legislative and Executive branches of government, it can be said that progress in the openness of judicial data has been slower and not as broad in number and quality of published data (Marković & Gostojić, 2018).

According to the latest edition of Open Data Barometer,(3) which is a periodic evaluation carried out worldwide by the World Wide Web Foundation (2017), on the way in which governments publish and use open data, it can be stated

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(*) Coordinator, Open Justice Program, Ministry of Justice and Human Rights, Argentina.

(1) The International Open Data Charter includes a series of principles and good practices aimed at establishing greater consistency and collaboration in government open data. See https://opendatacharter.net/principleses/

(2) I use the definition provided by Garavano & Chayer (2015), in the sense that talking about justice institutions does not refer exclusively to those within the Judicial Branch.

(3) The Open Data Barometer measures the level of data openness in 115 countries worldwide to improve accountability, innovation and social impact, based on a total of 15 variables (land, censuses, budgets, legislation, trade, health or education, among others), examining the indicators on availability, format, type of license, updating and ease of access: https://opendatabarometer.org/

that by 2016, although most of the 115 countries evaluated had public data on the justice sector (grouped under the "crime" category), only 9 (a little less than 8%) offered these data openly.

Historically, judicial institutions have been considered distant and isolated from any social influence. Nonetheless, it is a sector in which decisions substantively affect society and that are not different from those issued by other public institutions in the sense of being transparent and remaining under the ongoing scrutiny of society (Montero, 2017).

The paradigm of Open Justice can contribute to settling justice's debt with society. The open data philosophy used for those data from justice sector institutions has become a means to deploy the principles of transparency and access to information and accountability envisaged within that paradigm.(4)

Along the same lines that consider open data an opportunity to catalyze productive rights-based and technology-fostered partnerships between government and civil society (Noveck, 2017), as well as a new means to consolidate social capital within the framework of a digital society (Lampoltshammer & Scholz, 2017), in this Chapter we will analyze the meaning of open public data for the justice sector, highlighting a few examples found in countries across the world. We will thus start by defining the notions of open data and public data, and then we will refer to open data in the justice sector, quoting and assessing some noteworthy experiences in data publication. Furthermore, we will address the ecosystem of judicial open data. Finally, we will analyze the role of open data in the justice sector for materializing and measuring the UN 2030 Agenda. The conclusions will include a series of recommendations to further develop an open data agenda for the sector.

2. Open data and public data

Probably the broadest definition of open data is the one provided by the Open Knowledge Foundation (2018) that defines them as those that can be freely used, re-used and redistributed by anyone, subject only, at the most, to a requirement to credit the data provider and make it clear if anything has been changed in the data. Based on this canonical definition, three broad basic principles are established for open data, namely:

- **Availability and access:** data must be available as a whole and at a reasonable reproduction cost, preferably downloadable from the Internet. Furthermore, they must be available in a convenient, modifiable form.
- **Re-use and redistribution:** data must be provided under terms allowing their re-use and redistribution, including the intermixing with other datasets.
- **Universal participation:** everyone must be able to use, re-use and redistribute data. There should be no discrimination against fields of endeavor or against persons or groups, or restrictions of use for certain purposes.

(4) With a view to expanding on the Open Justice paradigm, we have included a conceptual chapter at the beginning of this publication.

Government agencies collect, store and produce huge amounts of data on citizens and companies, on their own operations and actions, as well as on an endless number of topics and subjects. That critical mass of data and information, including potential knowledge stemming from its analysis using analytical tools (particularly by cross-checking and relating data on different individuals or groups) are, in their own right, owned by society and must thus be understood and catalogued as public data (Prince & Jolias, 2013).

The Sunlight Foundation (2010) established (based on the first list drawn up in 2007 by the Working Group on Open Government and duly updated)[(5)] a list of ten principles to be observed for openness of public data, as follows:

- **Completeness:** Datasets released by the government should be as complete as possible, reflecting the entirety of what is recorded about a particular subject.
- **Primacy:** Datasets released by government should be primary source data.
- **Timeliness:** Datasets should be available to the public in a timely fashion and released as quickly as possible once they have been gathered or collected.
- **Ease of access:** whether through physical or electronic means.
- **Machine readability:** Data must be stored in widely-used formats that easily lend themselves to machine processing
- **Non-discrimination:** means that any person can access the data without having to identify him/herself or provide any justification for doing so.
- **Commonly owned:** Data must be published in commonly-owned, freely-available formats.
- **Licensing:** There should be no imposition of "Terms of Service," requirements, barriers or restrictions of any sort to public use of data.
- **Permanence:** Information should be easily found, i.e., it should be available online in perpetuity in the same location.
- **Usage costs:** information must be free-of-charge. No fees or payments of any kind should be imposed.

3. Open data for the justice sector

As already mentioned above, the justice sector institutions are overall more reluctant to apply the open data philosophy. This is a problem within the context of democratic systems in which the Judiciary must provide a citizen-centered public service, and decisions are made by officials who have been entrusted with the mission of abiding by the law, but in no way are over and above it (Mora, 2006).

Greater penetration of the open public data philosophy in the justice sector could substantially help to improve the service, making it not only more

(5) See https://public.resource.org/8_principles.html (adapted by the author).

transparent and accountable, but also more efficient and closer to society. The fact of having data can bring about a significant change in how judicial public policy is implemented; a policy that is often times designed on the basis of intuition which leads to great deficiencies in service provision to citizens.

Having open public data is ultimately unavoidable for implementing an Open Justice paradigm (Jiménez-Gómez, 2017). With regard to the transparency, access to information and accountability principles, open data are the necessary raw material so that the sector, so far relatively neglected, can successfully undertake an openness strategy. Evidence of this is a greater incidence, within the framework of the Open Government Partnership, of commitments based on open data use, among those applicable to justice institutions, where an important number of judicial reform commitments are based on the use of open data.(6)

By definition, the most common open data sources for the justice sector are those governmental agencies dealing with these matters. Therefore, it is logical for most of the initiatives in this regard to be national projects, promoted by the Executive Branch and the Judiciary, with some under the umbrella of international organizations such as the European Union or the United Nations Office against Drugs and Crime (UNODC).

3.1. The process of data openness in the justice sector

We have identified two sets of challenges to be taken into consideration when applying a government open data policy to the justice sector. On the one hand, there are challenges which are intrinsic to the data and, in practice, data must have certain specific characteristics to make them useful for the established purposes. On the other hand, there are institutional challenges to be met regarding matters inherent in the institutions that produce, publish and use government justice-related open data.

With regard to the first item (data-intrinsic challenges), Bargh, Choenni & Meijer (2017) consider there are three fundamental challenges to take into consideration when implementing an open data policy in the judicial field. These can be summarized as privacy, legacy and inter-operability challenges.

The privacy challenge is related to the need for striking a balance between data transparency and the privacy of real-life people, whose sensitive attributes (such as names, dates of birth, types of crime or trials) are expected to be eliminated or made anonymous. Meanwhile, the legacy challenge is related to the nature itself of legal data, whose semantics evolves throughout time, together with changes permanently undergone by rules and regulations. This changing scenario in which new crimes could be coded (or old crimes could change name over time) makes it difficult to have homogeneous data when working with data gathered at different points in time. Finally, the

(6) This publication has a chapter analyzing the justice-related commitments outlined within OGP.

inter-operability challenge refers to the need for having inter-operable datasets, i.e., many datasets gathered by a great number of agencies under standardized criteria and processes, enabling their integration and combination.

With regard to the second item (institutional challenges), we can start by pointing out that the required collaboration between the Executive Branch and the Judiciary is a relevant challenge to carry out the reform towards the sector´s openness agenda. Political and cultural barriers continue to be regular obstacles in the implementation of an open data agenda in the public sector, and they entail an even greater problem in the justice sector. In this sector, there is a long-standing conservative tradition that tends to directly link the idea of decision impartiality to the isolated reflection of an individual or small number of experts (Gargarella, 1996). On the other hand, in the case of justice, the necessary cross-cutting interaction to successfully develop an openness agenda is sometimes perceived as a threat to the separation of powers (in other words, an attack on judicial independence).

Such interaction has an added difficulty in the case of federal countries, in which the existence of national and sub-national levels (thus involving different judicial systems for some subject-matters) calls for the implementation of complex inter-institutional coordination mechanisms to ensure the success of this policy.

Another institutional challenge when implementing a government justice-related open data policy lies in the fact that the sector often lags behind regarding technological capabilities (material resources, officials trained in the use of IT tools beyond the level of basic users). Still pending in this sector is the generation of material and technical conditions to successfully address data openness. The same happens with legal frameworks which often times are inappropriate and do not consider data openness in their management processes, rather deliberately blocking this possibility. Likewise, institutions lack common standards for publishing their data which ends up in isolated efforts by some of them.

The last institutional challenge we wish to point out is the still limited involvement of civil society in the use of open data in justice, where only a few intensive-data-use projects are renowned worldwide, among the most relevant: Measures for Justice (United States of America), OpenGiustizia (Italy), La Nación Data (Argentina) and Justice Data Lab (United Kingdom).

Measures for Justice is a civil society initiative launched in 2011 that has since developed a series of data-based performance measurements for justice, to evaluate and compare different aspects of criminal justice in some state jurisdictions in the U.S.A. This analysis, using data extracted from court case management systems encompasses three main categories: fiscal responsibility, court proceedings and public safety and security.

OpenGiustizia was a Project for organizational innovation and optimization at the Court and Prosecutor's Office in the district of Naples, Italy, carried out

by three Italian universities and funded by the European Social Fund in 2007 through 2013. Ensuring inter-operability among the system's databases and providing accountability and institutional performance evaluation tools were among the project's objectives.

La Nación Data is a journalism data platform promoted -since 2012- by one of the main mass media in Argentina. It comprises a news portal and a blog based on data gathered from different primary sources, with an intensive use of justice-related open data. Some of the subjects addressed so far have been femicides, high-profile court cases, appointment of judges or the situation of the Argentine penitentiary system.

Justice Data Lab is a service managed by the UK Ministry of Justice, and New Philanthropy Capital. It was set up in 2013 and was targeted to organizations that render rehabilitation services for people in conflict with the law. It uses administrative data on second-time offenders to carry out evaluations upon the request of these organizations, so that they can assess the true impact of their work through such data.

Data availability as well as inter-operability continue to be a challenge for society to further develop this kind of initiatives. Thus, for instance, Measures for Justice covers only six States in the U.S.A.

3.2. Availability of justice-related open data

In this section we will establish a series of categories to classify justice-related open data that are currently available. On the one hand, we will answer the question on what kind of data is presented.(7) On the other hand, we will seek an answer to how the data are presented, and will then take this classification as a basis to evaluate the different initiatives found in justice-related open data.

What kind of data is presented? According to this evaluation, available open data released by government for the justice sector is divided into three groups:

- **Cases, judgments and decisions** at all system levels and in all jurisdictions (including a search engine by subject, applicable regulations, court hierarchy and jurisdiction, date and key words).
- **Jurisdictional data** which are those on aspects directly related to cases or matters that must be solved or addressed by justice institutions.

  For this classification, jurisdictional data are:

  - the system's management indicators -primary data and statistical information on cases filed, resolved and pending, mediation, kind of event and

(7) In the future, this classification will possibly include a new category on non-judicial data related to the justice sector, with data on different aspects regarding access to justice or gender, from different judiciary sources, public ministries or public defender offices. Such data would, for instance, refer to trafficking in persons, violence against women, persons deprived of their freedom, mediation, use of electronic bracelets, etc.

trial, procedural milestones, litigation by subject-matter, type of perpetrator involved, characteristics of perpetrators, resources, case number, court and prosecutor's unit, recorded facts or claims, interventions, seized assets, weapon carrying permits-;

- schedules and track record of court hearings;
- court case files and information related to their circulation (especially when dealing with particularly relevant social cases or those linked to alleged crimes of corruption by public servants);
- public information on judges, senior and operational staff (salaries, career background, disciplinary processes, property tax returns, gifts and trips paid by third parties);
- Information on the meetings of high-level officials (place, date and time, purpose, participants, topics discussed, defended positions, decisions, conclusions);
- Requests filed with judicial institutions to access public information;
- Wanted persons, arrest warrants, inmates at penitentiary facilities, etc.

- **Structural Data:** these concern data and information on the financial, administrative and internal functioning of justice sector institutions. This information should be public with only a few exceptions to protect sensitive data (ADC, 2014). Structural data focus on information concerning public funds managed by the sector's institutions but must also include regulations governing their activities, as well as information on the public servants performing their duties (with whom they meet and for what reason, what assets or gifts they receive and from whom, whether they receive any compensation for performing another job, academic, for instance, etc.).

Based on this classification, the following are considered structural data:

- regulations (legislation, internal rules, decisions and instructions);
- organization charts;
- physical and material resources (infrastructure, technological resources);
- detailed budget (of each institution, as allocated for the current year and as delivered for the prior year);
- call for bids for procurement and open competitions – goods and infrastructure, external services-;

information on the regime for accessing the institutions and the judicial career, selection and appointment processes.

How are data presented? The three above-mentioned categories are presented in three possible formats:

- **Primary data:** not statistically processed, granular data, they are presented in a downloadable format, often included in datasets (using formats such as .CSV, .XML, .DOC, .XLS or .PDF).

- **Statistical data:** aggregate, statistically processed data in datasets (using the above-mentioned formats).
- **Statistical data illustrated in graphs:** aggregate data, presented in static display mode or by using display and analysis tools (open- and closed-source software).

As can be seen, the way in which justice-related open data are combined and presented to users can vary significantly. Below (in Table 1) is an assessment of 15 examples of data projects, and, before that, an analysis of four cases: Openjustice (U.S.A.), Data.police.uk (United Kingdom), Datos.jus.gob.ar (Argentina) and ECourts (India). These cases were selected because they are considered the best examples of data openness in the justice sector worldwide.

Openjustice is an open data project implemented by the Prosecutor's Office, Department of Justice, State of California, U.S.A. It was launched in 2015 and was based on data from the state's criminal justice system. It currently provides State of California jurisdictional data on topics such as crimes, deaths in custody, hate crimes, homicides, juvenile courts and freedom under parole, citizen complaints and the use of force. Structural data available on this portal include lists of staff as well as contextual County-based data (education, income, poverty and unemployment indicators). Data are delivered only in the way of statistics through databases and visual display tools. Last information available is for 2016.

Data.police.uk is an Open Data Portal of the UK Home Office. It was launched in 2013 and offers data on criminality in England, Wales and Northern Ireland (Smith & Heath, 2014). The portal has jurisdictional data on crimes reported, as well as on all kinds of police activities (drug seizure, issuance of firearm certificates, blood alcohol level tests, police vehicle checks, among others). It also includes structural data on police staff, procurement and remuneration. Data available on the portal are primary data and statistics; however, there are no graphs available. They are updated quarterly or annually, depending on the topic.

Datos.jus.gob.ar is the Open Data Portal of the Argentine Ministry of Justice and Human Rights. It was launched in 2016 and contains data on the justice sector in general. The portal currently offers jurisdictional data on issues such as pre-court mediation, access to justice, criminal policies and the penitentiary system, as well as structural data on institutions within the Judiciary and the Ministry of Justice and Human Rights. Data are available in the way of primary and aggregate data, and are shown using visual display tools. The Ministry, through an agreement signed with 52 justice institutions at the national and sub-national levels, also presents data on the Judiciaries and Public Prosecutors' Offices across the country. The frequency of data update depends on the subject (updates may be done every day, every fortnight, or on a monthly, quarterly, annual basis or every six months).

ECourts is a service provided by the Ministry of Law and Justice and the Supreme Court of India. It has been available since 2013 and includes judicial data in real time on all jurisdictions within India´s judicial system. In this regard, it has become a dynamic source of information for the system. It uses a "National Network of Judicial Data" that operates as a data repository, including judgments, jurisdictional and structural data, which are visually displayed.

Table 1. list of open data projects in the field of justice

	What data are submitted?			How are they submitted?		
	Judgments/Decisions	Jurisdictional data	Structural data	Primary data	Statistical data (Datasets)	Statistical data (Graphs)
OpenJustice (U.S.A.)		X	X	X	X	X
Data.police.uk (Great Britain)		X	X	X	X	X
Datos.jus.gob.ar (Argentina)		X	X	X	X	X
ECourts (India)	X	X	X			X
Measures for Justice (U.S.A.)		X	X		X	X
Mapa del Delito CABA (Argentina)		X		X	X	X
Datos Abiertos del Poder Judicial de Costa Rica		X	X		X	X
Data Portal Singapore's Public Data (Singapore)		X	X		X	X
Productivity Commission (Australia)		X	X		X	X
Dados Abertos MPRS (Brazil)		X	X		X	X
Judicial Department (Russia)	X	X	X		X	
Statistics Canada Crime and Justice		X	X		X	X
The Judiciary (Liberia)	X	X			X	
Data.unodc.org (UNODC)		X	X		X	
ISS Crime Hub (South Africa)		X	X			X
Otvorené Súdy (Slovakia)	X	X	X	X		
Eur-lex (European Union)	X		X	X		
De Rechstpraak (The Netherlands)	X		X	X		

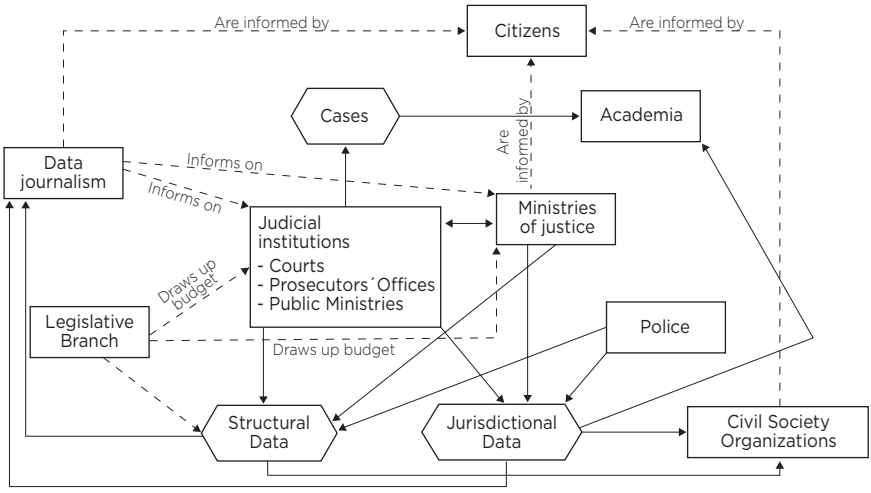
3.3. The justice-related ecosystem of open data

Graph 1 illustrates the justice-related ecosystem of open data released by government. As already mentioned above, the categories of judgments, structural and jurisdictional data indicate the three types of data that are published. The rest accounts for stakeholders involved in data collection, intermediation and usage. The solid lines represent a permanent interaction among those involved, whilst the dotted lines represent a direct, but discontinuous bond.

It is worth pointing out that in this ecosystem, data and information collectors (justice institutions) often times are also brokers and active consumers of the information they produce (Elena & Van Schalkwyk, 2017). Meanwhile, data consumers, such as the academia, civil society organizations or data journalists also act as brokers, using raw data and turning them into different information outlines for their use by the least informed users (citizens).

The outline states that whilst the sources of jurisdictional and structural data can be institutions within the Judiciary or Executive Branch, judgments come exclusively from the former.

Graph 1. The justice-related ecosystem of open data



4. Justice-related open data as a contribution to the Sustainable Development Goals

Justice-related open data released by Government are meant to play a crucial role in measuring progress in terms of social and economic development. Although the United Nations Office against Drugs and Crime (UNODC) has been working for several years on producing statistics on crime and justice, the UN 2030 Agenda on Sustainable Development attaches a fundamental role to data openness at all levels, so as to promote accountability and inclusiveness

of decisions, with a view to reducing crime and violence and fostering access to justice in the next 12 years.

On the one hand, having data will be key in order to show progress made by the countries in achieving the Sustainable Development Goals and their targets.[8] On the other hand, this will allow decision makers at public institutions to have quality information for designing evidence-based public policies, which will enable the achievement of these ambitious global goals.

Therefore, justice-related data will be essential to achieve and measure the level of fulfillment of certain specific SDGs, such as SDG 16 (aimed at reducing violence, organized crime and at providing access to justice, among other institutional goals) or SDG 5 (aimed at achieving gender equality and eliminating violence against women and girls).

With regard to the latter goal (SDG 5), it is worth mentioning two valuable open data initiatives, as are the provision of open primary data on sexual crime by the Colombian government through its Open Data Portal, as well as the specific section on gender-related matters of the Open Data Portal, Argentine Ministry of Justice and Human Rights, datos.jus.gob.ar, where primary data are published on femicides, trafficking in persons or assistance rendered to victims of violence.

The potential of government-released open data for justice with regard to the SDGs is the crucial impact it can have on the future allocation of resources and funds for projects and initiatives in this field. International organizations such as The Hague Institute for Innovation of Law (HiiL) or the *Iniciativa Latinoamericana por los Datos Abiertos* (Latin American Open Data Initiative -ILDA) are already targeting their funding priorities in this direction, just like other entities sponsoring the open data agenda in the world, such as the Open Data Institute, Transparency International and The Open Society Foundations.

Justice-related open data are also given more room on the agendas of the main international organizations promoting open government reforms in the public sector (IDRC, OGP, ODI, mySociety or ILDA, among others).

5. Conclusions

An enabling environment for the application of the open data philosophy to the justice sector is slowly being created worldwide. International organizations and governments are starting to consider these data to be raw material for the implementation and evaluation of public policies in the justice sector, and to add legitimacy and come closer to citizens in a sector which is traditionally closed and lags behind in implementing an openness agenda.

There are still many barriers to the implementation of good quality open data initiatives and to a widespread use of justice-related open data. The main

(8) See https://www.un.org/sustainabledevelopment/es/peace-justice/

challenges are, on the one hand, intrinsic to the data themselves, regarding privacy, legacy and inter-operability requirements. On the other hand, there are institutional challenges inherent in the institutions that produce, publish and use open data released by government for the justice sector, such as difficulties to achieve the necessary cross-cutting interaction among institutions from the different State powers, plus the traditional political and cultural barriers to changes in the public sector, deficiencies in technological capabilities, in the legal framework, lack of common standards for their publication, or the still limited involvement of civil society in the use of these data.

In view of the above, justice data openness plays an important role in carrying out global initiatives such as the United Nations 2030 Agenda and, therefore, a movement that seems to have started modestly among a few countries appears to be gaining ground and playing a leading role over time, along the unavoidable path towards openness.

Finally, hereafter are a few recommendations to improve and expand the justice-related ecosystem of open data:

- Governments must include the judiciaries in their laws on access to information and in their data openness policies and regulations.
- Judicial institutions, together with intermediaries such as the academia and civil society organizations, must partake in the national open data strategy.
- Governments and international organizations must promote the use of Open Judicial Data through different tools (competitions, hackathons, etc.).
- It is advisable to structure a Justice-related Open Data Portal with all available information.
- It is essential to ensure inter-operability among the systems of the different judicial institutions producing open data.
- One of the country's main justice institutions (Ministry of Justice, Supreme Court, Judges' Council, etc.) must undertake leadership in the process and coordinate the open data judicial policy.
- A group of countries, together with leading international organizations, should promote the definition and adoption of common standards for Open Judicial Data.
- Governments should provide not only judicial data in the way of open datasets but also visual display and data track records to reach out to all users.
- There should be public participation mechanisms to evaluate and prioritize justice system datasets.
- Each judicial system must discuss how to strike a balance between private data publication and protection. Privacy should not be used as an excuse for avoiding openness.
- Judges must establish targets, goals and measurable indicators for the justice service. Judicial performance should be assessed using open data.

- International organizations must promote the creation of working groups on open judicial data, and the participation of judicial experts and leaders in conferences and debates on open data.

A strong and sustainable justice-related ecosystem of open data will create more transparent and accountable judicial institutions, improve the quality and effectiveness of the judicial public policy and have an impact on greater access to justice, as well as fairer and safer environments for all.

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FURTHERING OPEN JUSTICE IN THE OPEN GOVERNMENT PARTNERSHIP: UPDATING THE FINDINGS

SANDRA ELENA* - JULIO GABRIEL MERCADO**

1. Introduction

The Open Government Partnership (OGP) is a multilateral initiative made up of governments and civil society organizations worldwide, launched in 2011 with a view to promoting reforms targeted at increasing transparency, empowering citizens, combating corruption and fostering the use of new technologies to improve governance.

Reform initiatives proposed through OGP materialize by means of commitments which are grouped into Action Plans, whose implementation is permanently evaluated through an Independent Reporting Mechanism (IRM), including different experts for each case, supervised by an International Experts Panel (IEP).

Commitments undertaken by governments within the framework of OGP should highlight at least one of the principles promoted by the Partnership: transparency, accountability, citizen participation or use of technology and innovation.(1)

The resistance of the Judiciaries vis-à-vis the possibility of experiencing structural changes forces to promote cross-cutting reform strategies involving all judicial institutions, including those that are organically a part of other branches of government (Jiménez-Gómez, 2017).

Among the commitments undertaken by the governments participating in the OGP, there is a growing number of commitments to improve the provision of justice services. Successfully implementing these commitments can entail a reform opportunity that the justice sector needs so as to improve its legitimacy vis-à-vis society, as well as its internal functioning.

(*) Coordinator, Open Justice Program, Ministry of Justice and Human Rights, Argentina.

(**) Advisor, Open Justice Program.

(1) Cfr: https://www.opengovpartnership.org/about/about-ogp

The research work spelt out in this chapter is an update of the findings and conclusions arising from two of our previous works published by OGP, in 2015 (Elena, 2015) and 2018 (Elena, 2018).

Although only four years have elapsed since the publication of the first research work, the current scenario shows some significant changes: commitments related to judicial reform keep gaining ground in the overall picture of OGP, in terms of quantity and importance. Evidence of the above is their growing use to introduce new topics going beyond data openness or administrative procedures simplification.

What share of all commitments is related to justice? Is there a region that is more active in outlining this kind of commitments? Which are the countries where the greatest number of justice-related commitments was issued in each region?(2) What is the share of commitments awarded *starred* status among the justice-related commitments? Are there any visible trends into the future? These are some of the questions to be answered by using OGP-provided data.

Towards the end of this chapter, there is an Annex listing the 132 justice-related commitments found in the National Action Plans issued in the period 2011-2018.

2. Method used

On this occasion, we used as primary source OGP's Flagship database (a Google drive-based spreadsheet, recently made public by OGP, which includes the full list of commitments).(3) The selection of new commitments to be added to the list was carried out by searching this database, using specific key words in English (judicial, justice, judiciary, law, court) as well as in Spanish (*justicia*, *judicial*, *ley*, *corte*). This preliminary search was followed by a careful reading of each new result, taking into consideration the tags placed by OGP on each commitment with regard to the government sectors for which the result was important (law and justice, the Judiciary, etc.).

In some cases, in which the link of the commitment with justice was still unclear after the prior analysis, we consulted different Action Plans and examined the full text of each commitment so as to decide on its relevance. This in-depth exploration was useful for ruling out certain commitments in which justice institutions (for instance, Ministries of Justice) were mentioned not as the object of reform, but instead as agencies in charge of implementing policies targeted to institutions from a different sector. It is worth highlighting that the Justice sector is considered in its broadest sense: not only the judicial branch but any government organization operating in the sector.

(2) Unlike in previously published calculations, we speak now of "governments" instead of "countries" as the issuers of commitments, given the fact that OGP now also allows sub-national governments (i.e. cities, provinces or autonomous communities) to issue their own Action Plans.

(3) Cfr: https://www.opengovpartnership.org/about/independent-reporting-mechanism/ogp-data

3. Main Findings

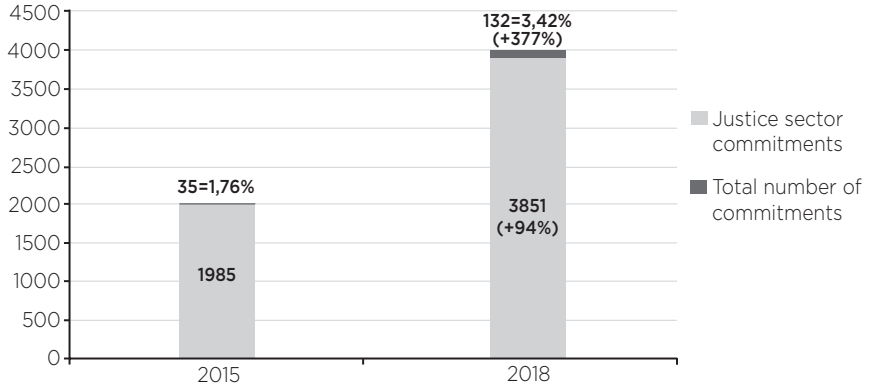
3.1. Total figures

One hundred and thirty-two (132) commitments out of a total of 3851 issued within the framework of OGP in the period 2011 - 2018 were identified as related to the reform of the justice sector, which accounts for 3.42% of the proposed commitments.

In our first assessment (2015), justice-related commitments amounted to 35, out of a total number of 1985 issued until then (1.76%). This means that, while the total number of commitments shows a variation of +94% between 2011 and 2018, the number of total justice-related commitments has increased by +377%.

Consequently, although the number of justice-related commitments is still small with regard to the whole universe of commitments, in the last four years the amount has increased speedily up to almost four-fold the year 2015 number. *See Graph 1.*

Graph 1. Variation in the Total Number of OGP Commitments and those Linked to the Justice Sector



3.2. Commitments by regions

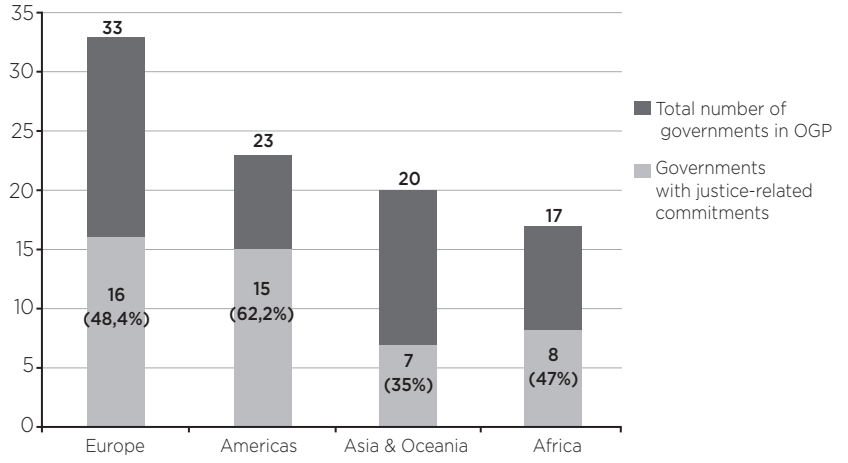
Regarding regional distribution (based on the structure followed by OGP), between 2011 and 2018 European governments have been the most active issuers of commitments (33 organizations have proposed a total of 1500), followed by the Americas (23 organizations, 1374 commitments), Asia and Oceania (20 organizations, 662 commitments) and Africa (17 organizations, 315 commitments).

Nonetheless, if this information is analyzed in light of the justice-related commitments, the situation looks different: the Americas is the most active region (15 governments, 56 commitments), followed by Europe (16 governments, 38

commitments), Asia and Oceania (7 governments, 22 commitments) and Africa (8 governments, 16 commitments).

Furthermore, an internal analysis of each region (through looking at the overall list of governments with commitments and at those that have issued specific justice-related ones) shows that 62.2% of the governments in the Americas have included at least one justice-related commitment in their Actions Plans (48.4% in the case of European governments, 47% in Africa, 35% in Asia/Oceania). *See Graph 2*.

Graph 2. Total Number of OGP Governments with Commitments vs OGP Governments with Justice-Related Commitments



To conclude, OGP seems to be an equally valuable platform to carry out justice sector reform for governments in the Americas, Europe and Africa (at least half of the governments in these countries that have submitted Action Plans included justice-related commitments into them), while Asian countries seem to attach less importance to the topic (although it is also significant).[(4)]

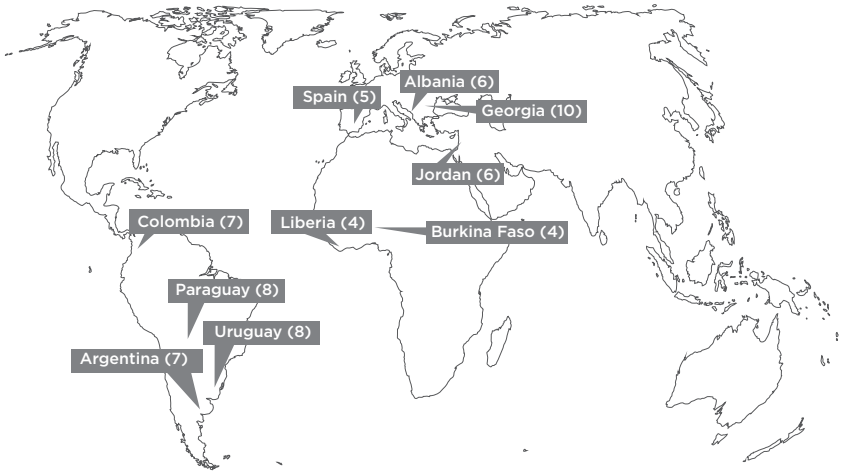
All the above evidences the role that OGP plays currently with regard to the judicial sector, providing an institutional space in which civil society and governments can converge and work hand-in-hand in formulating and implementing reforms (Scrollini & Durand Ochoa, 2015; Byanyima, 2017).

There are countries that stand out in each region based on the number of justice-related commitments issued during the analyzed period: in the Americas, Paraguay and Uruguay (8 commitments each) as well as Argentina and

(4) It is worth noting that in our last published analysis (Elena, 2018) African governments were pointed out as stronger players in the use of OGP for pushing forward judicial reform (by then, 72.2% of African Action Plan issuers had included justice-related commitments). During 2018, a number of government organizations from that region (8) have enacted new Action Plans, however none of them included any justice-related commitment.

Colombia (7); in Europe, Albania (6) and Spain (5); in Africa, Burkina Faso and Liberia (4); and in Asia, Georgia (10) and Jordan (6). *See Graph 3.*

Graph 3. Countries with Justice-Related Commitments by Region

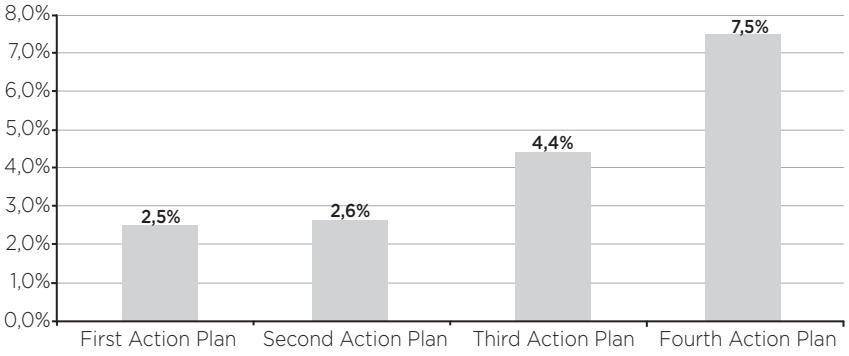


3.3. Commitments by Action Plan

Thirty-eight out of a total of 132 selected commitments were issued within the framework of a first Action Plan. The total number of commitments included in first Action Plan cycles is 1535 and, therefore, these 38 commitments account for 2.5% of all commitments.

On the other hand, 27 commitments out of 1057 belong to second Action Plan cycles (2.6%); 40 out of 897, to third cycles (4.4%); and 26 out of 348, to fourth cycles (7.5%). Only one commitment, featured in Indonesia's last Action Plan, belongs to a fifth cycle (this is the first case so far of the enactment of a fifth plan). *See Graph 4.*

Graph 4. Percentages Accounting for the Justice-Related Commitments of each Action Plan Cycle



3.4. Commitments by Year

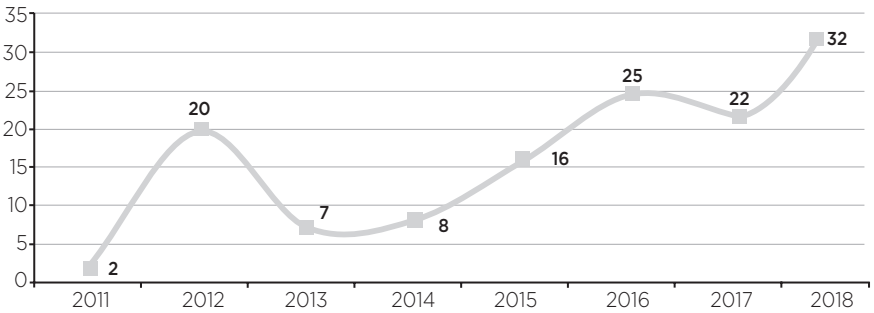
The percentage of justice-related commitments compared to the total number of commitments was on the rise in the period 2011-2018. While in 2011 only two justice-related commitments were issued (which accounted for 1.1% of that year's commitments), in 2012 the number went up to 20 (2.4%), and then decreased again in the following two years.

In 2015, however, a permanent, sustained growth started, with 16 justice-related commitments undertaken that year (5.4% of the total amount), 25 in 2016 (3.1%) and 22 in 2017 (7%). This trend continued in 2018, with an unprecedented high of 32 justice-related commitments (accounting for 6.7% of the total amount). In fact, 71.9% of all existing justice-related commitments were issued during the last four years. *See Table 1 and Graph 5.*

Table 1. How Justice-Related Commitments Evolved vis-à-vis the Total Number of OGP Commitments (2011-2018)

Year	Number of justice-related commitments	Total number of OGP commitments	% of justice-related commitments over total number of OGP commitments	% of justice-related commitments/ year
2011	2	186	1.1%	1.5%
2012	20	850	2.4%	15.2%
2013	7	322	2.2%	5.3%
2014	8	602	1.3%	6.1%
2015	16	294	5.4%	12.1%
2016	25	806	3.1%	18.9%
2017	22	316	7%	16.7%
2018	32	475	6.7%	24.2%
Total	**132**	**3851**	**-**	**100%**

Graph 5. Evolution in the Number of Justice-Related Commitments per Year (2011-2018)



3.5. Starred commitments

The notion of starred commitment was introduced by OGP to identify strong (or model) commitments in the Action Plans. According to the OGP methodology, these commitments are expected to be useful as incentives for government and civil society organizations, as well as to foster learning among countries.

This characterization made by the OGP Independent Review Mechanism is based on a higher level of compliance with the following indicators: precision (commitment specificity) ambition (potential impact), relevance (respect for Partnership values), and completeness (level of implementation) (Foti, 2014).

Out of the 132 justice-related commitments identified so far, 13 are starred commitments. The countries with more awards in this regard are Colombia (3) and Albania (2). *See Table 2.*

Table 2. List of Justice-Related Commitments Awarded "Starred" Status

Country	Year	AP	Commitment title
Albania	2012	1	*24 Audio and video recording of judicial hearings.*
	2012	1	27 Portal www.gjykata.gov.al.
Chile	2014	2	*12 Fortalecimiento de la democracia ambiental (Strengthening of environmental democracy).*
Colombia	2017	3	*Construcción de confianza y consolidación de transparencia y rendición de cuentas en el Consejo de Estado (Building trust and consolidating transparency and accountability in the State Council).*
	2015	2	*Transparencia y rendición de cuentas en el Consejo de Estado para un mejor servicio de justicia (Consejo de Estado). (Transparency and accountability at the State Council for better justice-related services (State Council).*
	2015	2	*Rendición de cuentas de la Rama Judicial y más información sobre servicios de justicia (LEGALAPP- Accountability of the Judiciary and further information on justice-related services).*
El Salvador	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. (Supporting the efforts to amend the law on illicit enrichment promoted by the Supreme Court of Justice integrity office proposing that government officials' property tax returns be published).*
France	2015	1	Further expand the Opening of Legal Resources, the Collaboration with Civil Society on Opening the Law.
Georgia	2014	2	Commitment 17 Proactive Publication of Surveillance Statistics.
Jordan	2012	1	2.3.3 Establishment of a Constitutional Court.
Kenya	2012	1	Improving Transparency in the Judiciary: 2a Public Vetting of Judges and Case Allocation System.
Liberia	2015	2	Implementation of the new jury law.
U.S.A.	2015	3	Build Safer and Stronger Communities with Police Open Data.

3.6. Commitments Based on OGP Values

An evaluation of justice-related commitments based on core OGP values (i.e. transparency, accountability, public participation and innovation and technology) shows a pre-eminence of commitments to provide the justice sector with greater transparency (96 commitments), whilst close to half of the commitments (63) aim at strengthening accountability. On the other hand, the values regarding public participation and technology and innovation are less frequent although they are still relevant (53 and 48, respectively).

With regard to the 2015 evaluation, there is a prevalence of the transparency value, whilst accountability is gaining ground (it was ranked third in 2015 and is now second), and technologies and innovation is losing ground (it was second in 2015 and is now fourth). *See Graph 6 and the Annex for a full list of the values identified in each commitment according to our most recent assessment.*

Graph 6. OGP Values in Justice-Related Commitments

3.7. Trends: Access to Justice, Open Data and Violence Against Women

Fostering access to justice (in other words, improving the effective availability of institutional channels to protect citizens' rights and settle disputes based on the legal system) can be identified as a guiding trend of a significant number of justice-related commitments (Maassen & Basu, 2017), particularly in the last four years.

In 2016, this trend was especially backed by OGP through the Paris Declaration (issued during the Partnership's Fourth Global Summit[5]), that

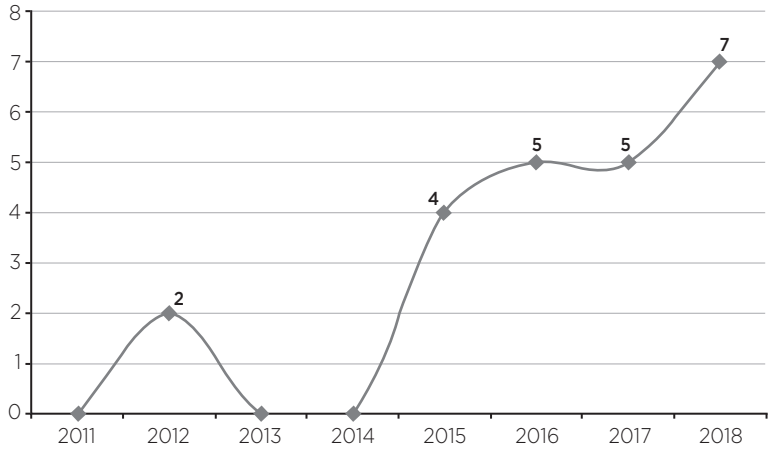
(5) Cfr. https://www.opengovpartnership.org/paris-declaration

included an agenda of specific collective actions to promote open government. Among these actions, one was especially targeted to setting the foundations for a greater use of open government in support of the Rule of Law and access to justice (bearing in mind the guidelines established by the United Nations 2030 Agenda on Sustainable Development, particularly Goal 16).

Subsequently, in 2018 a Coalition for Access to Justice was formed during OGP's Fifth Global Summit in Tbilisi, Georgia[6]. A deeper involvement of access to justice-related civil society organizations and of governments is currently taking place within the OGP, which will certainly set the landscape for further developing this trend.

According to our evaluation, 23 justice-related commitments are targeted to fostering access to justice, 21 of which were issued in the period 2015-2018. *See Graph 7 and the Annex at the end.*

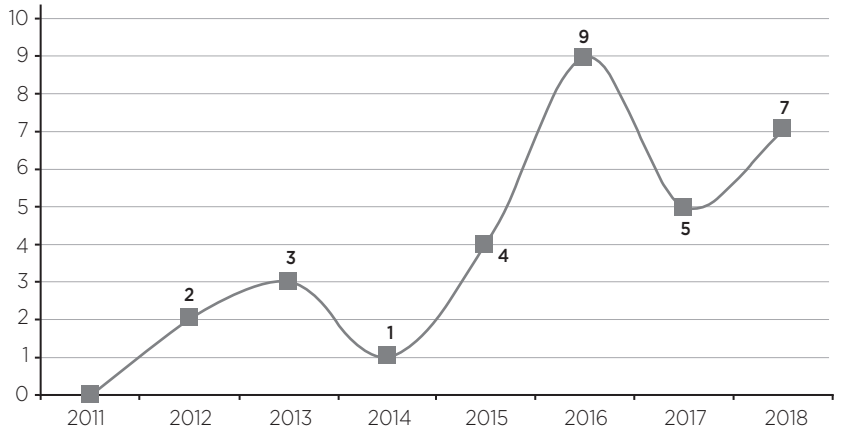
Graph 7. Evolution in the Number of Access to Justice Commitments by Year (2011-2018)



Furthermore, justice-related commitments based on the use of open data seem to have become a growing trend in the last few years. The increasing popularity of open data commitments within the overall OGP context (Khan & Foti, 2015) also seems applicable to justice-related commitments: out of a total of 31 commitments of the kind, 25 were issued in the period 2015-2018. *See Graph 8 and the Annex at the end.*

(6) This Coalition had the Ministries of Justice of Albania, Argentina, Armenia, Macedonia and Georgia as initial members. Cfr. https://www.opengovpartnership.org/stories/legal-system-needs-serve-those-who-need-it-most

Graph 8. Evolution in the Number of Justice-Related Commitments Based on Open Data, by Year (2011-2018)



Finally, in 2017 and 2018 four justice-related commitments were specifically targeted to addressing violence against women. This trend is expected to grow in the near future, and thus OGP will continue to act as a vehicle not only for innovation but also for social change.(7)

These first four justice-related commitments were the following: the one included by Afghanistan in their first Action Plan, targeted at establishing courts especially devoted to addressing the topic; another in Costa Rica (third Action Plan), creating a digital platform for accessing information on policies and mechanisms for protecting women's rights; another in Spain (third Action Plan) to generate information on gender-based violence; and another in Malta (third Action Plan) aimed at tackling 'domestic violence'. *See Annex.*

4. Conclusions

The Open Government Partnership is currently gaining momentum among the participating countries as a strategic tool for implementing a justice sector reform, bringing the latter closer to an Open Justice paradigm. In the last four years, justice-related commitments became more important in the four regions of OGP countries, with 132 commitments issued in the period 2011-2018.

The trends to which the countries seem to be heading for in the future in this regard are providing access to justice, using open data for the justice sector and addressing violence against women.

It is to be expected that OGP will continue to be a platform for change, allowing the implementation of reforms agreed upon by consensus at the global level, and that its impact on the justice sector will continue increasing in the future Action Plans.

(7) For further information on the role of women in the OGP process, cfr. McGraw (2017).

5. Annex

Justice-related commitments					OGP values				Trends		
Country	N°	Year	AP	Title of commitment	Trans-parency	Accoun-tability	Public Participation	Innov. & Tech.	Access to Justice	Open Data	Violence against women
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	Apertura de información sobre los procesos de selección de magistrados	X		X			X	
	9	2017	3	Apertura de información pública sobre los procesos disciplinarios a magistrados	X		X			X	
	10	2017	3	Segunda etapa del Portal "datos.jus.gov.ar"	X	X	X	X		X	
	11	2017	3	Apertura de información del Servicio de Justicia	X		X	X		X	
	12	2015	2	Plataforma para la participación ciudadana y el acceso a la información de la justicia Justi-cia2020	X		X	X			
	13	2013	1	2 7 Proyecto de Ley para la reforma del Poder Judicial	X						
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	

Justice-related commitments					OGP values				Trends		
Country	N°	Year	AP	Title of commitment	Trans-parency	Accoun-tability	Public Participation	Innov. & Tech.	Access to Justice	Open Data	Violence against women
Buenos Aires, Argentina	18	2018	2	Openness and innovation for an open government	X		X			X	
Bulgaria	19	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	
	20	2015	2	14. Introducing the Concept and Practice of Problem Solving Courts in Bulgaria	X		X		X		
Burkina Faso	21	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					
	22	2017	1	Improve the access of vulnerable persons to "Fonds d'assistance judiciaire" [legal aid fund]	X				X		
	23	2017	1	Operationalizing specialized judicial areas in the punishment of economic and financial crimes	X	X					
	24	2017	1	Build the capacities of disciplinary committees	X	X					
Chile	25	2018	4	Justicia Abierta en la Defensoría Penal Pública	X		X			X	
	26	2014	2	12 Fortalecimiento de la democracia ambiental	X		X				
	27	2012	1	4 1 Participación ciudadana en materia medioambiental	X	X	X		X		
Colombia	28	2017	3	Participación Ciudadana en la consolidación del componente de Justicia Comunitaria en el Sistema de Estadísticas de Justicia (SEJ)			X	X			
	29	2017	3	Construcción de confianza y consolidación de transparencia y rendición de cuentas en el Consejo de Estado	X	X		X			
	30	2015	2	Mejor acceso a servicios y trámites en justicia, salud, educación, ambiente e inclusión social	X		X	X	X		
	31	2015	2	Rendición de cuentas de la Rama Judicial y más información sobre servicios de justicia	X	X		X		X	
	32	2015	2	Transparencia y rendición de cuentas en el Consejo de Estado para un mejor servicio de justicia	X	X				X	
	33	2012	1	2 7 Mayor transparencia de información del sistema de justicia	X			X		X	
	34	2012	1	2 9 Participación en la formulación de políticas		X	X	X			

Justice-related commitments					OGP values				Trends		
Country	N°	Year	AP	Title of commitment	Trans-parency	Accoun-tability	Public Participation	Innov. & Tech.	Access to Justice	Open Data	Violence against women
Costa Rica	35	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
	36	2017	3	Observatorio del Marco Jurídico Vigente en materia de Gobierno Abierto	X	X	X				
	37	2017	3	Política de Justicia Abierta	X	X	X		X		
	38	2015	2	Difusión de la Política de Participación Ciudadana del Poder Judicial			X				
	39	2015	2	Proyecto de Ley de Acceso a la Información Pública	X	X					
	40	2013	1	3 2 3 Presentar a la Asamblea Legislativa un proyecto de Ley de Acceso a la Información Pública	X		X				
Czech Republic	41	2018	4	Improving the annual statistical report of the Czech judiciary	X				X		
	42	2018	4	Publishing the decisions of lower courts	X	X	X		X		
El Salvador	43	2014	3	Fortalecer la probidad pública	X						
	44	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	45	2018	2	Involving citizens further in the work carried out by the Cour des comptes	X		X			X	
	46	2015	1	Further expand the Opening of Legal Resources the Collaboration with Civil Society on Opening the Law	X		X	X		X	
	47	2015	1	Strengthen Mediation and Citizens Ability to Act in Matters Relating to Justice			X		X		
Georgia	48	2018	4	Publishing court decisions in a unified database and creation of a retrieval system	X	X		X			
	49	2018	4	Strengthening the existing major Anti-Corruption Institutions		X					
	50	2016	3	10 Establishing unified regulations to publish court decisions	X	X	X			X	
	51	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	

Justice-related commitments					OGP values				Trends		
Country	N°	Year	AP	Title of commitment	Trans-parency	Accoun-tability	Public Participation	Innov. & Tech.	Access to Justice	Open Data	Violence against women
Georgia	52	2016	3	13 Publication of phone tapping data according to the nature of the crime and geographic area	X	X	X			X	
	53	2016	3	16 Adoption of the Environmental Assessment Code	X	X			X		
	54	2014	2	Commitment 27 Interactive Statistics and Crime Mapping				X			
	55	2014	2	Commitment 17 Proactive Publication of Surveillance Statistics	X						
	56	2012	1	1.1 Public Service Hall Hub of Public Services				X			
	57	2012	1	3 3 Citizens and Justice			X				
Ghana	58	2013	1	4 Human Rights and Anti-Corruption		X	X				
Greece	59	2016	3	Accountability and Settlement of Disputes between the citizens and the Public Sector		X					
	60	2016	3	Enhanced statistical data of justice open to the public	X	X		X		X	
	61	2016	3	Provision of open data for Justice	X	X		X		X	
Guatemala	62	2014	2	Aumentar la Integridad Pública	X	X					
Honduras	63	2018	4	Open Justice Digital File for Greater Transparency in the Process	X	X	X	X		X	
Hungary	64	2013	1	5 Dissemination of information on anticorruption and integrity	X	X				X	
Indonesia	65	2018	5	The Expansion and Increase in Quantity and Quality of Legal Aid Services					X		
	66	2011	1	4 Police	X	X		X			
Ireland	67	2016	2	Improve Access to Justice	X	X			X		
	68	2016	2	Judicial Council legislation will be published and enacted		X					

Justice-related commitments					OGP values				Trends		
Country	N°	Year	AP	Title of commitment	Trans-parency	Accoun-tability	Public Participation	Innov. & Tech.	Access to Justice	Open Data	Violence against women
Italy	69	2016	3	1 Shared national agenda for the enhancement of public data	X	X		X		X	
	70	2016	3	10 Transparency of data on penitentiaries	X		X	X		X	
Jordan	71	2018	4	Unification and development of the national Human Rights violations' complaints mechanism		X		X			
	72	2016	3	2 Strengthen the facilities available for persons with disabilities to access the justice system	X			X			
	73	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					
	74	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			
	75	2012	1	2.3.3 Establishment of a Constitutional Court							
	76	2012	1	2 3 4 Establishment of an Administrative Court							
Kenya	77	2018	4	Public participation		X	X				
	78	2012	1	C Improving Transparency in the Judiciary 2 a Public Vetting of Judges and Case Allocation System	X			X			
Kyrgyz Republic	79	2018	1	Modernization of the state judicial acts register	X						
Liberia	80	2017	3	Citizen Monitoring and Support for the Justice System		X			X		
	81	2017	3	Implement A Feedback Mechanism to Build Accountability of the LNP	X	X					
	82	2015	2	Enhance citizen monitoring of the justice system		X					
	83	2015	2	Implementation of the new jury law			X				
Macedonia	84	2018	4	Access to Justice Development					X		
	85	2018	4	Improving access to justice for marginalized groups of citizens				X	X		

Justice-related commitments					OGP values				Trends		
Country	N°	Year	AP	Title of commitment	Trans-parency	Accoun-tability	Public Participation	Innov. & Tech.	Access to Justice	Open Data	Violence against women
Malawi	86	2016	1	National Integrity System and Fight Against Corruption	X	X					
Malta	87	2018	3	Strengthening Local Government and the Commission for Domestic Violence in Malta		X					X
Mexico	88	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		
	89	2011	1	29 Criminal Investigation Site	X	X	X	X			
Moldova	90	2018	4	Developing citizen-centered public services by optimizing and streamlining public service delivery processes	X	X		X	X		
	91	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	92	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						
Montenegro	93	2018	2	Efficient collection of administrative fees	X	X					
Nigeria	94	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				
	95	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	96	2017	3	Observatorio Ciudadano Anticorrupción	X		X				
	97	2015	2	Elaborar propuesta para establecer mecanismos participativos de escogencia de Magistrados Procuradores Magistrados y Fiscales Administrativos	X		X				
Paraguay	98	2018	4	Sistema de Información Gestión Penitenciaria	X						
	99	2018	4	Datos abiertos sostenible y responsable	X	X				X	
	100	2018	4	Un jurado de enjuiciamiento de magistrados transparente	X	X	X				
	101	2018	4	Mecanismos de medición de gestión de agentes fiscales	X	X					
	102	2018	4	Programa de Justicia				X			

Justice-related commitments					OGP values				Trends		
Country	N°	Year	AP	Title of commitment	Trans-parency	Accoun-tability	Public Participation	Innov. & Tech.	Access to Justice	Open Data	Violence against women
Paraguay	103	2018	4	Ventana de Transparencia y Acceso a la Información Pública del Poder Judicial	X						
	104	2018	4	Diálogo con la ciudadanía			X				
	105	2012	1	9 Servicio de información legal (e-legal)	X			X			
Peru	106	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				
	107	2012	1	2 g Acuerdos plenarios supremos			X				
	108	2012	1	3 e Subsistema especializado en delitos de corrupción		X					
Romania	109	2018	4	Annual mandatory training of civil servants on integrity matters				X			
	110	2018	4	Improving transparency in the management of seized assets	X					X	
	111	2016	3	12. Improve transparency in the management of seized assets	X	X					
	112	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 c Expanding the on line submission of fiscal forms B 1 d Ensuring the free on line access to national legislation B 1 e Developing electronic tools to manage subpoenas and facilitate access to information regarding legal proceedings B 1 f Developing electronic tools to manage the procedures related to obtaining the Romanian citizenship 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 SIIAEJ	X			X	X		
Sierra Leone	113	2016	2	9 Access to Justice	X				X		
Slovaquia	114	2015	2	Open Justice	X			X			
South Africa	115	2016	3	Institutionalisation of Community Advice Offices as part of the wider Justice network		X	X	X	X		

Justice-related commitments					OGP values				Trends		
Country	N°	Year	AP	Title of commitment	Trans-parency	Accoun-tability	Public Participation	Innov. & Tech.	Access to Justice	Open Data	Violence against women
South Korea	116	2016	3	Disclosing high-demand and high-value national data first	X	X		X			
Spain	117	2017	3	Support for open government initiatives abroad	X	X	X				
	118	2017	3	Push Open Data as an instrument for Open Justice in Spain	X	X	X			X	
	119	2017	3	Information on gender-based violence	X		X				X
	120	2014	2	Commitment No 7 Portal of the Administration of Justice	X			X		X	
	121	2012	1	5 e justicia				X			
Ukraine	122	2014	2	11. Corruption risk assessment methodology		X	X				
USA	123	2015	3	Build Safer and Stronger Communities with Police Open Data	X	X				X	
	124	2015	3	Expand Access to Justice to Promote Federal Programs			X		X		
Uruguay	125	2018	4	Access to judicial processes							
	126	2018	4	Public hearings on video	X			X			
	127	2018	4	Transparency of Statistical information of the Judicial Branch	X	X				X	
	128	2018	4	Transparency and participation in the National Plan on Human Rights Education	X		X				
	129	2018	4	Human Rights Reports: New participatory mechanisms	X		X				
	130	2018	4	Monitoring and ongoing evaluation of the National Plan for Access to Justice and Legal Protection of Persons with Disabilities (2015/2020)		X	X		X		
	131	2016	3	3 1 Transparencia de información estadística del Poder Judicial	X	X					
	132	2016	3	3 2 Proceso para canalizar demanda de información del Poder Judicial	X		X				

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JUSTICE AND INNOVATION: THE NEED FOR AN OPEN MODEL

SANDRA ELENA* - JULIO GABRIEL MERCADO**

1. Introduction

Implementing and promoting innovation within a framework of open justice goes hand-in-hand with a new political and ethical outlook applicable not only to public institutions, but also to the private sector and the whole of civil society.

While there is much evidence about thorough debates on the new ways of designing public innovation strategies in the "traditional" sectors such as general public services, healthcare or housing (OECD, 2019), we believe these have not been sufficiently developed (despite their relevance) regarding justice administration sectors.

We support the fact that justice must not be considered a "lost cause", in which the complexity of the context as well as the rigid tradition of some of its organizations is believed to block any attempt to address innovation: quite the opposite, we consider it is necessary to open a broad discussion on how the organizations can adjust to facing the growing demands and challenges ahead to serve societies that are becoming more complex throughout time.

We will start this chapter by introducing the notion of innovation in the public sector and provide a brief overview on how this term has evolved, ultimately proposing four categories to classify public innovation (products, processes, governance and conceptual).

We will then focus on innovation in justice as a new approach involving the different agencies and individuals that partake in and use justice-related services. The conceptual framework we use is the one developed in 2019 by the Innovation Working Group of the Task Force on Justice (Task Force on Justice, 2019).

We will use public innovation categories to classify different types of innovation in the justice sector and, to conclude, we will outline a few ideas which

(*) Coordinator, Open Justice Program, Ministry of Justice and Human Rights, Argentina.

(**) Advisor, Open Justice Program.

can lead to thinking about an open innovation model for the sector, focused on the interaction of justice institutions with civil society, other government institutions and the private sector.

2. Public Sector Innovation

Innovation is a term that is no doubt attractive to public and private organizations and to citizens at large. Although as at today it can be considered an umbrella term encompassing many potential meanings (Edwards-Shachter, 2018), all equally desirable, innovation only turned into a positive value as from the 20th century, a time at which the historically challenged idea of humankind-fueled deliberate change took on a positive connotation (Godin, 2015).

At present, innovation has become a totally positive value, a sort of "magic concept" (Pollit & Huppe, 2009), linked to ongoing reform processes, that together with the will to improve public service through a subtle ingredient of business practice (Osborne & Browne, 2013) entail hope for a great part of the public sector to be able to meet the challenges of the fourth industrial revolution underway (Schwab, 2017).

2.1. An evolving concept

The most basic definition of innovation is any idea, practice or object perceived as new by an individual or other unit of adoption (Rogers, 2003).

A part of this new positive meaning of innovation is due to the contribution of Austrian economist Joseph Schumpeter who in his development theory attached a central role to innovation as the force promoting the necessary structural changes from the inside for historical processes of change to happen (Schumpeter, 1911 & 1942). According to the Schumpeterian definition, innovation is brought about by entrepreneurs that:

> "*...reform or revolutionize the pattern of production by exploiting an invention or, more generally, an untried technological possibility for producing a new commodity or producing an old one in a new way, by opening up a new source of supply of materials or a new outlet for products, by reorganizing an industry and so on...*" (Schumpeter, 1942, p. 132).

Schumpeter's definition was a starting point for all theoretical explorations and developments regarding innovation that, at first, were exclusively linked to the private sector and to market-linked business attitudes (Brugué, Blanco & Boada 2014). Once the public innovation notion was developed, it also encompassed public institution analyses and practices. This happened side-by-side with an emerging path taken by the public sector worldwide, through which the latter, helped by technological changes, new forms of citizen-centered governance or new management notions, took on a greater leading role in innovation processes (Tõnurist, Kattel & Lember, 2017) and, in some cases, the initiative of creating new markets, technologies and even economic sectors (Freeman, 1995; Mazzucato, 2011).

There is currently widespread consensus on the idea that public innovation can be useful to address and resolve specific needs and challenges, both long-standing and emerging ones, many appearing to be unsolvable (NESTA, 2014; Schwab, 2017; Young, Brown, Pierce et al., 2018).

2.2. Types of public sector innovation

In the last few decades there have been many theoretical approaches to public innovation (Borins, 2001; Hartley, 2005; Halvorsen, Hauknes, Miles & Ranveig, 2005; Mulgan, 2007; Windrum & Koch, 2008; Bekkers, Edelenbos, & Steijn, 2011; Osborne & Brown, 2011; Bloch & Bugge, 2013; De Vries, Bekkers & Tummers, 2014). However, the broadest definition of innovation, applicable to all organizations (private and public), is the one provided in the OECD Oslo Manual.

In its different editions, the Manual has sought to be a guide to understanding the nature of both public and private innovation, as well as a means to measure its effect through data usage. Its latest edition defines innovation as:

> "*...a new or improved product or process (or combination thereof) that differs significantly from the unit's previous products or processes and that has been made available to potential users (product) or brought into use by the unit (process)...*" (OECD/Eurostat, 2018, 20).

This definition deems innovation to be a dynamic and universal activity taking place through changes implemented by organizations and individuals in their products and processes. This entails many interactions and feedback in knowledge creation and use, within the framework of a learning-based process that draws on multiple inputs and requires ongoing problem-solving (OECD/Eurostat, 2018).

In view of the Oslo Manual definition, we can try and propose a public innovation typology, initially with two categories: product- and process-based public innovation.

Product-based public innovation consists of providing a new good or service, improving quality or bringing about changes in the way in which the public good or service is provided to citizens. In order to understand product innovation in the public sector, a broad range of goods and services provided by public institutions must be taken into consideration, which calls for the social value generated to be included in the equation (Hartley, 2005) since it is based on political and social considerations (and not on maximizing economic benefits as in the case of product innovations in the private sector) (OECD/Eurostat, 2018).

On the other hand, process-based public innovation refers to changes made in organizational processes, both internal and external, inherent in the operation of these institutions. This kind of innovation has an impact on the structure, resources, administrative or management procedures of public institutions (Walker, 2014), since many of these innovations are inspired in or are similar to others applicable to the private sector, save for the fact that these

pursue redistributive or consumption-related goals that are unique to government (OECD/Eurostat, 2018).

Once these two basic analysis categories have been established, following Wagenaar & Wood (2018), we argue that the public sector is, above all, a political process entailing an inherently public and democratic practice, essential to safeguard and promote specific values within the context of public life. According to this rationale, public innovations:

> "*...are not straightforward applications of an impulse to improve the functioning of our administrative apparatus... (...) ... instead, they are contingent outcomes of human agency, ideological enthusiasm, strategic one-upmanship, and historical development...*" (Wagenaar & Wood, 2018, 155).

This substantially political component of public sector innovation is a differential feature that calls for two more categories within public innovations: governance-related and conceptual, also reflected in the literature (Hartley, 2005; Halvorsen, Hauknes, Miles & Rannveig, 2005; Moore & Hartley, 2008; Windrum & Koch, 2008; De Vries, Bekkers & Tummers, 2014).

Governance-related public innovation refers to changes that go beyond organizational borders, targeted to modify decision-making processes which harness new resources and inputs, ultimately redistributing the right to define and judge public value (Moore & Hartley, 2008). Governance innovations consist of new citizen engagement forms and processes (Hartley, 2005), new forms of government-citizen interactions targeted to achieving the objectives collectively established by society.

Conceptual public innovation refers to those changes entailing the introduction of new paradigms or worldviews in public organizations, hand-in-hand with a rethinking of their mission, objectives and strategies (Halvorsen, Hauknes, Miles & Rannveig, 2005). This kind of innovation allows organizations to reframe the nature of specific problems as well as their possible solutions (Bekkers, Edelenbos, & Steijn, 2011), giving them the possibility to adopt new approaches to better address both new and old situations. The following table summarizes the above-described categories of public innovation.

Table 1. Categories of public sector innovation

Categories of Innovation	Description	Source
Product-based	Changes in provided services and products.	OECD/Eurostat, 2018; Hartley, 2005; Windrum & Koch, 2008.
Process-based	Changes in the internal and external processes in organizational operation.	OECD/Eurostat, 2018; Hartley, 2005; Windrum & Koch, 2008, Walker, 2014.
Governance-related	Changes in the way organizations interact with citizens to create public value.	Hartley, 2005; Moore & Hartley, 2008.

Categories of Innovation	Description	Source
Conceptual	Shift in the paradigm or worldview of organizations.	Halvorsen, Hauknes, Miles & Rannveig, 2005; Bekkers, Edelenbos, & Steijn, 2011.

3. Public innovation in justice

As public organizations, justice-sector institutions also need to adopt an innovative approach to face the challenges and deficiencies of the justice systems worldwide.

We believe there is still a lot of room for more thorough developments and analysis of public innovation, and although by now there is a consensus on the need for further innovation as a prerequisite to achieve greater access to justice and a better operation of justice-related services (without denying, of course, the difficulties faced in their implementation) (Katz, 1986; Schreiber, 1992; Velicogna, 2007; Baxter, Schoeman & Goffin, 2011; Sheppard, 2015; European Commission, 2017; Leering, 2017), no typology has so far been developed to allow classification and analysis of either implemented or potential initiatives.

3.1. The need to innovate in the justice sector

In essence, institutions in the justice sector have not undergone any major changes in the last two hundred years (Muller & Barendrecht, 2013).

Complexity inherent in the justice sector makes it particularly difficult to implement any innovation initiative. These are organizations whose performance is linked not only to one but instead to all three branches of government (Executive, Legislative and, of course, the Judiciary) and includes bonds (sometimes winding, not harmonic) with a vast universe of current and potential users, as well as with many professional sub-systems, each with their own weight, for instance, professional associations, court administrators, law enforcement devices or criminal agencies (Schreiber, 1992).

There are many reasons to promote innovation in the justice sector. Besides the proven correlations between judicial efficiency, institutional strength and sustainable economic and social development (OECD/Open Society Foundations, 2016; Bove & Leandro, 2017; Fauvrelle & Almeida, 2018), one could add society's growing demands and expectations. Such expectations exert a strong pressure, either directly or indirectly, on the sector's organizations. The justice system is expected to improve its performance, the quality of its decision-making process, accountability for its actions, and ensure transparent actions, all under the close scrutiny of the mass media, politics and society at large (Dupont, Schoenaers, Gibens et al., 2018).

Apart from the above, there is the most basic and urgent need to reduce unmet legal needs, translated into the current lack of access to justice experienced by around 1.5 billion people worldwide (Task Force on Justice, 2019)[(1)].

(1) Unmet legal needs refer to the gap between experiencing a legal problem and achieving a satisfactory solution thereof, including legal needs that are not resolved because

It could be said that innovation has at this point turned into the way of having justice services face all the above challenges, and also the way of preserving the very values and integrity of society (Baxter, Schoeman & Goffin, 2011).

Although it is true that until recently justice organizations seemed immune to the innovation momentum experienced by the public sector overall (Sheppard, 2015), this appears to be changing quickly and now there is no doubt about justice having to adopt an innovative approach, but the issue is how to do it. The questions to fuel the current debate are in the order of: is justice innovation exclusively tasked to the judicial organizations? Or can all justice-related organizations (including the private sector) make a contribution? Does innovation have to be bottom-up, a political response to a crisis or a turnaround headed by the sector's different agencies? (Borins, 2002).

In this article, we propose an innovation strategy openly addressing the current challenges of the justice sector as a whole, by building new capacities and improving existing ones, fostering the willingness of the sector's organizations to innovate (Leering, 2017). In this regard, we believe that the implementation of the innovation strategies for the sector should not be the sole decision of the public sector, or of the judiciary alone: all public institutions (from all three state branches) should be included as well as private organizations, civil society at large, the academia, consistent with the above-stated open justice paradigm[(2)].

With regard to whether it should be a bottom-up movement, a political response to a crisis or a turnaround headed by different agencies acting within the system, we believe that it must be a mix of all three options. It must gather the inputs of all stakeholders and agencies interacting within the system (including, of course court users), respond to a representation and trust crisis stemming from the quick changes in our societies because of the fourth industrial revolution (Schwab, 2017), and finally, call for leadership to reinforce and promote the process, without any branch of government or sector having exclusivity in the process. Justice innovation must be thought of as a dynamic learning process, individual and social (Engel, Klement & Weinshall, 2017), facilitating its dissemination and adoption.

Although the use of new technologies plays an important role in innovating, it does not exclude other factors (Aylwin & Simmons, 2017). Innovation can entail institutional re-design, a new way of thinking the sector's practices or new

people are not aware of their rights, or because there are limitations to their enforcement. According to the *Encuesta Nacional de Necesidades Jurídicas Insatisfechas y Niveles de Acceso a la Justicia* (National Survey on Unmet Legal Needs and Access to Justice) carried out in 2016 by the Argentine Ministry of Justice, 66% of Argentina's inhabitants admit having experienced some sort of legal problem in the last three years, whilst 54% say they lack knowledge or capabilities to solve their problem. For study outcomes, see http://www.jus.gob.ar/media/3234696/diagnosticoinformefinaldic2016.pdf

(2) Chapter 1 of this publication lists the components of the Open Justice paradigm.

ways of enforcing people´s rights through a new organizational structure. Thus, whilst technology can play a significant role in implementing justice-related innovations, its use does not outline it as such.

3.2. Innovation Working Group

At the end of 2018, the Innovation Working Group (IWG), of the Task Force on Justice, made up of world experts in justice-related innovation in the public and private sectors drafted recommendations on the potential of innovation to increase access to justice and collaborate with the fulfilment of the UN 2030 Agenda, particularly Goal 16 and its targets related to sustainable institutional development[3].

As a result of these efforts to outline a rationale for the future of innovation in justice, a series of principles and case studies were proposed to inspire the work of responsible leaders and organizations on the future of the sector in forthcoming years. According to conclusions arrived at by IWG, the starting point for justice innovation is particularly complex because of three factors: a widespread lack of trust in institutions, the demographic pressure (particularly significant in countries with a low level of access to justice) and inevitable changes in the labor market promoted by a growing use of new technologies.

According to IWG, the best way to address this difficult task is to challenge our basic assumptions about what justice systems do and how they do it. It thus proposes to rethink justice systems on the basis of four basic ideas, namely:

- The need of *putting people first*: instead of considering the justice system as an automatic mechanism applying standards to people's behavior, it must be re-framed in terms of people's justice needs and of the fairness of their relationships;
- A new focus on *outcomes*: to no longer think that the only potential outcomes of the system are sanctions or acquittals, and start thinking about solving different situations on a more human scale, that is to say, focus on whether a person affected by a problem obtained a solution or not, and if potential damages into the future were prevented or not;
- *Open up* the system: leave aside what IWG calls the "robe model" according to which justice is the exclusive domain of lawyers, and change the system's rules and, moreover, the system's culture, allowing entry of other fields of knowledge and experiences (social scientists, data analysts, administrators, users);

(3) Chaired by the Governments of Argentina, the Netherlands and Sierra Leone, as well as by the Elders (an international non-governmental organization founded by Nelson Mandela in 2007), The Task Force on Justice is an initiative of the Pathfinders for Peaceful, Just and Inclusive Societies to bring together world justice leaders and experts in order to accelerate the provision of justice to people and communities currently outside the protection of the law, in line with SDG16.3 and related SDG targets on justice. https://www.justice.sdg16.plus/

- Change the notion on the *system's costs*: besides the monetary costs for its operation, think of the benefits the system provides in terms of economic and social development, and take into account the benefits for social cohesion that could stem from reducing the number of people with unmet legal needs (Task Force on Justice, 2019).

In order to shift the paradigm, IWG focuses on various sectors to carry out a new *justice innovation approach*. The success of this new paradigm depends on the following stakeholders:

- *Justice leaders* from the public sector and civil society (ministers of justice, chief justices, chief prosecutors, ministers of development, parliamentarians, presidents of bar associations, civil society leaders, deans of law schools, presidents of think tanks, presidents of philanthropic organizations);
- *Government officials* as well as *professionals* working in the private sector (courts, prosecution services, police departments, law firms, individual lawyers, paralegal organizations, all justice workers and their organizations);
- *Other public and private organizations* (ministries other than the Ministry of Justice, bureaus of statistics, research institutions);
- Private sector *justice entrepreneurs*;
- *Citizens* (Task Force on Justice, 2019).

There is empirical information stating that the change brought about by justice innovation is ultimately much more important than the novelty of its introduction (Machado, Sousa, Rocha & Isidro, 2018). We believe that, over and above the use of technologies to streamline judicial management (which also includes innovation that can make life easier for the system's operators and users), this new approach should be based on an open justice model, under the premise of applying Open Government principles to the judicial sector.

3.3. Types of justice sector innovations

Along the lines of this idea, implementing the new *justice innovation approach* entails empowering and encouraging the greatest possible number of stakeholders in the justice system (from judges to victim support services, from academics to legal aid lawyers) to seek continuous improvement of justice mechanisms (Muller & Barendrecht, 2013). This improvement can be reflected in many ways, through new forms of understanding, conducting, managing and regulating public organizations (courts, prosecutors' offices, access to justice services, etc.), as well as private ones (for instance, law firms), and through policy innovation, the creation of new, disruptive services or the improvement of already existing offerings (Aylwin & Simmons, 2017).

Below we will provide examples of justice innovations, taking into consideration the above-mentioned model to analyze innovation in the public sector overall. This table provides a few examples of existing innovations in the judi-

cial system and it may be enlarged with innovations that may not have fallen into our radar and those that may appear in the future.

Table 2. Categories, Examples and Cases of Public Innovation in Justice

Categories of justice innovation	Examples	Cases
Product-based	- legal aid services, provided by lawyers and lay individuals, in-person or using technology, to individuals or organizations; - production and publication of data, statistics and judicial information in machine-readable formats; - implementation of new customer service models; - plain language initiatives; - clearance of criminal records; - smart contract-based services.	- Stop and Search Dashboard, London Metropolitan Police (UK); - Barefoot Law (Uganda); - A Closer Justice; Ministry of Justice (Portugal); - Clear My Record, Code for America (USA); - Adapting Legal (Netherlands); - Legal Aid Hospital, Ministry of Justice and Human Rights (Argentina); - Georgia Justice Project (USA);
Process-based	- management systems (paperless, use of dashboards); - legal tech services based on artificial intelligence and machine learning; - adoption of special procedures (alternative dispute resolution, flagrancy, summary proceedings, jury trials); - use of blockchain technology (information protection); - use of quality certificates; - interdisciplinary practice; - change in procedural systems.	- CrimeSync (Sierra Leone); - Modernization of Courts, Ministry of Justice (UK); - Prometea (Argentina); - Civil Resolution Tribunal (Canada); - Kira Systems (Canada); - Docusign (UK); - CaseText (USA).
Governance-related	- citizen-based mechanisms and platforms to increase access to government policy and legislation; - mechanisms for public grievance redressal; - public hearing mechanisms.	- Access to Public Grievance Redressal, Bihar Department (India); - Justicia 2020, Ministry of Justice and Human Rights (Argentina).
Conceptual	- re-frame the system in terms of people's justice needs; - dispute resolution from a more human perspective; - leave aside the 'robe model'; - new understanding of system costs.	- Innovation Working Group (IWG), Task Force on Justice

4. Towards an open justice innovation modality

In view of the above, innovation for the justice sector should take place within an open justice paradigm, that is to say, in a way in which the sector's organizations interact and exchange information among themselves, with civil society and other public and private sector institutions to create a better, more efficient, responsible and user-centered service.

The open innovation perspective has lately been widely addressed in literature (Chesbrough, 2003; Nambisan, 2008; Bommert, 2010; Hilgers & Ihl, 2010; Podmetina, Fiegenbaum, Teplov & Albats, 2014; Bogers, Chesbrough & Moedas, 2017; Agger & Lund, 2017), in what we believe to be a notion that goes beyond the traditional concept of innovation, more related at the beginning to the Schumpeterian idea attaching more importance to the individual, lonely momentum of an entrepreneur, as stated at the beginning of this paper.

According to that original idea, innovation was the exclusive responsibility of a producer innovator or of a single user innovator (Baldwin & von Hippel, 2010), in what was alleged to be a closed innovation paradigm which served as a successful model for the knowledge environment present throughout most of the 20th century (Chesbrough, 2003).

Several developments and trends, such as globalization, technological changes, new business models or the role of knowledge as the most important resource for organizations (Gassmann, 2006) led to the obsolescence of the closed paradigm, promoting the need to replace it by a new paradigm, which is based on an open, collaborative modality, focused on harnessing the resources and capabilities of external networks, organizations and users as a way of accelerating and achieving better outcomes from innovation (Nambisan, 2008).

The need to mainstream and harness this huge wealth of resources and capacities to develop an innovative approach is shared by most of the public sector: each day more public organizations use external knowledge sources to improve the services rendered and create more public value, which has resulted in a deep restructuring and change in organizational forms (Lee, Hwang & Choi, 2012).

The justice sector needs to bring about changes to adopt an open innovation paradigm and leave aside the features of a closed, hierarchical and difficult to access system for the people, no longer focusing on operators, and opening it up to other organizations and users. The principle of power separation, which is essential in the design and operation of modern judicial systems has led to isolating some justice organizations from many innovative initiatives and trends taking place in other organizations within the public sector, as well as in other government branches. Therefore, while some organizations have undertaken their transformation from classical and hierarchical 19th century models to become reactive and forward-thinking examples of governance, others seem to lag behind (OECD, 2019).

In the specific case of the justice sector, we propose that:

> "*...Bureaucratic cultures coined by negotiating legal command and control and closed boundaries of tradition have to be cracked towards cultivating permeable edges, fostering power-sharing and free interaction between groups and individuals inside and outside the public organization...*" (Hilgers & Ihl, 2010, 83).

With a view to promoting a shift towards this new model, current leaders in the justice sector should set the direction and route of change, promoting the appropriate policy framework for innovation, establishing indicators and evaluation tools to measure the effects, creating structures and mechanisms to accommodate risk-taking, explorative capacity and capabilities needed for organizations and actors to envision and manage this new vision, as well as to share the rewards thereof (Mazzucato, 2016).

5. Conclusions

The number of unmet legal needs is high and growing worldwide. Achieving a justice service that meets these needs calls for putting an end to business as usual, thinking of disruptive ways to provide the service so as to reach out to more people. This disruption goes hand-in-hand with open innovation; an innovation model that brings in all justice ecosystem players. This leads to going from a justice system transformed on the basis of a single leadership to a co-created transformation with several players, particularly the active inclusion of civil society.

Following our theoretical framework, a drop in the unmet legal needs calls for innovation at four levels: at the level of paradigms, governance, processes and products.

At the paradigm level, justice must forget about the 19th century model that set a distance between judges and individuals and head towards a people-centered system. The core of all justice system actions in its broadest sense will from now onwards be the people and their legal needs. All public policy decisions must focus on this new cosmovision.

A new governance model is thus required so the justice sector can leave aside hierarchical leaderships inherent in another era, and open up to participation in the design, implementation and evaluation of justice-related public policies. Several mechanisms are applicable to achieve this objective: from participatory platforms to discuss policies, through to public hearings that could be useful to address the most relevant cases.

Justice processes, particularly formal ones, require a high degree of innovation so as to come closer to the new paradigm. Proceedings must be shortened and be less formal, and the use of oral procedures and plain language will help to such a transformation. It is essential for justice institutions to use new technologies to increase access to justice: smart contracts, use of legal tech, artificial intelligence and blockchain are some of the powerful tools to be disseminated. Open data and the free flow of data will always be present in innovative systems.

Finally, justice products delivered to people must be enhanced and improved. It is not only the Judiciaries that provide justice. Demand is so high that the judiciaries on their own would never be able to meet all needs. Ministries of Jus-

tice, public prosecutors' offices, public defenders' offices, legal clinics, public and private legal service providers can help solve certain disputes. Tools such as judicial facilitators, centers for access to justice and legal aid hospitals are excellent options for this purpose.

It is not a simple task to achieve the innovation herein proposed. It calls for an important cultural change. In each case, an analysis must be carried out on who is the innovative agent that can put into practice these changes. Since 2016, the Argentine Ministry of Justice and Human Rights of Argentina is in charge of promoting to provide more and better access to justice. Only if we place people and their needs at the center and align processes and products to this idea will we be able to achieve a fairer, more peaceful and inclusive society by 2030 as committed to by most countries through the UN development agenda.

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PROTECTING PRIVACY AND ENSURING ACCESS TO JUSTICE-RELATED INFORMATION: A POSSIBLE WAY AHEAD

CARLOS G. GREGORIO*

1. Introduction

Two and a half centuries ago, Charles III -King of Spain- was asked about the justification for his decision to expel the Jesuits from their land and he is said to have answered the following: "for reasons I keep to my Royal self" (Ferrer del Río, 1866). Today no head of government could give such a reply. Citizens have the right to know the reasons why, hear about the details and broadly voice their opinions about the acts of government and the use of State power. In the last 50 years this change has taken place through several legal strategies: the right to access information, decision-making in public hearings, citizens' participation in the acts of government, active transparency, among others. State information to which access has been gradually gained, has turned an environment of opacity into one of openness. These strategies have flourished in the public administration. In the Judiciary, however, the path towards full openness has certain obstacles. The arguments in this regard refer to the importance of preserving the Judiciary's independence or the separation of powers. Specifically, no argument is so relevant or repeated for restricting the openness of judicial information as is the great amount of personal data, intimate and private situations and conflicts that are submitted to the courts, plus the diversity of situations and number of people participating in court proceedings.

The judge has traditionally been considered the director of the process and his/her unavoidable duty is to strike a balance between the rights of all participants and, therefore, arrange and regulate the flow of information.(1) Thus,

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(*) Advisor, Open Justice Program.

(1) The court proceedings shall be viewed as a flow and accumulation of the necessary information to define positions, value facts and justify a decision related to a dispute or

it cannot be overlooked that the greatest difficulty appearing the most in judicial openness is related to the protection of personal data. The method presented in this document carefully analyzes this predicament in Latin America and the world, to try and understand the difficulties in reconciling citizens' power to control government acts with the exposure entailed in having the judiciary open up people's intimate, private and sensitive data.

2. Personal data protection

From the word go, laws on the protection of people's private life have sought to avoid a person or his/her assets from being searched without a court order. Moreover, there is criminal legislation for protecting correspondence. Such legislation was enshrined in international human rights instruments such as the 1948 Universal Declaration of Human Rights. This document very clearly spells out that "No one shall be subjected to arbitrary interference with his/her privacy, family, home or correspondence, nor to attacks upon his/her honour and reputation". (Article 12, Universal Declaration of Human Rights, 1948).

The widespread use of technology in state and private services, gave rise to the need to improve protection not only of people's private lives, image and reputation, but also of "data" themselves. The data subject can lose control when data are automated.[2]

Just like similar legislation in Latin America, Argentine law 25,326 on Personal Data Protection enacted in the year 2000 follows the European model: there is a single law for all kinds of data,[3] both in the public and private sectors. It creates authorities or oversight bodies[4], and the government as well as private individuals are banned from processing personal data without prior consent from the person concerned. The data subject always has the right to access his/her data: rectify them, cancel them and object to their use. Data cannot be used for purposes other than or incompatible with those that led to their collection. Sensitive data -for instance, on health- are especially protected,[5] all the above thought of particularly within the context of computer files.

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requirement. Each person partaking in the proceedings shall provide personal information, as well as information on his/her private life which could be risky to publicize.

(2) This right has been called "informational self-determination" because the data subject is given the authority to control his/her personal information.

(3) The alternative model to the European one is that of the U.S.A. where the laws protect only certain kind of data (for instance, *Children's Online Privacy Protection Act, Fair Credit Reporting Act, Video Privacy Protection Act*).

(4) Oversight bodies must be independent. In the U.S.A. there is no formal agency and oversight is carried out by the ordinary courts.

(5) Sensitive data also include those that disclose race and ethnic group, political opinions, religious beliefs and information on the individual's sexual life. The protection of health-related data is the field that has evolved the most: see, for instance, U.S.A. *Law on Health Insurance Portability and Accountability Act* (HIPAA), given its specificities.

No right in itself is absolute and often times there are situations in which public interest justifies a reduction in the protection of personal data, private life, image and reputation. The clearest example is that of a public figure[6], although there are also other situations in which weighting of personal data protection and the right to access information of public interest lead to providing personal data: these cases suppose circunstances of violations of human rights (*CFed. Cas. Penal, Sala II* - Federal Criminal Cassation Court, Panel II, 2011) or when personal data are necessary to carry out a thorough social check on how competent officials make their decisions (CSJN – Argentine Supreme Court of Justice, 2014).

3. Laws on access to public information and judicial transparency

The first option we could consider to promote judicial openness is legislation that ensures access to public information from that branch of the State. Experience shows, however, that it is not that simple: several lines of thought have been identified worldwide, and also very visible differences with regard to public access to judicial information.

The *Freedom of Information Act* (FOIA), a US federal law, and other federal legislation such as that from Switzerland, Canada, Australia and Germany has decided to exclude judicial information from the scope and procedures of access to public information. In other countries, laws include only the Executive Branch (for instance, Chile, the Netherlands, New Zealand), or in their title warn that it applies to the State's administrative information (for instance, Portugal, Italy, Belgium, France).

Another set of laws only includes administrative information from the Judiciaries, but excludes jurisdictional information: such is the case of Spain, Israel and Ireland. Normally the difference between administrative and jurisdictional is not clear. Anyhow, Spain's Law on Transparency, Access to Information and Good Governance (section 2, paragraph f – Law 19/2013, of the year 2013) affirms that administrative information is connected with activities subject to administrative procedures.[7]

(6) For reasons strictly due to the type of activity they have decided to carry out, public figures must put up with a greater level of interference with their intimacy than private individuals, since the former's activities are subject to great public scrutiny. Juan Antonio Xiol says: "in Spain, the Anglo-Saxon doctrine has an incidence when it is a public person, since the protection of his/her reputation diminishes, protection of his/her intimacy is diluted and the protection of his/her image is excluded" (Supreme Court of Spain, ruling 1799/2011). Exposure of the private life of public persons is not boundless (TEDH, 2010, §§ 51, 52, 57).

(7) Jurisdictional information –the case file, decisions, documents, videos of hearings, etc.– is full of personal data and depicts aspects of the private lives of the parties, witnesses, victims and others in the proceedings. Administrative information includes personal data of judges and officials who are considered public persons.

In all these cases, access to jurisdictional information is governed by rules enacted by the Judiciaries or by procedural rules, with some of the following characteristics:

1) a request is made, or a form is used to describe the requested documents;
2) a legitimate or public interest must be established, a justifiable benefit or sufficient cause which is weighted with the interests of other persons and other essential public interests;
3) requested documents can be denied for intimacy reasons, unless the document is redacted (blacked out) or a public version is produced;
4) A fee may be applied to photocopies or to processing tasks; visual inspection is usually free-of-charge;
5) A certified or simple copy may be requested;
6) Conditions or responsibilities stemming from the use thereof can be established; and
7) The term for sending a reply may be "reasonable" or discretional.

Any of these requirements will evidently be viewed as a barrier.

Another option is related to specific laws on access to jurisdictional information, for instance, in Finland and the states of New South Wales and Victoria in Australia. These laws aim at structuring and completing procedural codes so that they provide clear rules on access. A common trait is to give a trial judge the authority to either disclose information or not, according to the characteristics of each case.

The explicit inclusion of the Judiciary as duty-bearer in the laws on access to information came up in Mexico, in 2002. The Federal Law on Transparency and Access to Governmental Information (hereinafter LFTAIG), enacted in 2002, establishes access to jurisdictional information (section 3, paragraph xiv, c and e), and makes it mandatory to publish all final judgments[8] (section 8), also stating that court case files should be accessible once the case has finalized/been dismissed (section 14, para. iv).

In order to better measure the impact of this law, it is worth pointing out that Mexico came from almost a century in which only one political party had been in office which, in the minds of those proposing this legislation, was seen as related to the power of opacity. At the same time, the Judiciaries in Mexico -particularly at state level- had been questioned with regard to their independence, and LFTAIG was considered a tool to kill corruption. Furthermore -and to generate more openness- an asymmetry in appeals was established, since the duty-bearers cannot challenge access decisions by filing appeals with the Judiciary (section 59). Thus, this law -later supplemented by the General Law

(8) The amendments made by LGTAIP have an effect on "judgments/sentences of public interest" (Section 73).

on Transparency and Access to Governmental Information (LGTAIG, 2015)- has had a strong international impact, particularly in Latin America. It could be said that it had a strong influence on the laws in India (2005), Brazil (2011), Colombia (2014), Argentina (2017) and other Latin American countries (El Salvador, Guatemala, Honduras, Nicaragua). Chile and Peru went for the prevailing trend.

In Brazil and Colombia, the laws on access to information applied the Mexican innovation with a few changes: the Judiciary is included as duty-bearer, but the regulations in both countries partly regulate procedural aspects. Furthermore, none of the two laws creates a central oversight body for reviewing decisions on access. Thus, in Brazil, the *Conselho Nacional da Justiça* (National Justice Council) regulated -in resolution 215/2015- the law on access to justice-related information, with rules that are more in line with the needs. Colombia regulated the law only for the Executive Branch. In judgment C-274-13, with regard to prior control on the constitutionality of a Bill, the Colombian Constitutional Court was clear as to the fact that access procedures shall be managed administratively or judicially, depending on whether information is administrative or judicial -in practice access is regulated by the General Procedural Code. The judiciaries and public opinion reacted similarly in Argentina, El Salvador and India. In Argentina, the Supreme Court of Justice reached the following interpretation in its decision 42/2017 "the provisions of law 27,275 shall not be applicable" to jurisdictional information, which shall be accessed using procedural rules. In El Salvador, in its judicial decrees 438-2011 and 7-2006, the Constitutional Court systemically construed the Law on Access to Public Information (section 110, paras. e & f, LAIP, 2011) and referred access matters to the procedural codes. In India, the High Court of Delhi annulled a decision of the Central Information Commission (CIC) and stated that procedural rules were applicable to jurisdictional information, and RTIA rules, to administrative information (High Court of Delhi, 2017).

4. General Openness Principle

Whichever the form of access, it is necessary to have a criterion to decide on the openness of jurisdictional information vis-à-vis personal data. With regard to court rulings, article 14.1 of the International Covenant on Civil and Political Rights (1966) states as follows:

> "...any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children".

The ideal situation is for trials to be public. We can summarize it in the words of Juan Bautista Alberdi (*Elementos del derecho público provincial*, 1853 – Elements of provincial public law) when he said "Publicity is the utmost guarantee".

For information of public interest the "principle of full publicity" is mentioned over and over again (section 1, Law 27,275, Argentina; section 2, Law 1712, year 2014 (March 2006), Colombia; section 3, Law 12,527, Brazil), establishing the presumption that "all information is accessible, subject to a limited system of exceptions", that must be "established in the law to ensure that they are not left to the discretion of the public authorities" and "exceptions are necessary in a democratic society, when intended to satisfy a public interest".(9)

In other words, when information is of "public interest", "maximum publicity" is achieved by reducing prevalence of other rights -including personal data protection-, or by using the "least amount possible" of legal restrictions.

5. Open data

Policies on the proactive disclosure of open data by State institutions are thus pertinent given the difficulties in accessing jurisdictional information, which is broadly used among academic researchers, members of civil organizations and data journalists.

Let us consider, for instance, data on sexual crimes published on the Colombian open data website. This is not precisely judicial information but it shows the potential of having detailed information on sexual assaults. These are primary data (that is to say, disaggregated on a case by case basis, and not statistical data), in which only the names of the victim and perpetrator have been omitted; names are not a necessary piece of information to learn about the status of sexual crimes, only analytical results are needed. Thus, for instance, we can learn about the high number of sexually assaulted among older persons or the prevalence of this crime in rural or urban areas, etc.

Availability of these data replaces the need to submit formal requests for accessing public information. The question is how to define the contents to be publicized. Considering the above example and other similar ones, relatively clear criteria can be outlined:

1) generate "datasets" including all structured variables from the judicial management database (in the understanding that the information suffices to make decisions) -leaving aside personal identification data-;(10) and
2) Ensure the quality of primary data. If the case entailed the analysis of a specific typology of citizen or corporate interest ("homicide" or "damages"), it would probably be necessary to share or produce more information, or authorize other forms of access and collaboration.

(9) Excerpts from the case "Claude Reyes et al." (Inter-American Court of Human Rights, 2006, paras. 92, 89 & 91).

(10) Structured information should provide enough data on the cases and their movements, the text fields usually include names, domiciles and other identification data. The quality of the dates, as well as the categories used, are essential and must be emphasized to achieve this purpose.

The experience in the Argentine Republic with the publication of justice-related open data is at an advanced stage of development. Since 2016, the website 'datos.jus.gob.ar' has posted a remarkable number of publications. For instance, access to basic data on corporations, requests for authorization to carry weapons, curricula vitae of judges to fill vacancies in the Judiciary and Public Ministry, list of Federal Penitentiary Service inmates, among others. All these datasets expose personal data that, to some extent, refer to public figures or whose publicity results from weighting public interest. The consequences of such weighting are very strong because open data are not subject to any legal restriction. Nonetheless, some countries have rejected the idea of showing on the Internet the name of convicted criminals because their Constitution bans life sentences,[11] in the belief that conviction publicity is a part of the punishment.[12]

The policy of publishing open data forces the institutions to improve the quality of their data, make the most of them and, obviously, then share them so that they are processed based on other views and with the creativity provided by different points of view. Anyhow, the fact that data can be re-used without any restrictions (or re-identified) generates fear and prudence in excess. The result is that, worldwide, when "justice" is selected in the sites labeled as "open data", one usually finds statistics, administrative structural data and practically no primary jurisdictional data.[13] Thus, for instance, it is very difficult to find open data concerning the prosecutor's activity.[14]

6. Personal data protection in the Judiciary

Each at its pace and with its own style, Judiciaries worldwide have believed in the need to provide transparency and openness to their management. Very few have outlined global policies, but almost all of them have provided solutions.

The following are some of the solutions: posting of judgments on the Internet, electronic access to procedural information (PACER), providing assistance on how to access jurisdictional information, publishing administrative information

(11) For instance, section 40 of Costa Rica's Political Constitution says: "No one shall be subjected to cruel or degrading treatment or convicted to life sentence".

(12) The Argentine Supreme Court of Justice (CSJN), *in re* "Matías Kook Weskott" (2005) said that "no doubt the publication of the sentence in full could affect the petitioner, but such ruling is brought about by the behaviour giving rise to the criminal punishment"; or for instance, sections 56 - 58 of the Nuevo Leon Criminal Code state "the judge may, at the request of the offended party who shall bear the cost thereof, order publication of the sentence".

(13) The Buenos Aires City High Court of Justice, in its decision 34/2016, referred to the publication of judgments/sentences, later published with reference data.

(14) See non-open data in Brazil for Federal Public Ministry and *Ministério Público do Rio de Janeiro*, and open data for *Ministério Público de Rio Grande do Sul*. See open data for ten provincial (sub-national) Public Ministries in the Argentine *datos.jus.gob.ar* judicial data portal.

and data on judges, setting up judiciary spokespersons and TV channels,[15] transmitting hearings live or retransmitting them (preferably appeals), publishing statistics and indicators, and promoting participation mechanisms such as *amicus curiae,* or restorative justice.

As can be seen so far, intimacy, image, honour and, to some extent personal data or the risk of discrimination are a predicament when it comes to broadly disseminating court information. Other restrictions appear in the laws to limit publicity that could somehow prevail in justice-related information, such as judicial independence, process efficiency or personal safety of judges, but these caveats apply for a short period, whilst private life protection tends to be forever. It is also true that there may be court proceedings that can jeopardize national security or international relations, but clearly these are not sufficient grounds to consider them secret or confidential indefinitely.

The starting point for the debate on what to do with personal data included in judgments and court documents (such as court records) could be to take a look at international trends. Although there is no updated international measurement on how judicial information is publicized with personal data, it can be noted that a great majority of the judiciaries publish the full text of their judgments on the Internet, that is to say, including the personal data of all parties. With regard to access to court case files (certainly with more physical and formal barriers), access on the Internet is provided with certain limitations in the case of family, girls, boys and adolescents; and juvenile criminal cases which are overall restricted.[16] These are trends that vary according to the country and have special characteristics. The new possibility of consulting court proceedings on the Internet has facilitated access even more, since everything is visible there unless a formal statement of reservation is made by the trial judge.[17]

Within this structure, a significant group of countries tends to suppress only personal data linked to sensitive information, or upon the request of the interested party (Ohm, 2015). This suppression also happens when there are laws in place to protect victims and witnesses, or HIV carriers. In Argentina and Brazil, searches on the Internet are also restricted by the name of workers in labour cases.[18]

(15) See https://www.cij.gov.ar/cijtv; http://www.tvjustica.jus.br; http://www.poderjudicialtv.cl.

(16) For instance, cfr. sections 236 and 321, paras. f and g) of the Argentine Civil Code.

(17) For instance, section 4.3 of the Model Policy for Access to Court Records in Canada –" Public knowledge of the existence of a case file is a minimal requirement for openness"– or Resolution 215/2015, section 9, *Conselho Nacional da Justiça de Brasil* (Brazilian Justice Council).

(18) See section 3, Law 26,856 and Resolution 121-2010, Conselho Nacional da Justiça (section 4, § 1).

Only a few countries suppress all personal data in the published judgments. For instance, in Spain, the *Centro de Documentación Judicial* (Cendoj – Court Documentation Centre) —although it must be noted that the Constitutional Court publishes its judgments with all names—, and in Mexico, where they have even eliminated the name of the prosecutor or of the authors in doctrine quotes (Soto Morales, 2017). On the other end of the spectrum is Brazil, where it is strange to find a judgment or procedural document in which personal or even sensitive data have been decoupled; in Brazil, proceedings are public, unless secrecy or confidentiality has been declared by the court.[19]

When publishing court rulings in a non-open format (the most widespread practice), the assumption is that the names are published to facilitate a full understanding of the judgment, and there is no consent needed from the parties since they are published in exercise of a public function (cfr. section 5, Law 25,326). This should be considered in the sense that personal data cannot be re-used in another context other than that of case law dissemination (see, for instance, the legal note in the New Zealand case law website).

The same happens with a case file with several pieces that is looked at or delivered. Thinking of the possibility to redact a big case file in which there are many documents such as birth certificates, photographs or medical/psychiatric reports is an illusion, not only because of the risks -who would be responsible should any sensitive or intimate data of a person inadvertently remain? – but also because of costs and the delay in publishing such case file.

Without most judiciaries having formally declared it so, the prevailing trend is that judgments and all documents related to the proceedings are visible in full on the Internet site, save for very few exceptions. A potential explanation is that this is the result of the maximum publicity principle, which entails a minimum application of personal data protection; a minimum level, in between sensitive data protection or the suppression of names within a clear legal mandate.

7. Re-utilization and re-identification

There have recently been cases of companies re-using judicial information, for instance, in Brazil, there are firms warning lawyers about notifications published in the *Diário Judicial*[20] ; in Mexico, several companies download procedural information from judicial gazettes or lists of decisions published by

(19) Brazil recently pased its data protection law. See: Law 13,709, August 14, 2018.

(20) *Diário Judicial* was created by Law 11,419 and is the only means of notification. Anyhow, Brazil's legal structure leads the country to having many courts, each with their own judicial journal (by state, subject-matter, etc.). It is also common practice for lawyers to litigate in several states at the same time, so it is materially impossible to review on a daily basis all judicial gazettes. They thus hire one of the companies that download the information using robots who warn them when notice is served in their cases.

the state or federal courts (one of these firms is the *Buró de Investigaciones Legales*[21], and another similar company is *Buho Legal*[22]).

Most of the judiciaries are against the re-use which clearly appears in the proliferation of CAPTCHAs in all steps to access judgments and consult procedural information, since they avoid the massive download needed by re-users.

On the other hand, in the last few years, several researchers (Sweeney, 1997; Narayanan & Shmatikov, 2008) have questioned the reliability of dissociation techniques. The most commonly mentioned example of an attempt to re-identify people in anonymized databases is that of Netflix[23], although researchers at the University of Texas (Austin) were only able to identify five Netflix users from a huge database. Another relevant example is the re-identification of the name of the governor of Massachusetts in the U.S.A., in a database with anonymized clinical records based on age, sex and postal code. The method used by researchers was to cross-check the database of clinical records with external sources, in this case the voters' list (Ohm, 2010). After this happened, the reliability and effectiveness of anonymization to publish databases containing personal information has been questioned.

8. Evolution of the judicial openness notion

One of the solutions provided by the judiciaries to maintain openness has been to authorize specific access channels for each kind of judicial information, using search criteria and information contents with or without personal data, pursuant to a balance of rights. In some cases, it is done according to what is mandated by the law, such as those who owe payment of alimony, for instance, in the Argentine province of Salta; or the registries of sexual criminals, also in Argentina (with different levels of access according to the province), enforced as per the provisions of law 26,879 (law 7222 in the Mendoza Province; law 6980 in Córdoba; and law 2520 in Neuquén). In other cases there is a judicial policy, such as in inheritance and personal bankruptcy trials, for which the forms of access vary according to the province -see, for instance, public on-line access in Mendoza and Río Negro-; restricted in Buenos Aires Province and deferred in Formosa Province. Access to criminal hearing schedules also has specificities since they are visible across a time window, from the time of their convening until they are held, and include the publication of the *prima facie* accused (see on-line access in Mendoza and La Rioja; while in Chubut access can be gained once the hearing has been held, with no mention made to the name of the *prima facie* accused; in Peru there is a

(21) www.bil.com.mx.

(22) www.buholegal.com.

(23) In 2006, Netflix published its databases –with the names of its customers anonymized– within the context of a competition to obtain ideas on how to choose films; the case was taken to court–"Doe vs. Netflix"– because in the U.S.A. the privacy of people renting videos is especially protected by the *Video Privacy Protection Act*.

search engine by name, and in Costa Rica data is available for the *prima facie* accused in hearings already held).

There are also systems for following up on sentence enforcement, under several modalities: Mendoza, for instance, anonymously, and in Paraiba, Brazil, with a search engine by name, and with access to a great amount of data, such as the name of the parents, crimes the accused is/are charged with, name of the victims, criminal regime, among others. The daily lists of decisions or court orders are common in Argentina and Mexico, using either search engines by name of the parties or anonymized, public or for registered users and, in some cases, the name of the victims is included (such as lists of decisions of the Judiciary in Tabasco).

Such diversity depends on the interpretation given to the principle of maximum disclosure, which forces to generate specific modalities for each kind of judicial information, since in each case different weightings are carried out between private life, personal data, presumption of innocence or right to defense, which entail either the dissociation of personal data or their mandatory exposure -sometimes permanently, others on a temporary basis-.

A few examples can be given of recent initiatives providing full access, having solved the issue concerning personal data. The first one is access to voter lists. In Mexico and Argentina, it has been noted that the precedents are now applied with great precaution.(24) For instance, the Argentine Electoral Court respects access to voter lists but delivers only the necessary elements and data for duly declared research, besides having individuals sign the following commitment:

> "Pursuant to the request filed by ..... for using the data on ..... as an input for statistical analysis, a closed, sealed envelope is handed over to Mr./Mrs. ..... with a DVD containing a digital copy of the database of active voters recorded in National Electoral Registry ..... The requesting party undertakes the commitment to adopt all necessary measures to ensure the safety and confidentiality of personal data, avoiding their unauthorized use and treatment, or their utilization for purposes other than those stated in the request, with a specific ban on the possibility to create *ad hoc* files, records or databanks."

This is something unimaginable if the letter of the law on access to public information is duly followed.

Another example is the Inter-jurisdictional Agreement on Open Judicial Data -signed in Argentina in October 2016 between the Ministry of Justice and Human Rights and more than 50 national and provincial judicial institutions- that spells out, as a first task, that of generating primary databases and producing

(24) Fallo Nº 3410/2005, ***In re*** Susana Sánchez Morteo, Cámara Nacional Electoral, 04/14/2015.

statistical indicators (taking as starting point the National Judicial Data Grid of India). During the design stage, the inclusion of incomplete personal information of the *prima facie* accused was analyzed ("quasi identifiers") because it would facilitate the link of prosecutor´s investigations with criminal cases. The judiciaries, however, considered that the risks of re-identification were higher than any potential advantage.(25)

A central topic is that the laws on access to information or the active publicity policies do not clearly define what can be done with personal data once they have been published: can they be re-used as open data? Are they still legally protected? Does their protection remain in place and are there criminal regulations to avoid re-use without due consent? Once the data have left the institutions originating them, they can no longer be protected in the same way. This vagueness has given rise to different policies with regard to what rules apply once information with personal data has been delivered or published.

9. Conclusions

No modality or policy in itself can ensure judicial openness: neither active transparency or data accessible on the Internet, or procedures for accessing information, access to electronic process databases (including list of court orders, edicts, hearing schedules, notices), open datasets, access to a physical file or assistance during a hearing. It is clear that a greater level of access, such as that in which personal information is present in full detail, is fundamental for some research work of public interest.(26)

On the other hand, diversification of access and publication modalities concerning judicial information show that general rules do not suffice, and that an active judicial openness policy is needed, bearing in mind all kinds of users, citizens, litigating parties, lawyers, academic researchers and civil society, data and research journalists, and other stakeholders that may be interested in judicial information because of their economic or social activities.

The private sector also has a great incidence so rules for businesses must be clear. Therefore, companies trading personal profiles are very much aware of the fact that their business depends on them having complete databases. One

(25) Consequently, the prima facie accused who are over 65 years of age have been recorded as 65+, the criminal proceedings databases will contain primary data and, therefore, re-identification risks should be avoided; and, moreover, it is known that the older persons are more exposed in this kind of record.

(26) For instance, a dispute over the custody of an adolescent may no be of public interest, but most of the custody cases are of public interest since they unveil the quality of the legal proceedings. It is of "public interest" to know whether the judges -in general- give custody of a child to the right spouse or relative, or decide on an educational measure, or on the treatment of an adolescent transgressor, to better ensure his/her right to social re-insertion, as well as public safety. Furthermore, the judiciaries shall provide judges with the necessary tools – experts, advisors, Gesell Domes, etc.-, community-based training and execution Programmes; this context shall be assessed to ensure its efficiency and ongoing improvement, which is not possible without independent research.

of the elements that appears repeatedly in access modalities and in on-line consultation of judicial data is the need to facilitate search of a specific case and avoid the downloading of big chunks of databases. Likewise, access to court files outside the formalities of the laws on access, makes it necessary to file a request with the trial judge and not with the Judiciary's information official. This modality avoids collecting related-datasets of judicial information. Apart from the proliferation of CAPTCHAS and the design of search engines (allowing only certain kinds of searches). When a lawyer consults a case law database, whether on a judicial website or on a private publisher's site, he/she in fact has access to a small percentage of rulings.(27) Judicial information that could be collected under these modalities would bring about many false negatives, and thus (relevant) case law as published nowadays is not attractive for generating personal profiles.

The notion of openness is dynamic, participatory and results from dialogue among authorities, technicians and users; it includes the weighted application of legal principles which translate into explicit but adjustable and amendable "policies", in line with new situations and technologies.

Dissociation procedures -the only ones the access laws trust to ensure personal data protection- must be assessed by quantifying re-identification risks, which depend mostly on the availability of other databases. For instance, in Argentina there are several "on-line DNI (ID document)" systems operating freely,(28) so anonymization standards must be higher.

Finally, judicial openness is also closely related to personal data protection because it aims at having citizens understand and discuss how the Judiciary makes its decisions, but it is clearly not targeted to facilitating the investigation of people's private lives. Those who go to court cannot be asked to publicize their disputes, difficulties, vulnerabilities, health data, etc., less still that they be conditioned thereby, as if it were an additional cost for obtaining a court decision.

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(27) The percentage of cases selected for their publication is always unknown because the purpose is to publish judgments/sentences that set a relevant precedent. Computers and IT allow more judgments/sentences to be published on official websites, but these are two different things.

(28) For instance, www.dateas.com or www.cuitonline.com

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SECTION TWO:
ARGENTINA VIS-À-VIS OPEN JUSTICE

OPEN JUDICIAL DATA IN ARGENTINA: THE OPEN JUSTICE PROGRAM

SANDRA ELENA*
ALEJANDRA GONZÁLEZ RODRÍGUEZ**

1. Introduction

The Access to Information Law, enacted by the Argentine Congress in September 2016, signaled a deep change in paradigm with regard to the obligations of all three of Argentina's State branches to promote transparency, accountability and the participation of society in public management.

In the specific case of justice, the passing of this law settled a pending debt with society that was decades old,(1) endorsing the full and effective enjoyment of the right to access justice-related public information. Although the Supreme Court of Justice and the lower courts were already obliged to partially publish certain information on their work (Law 26,856, of the year 2013), the new law directly included the Judiciary(2) among the public institutions that must provide public information, moreover specifying that information

(*) Coordinator, Open Justice Program, Ministry of Justice and Human Rights, Argentina.

(**) Advisor, Open Justice Program.

(1) The path towards access to justice-related public information in Argentina starts with case law. An example dates back to 1994, when the Argentine Supreme Court of Justice ruled in favor of a journalist who was denied access to a closed case file on homicide with the excuse that he was not a party to the case (CSJN, "Monzón, Florencio s/ recurso de queja", 22 December 1994, M. 836. XXV. Retrieved from: https://ar.vlex.com/vid/-40396584). Along the same lines, in 1997, the Court ruled against a person that filed a claim asking that the Court ban the videotaping and broadcasting of the proceedings in which he was the defendant (CSJN, "Gaggero, Juan José s/recurso de queja", 27 February 1997, G. 978. XXXI. Retrieved from: https://ar.vlex.com/vid/-39685995).

(2) Including the National General Prosecutor's Office, the National Public Defender's Office and the Judges' Council (Section 7).

had to be published in bulk, updated and provided in open digital formats[3] (Law 27,275).

Until the beginning of 2016, obtaining information on the Argentine justice system was a particularly challenging task. Years ago, research carried out by the Center for the Implementation of Public Policies on Equality and Growth (CIPPEC, in its Spanish acronym) asserted that, as a result of certain historical characteristics of our country, there was "an abyss" between justice and citizens. As pointed out by CIPPEC:

> ... legal language is very technical and complicated; there is no shared, widespread belief that judges are public servants; neither is there a system forcing them to be accountable to society, and selection processes and disciplinary matters concerning judges are not too transparent.... (in Elena & Pichón Rivière, 2013, p. 2).

Many actors complaint about the opacity of the judiciary; different civil society organizations, bar associations and universities were calling for greater transparency, dialogue channels and mechanisms, demanding to learn more about the functioning and composition of justice. The new government that took office y 2015 heard these demands, and translated them into the political will of starting an opening process to narrow the "abyss".

Besides the above-mentioned Access to Information Law, there is momentum to implement Open State policies in the three branches of government. The Executive Branch moved this agenda forward through initiatives such as the Data Openness Plan, which stated that it was mandatory for all agencies, to establish special data openness and publication strategies (Presidential Decree 117/2016).

The Ministry of Justice and Human Rights (MJDH) started a systemic process of data and information openness, in which it included all judiciaries and public ministries across the country, as well as other national and federal judicial agencies. With this aim, it set up the Open Justice Program, commissioned with the task of positioning the country as a pioneer in judicial openness, by applying a paradigm of Open Justice, thus increasing transparency, access to information, accountability, citizen participation and collaboration, and the use of technologies and innovation in the sector (Resolution 87/2016 MJDH)

The outcomes of the first three years of the Open Justice Program will be analyzed in this chapter, taking into consideration the publication of justice-related open data in the portal *datos.jus.gob.ar*, the work carried out with judicial institutions across the country after the signing of the Inter-jurisdictional Agreement on Open Judicial Data, including open citizen participation based

(3) See Article 32.

on the data published, and the role the Program plays in measuring the Sustainable Development Goals (in particular SDG 16) of the United Nations 2030 Agenda.

2. Publication of justice-related open data

In 2016, Argentina climbed 37 places on the Global Open Data Index, from the 54th position up to the 17th, according to the report published in May 2017. The Index is published by the Open Knowledge Foundation, a non-profit international organization that for over a decade has been working on initiatives promoting innovation in data and Open Government.(4)

The work performed by the Ministry had a lot to do with this achievement: judicial data taken into consideration by the Index, i.e. the publication on datos.jus.gob.ar of data on all legally registered entities (stock and non-stock companies, civil associations, foundations, etc.) before the MJDH's *Inspección General de Justicia* (Office of Corporate Oversight), gave the country the possibility for improving its position on the ranking, while becoming a milestone for access to data that before were considered practically inaccessible.

Datos.jus.gob.ar was launched on November 1st 2016, developed by the Open Justice Program, with the support of the Under-secretariat of Public Innovation and Open Government from the Argentine then Ministry of Modernization.(5) During its launch, the Minister of Justice and Human Rights, Germán Garavano stated that

> "... These are historical times guiding us to continue working in the right direction. Between the justice sector and society there is little information available and the analysis of such information is not thorough. We believe that data publication is important because it leads to generating public policies based on specific information..." (in Justice 2020, 2016).

The portal offers previously unavailable databases that have had a strong impact on public opinion and research.(6) The portal contains information related

(4) The Global Open Data Index can be found at: https://index.okfn.org/

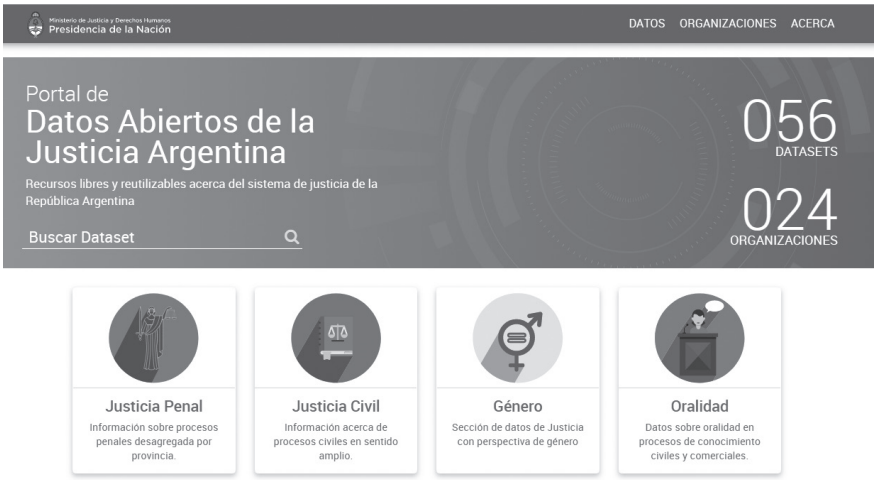
(5) The Open Judicial Data Portal of the Ministry of Justice was developed on CKAN, an open-source platform designed specifically for data publication, which allows data grouping by organizations, dataset and resources. Likewise, each can have its own metadata, published on the collaborative platform GitHub. At the same time, the site allows data publication in different formats. The Portal has an API (Application Programmeming Interface) which facilitates automated data entry and integration with other open-data portals.

(6) Data from the portal is regularly used in *hackathons* and news articles. An example was the hackathon on members of the Judiciary, organized by an association called ACIJ to improve the *Justiciapedia* (Justipedia) platform. This also gave rise to articles in media, such as in Chequeado and La Nación Data.

to: list of corporations of the Office of Corporate Oversight, data of the Unit of Registration, Systematization and Follow-up of Femicides and Aggravated Homicide due to Gender, data on patents and transfers of the *Registro de la Propiedad del Automotor* (Automotive Registration Office), queries received by the Centers for Access to Justice, list of national laws from the Argentine Legal Information System's database, list of national and provincial judges and, a database with curricula vitae submitted for the open competitions to appoint judges, among others.

As from its launch, around 170 thousand users have used the portal, and there have been around 300 thousand visits to the different webpages.

Picture 1. Home Page of the Argentine Open Judicial Data Portal



Most of the data published on the Portal are "primary data", that is to say, disaggregated, granular data. All resources are, moreover, published under an Open Database License (ODbL), so that they can be freely used and distributed. (7) This kind of license allows the material to be shared without restrictions but under certain conditions: it is necessary to quote the original source and, if used in other works or articles, the databases shall hold the same kind of license (Open Data Commons, 2018).

As at April 2019, the Argentine Open Judicial Data Portal has published 54 datasets, from 24 MJDH institutions. So as to have such data, several offices of the MJDH worked in a coordinated manner, providing training and

(7) For data to be considered "open", they must meet a series of requirements, namely: they must have an open license, be published in machine-readable open format, be downloadable at once, be updated and publicly available, as well as free-of-charge.

technical assistance to systematize data provision and to make it sustainable across time.

The Portal is now a tool for citizens to monitor the justice system based on data; this fosters openness and accountability. These data can be used as raw material for different sectors: researchers, activists and educators can use them as an official source of primary data to do research and prepare data visual displays; the legal community, to explore and analyze specific aspects of their practice; journalists, as sources of true information for their reports; businesspersons and user communities, to prepare civil technology applications and projects. Furthermore, data provided allow decision-makers of all three branches of government to have quality data for designing evidence-based public policies.

Publication of data in the Portal was included among the commitments of the two successive National Action Plans submitted by Argentina within the Open Government Partnership (OGP). This international organization brings together countries that work on the development and implementation of long-term Open Government policies, seeking consensus between governments and civil society, which translate into commitments for action. With a view to submitting these commitments, the MJDH, through the Open Justice Program, held meetings with different civil society organizations which participated in the development and follow-up of the commitments. At present, in the year 2019, Argentina holds the vice-presidency of OGP and is preparing its fourth National Action Plan, from where it will continue to promote an enhanced the open justice agenda.[8]

2.1. Justice and gender data

In April 2018, *datos.jus.gob.ar* published a new section on gender-related data,[9] in which indicators desaggregated by gender facilitate research and analysis based on empirical evidence. Data on the following is included in this section:

- Violence
  - Femicides and murders aggravated by the relationship between the victim and the offender. These data are taken from the National Registry on Femicides compiled by the MJDH's Secretariat of Human Rights and Cultural Pluralism, though its Unit of Registration, Systematization and Follow-up of Femicides and Aggravated Homicide due to Gender.
  - Information on calls to line 137 for victims of family violence. It includes the phone calls answered by professionals from the Program on Victims

(8) See https://www.opengovpartnership.org/

(9) See http://datos.jus.gob.ar/pages/datos-de-justicia-con-perspectiva-de-genero

of Violence, regarding cases of family and sexual violence. It provides data on the calls, perpetrators, types of reported violence, etc. These data are provided by the Under-secretariat on Access to Justice.

- Situation of women in different environments
  - Women in confinement in federal prisons. It includes information provided by the Under-secretariat of Criminal Policy.
  - Women in the economic environment. This information is based on data from the Office of Corporate Oversight and shows the presence of women as CEOs in corporations, limited responsibility companies, civic associations, non-profits and companies incorporated abroad.
  - Women in justice. This information shows the proportion of women appointed as judges at the national and federal justice.

3. A federal perspective on open judicial data

In order to deepen data opening in the Justice System, the Open Justice Program formally established cooperation and exchanges with different players in this sector, at the federal and provincial levels.[10] In fulfillment of this premise, in October 2016, the Inter-jurisdictional Open Judicial Data Agreement (IOJDA) was signed, with representatives from across the Argentine justice sector, at a ceremony attended by the president of the Argentine Republic, the Chief Justice of the Supreme Court of Justice and the Argentine Minister of Justice and Human Rights. The document, signed between the Argentine Executive Branch and 52 institutions across the country, established a joint plan to streamline the Argentine justice's information systems, guided by the Open Government and Open Data standards.[11]

The Agreement has, in practice, become an important joint working tool for the Ministry of Justice and justice institutions in the country, which in several cases have adjusted their information systems so as to meet the proposed data openness parameters.

(10) According to the provisions of the 1853 Argentine Constitution, Argentina is a federal country, so each province has its own structure within the Judiciary and the procedural codes are provincial (although substantive codes are national). Likewise, there is provincial legislation having an effect on procedures. Information systems used in each court's jurisdiction are designed differently, and their classification categories and tables are practically incompatible.

(11) The Agreement was signed by the Argentine Ministry of Justice and Human Rights, public ministries and judiciaries from across Argentina, the Argentine Judges' Council and the National Public Prosecutor's Office of Argentina, besides the Federal Court Board and the Council of Attorney-Generals, Prosecutors, Defenders and General Advisors of the Argentine Republic.

Picture 2. Signing of the Inter-jurisdictional Open Judicial Data Agreement

This joint work of institutions from the justice sector brought about great challenges because each institution faces its own reality, and has different resources and technological developments. In order to move forward, the first step was to establish common procedures and publication criteria compiled in technical data protocols (establishing what data will be published) and process protocols (establishing methodology for publication). Thus, coding tables and historical data lists were produced, among other things. The protocols, in turn, were used to standardize tables by crime, court case, type of offender and procedural steps.

According to the IOJDA, the following principles should be observed: anonymity, quality, process speediness, gradualness and cooperation (MJDH, 2018):

1) **Anonymity:** all data shared must be anonymous, ensuring protection of personal data that remain under the exclusive custody of signatory institutions. Each institution must only share the data considered public.

2) **Quality:** so as to optimize information, primary data are used and not statistical data.

3) **Process speediness:** the protocols state that process automation mechanisms must be developed so that data, statistics and indicators are accessible to citizens quickly, with minimum delays.

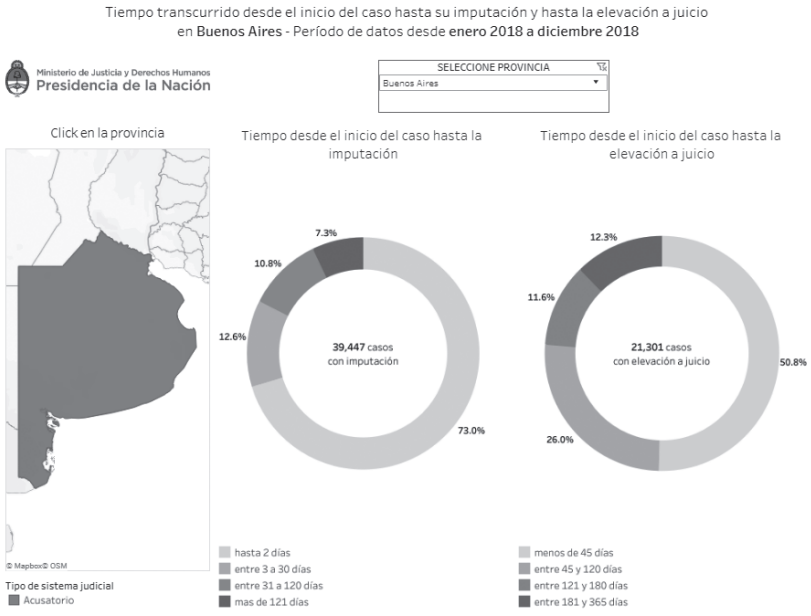
4) **Gradualness:** the second version of the protocols include data from the first version, plus additions arising after the first year of joint work between signatory institutions and the MJDH. Once the processes have been

adjusted with all the institutions, there will be room for the inclusion of new data.

5) **Cooperation:** to promote mutual technical assistance among justice institutions, when required, to optimize data generation, collection and systematization.

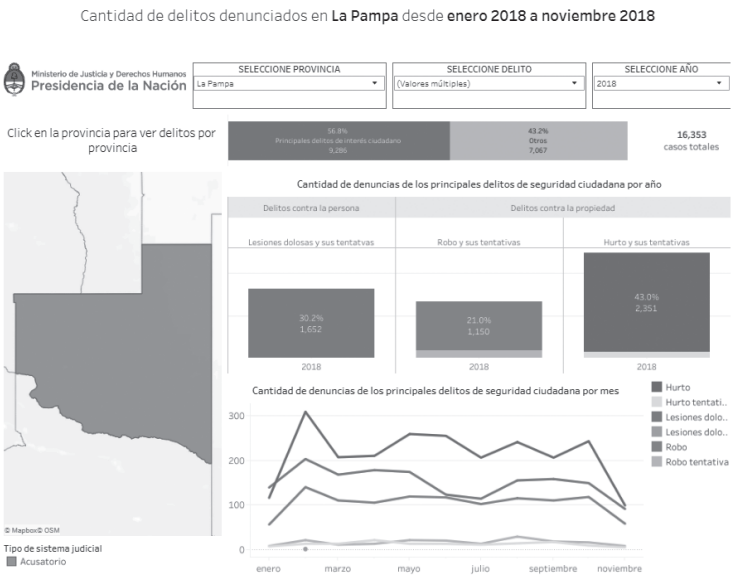
On top of publishing raw primary data, the portal also offers interactive charts with statistics. Statistics are published in Tableau-based dashboards, with information disaggregated by number of filed cases and types of crime. They can also show the number of procedural steps by court and duration thereof. Below, for instance, is the dashboard with information for Buenos Aires province.

Picture 3. Open Justice Program: information provided by the Public Ministry, Buenos Aires Province (Example 1)



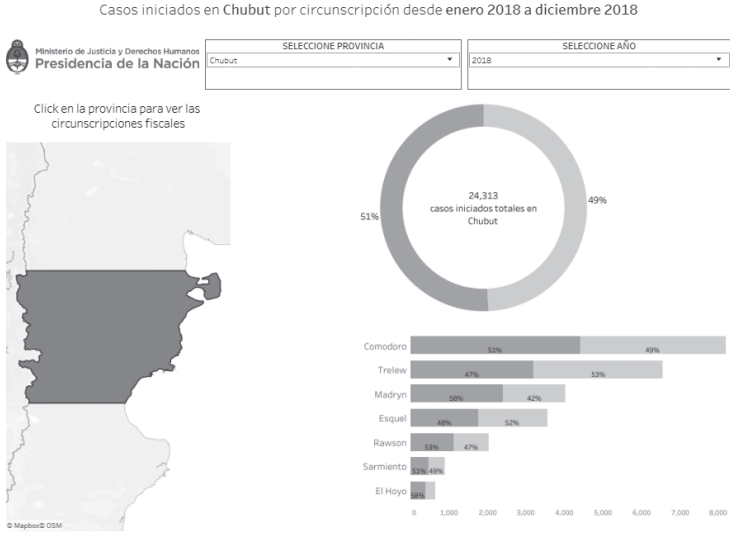
Graphs included in the dashboards are interactive and allow users to personalize information by date and type of variable. Below, for instance, we can see the number of reported cases of robbery, theft, injury and attempts thereof in La Pampa province for 2018. Just like in Buenos Aires, these data were provided by the province's Public Ministry.

Picture 4. Open Justice Program: number of claims filed regarding main crimes affecting citizen safety in La Pampa province (Example 2)



We can also, for instance, obtain information about the number of cases filed with the Public Ministry of Chubut province, divided by district.

Picture 5. Open Justice Program: number of cases filed with the Public Ministry, Chubut Province (Example 3)



All data included in the dashboards are posted in open .CSV format on the Portal, so that statistics can be produced and analyses carried out according to the interests of each user.

3.1. Examination of international experiences

Before the drafting of the protocols, the Open Justice Program looked into existing experiences in other federal countries regarding development of judicial statistics. Such research showed the great difficulties faced in federal countries for collecting basic data and producing indicators common to all jurisdictions.

For this preliminary study, the following federal countries were taken as benchmarks: Australia, Brazil, Canada, Germany, India, Mexico and the U.S.A., considering variables such as updates (last statistical report published), institution in charge of compiling and publishing information, data quality, etc.

This assessment provided three main conclusions:

1) With regard to the quality and feasibility of the statistics, it is not relevant whether the institution in charge of compiling the data is a part of the Executive Branch or the Judiciary.

2) In many of the systems there is great delay in publishing judicial data which makes many of the available statistical data in these countries not too useful for designing policies or measuring their outcomes.

3) There are great difficulties to obtain data from national and sub-national entities that can be compared: the quality, quantity and continuity of data are quite different. Data quality is very important because it has an incidence on the usefulness of indicators utilized to monitor the work of justice by the system's actors and the civil society. As to the quantity of data, it is necessary to have disaggregated data on different variables to infer analytical outcomes. And with regard to continuity, it is necessary to have a time series to appreciate long-term trends.

In the assessment, two countries stood out because of their good practices: Canada and India. These countries attach great importance to measuring the duration of proceedings (Canada stands out due to its continuity and quality). Their systems have several tools to disaggregate data by provinces and territories, but also by specific categories for each series, such as, age, gender, type of case, type of crime, court level, and others. Data may be downloaded in several formats. In the case of India, the most common judicial indicators are reported (cases filed, solved or pending) but targeted to measuring duration. Furthermore, the system allows the break-down of data by state, jurisdiction, court, and even down to the level of case-based data. An interesting comment on India is that it includes data on access to justice (for women and elderly persons). The remaining countries follow a

traditional format, publishing many numbers on the court case steps, with few variables.

The Argentine Portal uses the Indian method of real-time processing of basic primary data for each case, plus the accuracy and analysis capabilities noted in Canada. Work was thus targeted in this direction, together with the Argentine justice institutions participating in the IOJDA.

Work within the Agreement entails regular trips to all Argentine provinces and video-conference meetings. Ongoing contact through a working network is among the most important outcome ensuring project continuity into the future. The first results are extremely positive, allowing the identification of structural difficulties shared by various justice institutions, as well as potential common strategies to overcome the problems.

3.2 Lessons learned

Several lessons were learned from this experience given its coordination complexities. Firstly, the implementation with over 50 federal organizations calls for leadership capabilities, as well as the necessary flexibility to adjust to the different political and institutional realities. One of the main obstacles was reluctancy to publish open data, so it was necessary to work jointly on awareness-raising and training to promote this kind of work. With regard to regulations, many of the signatory provinces did not have, at the time of signing the IOJDA, legislation on public access to information.

Lack of appropriate technology was another challenge. Judicial institutions use different software platforms for judicial management. Adapting the processes for data uploading and transmission from and to these systems was a complex task. Moreover, not all institutions had trained human resources for the job. Some had big, experienced teams in this field, whilst other did not have appropriate human resources to implement the IOJDA.

Vis-à-vis this scenario, the Open Justice Program was flexible and adjusts the methodology so the mayority of the institutions can comply. An example of re adjustment is the following: the institutions' were reluctanct to publish an identifier allowing individual data traceability through identification codes. To expedite the process, we decided to eliminate all identifiers that could jeopardize personal data appearing in court cases. Another example was the collective drafting of the protocols on data and processes. In its first version, the Program drew up a protocol that was shared with provincial institutions. This document did not envisage a solution for the different scenarios, so work was jointly carried out on a second version that met the specific needs of the institutions.

For this kind of work, it is necessary to have leadership generating horizontal cooperation bonds, and not carry out work in an isolated manner. Meeting the needs of data suppliers is the main mission for ensuring the success of an innovative, pioneer national project such as the one promoted by the Open Justice Program.

4. Citizen participation mechanisms

The Open Justice Program currently has an open dialogue with the community through debate forums organized by the Justice 2020 Program.[12] The protocols on data exchange with provincial justice institutions were presented at this forum, discussing demands set forth by different organizations to prioritize databases to be published, and also the different user experiences in the utilization of databases. Several in-person meetings with forum participants were also held within this context.

During the first three years of work, the Open Justice Program organized meetings and participated in collaborative and inter-disciplinary working events with data users. For instance, in December 2017, the Program organized an Open Justice Dataton, together with civil society organizations and two schools of journalism at two Argentine universities (*Nacional de Lomas de Zamora* University, and the one in Concepción del Uruguay, Entre Rios Province).[13]

At the end of August 2018, a Justice and Gender Dataton was organized by the Program together with the National Institute for Women and the *Equipo Latinoamericano de Justicia y Género* (Latin American Team on Justice and Gender), an NGO that specializes in this field.

The Program also helped organize the first Conference on Open Justice in Argentina, together with the Judges' Council and the Buenos Aires City Government, in December 2016, with national and international experts on open justice. The second national conference was held in mid-2018, organized by the Government and the Judiciary of Mendoza Province. This milestone reflects federalization of the work to ensure justice-related open data and the willingness to institutionalize work in the future.

The Open Justice Program also participated in all four editions of the most important Open Government event at the national level called Argentina Abierta, where it shared its experiences with Argentina's Open Government community.

5. Working from an international perspective

The Open Justice Program also offers a resource for measuring fulfillment in Argentina of the UN 2030 Agenda and the Sustainable Development Goals (SDGs).[14] Open Judicial Data specifically represents a contribution to SDG 16 (*Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive*

(12) See https://www.justicia2020.gob.ar/eje-institucional/programmea-justicia-abierta/

(13) See http://blogs.lanacion.com.ar/data/argentina/hackathon-la-justicia-bajo-la-lupa-de- equipos-de-periodismo-de-datos/

(14) See http://www.odsargentina.gob.ar/

institutions at all levels), particularly target 16.6 (*Develop effective, accountable and transparent institutions at all levels*) and 16.10 (*Ensure public access to information and protect fundamental freedoms*).

With regard to target 16.6, the purpose of the Program is to improve citizens' bonds and experience with justice, at the national and sub-national levels, through the application of active transparency policies that facilitate accountability vis-à-vis civil society. With regard to target 16.10, it plays a relevant role in the above-mentioned decision adopted by the National Government to strengthen Public Access to Information mechanisms.

At the same time, the Open Justice Program is a contribution to the renewal and transformation strategy established by the international group of Pathfinders for Peaceful, Just and Inclusive Societies,[15] in which the Ministry of Justice plays an active role, since it aims at an ambitious reform, getting justice institutions ready to meet the aspirations of a more prosperous, inclusive and sustainable future.

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JUSTICE 2020 PROGRAM: ACHIEVING OPEN JUSTICE THROUGH CITIZEN PARTICIPATION AND TRANSPARENCY

HÉCTOR MARIO CHAYER* - JUAN PABLO MARCET**

1. The Justice 2020 Program

The justice system is a fundamental instrument to ensure the well-being and development of all people. Besides its role as a political institution, from the point of view of the UN 2030 Agenda and the Sustainable Development Goals (SDGs), it plays an essential role in "promoting peaceful and inclusive societies for sustainable development, providing access to justice for all and building effective, accountable and inclusive institutions at all levels", as stated in SDG 16.

The Justice 2020 Program is an initiative of the Argentine Ministry of Justice and Human Rights that seeks to foster a justice system close to those people that need it the most, and that inhabitants can trust in dealing with their problems, ensuring quick, reliable and impartial solutions, also accountable to society. Within this vision of an efficient, accessible and reliable justice system, the role of the Ministry of Justice and Human Rights is that of a dynamizing factor in public policies across the country, and a promoter of reforms in Argentina's different judiciaries. All four targets (i.e. coming closer to people, modernity, independence and transparency) are long-term goals that will guide all justice-related work in the next few years.

The Justice 2020 Program seeks to achieve a general transformation of the Argentine justice institutions, through a process of active transparency and a plurality of voices and ideas, within an Open Justice model. The projects are enriched with the contributions of justice leaders, professionals, NGOs, experts, legislators, judges and anyone who wishes to make a contribution to a better public service, through virtual debates open to the community and

(*) Cabinet advisor, General Coordination Unit, Argentine Ministry of Justice and Human Rights. Justice 2020 Program Coordinator. Expert in judicial organization and management.

(**) Advisor, Justice 2020 Program, Justice Secretariat, Argentine Ministry of Justice and Human Rights. Expert in judicial organization and management.

in-person meetings, in which all participants can meet with public officials in charge of the different initiatives to express their points of view. The Justice 2020 Program was implemented with the aim of covering a four-year span (2016-2019) and still works on seven thematic areas with their own objectives. The topics are: institutions, criminal and civil matters, access to justice, human rights, judicial management, justice and society.

2. Participation mechanisms

In May 2016, the Justice 2020 Program posted a virtual platform that can be freely accessed (www.justicia2020.gob.ar), where citizens and stakeholders can participate to learn about, discuss and enrich initiatives. The platform is structured into the above-mentioned seven topics, and 19 thematic teams were working on it as at July 2018. The members of the teams interact over the Justice 2020 platform with the officials responsible for the initiatives, through on-line forums, allowing participation from any part of the country, at any time, with no further requirement than having registered by filling out a simple web form. In-person meetings are also convened periodically and can be attended by all those registered on-line to work on the initiatives. Inputs from the discussion platform are harnessed to support the drafting, follow-up of and evaluation of public policies with three kinds of initiatives: Programs implemented by the Ministry of Justice and Human Rights itself; bills to be submitted to the Argentine Congress; and support to other institutions, mainly judicial ones, to carry out reforms.

All those registered can get to see the documents posted and the contributions of the debates. Furthermore, everyone receives by e-mail, monthly bulletins with news on Justice 2020, invitations to meetings, on-line progress summaries, etc.

This sets up a transparent, agile, efficient and reliable public participation mechanism that particularly sees to federal integration in the reform process. Participation can be stratified into different levels. According to the International Association for Public Participation, the latter can be summarized into five (Elena & Ruibal, 2015):

Table 1. Public participation spectrum

	Inform	Consult	Engage with	Collaborate	Empower
	Level 1	Level 2	Level 3	Level 4	Level 5
Public participation goal	Provide balanced, objective information to the public to help it understand the problem, options, opportunities and/or solutions.	Obtain feedback on analysis, options and/or decisions.	Work directly with the public to make sure its concerns and aspirations are consistently heard and understood.	Work with the public on each aspect of a decision, developing options and identifying the preferred solution.	Place final decision-making in the hands of the public.

	Inform	Consult	Engage with	Collaborate	Empower
	Level 1	Level 2	Level 3	Level 4	Level 5
Promise to the public	We will keep the public informed.	We will keep the public informed, listen to their concerns and aspirations, take them into consideration, and provide feedback on how public inputs had an incidence on the decision. We will ask the public for feedback on drafts and proposals.	Work will be done to ensure that concerns and aspirations are reflected daily in the developed options and feedback will be provided on how the public had an incidence on the decision.	We will work together with the public to formulate solutions and include, insofar as possible, their suggestions in the decisions made.	Whatever the public decides shall be implemented.

Justice 2020 goes as far as level three of those described in the table above. Working directly with the public makes sure that its concerns and aspirations are consistently heard and taken into consideration, informing it on how participant inputs influence decision –making process.

3. Justice 2020 and the SDGs

In September 2015, the United Nations adopted the 2030 Development Agenda, including the 17 sustainable development goals (SDGs). This agenda proposes the development goals, targets and indicators to be achieved by the world in the period 2015-2030. The new element here is the addition of institutional development goals.

In particular, SDG 16 proposes to "promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels".(1) This goal envisages 12 targets for transforming and strengthening institutions. Justice 2020 (as a platform for transforming the justice sector in Argentina) considers these goals to turn them into public policy initiatives duly discussed and agreed upon with society.

Joint work of government and civil society within the Justice 2020 Program has helped to establish public policy definitions, including qualitative and quantitative goals and indicators to measure fulfillment of each of the abovementioned institutional targets. Argentina thus offers itself as a leading country in implementing and measuring institutional development goals that can serve as a model for the global community.

(1) See https://www.un.org/sustainabledevelopment/es/peace-justice/

The following SDG 16 targets are envisaged in Justice 2020:

- 16.2: End abuse, exploitation, trafficking and all forms of violence against and torture of children;
- 16.3: Promote the rule of law at the national and international levels and ensure equal access to justice for all;
- 16.6: Develop effective, accountable and transparent institutions at all levels;
- 16.7: Ensure responsive, inclusive, participatory and representative decision-making at all levels; and
- 16.10: Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements.

4. Justice 2020 and the Open Government Partnership

In Argentina, Justice 2020 reflects in practice for the first time, the notion of Open Government in the justice sector, called Open Justice, and promotes the standards established by the Open Government Partnership, an international initiative that our country joined in 2012.(2) The fundamental values of the Partnership that have been core in the design of this working method of the Justice 2020 Program are the following:

- **Improve transparency and access to information:** Justice 2020 is an active transparency platform making available to civil society relevant information on around 60 of the main initiatives undertaken by the Argentine Ministry of Justice and Human Rights. This information is permanently available on its interactive platform. Through on-line debates and in-person meetings, those in charge of the initiatives present the projects that are being implemented so that anyone can learn about the Ministry's strategy, and the bills being developed. Justice 2020 seeks to improve access to information on these projects as well as on the Ministry's work.

- **Ensure greater participation and collaboration with civil society:** Justice 2020 is a platform offering an unprecedented channel for civil society to participate. With the intent of strengthening dialogue mechanisms and attracting the greatest number possible of individuals and institutions, the method was designed with two easily accessible participation channels. The scrutiny and public debate process for the Ministry's initiatives is carried out through two contact options: an interactive portal and in-person meetings. The teams are jointly coordinated by a public official and a member of civil society.

(2) The Open Government Partnership (OGP) was launched in 2011 and provides an international platform for domestic reformers committed to having accountable, more open and citizen-responsive governments. Since then, the Open Government Partnership increased its participants from 8 to over 70 countries, among them, Argentina. In OGP, governments and civil society work together to develop and implement ambitious Open Government reforms.

- **Create effective accountability mechanisms:** Justice 2020 is annually accountable for progress made within each of the initiatives. This is useful as a formal channel for citizens to monitor public policies by engaging with others on the web platform and attending in-person meetings. Civil society organizations can request additional information using these tools when they believe that the course of action is not in agreement with the plan. Justice 2020 also periodically evaluates the evolution of the mechanisms based on the dialogue held with civil society.
- **Promote the adoption of new technologies and innovation:** Justice 2020 uses an on-line platform that, as at June 2018, had over 40,000 registrations in the different working teams. This level of participation in judicial policies is unprecedented at the international level. It has allowed stakeholders from the legal community and any ordinary Argentine citizen to engage with Ministry officials on equal grounds, no matter their geographical location.[3] Furthermore, one of the Program's initiatives is the creation of the first Argentine Open Judicial Data Portal (see datos.jus.gob.ar).
- As a substantive part of Commitment 11, within the Second Open Government National Plan of Action 2015-2017, Justice 2020 proposed to foster the participation of civil society in decision-making in the justice sector, and to provide updated, disaggregated information in open format to facilitate the participatory process at all public policy stages, as well as accountability. The committed outcomes were achieved in due time and even more than expected was accomplished given the level of participation.

5. Strategic actions within the Justice 2020 Program

5.1. Bringing justice closer to the people

Justice administration must be targeted to the community and to offering functional, efficient and quick answers to its needs, based on the premise that access to justice is a basic, fundamental right of all people.[4] Technologies provide new possibilities for exchanging information among individuals and

(3) The website www.justicia2020.gob.ar was developed based on WordPress, the most widely used open source content manager on the Internet, and PHP, HTML, CSS, JavaScript (Ajax, Jquery, etc.). Around 30% of the websites on the Internet are WordPress-based. Besides the positive aspects of this tool, the website has been worked on together with the Ministry's Technology, Safety and Security area so as to optimize web-based security. Proprietary developments have also been carried out to provide specific solutions. Additionally, its positioning on search engines is being optimized. It is an agile and easy to manage platform: once the parameters have been established, non-technical staff from the Justice 2020 Program can manage it. Finally, the website has been adapted for its use on any kind of device (PCs, notebooks, mobile phones, etc.).

(4) The following articles enshrine access to justice: article 8 of the Universal Declaration of Human Rights; article 2.3 of the International Covenant on Civil and Political Rights; article XVIII of the American Declaration of the Rights and Duties of Man; article 8.1 of the American Convention on Human Rights and articles 5 and 6 of the Convention on the Elimination of All Forms of Discrimination Against Women.

the justice sector across the country, improve communication with citizens, and facilitate knowledge and understanding of legal information. The Justice 2020 platform is an example thereof and allows interaction between the community and Ministry of Justice officials, with no restrictions as to time and place. Procedural reforms promoted by Justice 2020 reinforce access to justice. Oral proceedings turn a slow and inefficient system into a more agile, simple and accessible one for people. In the oral proceedings, the old and complex vocabulary of written proceedings turns into terminology that can be understood by the public at large. Human rights become a point of convergence for social development and a tool for dispute settlement. An approach is then included on the basis of respect for diversity and dialogue to foster peaceful, calm and systematized coexistence in a comprehensive national plan. The adoption of progress indicators in economic, social and cultural rights is promoted in agreement with the international treaties to which Argentina is an active and committed party. The necessary guarantees are provided to ensure continuity of the Remembrance, Truth and Justice policies, and deepening of rights for the most vulnerable sectors.

Justice 2020 draws up prevention policies to avoid institutional violence and sets standards for security forces in this field. It fosters the creation of mechanisms to deal with disasters and emergencies, and establishes quick response mechanisms when situations affecting human rights have been identified.

The Program proposes a shift in the focus on indigenous peoples and the outlining of an active permanent State policy, incorporating them into the community as true right-holders. The relationship with these peoples should not be based on welfare but instead on the respect for their customs and their community ownership of land, which are rights especially enshrined in the Constitution and other national and international standards. Working strongly on the social aspect brings up another important factor: justice must not only exist in courts and rulings, but also act as a promoter of continuous improvement of people's quality of life.

5.2. Streamlining judicial services

Demands to be met by the justice system have increased progressively in our country but judicial body structures have remained unchanged. For 200 years, the courts have kept written, difficult to understand case files, forgetting about the underlying existence of a dispute between people that calls for a quick solution. It is necessary to install a new organizational model, providing the responses required by people in due time and format. In this regard, Justice 2020 promotes modern, efficient organizations giving quick, quality answers to the problems at stake. It fosters the adoption of best practices regarding models and procedures to ensure quality and continuous improvement. Furthermore, it promotes the incorporation of new technologies to streamline old proceedings and meet the needs of the population in an agile and efficient manner. Justice 2020 promotes the use of digital case files and their electronic management, which will lead Argentine justice to going paperless, making formalities more

agile and facilitating remote access to sources of information. The incorporation of technology also provides more dynamism to criminal investigations aimed at dismantling corruption, fighting drug trafficking, preventing money laundering and avoiding people trafficking networks that are a critical problem for society.

Argentine judicial proceedings are written and slow; massive oral proceedings will bring about a decisive change. The civil procedural reform and the start-up of the criminal procedural reform will include transparent, public hearings to settle disputes and provide satisfactory answers to the community. Management of national public records is an essential part of quality services. New rapid access forms are generated through electronic means, with mechanisms improving access to and the transparency of formalities so as to provide greater legal certainty to all users.

5.3. Making the judicial system transparent

Justice 2020 proposes an independent, transparent justice administration for which it is necessary to ensure the autonomy of judges, prosecutors and defenders that must be able to perform their job without political or any other pressure. In order to guarantee effective solutions for the population, all actors must have institutionally defined clear roles to limit any potential power abuse. The Judges' Council must reflect a balance of political forces and the technical representation of judges, lawyers and academicians spelt out in the Constitution so as to avoid the politicization of judges' appointments and removals.

Justice 2020 promotes institutional transparency and the fight against corruption. Access to public information, to be provided by the judiciaries and the different registries under the Ministry and other jurisdictions, will lead to controlling public officials and ensuring their accountability. With regard to open data, Justice 2020 promotes transparent justice system statistics allowing judicial policy decisions to be made on technical grounds, inherent in a serious, modern State. Data collection mechanisms were improved so as to unify and consolidate information from judicial systems at the provincial and national levels, so the situation in Argentina can be compared to the rest of the world.

Statistics will lead to outlining justice administration indicators and making structural improvements where failures are identified. When opening the databases to the public at large, Justice 2020 ensures greater control by the different sectors of society, mainly by civil society organizations, the academic community and journalism. The use of inter-institutional coordination tools and oversight instruments at all levels helps to ensure process transparency and public management overall.

Independence and transparency make justice predictable, which guarantees to the population that the replies obtained will be quick, satisfactory and of good institutional quality. Reforms contribute to reinforcing trust in the Rule of Law principles, regulations and procedures.

Hereafter is a list of the seven fields of work of Justice 2020 and the pertinent goals.

1) **Institutional.** Goals:

- To achieve effective independence of the Judiciary, transparency and an efficient use of the justice system.
- To reinforce the fight against corruption, promoting active public ethics and management transparency policies, which strengthens the institutional capability of filing claims.
- To institutionalize a transparency and accountability system for the judiciaries.
- To attach greater importance to and depoliticize the mechanisms for selecting, disciplining and removing judges, by including agile processes and Open Government and transparency mechanisms.
- To move towards a citizen commitment charter and permanent State policies in the field of justice.
- To strengthen federal justice across the country, as well as provincial judiciaries.
- To promote and actively participate in the transfer to Buenos Aires City of the national justice, the Inspección General de Justicia (Office of Corporate Oversight) and the Real Estate Registry.

2) **Criminal Justice.** Goals:

- To guarantee the rights of victims and achieve a justice system that investigates, prosecutes and convicts those who have committed a crime and also favours their social re-insertion.
- To promote the investigation of drug trafficking and organized crime through new procedural tools and the design of an efficient criminal policy.
- To promote effective, quick, transparent criminal proceedings that ensure punishment of offenders.
- To reinforce respect for the constitutional requirements and guarantee the effective acknowledgment of the victims' rights, equality between the parties, and the immediate holding of oral proceedings.
- To promote implementation of an accusatory system and effective oral proceedings in criminal proceedings, at the national and provincial levels.
- To promote the establishment of jury trials at the federal and provincial levels.
- To promote a comprehensive reform of the Federal Penitentiary Service, allowing social reinsertion of offenders within a Human Rights framework.

3) **Civil Justice.** Goals:

- To ensure the effective enjoyment of inhabitants' rights by modernizing the laws and promoting an agile justice system, that comes close to people.
- To promote new civil and commercial proceedings based on the effectiveness, speediness and transparency of the oral proceedings' principle.
- To promote projects to deal with neighbourhood issues and small claims courts, at the federal and provincial levels.
- To foster the use of arbitration for property-related issues.
- To promote reform projects in federal courts dealing with social security and administrative matters, so as to achieve efficient proceedings rendering quick and reliable responses.

4) **Access to justice.** Goals:

- To ensure all people, particularly the vulnerable, have access to the justice system and can settle their disputes in a participatory manner.
- To promote broad, balanced territorial coverage of access to justice across the country at centers for access to justice (CAJ), in coordination with local governments.
- To promote the strengthening and coordination of free legal assistance and advice centers at the local level, and to adopt protocols to serve the vulnerable groups.
- To foster the efficient application of an early exit from the proceedings and alternative dispute resolution methods, emphasizing those based on conciliation, mediation and arbitration.

5) **Human rights.** Goals:

- To ensure protection of the rights of the indigenous peoples and the vulnerable groups, and deepen policies favouring equal opportunities and eliminating discrimination.
- To foster international and inter-cultural cooperation and dialogue.
- To establish co-participation mechanisms to fulfill international obligations.
- To foster coordinated work in the field of human rights in all provinces.
- To generate and consolidate citizen education and training in human rights.
- To establish quick action mechanisms when detecting any situation that violates, affects or jeopardizes human rights; to promote policies to prevent institutional violence; and to establish standards for law enforcement in this regard.
- To implement active policies recognizing and strengthening new rights for citizens.
- To establish mechanisms for monitoring progress indicators regarding economic, social and cultural rights.

6) **Management.** Goals:

- To optimize registration and justice service processes, and make them more agile and simple.
- To establish more agile judicial proceedings, prioritizing simple cases that must be addressed more expeditiously than the more complex ones.
- To promote redesign of organizational structures (courts, prosecutors' offices, defenders' offices, advisory services, etc.)
- To promote digital case files, electronic management of cases and electronic communication.
- To ensure transparency and consolidate the legal system's statistics and indicators
- To turn registration processes into quick, simple, modern ones, by including the possibility to access and carry out all formalities on the web.
- To develop active policies so as to have quality models and procedures, and ensure continuous improvement in different justice system aspects.

7) **Justice and society.** Goals:

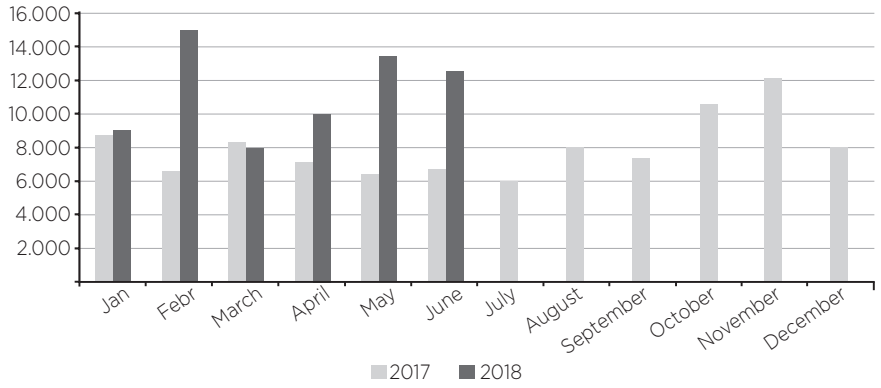
- To re-define the profile of law practitioners, and work to ensure that all stakeholders support transformation of the justice sector.
- To reinforce the relationship with the academic community, professional associations and civil society institutions, attracting them and turning them into stakeholders of the justice system reform process.
- To promote and encourage curricular reforms at the schools of law, both in public and private universities.
- To move forward in the implementation, streamlining and updating of the codes of professional and judicial ethics. To strengthen the professional ethics oversight mechanisms.
- To promote due professional registration for practicing law.
- To improve communication with the population at large.

6. Outcomes with regard to citizen participation

In the period May 2016-July 2018, over 200 meetings were held on Justice 2020, open to all those willing to attend, and over 5,700 participants made over 2,300 contributions. Just over half of the meetings took place in Buenos Aires City, while the rest were held in different Argentine provinces.

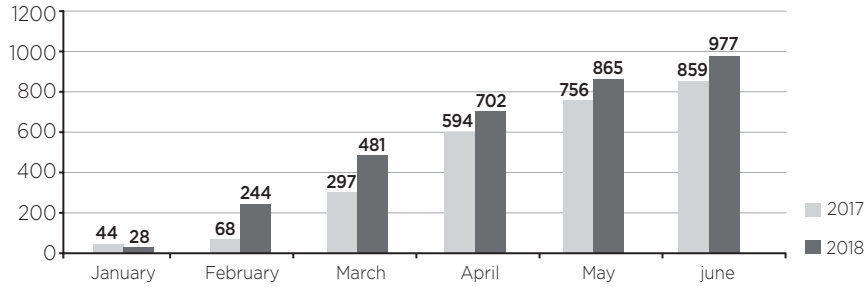
In 2018, the platform's functionalities were reformulated, and accessible information was added for those who had not registered previously, and supplementary labeled data were improved (metadata). This increased the volume and quality of information made available and the number of website visits.

Graph 1. Total number of visits to www.justicia2020.gob.ar



As at July 2018, the on-line platform totaled 42,000 registrations in team work, just over 6,500 contributions were received from over 2,800 people that wrote from all over the country, in more than 200 different discussions. Visits to the platform total hundreds of thousands.

Graph 2. Contributions to the on-line forums at: www.justicia2020.gob.ar (annual cumulative)



These results lead to describing the Justice 2020 Program as a very successful experience with regard to Open Justice, putting into practice the principles of active transparency and participation of a plurality of voices and ideas in the drafting, implementation and evaluation of justice-related public policies.

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JUSTICE IN PLAIN LANGUAGE: CASE STUDY OF THE ARGENTINE LEGAL INFORMATION SYSTEM

SILVIA IACOPETTI*

Escribir sin pensar en el lector es como escribir una carta de amor dirigida a quien corresponda.

(Writing without thinking of the reader is like writing a love letter to whom it may concern)
Zelasky[1]

1. Introduction

Legal language used in legal documents is not always clear for those who are not knowledgeable about law. Sometimes, these texts use words that are not utilized in daily life or that have a different meaning to what we attach to them in everyday life.

Despite this complexity of the legal systems, the basic principles in place are the assumption that one must be aware of the law, and cannot decide not to abide by the law due to lack of knowledge. Therefore, if citizens do not understand what the law spells out, in practice they are in a vulnerable situation.

Throughout a person's life, he/she may come across the legal universe and its terminology several times: in a request for alimony; a car accident; when filling out a criminal record form, when marrying or selling property. If in these cases, the specialized language generates confusion and brings about a feeling

(*) National Director, Argentine Legal Information System.

(1) Quote taken from Manual de Lenguaje Claro (2007, Mexico: Secretaría de la Función Pública de los Estados Mexicanos, p. 42).

of distance, it will give rise to legal uncertainty, which has a negative impact on dispute settlement.

Learning about the laws allows a better exercise of rights and obligations, knowing how and vis-à-vis whom they can be imposed. Thus, working on message clarity is working for justice to be perceived as closer to people. Improving communication with citizens and being clear interlocutors, increases trust in institutions.

Laws are ultimately language expressions that can well be clearly worded: in an unequivocal, unambiguous manner, creating no confusions, not being redundant or unclear.

Within this new context, the Ministry of Justice and Human Rights of Argentina undertook the commitment to work in favour of a justice that comes closer to the community, and that is open, modern, transparent and independent. One of the Ministry's challenges is to make sure that all citizens know and understand their rights and obligations by bringing justice-sector language closer to the people.

This task was commissioned to the Argentine Legal Information System's (SAIJ in its Spanish acronym) National Directorate which, besides gathering legal information at the national level, updating it and making it available to citizens, carries out several rights-dissemination initiatives using clear language.

Clear language is a simple and efficient drafting style that helps people easily understand what has been written. This technique, used in several countries in the world, allows people to understand without the need to re-read, and to find appropriate information to make a decision or file a claim.

Apart from the text in itself, this wording style takes into consideration the structure, editing, visual language, design and usability. Clarity of messages does not entail content simplification, or under-estimating citizens. Quite the opposite, it is related to the effectiveness of State messages and to transparency.

2. Plain language: a technique that is growing worldwide

2.1. Background information

Clear language, 'citizen' language or plain language arose in the 20th century as a movement seeking to simplify public and administrative documents to facilitate their understanding by citizens.

In the world there are several initiatives encouraging its use. As from 1960, in the U.S.A., citizens started demanding clarity in State messages. In 1978, during Jimmy Carter's administration, it was established that "the most important government regulations have to be worded in English that is clear

and easy-to-understand by those who are required to comply with them." In 2010, President Barack Obama signed the Plain Writing Act of 2010 into law, instructing US federal agencies to use clear language in all their documents and to train their employees in using plain language.

In the European Union (EU) there are so many problems regarding clarity of translations into the 24 official languages that, since 2010, a booklet entitled "How to write clearly" has been published in all those languages, as a part of a specific EU Program.

In the 1970s, in the United Kingdom, a group of consumers protested because of the unintelligible information delivered by the government. Throughout time the "Plain English Campaign" and "Plain Language Commission" were set up: two non-governmental organizations that, just like others, have had a strong influence on the way in which messages are written for the United Kingdom public. Nowadays, everything officially informed by the government is fully written in plain English.

For over 30 years, legislation in Sweden has been worded in a clear language and, moreover, there is a graduate academic career and a certification for plain language instructors.

No doubt, the most significant advocacy and success stories in plain language can be found in English-speaking countries. For instance, Australia, New Zealand and the Democratic Republic of South Africa, where in 1996 a new Constitution was drafted in plain language and was, in turn, translated into the country's 11 official languages, since plain language also makes translation easier.

Canada also has many plain language initiatives, both in French and English, in government (for instance, the Ministry of Justice) as well as in the private sector.

Nowadays there are several international organizations worldwide promoting plain language. SAIJ used their material as a guide to develop its services: Clarity; Plain Language Movement; Chile's Library at its National Congress, with its service called Ley Fácil (Plain Law); the Programme La Ley en tu Lenguaje (Law in plain language), implemented by IMPO, Uruguay, among others.

2.2. Regulatory framework

- The International Covenant on Civil and Political Rights, and the Convention for the Protection of Human Rights and Fundamental Freedoms recognize, with a different wording, the rights of all people to obtain the effective protection of courts in a public proceeding with all guarantees.
- Article 2 of the Convention on the Rights of Persons with Disabilities (at constitutional level in Argentina, pursuant to law 27,044) states the following:

  > "For the purposes of this Convention: "Communication" includes languages, display of text, Braille, tactile communication, large

> print, accessible multimedia as well as written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology";

- The Brasilia Regulations regarding Access to Justice for Vulnerable people (adhered to by Supreme Court of Justice decision 5/2009) specify the following:

> "... All necessary measures will be adopted to reduce any difficulties in communication that affect the understanding of the judicial proceeding that vulnerable persons are a party to, guaranteeing that they can understand its scope and significance (...) Simple and easily understandable terms and grammar structures will be used, in line with the specific needs of the vulnerable persons referred to in these Regulations (...) In judicial proceedings where minors are involved, it is important to take into account their age and overall development, as well as observe the following: - All acts shall be held in an appropriate court or room. - The language used must be simple, making it easier to understand."

- Article 3, national decree 891/2017, says that "Rules and regulations enacted must be simple, clear, accurate and easy to understand..."

2.3. Technique

Plain language seeks to strike a balance between clarity and the technical accuracy of the discipline under consideration -in our case, law. It is important to bear in mind that the specifics of legal language do not necessarily entail that it must be unclear, archaic and trapped in difficult to understand formulations. Neither must information be lost: when a text is adapted to plain language none of the contents are lost, they are just explained in a simpler manner.

In each step in the development of a public policy, focus must always be on the citizens it is targeted to. This means the State should be capable of clearly conveying the contents of Programs, formalities and services, besides informing on acts of government through a transparent accountability exercise.

Therefore, at the time of communicating in plain language, the most important thing is to think of the addressees. Their interests, needs, expectations and level of knowledge should be known, as it is also necessary to be clear about what citizens shall do with that information.

As pointed out in the *Guía de Lenguaje Claro para servidores públicos de Colombia* (Plain Language Guidelines for public servants in Colombia – 2015), the use of plain language reduces the number of mistakes and unnecessary clarifications, increases efficiency in managing citizens' requests, facilitates citizen oversight of

public management and also participation, and promotes the social inclusion of persons with disabilities, to effectively enjoy rights in equal conditions.

The practical rules of plain language can be summarized as follows:

1) Short sentences: not over 120 characters.
2) Short paragraphs: no more than six sentences.
3) One idea per sentence.
4) One topic per paragraph.
5) Simple sentence structure: subject, verb, complement (in that order).
6) Short words, for instance, "use" instead of "utilize".
7) Numbers in figures (not spelt out).
8) Less use of the gerund which is a verbal tense that is imprecise because it does not tell you about the who or the when (and legal language usually uses gerunds in excess "being", "having").
9) Less archaic terminology (for instance, "*otro sí digo*" in Spanish, or e.g. "having these presents been read"), and less obscure words.
10) Not so many words in Latin.
11) Friendly design.

3. The experience of the SAIJ National Directorate and the development of services in plain language

SAIJ carries out initiatives to facilitate access to law, and knowledge and understanding thereof for all citizens. It provides legal information in different formats to judges, lawyers, teachers, students and citizens at large. It is a pioneer in systematizing legal information and in developing access to law and outreach strategies in Latin America.

Nowadays, the websites it manages (Infoleg and SAIJ) provide citizens with updated versions of all Argentine laws and case law, with an average of 24 million visits a year. In 2016, it posted on the Argentine Open Judicial Data Portal *datos.jus.gob.ar,* the Infoleg-SAIJ databases, in another effort to position Argentina among the 20 top countries with the best data opening. Therefore, SAIJ fulfills one of its two fundamental missions: to disseminate legal information.

The second mission of the agency is to make it easier for citizens to understand the laws and to disseminate them through different outputs, so the community can take ownership of the laws and use them in their daily life, for instance, for people to learn about the requirements for accessing a given benefit, or the new behaviours that are criminalized, and the penalties or obligations they are subjected to.

3.1. Projects

SAIJ provides different plain language-related services:

- **Simple law:** laws having an impact on daily life adapted to plain language in a questions and answers format, providing useful tips and links to the specific enforcement agencies.
- **Justice closer to citizens:** citizens are explained their rights and obligations in daily life, in specific situations, for instance, going to the supermarket, traveling on a bus or leasing an apartment.
- **Easy-to-Read:** legal texts are adapted so that they can be understood by persons with cognitive disabilities or difficulties in reading-understanding.
- ***Wiki Ius:*** it manages a participatory glossary of legal terminology in plain language, which helps to understand technical vocabulary.
- **Digital communication strategy in plain language:** a selection of formats and design is carried out and contents are managed in plain language.
- **Regulatory simplification:** resolutions of the Ministry of Justice and Human Rights are classified and also user and public administration experiences are harnessed regarding formalities and institutional texts.

SAIJ, moreover, is a promoter of the Argentine Plain Language Network which is a call upon institutions and agencies of the three State branches seeking to promote, disseminate and train in the use of this technique across the country.

Awareness-raising in the use of plain language, together with the promotion of citizen participation through the Justice 2020 Program, and the strong commitment to open up data through the Open Justice Program, make up a cross-cutting strategy of the Ministry of Justice and Human Rights to ensure modern, open, transparent, close-to-the-people management.

3.2. Work process

Every day, SAIJ analysts apply plain language guidelines to adapt regulatory texts, mainly the laws passed by Congress. They carry out a thorough job to avoid conceptual inaccuracies or mistakes when the time comes to simplifying the terminology used in legal documents.

With a view to improving the quality and usefulness of the final text, in some cases work has been carried out with public agencies specialized in the subject-matter addressed by the law, so as to validate its adaptation to plain language.

3.3. How do we communicate

Nowadays it seems difficult to think of public management without appropriate communication. It is no longer an element that appears after deciding, acting and managing but instead is a part of the public policies as from their planning stage.

Communicating from the State calls for a special approach: it entails permanently thinking of citizens' needs and expectations. Therefore, the contents must be continuously updated, taking into consideration legislative changes and the needs of the population. Communication is, moreover, an effective tool to reach out with public policies to the population at large.

Digital communication is an ongoing development. Users have changed their way of accessing digital contents. With the explosion of platforms such as Facebook, Twitter, Instagram, Youtube and Google, less users access the website directly.

Thus, the two most important channels to disseminate SAIJ services are Facebook and Twitter. The communication team posts weekly publications on rights in plain language, thinking comprehensively of the contents and design, so that citizens can access the service from a computer or mobile phone.

Mass mailing is also used for specific topics (such as "I am pregnant", "Traveling by car" or "Casting votes") to explain some of the most important rights of people experiencing these situations.

Despite the use of digital formats, contents are also developed on paper for government areas that work at territorial level. Brochures, flyers and post cards are designed on paper to reach out to those citizens that do not have access to the Internet. They are distributed through strategic government officials who work at the territorial level across the country. Work is also carried out by establishing strategic partnerships with other State agencies, their offices, and civil society organizations.

4. Conclusion

The streamlining of justice is a challenge faced by the whole of the Ministry of Justice and Human Rights, which calls for new language frameworks, easier to understand, and that help bring justice closer to the people.

The clarity of management channels, single windows, open data and plain language are key tools to improve the State's relationship with citizens.

Nowadays it seems difficult to think of public management without appropriate communication. It is no longer an element that appears after deciding, acting and managing, but instead it is a part of the public policies as from their planning stage. Plain language arises as a tool related to management and communication of public policies, that is essential to the new 21st century communication and justice models.

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ORAL CIVIL PROCEDURES AS A CHANNEL FOR OPEN JUSTICE: ANALYSIS OF THE ARGENTINE JUDICIAL REFORM PROJECT

HÉCTOR MARIO CHAYER* - JUAN PABLO MARCET**

1. Backgrounds

For decades, there has been a severe widespread problem with civil actions in Argentina.(1) Adversary proceedings (i.e. cases where a disputed issue involving contracts, traffic accidents, professional malpractice or evictions is brought before a judge for adjudication) can have an unpredictable duration, usually not less than several years, and are opaque, since they are conducted in writing, through records of proceedings added to a paper case file, at the pace of the litigants that pursue the case. Successive "hearings" are added to the case file in the form of printed out documents with transcriptions of witnesses', parties' or expert witnesses' statements given orally before a judicial official who serves as stenographer, interviewer and court recorder. Concentration of evidence is unusual in these hearings as is the presence of the judge. In general, the judge's function is delegated to other officials or court employees. This methodology strongly contradicts the civil procedure principles of concentration and immediacy, and the court loses control over the duration of the evidence-taking period.

The Oral Civil Proceedings Generalization Project, created by the Ministry of Justice and Human Rights of Argentina, promotes effective oral civil procedures(2) through two hearings, both conducted by the judge in charge of the case: a pretrial conference or hearing (intended to achieve conciliation, assess evidence, and organize evidentiary activity) and a videotaped trial hearing (which concentrates all the evidence that may be submitted in a hearing).

(*) Cabinet advisor, General Coordination Unit, Argentine Ministry of Justice and Human Rights. Justice 2020 Program Coordinator. Expert in judicial organization and management.

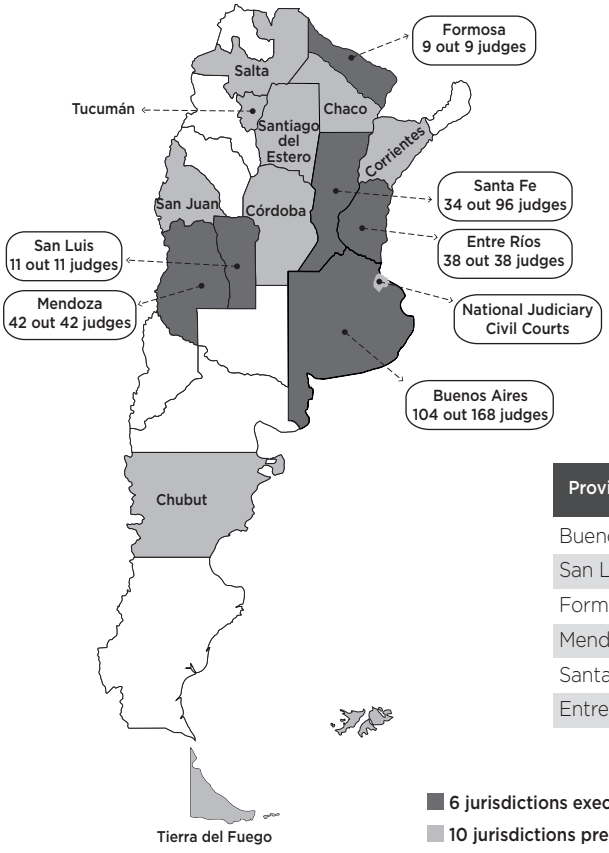
(**) Advisor, Justice 2020 Program, Justice Secretariat, Argentine Ministry of Justice and Human Rights. Expert in judicial organization and management.

(1) Term considered in a broad sense, including all non-criminal proceedings.

(2) This project applies to monetary lawsuits (civil, commercial and labor matters).

In May 2016, the project was implemented in the first jurisdiction, the province of Buenos Aires, with the support of the Buenos Aires Supreme Court.[3] As of June 2018, there are over 100 judges in Buenos Aires Province who are taking part in the experience in 18 judicial departments,[4] with high-impact results, as we will discuss shortly. Additionally, the Ministry provides technical and financial support for the project in the provinces of San Luis, Formosa, Mendoza, and Entre Ríos, where all civil and commercial judges are taking part in the initiative, as well as in Santa Fe Province, where one third of the judges is already involved (with prospects of more joining soon). In total, over 230 judges throughout the country are taking part in this project.

Chart 1. Nationwide implementation of the Ministry of Justice and Human Rights' Oral Civil Proceedings Generalization Project



Province	Beginning of project
Buenos Aires	August 2016
San Luis	June 2017
Formosa	August 2017
Mendoza	August 2017
Santa Fe	April 2018
Entre Ríos	July 2018

(3) In this regard, Buenos Aires Supreme Court resolutions 1904/2012, 3683/2012, 2400/2016 and 2761/2016, refer specifically to the generalization of oralcivil procedures.

(4) Out of the 19 judicial departments of Buenos Aires Province.

The three key purposes of the project allow selecting the methods to be used and the indicators to measure progress. They are results- and user-based, and are the following:

1) Reduce the total terms of civil and commercial adversary proceedings, by exercising effective control over the duration of the evidence-taking stage.
2) Increase the quality of judicial decisions through the materialization of the principles of immediacy of the judge, and the concentration of evidence in oral hearings.
3) Increase civil and commercial justice system users' satisfaction.

2. Legal and Public Policy Framework

The Ministry of Justice and Human Rights of Argentina implemented the Justice 2020 Program (Programa Justicia 2020). The Program intends to prepare, implement and assess policies to develop, together with civil society, a justice system that achieves socially relevant results and allows for fast and reliable conflict resolution. The initiatives and projects that are a part of the Program are presented on an online platform,[5] which is open to the community, as a mechanism for active transparency and effective participation.

The Oral Civil Proceedings Generalization Project is presented as a part of the Management thematic area within the Justice 2020 Program, which focuses on changing judicial practice and not on amending legislation (as it is the tradition when trying to introduce oral judicial proceedings). It is about managing proceedings differently within the same legal framework. This approach allows the system to work fast, with no need to wait for any procedural code reform.

The goals to expand oralprocedures are included in the National Strategy for the Reform of the Civil Justice System (Ministry of Justice Resolution 829/2017). The mission of this Strategy, among others, is to modernize civil and commercial legislation and management practices in all local jurisdictions throughout Argentina; promote the adoption of effective oral civil and commercial proceedings, to achieve direct contact between the judge and the parties in controversies that require the judge's intervention; *prevent delegation of functions; concentrate procedural activity and avoid formalities; and encourage the adoption, measurement and dissemination of indicators and goals* that may account for the results of this civil case management model.[6]

This resolution includes, among the Justice 2020 Program actions, "providing technical support and follow-up to local experiences of civil justice system reform, as well as financial aid when applicable, through specific agreements." Additionally, the objectives fully agree with the first purpose of the Civil Justice thematic area of the Program, which states: "to promote a new civil and commercial procedure based on the principles of effective orality, speed and transparency."

(5) See www.justicia2020.gob.ar.

(6) Emphasis added.

3. Distorted Oral Procedures, Change in Work Practices and Effective Procedures

This project is intended to address, in a novel way, a long-standing, seemingly insurmountable problem: the delay in case processing time. The focus is on effectively changing the first instance judges' work practices, to achieve completely different outcomes in terms of user satisfaction, duration of proceedings and conciliatory solutions.

To be able to capture this perspective of civil procedural change, which reinterprets procedural rules and materializes the principles of immediacy and speed by having the judge effectively lead the proceedings, the Ministry published a collection called *"Nueva gestión judicial"* (New Judicial Management).(7)

The importance of oral procedures as a means to achieve the principle of immediacy between the judge, the parties and the evidence in judicial proceedings does not require further justification, as it has been discussed by a myriad of scholarly and legal sources. We can give assurance that there is unanimity among judicial operators about the desirability of hearings being presided over by judges. However, the legislative attempts to quickly implement oral procedures came across distortive work practices that led to a *de facto* shift away from orality. Thus, in many jurisdictions, oral procedures are discussed theoretically, as something written in the procedural rules, but not applied in practice. Some provincial Supreme Courts have gone as far as staying the application of evidentiary hearings, as established by the legal provisions. Alternatively, cases started to be litigated with spurious orality; documents added to the case file would certify that something had happened in the presence of a judge when, in fact, that was not the case, and the single purpose of the so-called "hearing" was to draft a joint written document. Nothing could be farthest away from an effective oral procedure itself.

Despite the agreement on the valuable and desirable nature of effective orality, a distorted oral practice prevailed. This did not happen on the basis of a scholarly or legal text, but because judicial operators were convinced of the alleged impracticality of holding hearings in every single judicial case. Therefore, many chose to pretend they were holding hearings when in fact they were not. This belongs to the realm of practice, not of the law.

When a judge who was not present in a hearing signs a document stating he/she was present, it means that this judge is not satisfied with his/her absence, and feels the need to conceal said reality. The judge understands that he/she should have attended the hearing. In turn, this arises a trust crisis in the operators and the citizens involved in the system, who are invited to sign a record that states

(7) As of June 2018, the collection included: Oralidad en los procesos civiles ([Oral Civil Procedures], 3rd edition, March 2018), Tecnología y oralidad civil. El caso de San Luis ([Technology and Oral Civil Procedure. The San Luis Case], April 2017) and Cambio organizacional y Gestión oral del proceso civil. El caso de Mendoza ([Organizational Change and Oral Management of Civil Proceedings. The Mendoza Case], July 2017).

that the judge was present when in fact he/she was not. Any litigant and any counsel know that what the record shows is not true, which leads to losing trust in what the case file reflects. In other words, if the judge was not present but the record of proceedings states he/she were present, how trustworthy are the other records in that case file? How can we trust that what the records state is true if we were asked to sign one that sets forth false information? Although it may seem harsh to put it in these terms, the case file shows lies contained in official documents. That litigants may grow accustomed to this is odd, to say the least.

That is why we discuss the notion of "effective" orality, understanding it as oral procedures that uses videotaped hearings that involve direct verbal exchanges between the participants (these being the basis for the adjudicator's decision) and that are held in the presence of the judge and led by him/her.

Videotaping has several effects. First, it makes a clear distinction between videotaped hearings and "hearings" (if they can be so called) in which the attendants draft the documents together and are much shorter (an average of 30 minutes). The motivation to prepare untrue judicial documents disappears. If a record reflects what happened during the hearing, it will show a reality not a fantasy; much more so when the record is replaced by a videotape to which a succinct list of attendants may be added.(8)

As has been said, a core feature of the project is to change practices without amending the applicable legal provisions. It is assumed that the existence and the use of procedural tools depend much more on everyday practices by the courts and legal counsel, than on the language of the law, and that the correct interpretation of procedural rules allows the judge to summon the parties to attend hearings, explore the possibility of settling the dispute through conciliation, and concentrate all evidence. Practices are built on the foundation of beliefs and values shared by judicial operators and they are decisive for shaping proceedings. Significant efforts are made to understand procedural practices, review the possibilities offered by the provisions and change beliefs, in order to modify practices and obtain different outcomes.

This is why the project is being executed with no need for any legislative reform, although such reform would be desirable at a later stage. With the procedural framework currently in force in each jurisdiction, the effective implementation of hearing-based adversary proceedings has proven to be fully possible. The substantial challenge is to change work practices; the time will come to consolidate this with a procedural reform after this challenge has been overcome.

If we were to enforce what the procedural rules label "duties of the judge" and "power of the judge to order measures and provide instructions", which are nothing other than the logical and natural result of the prerogatives inherent in the judge's role as the director of judicial proceedings, it would be possible to orga-

(8) Please note that not even this document is necessary; it would suffice for the judge to state verbally who are the people who attended, and videotape it.

nize judicial litigation with effective orality. This is both a way to ensure due process as well as access to justice, and a way to materialize the principles of immediacy, concentration of procedural steps and procedural economy, thus reducing total case processing times from the beginning to the end of the proceedings.

As the parties to the conflict are present in the hearings, judicial operators (both attorneys and judges) and the parties themselves are forced to make a communication effort that is different from that which is required in written procedures. The judge obtains a much more objective perspective on the evidence that is closer to the facts than when he/she has access to it through minutes drafted by third parties. The account of a witness contained in a record prepared by a court official reaches the judge after being mediated twice: firstly, when the judicial officer interprets the testimony, and secondly when the official drafts the record.

For this project, it is essential that hearings are effectively conducted by judges. They can then take full advantage of the conciliation opportunities offered by orality, with the application of mediation and conciliation techniques, which facilitate a participatory resolution of the conflict, and with a first-hand impression of the value of the evidence submitted by the parties.

Effective oral procedures as the driver for redesigning adversary proceedings leads to achieving a key result: exercising greater control over the evidence-taking stage (both the evidence itself and period for its submission). Additionally, it promotes concentration of all the various hearings (with witnesses, parties and experts) in a single meeting, which in a written procedure would be held at different times over months. As has been said, it also does away with paper to support evidentiary or trial hearings; this is replaced by a videotape which saves the time and effort of having to transcribe the hearing. All this facilitates the reduction of the duration of the process, given that by the end of the hearing the judge usually has all the information required to reach a decision (unless there is a piece of essential evidence that is missing, but that would be the exception and not the rule). Additionally, the fact that the date for the trial hearing is systematically set during the pretrial conference and that these two hearings are not more than 3 or 4 months apart favors conciliation possibilities. This is further leveraged by the presence of the judge who takes an active part in the negotiations, and by the certainty that the proceedings will come to an end in a definite timeframe. Finally, videotaped hearings prevents informal delegation of functions and provides an additional instrument to the appellate courts to understand the assessment of the evidence made by the first instance judge, since they will have access to the videotape of the hearing and will be able to directly ascertain the value of the statements rendered in the video.

To provide support to this change in practice, a work protocol is used. This provides consistency and uniformity to management practices so that users know that, regardless of which court is in charge of hearing their case, the proceedings will be conducted in a substantially similar way, and they will have the opportunity to have a judge personally deal with their conflict.

4. Structure

The procedure contemplates two hearings after the pleadings have been filed and the disputed questions have been determined. At the first hearing, the judge hears the parties, tries to bridge the parties' positions and explores the possibility of settlement through conciliation.

When the case cannot be settled at this time, the disputed issues to be proven are established together with the evidence that will be submitted during the evidence-taking period; more specifically, at the second hearing, in which evidence will be presented orally, after which the case will be ready to be decided by the judge.

There are two key elements to success. On the one hand, the judge's direct involvement in the dispute, ensuring impartiality and due process to parties that are usually on an unequal footing. On the other hand, the complete oral conduct of the proceedings, since evidentiary hearings are videotaped, and this precludes the need to prepare written documents or records.

The role of the judge is crucial in this process. During the pretrial hearing, the judge becomes a conciliator of antagonistic positions, with broader powers than a mediator. The judge tries to convey to the parties the advisability of their reaching a settlement that may satisfy the interests of both without a trial in which there is always a prevailing party and a non-prevailing party. In the organization of evidence and during the trial hearing, the judge is a true director of the proceeding and organizes it together with the parties, always with a view to reaching a final decision: the judgment, which will adjudicate the dispute. Videotaping the trial hearing contributes to informality, speediness and open dialogue that is absent from the written records, that in traditional systems document the parties' positions and statements. Several measurements taken indicate, contrary to general belief, that pre-trial hearings last approximately 45 minutes and videotaped trial hearings last, on average, 30 minutes for the gathering of evidence. That is to say, it would be perfectly possible for Argentine judges to deal with adversary proceedings through hearings, with the usual workload.

The judge's immediacy allows him/her to know the case and the terms of the dispute in depth, which facilitates the issuance of the final judgment. It also gives the litigants the assurance that justice, embodied in the judge, listens to and takes care of their claims. This is a justice system that is close to the litigant and, above all, transparent.

To be able to ensure that hearing-based proceedings are conducted in this way, in the framework of this project, the participating judges agree to survey data (generally included in IT management systems). These data can be used to develop indicators, such as total duration of the proceedings, duration of the evidence-taking stage, settlement rate (both at pre-trial conferences and trial hearings), and even satisfaction surveys for users and attorneys. This also allows results to be compared, which is essential, as results show how effective or not a certain public policy is.

The energy and management capacity of the judiciary organism must be set in motion with a clear objective: the success of the hearings. For this, it is key for the parties and their counsel to appear in person and to be aware of the issues to be discussed during the proceedings. It is not a matter of sending proxies to sign the minutes in order to comply with a formality. It is expected that witnesses attend personally, as well as expert witnesses when this is deemed advisable, and steps must be taken so that requests for information are sent sufficiently in advance of the hearing. Methods of service must also be managed by the court assertively and creatively, leaving as little as possible in the hands of the parties. To this end, service by electronic means, which is extremely simple on the courts, is almost indispensable, since summons can be sent by the court without depending on the parties or overloading the court. Experience shows that it is simpler and faster to issue electronic notices than to go over a summons prepared by an attorney.

A change of this nature requires determining the tasks that are expected from the judge and his/her assistants, and the skills required for each. The skills needed by a judge who reads case files at his/her desk are not the same as those needed by a judge who spends most of his/her time in hearings. Therefore, the use of protocols or process manuals is extremely useful, as they provide concrete action guidelines for tasks for which both attorneys and judges have received little education.

5. Method and Feasibility

A final issue that needs to be demystified is the idea that the judge cannot possibly be present in all hearings. For this purpose, two things are required: an appropriate method and a feasibility analysis.

We therefore need to focus first on the method. For each civil action there can be no more than two hearings, not too far apart in time. The method relies on the protocol. This is a document developed by the local judges of each jurisdiction, with the assistance of the Justice 2020 team, which gives the judge hearing the case a step-by-step guide, in the form of a checklist, to ensure he/she can manage the evidence-taking period in the best way possible.

The protocol is a fundamental tool that interprets the Code of Procedure, ensuring that all the actions implemented by the judge in a hearing-based proceeding are lawful. It is about going back to the provisions and emphasizing the ones that promote hearings and the leadership of the judge, which are generally neglected in everyday practice.

The use of the protocol ensures that the various courts will conduct proceedings in a substantially similar way, without any significant distortions. Having a document that provides uniform work practices is, in and of itself, innovative in many jurisdictions. This road map allows the judge to review the steps he/she must follow during the hearing; not because it is mandated by law or to comply with legal formalities, but because it becomes necessary given the management perspective and the impact that jurisdictional decisions have in case man-

agement. It is a tool that underscores a fundamental procedural step that is key to the success of the system: setting the date for the trial hearing at the pre-trial hearing. Scheduling the trial hearing is of utmost importance to accomplish one of the purposes of the project: to reduce the duration of proceedings.

The significant hurdle that stood in the way of previous initiatives seeking to establish oral procedures is removed. This obstacle consists of setting the date for the trial hearing only after all the evidence to be submitted has been added to the case file, at the request of one of the parties. With this practice, the hearing is significantly delayed and there is no gain for the written procedure described above. This case management method causes the judge to lose control over procedural terms which are thus left for the parties to manage based on their efficiency in complying with procedural requirements. Reality shows that, regardless of the intended spirit of procedural law, the courts that allow a proceeding and fail to set the date for the trial hearing until one of the litigants requests it, lose control over the duration of the evidence-taking period.

Just by scheduling the date for the trial hearing at the pre-trial hearing, all the attendants will be aware of the date (close in time) on which the proceeding will come to an end.

The worst decision is to schedule the hearings as the cases become ready for final decision. The order of actions should be reversed and the date for the trial hearing must be fixed at the pre-trial hearing; and it should be in the shortest, strictly necessary timeframe possible. Based on this, the actions to be carried out by the parties and the court must be established to be able to arrive at the hearing prepared: with all the evidence produced and with any necessary notices already served. In the end, this procedure acts as a work plan based on which the court, the litigants and the attorneys will have clear responsibilities as to what needs to be done between the pre-trial and the trial hearing.

Another key factor is that hearings should not be rescheduled, except in the case of force majeure. Modifying the customary non-attendance by the parties requires positive incentives for attending. There should be mechanisms that ensure that hearings are effectively held; otherwise, the system will be undermined at the roots.

Additionally, it is essential to consider the feasibility of this method; i.e., ensure that judges have the necessary time available to preside over both hearings. For this purpose, the Ministry keeps statistics about the various courts to know how many adversary proceedings go to the evidence stage, to establish how many hearings each judge must preside over (pre-trial and trial hearings), and how many rooms equipped with videotaping devices will be necessary.

It should be considered that judges are a limited human resource and, as such, they cannot preside over more than a certain number of hearings in a certain period. Therefore, the average number of monthly hearings for each judge is established on the basis of the number of proceedings instituted in each court. In all the analyzed cases, the conclusion was always that this approach is possible.

Digital videotaping of the trial hearings becomes the basic support for the efficient development of a hearing-based management model of litigation, as it avoids having to transcribe the statements and, thus, notably shortens time frames. As the records only include a list of the people in attendance, the length of the trial hearings is strictly limited to the time required to present statements (requests for admissions, expert witness and witness statements).

6. Outcomes

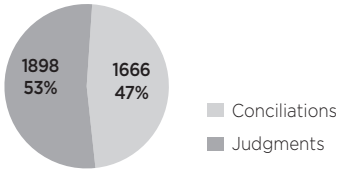
Two years after the onset of the project, there are already six jurisdictions participating in it, including the recent addition of Entre Ríos in June 2018, which has not been considered in the results below. With almost 9,000 hearings presided over by 230 judges, the experience is consolidated and in full development.

Chart 2. Results of theOral Civil Proceedings Generalization Project (Ministry of Justice and Human Rights). Period: 1 August 2016- 30 April 2018

8904 hearings attended by the parties

Province	Hearings	Pre-trial	Trial
Buenos Aires	7555	5153	2402
San Luis	155	114	41
Formosa	208	154	54
Mendoza	984	744	240
Santa Fe	2	2	0
Country total	8904	6167	2737

3564 completed proceedings
47% through conciliation



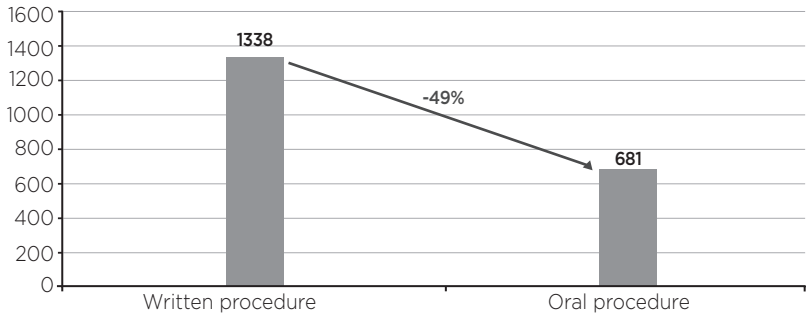
Province	Conciliation rate	Conciliation	Judgment and others	Completed
Buenos Aires	44%	1476	1858	3334
San Luis	77%	17	5	22
Formosa	55%	23	19	42
Mendoza	90%	130	16	166
Santa Fe	-	0	0	0
Country total	47%	1666	1898	3564

The fact that 47% of cases ended with conciliation shows that the goal to improve the quality of judicial decisions was met, thanks to the immediacy of the judge and the concentration of the evidence in oral hearings. This is so because a conciliation decision is made to the satisfaction of the parties and

will therefore be of a higher quality (in terms of adequacy to their interests) than a decision issued by a third party.

Regarding the total duration of civil and commercial adversary proceedings, by exercising greater control over the evidence stage, terms were reduced by half. These are the data surveyed in the province of Buenos Aires, the first jurisdiction that implemented the project and can, therefore, provide the most reliable results: in 3,334 actions over 21 months there was a significant decrease in the duration of civil proceedings.

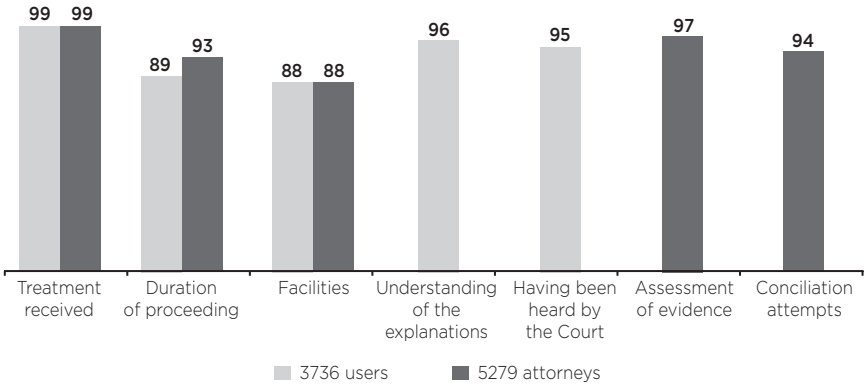
Chart 3. Decrease in the duration of civil proceedings
in Buenos Aires Province. Period: August 1st 2016- April 30th 2018



Finally, the third objective should be addressed: increase civil and commercial justice system users' satisfaction. Unfortunately, no baselines are available to draw comparisons as it is not customary to conduct these surveys in judicial systems. However, the results shown by thousands of surveyed people are really remarkable.

Chart 4 accounts for the results of user satisfaction surveys conducted in four provinces (90% of the surveyed users are from the province of Buenos Aires): an extremely high satisfaction rate is observed as 99% of users state that the treatment received was good or very good.

Chart 4. Results of user satisfaction survey Period: August 1st 2016 – March 30th 2018



From these analyses we can affirm that the project to generalize oral civil proceedings without legislative reform is an effective method to turn judicial proceedings into more transparent ones, provide accountability for judicial actions and deliver valuable results to society. All this is based on the new generation of judges' commitment to move away from the eclipsed position in which written procedures have put them, allowing them to stand strong before and serve society.

JUSTICE 4.0: USE OF ARTIFICIAL INTELLIGENCE TO BRING JUSTICE CLOSER TO CITIZENS

JUAN G. CORVALÁN* - GUSTAVO SÁ ZEICHEN**

1. Introduction

1.1. Justice: 1.0, 2.0 and 3.0. Towards a 4.0 Justice

Let us suppose that you wish to access judgments or court decisions. If we were within the Justice 1.0 or 2.0 paradigm, you would probably have to go to a court office so as to see the case file and, in any case, obtain a copy of the file. You may also ask for the book in which the above are recorded to access them. Maybe the information has not been organized by topic or sub-topic or has been lost. Something similar usually happens with information on location of the files and, overall, with a lot of the information produced or managed by the Judiciary. Therefore, searching for and obtaining court information has been, and in many cases still is, a sort of bureaucratic purgatory.

In this chapter, we consider a classification regarding the evolution of justice based on the well-known stages of industrial revolutions (Schwab, 2017). Thus, we can characterize Justice 1.0 as the traditional 19th century stage (still valid), on paper, with physical case files, in-person, rigid formalities. Justice 2.0 entails progress with regard to the above, including electronic devices either for a better functioning of the court, as well as for greater comfort of court agents: telephones, faxes, electronic typewriters. Courts added electronic devices facilitating certain routine jobs, while maintaining old management techniques. The most relevant qualitative and quantitative leap took

(*) Deputy Attorney-General, Administrative and Tax Court (CA&T), Buenos Aires City.

(**) Office of Innovation and Law, Deputy Attorney-General's Office, CA&T Court. We wish to thank Melisa Rabin, Antonella Stringhini & Matias Puig for their cooperation.

place with Justice 3.0 where the difference is marked by the digital revolution, from mechanical and analogue machinery to digital technology. Information and communication technologies paved the way, with the revolutionary arrival of personal computers and their interlinking over "networks": the Internet.

We could thus say that in the last 45 years a still incomplete transition started from the 1.0 format (paper, ink, carbon paper) towards the 2.0 paradigm (electronic) and then to the 3.0 (digital), in which a shift took place from the "typewriter" to the "computer-based" model (with its peripherals, printers, text processing systems), and then on to IT management and interaction systems. Thus, based on the development of the Internet and the upgrade in computers (known as the "third industrial revolution"), the world started walking along a path of migration of printed data and information towards digital formats that could then be posted on web portals.

In parallel, at the beginning of this century and in an asymmetrical manner, depending on each country and local authority, transformation towards a 3.0 Justice (on the Internet) started taking place. This accelerated the transition from a "paper-based bureaucracy" towards a "digital bureaucracy", which presupposes "uploading" data on webpages, using digital portals, mobile apps and social networks to manage public data and information. This 3.0 format is basically grounded on innovations as from the last part of the 20th century and has set the foundations for the fourth industrial revolution (Schwab, 2017)[1] that started developing in the 21st century. A 3.0 Justice should help save time and shorten distances by allowing access to public information after a couple (or several) clicks on the mobile phone or PC, that is to say, easily and ubiquitously.

Ultimately, and in essence, these three public organization models (1.0, 2.0 and 3.0) summarize an ongoing traffic which has tried to simplify and optimize data and information management in the different public and private organizations. In the 3.0 approach, however, a large-scale organizational model came up that could be summarized in two broad postulates. On the one hand, promoting appropriate governance, which entails an open, network-based relationship paradigm with the inhabitants, to reinforce participatory democracy and the Republican system. In this regard, certain principles or pillars of "Open Government" are highlighted, which focus on transparency, participa-

(1) The first three industrial revolutions radically changed societies in the last few centuries. The fourth industrial revolution is currently underway and relates to a disruptive development of technologies which will transform as never ever before the world in which we live (biotechnology, nanotechnology, robotics, among others) In brief, the digital and artificial intelligence revolution does not place computers, machines and IT Programs in the mere role of instruments to improve our physical capabililties, but instead we are facing a profound transformation of human beings and their environment, stemming from two big phenomena: 1) a radical transformation in the way of processing data and information in many activities that before could only be done by our brains; 2) an exponential mutation of the notions of time and space.

tion and collaboration.[2] On the other hand, the organization and management model based on innovation and use of information and communication technologies (ICTs) provides a framework to the "Open State" paradigm (see additional information on "Open Justice" in Sá Zeichen, 2018).

Both postulates (governance and management) are closely related and made up of many notions and categories in light of several optimization principles and mandates, such as technological preparedness, inclusive innovation, digital culture, digital literacy, e-governance, digital inclusion, digital solidarity, among many others, aimed at achieving sustainable development, as reflected in several recommendations of important international organizations such as the United Nations and the Organization of American States (OAS).[3]

Although we are still transitioning among these first three "evolutionary models" at different stages, it is key to identify and adapt the new technologies to the rationale present in the organizations, and to the new technology waves linked especially to knowledge management. For instance: nowadays one could not argue about the advantages of using a computer and a text processor such as Word, vis-à-vis the benefits provided at the time by the typewriter. Computers were essential to help improve bureaucratic systems, and so was the use of communication networks, particularly the Internet. A similar phenomenon seems to be happening with the development of artificial intelligence, as a new stratum of progress. This innovation can exponentially simplify and optimize court red tape in many aspects. The 4.0 model is thus emerging.

Indeed, Justice 4.0 is built on the basis of Justice 3.0, but evolves exponentially because it is served by disruptive technologies within the "fourth industrial revolution", based on technological leaps that have a great impact including, inter alia, robotics, nanotechnology, quantic computing and the Internet of Things. Also, blockchain and what is of particular interest to us, "artificial intelligence", advancements that can shape the 4.0 Justice that we referred to above.

Of course, this new 4.0 paradigm has not been as yet consolidated, quite the opposite.

That is why here we set forth a justice paradigm that offers a new evolution leap in technical and conceptual terms: the 4.0 paradigm consists of applying more developed and disruptive technologies: particularly, at a first stage, the so-called "artificial intelligence" (AI) and the widespread use of blockchain. In the short run, this innovative model will initially co-exist with the previous formats (1.0, 2.0 or 3.0) but has the potential of radically improving many court tasks and activities, and achieving an effective revolution in the way of efficiency, transparency, openness and better management. In this paper, we will focus specifically on some of the potential uses of artificial intelligence.

(2) See https://www.opengovpartnership.org/

(3) See Annex for a more comprehensive list.

2. The problem of information overload. Towards an "AI-assisted openness" model

The so-called "fourth industrial revolution" (Schwab, 2017) is based on an exponential growth of two factors: storage capacity and the speed at which information and data are processed (Corvalán, 2017, p.1). This entails the existence (and ultimately, availability) of a huge wealth of information. Based on the explosion of Big Data, there is still another emerging challenge. The volume of information produced is growing at a great speed, almost 30 % per annum. This means that every three years there is more new information than that generated throughout the history of humanity. The only way of managing this information is by using digital technologies (ECLAC, 2018).

In the public sector, data and information are usually spread out, incomplete and lack consistency, are not available or cannot support interoperability. Also, in many cases, they are not recorded or stored. That is to say, they do not add value or allow the extraction of relevant patterns that favour state management optimization and simplification.

This hyper-saturated data environment generates the so-called "information fatigue syndrome", also known as "information overload" or "opacity due to an excessive wealth of information". Here there is a paradox: the more data and information "uploaded" into the digital world, the more difficult it is for citizens to find and process them. As Diana Galetta (2018) says, "opacity by confusion" can paradoxically cause disinformation.

"The information fatigue syndrome" is what could happen to a person that is exposed to a huge amount of information, available in a relatively unlimited fashion, which can paradoxically paralyze, because of the impossibility of processing and decodifying the wealth of data people can access.

This huge volume of data and information cannot be efficiently addressed by human beings. It is necessary to innovate vis-à-vis this problem that is faced by public and private organizations. The challenge is multi-faceted: greater openness, systematization, de-codification, facilitation, streamlining, plain and clear language, etc. All these principles and postulates are key for managing justice-related data and information.

This is where the new technologies surface as essential tools. It is a matter of helping people process the great volume of data and information in a more efficient way. Several questions come up within this scenario: how to get the State to effectively make knowledge available to stakeholders; in what other way can justice be opened; how can access to justice-related data, information and information patterns be streamlined and optimized; or else, how do we manage to ensure citizens are able to access specific, useful, plain and clear answers.

Replies are multi-faceted but a possibility would be to say that a potential solution is to optimize justice opening, based on an "assistant" that could be set

up as a "conversational agent". That is to say, an entity that must undertake the task and achieve better outcomes. Let us look at this in greater detail.

The "human assistant" model already exists in other countries. For instance, as a "responsible party" in the administrative proceedings in Italy, where there is a reference individual for citizens throughout the proceedings, supporting the person (who lacks the skills and possibilities to do so) along the path of learning about the political and administrative processes (Galetta, 2018, p. 143).

The "assisted opening" we propose is based on artificial intelligence (AI) systems that can, in many cases, co-exist with human assistance and intervention. We could, therefore, talk about "hybrid assistance", based on a mix of AI and human assistance. In this proposed paradigm, assistance through AI has several levels according to two big factors: 1) the opening proposed; and 2) the relationship with the needs of citizens and legal operators.

It is just like opening a big dyke containing a great amount of water; there must be a dosing and filtering of the water allowed through. As we will see, this kind of assistance helps with regard to the necessary opening, dose, accuracy and accessibility to meet the true objective of such opening: allowing citizens to access knowledge.

3. Artificial intelligence to serve justice. *"Prometea"* and "chatbots"

Human intelligence is linked to a series of relatively autonomous cognitive capacities or qualities that are usually classified into "intelligence profiles" or "multiple intelligences": social intelligence, linguistic (or musical) intelligence, logical-mathematical intelligence, inter-personal and intra-personal or emotional intelligence, fluid intelligence, among others (Gardner, 2010, p. 52 & ss.; 2013, p. 17).

In essence, the human brain controls the capacity of processing information coming from the environment and from our own body, used to assess and choose future courses of action. Decision-making and evaluation come into the scene at this point to select, adjust and organize available information (additional information in Corvalán, 2017a; Corvalán, 2017b).

Based on artificial intelligence, several technological innovations were developed. The one we will refer to here is related to information processing to solve problems and make decisions using machines that operate through the so-called intelligent algorithms. AI is supported by intelligent algorithms or learning algorithms that, among many other purposes, are used to identify economic trends, forecast crimes, diagnose diseases, predict our digital behaviours, etc. An algorithm can be defined as an accurate set of instructions or rules, or as a methodical series of steps for computing, solving problems or making decisions. An algorithm is a formula used for calculation purposes (ECLAC, 2018; Domingos, 2015).

In the last few decades, different methods have been used to develop algorithms utilizing big volumes of data and information (some of the methods are, inter alia, neuronal networks, genetic algorithms, reinforcement learning). In essence, by applying AI, the aim is for technologies to allow computer systems to acquire skills concerning self-dependency, self-adaptive reconfiguration, smart negotiation capabilities, cooperation, as well as survival skills with little human intervention, among other features. All this presupposes the use of different techniques based on the recognition of patterns to solve problems, maximize objectives and optimize information processing.

Intelligent algorithms will be more and more decisive in simplifying environments, optimizing human beings' activities and maximizing outcomes, or obtaining other results that would be impossible to achieve without AI, based on our cognitive capabilities when faced with huge volumes of data. Through AI systems there will be a trend to reduce or eliminate distorted, inaccurate, illogical or irrational interpretations that happen when human brains process data and information. In essence, it is a matter of managing complexity and uncertainty, reducing cognitive biases and optimizing "management" (reduce time and cost) of data-information patterns that support activities and human decisions (Luhmann, 2005, p. 10; 2010, pp. 220-225).

Within this context, although initially artificial intelligence has been used by the private sector, it is also a key factor for countries' economic and social development, if adopted by the public sector as shown by ECLAC in a recent report (2018), that emphasizes the fact that AI can also be used for economic and social development, based on the sustainable development goals adopted by the United Nations in 2015 (2030 Agenda for Sustainable development; United Nations, 2012, page 45; 2016, cons. 31). The State also has this very valuable tool available for achieving these goals.

Within this framework there appears the notion of "smart state bureaucracy" (or bureaucracy 4.0). This notion that includes Justice 4.0 presupposes the adoption of a new paradigm: the progressive transition from a digital to a hybrid intelligence model, mixing human and artificial intelligence. This entails a two-fold challenge, related to a double transition for States. While shifting towards an integrated, digital government[(4)] , strategies must be rethought of to link data, knowledge and information patterns with AI systems, and the latter with human intelligence. The key of this last transition towards smart States, and particularly smart judiciaries, is based on data and information governance.

(4) A 2012 United Nations Survey finds that many Member States are moving from a decentralized single-purpose organization model, to an integrated, unified, whole-of-government model, contributing to efficiency and effectiveness. The model aims at centralizing the entry point of service delivery to a single portal where citizens can access all government-supplied services, regardless of which government authority provides them. (United Nations, 2012, p. 85).

Should the States start to develop a hybrid intelligence model based on AI systems, public sector capabilities would be reinforced to favor evidence-based decision-making, reduce transaction costs, carry out impact assessments and *ex-ante* and ex-post evaluations, identify/eliminate/replace unnecessary, obsolete, insufficient or inefficient regulations or administrative burdens, particularly for the analyzed topic, and promote ease of access through a friendly interface.

All the above is not merely theoretical speculation. Quite the opposite, artificial intelligence is a reality that is developing fully in our judicial system in an unprecedented manner, even considering the international arena. We are referring to "Prometea".

3.1. Buenos Aires City Attorney-General's Office: "Prometea"

Prometea (Luna, 2017; Corvalán, unpublished; Corvalán, 2017a) is AI created in Argentina, within the Buenos Aires City Government Attorney-General's Office, which combines prediction with different layers of digital assistance. Furthermore, this AI is currently applied in three processes within the Inter-American Court of Human Rights (hereinafter IAHR Court) and has been presented to a few of the most important institutions worldwide.

According to the technique known as "supervised automated learning", Prometea has greatly optimized bureaucratic processes. Moreover, this AI system is a mix of three layers of innovation working as a whole. Firstly, it uses an integrated screen, eliminates clicks and the opening of several windows on the computer. In a single screen, the user has all resources available for doing the job. Secondly, it works as a virtual assistant based on voice recognition or natural language processing (chatbot). This makes it possible to control matters related to terms and formats in all case files ruled on by the High Court of Justice of Buenos Aires City. For instance, on the basis of five questions, the program can fully complete the prosecutor's opinion on why an appeal should be rejected because of it being untimely. Thirdly, it works in a predictive manner. In 20 seconds (on average), it can find the applicable solution just by entering the case number. This task is carried out by reading and recognizing court decision patterns available on the web of other lower courts. Once Prometea identifies the solution, it allows the user to fill out the opinion based on a few questions and shows a preliminary view of the final document, which can be edited online. That is to say, the first draft version is automatically generated by AI.

In brief, Justice 4.0 is possible and can be harnessed to extend innovation to other processes, essentially in the equation citizen-court operator-Judiciary. Those systems that use artificial intelligence in the interface, as is the case of "Prometea", can be applied as "virtual assistants" so that citizens intuitively, easily, directly and in a friendly manner come closer to the Judiciary, which favours an "assisted opening" of justice. This assistance can be provided through different channels, including particularly the traditional "human-to-human" contact.

Although this AI was initially developed for its use by public servants working with the proceedings (back office), the idea is to develop these systems so that they can serve citizens as virtual assistants (front office).

4. Conversational agents or "chatbots" for assisted openness

For instance, let us suppose that you wish to access a judgment or statistical information on how to solve a given case according to the most widespread criteria. You connect and interact with a conversational agent (of the Siri type, or iPhone or Waze traffic assistant) and after a few questions, the system presents information for you to read or download, wherever you are. No doubt, this is an unprecedented simplification of access to justice. Although it may sound unreal, from a technological standpoint it is relatively easy to implement, although it may be complex from other standpoints: for instance, making the information inter-operable, ensuring an appropriate data governance, guaranteeing access to the Internet, training and educating people to work on its development and adapt to this kind of interactions, etc.

In essence, the rationale of a conversational agent (also called a chatbot) is related to a new paradigm developed at the end of the last century. One of its promoters is Tom Gruber[(5)], co-founder of Siri Inc. (2007), a company that created the namesake artificial intelligence, then acquired by Apple in 2010. The notion for defining an AI-based personal assistant is linked to "intelligence at the interface". This means that the interface knows a lot about the user, understands its context, is proactive and improves with experience (Gruber, 2008). Intelligence at the interface changes the paradigm of interaction on the Internet.

In the first phase of progress, we come across the "Hansel and Gretel" model. Here the user chooses the path and technology joins the dots, as happens with hyperlinks. During this first stage, the user's role entails following the path drawn by the links, whilst the only role for technology is to connect the different elements on the Internet. That is why it is called "bread crumbs in the forest". The second, is the "portal" model in which the user chooses a channel and technology conveys the contents, as would happen in broadcasting. In this case, technology allowed a permanent, uninterrupted data flow, based on which users could communicate or obtain information. During a third phase, there appears the rationale of search engines or "magic words", in which the user states what he/she wishes to search for and technology finds the relevant, quality contents to feed back to the user. A great example of this is Google. This company has catalogued and organized contents on the Internet so that the most important contents can be accessed by providing only a few key words on what is being sought.

(5) See Tom Gruber's official website: www.tomgruber.org, and particularly, http://tomgruber.org/bio/bio.htm

Finally, we come to the intelligence at the interface paradigm in which the user simply interacts "naturally" and technology solves the problems, connecting to different systems that can meet the needs of a person after the system has undergone a "learning" process. Within this paradigm, a "conversational agent" is one of the modalities.

These assistants are starting to play a central role in the 4.0-type organization. This virtual assistance modality allows quicker access to information, organizes calendars and manages several tasks. It all depends, to a great extent, on which is the artificial intelligence supporting it. To see a basic version of these systems in action within the public sector you can access "BA147", the Buenos Aires City Government virtual assistant. This chatbot is presented as a first point of access to obtain information on several State-provided services, request guidance in general, ask for help with appointments, submit requests and, eventually, clarify doubts on the local State's public services.

Simplification brought about by these digital assistants is very important vis-à-vis traditional red-tape scenarios. Basically, conversational agents radically optimize the citizen/services equation. The fact that people can access information in an extremely simple way, just by answering two or three questions, "chatting", interoperating with automatic agents to guide them and leading people to find the information they were looking for in a speedier, more intuitive and efficient way is a great contribution to the intended citizen "accessibility" to a wealth of state data and services.

This does not mean that users are necessarily happy or satisfied with the replies of these conversational agents. There are studies that show the opposite (Luger & Sellen, 2016). Nonetheless, the usefulness of these "artificial tracker hounds" goes well beyond simple assistance and, no doubt, facilitates, guides and allows access to information immediately, in an orderly and useful manner.

In essence, there are three big conversational systems.

The first is the most basic and often times used in these last few years. The system is trained utilizing pre-set questions, while offering on the screen the most frequent questions on certain topics or services that are among the most common, processing the language to interpret the user's wish through a neural network or machine learning technique that interacts with the user through question-guided dialogue. BA147 is an example of this system.(6)

The second version of these conversational agents is linked to the most sophisticated artificial intelligence systems (deep neural networks). Open dialogues can be generated because the networks usually shape conversations as a matter of prediction of the following sentence, or the potential answer based on the previous conversation.

(6) See the website: http://www.buenosaires.gob.ar/

The third version and the most sophisticated of these conversational agents is the one most recently presented by a team of researchers from Microsoft and a few universities. A dialogue model is presented in images combining the recognition of scenes and sentiments, using a natural language model. The idea is for the conversational agent to express more "emotion" and for this purpose, visual information can be included (different images, objects, scene features and facial expressions). The system was trained and tested in a million real conversations on social networks (Huber *et al,* 2018).

In this advanced conversational agent model, questions and answers are put into context. According to researchers, the images' "down to earth connection" provides significantly more informative, emotional and specific answers. Furthermore, other research work points out to the fact that these agents must provide information and show empathy to participate in conversations (Bickmore & Casell, 2001, pp. 293-327; Bickmore & Pickard, 2005, pp. 293-327; Casell et al, 2000, pp. 29-63).

Beyond the different conversational agent modalities, these can facilitate interaction between the explosion of information and citizens. Through this "intelligence at the interface", the user simply interacts with the state organization, whether by speaking such as with Siri (Apple), Alexa (Amazon), Prometea (Buenos Aires Attorney-General's Office), or chatting with these systems through conversational agents, such as WhatsApp. Prometea, for instance, works in both modalities at the Buenos Aires City Public Ministry and at the Inter-American Court of Human Rights where it is already operational.

A smart, inclusive Open Justice paradigm (Justice 4.0) can be developed on the basis of the above.

5. Towards a 4.0 Justice: open, smart and inclusive

By setting forth a new justice paradigm from this perspective, we are referring to the adoption of new technologies to reinforce and improve citizens' rights to access. That is to say, here technology is a key factor to optimize rights and simplify bureaucracy. Thus, although it is put forward as an accessory to human service, in fact it is becoming a core player. Without technology it would be practically impossible to achieve a substantive improvement in the enjoyment of rights.

This approach does not intend to make human beings serve technology, quite the opposite. Nonetheless, knowing how the new technologies operate, can help deploy strategies and substantive reforms in an organization that was developed to manage data and information in light of other technologies. Designing paper-based bureaucracy is quite different from a digital-based system. Therefore, it will be necessary to re-think and establish a re-engineering of flows and processes if one intends to apply artificial intelligence. We could say that, to a great extent, technology conditions the rationale of data and information storage and management. In turn, all this has a direct impact on the effectiveness of people's rights.

Since Open Justice is a notion that mainstreams a broader one regarding state governance and the Open State, here we only focus on the potential adoption of artificial intelligence to exponentially simplify and optimize the citizen-data/information/information patterns-judiciaries equation. In this regard, voice recognition could be used so that, through a digital assistance, a court decision or certain information on the web or on a portal can be "brought" to the screen and displayed accurately and quickly.

Assisted openness is linked to examples such as the one provided above. At this stage, we can make a summary by dividing innovation based on the use of artificial intelligence into three layers, as a contribution to the notion of smart and open justice.

- **First level of assisted openness (basic)**. The core idea is to reduce the number of clicks, steps and opening of "windows" in the virtual environment, so that the digital assistant saves time and "digital bureaucracy" for obtaining general information. Here "intelligence" aims at achieving greater efficiency in access to static information that is usually stored in cyberspace. At this level, among others, we can find examples of facilitation of basic information on the organization, formalities, appointments and matters related to specific formalities (such as the BA147 chatbot).
- **Second level of assisted openness (intermediate).** Here the basic idea is to guide citizens vis-à-vis certain interactions in the judicial environment. A personal response is sought to a specific question by citizens, and it essentially relates to providing useful information within the formalities and processes available on-line for the user that has connected to the website. For instance, when notice is served upon a person and he/she wishes to learn about the basic issues concerning that court notification. It could also be applied as a citizen information tool when there are litigations or matters that could be brought to court, guiding the citizen on his/her situation and prognosis (for instance, if there are tax-related questions). At the Public Ministry, we are currently working on a digital assistant that could guide citizens vis-à-vis problems linked to jurisdiction, for instance, should a court notification be received with regard to local taxes owed. It must be noted that within Buenos Aires City, there are over one million tax writs (Judges' Council, Buenos Aires City, 2018).
- **Third level of assisted openness (advanced).** This level aims at having digital assistance provide the capability of accessing, recognizing patterns and then assisting citizens in more complex matters. For instance, from a simple statistical analysis (how many judgements were issued by a court as to the statute of limitations and under what legal standards) through to predictive intelligence matters, such as the analysis of a potential court response to a specific case based on precedents and response patterns in similar cases.

At present, artificial intelligence systems can carry out those tasks, so it would be possible to apply them to the court environment. The City's Attorney-General's Office is evaluating the implementation of Prometea for this purpose.

On the other hand, these levels do not exclude one another. On the contrary, the idea is to add "layers of assisted openness" allowing a progressive improvement in the quality of access to knowledge and, on the other hand, the optimization of the access rights at stake. And besides obtaining other advantages related to openness and accessibility, AI systems are key factors to guarantee access of persons with disabilities.

For instance, a smart system capable of identifying relevant contents on a website or in a document, and conveying them according to the specific needs of each person is one of the benefits provided by artificial intelligence. For instance, the use of image recognition to describe their components would be a useful tool for visually-impaired persons.

In brief, it is a matter of advancing innovations to favour inclusion: the so-called "inclusive innovation". In justice openness, applying breakthroughs such as artificial intelligence so that people can achieve access and a more overarching understanding of the situation with regard to a court case or a legal problem is a useful tool to serve justice and peoples' rights.

6. Annex

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SOCIAL MEDIA AND OPEN JUSTICE: THE CASE OF COURT NO. 10, CITY OF BUENOS AIRES

PABLO CASAS* – YASMIN QUIROGA**
ANTONELA MANDOLESI***

1. Introduction

Given the framework in which this article is published, we will not elaborate on the theoretical background of Open Justice.(1) We will simply use this space to convey part of the experience of implementing open policies at a Criminal, Small Claims and Contraventions Court in the City of Buenos Aires (CABA), Argentina.

One of the main reasons for starting this search was, undoubtedly, the actual discredit and lack of trust of the community in the Judiciary that we belong to. The results of any opinion poll can quantify what we perceive in the social environment in which we carry out our duties.

Even though the figures and measurement environment used to prepare any statistics or opinion survey tend to solely reflect the views of a few actors

(*) Head of the Criminal, Small Claims and Contraventions Court No.10 of the Autonomous City of Buenos Aires.

(**) Official of the Criminal, Small Claims and Contraventions Court No.10 of the Autonomous City of Buenos Aires.

(***) Clerk of the Criminal, Small Claims and Contraventions Court No.10 of the Autonomous City of Buenos Aires.

(1) For this paper, we will consider a generic approach to the definition of Open Justice as an extension of the philosophy and principles of Open Government (especially Transparency, Participation, and Collaboration) applied to the justice environment where innovation and, currently, information and communication technology (ICTs) are key tools for these initiatives.

within the system, the appraisals obtained about the operation of the judiciary lead us to believe there is a need for change in the relationship between the community and the administration of justice. Criticism is mainly focused on slow case management and resolution, poor service delivery, lack of transparency, detachment from the parties of the proceedings, and excessive bureaucracy, among others.

We feel that we are part of a universe that we share with many other people. In the different judiciaries within a federal country such as Argentina, much effort is focused on performing the jurisdictional task in the best way possible.

Based on this idea, we analyzed how we could contribute to raise trust levels in justice administration through changes in our practices.

As we defined our strategic plan, we scheduled a series of group meetings with the court´s team, in which we reflected on what we did, how we did it, and why we did it in a specific way. Those meetings helped us not only to strengthen human relationships but also standardize the work processes and outline our strategic objectives: promoting open data and the use of ICTs, as well as coming closer to the community.

2. Use of social media

Back in May 2016, we decided to open a public social media account[(2)] that would guarantee access to information that, although already public, was not available to everyone, despite access to public information being a fundamental right in a democratic society.[(3)]

Regulations prescribe that all judicial offices shall have a book of public access containing all decisions made therein, and to which every citizen has access to by merely appearing before the reception desk of the court and requesting it. It is known as the "Judgment Protocol Register Book".

We gathered information therefrom and decided to maximize its dissemination through the publication of these court decisions and judgments in a social media account.

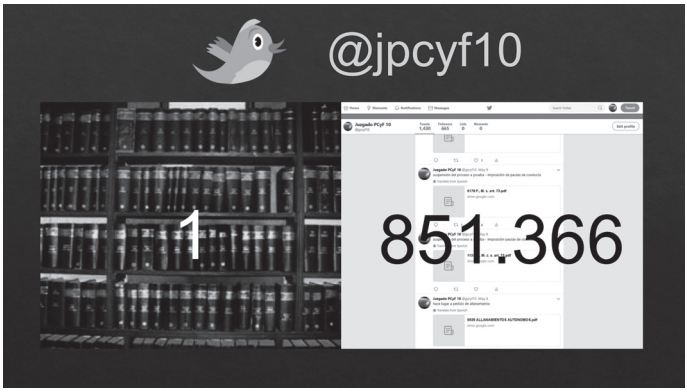
(2) https://twitter.com/jpcyf10?lang=es

(3) Article 13 of the American Convention on Human Rights, defines the right to freedom of expression as the right to "to seek, receive, and impart information and ideas of all kinds". It includes information held by the State. In the same vein, Article 19 of the Universal Declaration of Human Rights protects the right of access to information as it states that "everyone has the right to freedom of opinion and expression"; and that "this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers". Moreover, Article 19 of the International Covenant on Civil and Political Rights aims at protecting access to information from a perspective of the right to freedom of expression as a collective right. At a legislative level, Law 27,275 on the Right to Access Public Information and

We have always been very much aware of the need to guarantee the protection of personal data contained in published decisions and judgments. Therefore, we designed an anonymization process in order to eliminate all sensitive data that could allow for the identification of the people involved, as a way of solving that tension created between the individual right to privacy and the collective right of access to information.(4)

When we launched this initiative, we started using pdf. file format for the publication of the documents, which required installing a licensed program that enabled us to work on and edit the files.

Picture 1. Number of recorded accesses to published decisions on social media of the Criminal, Small Claims and Contraventions Court No. 10 (CABA)



Note: the number of recorded accesses to decisions published in the court´s social media account (851,366 according to the above picture) shows the big contrast compared to the only time the Judgment Protocol Register Book was asked for in more than 20 years of judicial experience of the court staff.

After some time and within the framework of the training carried out together with the access and open data area, Judges' Council, City of Buenos Aires, we realized that we could add value to our publications by meeting the requirements of the various actors who work with open data. Therefore, we started to convert the type of file to make publications into an open format (.odt). In

Law 104, Autonomous City of Buenos Aires, specifically establishes that "Every person has the right to request and receive complete, thorough, adequate, and timely information. In order to exercise the right to access public information it shall not be necessary to prove a subjective right, legitimate interest, or reasons in support of that request."

(4) Section 6, subsection 1 of the CABA Act 104 establishes among the limits on access to information "that affect the privacy of the people or refer to sensitive data in accordance with the Personal Data Protection Law, Autonomous City of Buenos Aires. This exception shall not be applicable when there are technical mechanisms to decouple sensitive information or when consent is not necessary or when the person/s to whom the requested information refers to has provided his/her explicit consent."

this sense, we followed the definition of open data from datos.jus.gob.ar Open Judicial Data Portal:

> "...The publication of data in digital formats for reuse and redistribution by citizens is a global initiative linked to Open Government policies. Its purpose is to make data and information available to all citizens, with no restrictions of access, copyright, patent, or other control mechanisms. When data meets these requirements, it is deemed to be open data..."

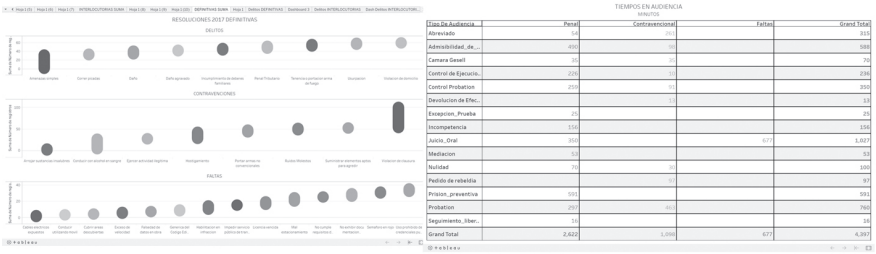
3. Open data and statistics

We also created an open data repository(5) where, on the one hand, a dataset containing records of all interlocutory orders and judgments issued since May 2016 can be found and, on the other hand, a second dataset about conducted hearings with details about their type, number and duration.

We have currently achieved a reduction in the data upload time, which allows for published orders and judgments to be fully updated since we strive to publish information within timelines that can guarantee the value and good use of such data.

These databases that we create daily also allow for measuring different aspects of our work. For instance, they provide information in order to generate indicators regarding the time involved in the completion of a hearing, the number of judgments issued and their type, the number of cases in each field per year, and a lot of other information that was also published in our social media for citizens to access, so at to guarantee the principle of maximum access.(6)

Picture 2. Metrics on orders (2017) and hearing times (first semester of 2018)



Tipo De Audiencia	Penal	Contravencional	Faltas	Grand Total
Abreviado	54	261		315
Admisibilidad_de_...	490	98		588
Camara Gesell	36	34		70
Control de Ejecucio...	226	10		236
Control Probation	259	91		350
Devolucion de Efec...		13		13
Exaccion_Prueba	25			25
Incompetencia	156			156
Juicio_Oral	350		677	1,027
Mediacion	53			53
Nulidad	70	30		100
Pedido de rebeldia		97		97
Prision_preventiva	591			591
Probation	297	463		760
Seguimiento_liber...	16			16
Grand Total	2,422	1,098	677	4,397

Prepared by the authors.

(5) See https://drive.google.com/open?id=0B9wNhp3GjjazZ2VCqVZmM3MwTTq

(6) National Law 27,275 aims at guaranteeing the right to access public information. It is based, among other guiding principles, on promoting citizen participation and transparency in public administration, and its "principle of maximum input", which is defined by the law in the sense that "the information shall be published in a thorough manner, with the highest level of disaggregation possible, and through as many means as possible".

4. Hearings' public agenda

When we, as lawyers, think of the process in terms of publicity, the idea seems to be closely related to the principles of orality and immediacy, which are paradigmatically guaranteed by the hearings held.

Indeed, said principles contribute to a great extent to the objective of transparency in the exercise of the judicial function, since it enables visibility with no interventions or alterations, of every issue that is argued, questioned, alleged, ordered, or pronounced orally in a hearing setting, which will then be succinctly recorded in a document.

Orality is, as a matter of fact, the natural means of communication between human beings, and our procedural rules embrace this reality and prescribe orality for the most important stages of the proceedings.

This is the reason why we thought it was crucial that, as part of the opening process, we include the publication of the court´s hearings schedule so that any person of legal age can attend any hearing.

Picture 3. Broadcasting of court hearings on social media

Note: we make weekly announcements of the dates and times of the scheduled hearings with a brief comment on the hearing´s objective.

5. Case file digitization

This experience required our own training in hardware and software tools management, as well as in new information technologies (ICTs).

After working tirelessly, we managed to digitize over 90% of the files of cases currently being heard by the court, which required new skills to learn how to deal with and process digitized documents without resorting to paper.

Thanks to this project, and the recent implementation of the new electronic filing system (Judicial Electronic Files Management System) which includes

digital signatures in electronic notices, there was no need to modify our internal working systems since they were limited to the objective of maximizing the ICTs.

6. Remote hearings: videoconference system

Another important contribution, also related to the use of ICTs, was the use of a videoconference system to hold certain types of hearings or upon the request of one of the parties.

We have documented such great contribution in terms of access and participation of people with disabilities in the proceedings. It also helps to come into contact with persons deprived of their freedom, which enables more frequent contact from the penitentiary institution, besides being cost-efficient, and reducing security problems related to the Penitentiary Service transfers.

We can also see the value of the videoconference system in those hearings where the debate is merely technical and attorneys are the only ones required to attend (prosecutor, defense attorney, plaintiff attorney, or guardianship advisor), which favors the optimization of resources and avoids the transfer of professionals to the courthouse.

Picture 4. Videoconference system

7. Co-creation as a tool for citizen participation

This court has jurisdiction over contravention matters regulated by Law 1,217 in those cases in which a contravention judgment is required in view of a sanction imposed by the administrative authorities of the City Government because of a violation of Law 451 (Section 24). This process does not require mandatory legal counsel, but merely the appearance of the alleged infringer before court (Section 29 of said law).

Now, on numerous occasions, the citizens appeared before court to exercise their rights explained they had received an official notice they did not understand.

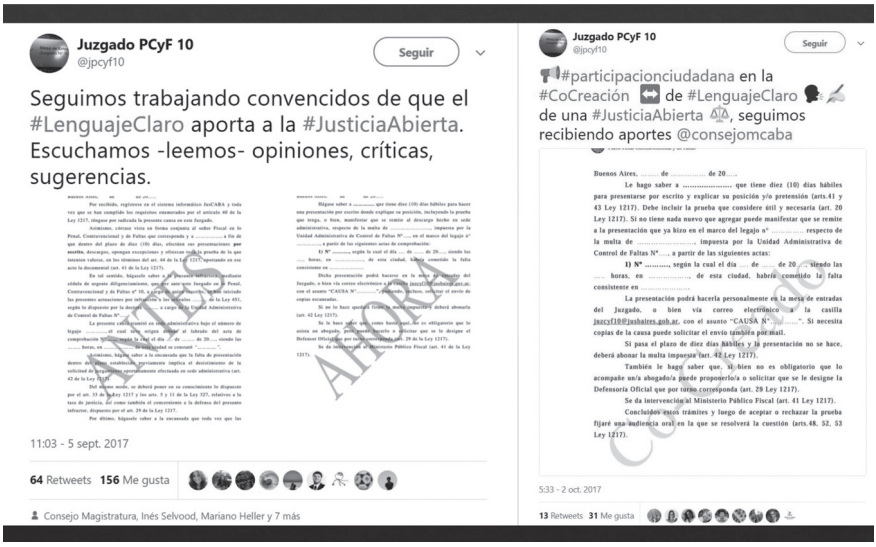
Therefore, we reviewed the text of these notices served by the court and realized they were written in "judicial" language. We then drafted a new text written in plain language and we posted the new version on social media for the community to suggest appropriate changes.

Said publication generated a higher degree of citizen engagement and we received different proposals to modify terms and/or expressions used in it through our social media account.

The proposal aimed at generating a collaborative drafting process of the document in which those potentially affected could take direct part in the transformation of an element of the justice administration system to jointly improve a specific result (the contents of notices), based on the experience gained, and create an added value of social nature.

It all led to a new wording of the text, written in simpler and more comprehensible terms for the real recipients of the message which, from our perspective, resulted in a success story with regard to the co-creation of a legal document with citizens.(7)

Picture 5. Co-creation of notices in plain language



(7) We chose this text as a possible definition of "co-creation": "governments and citizens that jointly initiate, design, and implement programmes, projects, and activities. Even though this term is very similar to the notion of citizen participation, the main difference is that it is not only a matter of having the practical knowledge but also ensuring practical outcomes are achieved." (Cañares, 2017).

8. The *puertarrón*

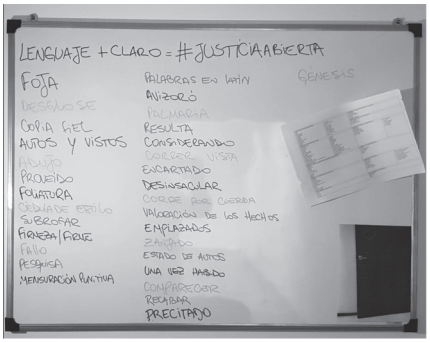
In the process of implementation of this plain language policy, we also aimed at replacing all the words that we were used to utilizing and that, most likely, someone that did not belong to the legal environment would not understand. We believe that the discomfort in society against the Judiciary may have to do with the difficulty in understanding the language used in an iconic manner in legal documents.

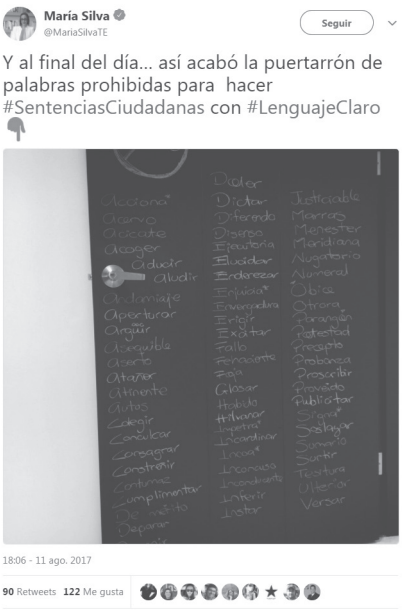
We are convinced that clear language is necessary to deepen democracy and increase people´s trust in their institutions. After all, there is no real transparency if citizens do not fully understand the contents of public information. We took ownership of an initiative that a Mexican colleague, Dra. María Silva, had promoted and used her idea of a *"puertarrón"* (word that results from the combination of the words "door" [*puerta*].and "chalkboard" *[pizarrón]* in Spanish)[8].

In one of our working meetings, we created a list of words and expressions that we committed not to use any further from than time onwards.

As an example, we eliminated the use of formal words such as "folio", "disaggregation", "indicted", and replaced them by "page", "breakdown", and "accused". We also committed to stop using words in Latin that we have customarily included in our "judicial" language.

Picture 6. Our "*puertarrón*"





(8) See https://twitter.com/MariaSilvaTE/status/896176008914587648

9. The people who make up our working group

Another step in the opening process was the publication of a biography and a photograph of each court member in our social media account. Anyone can access the personal and professional information of those of us who carried out this initiative at the Criminal, Small Claims and Contraventions Court No. 10 of this city.

In closing, we have shared a part of this initiative that is underway because we believe in the importance of transparency in performing the jurisdictional role, the importance of meeting the demand for accountability, and the need for specific enhancements that will contribute to having more reliable judicial systems as a means of improving the democratic legitimacy of our justice administration system, which is entrusted with the important task of ensuring respect for the rights and guarantees of the people.

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OPEN DATA ON THE PENITENTIARY SYSTEM: NATIONAL STATISTICS SYSTEM ON SENTENCE ENFORCEMENT

HERNÁN OLAETA*

1. Introduction

There was progress and setbacks during the structuring of penitentiary statistics in Argentina until the final consolidation of a true regular and thorough information system. Among the earliest precedents concerning information on prisons, back in the mid-19th century, came from penitentiaries and municipalities, together with studies on clinical criminology, which were the common source for inquiries both at the official and academic levels. Thus, work from the most renowned representatives of local national positivism (*Ingenieros, Dellepiane, Lancelotti*) frequently used statistics and studies from penitentiaries.

These first productions were based, mainly, on provincial or national records (Federal Capital city and National Territories) and not on more comprehensive surveys covering all provincial jurisdictions. In this sense, Ministry of Justice reports (annually raised to National Congress), included insufficiently systemized information of the National Penitentiary system's population as well as of those on trial, sentenced, women, and minors. This situation dramatically changed in 1906 with the implementation of the First National Prison Census, which was the first official initiative for collecting national data (that is to say, from all jurisdictions) on this topic.

Although the census was a success in terms of scope and results, unfortunately it could not find its place as a regular, ongoing study. The following

(*) Coordinator of Justice System Studies and Statistics, Under-Secretariat of Justice and Criminal Policy (Ministry of Justice and Human Rights of Argentina).

survey with this kind of scope and known outcomes was carried out in 1932 and it was not until the 1950s that new penitentiary data were obtained again for only a few years. After this phase, in the 1970s, the initiative of carrying out surveys on national penitentiary data had its comeback and a new series of studies covered the 1972-1983 period, when they once again came to a halt. And that is how we got to the 1990s when these initiatives were finally materialized with the passing of Law 25,266 on Statistics Structuring in the year 2000, followed by the creation of the National Statistics System on Sentence Enforcement (SNEEP) in the year 2002.

2. The National Statistics System on Sentence Enforcement (SNEEP)

Law 25,266 prescribes that the National Directorate for Criminal Policy in Justice and Criminal Law matters, at the Ministry of Justice and Human Rights, is the body in charge of producing the official statistics on criminality and operation of the criminal justice system. Within this framework, the Directorate created the National Criminal Statistics System, with a view to gathering information recorded by the offices that are part of the criminal justice system: the police forces, criminal justice, and prisons. Thus, as one of the links within this comprehensive system, the National Statistics System on Sentence Enforcement (SNEEP) was implemented in 2002. It covers, at a national level, persons deprived of their freedom due to a criminal offense.

Chart 1. Components of the official statistics about criminality and operation of the criminal justice system

There are penitentiary institutions at the federal level with units located throughout the country, and at the provincial level there are penitentiary institutions usually organized under the form of a provincial penitentiary or any similar scheme. There are a series of bodies placed within different legal and political jurisdictions. This complex organization posed obstacles in the design of a valid system for regular data collection across the whole country that required the same analysis units and the needed scientific thoroughness. Moreover, the population deprived of freedom for having infringed a criminal

law is not only found within the penitentiary area. There are people detained at police stations as well as children and youth who have infringed the law and live in institutions or homes. In order to deal with both groups, the Directorate carries out two specific surveys on two areas that are not included in the SNEEP, which are published in a supplementary and parallel manner.

SNEEP's objective is to understand criminal enforcement in its broad meaning; that is, not only in the enforcement of freedom-depriving sentences but also in the enforcement of security measures and misdemeanor sanctions consisting of deprivation of freedom. Moreover, it includes information referring to pre-trial detention (which does not constitute an enforcement of the criminal sentence) due to the quantitative value it has within the population deprived of their freedom in our country and, therefore, its qualitative value in reference to the operation and daily life of the criminal enforcement institutions.

SNEEP's users are criminal detention units within the structure of the federal and provincial system. The design of the questionnaires for data collection was based on the Law on Sentence Enforcement (Law 24,660). These are two questionnaires that have to be replied by each detention center and that refer to the total population in those locations. The first instrument is a set of basic charts containing information that takes the institution as the analysis unit and is divided into groups. The information required is basically: quantity, legal situation, departures (of those prosecuted and convicted), number of visits and episodes of disturbances, number of suicides, deceased, and prison breaks of those who lived in the prison during the past year, disaggregated by gender, age, and jurisdiction. The second instrument is a census of the population detained as at December 31st each year in each detention center. The analysis unit is the number of people who are living in a given jail on that date. The census collects the following information on each of the individuals: age, gender, nationality, marital status, education level, work status, place of residence, legal jurisdiction, legal situation, date of detention, date of sentence, center of provenance, type of offense charged for, participation in paid work, in job training activities, in recreational activities, medical assistance, visits, disturbances, disciplinary sanctions, type of conduct, breakout attempts, suicidal attempts, injuries, sentence duration, security measures, recidivism, progressivity regime, temporary outings, semi-open regimes, prerelease program, intermittent imprisonment, semi-detention, sentence reduction, and women who live with their children.

The central office of each penitentiary service (or the local police) gathers the records of all of their detention facilities and sends them to the Directorate where the information is entered into a database created to that effect. National and provincial reports are drafted based on the main outcomes, and sent to the authorities responsible for the design of penitentiary policies, and are then published for public access. Moreover, this information is also used to complete the annual INDEC (Argentina's National Institute of Statistics and Censuses) statistics and to meet international requirements, such as the United Nations Survey on Crime Trends and Operations of Criminal Justice Systems (UN-CTS).

3. The international situation

The penitentiary statistics are one of the key indicators used at the international level in order to analyze the situation of each country. In this sense, having official data from SNEEP enables comparison with other countries within the region and the world at large.

A quick international overview shows us that the average rate of worldwide imprisonment is around 144 prisoners per 100,000 inhabitants, with significant differences according to each region. Indeed, according to the World Prison Population survey (2016), based on official sources, the world total prison population was 10,357,134 prisoners in the year 2015. If we compare the different continents, the imprisonment rate of the Americas is the highest with a penitentiary population of 387 prisoners per 100,000 inhabitants, having a penitentiary population of 3,780,528, which accounts for 36.5% of the total world penitentiary population. In this sense, possibly this is because two countries with the highest concentration of penitentiary population and highest rates of imprisonment in the world (the US and Brazil) are in the Americas. Europe, on the other hand, is the continent that comes next on the ranking of international rates with 192. It is worth noting that there are diverse situations within the continent: while there is a great number of countries with low rates as those of Western Europe (for example, The Netherlands, with 69, Germany 78, Switzerland 84, and France and Austria 95) some countries spreading out between Europe and Asia have higher rates (for example, Russia with 445 and Turkey, 220).

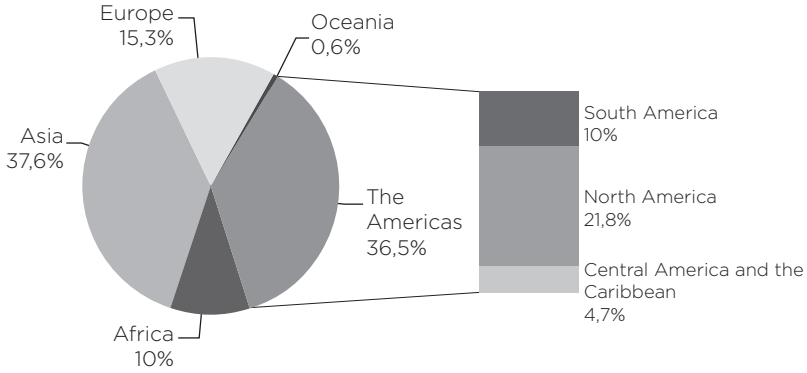
Half of the countries around the world have rates below 144 prisoners per 100,000 inhabitants. In this sense, Argentina is above the international average.

Chart 1. World imprisonment rates

Continents	Total penitentiary population (available as at 31/10/2015)	World population (available as at 31/10/2015)	World prison population rate per 100,000 inhabitants
Africa	1,038,735	1,102,000,000	94
The Americas	3,780,528	977,000,000	387
Asia	3,897,797	4,227,000,000	92
Europe	1,585,348	827,000,000	192
Oceania	54,726	39,000,000	140
World Total	10,357,134	7,172,000,000	144

Source: World Prison Population List (2016).

Chart 2. Distribution of persons deprived of their freedom around the world

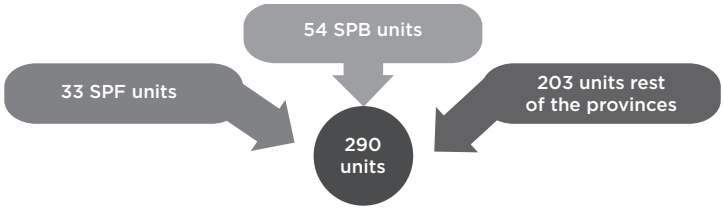


The imprisonment rate in Latin American countries, in the period 2002-2016, increased steadily with certain nuances, especially in Brazil, Uruguay, Peru, Paraguay, Venezuela, Argentina, El Salvador, and Costa Rica. There are certain specificities as in the case of Chile which showed steady growth until 2010 but whose values, since then, have decreased until reaching, in 2016, the same rate as that of 2003 (242 prisoners per 100,000 inhabitants). Mexico, on the other hand, had an irregular evolution but we could say that in the year 2015 it had the same rate as that of 2003 (174 people deprived of their freedom per 100,000 inhabitants).

4. SNEEP information to be highlighted

In Argentina there are 290 detention units. The jurisdictions with the highest number of prisons are the Buenos Aires Province Penitentiary Service with 54 units, and the Federal Penitentiary Service with 33. These figures were taken from the 2016 SNEEP Report (MJDH, 2017).

Chart 3. Detention units included in the 2016 SNEEP Report

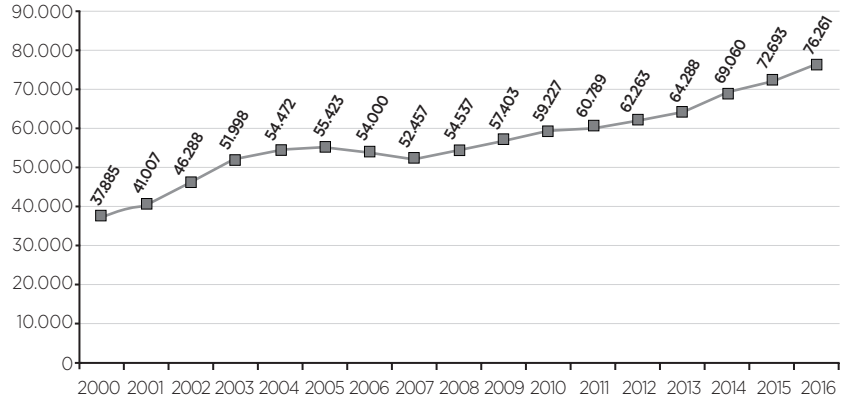


In Argentina, as at 31 December 2016, there were 76,261 people deprived of their freedom in detention units, which implies a rate of 175 per 100,000 inhabitants. If we add 5,714 people deprived of their freedom in police units or those of other public forces reported by said institutions (with the exception of Río Negro province that did not provide information), the figure amounts to 81,975, which means a rate of 188 per 100,000 inhabitants. This information does not include people who are not in these units such as, for example, those subject to electronic monitoring. The National Rehabilitation Directorate of the Ministry of Justice carries out a Program for Assistance to People

under Electronic Surveillance that has 357 active cases. In 2015, 45 people were added to this regime, and another 249 in 2016. At the same time, certain provinces have their own programs such as, for instance, the Province of Buenos Aires, which as at December 31st 2016 had 1,329 people under this regime.

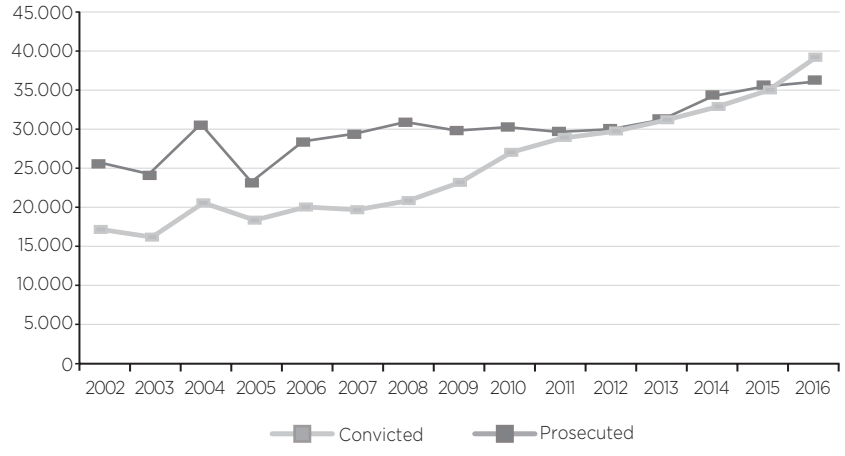
There has been a growing trend in the penitentiary population since the 1990s. Besides certain periods of lower or stagnant figures, as in the years 2006 and 2007, there is a constant yearly growth in the total number of people deprived of their freedom in detention units. In 2016, there was an increase of 5% with regard to the previous year, but of 41% with regard to the year 2006, and of 86% with regard to 2001.

Chart 4. Evolution of the penitentiary population in the Argentine Republic



In 2016, more than half of the people deprived of their freedom had been sentenced. Although the rates are similar, the historical trend of more than half of the detainees not being convicted was slightly reversed.

Chart 5. Evolution of the number of detainees according to their legal status

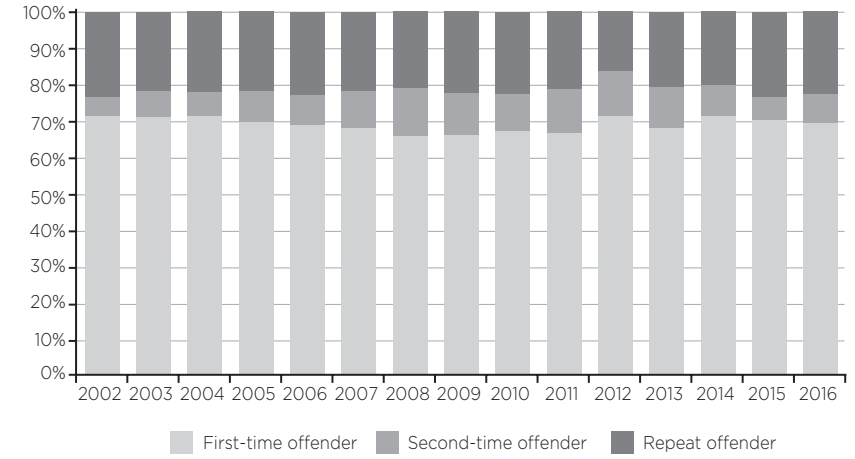


In line with a strong historical trend, people deprived of their freedom had been mainly charged with theft (and attempted robbery), infringement of Narcotics

Law 23,737, intentional homicide, and rape. In the case of infringements to Law 23,737, we can see a slight increase in comparison with last year and, for the first time, they surpassed in number those charged with murder or intentional homicide.

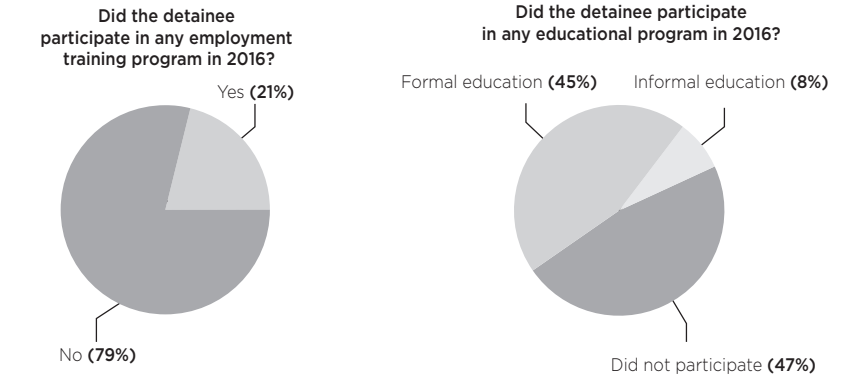
Something to be taken into consideration is that the distribution of offenses among the penitentiary population is not comparable to the distribution of the general statistics on offenses recorded by the police forces throughout the country, where homicides and infringements to Law 23,737 have lower rates compared to the rest of the crimes. In line with the historical trend recorded in the SNEEP statistical series, over two thirds of those convicted were first offenders, that is to say, they had no previous convictions.

Chart 6. Evolution of convicted detainees, by recidivism



According to the trend shown in the past years, around 20% of the people deprived of their freedom participated in some employment training program within the institution during 2015, while around half of the penitentiary population participated in an educational program.

Chart 7. Participation of detainees in employment training and/or educational programs



5. Public access to SNEEP

Aiming at open databases for public consultation, the information generated through SNEEP can be seen online, both the final reports as well as the database itself. They can be accessed through a web link as follows:

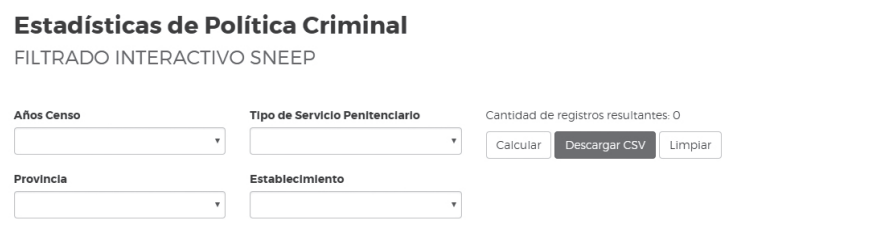
Go to: http://www.jus.gob.ar/areas-tematicas/estadisticas-de-politicacriminal/wmapa.aspx

Once there, you will see the following screen where you can access the search engine by clicking on the link "*Acceso al sistema de consulta de base de datos SNEEP"* (see graph below).

Picture 1.

Once you click on the link *"Acceso al sistema de consulta de base de datos SNEEP"*, you will see the following screen where you can indicate the type of information you wish to obtain.

Picture 2.



Información poblacional

Género | Nacionalidad

Estado Civil | Mujeres viviendo con sus niños

Últ. lugar de residencia | Últ. provincia de residencia

Nivel de instrucción | Última situación laboral

Capacitación laboral al ingresar

Información judicial

Jurisdiccion | Situación legal

Tipo de delito | Reincidente

Establecimiento de procendencia

Actividades y otras situaciones registradas dentro de la institución

Recibió at. médica ult.año | Recibió visitas ult.año

Participa en prog. laboral | Hs. de trabajo remunerado

Participa en prog. educativo | Participa en act. deportivas

Calificación conducta | Part. en alt. orden últ. año

Tipo infracción disciplinaria | Sanción aplicada

Fue lesionado | Tentativa de suicidio

Condenas y progresividad de la pena

Condenado a Prisión o Reclusión Perpetua | Tiene medidas seguridad

Duración de la condena | Tuvo salidas transitorias

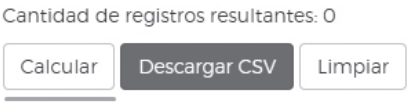
Incorp. régimen semi libertad | Participa prog. pre-libertad

Participa programa de prisión discontinua | Participa prog. semi detención

Tiene período progresividad | Tuvo reducción de pena

This tool allows you to select one or several options of the proposed menus so that the search can then be activated by clicking on *"Calcular"*.

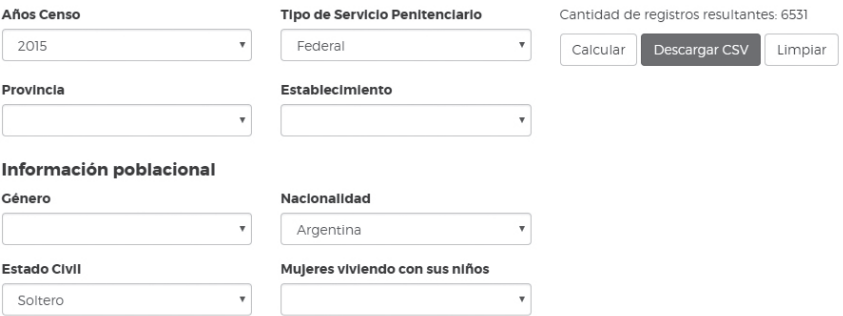
Picture 3.



This is how the records can be obtained: if the result is higher than 0, a CSV file can be generated and then used on Excel.

This is the screen layout:

Picture 4.



For instance, the search engine was asked to perform an inquiry for 2015, Federal Penitentiary Service, Argentine nationality, single for marital status. By clicking on *"Calcular",* 6,531 records showed up and, then, by clicking on *"Descargar CSV"*, a compressed file that can be opened with WinZip was generated:

Picture 5.

6. Bibliography

Ministry of Justice and Human Rights (MJDH), Under-Secretariat of Criminal Policy of the MJDH. (2017). *Informe SNEEP 2016* (2016 SNEEP Report). Buenos Aires.

University of London. (2016). World Prison Population List (11th edition), *World Prison Brief,* London: Criminal Policy Research Institute. Retrieved on 18 September 2018 from: http://www.prisonstudies.org/research-publications?shs_ term_node_tid_depth=27

SECTION THREE:
OPEN JUSTICE WORLDWIDE

THE OPEN GOVERNMENT PARTNERSHIP: A SOUTH AFRICAN CIVIL SOCIETY ORGANISATION PERSPECTIVE

BOROTO NTAKOBAJIRA *

1. Introduction

The Open Government Partnership in South Africa was a step towards achieving the goals that the post-apartheid regime set to reap the benefits of democracy. At time when the country was inaugurating its fifth democratic administration, the focus was to come up with clear strategies that speak to national needs and aligned to international commitments.

The National Development Plan (NDP) was adopted by the National Government as an engine for socio-economic emancipation, strengthening democracy and transparency. The National Development Plan was adopted in September 2012 as a vision for South Africa by 2030. Internationally, the process of developing a post-2015 Development Agenda resulted in the production of the Global Sustainable Development Goals (SDGs).

South Africa wanted to be part of the 2030 Agenda for Sustainable Development, an agenda that established some global priorities to help eradicate extreme poverty and shift all countries toward inclusive, sustainable development.

In just over five years the OGP has grown from a membership of eight countries to 69 countries.

Countries wishing to join have needed to meet certain eligibility criteria. Excellence was rewarded, and poor performance penalised through the Independent Reporting Mechanism (IRM).

Countries were encouraged to promote open government reforms that stretch governance beyond its current state of practice. This would in turn significantly

(*) CAOSA, South Africa.

transform the status quo by strengthening transparency, accountability and public participation in government. Countries may select to either initiate new open government initiatives in their action plans or improve on existing and on-going reforms.

2. Open Government Partnership in South Africa

Whereas transparency and accountability were not new concepts, particularly in South Africa, their formalisation into the OGP certainly gathered considerable momentum in the years of when South African adopted the 2nd and 3rd Open Government Partnership Country Action plans; the 3rd plan was to be rolled from 2016-2018.

The OGP was overseen by a Steering Committee comprising governments and civil society organisations. The Department of Public Service and Administration (DPSA) was leading the OGP at government level and it was the then deputy Minister who was the representative for South Africa on the steering committee.

The OGP principles, objectives, and focus aligned with the 1995 White Paper on the Transformation of the Public Service and the South African Constitution. The White Paper emphasises that government, which spoke to the improvement of quality public goods and services to all, towards development and eradicating poverty, to facilitate inclusive economic development and growth; and people-centred and people driven

Section 195 sub-section (1) of Chapter 10 of the 1996 Constitution of the Republic of South Africa describes the principles under which the government should engage with citizens and provide services. These are:

- A high standard of professional ethics.
- Public administration must be development oriented.
- People's needs must be responded to and the public must be encouraged to participate in policy making.
- Public administration must be accountable; and
- Transparency must be fostered by providing the public with timely, accessible and accurate information (South African 3rd OGP Country Action plan 2016-2018).

According to the Plan, "there should be a clear and demonstrable improvement from one action plan to the next. The OGP Country Action Plan should focus on ensuring that it is responsive, retains relevance and that each commitment is clearly advancing one or more of the following OGP principles:

- **Transparency:** This includes publication of all government-held information (as opposed to only information on government activities); proactive or reac-

tive releases of information; mechanisms to strengthen the right to information; and open access to government information.

- **Accountability:** There are rules, regulations and mechanisms in place that call upon government officials to justify their actions, act upon criticisms or requirements made of them, and accept responsibility for failure to perform with respect to laws or commitments. Commitments on accountability should typically include an answerability element, i.e. that they are not purely internal systems of accountability but involve the public.
- **Participation:** Governments seek to mobilize citizens to engage in dialogue on government policies or programs, provide input or feedback, and make contributions that lead to more responsive, innovative and effective governance.
- **Technology and Innovation:** Governments embrace the importance of providing citizens with open access to technology, the role of new technologies in driving innovation, and the importance of increasing the capacity of citizens to use technology. E-government initiatives are welcome, but to be relevant to OGP, action plans should explain how these initiatives advance government transparency, accountability and/or public participation." (South African 3rd OGP Country Action plan 2016-2018)

3. South African 3rd Open Government Partnership Country Action Plan 2016-2017

South Africa's 3rd OGP Country Action Plan clearly reflected the adherence to the partnerships principles and linked national commitments to the SDGs by including Goal 16 related activities such as a commitment to Access to Justice. This commitment was led and driven by civil society as an implementing partner, something that was part of innovation, improvement and ownership in the National Action Plan 3 (NAP3).

The plan had 8 commitments, namely:

1) Strengthen Citizen-Based Monitoring to enhance Accountability and Performance.
2) Open Budgeting
3) Back to Basics Programme
4) Develop an integrated and publicly accessible portal of environmental management information
5) Institutionalisation of Community Advice Offices as part of the wider Justice network
6) Development of Pilot Open Data Portal for South Africa
7) Roll-out Open Government Awareness Raising Campaign
8) Implement South Africa's action plan on the G20 High Level Principles on Beneficial Ownership Transparency and implement a register of legal persons.

One needs to be made aware of the fact before and during the production, the 3rd OGP country Action Plan, South Africa utilized several complimentary methods to collect inputs. These included requesting inputs from government departments on commitments, undertaking community-based consultations in various Provinces, conducting stakeholder workshops with civil society and using surveys to assess the level of citizen's satisfaction with the provision and delivery of services in accordance with the principles of the OGP that include Partnership, Accountability, Transparency, Anti-Corruption and Use of Technology.

The commitment on access to justice, which was introduced in the 3rd OGP Action Plan, was led by a civil society organisation, the National Alliance for the Development of Community Advice Offices (Nadcao), which was an implementing partner.

Commitment five focused on the "institutionalisation of Community Advice Offices as part of the wider Justice network". Having a commitment led by a Civil Society Organisation was an innovation according to government. And this was also enormous for a civil society organisation to be approached by government to lead a commitment.

As the former director of Nadcao, the late Nomboniso Nangu argued: this was an achievement.

> "One of the things that we underestimated was the enormity of the achievement of securing a commitment in the OGP Action Plan for a civil society organization; to co-create with the State a commitment in the Action Plan that would be achieved collectively, is that not only did we unblock the process of co-creation; we made it a possibility and a reality. We think it also inspired and stimulated civil society organisations to take the platform that much more seriously and the efforts in South Africa to discuss the joint monitoring of the implementation on OGP commitments are indeed encouraging. The revival of the National Steering Committee that is true collaborative platform between the State and civil society can be attributed to the opportunity opened by co-creation." (Nangu, 2016)

Despite this achievement and the encouragement by the positive energy created in engagements, there was a need for concrete and immediate results. Along the journey, these never materialised, and the co-creation process never worked out for various reasons.

4. Nadcao[1] and Commitment 5 of the 3rd OGP South African Action Plan

The National Alliance for the Development of Community Advice Offices (Nadcao), is the only civil society organisation that had a commitment in the

(1) Nadcao has merged with ACAOSA to form a new organization called the "Centre for the Advancement of Community Advice Offices of South Africa" (CAOSA)

3rd OGP South African Action plan. Commitment five (5) read as follows: *"Institutionalisation of Community Advice Offices as part of the wider Justice network"*.

The Institutionalisation of Community Advice Offices as part of the wider justice network aimed at making the advice offices a permanent feature at grassroots level in communities to advance access to justice at the coalface and frontline of community engagement.

This commitment sought to strengthen the advice office sector by ensuring that the sector has the skills to lead advocacy and communications initiatives critical for long-term sector sustainability. Skills and knowledge in networking and engaging civic groupings and government are critical for shaping policy and debates on the value and impact of the work of community advice offices. This was essential for the sector to be recognised (through a regulatory framework and/or legislation and has access to the funding from the fiscus).

The main objective of this project was to contribute to the long-term development and sustainability of the community advice office sector in South Africa. Its specific objectives are to: (1) ensure that community based paralegals have the requisite skills to advocate for access to justice for marginalised and vulnerable (2) that they have the knowledge and skills to engage other civic groupings and government so as to advance the constitutional rights of citizens and communities (3) that the leadership within the sector is skilled to confront various challenges (4) that research and evaluations of programmes are conducted to ensure evidence based and cost effective interventions to advance arguments for sustainability of the sector (5) that the sector has access to a Case Management System (CMS) in selected provinces and based on the results (Commitment 5 of the 3rd SA OGP Partnership Action Plan 2016-2018).

At first sight, Nadcao was doubtful regarding the benefits of being a partner in leading one of the commitments, but later realised that this could be a platform that had the potentiality of advancing initiatives towards the institutionalisation of Community Advice Sector.

> "It's true, we really didn't think the platform was going to advance our initiatives and that we were not likely to derive any benefit from participating, in particular our efforts for advocating for the institutionalization of the sector, but was pleasantly surprised when the South Africa's OGP Envoy's office asked us to lead a commitment in the OGP Action Plan, this has been a good misunderstanding." (Nangu, 2016)

To deliver on this commitment, Nadcao set verifiable and measurable milestones to fulfil the commitment:

1) Training community-based paralegals on leadership, governance and accountability

2) Sector training in fundraising, communications and advocacy to increase awareness importance of access to justice in line with goal 16 of the Agenda 2030 SDGs.
3) Sector training in engaging and networking with other civic groupings and government
4) Through the annual Dullah Omar School, to build a cohort of individuals with a firm grasp of the needs of marginalised local communities and the key role of Community Based Paralegals in driving access to justice for these marginalised communities.
5) Engaging international actors such as the OGP, United Nations, think tanks and other networks – the result will be a better-informed sector in relation to opportunities and strategies.
6) Awareness campaigns on access to socio-economic rights led by Community Advice Offices.

5. Co-creation process between Nadcao and the South African Government

Nadcao commitment spoke to key areas in the Open Government Partnership:

1) Civic Engagement and Participation;
2) Public Accountability;
3) Technology and innovation for openness and accountability;
4) Strong Institutions at Grassroots level; Access to Justice

These areas were led by government who was the main partner without whom Nadcao could not deliver on this commitment. Government led the national steering committee, and was the coordinator of all OGP commitments, Nadcao being the *only Civil Society Organisation* that was leading a commitment. Other commitments were led by government departments, namely the department of Planning Monitoring and Evaluation (DPME) (1), South African National Treasury (2), Department of Cooperative Governance and Traditional Affairs (COGTA) (3), Department of Environmental Affairs (4) , Department of Public service and Administration (DPSA) (6), Government Communication Information System (GCIS) (7), Department of Public Service and Administration (8) and Nadcao was leading Commitment 5.

Commitment 5 was one of South Africa's government pledges to achieve social justice. It invited civil society into partnerships with government to enhance the quality of civic participation, governance, service delivery, and the realization of constitutional rights. Leading civil society and government in this partnership were Nadcao and the Department of Public Service and Administration (DPSA). The partnership, which was complemented by other public-sector actors was supposed to implement programmes and

interventions that coalesce towards institutionalizing and strengthening the community based paralegal sector in South Africa. The partnership is probably the most efficient model that there is of the civic engagement that has emerged under South Africa's OGP. On one hand, it detailed a pattern of civic participation through which South Africa's commitment to the values that underpin the OGP, to access to justice, and to the challenges and opportunities of the OGP as a partnership, can be viewed. On the other, it threw into sharp relief what South Africa was failing to do with respect to other OGP commitments.

The partnership between the South African Government and Nadcao saw the tenure of meetings where strategies were defined to deliver on this commitment. The meetings were initiated by Nadcao, who approached the Department of Public Service and Administration and the Department of Cooperative Governance and Traditional Affairs that were the leading implementing agencies for commitment 5 and 3 to work together and to have a structured approach for the National Action Plan.

From the many tripartite meetings, it was decided that there was a need to develop a blueprint for the partnership.

It seemed however that it is only this structure made of the partnership between Nadcao, the DPSA, COGTA that was working towards the OGP commitments. Other government departments were not working on their commitments. This structure was dynamic because of the presence of Nadcao.

Because of the lack of follow up from other departments, the above-mentioned tripartite structure that was working on commitments 3 and 5 decided to move ahead, in the hope that they could influence the bigger structure responsible for the six (6) remaining commitments. This never materialised however as other government departments never came on board.

In addition to this, there was a risk of having two (2) OGP processes running in parallel, one with the tripartite structure and the other with other government departments. This constituted a hurdle as there was no consensus on how to move ahead without all commitments being addressed.

Because of this, the process stalled, various challenges emerged; from the non-participation of other government departments and of other civil society organisations who felt like they were not associated in the process.

6. Challenges to the OGP in South Africa

In June 2017, Nadcao convened a small roundtable to review progress in implementing the access to justice Commitment and take stock of South Africa's OGP experience. At the roundtable were members of civil society, academia, the donor community and two government departments, to discuss how the partnership between DPSA and Nadcao enabled or hampered Commitment 5 or secured the prospects of the community based paralegal sector. It was an

opportunity to evaluate government's commitment to access to justice, in the light of its adoption as an OGP commitment and imagine how the partnership between DPSA and Nadcao could inspire similar partnerships around South Africa's other OGP Commitments.

At the time of the roundtable, there had been major events in South Africa's OGP sphere. South Africa chaired the OGP in 2016 and had just consolidated its international OGP image by becoming a member of the OGP Steering Committee. Locally however, recent changes in the leadership of the DPSA first and at Nadcao tested the resilience of the partnership and its ability to deliver on the commitment. These developments further underlined the importance and timeliness of the roundtable. Below is a list of the major challenges that hampered the OGP in South Africa.

6.1. Change in political leadership

Because of changes in political leadership in government, processes had to be redefined. In South Africa, the process suffered of the endemic ministerial reshuffles that destabilised the state of affairs; negatively impacting on partnerships and programmes such as the OGP. For an example, the minister who was chairing the steering committee was moved to another portfolio and for this reason, the coordination was lost. The new appointees did not put OGP on top of their agendas.

6.2. Lack of institutionalisation of processes

The second challenge which is a result of the first challenge is the loss of the institutional memory. Processes were person-dependent and were not institutionalised. Despite the international commitments of the South African government about the SDGs, OGP, the political changes affected programmes. When the person who was leading the process was moved to another portfolio, the process died or moved with the person, but the new portfolio did not have the mandate nor the budget to deliver on the OGP. On the other side, the new comer who was supposed to deliver on the OGP commitments did not understand its importance. This not only for government, but also for Nadcao who suffered the loss of its leader, the late Ms. Nomboniso Nangu who left with her institutional memory.

6.3. Lack of financial support

Processes such as the OGP, especially where partnerships are concerned, financial support is a needed to keep the processes going. Convening meetings and round tables require financial support, which government was not ready to give. OGP is about partnership between government and civil society to deepen democracy, openness and transparency in governance. The OGP is inherently partnership oriented and seeks to ensure that government and civil society work together for better governance. In most cases, government is not ready to spend money on processed that will ask transparency from them, hence they undermine these processes.

6.4. Lack of Coordination

There was no OGP Coordination from government side, and from CSOs side. It looked like some commitments, commitment 5 and 3 in the South African case were moving forward while other commitments were lagging. This goes to the way information was communicated, how different partners were informed on the processes inside the programmes. There was no official OGP structure through which people could engage Government.

6.5. Civil Society Organisation Fatigue

It looked clearly that CSOs were tired or lost interest. Proof for this was that many civil society groups that were invited to meetings or round tables never showed up. They had lost enthusiasm in the OGP.

7. Concluding notes

OGP was launched in 2011 to provide an international platform for domestic reformers committed to making their governments more open, accountable, and responsive to citizens. In South Africa, the OGP process stalled for lack of coordination and for lack of prioritisation from government. In 2015, in preparation of the OGP summit in Mexico, Nadcao held discussions with the Office of the OGP Envoy in South Africa, who was the deputy minister in the department of Public Service and Administration. Nadcao promoted that the OGP should focus on monitoring and measuring the delivery of the SDGs, especially SDG 16. As a civil society organisation, co-creating with government meant that we could participate in different processes, and that we are given the needed support to execute our mission and remain a co-creation partner of the government of South Africa on Commitment 5 of the National Action Plan.

It is unfortunate that the political support needed was not given to Civil society organisations. It is also unfortunate that there was no clear coordinating structure for the OGP in government, adding to this, changes in political leadership and the reshuffling of cabinet meant that the “vision careers” focused more on their political survival and dumped an important programme such as the OGP.

South Africa is amongst the countries that will conduct their Voluntary National Review (VNR) for the first time in 2019. It remains unclear how this will be feasible, as none knows which government department is coordinating all these processes.

It is our hope however that as we approach the 2019 meeting of the HLPF, Government will move towards renewing its intention to work with civil society organisations to continue monitoring and measuring the delivery of SDGs. At the same time, civil society organisations have an opportunity to revive the OGP process and to hold government accountable. This will require renewed

commitments and energy from both civil society organisations and Government. International solidarity and collaboration amongst civil society organisations will also contribute towards reviving the OGP.

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OPENING THE DOORS OF JUSTICE IN COSTA RICA

SARA CASTILLO* - INGRID BERMUDEZ VINDAS**

1. Introduction

The Judicial Branch of government in Costa Rica brings the following agencies together under one single institution: the Courts, the Prosecutor's Office, the Judicial Investigation Body and the Public Defender's Office. The institution's administrative function is included in the same structure too, performed by two bodies: the *Corte Plena* or Supreme Court of Justice and the *Consejo Superior* (or Higher Council of the Judiciary). This level of concentration in the organization, characteristic of the Nation's constitutional design, has turned it into a strong, complex and diverse branch of government, with coexisting agencies and functions, whereas, other countries, have them functioning under multiple branches and levels of government. In addition, a strong self-managed drive for change has brought about many judiciary-led legal reforms in justice, as well as a robust supplementary system to expand access to justice, with a strong focus on populations in a situation of vulnerability. For over a decade, the obligation of having a court system with a human face, offering an adequate response to society's changing demands, has consistently permeated institutional goals.

On the other hand, political culture in Costa Rica encourages and provides for trouble-free relations, though not always free-from-tension among the Judiciary, other branches of government and other institutions. This interaction takes place at all different levels, from the most senior positions among leaders from all branches of government, through to the coordination of technical

(*) Executive Director of the National Commission for the Improvement of Justice Administration (CONAMAJ), Judicial Branch of Costa Rica.

(**) Coordinator of the Citizen Participation Programme (CONAMAJ-Judiciary), joined as co-author of the chapter on the Costa Rica case authored by Sara Castillo.

management cadres, as well as in the interaction among functional and operational relations.

As of the constitutional reform of article 9,[1] Judiciary actions have aimed at strengthening dialogue and encouraging citizen participation, until a public policy is adopted, formally including social participation practices and instances into its everyday activities.

Costa Rica as a country and from its Executive Branch of government, has participated in different demonstrations and processes initiated by Open Government as a global movement, leading to favorable repercussions in its government's administrative and management structures, with its presence starting to surface in our country's political and leadership levels. All of the above has built an enabling and conducive environment for implementing an Open Justice policy in the country, under the leadership of the Judiciary, expecting it to seep into other instances of our court system, while making a contribution to the country's vision of becoming an Open State.

This article is intended to take note of the most important milestones characterizing the process, to share lessons learned and to identify the challenges envisioned ahead along our journey towards a promissory future of opening justice up to transparency, participation and partnership.

2. International Context

Open Justice developments in our country are closely linked to several international phenomena and movements boosting change and acting as an inspirational framework. Among the most outstanding, it is worth mentioning the following: Costa Rica joining the Open Government Partnership as a member; the adoption of the UN Sustainable Development Goals (SDGs); and the Open Justice Working Group under the Ibero-American Judicial Summit framework.

In 2012, Costa Rica joined the Open Government Partnership leading to the voluntary adoption thereafter in 2013 of the commitment, by the Judicial Branch's Presidency, to implement an institutional policy inspired in the Open Government principles and philosophy. This visionary step had the virtue of organizing human resources at the highest level of the Judiciary so as to fulfill this commitment, leading to the co-creation of a judicial policy document, approved in March 2018[2] and which, in practice, is designed to group all projects and efforts developed by the institution under this paradigm (now reviewed and revised using novel approaches consistent with current citizens'

(1) Art. 9° of the Costa Rica Political Constitution: "The Government of Costa Rica is popular, representative, participatory, alternative and responsible. It is exercised by the people and three different and independent Branches of Government: the Legislative, the Executive and the Judiciary" (this paragraph is thus amended by the single article of law 8364, dated 1 July 2003. Published in *La Gaceta* No. 146, on 31 July 2003).

(2) Corte Plena session 10-18, held on 12 March 2018, Agreement XIII with Open Justice principles. The above is stated by the explicit inclusion of relevant OJP objectives.

demands). The adoption of the Open Justice Policy (OJP) is a historic event, in that it is an unprecedented process, both at the international level and in the institution's track record.

Moreover, at the international level, the UN 2030 Agenda for Sustainable Development was chosen as a path to be followed by the Judiciary to guide actions, fully consistent with Open Justice principles. The explicit addition of relevant Open Justice Policy (OJP) objectives is evidence thereof.(3)

At the Ibero-American level, in light of the Asuncion Declaration (Paraguay), on the initiative of the Costa Rica Judicial Branch, an agreement was adopted at the XVIII Ibero-American Judicial Summit in April 2016, to create the Ibero-American Open Justice working group. Argentina, Bolivia, Colombia, Costa Rica, Guatemala, Nicaragua, Panama, Paraguay, Peru, Spain and Venezuela are members of this group, which was charged with drafting a proposal: The Principles and Recommendations to promote Open Justice among Ibero-American Judiciaries, Judicial Bodies and Agencies(4) approved at the XIX Judicial Summit in Quito, Ecuador, in April 2018, including several themes historically developed by the Judicial Summit, under the Open Justice overarching vision.

Costa Rica's Judicial Branch representatives were commissioned with the coordination of the Ibero-American Open Justice working group to draft the charter, which became a valuable feedback mechanism between the regional level and the national drafting process of Open Justice Principles, with major coincidences, even in their formal creation dates.

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(3) Sustainable Development Goals (SDG) included in OJP:

- 9.c Significantly increase access to information and communications technology and strive to provide universal and affordable access to the Internet in least developed countries
- 16.3 Promote the rule of law at the national and international levels and ensure equal access to justice for all.
- 16.6 Develop effective, accountable and transparent institutions at all levels.
- 16.7 Ensure responsive, inclusive, participatory and representative decision-making at all levels.
- 16.10 Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements.
- 17.6 Enhance North-South, South-South and triangular regional and international cooperation; and enhance knowledge sharing, through improved coordination and technology facilitation.
- 17.18 Enhance capacity building support to developing countries, including for LDCs and SIDS, to increase significantly the availability of high-quality, timely and reliable data disaggregated by income, gender, age, race, ethnicity, migratory status, disability, geographic location and other characteristics relevant in national contexts
- 17.17 Encourage and promote effective public, public-private and civil society partnerships, building on the experience and resourcing strategies of partnerships.

(4) Record of San Francisco de Quito, Ecuador, 18-20 April 2018.

3. National Context

At the national level, an environment conducive to advancements in public institutions' openness has also evolved, making a positive contribution to the development of Open Justice.

Thanks to the leadership of the Executive Branch of Government (under the Solis Rivera administration, 2014-2018) the Open Government integrating vision went beyond the e-government view, successfully working its way into the most important ranks of the Executive. Major advances were made in terms of citizen participation, with a small but highly qualified and committed group of civil society organizations becoming a major player, with a strong presence and significant weight.

In 2014, the Judicial Branch joined the work coordinated by the Vice- ministry for Citizen Dialogue and the National Committee on Open Government (CNGA in its Spanish acronym),(5) in the Sub-committee for Citizen Participation, and commitments were assumed with Open Government National Plans of Action II(6) and III, pioneering this practice.

The 2017 commitment – NPA 3 – in Open Justice Policy seeks to:

> "... promote a management approach in all areas of the Judiciary, based on the Open Justice guiding principles: transparency, participation and partnership, to guarantee the right to access a fair, independent and egalitarian justice system, and effective legal advice leading to the fundamental well-being of persons. Seeking, in addition, to implement a Policy, including at least the following items: players mapping, action plan, baseline, evaluation and follow-up system, including citizen monitoring and a system of accountability to citizens, paying special attention to populations in a vulnerable situation. At present, this commitment is underway. Some of these activities have already been completed, such as the adoption of an Open Justice policy and completion of a Situational Diagnostic assessment. A Plan of Action is currently being designed, and still pending is the outlining of a monitoring and evaluation plan as well as the systematization of the experience..." (Elena, 2018).

The Judiciary adopted the Open Government Policy by signing the Declaration on "Building an Open State" and the "Framework Agreement to promote

(5) Decree 38994/2015 pursuant to which the National Committee on Open Government was established, to facilitate and coordinate Open Government policies in Public Administration.

(6) Year 2015 –NPA 2–Dissemination of Citizen Participation Policy in the Judicial Branch of Government: "Fulfillment of this commitment is considered of great importance because all activities contained in the Plan of Action have been completed and the communications strategy was developed and implemented to disseminate the Judiciary's participation policy". Independent Reporting Mechanism, OGP.

an Open State for the Republic of Costa Rica among the Executive, the Legislative, the Judiciary and the Supreme Electoral Tribunal" in March 2017. The document ratifies the determination of the Judiciary to move forward with the principles of transparency, participation and partnership; committing to the provision of justice in a full, prompt manner, with no denials, and to encourage respect for and enforcement of human rights.

A study performed by the **Organization** for **Economic** Cooperation and **Development** (OECD) on Open Government in Costa Rica (2016), acknowledged the role of the Judiciary as a key player in the country's transition toward an Open State. In addition, this study stated that the Judicial Branch ranks "amongst the most advanced worldwide, in terms of transparency, accountability and participation; and that there are strategies in place to create an Open Judiciary."

4. Progress made regarding Open Justice principles

Drafting the first Strategic Plan (2000-2005) could be mentioned as one of the initial steps in this process focusing on the rights of users, the creation of the Services Comptroller office, the establishment of the Gender Secretariat and the approval of the Gender Equality Policy, the creation of User Committees, as well as the establishment of the Access to Justice Committee, made up of several sub-committees serving the needs of the vulnerable. In 2012, the Restorative Justice Program was also approved, to meet strategic objectives such as: citizen participation, court backlog reduction, streamlining of judicial processes and human resources, efforts intended to protect the rights of all persons, without discrimination, and the operation of a sensitive justice system, responsive to all demands from society.

So as to ensure transparency of all its actions, to strengthen public trust and guarantee the legitimacy of court decisions, the Judiciary established the Transparency Committee to move forward with changes in the organization and operation of the Judiciary, seeking to promote ethically-consistent staff behavior (particularly among judges) and limit the risk of corruption. On the other hand, the Ethics and Values Secretariat has championed an axiological policy based on a set of shared values.

Another advocacy activity at the national level was the work done by the Judiciary's Transparency Committee to improve citizen participation indicators, evaluated using the Office of the Ombudsperson's Transparency Index,[7] setting the improvement of the 2016 qualification as an institutional goal for 2017. These efforts yielded positive results, given the fact that, in the 2017 measurement exercise, the Judiciary branch was ranked number 5 (that is, it moved up five positions) and scores ranged from 55.49 to 80.37. We

(7) The index can be consulted at: http://www.dhr.go.cr/red_de_transparencia/indice_de_transparencia_del_sector_publico.aspx

should also emphasize that the Judicial Investigation Body (OIJ by its Spanish acronym) is ranked first at the national level, with a 98.01 score.

Amendment of Article 11 of the Political Constitution of Costa Rica established the obligation of the Public Administration to undergo an evaluation of outcomes and to be accountable, so measures were adopted by the Judiciary, including accountability to the Legislative Assembly; the yearly work report to citizens and to all branches of government at the judicial year opening session; the public hearings program and visits to the communities.

Since 2011, the 'Situation of the Nation' Program (PEN by its Spanish acronym), under the Framework Agreement between the Judicial Branch and the National Council of Rectors (Conare) has monitored the Judiciary's performance,[8] using reports grouped under the title of "Status of Justice". "Status of Justice" Report II

> "...includes detailed quantitative and qualitative information about judicial infrastructure and Human Resources, management indicators of the different judiciary offices, constitutional court voting patterns, data about detainees and prisoners, among others. The report includes critical information from outside the Judiciary to be taken into account in the accountability process. There are apparently no mechanisms to follow up on the conclusions of this report. It appears that there is no formal procedure in place to plan for actions seeking to correct the flaws stated in the report..." (Elena, 2018)

It highlights the Public Ministry's accountability program in communities, whereby prosecution office staff regularly report to the communities they serve, at public hearings. Likewise, the Pilot project "Public Ministry National Transparency and Accountability Plan" launched on February 1st 2017 is promissory, and is in line with the new prosecutors' career bill which includes these obligations in the regulation.

In July 2015, the Citizen Participation Policy proposed by CONAMAJ was formally approved by the *Corte Plena*, with the overall objective of making sure the Judiciary is capable of bringing citizens on board as the main identifying feature of its operations, pursuant to Article 9 of the Republic of Costa Rica Political Constitution. In fulfilling this overall citizen participation goal, specific objectives were included to support citizens when exercising their constitutional right to citizen participation in Costa Rica's Judiciary and fostering a democratic, transparent, responsible, accessible, open to dialogue, friendly and reliable Judiciary, available to citizens across the whole of Costa Rica.

The most important progress in this field is also included in the Situation Diagnostic report prepared by Sandra Elena (2018).

(8) See Second 'Status of Justice' report (2017), which can be downloaded at: https://www.estadonacion.or.cr/files/biblioteca_virtual/justicia/COMPLETO-2017.pdf

Initiatives have focused on improving citizen understanding of the system of justice, and on taking justice closer to the people. To this end, public hearings have been scheduled to involve people, using a more inclusive language, thus eliminating one of the biggest barriers to access, and redesigning the facilities to make them more accessible to people. With regard to citizen participation mechanisms, action has been taken with all judicial officers, and consultation and participation events have been organized, such as workshops and citizen committees, to strengthen users' advocacy in selecting priorities and in judicial decision-making processes. Lastly, legal education programs for the people were implemented, using educational games and publications to improve knowledge about citizen rights and enforcement tools, as well as dissemination mechanisms in the mass media and social networks.

5. Creation and approval of the Open Justice Policy

Taking national and international background information into account, as well as all actions implemented in the Costa Rica Judicial Branch in terms of Open Justice, an Institutional Committee was set up to draft the Open Justice Policy. This Policy is intended to bring together all efforts made so far and all efforts to be implemented, seeking to fulfill established goals in terms of transparency, partnership and participation.

At a civil society general meeting with representatives from related social organizations, and organizations showing a high degree of interest in participating or interacting with this branch of government, eight people were elected as representatives to join and strengthen the co-creation process of the above-mentioned Policy. In 2016, under a Cooperation agreement, the Economic Commission for Latin America and the Caribbean (ECLAC) helped in the process by drafting a report used as a basis to proceed with the Policy's consolidation process.

After the process was completed, a preliminary document was drafted and made public using the "focus group" methodology, in different judicial areas across the country, including the Judiciary and civil society staff. At these meetings, input was gathered to enrich the document ultimately submitted to the *Corte Plena* that, in turn, shared the document with Judiciary unions to learn about their views. After the time for discussions elapsed and all adjustments were completed, the Open Justice Policy was unanimously approved at session N° 10-18, held on 12 March 2018, by the twenty-two judges of the *Corte Plena*.

When putting the Open Justice philosophy and principles into practice, great importance was attached to the implementation of co-created processes and, in addition, to opening them up to comments on the Judiciary's website. Thus, consideration was given to the three key elements of the participation and co-creation process, according to OGP, namely: disseminating information on dialogue platforms and spaces; co-creation; and lastly (and the most important aspect) ownership and joint decision-making.

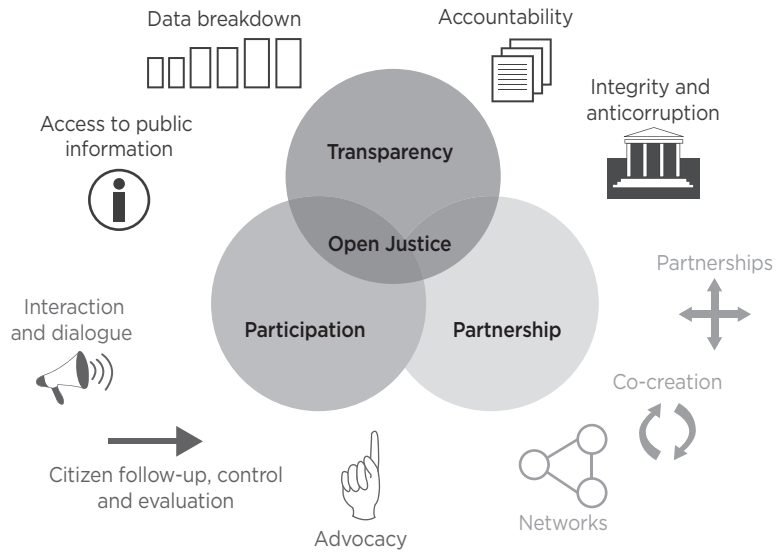
6. The Policy's general aspects

With regard to the Open Justice notion used in the Policy, it is necessary to reiterate that it was built from a participatory approach among all different social representatives involved in the process and supplemented by the Open Government theory. The outcome of said process is described below:

> "...Open Justice is a form of public management applied to the administration of justice activities, redefining the link between the Judiciary and society at large, on the basis of transparency, participation and partnership principles, to ensure the Rule of Law, promote social peace and strengthen democracy..." (CONAMAJ, 2018, p. 17).

The diagram below plots each of these principles, as well as the Open Justice Policy areas of work, by principle:

Picture 1.



Source: Created by the National Committee for the Improvement of Justice Administration (Conamaj), using the Arnel Le Coz and Cyril Lage Open Government diagramme (Conamaj, 2018, p. 16).

he Policy's crosscutting topics are: access to justice, gender equality, quality public service and restorative justice.

Since OJP was established as a set of guidelines and directives coordinating, linking and strengthening plans, programs and actions carried out by the institution, on the basis of Open Justice principles, its general goal is: "To promote legal proceedings based on Open Justice guiding principles: transparency, participation and partnership, in order to guarantee the Rule of Law, promote social peace and strengthen democracy" (Conamaj, 2018, p. 23).

Its main lines of action are: information and dissemination; training and awareness-raising; internal, external and inter-institutional coordination; policy follow-up and evaluation.

It might be helpful to explain that the Policy's implementation is being carried out with a co-created plan of action, a baseline and an evaluation and monitoring system, with the support of EUROsociAL.

7. Lessons learned

The main lessons learned are the following, drawn from conclusions reached during field work, with actions completed using dialogue, interaction, questions and answers, citizen participation (at decision-making levels) and co-creation, all of which are legitimizing mechanisms of activities performed by public institutions (particularly, within this Branch of Government in our country). Civil society plays an active role in these processes by becoming involved, making contributions and experiencing ownership, in addition to showing great willingness to help. But that is not all: civil society demands and requires prompt justice, full-fledged and quality justice, where quality public services are provided on demand. And public servants are there to make this happen: performing a user-centered job as their prime goal, providing services in line with each person's needs.

In this process, there is a lesson learned in active transparency, where the rule is "the more, the better". This means that although data are not available in the desirable formats, it is best to publish them while working on them to make them more easily accessible. It is thus also necessary to open more data sets seeking to be more transparent, always respectful of the openness provisions stated in each country's legislation.

In addition, it is important to understand that citizen time frames are not the same as those of public institutions, so we need to be flexible to have an active participation through in-person hearings and meetings.

The use of technology shall be optimized, but always aware of the pretty wide divide in Costa Rica.

8. Challenges

Implementation of the Open Justice Policy entails many challenges. The most relevant ones are listed below:

- Costa Rica's Judiciary is extremely complex since it includes the Public Ministry, the Judicial Investigative Body, the Public Defender's office and all the administrative and jurisdictional areas within the same structure. Therefore, coordinated actions are a challenge, so this was taken care of with the creation of the Open Justice Committee, under the coordination of CONAMAJ, representing all institutional and civil society sectors.

- Our country, like most countries, has an Access to Public Information law in place.
- Since Costa Rica is the first country to pass a Policy of the sort, it faces a true challenge, since this is an unprecedented experience with no implementation references in any other Judiciary in the region, except for the Open Justice experiences at the Argentine Ministry of Justice, and other international experiences linked to Open Government.
- Costa Rica shall comply with all commitments undertaken with regard to Open State at the national and international levels, and the Judiciary has commitments to live up to at all levels. The most sensitive commitment is with people residing in the country, who already have an expectation of change in legal proceedings based on the Open Justice principles.
- Active transparency shall be strengthened by expanding the publication of data sets and updating the information submitted, for instance, on court statistics. At the same time, it is also important to update the Open Data Portal, making it as friendly as possible to users.
- The Judiciary's website should also be improved so access is easier and information is more accessible.
- The partnership component needs to be strengthened since experience is limited in that area, as well as with regard to transparency, in terms of accountability.
- Judicial officers' resistance to a change in paradigm and culture needs to be minimized as required by the implementation of Open Justice.

Though one may conclude that many successful actions have been completed by the Judiciary in terms of Open Justice, the need to coordinate and carry out comprehensive processes under a guiding framework is a hard-pressing task which can be accomplished with the implementation of the recently approved Policy. Systematization is another major task to be completed, particularly because experiences might be a reference of best practices for other countries willing to adopt the same philosophy and a change of paradigm, currently required by justice administration systems.

9. Conclusion

The Open Justice Policy is a step forward towards building a more accessible Judiciary to citizens, with the necessary tools for the justice administration system to address the 21st century challenges, adding public value to the provision of services.

The creation of public value is a basic requirement for the construction of a broader and more inclusive social, civil and economic citizenship, in which trust, openness and transparency are strengthened, based on a public service dimension that meets the real needs of users. To accomplish this goal, a vision is required, geared towards identifying and meeting these demands, adopting policies that are respectful of the environment, participatory, and apply a stra-

tegic approach. Based on this approach, pertinence, agility and quality shall characterize the goods and services provided by the State and, particularly, by the Costa Rican Judiciary.

The highest aspiration of Costa Rica's Judiciary is to take its philosophy and materialize its principles across the whole of the justice sector, and the National Committee for the Improvement of Justice Administration is the proper agency to accomplish this goal. Therefore, an area of intra and inter-institutional synergies has been included in its Strategic Plan, and all possible efforts shall be made to reach this ideal. The expectation is that, in the medium run, the impact will be felt and measured, not only for this objective, but for all Open Justice goals, its policy duly implemented.

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OPEN JUSTICE IN COLOMBIA

ALICE BERGGRUN* - SEBASTIAN CANAL**

The Rule of Law is fundamental to any civilized society, and the rule of law means, at the very least, that a society is governed by laws which are properly enacted, clearly expressed, publicly accessible, generally observed, and genuinely enforceable. Enforceability includes access to the courts for people to enforce rights and to defend themselves. Rights which are unenforceable are as bad as no rights at all. The rule of law also requires the honest, fair, efficient and open dispensation of justice. And, therefore, there is no hope for the rule of law unless we have judges who are independent, honest, fair, and competent. We, judges, owe it to the public, at least in cases which are important or have excited wide interest, to ensure that our decision and essential reasoning are as comprehensible as possible to the public.

Lord Neuberger at the Hong Kong Foreign Correspondents' Club

1. Introduction

In recent discussions about Open Justice topics in Argentina, one of the most relevant aspects discussed was the definition and standard of Open Justice in itself.

Citizen trust in institutions is not a permanent attribute, it is rather exactly the opposite, it keeps changing and shifting, therefore, it is imperative that public institutions, judicial officials and the public at large, be aware of the importance of working towards building citizen trust in the judicial system and cooperating towards the enhancement of confidence therein.

In Colombia, our approach was framed into five basic principles: active and passive transparency, accountability, judicial ethics and citizen involvement. This ap-

(*) Advisor. Secretary for Transparency at the Presidents' office, Republic of Colombia.

(**) Chair of the Council of State, Republic of Colombia.

proach emerged from the needs of the judicial system itself in the Colombian context and from searching for international standards in this field. One of the best-known judges worldwide, UK Lord Chief Justice Neuberger, said: "Open justice is an essential feature of the rule of law in any modern democratic society, and judges should minimize the extent to which they sit in private session. Courts should also do all they can to mitigate the unfairness of a closed hearing".(1)

That is what Open Justice is all about. Open Justice is an essential feature of the Rule of Law. In its basic form, this means that court hearings are to be held in public and court decisions are to be made available to the public; that case law must be clear and citizens are entitled to use it to defend their rights at multiple levels.

When court hearings are private, judges are no longer adequately responsible for their decisions, since the public is not aware of the evidence and arguments brought before the court, or of the reasons for the court rendering a specific decision. Government institutions in general, are in need of recovering citizen credibility, and this is one way to do so. Gallup Poll Colombia reported an 81% unfavorable perception of the judicial system according to April 2017 figures. Courts worldwide are taking mayor steps forward in this field. Included in this group are the Supreme Court of the United Kingdom and the European Court of Justice, as well as the regional cases of Costa Rica and Argentina.

Legitimacy of judges is another substantial matter. Access to institutions should be open to people for them to be trusted, particularly because judges are, at the end of the day, public servants who owe themselves to their citizens, not only because they prosecute citizens, but also reassert citizen rights through their rulings.

Open Justice is not only about courts being physically open to visitors; rulings should be open as well. When the Council of State in Colombia rendered its first in-person accountability report before an audience of non-profit organizations, litigants and academicians, it was faced with the challenge of explaining its decisions and most relevant case law in lay language, and of summarizing and showing citizens why a specific judgment is helpful to him/her or how it can be a life changing event. For the section on pensions, Gabriel García Marquez was quoted *El coronel no tiene quien le escriba* ***(No One Writes to the Colonel)*** and the difficulties senior citizens are faced with, when their pensions do not arrive on time. These exercises are essential, because citizens are isolated from the court system and from their opportunity to demand justice when reading and understanding a difficult Supreme Court ruling that is hundreds of paragraphs long, including several contradictory opinions or subtle differences between one another.

For example, comments should be included in the accountability component about how to hold judges accountable. Accountability should be approached from two different angles: the individual and the institutional angles. Individual accountability is directly linked to the responsibility incumbent on profession-

(1) See "http://www.theguardian.com/law/2013/oct/04/senior-uk-judges-open-justice" \h https://www.theguardian.com/law/2013/oct/04/senior-uk-judges-open-justice

als of the judiciary to abide by rigorous standards of conduct. Judge-specific accountability mechanisms include the obligation of judges to draft all resolutions in language understandable to users of the court system; to explain their personal opinions about law and the constitution to the public at large and to accept a reporting system of their economic and other interests, if any.

In addition, the Special Rapporteur on the Independence of Judges and Lawyers [2] firmly believes that court professionals should abstain from participating in activities compromising the dignity of their positions or leading to conflicts of interest, jeopardizing citizen confidence in the judicial system. In this regard, judicial independence is not intended to favor judges, but rather to protect people from abuse of power and to ensure the provision of an impartial and unbiased service to users of the judicial system.

On the other hand, institutional accountability should include all activities performed by the institution, judicial as well as administrative activities and other tasks performed. This procedure would allow mass media, civil society, human rights organizations and other branches of government to oversee the proper operation of the judicial system.

The correlation between the two principles (judicial independence and transparency and accountability) is essential for the consolidation of a social Rule of Law and its judicial activities, in order to ensure legitimacy and citizen confidence in judges.

Lastly, the importance of a judicial system evaluation by users should be highlighted; within this context, civil society organizations shall monitor the proper functioning of the system, encouraging a participatory dialogue among the judicial system, citizens and other branches of government.

In terms of active transparency, in Colombia, both, public policies and the legal framework include a "transparency" approach to the judicial branch. Thus, and in conformity with CONPES 3654 and with the Transparency and Access to Public Information Law (Law 1712, year 2014), the Judiciary must abide by the law; and access-to-information standards shall be established, for both judges and the institution itself. Judges have the fundamental obligation to publish their résumés, their conflicts of interests, their court absenteeism, vacations and all other information required by the practice of transparency.

Reporting judge chambers' and corporation statistics as well as efficiency data thereof is of utmost importance in a country where the resolution of a case can take up to 10 years. Transparency involves information management and publication in accordance with relevance, accessibility, accuracy and completion deadline criteria. Furthermore, this is defined by the Judiciaries Summit as the duty imposed on judiciaries to maintain relevant management and members' information accessible to the public.

(2) Consultative Council of European Judges (CCEJ) Report No. 3 drew the attention of the Committee of Ministers, Council of Europe, to the principles and rules governing judges' professional conduct and deontology, in particular ethics, incompatible behavior and impartiality.

The Open Justice concept:

> ... developed over the past decade, it goes far beyond the mere opening up of public information, because the goal is to reach a point where truthful and timely information regularly provided by the State to meet transparency principles requirements, should not only build trust and legitimacy in its institutions, but should also become input for all players in society to join efforts to strengthen analytical skills, to identify recurrent patterns and problems but, above all, as input to encourage accountability and social oversight, leveraging the potential offered by information and communication technologies (ICTs) primarily using open data, and civil society's vocation and knowledge. (Corporación Excelencia en la Justicia, 2017).(3)

In terms of the Judiciary in Colombia, there are certain efforts in place to move forward in these areas. Transparency principles and rules are included in the Political Constitution of Colombia, as well as in the Administration of Justice Statutory Law. Cross-cutting effects are also built into the criminal and disciplinary codes, as well as in laws ruling public contracting policies, and in Law 190, 1995, in the National Development Plan and in the Transparency and Access to Public Information law.

There are a few non-binding rules in place, seeking to strengthen cooperation. These rules are binding in nature for the Executive branch and optional for the Judiciary, such as the Anticorruption Statute; the Digital Government Strategy, the Single Accountability Manual, the United Nations Convention against Corruption and the Inter-American Convention against Corruption, as well as the OECD Convention on Combating Bribery of Public Officials, that have repeatedly requested that Colombia includes stronger transparency commitments in its judiciary.

But needless to say, the most important efforts have taken place in Open Government-related topics. The State Council has been one of the first courts worldwide to enter into direct commitments with the Open Government Partnership (OGP) and to establish a Transparency and Accountability Committee within its organization. The Open Government Partnership is a multilateral initiative comprising 75 countries, providing a platform on which governments can report advances in terms of transparency, Open Government and accountability, with the permanent support of civil society and other member countries, and with clear assessment tools. This initiative is seeking to expand and involve an increasing number of players, including other countries' judicial branches. The strategy herein has been given the name of "Open State" and, under this framework, Colombia has signed an Open State commitment with several of its high courts and control bodies, including the Vice Chief Justice of the Supreme Court, committing to information openness and accountability standards. This

(3) Corporación Excelencia en la Justicia, "Justicia Abierta en el Consejo de Estado" (Open Justice in the Council of State), ACTUE – European Union project consultancy, Output 4. 2017. p. 15

was done through the *Comisión Nacional de Moralización* (National Moralization Committee), a government coordination forum with other branches in issues related to good governance, Open Government and the fight against corruption, in which State objectives and policies are identified to improve citizen services and strengthen the fight against corruption. This has translated into the Constitutional Court reporting judge's income statements and is *ad portas* of rendering its accountability report, and the Colombian Supreme Court of Justice is in the process of fully joining the Open Justice strategy.

Despite all progress achieved, we believe further efforts can be made and the Open Government Partnership (OGP) could be an important catalyst to bring all these initiatives together but, as countries, we should also consider other proposals, in addition to OGP strategies, with clearly defined standards to be reached and with the political will of supreme courts to participate therein.

2. What do we do at the Open Justice Transparency Secretariat?

We support the courts and judicial branch of government in their in-house Open Justice implementation efforts, to carry out a diagnostic assessment of steps already taken in terms of transparency, accountability, judicial ethics, and enforceability of Law 1712 – Transparency and the Right of Access to Public Information, 2014. The creation of an Internal Transparency and Accountability Committee for this purpose and all actions taken from that point onwards is of critical importance to push these processes forward at the pertinent courts.

On the basis of the above-mentioned diagnostic assessment, an Action Plan is put together including the following four (4) components:

1) Active transparency (mandatory minimum requirements and challenges): according to CONPES 3654, active transparency involves management and publication of information pursuant to the following criteria: relevance, accessibility, accuracy and deadlines met. According to the Judicial Summit, judiciaries are charged with the responsibility of making available to the public all relevant information on judicial management and its officials.

   The components listed below shall be included:

   a) Relevant information on the judiciary and information produced by it (data, levels of efficiency). Consideration might be given to publishing relevant information about planning processes, selection of judges and decongestion of court proceedings, etc.
   b) Management reports using citizen-friendly language and including citizen feedback and easy-to-use tools.
   c) Publication of information on judges and their chambers. Information about the judges' income reporting system and how to use it to avoid conflicts of interest, publication of résumés, trips made, purpose of trips, anticipated work and entity assuming costs thereof, absenteeism from courtroom, lobbying activity reports, etc.
   d) Explanation of interaction mechanisms with other organizations in the judicial branch of government.

Criteria to apply this component:

- To prioritize information to be shared with citizens, in addition to the requirements established in the tenets of Law 1712, year 2014, and the mechanisms to be used in the implementation thereof.
- To have a methodology in place to draft the institutional management report.
- To have standard formats in place to disseminate institutional information.

2) Passive transparency (monitoring Access to Information).

3) Accountability: to structure a systematic and permanent accountability plan, not limited to the Annual Management Report. This shall include actions intended to:

   a) Put the strategy into operation to create spaces of in-person interaction with citizens, where judges are questioned, not about their decisions, but about other aspects of their public life and in which they have the opportunity to explain the rationale of their decisions in a clear manner.

   b) Define topics and subtopics to be presented during the accountability session through the Transparency and Accountability Committee

4) Judicial ethics

   a) All judges shall sign an agreement of integrity.

   b) Awareness-raising exercise on Open Justice topics within the organization, examples and teaching cases where a breach of the judicial code on conduct led to the enforcement of disciplinary measures.

   c) Exercises within the judicial structure, identifying ethical dilemmas, risks of corruption, etc., for the Judicial Branch, and measures to eliminate/manage them.

   d) Establish a strategy to implement an integrity culture and to adapt the Judicial Code of Ethics. The analysis and optimization of the Code of Ethics shall govern all employees in the organization involved in this exercise.

3. Council of State experience in transparency and accountability: one of the first Open Justice experiences in this continent

For over two years, the Council of State has been committed to abiding by the transparency and accountability principles seeking to guarantee good institutional performance, fight corruption, strengthen legitimacy of the judicial branch of government and consolidate a more honest judiciary, closer to citizens. The activities listed below have been carried out during this timeframe:

The Transparency and Accountability Committee was established pursuant to agreement 289, 2015, to "formulate, design and coordinate the implementation of the Council of State policy to ensure transparency, accountability and promote the culture of honesty, pursuant to the Organization's *Sala Plena* (Plenary Chamber) guidelines" providing for an institutional environment at the Supreme Court level to further this topic in the long run.

Open Government Partnership (OGP) Action Plan II was supported through Commitment No. 16, under the title of "Transparency and accountability in the Council of State to better serve justice". The above was acknowledged by OECD as an unprecedented experience worldwide in a judicial body, giving us the opportunity to share our experience at the OGP global summit in December last year in Paris.

It reached out to many regions with the development of an academic program provided to the most important beneficiaries of our decisions, i.e. government officials nationwide under the "Regional culture of legality and legal certainty program".

This program was successful in planting the seed of a transparency and accountability culture among judges and magistrates in the contentious-administrative court, profiting from the 26 meetings held to publicly establish transparency and accountability committees at each one of the country's administrative courts, providing attendees, for the first time ever, with the outcomes of their management performance.

In 2017, the second phase of this initiative was presented at the seminar "Dialogue with regions", so that the Council of State and regional administrative courts could address with public authorities and citizens the main contentious problems in the region, to explain the courts' views about them and to create opportunities for interaction seeking to standardize criteria.

On 29 June 2017, a public hearing was held in which the Council of State 2015-2016 accountability report was submitted.

The organization's presidency and the Fifth Section were certified for ISO 9001 and GP 1000 standards, accrediting a quality management system in processes, procedures and resources necessary to improve and control the organization's performance relative to the efficiency of the administration of justice.

Circular notice number 12 from the Council of State Presidency was issued, adopting new, clear transparency measures highlighting the following: the obligation to report impediments and recusation of assistant magistrates, the distribution of cases to be publicly made, judges chosen by lot, cases to be heard shall be published and court employees reminded of their obligation to submit their annual tax return, affidavit of assets, income and Private Economic Activities. Other Council of State internal communications add to this notice imparting precise information on management guidelines and court proceedings to boost transparency.

In addition, the organization redesigned its institutional website, to turn it into a communication portal for users of the administration of justice system, for accessing clear, accurate and timely information, where there will be transparency and citizen participation micro websites.

Starting two years ago, records of administrative sessions and Plenary Chambers of the Supreme Court records were posted on the website pursuant to LEAJ, as well as the calls to chamber meetings, judges of our jurisdiction and council members nationwide on secondment or temporary leave, leaves of absence, appointments, resignations and inconsistencies of all Council of State officers, council members' résumés; and, moreover, council nominee interviews as well as nominee interviews for senior positions are broadcast.

Objective guidelines are used by the Council of State, in the designation of provisional employees and court judges, prioritizing career employees, judicial branch employees, seniority, qualifications, successful candidates in open competitions and the service's needs. In order to confirm that no cronyism or patronage has occurred, the Excellence in Justice Organization has been requested to assess all hires made over the past three years in the system, pursuant to a list provided to the above-mentioned NGO.

On 1 February 2012, the Ibero-American Code for Judicial Ethics was adopted by the then Administrative Court of the Judiciary Higher Council, as a guide of ethics for all judicial branch employees in Colombia, not legally binding at the formal level, but with a strong moral standing, as the course of conduct to be followed by all judicial employees, regardless of judges' autonomy and independence within the Republic.

The decisive attitude of the Council of State in Colombia with regard to restoring citizens' confidence and trust grounded on the independence of the judiciary and based on transparency and accountability practices, is the best example in Latin America of judges seriously committed to their country and their citizens.

Thus, other countries in the region and their respective courts should now institutionalize the above in their legal proceedings and restore citizen confidence in their judges.

4. Conclusions

The legitimacy of countries' judicial branches and of the obligations that judges have as public servants is partly linked to Open Justice standards. Open Justice is sharing with the public what is actually happening in the courts and the decisions made by judges and juries. Open Justice entails having the people and the media understand what is actually going on in courts and the decisions made by judges. But Open Justice also requires a healthy and informed discussion about the judicial proceedings and court decisions.

> ... Judicial decisions are not there for the mere purpose of sharing them with an admiring and humbly receptive, non-responsive audience. People should be able to voice and shape their own opinion about judges' decisions. When members of the public are unable to share their opinion on what is happening within the courts, freedom of expression is undermined, which is another vital ingredient of a modern democratic society. Therefore, people are entitled to see and learn with no fear about what courts are doing and saying, even if judges feel uncomfortable with this from time to time.(4)

(4) See https://www.supremecourt.uk/docs/speech-140826.pdf

THE MEXICAN EXPERIENCE IN IMPLEMENTING OPEN GOVERNMENT POLICIES TO ADMINISTER JUSTICE

MARÍA G. SILVA ROJAS*

1. Introduction

In the last few decades, the Academia as well as some governments have developed the notion of Open Government as a State that reinforces democracy, fostering the relationship between the authorities and society, through three fundamental pillars: transparency, social participation and inter-institutional collaboration.

In 2011, the Open Government Partnership was set up and Mexico was a founding member. This Partnership included in its Open Government Program Strategy 2014-2018, a recommendation addressed to the Partnership's States, to try and include openness policies in their judiciaries.

Stemming from this commitment, Mexico includes certain specific obligations in its legislation, which intend to reinforce judicial transparency. This article will provide an overview of the current situation of Open Justice in Mexico, including a few good practices to administer justice from an Open Government perspective.

2. State-of-the-art

In order to establish the state-of the-art of Open Justice in Mexico, first of all I will outline the composition of the Mexican Judiciary and will then explain its current policies for each of the three Open Government pillars.

(*) Judge sitting in the Regional Tribunal of Mexico City, Electoral Court, the Federation's Judiciary.

2.1. Composition of the Mexican Judiciary

Mexico is a representative, democratic, lay and federal republic, comprising free, sovereign States with regard to their domestic regime, plus Mexico City, all of which form a federation established as per the country's constitutional principles (Political Constitution of the United Mexican States, 1917, article 40)

In Mexico there is a state and federal-level judiciary. The federal level includes the Supreme Court of Justice, the Electoral Court of the Federation's Judiciary (hereinafter referred to as TEPJF), the Collegiate and Unitary Circuit Courts and the District Courts.(1)

At the state level, the Constitution indicates that power is split up between the Executive, Legislative and Judiciary, and that the latter shall be exercised through the courts established by the constitution in each federative entity.(2)

2.2. Open Government Pillars in the Mexican Judiciary

2.2.1. Transparency

Transparency of the Judiciary bodies is guaranteed by Article 6 of the Constitution which recognizes people's rights to access information, at the federal and state levels. This regulation states that all information held by judicial authorities and bodies (among others) is public.(3) Additionally, it points out that there must be agencies responsible for ensuring this right at the federal and local levels.(4) In Mexico there are two laws regarding this article: General Law and Federal Law on Transparency and Access to Public Information (hereinafter called General Law and Federal Law).

The General Law regulates affairs in this field and, besides the obligations applicable to all gatekeepers -among them, the Judiciary bodies- it establishes a few specific obligations for such bodies, for instance, the publication of:

1) Reasoning and final judgments in official dissemination instruments.
2) Public versions of the sentences/judgments of public interest.
3) Stenographic versions of the public sessions resolving matters.
4) Information related to the appointment of judges.
5) List of decisions published daily.(5)

On the other hand, at the federal level, the Federal Law aims at ensuring the right of access to public information held by federal entities. This law also

(1) Political Constitution of the United Mexican States, 1917, article 94.

(2) Political Constitution of the United Mexican States, 1917, article 116.

(3) Political Constitution of the United Mexican States, 1917, article 6. A.

(4) Political Constitution of the United Mexican States, 1917, article 116-VIII.

(5) Federal Law on Transparency and Access to Public Information, 2015, art. 73.

contains some overall obligations for all gatekeepers, and specifically points out that the Federation's Judiciary bodies must:

1) Try to use plain language in their decisions.(6)
2) Publish:
   a) Stenographic versions, audios and videos of the public sessions.
   b) Information on the procedures for appointing judges through open competition: call for submission of candidacies, list of candidates, who move on to the next stage as well as outcomes and successful candidates.
   c) Decisions with judges' justification to ratify a ruling.
   d) Decisions imposing disciplinary sanctions on the members of the Federation's judiciary.
   e) Indicators related to jurisdictional performance.
   f) Provisions that must be generally observed and that are issued by the Tribunals in Full and Presidents of Tribunals for appropriate duty performance.
   g) Votes of any kind cast by court members.
   h) Resolutions regarding contradictory reasoning. (7)

At the state level, each of the 32 United Mexican States have their own regulations pursuant to the provisions of article 116 of the Constitution, to which the General Law is applicable; moreover, electoral courts in each of the federative entities have their own regulations since they are not a part of the state judiciaries.(8)

2.2.2. Social participation

I will start by saying that I believe social participation mechanisms in justice administration entail transparency by jurisdictional bodies, but also call for certain actions by society so as to materialize the above, that it to say, these mechanisms go beyond the mere publication of what the authorities have done, since they require actions from stakeholders too so as to be effective.

These mechanisms are not regulated as such in any law, although the Federal Law outlines a few when pointing out the following obligations of the Federation's Judiciary:(9)

1) Promote public access to hearings and sessions in which jurisdictional issues are resolved.

(6) Federal Law on Transparency and Access to Public Information, 2016, art. 67-II-c.

(7) Federal Law on Transparency and Access to Public Information, 2016, art. 71.

(8) *Ley General de Instituciones y Procedimientos Electorales* (General Law on Electoral Institutions and Procedures), Mexico, 2014, arts. 105-2.

(9) General Law on Electoral Institutions and Procedures, Mexico, 2014, arts. 105-2.

2) Promote mechanisms to ensure public access to the sessions of administrative collegiate bodies, if the nature thereof allows so.
3) Implement electronic platforms and other tools allowing interaction with society regarding jurisdictional actions.
4) Set up a working group with society to enable ongoing interaction, the identification of opportunities and the establishment of institutional openness policies.

2.2.3. Inter-institutional cooperation

With regard to this element of Open Justice, there is no specific regulation, so it is therefore carried out pursuant to agreements or covenants signed by the authorities.

2.3. Fulfillment of obligations

If there were full willingness by all authorities involved, the above-mentioned regulations would provide good support to an Open Judiciary in Mexico; anyhow, several studies have shown a loophole in this regard.

According to the report on "Transparency in Judgment Publication, setbacks after the General Law on Transparency and Access to Public Information" (2017), the obligation to publish judgments "of public interest" makes state tribunals opaquer than before the entry into force of this law since the quoted expression is ambiguous and remains subject to interpretation.

Before enactment of the law, most state legislations on transparency included the obligation of the judiciaries to publish all final judgments. As reported, passing of the General Law brought about a change and now many courts allege compliance with the General Law and do not publish their judgments because they are not "of public interest".

In this regard, the 2017 Open Government Metric (2017) points to the fact that there are still opaque practices that hinder the right to access information and, although this practice is not against the law, its interpretation and the adjustment of the authorities' activities take place in such a way that they manage to delay provision of the requested information, for instance, through deferrals and precautionary measures.

When referring in general to agencies in all three state branches, the study mentions that although progress has been made in the field of transparency, and there is clarity with regard to the submission of a request for information, regarding citizen participation there is, often times, no definition of the processes within the institutions to allow the above, thus hindering the possibility of such participation.

3. Good practices

Just like in the above section, I will structure this one according to the Open Justice pillars.

3.1. Transparency

The following practices are worth mentioning with regard to transparency as an element of Open Justice.

- Public session broadcast on television and/or the Internet. Some of the Judiciary bodies broadcast on the Judicial Channel those public sessions in which a matter is resolved (Supreme Court of Justice and Higher Court of TEPJF), and many other bodies also broadcast their public sessions on the Internet, either directly on their websites or on social networks such as Periscope, YouTube, Facebook Live.
- This allows society to hear the discussions held by judges when solving matters, thus learning about their personal criteria, arguments and ideological stances.
- It is worth mentioning that some of the jurisdictional bodies then publish videos, audios and even stenographic versions of their sessions, which are tools that can then be consulted by Internet users.(10)
- Jurisdictional drafting handbook for Courtroom One. In 2007, Courtroom One of the National Supreme Court of Justice issued this handbook with a view to homogenizing its resolutions to ensure better access to justice and a proper justification and motivation of the rulings (Pérez Vázquez, 2007, pp XIV-XV). The use of this handbook is not binding for those working in Courtroom One and is not broadly used.
- Handbook for preparing judgments. *Justicia Electoral cercana a la Ciudadanía.* (Electoral Justice Close to Citizens). In 2015, and stemming from a study carried out by the Electoral Court's (TEPJF) Regional Courtroom of Monterrey, this handbook was issued and is still used nowadays as a guideline for drafting the decisions of this Courtroom and of others that have adopted it to issue judgments using plain language, easily understood by society (García Ortiz, Rodríguez Mondragón & Zavala Arredondo, 2015).
- Publication of judgments and decisions. TEPJF. Although the General Law spells out the obligation to publish judgments "of public interest", TEPJF Courtrooms are obliged to publish on their Internet portal the decisions made in case of challenges, as well as final judgments that do not contain classified or confidential information.(11)
- Social communication: newsletters, social networks, infographics, news bulletins. Although this is not a normal practice in most courts, it is becoming more common to use social networks as a social communication tool to disseminate court decisions, as well as the jurisdictional activities of courts and

(10) National Supreme Court of Justice sessions can be consulted here: https://www.sitios.scjn.gob.mx/video/. Electoral Court of the Federation's Judiciary sessions can be consulted here: http://portal.te.gob.mx/noticias-opinion-y-eventos/sesiones-publicas

(11) *Acuerdo General de Transparencia, Acceso a la Información Pública y Protección de Datos Personales* (General Agreement on Transparency, Access to Public Information and Personal Data Protection), 2008, arts. 8-I y II.

judges who, on certain occasions, interact with the networks' users -maybe this trend is because of the current situation in which we are experiencing the most complex electoral process in our country's history since we will be electing over 3,500 officials on 1 July.

These tools allow jurisdictional activities to be brought closer to society at large and a proper use thereof can avoid risks such as important decisions being informed to the public as per the interpretation made by the mass media. This risk is minimized since the use of social networks allows courts to communicate their decisions directly -without mediators or distortions.

3.2. Social participation

- Judicial observatories or comments on judgments. Although infrequent, some courts or civil society organizations or the academia organize observatories with a view to submitting relevant judgments to public scrutiny, highlighting their mistakes and good decisions, so as to positively criticize judges, thus allowing them to improve their work with other points of view with regard to the matters submitted to their jurisdiction. Some written articles have also stemmed from these observatories.[12]

  A similar mechanism to the judicial observatories is that of the written comments to important decisions that are issued by academic institutions and bar associations.

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In view of what was explained above with regard to the need for society to act so as to have social participation mechanisms leading to greater court openness, I deem it advisable to include in this Open Justice element (social participation) those tools or processes that, although they do not necessarily entail a substantial change in justice administration, they do bring about changes in the sense of making it more accessible to people. The following are examples of these tools or processes that I consider good practices.

- Electronic Case Files. In 2013, the National Supreme Court of Justice, the TEPJF and the Federal Judicial Council issued a decision to regulate Certified Electronic Signatures in the Federation's Judiciary, and the Electronic Case File -also at the federal level.[13]

  The implementation of the decision allows filing claims and publicizing them on electronic means, which avoids expenses and travel time, while making justice administration more agile with a quicker method for serv-

(12) See Cantú & Noriega (2016).

(13) This agreement can be consulted at: http://www.internet2.scjn.gob.mx/red2/electronico/pdf/95021.pdf

ing notices -without diminishing safety and security for the parties. It must be pointed out that TEPJF has not yet implemented these mechanisms.

- Electronic courtrooms. The National Supreme Court of Justice and TEPJF both have electronic courtrooms, easily accessible to citizens.(14) Decisions published by the courts of the Federation's Judiciary can be consulted online, although whoever is consulting must have accurate data on the case file, and passwords allowing access thereto.(15) It must be recalled that given the different matters addressed, in electoral courts the decisions issued in response to challenges are published and can be consulted by anyone, in the understanding that on certain occasions personal data of the parties are kept confidential.

- Closing Statement Hearings. Unlike what happens in other countries, interlocutory hearings are common practice in Mexico (Elizondo Mayer Serra & Magaloni, 2015, pp. 1005-1034) and they are not banned save for criminal matters –if not carried out in the presence of both parties.(16)

  Until 2017, they were not regulated. That year, on 13 March, the First Collegiate Tribunal in Administrative matters of Nueva Leon published Administrative Regulations governing these hearings and set forth the prohibition for them to be held in private so as to avoid bribery –they were removed from the Internet portal so cannot be currently consulted.(17) On 16 March, the Federal Judicial Council discredited these regulations stating that the body had not issued guidelines allowing these closing statement hearings to be held at an institutional level.(18)

  In November 2017, the TEPJF Regional Courtroom in Mexico City issued a general ruling establishing the guidelines for holding closing statement hearings(19) so as to ensure the legal certainty of those promoting challenges filed in that Courtroom, and reinforced Open Justice and the right of individuals to access justice since this kind of practice allows direct

(14) Decisions published by the National Supreme Court of Justice can be consulted at: https://www.scjn.gob.mx/transparencia/solicita-informacion/estradoelectronico-de-notificaciones y los del TEPJF, pueden ser consultados aquí: http://portal. te.gob.mx/estrados_inet/principal.aspx?sala=SUP

(15) Should you have accurate information on the case file, you can consult it here: http://www.serviciosenlinea.pjf.gob.mx/juicioenlinea/Presentacion/Ver-

(16) Political Constitution of the United Mexican States, 1917, art. 20.A-VI.

(17) According to note that can be found at: https://www.reforma.com/aplicacioneslibre/articulo/default.aspx?id=1066707&md5=e4cf6e0e3234f747ed011c72725fec11&ta=0dfdbac11765 226904c16cb9ad1b2efe

(18) According to note that can be found at https://www.elnorte.com/aplicaciones/articulo/default.aspx?id=1067679&sc=319

(19) Go to: http://www.te.gob.mx/EE/SCM/2017/VAR/AVI/7/SCM_2017_VAR_AVI_7-135.pdf

communication between the parties and judges thus helping to understand the litigation context.

3.3. Inter-institutional cooperation

Here I would like to highlight two cooperation agreements between electoral authorities since this is the field in which I work. Maybe I am unaware of other agreements between courts and therefore will not include them in this article.

Judicial traineeships. TEPJF and the Association of Electoral Tribunals of Mexico signed an agreement to organize "judicial traineeships" which allow lawyers hired by local electoral tribunals to work for a few weeks at the TEPJF courtrooms to gain experience and knowledge and, at the same time, support the work of TEPJF.(20)

Electronic notices. In 2014, TEPJF, the National Electoral Institute, local public electoral agencies and the electoral tribunals at the federal level signed a cooperation agreement so that TEPJF serve its notices to the parties electronically, thus making the process more agile and diminishing costs.(21)

Open assignments. In February 2018, TEPJF and the National Institute for Transparency, Access to Information and Personal Data Protection signed a cooperation agreement to include TEPJF in the "Open Assignments" Program implemented by the Institute, with a view to publishing on a single platform all expenses incurred on official assignments carried out by the authorities in office. (22)

4. Conclusions

Having an Open Government, open courts, entails a true commitment on behalf of those in charge of administering justice. There will be no legal corpus that is sound enough in itself to force government openness.

On the one hand, Open Justice calls for public servants working in the Judiciary to be willing to open justice to society and, on the other hand, to have society participate actively with the courts in the quest for a better justice administration.

In Mexico, significant progress was made in jurisdictional opening and there is a normative framework allowing courts to implement Open Government mechanisms; in practice, however, there are delays and obstacles in achieving the above.

(20) Go to: http://sitios.te.gob.mx/repositorio/A70F33/2017/Convenio%20ATSERM-TEPJF%202017.pdf

(21) Go to: http://ceepacslp.org.mx/ceepac/uploads2/files/convenios/CONVENIO%20DE%20COlABORACI+%C3%B4N-INE-TEPJF-CEEPAC%20(4)%20031214%20(5).pdf

(22) See http://portal.te.gob.mx/noticias-opinion-y-eventos/boletin/0/65/2018

Day after day society is calling for greater transparency among its authorities, but transparency is only one of the Open Justice pillars and, as has been proven in several studies, it is the soundest element in Mexico's Open Government. Social participation as an element of State opening is the most complex to implement because it involves authorities and a society that is disappointed with government and, often times, does not participate in joint activities with government because of a lack of trust in the institutions.

It is compelling to find a way to have society participate in justice administration to thus have more open courts that will not only render better services to society but also help regain trust by having people participate in their activities.

Participation of society in justice administration entails its active involvement, which will not only allow courts to perform better with the wealth of knowledge and experience provided by society (Noveck, 2015, pp. 1-7), but also have the people collaborate with the judges to develop a sense of ownership or identification with the senior judiciary officials and the activities that are being carried out, in the quest for improving justice instead of discrediting and being unaware of it.

Open Justice is essential to consolidate the Rule of Law since for a proper implementation of the rules it is not enough for government to act correctly, it is also necessary for society to abide by the normative framework and participate in making authorities accountable. In Mexico there are, no doubt, windows of opportunity to work on, but also good initiatives and willingness to continue working on opening up our courts.

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WOMEN, LEGAL EMPOWERMENT AND ACCESS TO JUSTICE CASE STUDY ON SRI LANKA'S FIRST OPEN GOVERNMENT PARTNERSHIP NATIONAL ACTION PLAN

SHYAMALA GOMEZ*

1. Background

Sri Lanka's Open Government Partnership First National Action Plan (OGP NAP) was drafted in 2015 with government and civil society working collaboratively to craft the commitments. The government elected in 2015, came into power on a platform of good governance and anti corruption and these principles formed the framework within which the first OGP NAP was formulated. The first NAP's commitments straddled the themes of right to information, health, education, local government, information and communication technology, anti corruption, environment and included two commitments on women.

The Sri Lanka chapter of Transparency International, Transparency International Sri Lanka (TISL) led the compilation of a civil society drafted National Action Plan which was submitted for Cabinet approval through the Government Focal Point attached to the Ministry of Foreign Affairs. Initially the OGP came under the purview of the Ministry of Justice and thereafter under the Ministry of Foreign Affairs. However, it was subsequently taken over by the Presidential Secretariat, as the President is the Chairperson of the OGP National Steering Committee.

The development of the first NAP was led by civil society with the involvement of government ministries and agencies. At the time, government and civil society lacked a clear understanding on the connotations of OGP principles on transparency, accountability and public participation and their im-

(*) Executive Director, Centre for Equality and Justice, Colombo, Sri Lanka.

pact on good governance and the rule of law. The concept of OGP was new to Sri Lanka and this was an obstacle to the crafting and the rolling out of the first NAP. However, the drafting process of the second OGP NAP in 2018 was more streamlined due to a better understanding of the OGP process among government agencies and civil society.

2. The Women Commitments in the First OGP NAP

The inclusion of two women commitments in the first OGP NAP that consisted of nine commitments, was a major step in ensuring that gender concerns were integrated. In a context where women's concerns are rarely given any weightage in national processes such as policy formulation and NAP making, the rigorous advocacy of women activists ensured that a focus on women was reflected and included as two stand alone commitments. Two commitments on women were included in the first NAP with several milestones to be achieved. The commitments included one on increasing women's political participation in local government and another women commitment that dealt with facilitating women's access to justice through reform of some discriminatory aspects of the personal laws, women's labour force participation and reform of selected discriminatory provisions in the land laws. The aim of the two commitments were to have a transparent and accountable process in the implementation of selected CEDAW Concluding Observations included in annual work plans of the Ministry of Women's Affairs. Civil society organizations and the Ministry of Women's Affairs worked collaboratively to decide on the commitments that should be included in the first NAP.

3. Lack of Gender Concerns in Other Commitments

Although the two women commitments were included in the first NAP, it is striking to note that none of the other seven commitments incorporated any gender considerations. Gender was not considered as a cross cutting issue. What is also striking is that although women from both government and civil society sectors were involved in crafting the other commitments, they failed to integrate women's concerns. A reason could be that there were neither gender sensitive government officers nor civil society representatives that were involved in designing the commitments. Another could be that mainstreaming gender is not considered a priority across government machinery and this is a major challenge. There is a lack of understanding of gender issues at every level of government. This hampers the inclusion of women's issues into polices, programme design, implementation and monitoring of any programme initiatives. Although gender focal points have been appointed in Ministries, these focal points generally lack sufficient knowledge and capacity on how to mainstream gender or women's issues into the mandates of Ministries.

Several of the other commitments could have included a gender component. For example, the education commitment was on teacher recruitment policy.

The commitment could have brought in OGP principles through the inclusion of availability of gender-disaggregated data in open data portals. It could have also included specific guidelines on female teacher recruitment that were formulated with the engagement of the public.

This is true of any similar national policy making process. Unless there is a strong lobby by gender activists and those sensitive to gender, women and gender considerations are rarely included. A concerted effort to mainstream gender and women's concerns into all OGP commitments should inform future OGP NAP making processes. Another cross cutting issue omitted in these processes is that of disability. However, Sri Lanka's 2nd OGP NAP has a separate commitment on disability and the need for disability friendly housing.

4. Legal Empowerment as an Aspect of Women's Access to Justice

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

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.(1)

Opening up justice institutions was not part of Sri Lanka's first OGP NAP. There were no thematic commitments focusing on the judicial process and the justice process. It would not have been possible to incorporate justice sector reforms given the context where the stakeholders concerned had a very basic understanding of OGP principles. Enforcing open government was also not specifically focused upon in the women commitment, although elements of this aspect were evident in the women commitment.

The second goal of legal empowerment of justice related goals ostensibly forms the framework for Sri Lanka's first OGP NAP commitment on women. '*Ultimately, the decision to include justice commitments in OGP action plans will be the result of countries' priorities*,'(2) This was not the case for Sri Lanka.

(1) Opening Justice: Access to Justice, open judiciaries, and legal empowerment through the Open Government Partnership, Peter Chapman, Sandra Elena, Surya Khanna, Open Government Partnership staff, Working draft, July 2018, p.2, retrieved from https://www.opengovpartnership.org/sites/default/files/opening_justice_working_draft_public_version.pdf, 17th March 2019.

(2) Opening Justice: Access to Justice, open judiciaries, and legal empowerment through the Open Government Partnership, Peter Chapman, Sandra Elena, Surya Khanna, Open Government Partnership staff, Working draft, July 2018, p. 2, retrieved from https://www.opengovpartnership.org/sites/default/files/opening_justice_working_draft_public_version.pdf, 17th March 2019.

The first NAP was crafted with little knowledge of the OGP process. According to Open Society Foundations, *'Legal empowerment is about strengthening the capacity of all people to exercise their rights, either as individuals or as members of a community. It's about grassroots justice—about ensuring that law is not confined to books or courtrooms, but rather is available and meaningful to ordinary people'.*[3] 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."*[4] The OGP principles form the cornerstone of good governance and adherence to the rule of law. The first OGP NAP's women commitments are law and policy reform oriented and aim at giving voice to grassroots marginalized community women to claim their rights to own land, to have laws that do not discriminate against them and equal rights to livelihood and employment in the formal and informal sector.

5. Women's Engagement in Law Reform

The focus in the first NAP's women commitment was on ensuring the participation of women in law and policy reform processes, specifically on women discriminated by the land law and the Muslim and Thesawalamai personal laws.[5] The commitment was mainly in respect of women's participation in the law and policy reform process to promote an open, transparent, accountable process. It was also to enable monitoring of progress by relevant stakeholders in order to track the law reform process. The other thematic area focused on was non-discrimination in formal and informal employment sector for women. It was a policy-focused commitment that emphasized public consultations on proposing guidelines on protection of women in formal and informal sectors and publishing information on discrimination in employment for greater transparency and accountability.

Law reform in Sri Lanka is a long drawn out process. Rarely is there any sustained civic engagement. The women commitment had a strong focus on law reform that benefitted women from marginalized communities. Muslim personal law reform was integrated into the commitment. However, this was an ambitious commitment, which asked for women engagement in a law reform initiative that had already been under debate for many years due to the sensitivities involved. The Ministry of Women's Affairs held discussions with

(3) Retrieved from https://www.opensocietyfoundations.org/projects/legal-empowerment, 20th March 2019.

(4) Opening Justice: Access to Justice, open judiciaries, and legal empowerment through the Open Government Partnership, Peter Chapman, Sandra Elena, Surya Khanna, Open Government Partnership staff, Working draft, July 2018, p. 4. Retrieved from https://www.opengovpartnership.org/sites/default/files/opening_justice_working_draft_public_version.pdf, 21st March 2019.

(5) Thesawalamai law applies to Tamils that inhabit the Province of Jaffna.

community women leaders at district level on discriminatory provisions in the Muslim law.[6] In addition, several smaller meetings were held at the Ministry to discuss reforms in the Muslim law in order to include community views.[7] The second aspect of the commitment was the reform of the Tesawalamai personal law. The Ministry of Women's Affairs held community meetings to elicit views of women from the Tamil community on suggested law reform. The suggested amendments to the law were submitted to the Ministry of Justice for further action.[8] Transparency of process and civic engagement was achieved to an extent through these consultations.

6. Women and Access to Justice

An enabling legal framework is the first step in accessing the justice process. For example, for women to ensure that their right to ownership of land is secured necessarily needs as a prerequisite, land laws that ensure equality and non-discrimination between men and women. The first NAP had a commitment on reform of the land law to ensure non-discrimination in land ownership and rights of succession. The commitment sought to ensure that a draft amendment to a land law that has been in the pipeline for many years was brought to Parliament. Another aspect of the commitment on land sought civil society participation to bring in a law or regulations to grant co ownership in state land distribution. These land laws and procedures, if amended would facilitate women's access to justice by giving women equal rights to own and alienate land.

The first OGP NAP sought to ensure that women have a voice in reforming of the land law, to ensure that their views are included in the formulation of an amendment to the law. This was to be done by having consultations among civil society and government representatives, thereby ensuring participation and transparency in the law reform process. Access to justice for women was a priority in the formulation of the commitment on women in the first OGP NAP. Another aspect of the commitment was the emphasis on the need for public consultations in the reform of the Muslim personal law. The need for Muslim women to voice their concerns on amendments to the law was integrated into the commitment. This was a first step in accessing justice for Muslim women discriminated against under the Muslim law.[9]

(6) 'Open Government Discussion in Parliament', compiled by the National Committee on Women, Ministry of Women's Affairs and shared with the author on 20th October 2017 via email.

(7) 'Implementing the National Action Plan on open Government Partnership', National Committee on Women, Ministry of Women's Affairs and shared with the author on 1st August 2017.

(8) 'Implementing the National Action Plan on Open Government Partnership', National Committee on Women, Ministry of Women's Affairs and shared with the author on 1st August 2017.

(9) Retrieved from https://mplreforms.com/2018/09/02/the-right-questions/, 20th March 2019.

The second commitment on women was on increasing women's political participation in local governance structures. This objective was to be achieved through tracking of women entering politics at local level and ensuring that trained women are nominated for elections by male dominated party structures, among other milestones. The objective was to ensure a transparent and publicized political party process of nomination and track support to women who were contesting in local government elections. The inclusion of women in local level political leadership ensures that women's concerns are included and that local level initiatives necessarily include a women's perspective.

7. Women and Access to Justice as a form of Open Justice

At its most basic level, open justice reform consists of efforts designed to encourage greater accountability and transparency in justice systems, often through leveraging technology and innovation along with citizen participation. Such reform seeks to expand access to justice and ensure 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 towards governmental institutions. (10)

Open Justice for women includes the right to participate in law reform processes, where given laws discriminate against women and violate their socio economic and civil and political rights. Women have the right to be heard in these processes so that the first step in ensuring their right to access justice through laws that are gender sensitive, is met. Government legitimacy is established through transparent processes that are followed.

In order to facilitate women's access to justice through OGP principles, civil society needs to be strategic when it partners with government on formulating commitments. This is so even in the formulation of women commitments in OGP NAPs. Including a theme that is included in an OGP commitment on women in other national policy documents, for example, the National Human Rights National Action Plan (NHRAP), the Female Heads of Households National Policy, Women Headed Households National Action Plan is a strategic way to ensure that the achievement of milestones, goals and reporting by government counterparts is facilitated. This ensures buy in from government entities.

Another strategy would be to formulate OGP commitments based on what government agencies and ministries have included in their institutional annual workplans. When formulated in this manner, government bureaucrats do not regard it as cumbersome and entailing extra work to work separately on OGP related issues. Reporting at national and international level for governments is

(10) Surya Khanna, 'Exploring Open Justice, a New Frontier in Open Government Reform', retrieved from https://www.opengovpartnership.org/stories/exploring-open-justice-new-frontier-open-government-reform, 9th February 2019.

thereby facilitated. An example would be reporting to the CEDAW Committee every fours years upon states ratification of the UN CEDAW Convention. As one of the women commitments was based on the CEDAW Concluding Observations, this facilitates more streamlined reporting at least on the overlapping OGP NAP commitments that also intersect with Sri Lanka's obligations under the CEDAW Convention.

Access to data is a critical component to access justice. Access to data must be context based so that women from underprivileged communities are able to access data from varied open data portals. Websites of Ministries are rarely updated and this is a major challenge to accessing data, statistics or any other form of information.

8. Lessons for Sri Lanka's future OGP NAP formulation and implementation

The Cabinet of Ministers approved the 2nd OGP NAP on 22nd January 2019. It has a two-year life cycle from September 2019 to August 2021 and will come into operation in the near future. It has one extensive women commitment that includes the concerns of women in marginalized communities. The 2nd NAP too does not mainstream gender concerns into other commitments. The process of NAP making has not developed to a stage where the coordination of commitment formulation by government and civil society provides opportunities to mainstream gender. However, it is possible to bring in gender and women concerns into the rolling out of the NAP commitments. This requires concerted lobbying with civil society organizations and government counterparts to ensure that gender concerns are integrated into the design; implementation and monitoring of initiatives under the NAP and that gender concerns are kept high on the agenda in all OGP commitments. In order to monitor implementation of the commitment on gender, having gender indicators would be a useful tool to include in the NAP. This would ensure timely and effective implementation.

A comprehensive research study to ascertain what women want from an open government process could inform the formulation of a more strategic, more meaningful NAP that women will reap benefits from. Additionally, open justice commitments could be brought into NAPs that impact on women's access to justice. For example, different types of cases of gender based violence that have been decided upon, the status of these applications etc. can be made available in open data platforms.

The women commitment in Sri Lanka's second NAP specifically includes female heads of households (FHHs) and the need to ensure full implementation of the FHHs NAP that was formulated by the Ministry of Women's Affairs in partnership with UNFPA. This deliberate inclusion of FHHs in the NAP is to encourage government and civil society to include this marginalized group in the design of national and local level initiatives. The women commitments in

the first and second NAPs intrinsically contribute to gender equality through their focus on selected CEDAW Concluding Observations and the need for an accountable and transparent process to their implementation. The implementation of the women commitment in the second NAP needs to be systematically carried out in order to assess whether inclusion of a gender commitment in the NAP has effectively contributed to inclusion and gender equality.

The OGP can also be a useful implementation mechanism to track implementation of CEDAW Concluding Observations by states that have ratified the CEDAW Convention. For example, OGP principles of transparency, accountability and civic participation are important processes that bring in women's voices to law and policy reform commitments made under CEDAW by member states. Successful implementation also requires that civil society organizations have access to necessary data.

A separate commitment on women in an OGP NAP is a constant reminder to government officials and civil society that women need to be taken into consideration in the making of national action plans. Additionally, disability should be cross cutting. OGP principles cut across these groups and must influence the implementation of NAPs that incorporate the concerns of these marginalized groups. The process of co creation and inclusion of gender in the OGP process would also impact positively on other NAP making processes by giving visibility to gender concerns.

9. Conclusion

Civic participation, a cornerstone of OGP, is critical for bringing about reform to discriminatory laws and policies against women. Women's participation in these processes promotes good governance, democracy and adherence to the rule of law and provides women with a platform to voice their opinions and participate in decision making at national and policy levels and to push for transparency and accountability.

The quest for gender justice necessarily requires open justice principles to be adhered to. The improved second OGP NAP in Sri Lanka is another step towards facilitating access to justice for women. The making of the first NAP was fraught with a lack of understanding both among civil society and government institutions. It was a far from perfect process. Nevertheless, it was a stepping-stone to the formulation of the second OGP NAP, which had more buy in from all stakeholders, mainly due to a better understanding of the OGP process and the core principles of OGP.

OPEN JUSTICE PHILIPPINE CASE STUDY: TRANSPARENCY AND CIVIC PARTICIPATION IN THE SELECTION OF SUPREME COURT JUSTICES

MARITES DAÑGUILAN VITUG* - MARLON MANUEL**

1. Introduction and Context

The Philippines holds pride of place in the Open Government Partnership (OGP). It was one of the eight countries that founded it in 2011 during the presidency of Benigno Aquino III. So far, the Philippines has had three action plans but none of these addressed transparency and civic participation in the justice sector. In particular, the Philippines has made no commitments to improve accountability in the judiciary. What it focused on were opening up the budget process to strengthen fiscal transparency and initiating access to information through legislation by passing a Freedom of Information (FOI) Act. Having failed in the latter, the new president, Rodrigo Duterte, issued an FOI order in 2016 covering only the executive department. But an FOI bill remains pending in Congress.

While the OGP action plan missed out on the justice sector, the Philippines Development Plan (PDP) for 2017-2022 includes a full-fledged discussion of the problems of and strategic solutions to what ail the country's justice system. This is significant because it is the first time that a PDP does this. In past development plans, this sector simply merited a passing mention. Among the strategies laid out by the PDP, only one is linked to open justice: enhancing accountability through an engaged citizenry, specifically through surveys to determine access to justice and "satisfaction" with accountability mechanisms.

(*) Author of books on the Philippine Supreme Court and editor at large of www.rappler.com

(**) Former coordinator of the Alternative Law Groups in the Philippines and currently Senior Advisor to the Global Legal Empowerment Network, Namati.

In the Philippines, the OGP and the PDP could be significant in opening up the judiciary, which, historically, has been the least scrutinized branch of government. One indication of the culture of secrecy that wrapped the Supreme Court, the highest court in the country, is this: it set up a public information office (PIO) in 1999, after more than a century of existence. As the pressure of 24/7 media bore down on the Court, it recognized that, as an institution, it needed to deal with the media and communicate to the public.

Generally, media coverage of the Supreme Court has been limited to reporting on decisions of high-profile cases. Little has been written on court processes, why cases are delayed, financial records, ethical behavior and integrity issues of Justices, and how the Justices are selected. This has been the tradition on the Court with the belief that the Justices speak through their decisions. They closed themselves off to other areas of inquiry. Thus, for example, they exempted themselves from disclosing their assets statements although the law required this.

But the situation changed in 2012, after the historic impeachment of a Chief Justice who did not declare his actual net worth. Renato Corona was found to have hidden assets of more than P180 million (about US$3.5 million at the current exchange rate) prompting allegations of ill-gotten wealth.[1] Today, the media and the public—as long as they fulfill certain requirements—can request the Justices' assets statements. But the Court releases only summaries, not the complete declarations. This doesn't make the Justices fully compliant with the law, which mandates full disclosure of assets statements.

Another post-impeachment wave of change that swept over the Court was its financial transparency. The Court created a "transparency page" on its website and uploaded financial reports. [2] This was never done before.

Even if these changes in the Supreme Court coincided with the early years of the OGP, the Philippines failed to make use of this national momentum to include transparency in the judiciary in its commitments.

2. Supreme Court Appointments Watch: 2005-2012

Still, with a vibrant democracy—at that time the Philippines was known to have the most robust democracy in Southeast Asia—a few gains were achieved. Outside the OGP and the PDP for 2017-2022, before they came into being, civil society groups engaged a government agency to put into action what would become two key principles of open justice: transparency and civic participation. This case study focuses on the Supreme Court Appointments Watch (SCAW), a consortium of NGOs, and how it worked with the Judicial

(1) For a detailed discussion of the impeachment, see Vitug, Marites Dañguilan, (2012). Hour Before Dawn: The Fall and Uncertain Rise of the Philippine Supreme Court. Quezon City.

(2) http://sc.judiciary.gov.ph/transparency/

and Bar Council (JBC), which vets candidates to the judiciary, to make the selection of Justices to the Supreme Court transparent and participative.

The SCAW achieved four key results during a period of seven years, from 2005 when SCAW was organized, up to 2012, when it concluded its activities. These are unprecedented:

- Holding of public interviews with applicants for the Supreme Court.
- Having these covered by the media.
- Participating in interviews by sending questions both from SCAW and the public.
- Making the JBC voting process more transparent: it disclosed how its members voted and released excerpts of minutes of their meetings on the selection process.

How did SCAW do this? It focused on three main activities:

1) Consistent public advocacy through media statements, press conferences, interviews.
2) Engaging the JBC by working with members who were receptive to reforms.
3) Mobilizing interest in JBC and appointment of judges/justices through information campaigns.

In succeeding pages, this paper delves into a more detailed discussion of SCAW, its history, activities, challenges, and impact. The authors also assess SCAW's seven-year performance, looking at the JBC and its interaction with SCAW to show how changes came about as a result of these dynamics and the context in which these took place.

3. History of SCAW

SCAW was born in the early years of 2000 when the Philippine judiciary was on the cusp of change, brought about by the new Chief Justice, Hilario Davide. Appointed in 1998, he led the Court for seven years and inspired reforms. At the time, the air was filled with hope and anticipation because immediately before Davide's appointment as Chief Justice, the reputation of the judiciary was at a low. No less than then President Joseph Estrada called the judges "hoodlums in robes." Estrada's presidency, however, was short-lived. He was ousted in a people power revolt in 1998. Soon after, Davide vowed to restore the credibility of the institution and make it transparent. He was a well-known personality who helped usher in democracy in 1986 as part of a body that drafted a new Constitution after the dictator, Ferdinand Marcos, was deposed in a popular revolt.

"He demystified the gods of Padre Faura [street in Manila where the Supreme Court is located], he was a charismatic leader and he partially changed the

culture [of the Court]," said Carol Mercado, program officer of the Asia Foundation, which funded the SCAW.[3]

Under Davide's leadership, the Action Program for Judicial Reform (APJR) was put together and one of its aims was to bring about transparency and accountability in appointments to the Bench. Thus, when Davide was about to retire in late 2005, Mercado gathered a few NGOs together primarily to focus on the appointment process for the judiciary. "One way to ensure integrity in appointment of justices was to watch over the process," Mercado said. The Alternative Lawyers Group (ALG) led by Marlon Manuel, the Transparency and Accountability Network (TAN) headed by Vincent Lazatin, and the Lawyers' League for Liberty (Libertas), a legal reform advocacy group led by Roberto Eugenio Cadiz, composed the core of SCAW.

On its first year, the ALG, TAN, and Libertas worked with partners such as the Association of Law Students of the Philippines, the Philippine Association of Law Schools and the Integrated Bar of the Philippines (IBP) and held a series of forums nationwide to raise awareness on the importance of appointments to the Supreme Court. Initially, the IBP was part of the core group, but, eventually, became inactive primarily because the IBP is represented in the JBC, and in some cases, would make endorsements for candidates. This put it in a conflict of interest situation, according to leaders of the IBP at that time.

4. Goals and Activities

In its 2012 report assessing SCAW[4] , the Asia Foundation spelled out the ultimate goal of SCAW, which was to work for greater transparency and accountability of the judicial appointment process. In line with this goal, SCAW achieved the following major objectives:

- Raised the level of public awareness about the judicial appointment process.
- Contributed to the formulation of institutional mechanisms that will strengthen the transparency and accountability of the judicial appointment process.
- Enhanced venues for citizens' participation in the judicial appointment process.

SCAW undertook these activities:

Public information campaign. SCAW focused on increasing public awareness about the appointment process, informing them about how they can participate in the process and also about the candidates for the Chief Justice position through the following:

- Roundtable discussion with experts on standards that should be used by the JBC in screening candidates and formulated questions that could be asked

(3) Interview with Vitug, Jan. 4, 2019.

(4) Final Report for the Asia Foundation, Supreme Court Appointments Watch (SCAW) 2012 (Period Covered: July 1, 2012 – September 15, 2012).

by the JBC during interviews. SCAW also presented a proposal for a score sheet that could guide the JBC members in the final voting.

- Forum on the appointments process.
- Profiles of candidates were prepared and released to the media and the general public. Notes on the public interviews were also prepared and disseminated through various modes, including social networking vehicles (Twitter, Facebook).
- Media campaign via appearances and interviews of SCAW representatives on radio and TV and through press releases.

SCAW relied on the available information on the candidates based primarily on their submitted personal data sheets (PDS). At one point, SCAW commissioned a research on the background of the candidates. The information gathered from the PDS and the research was then presented to the media and widely disseminated through SCAW's network of organizations. SCAW also prepared and presented to media profiles of the Supreme Court associate justices who were candidates for the position of Chief Justice, which included a comparison of their votes and decisions on certain controversial cases brought before the Supreme Court.

Participation in the Appointment Process. SCAW engaged members of the JBC and worked with them to improve transparency in the selection of judges and justices:

- Reviewed JBC rules on live media coverage of public interviews.
- Met with members of the JBC to present a list of questions generated from roundtable discussions.
- Monitored JBC processes, attended public interviews, and took notes. SCAW prepared a summary of the interviews which it distributed to the members of the media and disseminated online.

Overall, SCAW was an active citizens' monitor and pushed for the enhancement of the transparency and accountability of the process. The Asia Foundation, in its report, noted significant improvements. For example, "live media coverage made the selection process more transparent and encouraged the participation of the public as manifested through comments in radio and TV programs and in social networking sites. The media coverage was complemented by JBC's opening of a Twitter account, which enabled the public to send questions for the candidates. During the interviews, the JBC members read some questions sent via Twitter. Combined with SCAW's public information campaign, these improvements contributed to the increased level of public awareness about the appointment process, and resulted in more active participation of the citizens in the process."

Moreover, "SCAW has maintained its cordial relations with the JBC. This engagement with the JBC gives SCAW a continuing opportunity to work for the

implementation of concrete recommendations for strengthening transparency and accountability of the appointment process."

Two members of the JBC confirmed this. Lawyer Milagros Fernan-Cayosa, a current member who is on her 8th year with the JBC, and Justice Aurora Lagman, former member, found their discussions with SCAW representatives helpful. "We were invited to meetings [by SCAW] and they suggested some reforms," Fernan-Cayosa said. "It is good to have validation and we need to know areas that need improvement."(5) For her part, Lagman observed(6): "They [SCAW] wanted to be sure that nominees to the Supreme Court are qualified. I gained much from their feedback and JBC became more transparent as a result of their suggestions. For one, we entertained questions from the public." Both Fernan-Cayosa and Lagman want SCAW to continue "so that somebody is watching" (Fernan-Cayosa) and "JBC members would be more careful" (Lagman).

5. Judicial and Bar Council

The JBC, for its part, came into being when the new Philippine Constitution took effect in 1987. During the martial law years (1972-1986), it was President Marcos himself who chose the Supreme Court justices as well as the lower-court judges. His was a one-man rule, disregarding Congress in the process of selection.(7) Before this time, Congress, via a commission on appointments, screened judges and justices. While it was a public process, it was rife with allegations of horse-trading.

When democracy returned to the country in 1986, President Corazon Aquino had a new constitution drafted. "Responding to the flawed system," the constitutional body adopted an innovation, which was the JBC.(8) It took away the process from one man, the president, and also from Congress. Instead, the JBC was composed of representatives of various sectors—retired Supreme Court justices, the Integrated Bar of the Philippines, a mandatory organization of lawyers, the legal academe, and the private sector—and Congress, particularly the chairs of the Senate and House of Representatives committees on justice who alternated in the JBC. The Supreme Court Chief Justice headed the JBC and the Court supervised it.

The Asia Law Initiative assessed: "While perceptions varied, there was general agreement that, while politics can never be totally removed from judicial selection, the JBC process is far better than previous process of judicial appointment solely by the President, as was the case until 1987. Transparency has in-

(5) Interview with Vitug, Dec. 18, 2018.

(6) Interview with Vitug, Dec. 19, 2018.

(7) Gavilan, Jodesz, Rappler, "Before the Judicial and Bar Council, how were justices chosen?" Dec. 11, 2017.

(8) Ibid.

creased with the establishment of a JBC website (www.jbc.supremecourt.gov.ph) on which it announces vacancies, including names of judges and justices who will retire in the current year, the list of applicants, and interview dates."[9]

Unlike in the past, the JBC published the list of candidates for the judiciary, scheduled them for public interviews, and made the short list public from where the President chose whom to appoint. JBC also encouraged the public to report information about candidates.

But the JBC was slow to follow its own rules on the conduct of public interviews which it made mandatory in 2000. Thus, one of the first things that SCAW did was to ask JBC to implement its rule on public interviews and mobilized groups to attend these. It was only after years of consistent advocacy from SCAW that the JBC decided to hold these interviews. At the start, though, the JBC simply did a token effort.

In December 2005, SCAW gathered at the Supreme Court hoping to witness the first- ever public interview of candidates for the chief justice. It turned out that twelve (out of 15) sitting justices asked for the cancellation of the public interview. [10] The resistance was strong because it was going to be a first in the history of the Supreme Court. The JBC, to SCAW's dismay, granted the justices' request to call of the public interview.

The next opportunity for a public interview of candidates for Chief Justice was to take place a year later. SCAW, once again, was on the frontlines urging the JBC to conduct public interviews, both in press statements and in a letter to the Chief Justice, Artemio Panganiban, who chaired the JBC. In addition, SCAW wrote Panganiban requesting live media coverage of these interviews.

In 2006, the air was heavy with anticipation as the public interview of candidates for the next Chief Justice was scheduled. But, again, this did not push through as five candidates, who were all sitting justices, snubbed it. Panganiban said that these justices had each written a letter "opting not to be present and that their applications or nominations be decided on the basis of their track record, written decisions, and accomplishments submitted to the JBC."[11] In a setback to judicial transparency, the public interview didn't take place for two years, 2005 and 2006. This would only happen in 2010.

Meantime, the SCAW pushed for JBC's adoption of an open-voting policy, meaning, that the JBC disclose how each member voted, and the use of score sheets to make the selection rigorous. It also continued to push for live media coverage of the interviews—all this through the media and letters to the JBC. One of the factors that contributed to SCAW's eventual success was its collaboration with reform-minded JBC members.

(9) Asia Law Initiative, Judicial Reform Index of the Philippines, March 2006.

(10) Letter of SCAW to Chief Justice Hilario Davide, Dec. 8, 2005.

(11) Philippine Center for Investigative Journalism, "5 Chief Justice candidates snub public interview," Nov. 29, 2006.

In 2008, Conrado Castro, a JBC member who represented the IBP, wrote Chief Justice Reynato Puno proposing an open-voting policy. This was discussed in a JBC meeting[12] and it met with resistance from others in the JBC. In response, Regino Hermosisima, who represented the retired Supreme Court justices, wrote the chief justice arguing against making the votes of council members public. In the end, JBC approved the open-voting system. They released tally sheets of the JBC members' votes during their closed-door deliberations to the public.

The year 2009 was significant as seven vacancies took place in the Supreme Court with the retirement of justices. "With the growing public discontent with then President Gloria Macapagal Arroyo, the SCAW again sounded the call for vigilance, especially about the impact that these next series of appointments would have on the independence and credibility of the Supreme Court," the Asia Foundation said. [13]

With vigor, SCAW monitored the selection process of seven new justices; reiterated its recommendations to the JBC on open voting and public interviews. SCAW submitted questions to the JBC for candidates to the Court, attended all public interviews, documented these and posted its notes and JBC tally sheets in websites as well as other social networking sites.

In response, the JBC released minutes of its meetings wherein they voted for top three candidates for the Supreme Court vacancies, their tally sheets, and process of selecting shortlisted candidates. This openness continued till 2010. And finally,

the first public interview of candidates for Chief Justice became a reality on the same year. Again, SCAW attended this and documented the interviews. JBC, however declined live coverage by the media.

After persistent follow-ups by SCAW with support from the media, the JBC agreed to a pooled live media coverage of public interviews for Chief Justice in 2012. The political atmosphere contributed to this shift as the Chief Justice at that time, Renato Corona, was impeached, a first in the history of the country. Corona was found to have undeclared his true wealth in his assets statement, as required by Philippine laws.

As the Asia Foundation observed:

> "With the removal of Chief Justice Renato Corona on May 20, 2012, on impeachment for culpable violation of the constitution and betrayal of public trust, the limelight shifted from the impeachment trial to the selection process for his successor. The impeachment of Corona created not only an opening within the

(12) Letter of Justice Regino Hermosisima Jr. to Chief Justice Reynato Puno, Oct. 3, 2008.

(13) Asia Foundation 2012 report.

> Supreme Court for a replacement, but also an opening for reform efforts for the enhancement of the transparency and accountability of the appointment process, and for greater citizens' involvement and active participation in the exercise. With the clamor for exacting the highest standards of integrity from high-ranking government officials, in general, and from the Chief Justice and members of the Supreme Court, in particular, there was a momentum for active public oversight of the appointment process."(14)

In late 2012, however, JBC returned to its old practice of not allowing pooled live media coverage of interviews because they reasoned that it became distracting. Instead, the Court live-streamed the interviews and allowed only the government TV station to cover from inside the venue. All other news organizations would hook up to the live video of this TV station as well as the livestream.

6. Assessment

SCAW's success in hurdling the challenges that it faced, especially during its early years, can be attributed to a number of notable factors.

Composition of the group. A major factor that contributed to the gains of SCAW was the composition of the group. The convenor organizations (ALG, TAN, Libertas) were national networks with vast partnerships among civil society organizations throughout the country. They were able to reach out to their members and partner organizations, facilitating dissemination of information about the JBC and the appointment process.

More importantly, the ALG and Libertas were groups of lawyers who were working closely with their partner communities and organizations, while TAN, on the other hand, was a coalition that was known for its programs on transparency and accountability. This combination provided an excellent platform for the nature of SCAW's advocacy. To a large extent, SCAW acted as a vital link between the JBC and the public.

Engaging media became a key strategy of the campaign. SCAW achieved considerable success in directing the attention of media, and consequently, the general public towards the JBC. With a number of controversial policies of then President Gloria Macapagal Arroyo questioned before the Supreme Court, SCAW seized the opportunity to emphasize the need to ensure the integrity of the appointment system, as an indispensable part of ensuring the independence of the judiciary. SCAW always highlighted Arroyo's unique opportunity to make what at that time was a record number of appointees to the Supreme Court.

(14) Ibid.

Clarity of objective. The second factor that contributed to SCAW's success was the clear objective of the program. As SCAW would always clarify in its information campaign, the group's focus was on the appointment system, not on the candidates. Ideally, of course, enhancing the integrity of the system should result to increasing the quality of the appointees. But SCAW never endorsed or opposed any candidate, except in cases when the candidate was clearly disqualified based on the JBC's rules.

In one case, a candidate was already more than 65 years and could no longer be able to serve the court for at least five years, if appointed. Under the JBC rules, such candidate is disqualified from being nominated for appointment. Through a letter to the JBC, SCAW had to point out this disqualification. In another case, SCAW wrote the JBC to call its attention to one candidate's pending case at the Office of the Ombudsman, which, under the JBC rules, constitutes a disqualification.

Credibility. Third, with SCAW's concentration on the process, the group's credibility was established. It was seen as an independent coalition that was motivated by the goal of strengthening the appointment system, not as a group working for the appointment of certain candidates. SCAW's credibility and independence proved to be helpful in its sustained engagement with the JBC.

Even if some members of the JBC opposed SCAW's proposals at the start, especially on the issue of announcing the votes of the members, the JBC was generally receptive of SCAW's participation in the appointment process. Through the years, SCAW had developed a good working relationship with the JBC, especially with the regular members (the members who were not government officials).

Overall, SCAW was successful in engaging the JBC in a way that was not perceived as antagonistic, but, rather, as supportive of the JBC's constitutional mandate to ensure the competence, integrity and independence of appointees to the judiciary.

7. Challenges

The culture of secrecy that has traditionally characterized the Supreme Court and its proceedings, as shown in this case study, extended to the JBC. In fact, with the 1987 Constitution's shift from the congressional scrutiny of the President's appointments of Supreme Court justices to the JBC's screening of candidates, the public (and more politicized) appointment process gave way to a more secluded mechanism. In that sense, the process became less open. But the JBC's role was not insignificant, compared to the role of the Congress in the previous set-up.

Before the 1987 Constitution, the President made an appointment and then submitted such appointment to the Congress for confirmation. Aside from

removing the role of Congress, the new process reversed the sequence and made the selection of nominees the role of the JBC. Under the current setup, when the President appoints one of the nominees in the JBC-prepared short list, the appointment is final and is no longer subject to congressional review. The JBC's selection of the final nominees (at least three per position, under the Constitution), thus constitutes the only limitation on the President's power to appoint.

Some may consider the composition of the JBC as adequate in representing the public in the process. The composition, after all, is a combination of different groups (the Supreme Court, the Congress, the Executive, the bar, the retired Supreme Court justices, the legal academe, and the private sector).

Despite the supposed diversity of representation, however, the JBC composition still limits the nominations process to an elite group of lawyers and judiciary insiders. The head of the JBC is the Chief Justice. The Congress is represented by whoever is the Chair of the Committee on Justice of either the House of Representatives or the Senate (a position which is always given to a lawyer legislator). The Executive is represented by the Secretary of Justice, also a lawyer. The representatives of the bar and the legal academe, of course, are also part of the legal community. Interestingly, even the position reserved for a representative of the private sector has always been occupied by a retired member of the judiciary.

With this situation, the key challenge for SCAW was to open up the process to citizens—not only to members of the legal community, but to the general public. Opening up the process entailed three essential interrelated actions as explained earlier. First, making the procedure more transparent. Second, creating venues for public participation in what was otherwise an exclusive and secretive procedure. Third, encouraging active citizen engagement in the process.

Enhancing the transparency of the process involved efforts both from within and from outside the JBC. The latter was the easier part as it primarily required the conduct of a public awareness campaign on the important role of the JBC, the constitutionally mandated process, and the need for citizens' active engagement.

Enhancing the transparency of the process from within proved to be more difficult as it required changes in policies and procedures that had been in place and implemented for almost two decades. As explained earlier in this case study, the policies on conducting public interviews, opening the proceedings to the media, and publicizing the votes of the JBC members, became possible only after a long period of persistent advocacy.

The call for public vigilance and active engagement in the appointment process entailed considerable logistical burden to SCAW. Even before the JBC started the conduct of public interviews, SCAW called on the public to send

information (both favorable and derogatory) about the candidates. Without the public interviews, however, SCAW had to exert efforts to make the public aware of who were being considered for nomination to the vacant position.

These challenges continue to this day. There is a continuing need, therefore, to safeguard the gains that had been achieved, and to prevent the system from closing itself again. Indeed, there were a number of disappointing setbacks, attempts to return to the old closed system. Recently, for some reason, the JBC withheld the announcement of the members' votes. Some incumbent Supreme Court justices have revived the previous argument that they should be exempted from the interviews if they are applying for the Chief Justice position as they are already in the court.

Overall, SCAW has proven to be an effective strategy of civic engagement. There is no doubt that it should be continued and replicated. Unfortunately, SCAW ceased its activities in 2012 when funds were no longer available as priorities of donor institutions shifted.

There were plans, though, to expand the initiative to cover the entire judiciary and convert SCAW into JAW or Judicial Appointments Watch. But the needs of such expanded program, in terms of human and financial resources, could not be matched by the respective capacities of the convener organizations. Thus, the effort did not materialize.

Beyond SCAW, there are notable efforts that are expected to improve the judicial appointment process. The Philippine bar association has recently started an initiative of assessing judges regularly. If institutionalized through the bar association's chapters nationwide, this program will feed into the nomination and appointment process, and will help the JBC assess the qualifications of the candidates.

Within the JBC, there are continuing discussions on how to improve its rules. This emphasizes the importance of ensuring that those who will be appointed as regular members of the JBC are reform-minded and independent.

8. Impact: institutionalized reforms

When SCAW started, there was no precedent for the program. No pattern from any previous engagement with the JBC or with the appointment process was available. Simply put, SCAW was a trailblazer in an area that at that time seemed closed and unwelcoming.

With the unrelenting advocacy and activism of its conveners, SCAW was able to build a strong constituency for reform, both in the JBC and among the citizens, which had collectively worked for reforms that would have lasting impact on the system.

The public interviews and the live media coverage of interviews were previously unimaginable. Today, they are regular features of the system. To some

extent, media has adopted the role of SCAW in vetting candidates. Today, media reports on the candidates' positions on previous decided cases, at least for those applicants who are incumbent justices of the Supreme Court or the lower courts.

In recent years, the combination of live media coverage and the popularity of social media further brought the process closer to the people and facilitated interaction between citizens and the JBC. During the interviews, some JBC members would read questions sent by citizens through Twitter.

All these are institutionalized reforms that are now difficult to reverse.

OPEN JUSTICE IN THE NETHERLANDS: AN OVERVIEW

MORTAZA S. BARGH* - SUNIL CHOENNI**
NIELS NETTEN***

1. Introduction to Open Justice

Gaining public trust, achieving transparency, stimulating innovations, and delivering economic growth have been considered as some of the driving-forces behind Open Data initiatives for government organisations in recent years. Traditionally Open Justice, which refers to making courts and their proceedings open and public so that what is done in the name of justice can be scrutinised and criticised, has been recognised even long before transparency became an important aspect of governance (McLachlin, 2014). Nowadays, the scope of Open Justice extends beyond simply court proceedings and judgments and includes also opening the data that are gathered within the administration processes and the judicial procedures of the whole justice branch of government. In addition to the rage of data sources and types, the scope of Open Justice has grown in terms of the objectives of Open Justice. Open Data initiatives have also gained momentum in the justice domain in the Netherlands. In this chapter we build on the results of, mainly, Bargh et al. (2016a; 2016b; 2016c; 2014) and provide an overview of Open Justice Data initiatives and their trends in the Netherlands.

This chapter is organised as follows. In Section 2, we elaborate on how the Open Data movement has impacted the justice domain and enhanced its scope beyond the traditional principle of Open Justice. In Section 3, we describe a number of Open Data initiatives in the justice domain of the Netherlands. Subsequently, we present the concept of Semi-Open Data and elabo-

(*) m.shoae.bargh@minvenbj.nl
(**) r.choenni@minvenbj.nl
(***) c.p.m.netten@minvenbj.nl

rate on its relevancy for partially opened justice domain data sets in Section 4. We discuss the current maturity status of the Open Data in the justice domain in the Netherlands and present our vision for its development in Section 5. Finally, we draw some conclusions in Section 6.

2. Open data in justice domain

With the advent of governments' Open Data initiatives, we argue that the scope of Open Justice is extended along, at least, two directions. Firstly, in the justice domain, the objective sought from being open is extended from the transparency principle, as sought in procedural and common law, to also the other principles of open government, namely: accountability, collaboration and participation (Jiménez-Gómez, 2017). Jiménez-Gómez (2017) coins the term 'Open Judiciary' to refer to this extended view. Secondly, we observe that the scope of the data has expanded from the data of court proceedings and judgments to the data gathered also within the administration processes and procedures of the whole justice branch of government. Elena and van Schalkwyk (2017) name court ruling data, statistics on operations, and budget and administrative data as the 'least' a judiciary should open. This set of data types, we conclude, is subject to expansion.

As a consequence of the second extension direction, we note that the data within the justice domain are generally gathered by various independent organisations involved in countries' justice domain. Lampoltshammer et al. (2017) use the term 'justice system' to refer to the (chain of) bodies in the apparatus of law, which are involved in creating data, from legislative texts to judicial decisions; and not just those being involved in courts. In the case of Dutch government's justice branch, the justice domain includes three legal systems pertaining to criminal law, civil law and administrative law. The independent organisations and agencies involved in, for example, Dutch criminal justice system include the Police, the Public Prosecution Service, the courts, the Central Fine Collection Agency, the Custodial Institutions Agency (i.e., prisons) and the Probation Service (van den Braak et al., 2013). Similarly, one can identify various organisations involved in other subbranches of Dutch justice domain, pertaining to civil law and administrative law.

For many years the justice administration and procedural data have been published by our organisation, i.e., the Research and Documentation Centre (abbreviated as WODC in Dutch) of the Dutch ministry of Justice and Security, in a report annually (Kalidien et al., 2016). On the other hand, an Internet site, called rechtspraak.nl, publishes Netherlands' court proceedings and judgments for criminal, civil and administrative cases regularly. In the following section, we will elaborate on these initiatives in more detail. As another example, the open justice initiative led by the California Department of Justice publishes a wide range of data types from various sources within the criminal justice system (like trends in arrests, crimes, death in custody, hate crimes, homicide, juvenile court and probation).

Considering the variety of the organisations involved in justice systems, we conclude that opening the data pertained to traditional Open Justice (i.e., judicial and court data) provides a limited view on such justice systems. This argument becomes even stronger when one notes that nowadays in certain countries the organisations involved in crime detection, prosecution, trial and probation have overlapping tasks and functions, which cannot easily be separated. In the Netherlands, for example, the arrest of a suspect does not necessarily lead to further prosecution. In some cases, the police may decide to handle the case by dismissing it, proposing a transaction, or imposing a punishment order. Moreover, the public prosecutor decides which cases to be prosecuted or dealt with by courts. The public prosecutor may dismiss a case, propose a transaction, impose a punishment order, or decide to send the case to court (van der Leij, 2016).

In summary, we argue that opening data in the justice domain (i.e., the justice branch of government) must cover the whole justice system of a country and not be limited to traditional judicial data. One may call this Open Justice in its extended sense or alternatively name it as Open Data in the justice domain. Consequently, Open Data in the justice domain not only contributes to realising the traditional vision of Open Justice, but also helps realising the progressive vision of Smart Justice, see (Netten et al., 2018) and the references therein.

3. Open justice initiatives in the Netherlands

There have been a number of open data initiatives in the justice domain in the Netherlands. In this section, we provide four examples of these Dutch open justice initiatives.

3.1. Justice administration and procedural data

Since 1985 the justice administration and procedural data (abbreviated as C&R in Dutch) have been published by the WODC in a report annually. The report includes the crime statistics at the national level in The Netherlands. These statistics are derived from the data provided by a large number of the organisations involved in the Dutch criminal justice system (van Dijk et al., 2018). The statistics cover various topics, related to crime and law enforcement (Kalidien, 2016) as well as local police and city councils (Smit and van Dijk, 2014) in the Netherlands. The statistics are presented in 36 tables with different and various attributes and records. The total number of the attributes is about 550.

3.2. Court verdicts

An Internet site called rechtspraak.nl (more precisely, https://www.rechtspraak.nl/) publishes Netherlands' court proceedings and judgments for criminal, civil and administrative cases regularly. The site offers several alternatives

to search for/in court proceedings. There is a manual available on the site that guides and supports users to search for cases. One can search by means of a number of keywords (e.g., murder case and civil case) or a number of criteria such as judgements, date of verdict, date of publication, jurisdictions and the type of judging organisation (e.g., the court of appeal).

We estimate that the court database of the site rechtspraak.nl contains about 473.000 cases currently. This estimation is based on two queries, posed to the site. In the first query, we searched for the term 'the' via the search engine and in the second query we searched for all cases between 1 February 1919 and 31 January 2019. The site replied with "473031 cases" to both queries. Note that the cases published on the site Rechtspraak.nl are only a fraction of the cases treated by the Dutch courts. The courts are responsible for placing the judgments and determining which verdicts can be published on the site. The decision for publishing these judgments and verdicts is based on a number of criteria such as: Being concerned with the courts of appeal or the supreme court, having media attention, relating to criminal justice cases with an imposed unconditional prison sentence of at least four years, relating to offences against human lives (such as murder, manslaughter and culpable homicide), relating to European Law and being issued by the EU court, or being concerned with those court rulings that could become a directive for other future cases.

The site provides also information about different courts and other judging organisations in the Netherlands, like court of appeal or the supreme court. Furthermore, the site is targeted for different type of users, i.e., there are separated interfaces for barristers, lawyers and civilians.

3.3. Police open data

Via the portal *data.politie.nl* the Dutch Police publishes its data related to registered crime, police performance and police operations. The published data are public, free of charge, royalty free, according to open standards, and easily accessible. Via the portal one can easily compile tables and graphs. A user that accesses the site *data.politie.nl* is able to select one of the following themes: business management, crime, and police performance. Business management includes the police data on Human Resource Management (HRM) indicators. These HRM indicators are presented nationwide and per organisational unit (note that there are 14 organisational units of the Police in total in the Netherlands). Using a topic filter, the user can see the data on absenteeism, organisational strengths, and non-organisational strengths. The second theme, i.e., the crime theme, presents the numbers of various crimes registered by the Police monthly. These data include also the crime types and the locations of the crimes. The data are presented in both tables or graphs. The third theme presents some data on police performance indicators at a national level or regional level (i.e., for municipalities). Example indicators are response times to emergency calls and response times on

identity checks. All data sets available on the site are easy to export to a file in html or csv format.

3.4. Other examples

The Dutch government uses the web portal *data.overheid.nl* to publish data about 17 government related themes, such as finance, culture and recreation, education and science, traffic, social security themes. Two of the themes are related to the Dutch justice system, namely: *public order and safety* theme and law theme. Next to each theme, the number of the data sets available for that theme is given. The themes with the highest number of data sets are *nature and environment, economics, and governance* themes (ranging between 2000 and 4000 published sets). The public order and safety theme and law theme are at the other side of the list, with 153 and 62 datasets published, respectively.

Selecting a theme guides the user to a sorted list of the datasets pertaining to that theme. If required, several filter options can be applied to reduce the list. One of the options is to select the publisher of the data, such as the Police or Statistics Netherlands. When a dataset is selected, a general description of the data set is shown and also other meta data about the data set are given, such as the source and the link that gives access to the data set. For downloading a data set, the user can usually opt for exporting the data in a particular format (like html, csv or gml).

Dutch municipalities frequently publish data pertaining to different social topics within their municipalities. Beside via the *data.overheid.nl* portal as mentioned above, municipalities publish their data pertaining to, for example, the districts and neighbourhoods within their municipalities via other Internet sites. For example, *denhaag.buurtmonitor.nl* is a web portal of the municipality of the Hague that publishes some data on different themes at the district and/or neighbourhood level. In addition, the site provides some concise reports with statistical information about the development of the district or neighbourhood on a particular theme, like poverty or crime. One of the themes in the web portal of the municipality of The Hague in concerned with the quality of life and safety. Within this theme, the data about crime and disorder are presented. The user has the option to filter these data per year, per type of offense, and per district or neighbourhood. It is easy to export these data to a file in excel or csv format.

4. Semi-open justice domain data

Many public organisations, particularly those in the justice domain, have been hesitant and unable to open their data in a way that fully satisfies all Open Data requirements, e.g., the data being opened as raw as possible (or as they are), for everybody, timely, with primacy, permanence, with appropriate metadata, etc. These hesitancy and inability are the case where, for example, the data to be opened have inconsistent, imprecise, uncertain, missing, and in-

complete data objects (thus, having low quality), have private or business sensitive information (conceivably when combined with other datasets or background information), or have proprietary and unstandardised format and semantics. These issues and deficiencies often exist for the data in the justice domain (van den Braak et al., 2013; Kalidien et al., 2010). Opening such data according to Open Data requirements (i.e., as they are, to the public, etc.) may lead to various problems such as privacy disclosures, sensitive business information disclosures, misinterpretations and misleading outcomes, and no or low economic growth. Consequently, organisations could not open such data according to the Open Data criteria, despite their willingness to share their data with some modifications and edition, in a limited scope (e.g., discoverable online but not downloadable), or in a PDF (Portable Document Format) format.

There are, however, many data opening initiatives, particularly in the justice domain, that partially satisfy the Open Data requirements. Through investing in time, efforts and resources, organisations can eliminate data sensitivity, improve data quality, harmonise data format, and create appropriate metadata for the data. These operations, however, not only inflict extra costs on organisations, but also result in opening only processed data. Both aspects (i.e., being costly and being modified) quite often violate some basic requirements of Open Data. To make these partially Open Data initiatives visible, Bargh (et al., 2016b, 2016c) coin the concept of Semi-Open Data to mark those data opening initiatives that do not fully adhere to all Open Data requirements, while promoting (some of) Open Data objectives. In this section, we elaborate on the motivation for and the concept of Semi-Open Data and present an example from the Dutch criminal justice system that can be characterised as Semi-Open Justice Data.

4.1. Motivations for Semi-Open Data

A large number of public organisations, particularly those in the justice domain, put enormous amount of efforts in order to address the privacy, misinterpretation and misleading challenges and do share a modified form of their data with the public. But these data sharing initiatives are not classified as Open Data. For example, the shared data are processed, aggregated, and offered to specific data consumers (e.g., scientists) in order to protect privacy of data subjects or to enhance the quality of data. Despite all these efforts, such organisations cannot position themselves as Open Data compliant and therefore cannot demonstrate their true dedication towards the ideals and objectives of Open Data in being, for example, transparent and supportive of innovations and economic growth. This (negative) image can be costly for public organisations, as they may lose the public trust and the benefits of well-informed societies and citizens. Being unable to share their data according to the full requirements of Open Data and not being recognised when sharing their processed data are two sides of the same problem that public organisations, particularly those in the justice domain, face currently.

One cannot consider opening of processed and not-for-free datasets as Open Data, while they do serve the same purposes of Open Data to some degrees. For example, entrepreneurs can purchase the processed data to make innovative services and products, leading to economic growth. Independent domain experts and the public can learn about public organisations by using the (high quality) processed data and can examine whether the public organisations adhere to their missions as well as to existing laws and regulations. As such, not-fully-compliant Open Data initiatives do also aspire and drive individuals, governments, and businesses for improving their existing or devising new policies, services, products, and processes.

One way to address the abovementioned problem is to acknowledge those not fully Open Data compliant initiatives, which basically push the frontiers of information sharing towards the ideals of Open Data. Acknowledging these partially Open Data initiatives, makes the public organisations behind those initiatives and their efforts visible within the Open Data landscape. This visibility not only encourages the organisations behind such initiatives to continue opening (more of) their data, but also provides a more realistic view on the landscape of Open Data (Bargh et al., 2016b). Recognising, acknowledging, and encouraging these initiatives are particularly important in the justice domain where it is often infeasible to meet all requirements of Open Data.

4.2. Definition of Semi-Open Data

To make partially Open Data initiatives visible, Bargh (et al., 2016b) coin the concept of Semi-Open Data to mark those data opening initiatives that do not fully adhere to all Open Data requirements while promoting (some of) Open Data objectives. More specifically,

> "Semi-Open Data paradigm include those data sharing solutions that aim at Open Data objectives (like transparency, compliance, innovation, decision support, cost reduction, participation, and collaboration) but do not fulfil all conditions of Open Data" (p. 10, Bargh et al., 2016b).

As such, the term Semi-Open Data refers to a wide spectrum of data sharing initiatives that fall between two extremes of closed/confidential data and Open Data. A main step towards making Semi-Open Data initiatives visible is to indicate their positions on the spectrum between the two extremes of closed data and Open Data. In other words, one should assess the degree of adherence of these Semi-Open Data initiatives to the requirements and thus objective of Open Data. In (Bargh et al., 2016b) we use the term "degree of openness" to refer to how much Semi-Open Data initiatives adhere to the requirements of Open Data and provide a method for a systematic assessment of the degree of openness of a dataset shared by an organisation. To this end, the devised method assesses the degree of openness of Semi-Open Data initiatives based on the Open Data requirements, which, in turn, are based on the Open Definition (Open Definition, 2018). Unlike most existing assessment

methods that make a binary decision about whether or not a data sharing initiative fulfils all requirements of Open Data, the proposed method adopts a multi-dimensional multi-level measurement approach to quantify the degree of openness of Semi-Open Data initiatives in terms of their adherence to the Open Data requirements. As such, the method provides a more granular indication of openness with respect to that provided by exiting binary assessment methods.

4.3. Example case

The WODC publishes its funded research data directly or indirectly via a portal managed by a Trusted Third Party (TTP). This TTP is a national organisation called Data Archiving and Networked Services (DANS). DANS was setup in 2005 by the Dutch government to encourage governmental institutions to use DANS' infrastructures and services for opening government information to the public. At the moment, DANS is used to archive some of WODC's anonymised research data. Moreover, DANS is involved in data access authorisation process for deciding whether to grant someone access to a dataset or not, see (Bargh et al., 2014; 2016a).

To share the research centre's datasets with scientists, the WODC consider the datasets of completed research for dissemination if they are in compliance with some criteria such as not being confidential, not being reused by the centre for monitoring or longitudinal research, not being insufficiently representative, and not being unreliable/invalid. After uploading an anonymised dataset and its metadata to the DANS servers, a data requester, e.g., a scientific researcher, can use the metadata at the DANS site to find about the centre's datasets. If interested to download a dataset, the researcher fills in a web form at the DANS's website, and DANS sends a data request derived from the filled Web form to the WODC via email. At the WODC, the data request goes through a rigorous procedure to authorise sharing the dataset. If the access is granted, DANS delivers the data to the data requester via email.

Ideally an open dataset should be open for everybody. In the example mentioned here, the datasets are uploaded to some authorised scientists. This is a typical case of Semi-Open Data as defined in the previous subsection. Along this dimension of 'for the public', according to definition of Semi-Open Data (Bargh et al., 2016b), one can define a number of ordinal levels starting from 'share with no one' to 'share with the public', corresponding to closed (or confidential) data and Open Data settings, respectively. In the case of data sharing via DANS mentioned above, there is an intermittent level between these extreme levels, namely 'share data within a specific group'. One can define also other intermittent levels in practice, such as 'share data within a department of an organisation', 'share data within an organisation/ministry', and 'share data among a federation of organisations'. Providing data at these intermediary levels results in a case of Semi-Open Data.

5. Maturity of Open Data initiatives in justice domain

Current trends (and future directions) for Open Justice in the Netherlands can be characterised based on an e-government maturity model such as the one proposed in (Lee and Kwak, 2012). The maturity model of Lee and Kwak (2012) consists of five levels: Initial conditions, data transparency, open participation, open collaboration, and ubiquitous engagement. Using this maturity model, we reflect upon the current status of Open Justice initiatives in the Netherlands in Subsection 5.1 and sketch our vision for achieving higher maturity levels in the future in Subsection 5.2.

5.1. Current status

The two first levels of the model of (Lee and Kwak, 2012) are of particular interest for us to express the current status of Open Justice initiatives in the Netherlands. Level 1 is concerned with the initial conditions, focusing primarily on cataloguing and broadcasting information to the public with no or few metrics to assess public engagement. Level 2 is about data transparency, focusing on increasing transparency of government processes and performance by (a) publishing relevant, high-value, and high-impact data online and sharing them with the public; and (b) establishing data management functions as well as improving and assuring data quality in terms of accuracy, consistency, and timeliness. We notice that most public organisations in the Netherlands, particularly those in the justice domain, are in a transition state, moving from Level 1 to Level 2. At this transition state, a lot of efforts are put to improve the quality of data and share high-value and high-impact data with the public.

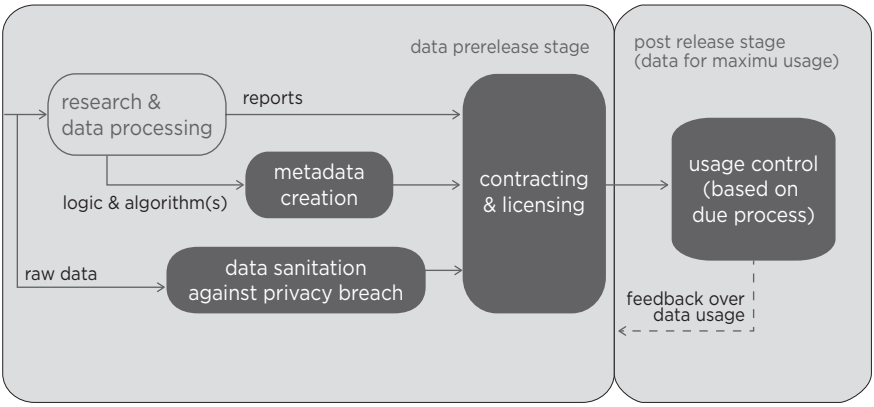
We also witness emerging initiatives within justice domain in the Netherlands, as in other countries, to promote the use of Open Data. These initiatives are often in the form of living labs to seek out how to make use of justice domain datasets in a responsible way, i.e., where the risks of, for example, privacy breaches and biased outcomes can be eliminated or contained at an acceptable level. Therefore, these living lab initiatives can be characterised as a form of Semi-Open Data, which aim at achieving open participation and open collaboration levels (i.e., moving towards the smart government vision) in the maturity model of (Lee and Kwak, 2012).

5.2. A vision for the future

In order to achieve the higher levels of the Open Data maturity model, e.g., open participation, open collaboration, and ubiquitous engagement levels; the barriers of Open Data must be settled. Two main Open Data barriers are related to privacy protection and data quality management. If these challenges are not addressed adequately, as we argued, personal data disclosure and data misinterpretation risks may arise. Therefore, we have envisioned an Open Data infrastructure for the Dutch justice domain, as depicted in Figure 1. The Open Data infrastructure encompasses technical and procedural measures to enable data opening. As shown in the figure, the raw data, which contain personal information potentially, are used for (scientific and/or statis-

tical) research and data processing. This activity results in aggregated data and reports, which do not contain personal information anymore, as well as enriched/processed data, which may contain some personal information. The aggregated data and reports are shared with the public freely.

Figure 1: An open data infrastructure envisioned for the Dutch justice domain



The raw data and enhanced data are also good candidates for being shared with the public as Open Data (as well as with specific groups such as scholars, scientists and data-journalists). These data, nevertheless, should be protected against privacy risks and the required trade-offs should be made and evaluated. The component called 'personal data sanitising' in Figure 1 contains all such data protection activities. For sanitising datasets against personal disclosure risks, privacy hackathons in a controlled environment can be arranged in order to find privacy leaks in the datasets in a responsible way. To this end, a close cooperation with universities and university colleges can be sought.

The data sanitation process needs to be well documented in the form of metadata so that data consumers can become aware of the processes done on the sanitised data. Such metadata prevent drawing wrong conclusions that otherwise may arise due to applying mitigation measures against data disclosure risks. All metadata, i.e., the data about the data, should also be opened as well. In addition to providing some information about the sanitisation process, the metadata concern the description of variables, possible variable values and semantics, data structures, the logic and the algorithms with which the data can be (or have been) processed.

In principle, Open Data can be reused without restrictions, i.e., there are no copyright, database rights or other rights applicable to the data. Nevertheless, we foresee that some licensing ((for example Creative Commons licenses) is needed to be applies in certain cases of data opening to regulate the conditions under which the opened data may be used. Using these licenses, one can build further privacy guarantees, especially if it cannot be excluded

that the opened data are traceable back to persons. We are aware that in such cases where restrictions have been imposed, we don't have Open Data in its traditional sense. Nevertheless, we think that even such a restrictive data opening could deliver some social benefits.

The Open Data infrastructure can also offer some tools in a toolbox for analysing opened datasets. In addition to a collection of data analysis tools, some guidance for choosing the right tool and a manual for using the chosen tool can be part of the infrastructure (note that such toolboxes are not drawn in Figure 1). The documentation about the toolbox and its tools can be dataset specific and, therefore, the corresponding documentation can be regarded as part of the metadata of the opened dataset. With using these tools and manuals, we expect, the use of Open Data can be stimulated.

Monitoring the proper data usage can facilitate opening those datasets that otherwise would not be opened due to the aforementioned concerns (i.e., the barriers of open data). Among others, the use of opened dataset can be monitored to see whether it is in line with privacy laws and regulations. Further, data consumers can proactively share their experiences about the potentials and pitfalls of the specific datasets they used and analysed. The results of the monitoring process and the data usage experiences can be fed back to the data opener, as shown in Figure 1, for improving the future open data initiatives.

6. Conclusion

In the advent of Open Data advances in the justice domain (i.e., the justice branch of government), we argued that opening data should cover the whole justice system of a country (i.e., not being limited to traditional judicial data) and the objectives of Open Justice include also accountability, collaboration and participation (i.e., not being limited to transparency). As a result, Open Data in the justice domain not only contributes to realisation of the traditional vision of Open Justice, but also helps realisation of the progressive vision of Smart Justice.

After describing a number of Open Data initiatives in the justice domain of the Netherlands, we elaborated on the concept of Semi-Open Data. In this way, we argued, one can recognise those data opening initiatives that do not fully adhere to all Open Data requirements, while promoting (some of) the Open Data objectives. Based on the open government maturity model proposed in (Lee and Kwak, 2012), we reflected upon the current status of Open Data initiatives in the justice domain of the Netherlands. Currently, these initiatives focus on cataloguing and broadcasting information to the public and on publishing high-value/impact data online and establishing data management functions (denoted by maturity Level 1 and 2 in (Lee and Kwak, 2012), respectively).

At the end, we sketched our vision for achieving the higher levels of the maturity model, namely: open participation, open collaboration, and ubiquitous engagement. We envisioned an Open Data infrastructure for the Dutch justice domain that aims at, among others, addressing two main barriers of Open Data (i.e., privacy protection and data quality management) as well as providing a number of data analysis tools and guidelines to stimulate the use of opened data sets in a responsible way. To this end, we elaborated on the need for monitoring the proper use of opened data sets and gathering the experience of data consumers about the datasets they used in order to promote the use of Open Data and to improve future Open Data initiatives. In this way, we foresee, the traditional vision of Open Justice can be enhanced to the progressive vision of Smart Justice.

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OPEN JUDICIAL DATA IN THE BALKANS

STEVAN GOSTOJIĆ* - MARKO MARKOVIĆ**

Abstract

Open government data has many benefits for the society. Among others, it increases transparency of government, helps in the fight against corruption, and creates new business opportunities. The potential of open data initiatives is still not fully realized, especially in the judicial branch of the government. In order to help realize this potential, we evaluate the state of open judicial data in the Balkans, identify weaknesses in the publishing process and suggest guidelines for improving quality and quantity of published data.

Keywords

open data, open justice, transparency, comparative analysis, Balkans

1. Introduction

The main reason for opening data is to increase transparency and accountability of government institutions and officials, increase their efficiency and effectiveness, and create new business opportunities and new jobs. Since the introduction of open data initiatives, there has been steady progress in opening government datasets. However, the process of opening datasets belonging to the judicial branch of government is widely believed to be slower compared to those belonging to the legislative and executive branches (Elena, 2015) (Jiménez-Gómez, 2017) (Bargh, Choenni, & Meijer, 2016). We assess the

(*) University of Novi Sad, Faculty of Technical Sciences, Novi Sad, Serbia

(**) University of Novi Sad, Faculty of Technical Sciences, Novi Sad, Serbia. Faculty of Technical Sciences, Trg Dositeja Obradovića 6, Novi Sad 21000, Serbia. markic@uns.ac.rs.

current state of affairs in open judicial data, identify good practices, and suggest how the process of opening judicial data can be improved.

Open Knowledge (2019a) defines basic open data as "data that can be freely used, re-used and redistributed by anyone – subject only, at most, to the requirement to attribute and share-alike." Tauberer and Lessig (2007) suggest eight basic principles to consider when opening government data: complete (all public data is made available), primary (data is as collected at the source, with the highest possible level of granularity and not in aggregate or modified forms), timely (data is made available as quickly as necessary to preserve the value of the data), accessible (data is available to the broadest range of users for the widest range of purposes), machine-processable (data is reasonably structured to allow automated processing), nondiscriminatory (data is available to anyone, with no requirement of registration), non-proprietary (data is available in a format over which no entity has exclusive control), and license-free (data is not subject to any copyright, patent, trademark or trade secret regulation although reasonable privacy, security, and privilege restrictions may be allowed).

Open data, as defined in Open Knowledge (2019b), must satisfy the two conditions of being technically and legally open. Data is legally open if data licenses allow anyone to freely access, reuse, and distribute the data. Data is technically open if it is available in a machine-readable format and in bulk for a price that is not greater than the price of reproduction. Therefore, open judicial data would be data produced or contracted by the judicial branch of the government (or entities controlled by the judicial branch of the government) that anyone can freely access, reuse, and redistribute.

In an assessment of open data impacts in the judiciary branch, Elena, Aquilino, & Pichón Riviére (2014) discuss the benefits of open data, including how it keeps citizens informed about government activities and helps the government increase transparency to be more effective. Sudbeck (2006) recognises the connection between publishing court records and an increase of judicial accountability, public trust, and confidence bringing citizens more efficient and effective access to judiciary saving their time and efforts, especially in rural areas. Gomez-Velez (2005) observed public interest in Internet access to court records regarding government transparency as a way to demystify court actions as well as contributes to accountability and public confidence.

Elena, Aquilino, and Pichón Riviére (2014) suggest that the judiciary should publish at least court rulings, statistical data, and budget and administration data (e.g. budget allocation, procurement, and contracting data). Evaluation of these types of datasets was conducted for Argentina, Chile, and Uruguay using a methodology developed by Center for the Implementation of Public Policies for Equity and Growth. Recommendations offered by this paper focus on increasing the awareness of the benefits of open judicial data, how to

implement open data policies, and monitoring and evaluating how these policies should be performed.

In a study on publishing court decisions, van Opijnen, Peruginelli, Kefali, and Palmirani (2017) only considered online repositories accessible by anybody for free. Recommendations for improving the accessibility of court decisions include: publishing criteria should be precise and publicly available, negative selection should be applied to the highest jurisdiction courts, and positive selection should be applied to the lowest jurisdiction courts, large case law databases should provide importance tagging, decisions should be licensed with licenses that allow reuse, and decisions should be published in computer-readable formats.

In (Marković & Gostojić, 2020) we analysed judicial datasets openness in selected developed and developing countries. This chapter is a continuation of this research that focuses on the Balkans region. We identify the most important judicial datasets types, critically review several widely-used open government data evaluation methodologies, and then select a methodology most suitable for evaluating the identified datasets, which comparatively assesses openness of the judicial datasets in the Balkans.

2. Related Work

Some of the open government data evaluation methods are based on the Open Data Readiness Assessment (World Bank, 2015), Global Open Data Index (Open Knowledge, 2019c), and Open Data Barometer (W3C, 2019).

The Open Data Readiness Assessment (ODRA) is a methodology for assessing the readiness of a country and an individual institution for evaluation and implementation of the Open Data Initiative. The methodology evaluates readiness in eight dimensions: higher leadership, legal framework, the structure and the capability of institutions, data management procedures and policies, open data demand, citizen participation, funding open data programs, and national infrastructure for technology and skill transfer.

The Global Open Data Index (GODI) measures government data openness in 122 countries each year. It relies on an "open definition" according to which "open data can be freely used, modified and shared by anyone for any purpose." Advantages of GODI as a metric is that it is based on claims of citizens instead of the government, it enables comparison of the same categories of datasets in different countries, it helps citizens to learn about open data and its availability in their countries, and it follows the change of open data over time. So, GODI evaluates if data is indeed published in a way that is accessible to citizens, media, and civil society.

The Open Data Barometer (ODB) analyses readiness for the implementation and opening of data. It is a part of W3C foundation work on data openness evaluation methods and is based on ranking three types of inputs. The

first is expert opinion, where experts from each country answer questions about open data in their country, second is detail assessment, where technical experts provide an assessment based on answers to these questions, and the third is secondary data, where data is based on the assessments of the experts. For ranking, three indexes are considered including the readiness index, implementation index, and impact index.

3. Method

After reviewing open data assessment methodologies, we selected the GODI methodology because it intentionally limits its inquiry to the publication of data and does not consider other aspects of common open data assessment frameworks, such as context, use or impact. This narrow focus enables a standardised, robust, and comparable assessment of open data around the world. Furthermore, it is product-oriented instead of process-oriented, thus simplifying the evaluation process as it does not require interviewing open data stakeholders, which is a time and resource-intensive process.

The authors assessed the openness of available judicial datasets in selected countries in January 2019 using a customised GODI methodology. The assessment was conducted by analysing the organisation of the judiciary in selected countries, searching for websites of the relevant judicial institutions, evaluating the datasets using the customised GODI methodology, collecting the results in a spreadsheet, and developing a narrative of the state of the open judicial data in each country.

The focus of the research was on the implementation of open data initiatives, and not its readiness (conditions in a country, city or sector determining if open data initiatives are likely to be successful) or impact (whether open data led to change). The key limiting factors included the language barrier and available resources. Therefore, we decided to assess the state of open judicial data in selected countries using languages we understand. We analysed the openness of judicial datasets in Balkans countries: Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Greece, Kosovo (under UNSC Resolution 1244), Montenegro, North Macedonia, Serbia, and Slovenia. Judicial datasets analysed in this paper include court decisions, case registers, filed document records, and statistical data. The choice is based on its influence on transparency and accountability of the judiciary.

The GODI methodology evaluates datasets using both qualitative and quantitative variables. Qualitative variables are determined by answering five questions: “Is the data collected by the government?” (Q2), “Is the data available online?” (Q1), “Where can the data be found?” (Q5), “How much do you agree with the following statement: ’It was easy for me to find the data.’” (Q6), and “How much human effort is required to use the data?” (Q11). If the answer to questions Q1 or Q2 is negative, the dataset is not scored. Otherwise, each dataset is scored by summing up six variables determined by answering six ad-

ditional questions: “Is the data available online without the need to register or request access to the data?” (Q3), “Is the data available free of charge?” (Q4), “Is the data downloadable at once?” (Q7), “Is the data up-to-date?” (Q8), “Is the data openly licensed or in the public domain?” (Q9), and “Is the data in open and machine-readable file formats?” (Q10). We weighted the quantitative variables as suggested by the GODI methodology.

Only datasets which can be accessed without registration were included in the survey because most of the questions prescribed by the GODI methodology cannot be answered without access to the dataset and its metadata. The completeness of published data sets was not captured by this assessment because most countries publish selected decisions only (such as decisions delivered by supreme or appellate courts). Difficulties in language understanding have some influence on evaluating published data. Those difficulties influence the evaluation of Q6 or the total score if a dataset can not be found on websites not translated to an international language.

4. Results

The key characteristics of openness of judicial data as evaluated by the GODI methodology are described in this section and summarised in Table 1. Each section describes the organisation of the courts in the selected country and how the identified judicial datasets were published, if at all. In some countries, the constitutional court is not considered the part of the judiciary. Therefore, constitutional courts are omitted from this survey.

Albanian courts include first instance courts (22 district courts, The Court for Serious Crimes, and six administrative courts), second instance courts (six appeal courts, The Serious Crimes Appeal Court, and The Administrative Court of Appeal), and third instance courts (The Supreme Court). Selected decisions are published by The Courts Portal in PDF format along with case registries and statistical data.

The court organisation in BiH is complex due to the complex organisation of the state, which includes two entities and one district. The court system consists of three constitutional courts, three supreme courts, 16 county courts, 49 municipal courts, The Higher Commercial Court, and five commercial courts. The Court Decision Base publishes judicial decisions and other judicial information (Baza sudskih odluka, 2019), operated and owned by The Judicial Documentation Center. A case registry and registry of filed documents are not available online while statistical data about courts is available annually.

Bulgarian judiciary for civil and criminal cases consists of regional courts, district courts and The Supreme Cassation Court as the highest instance. Unified e-Justice Portal (2019) provides a search engine for case registries (including information on receipt documents) and decisions delivered by Bulgarian courts. Case registries are available in HTML format and are not published using an open license. Search is protected by CAPTCHA. Published decisions are

available in MS Word or HTML format. The Supreme Judicial Council (2019) publishes statistical data in PDF and CSV formats with all rights reserved.

The judiciary's structure of regular courts in Croatia consists of municipal courts as the first instance courts established for the territory of one or more municipalities, county courts established for the territory of several municipal courts, and The Supreme Court of the Republic of Croatia as the highest instance. Case law portal (Sudska praksa VSRH, 2019) publishes decisions of Croatian courts in HTML and PDF formats. Court case register data are published on the e-Case portal in HTML format (Portal e-Predmet, 2019). Access to court decisions and case registers is protected by CAPTCHA and no information on the license is provided. Filed document records are not published. The Ministry of Justice of the Republic of Croatia (2019) publishes annual statistical data for Croatian courts with reports published in PDF format with no open license information.

Greek judiciary is divided into three branches: civil, criminal and administrative. The highest instance court for civil and criminal cases is the The Supreme Court and for administrative cases The Council of State. The Supreme Court (2019) provides the case registry for criminal cases only and publishes only decisions delivered by this court. Both the case registry and decisions are available in HTML format without an open license. The Ministry of Justice, Transparency and Human Rights (2019) publishes statistical data on a quarterly basis in PDF or MS Excel formats, also without an open license.

The court organization in Kosovo (under UNSC Resolution 1244) is relatively simple. The highest court instance is The Supreme Court, followed by The Appellate Court, and seven basic courts. Selected decisions are published by The Official Gazette and The Judicial Council in PDF format (plain text format was temporary unavailable at the time of assessment). The Judicial Council also publishes case registries and statistical data.

General jurisdiction courts in Montenegro are organised in four tiers. It consists of basic courts, high courts, the Appellate Court of Montenegro, and the Supreme Court of Montenegro as the highest court. Web presentations of the courts in Montenegro are accessible on the Courts of Montenegro (The Courts of Montenegro, 2019) portal. When a court is selected, its decisions are accessible in HTML format without any license information. A special portal section enables access to decisions from all courts. Individual courts, with several exceptions, publish their statistical reports in MS Word or PDF formats without license information. Court register data and filed document records are not available online.

The highest instance of North Macedonian judiciary is the Supreme Court of the Republic of North Macedonia. First instance courts of general jurisdiction are basic courts while appellate courts are established for the territory of several basic courts. The Judicial Portal of the Republic of North Macedonia (Judicial Portal of the Republic of Macedonia, 2019) provides a search engine for court deci-

sions. Decisions are available in PDF format while copyright belongs to the Judicial Portal of the Republic of North Macedonia. The portal provides a separate section for each court where information on hearings schedules can be found. Statistical reports are also published on these pages in PDF format. The period for statistical reports varies from court to court ranging between one month and one year. Case register data and filed document data are not published.

The courts in Serbia are organised into general and special courts. General courts include The Supreme Court, four appellate courts, 26 higher courts, and 67 basic courts. Special courts include The Magistrates Appellate Court, 45 magistrates courts, The Commercial Appellate Court, 16 commercial courts, and The Administrative Court. The Court Portal (Portal sudova Srbije, 2019) provides public access to records of filed documents. The selected decisions are available at the portals of The Supreme Court, appellate courts, and The Administrative Court. The Legal Information System (Pravno informacioni sistem, 2019) supports a case law database containing selected decisions available online, but the access is not free of charge. Statistical data about courts is provided annually. Case registries can be accessed only if the case number is known and are protected by CAPTCHA.

The Slovenian court system is represented by the general courts: The Constitutional Court, The Supreme Court, four higher courts, 11 country courts, and 44 municipal courts, and the special courts: The Higher Labor Court, four labour courts, and The Administrative Court. The Sodna Praksa (Sodna praksa, 2019) portal publicly publishes court decisions, and the portal e-sodstvo (Portal e-sodstvo, 2019) publishes case registry and filed document records, but the access is not available to the public. Statistical data about the courts is available annually.

As can be seen in Table 1, most of available open datasets were scored similarly. Overall, published data are rarely provided in a machine-readable format, are not published in bulk (although programmable access is provided in some cases), information about the legal status of the data is rarely available, and open data portals do not syndicate the data. On the other hand, the published datasets differ considerably. Each reviewed country publishes statistical data about its courts, although the level of detail differs, some reviewed countries publish delivered decisions in an open format, and few reviewed countries publish data about case register and filed document records.

5. Conclusions

In this paper, crucial judicial dataset types were identified, several widely-used open data evaluation methodologies were reviewed, the GODI methodology was selected as the most suitable for evaluating identified datasets and applied to assess the openness of judicial datasets in select countries, the assessment identified challenges faced when opening judicial datasets, and actions were suggested to improve open judicial data initiatives.

Courts decisions, case registers, filed document records, and statistical data were identified as the most relevant judicial datasets. The results of the evaluation suggest that the openness of datasets was scored similarly in each country included in the survey, but not all identified judicial datasets were present in each country. The main drawbacks in published datasets include data not being available in bulk or in a machine-readable format and not existing in the public domain, being published with an open license or the publication license is not explicitly specified. Each country publishes statistical data about its courts, with some publishing delivered decisions in an open format and others publishing data about case registers and filed document records.

Compared to the quality and quantity of open datasets published by the legislative and executive branches, the quality and quantity of open datasets in the judiciary is usually the lowest. Elena (2015) states that judicial branches continue to be among the least willing institutions to implement policies on transparency and access to information, and Jiménez-Gómez (2017) argues that although many open government initiatives have been implemented around the world, most are related to the executive and legislative powers and institutions.

Obstacles in opening government datasets recognised in Michener and Ritter (2017) are referred as the "three-Ps" of open data resistance representing professional, political, and personal privacy concerns. Professional resistance comes from the possibility of assessing the quality of work based on open datasets. Political resistance reflects lack of readiness to dedicate both human and financial resources to publish data. Personal privacy is primarily affected by judicial datasets as they can reveal personally sensitive information that causes irreversible damage once published.

Until a complete opening of judicial datasets is available, the public can find statistical data about judges and courts valuable because it can reveal the quality of their work. Publishing data about judges (e.g., name, biography, court of employment, date of employment, history of cases, statistical data about workload, and average time needed to make a decision) and courts (e.g., name, contact data, hearing schedule, judicial decisions, and statistical data) can improve transparency and minimize corruption.

Some actions to consider for enabling more effective and efficient opening of judicial datasets is to publish legal documents and legal data in standardized machine-readable formats developed in the legal informatics community, to assign standardized metadata and identifiers to the published documents and data, to provide both programmable and bulk access to documents and data, to explicitly publish open data licenses which apply to them in a machine-readable format, to introduce a centralized portal enabling retrieval and browsing of open datasets from a single source, and to published data using an international language.

Instead of publishing judicial decisions in HTML, MS Word or PDF formats, machine-readable XML formats, such as Akoma Ntoso (Palmirani and Vitali, 2011), LegalDocML (OASIS, 2019a) or CEN Metalex (Boer et al., 2010) should be adopted. Metadata should be published in one of the standardised formats based on RDF and OWL. ELI (European Commission, 2019a), ECLI (European Commission, 2019b), URN:LEX (Spinosa, Francesconi and Lupo, 2017) or LegalCiteML (OASIS, 2019b) formats should be used to identify court decisions to enable globally-unique identification of court decisions in a machine-readable format. Case registry and filed document records should be published in CSV, XML, JSON, and RDF formats. Some relevant XML formats include LegalXML Electronic Court Filing (OASIS, 2019c) and NIEM Justice (NIEM, 2019).

Although laws, regulation, and judicial decisions are exempt from copyright in many jurisdictions, this does not apply to assigned metadata. If data is not in the public domain, then it is necessary to specify the license under which it is published explicitly, and the license should be published in a machine-readable format.

Data access should be enabled both through an application programming interface (API) and in bulk. Government institutions should publish data in bulk first and check if the published data satisfies user requirements. Only if these requirements are satisfied, then they should invest in the development of an API to offer additional functionality.

Open judicial datasets and its metadata should be published individually (i.e., each judicial institution should publish the data and metadata for which it is responsible). However, an open data portal should also be introduced (by the supreme court or justice ministry) with the metadata describing the datasets being syndicated by the portal to enable centralised retrieval and browsing of open judicial datasets.

Table 1: Summary of the results.

Country	Dataset	Data available online	Collected by government	Data available online without registration	Data available for free	URL	All data downloadable at once	Up to date	Openly licensed / in public domain	Open and machine-readable format	Score
		Q1	Q2	Q3	Q4	Q5	Q7	Q8	Q9	Q10	
Albania	Court Decisions	yes	yes	15	15	http://www.gjykata.gov.al/	0	15	0	0	45
	Case Register	yes	yes	15	15	http://www.gjykata.gov.al/	0	15	0	0	45
	Filed Document Records	-	-	-	-		-	-	-	-	-
	Statistical Data	yes	yes	15	15	http://www.gjykata.gov.al/	0	15	0	0	45
BiH	Court Decisions	-	-	-	-		-	-	-	-	-
	Case Register	-	-	-	-		-	-	-	-	-
	Filed Document Records	-	-	-	-		-	-	-	-	-
	Statistical Data	yes	yes	15	15	https://vstv.pravosudje.ba/	0	15	0	0	45
Bulgaria	Court Decisions	yes	yes	15	15	https://portal.justice.bg/	0	15	0	0	45
	Case Register	yes	yes	15	15	https://portal.justice.bg/	0	15	0	0	45
	Filed Document Records	yes	yes	15	15	https://portal.justice.bg/	0	15	0	0	45
	Statistical Data	yes	yes	15	15	http://www.vss.justice.bg	0	15	0	20	65
Croatia	Court Decisions	yes	yes	15	15	https://sudskapraksa.csp.vsrh.hr/	0	15	0	0	45
	Case Register	yes	yes	15	15	http://e-predmet.pravosudje.hr/	0	15	0	0	45
	Filed Document Records	-	-	-	-		-	-	-	-	-
	Statistical Data	yes	yes	15	15	https://pravosudje.gov.hr/	0	15	0	0	45
Greece	Court Decisions	yes	yes	15	15	http://www.areiospagos.gr/	0	15	0	0	45
	Case Register	yes	yes	15	15	http://www.areiospagos.gr/	0	15	0	0	45
	Filed Document Records	-	-	-	-		-	-	-	-	-
	Statistical Data	yes	yes	15	15	http://www.ministryofjustice.gr	0	15	0	0	45

Country	Dataset	Data available online	Collected by government	Data available online without registration	Data available for free	URL	All data downloadable at once	Up to date	Openly licensed / in public domain	Open and machine-readable format	Score
		Q1	Q2	Q3	Q4	Q5	Q7	Q8	Q9	Q10	
Kosovo*	Court Decisions	yes	yes	15	15	http://gzk.rks-gov.net	0	15	0	0	45
	Case Register	yes	yes	15	15	http://www.gjyqesori-rks.org	0	15	0	0	45
	Filed Document Records	-	-	-	-		-	-	-	-	-
	Statistical Data	yes	yes	15	15	http://www.gjyqesori-rks.org	0	15	0	0	45
Montene-gro	Court Decisions	yes	yes	15	15	http://sudovi.me/	0	15	0	0	45
	Case Register	-	-	-	-		-	-	-	-	-
	Filed Document Records	-	-	-	-		-	-	-	-	-
	Statistical Data	yes	yes	15	15	http://sudovi.me/	0	15	0	0	45
North Macedo-nia	Court Decisions	yes	yes	15	15	http://www.sud.mk/	0	15	0	0	45
	Case Register	-	-	-	-		-	-	-	-	-
	Filed Document Records	-	-	-	-		-	-	-	-	-
	Statistical Data	yes	yes	15	15	http://www.sud.mk/	0	15	0	0	45
Serbia	Court Decisions	yes	yes	15	15	http://www.vk.sud.rs/	0	0	0	0	30
	Case Register	yes	yes	15	15	http://www.portal.sud.rs/	0	15	0	0	45
	Filed Document Records	yes	yes	15	15	http://www.portal.sud.rs/	0	15	0	0	45
	Statistical Data	yes	yes	15	15	https://www.vk.sud.rs/	0	15	0	0	45
Slovenia	Court Decisions	yes	yes	15	15	http://www.sodnapraksa.si/	0	0	0	0	30
	Case Register	-	-	-	-		-	-	-	-	-
	Filed Document Records	-	-	-	-		-	-	-	-	-
	Statistical Data	yes	yes	15	15	http://www.sodisce.si/	0	15	0	0	45

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SECTION FOUR:
OPEN JUSTICE FROM A CIVIL SOCIETY PERSPECTIVE

FIGHTING AGAINST CORRUPTION AS A CONTRIBUTION TO OPEN JUSTICE

RENZO LAVIN* - MARCELO GIULLITTI OLIVA**

1. Open Justice: a process underway

The Judiciary is called upon to play a fundamental role in the democratic system as a guarantor of the rule of law. Anyhow, it has chronic deficiencies with regard to judicial independence, transparency and accountability, as well as rapprochement to citizens. In this regard, we believe it is necessary to translate the principles of Open Government into initiatives and reforms to face the challenges of the justice sector.

The contents of the Judiciary's transparency axis entail access to and availability of information with regard to the internal functioning of justice, its administrative as well as jurisdictional authority, and the way in which it communicates with citizens.

The contents with regard to participation in the Judiciary can also have specific implications. The principles of independence and impartiality inherent in the judicial activities are often times misunderstood as synonymous to isolation in the eyes of any external stakeholder, which has led to reluctance to hear the voices of those who may be affected by a court decision, although openness, participation and deliberation mechanisms within the Judiciary improve the quality of decisions, reaffirm the validity and social ownership of the law, reinforce the system's legitimacy and favor access to justice.

The accountability pillar requires foreseeing mechanisms that lead to controlling performance of the judges and their courts.

(*) Co-director, *Asociación Civil por la Igualdad y la Justicia* (Association for Equality and Justice - ACIJ).

(**) Lawyer, Strengthening of Democratic Institutions Area at ACIJ.

Finally, innovation requires progress in the use of technologies as well as establishing new practices for opening up the Judiciary, such as removing red tape from processes, improving formalities and innovating in information systems.

The Open Justice agenda is a challenge and an opportunity. The challenge lies in avoiding the "Open Justice" notion from boiling down to on-line information. In this regard, as described in these paragraphs, we believe we cannot talk about Open Justice without an independent, transparent Judiciary, close to citizens. An Open Justice agenda without these characteristics would lack the truly transformative potential promised by the Open Government movement. The inclusion of justice in the discussion on Open Government is a huge opportunity to start on a path of reforms that can modify the rationale of a branch that is the farthest away from citizens and that society does not trust.

Organized civil society has proven to be a key stakeholder to fuel changes by making visible the structural problems of the Judiciary and proposing solutions. Building the Open Justice agenda is not a process going in a single direction but instead requires joint work of State institutions and citizens.

In this paper we will comment on a few of the ACIJ experiences to promote a more open justice and some of their outcomes.

2. Access to information in the Judiciary: assessing compliance with the Law on Access to Public Information

Until enactment of Law 27,275 on Access to Public Information in 2016, the Judiciary had no rules overall regulating access to information. Anyhow, there were rules addressing specific aspects in this field. For instance, the public hearing regime, the law on publicizing sentences/judgments and rulings, the law on publication of property affidavits, or provisions as those in Law 24,937 (amended in 2006 by Law 26,080) which provides for the publicity of cases being addressed by the Judges' Council, particularly those regarding allegations against judges.

The Law on Access to Public Information is an essential tool to achieve an Open Justice, since it places specific obligations concerning information in the hands of the judicial bodies and, therefore, provides for the possibility of establishing objective indicators for assessing the level of access. Furthermore, it spells out a minimum information standard on what must be published proactively, as well as the format in which such information should be published.

Although it is too soon to evaluate the level of compliance with the new law, its impact has been remarkable with regard to certain practices within the Judiciary. A study carried out by ACIJ on the implementation of the law since its entry into force in September 2017, assessed the answers to requests for information filed with the Supreme Court of Justice, the Argentine Judges' Council and the federal courts of appeal in the Federal Capital city of Buenos

Aires. Out of 20 requests for information submitted on basic matters such as personal and budgetary information, 17 were answered, which shows progress with regard to similar exercises carried out before enforcement of the law, when several courts did not even answer requests for Curricula Vitae of sitting judges. In 2016, ACIJ had submitted several requests for information to 46 courts (ordinary and courts of appeal) asking for information on judges' qualifications, and only four were answered.

The evaluation also included the level of compliance with active transparency obligations. At this point, the outcomes showed that, although the Judiciary publishes quite a bit of information, there is a certain amount of information needed for effective accountability and justice openness (such as property affidavits and statistics) which still remains unpublished or is not sufficiently disaggregated –for instance, concerning budget delivery or government procurement.

3. Justice and open data

The Judiciary's data opening on-line is core to foster transparency. In this regard, data opening allowing its re-use is a fundamental tool to analyze the functioning of the Judiciary and, based on objective assessments, then propose policies to help overcome such issues.

3.1. Justice-related data opening

The problem of the lack of on-line, accessible information with regard to judicial officials and employees, as well as with regard to tasks carried out by the justice system, has a direct negative impact on the system's accountability.

In cases in which there is relevant information missing, ACIJ takes action so as to obtain such information and publish it. Partnerships with the media and journalist organizations have been vital in this regard.

An example thereof is the publication of personal property affidavits of judges, which are essential instruments to detect unjustified enrichment and any potential conflict of interest. Vis-à-vis the reluctance to publish their personal property affidavits, together with organizations such as *Directorio Legislativo*, *Poder Ciudadano* and *La Nación Data*, since 2012, we make sure to request property affidavits from all three State branches to publish them on a platform (ACIJ *et al*, 2013), showing the information contained in the documents only available originally on paper, in a way that is easy to understand. ACIJ was in charge of the section on the personal property affidavits of judges within the Argentine Judiciary.

In 2013, Law 26,857 stated that the above affidavits should be published on-line. Furthermore, the Law on Access to Public Information provides for affidavits to be proactively published in an open, re-usable format. Nonetheless, so far, the Judiciary has not fulfilled such obligations. At present, ACIJ actions

are focused on achieving the publication of these affidavits on the web sites of the Judges' Council and the Argentine Supreme Court of Justice.

Another example of necessary information not available on-line was that on judges' qualifications. Vis-à-vis the lack of information, together with *Chequeado*, a journalists' organization, we are implementing a project called *Justiciapedia* (ACIJ *et al*, 2015), with which access was gained to the curricula vitae of judges that were then published, and their relationships with the political, business and academic actors was mapped. This platform contains the profiles of 271 judges (male and female) and 138 members of the Public Ministry for the Prosecution, as well as the profile of several related officials.

3.2. Data re-use

The publication of databases by the Judiciary or institutions such as pubic ministries or the Ministry of Justice (whether in open formats or not) are an opportunity for civil society organizations, journalism, the academia and decision-makers. At the same time, it is a challenge to show that there are users interested in having institutions publish information and that this justifies the efforts of the different State areas in trying to pursue the publication of more information.

In this regard, and as of the publication of databases by the Ministry of Justice on the Open Judicial Data Portal, we have carried out and promoted research on the composition of the Judiciary by gender, delays in selection processes, disciplinary processes, femicides, salaries of male and female judges, impact of the income tax exemption on the Judiciary, among others. Likewise, at this point it was essential to have partnerships with open data activists, journalists, programmers and experts in judicial matters. Informal working spaces generated by the open data community were core to developing joint projects for data usage. An example of this kind of experience was the analysis of data from draws to assign cases to the courts, published by the Judicial Information Center, which resulted in an investigation that had great public repercussion (ACIJ *et al*, 2017).

4. Open Justice and independence of the Judiciary

Independence of the judiciary is an assumption for the notion of Open Justice we uphold. This entails the existence of safeguards hindering political authorities and other groups from skewing at their will the decision of a judge by exerting pressure on the decision-maker.

Some of the major risks regarding the judiciary's independence happen at two stages: appointment of judges and disciplinary procedures against them. The former may be subject to arbitrary decisions which may lead to favoring someone, and the latter can be unduly used to exert pressure on judges. It is therefore necessary to promote mechanisms ensuring the best standards of transparency, participation and accountability during these stages.

4.1. Appointment of Supreme Court Justices and Attorney-General's Office officials

With regard to the appointment of the Argentine Supreme Court justices and the Attorney-General, decree 222/03[1] established an open process to enable citizens' participation in the discussion on the merits of candidates proposed by the Executive Branch. The procedure spelt out in the decree envisages the possibility to submit observations and questions to be posed to candidates. This decree correlates to the participatory procedure established for these positions by the Argentine Senate.

The participation in these procedures allows citizens to control, firstly, that the candidates are technically and morally suitable and that they are capable of expressing an independent opinion. In this regard, participation of civil society organizations and other social stakeholders is relevant to improve quality of the public debate on the candidates, increase social involvement in judicial matters and favor informed decision-making by the Senate (ACIJ, 2015). Participation in these processes also allowed ACIJ to access information that is not usually published so as to make it available to citizens.

4.2. Selection of judges and their punishment by the Judges' Council

Most of the country's jurisdictions adopted open competition as the way for selecting judges, so as to guarantee a minimum floor in the merit-based appointment of candidates, assessing technical knowledge and their past career. Anyhow, these processes still have stages in which arbitrary criteria prevail, thus distorting the purpose of the open competition. In this regard, it is also relevant to monitor such competitions in the Judges' Councils.

Firstly, monitoring by civil society organizations is useful to identify information that should be open so that citizens can oversee the process, and to promote its publication should it not be publicly available. ACIJ's experience in Buenos Aires city shows the need to litigate so that the Judges' Council would publish information. Furthermore, in the case of the federal jurisdiction, advocacy through investigations and reports on public policies resulted in the Judges' Council presenting to the Open Government Partnership (OGP) as one of the Council's commitments, a greater and better openness of information on the selection processes.

Control of these procedures will also allow the identification of the stages in the competition that favor arbitrary decisions, as well as the detection of specific cases that move away from objective and merit-based criteria.

Moreover, transparency of the disciplinary processes against judges is fundamental because through undue use thereof, pressure can be exerted on

(1) According to decree 588/03, Decree 222/03 applies to the appointment of Argentina's Attorney-General and the Public Defender.

judges to decide in a given direction in important cases. At this point, ACIJ promoted several advocacy actions so that the Judges' Council would allow access to disciplinary files concerning the investigation of judges, as well as the publication of more information on how the Council acts in these cases. This led to another commitment submitted by the Council to the OGP.

5. Open Justice and the fight against corruption

Impunity with regard to corruption, economic crime and all crimes involving powerful people are amongst the biggest problems affecting the credibility of the Judiciary and, therefore, one of the main obstacles to build an Open Justice.

The problem is the little information available and how opaquely the Judiciary processes the phenomenon of corruption, the lack of citizen participation, and the lack of accountability by those who are judges and those in charge of overseeing their performance.

5.1. Access to Information in cases of corruption

Inexistence of official information with regard to the duration of cases investigating corruption (and the potential responsibility of judges in delays) as well as the lack of information on the formalities are among the main obstacles for citizens to oversee the process. Besides this lack of official information, there is the inexistence of procedural tools allowing citizens to access cases investigating corruption, either as observers or parties to the case.

One of the ways in which ACIJ addressed this problem was through litigation to have access to different cases[(2)] in which corruption was investigated, obtaining several favorable judgments. Furthermore, the promotion of citizen participation measures within the cases investigating corruption, such as the possibility to access files or a class action, are a part of the Open Justice agenda. In this regard, we have unsuccessfully filed several claims to be recognized as plaintiffs or claimants in cases investigating corruption.[(3)]

5.2. Innovation for accountability: Corruption Observatory

One of ACIJ's strategies to provide visibility to the problem of corruption-related impunity, as well as to generate information for accountability and foster citizen participation was the development of a platform showing information

(2) The cases analyzed were selected because of their relevance (either because the *prima facie* accused are or were high ranking public officials, the amounts involved or the social impact of events) and because they represent the events occurring under the different administrations since the return of democracy.

(3) Recently, the *Fundación Poder Ciudadano* was accepted as plaintiff in a claim filed with the Federal Court in La Plata, in a case investigating corruption in consultancies carried out by the Universidad Tecnológica Nacional for the Argentine Ministry of Social Development. See more at: http://poderciudadano.org/ poder-ciudadano-fue-aceptado-como-querellante-en-caso-de-corrupcion

to which we had had access to, plus information dispersedly published by the Judiciary (ACIJ, 2016).

One of the first outcomes of our work, was the generation of aggregate information on the way in which the justice system processes the corruption phenomenon.(4) Likewise, the posting on the platform had a relevant impact on the mass media, which on several occasions used aggregate data in different publications.

We are currently at a second stage of the platform's development based on the publication of the Supreme Court of Justice Corruption Cases Database, which allowed us to access a greater volume of information, which we transformed into an open format and re-used to carry out different analyses on the investigation of corruption.(5)

The following table shows the relationship of the different ACIJ projects with the Open Government principles (i.e. transparency, participation, accountability and innovation):

Graph 1. Open Justice Initiatives as per the Open Government Principles

Open Justice Initiative	Open Government Principles			
	Tr	Part.	Acc	Innov
Assessment on compliance with the Law on Access to Information	x		x	
Openness of judicial information: judges' property affidavits and *curricula vitae*	x		x	
Hackathons to analyze justice system data, together with journalist organizations and others dealing with data and technology matters		x	x	x
Re-use of justice data: research on the composition and performance of the Judiciary			x	x
Justiciapedia Portal: a map of relationships and information directory on judges (male and female)	x		x	x
Participation in the appointment of Supreme Court Justices and officials at the Attorney-General's Office	x	x		
Monitoring of the Judges' Council: selection process and disciplinary sanctions against judges	x		x	
Participation in criminal corruption cases (review of the file and class action)	x	x	x	
Corruption Observatory	x		x	x

(4) The survey showed an ongoing pattern of delays in prosecuting cases of corruption (regardless of the political party of the governments involved and judges in charge) as well as the low level of conviction in these cases.

(5) The new version of the platform is being developed.

6. Final comments and conclusions

- The movement in support of Open Government provides a great opportunity for civil society organizations to advocate for the necessary reforms of the Judiciary.
- In order to deepen Open Justice practices, it is necessary to generate exchanges and collaboration between the State and civil society.
- Access to public information is a pre-condition to generate better diagnostic assessments in order to reform the Judiciary. Therefore, overseeing the enforcement of the Law on Access to Public Information is a useful tool for civil society organizations to promote an openness of the justice system.
- Not all the information that is public is necessarily useful. Data openness policies are based on appropriate diagnostic assessments on the information loopholes and must prioritize social demands. Likewise, these must go side-by-side with the strategies for potential users of such information to harness it.
- Partnerships between civil society organizations, journalists, open data activists and programmers are vital to generate greater demand for publishing information in open formats, as well as to better use it to provide visibility to problems affecting the Judiciary, and propose solutions.
- The experiences concerning the appointment and penalization of judges are useful to provide visibility to any potential problems of eligibility, judicial independence or arbitrariness of decisions. The more civil society organizations that participate at this stage, the greater the possibilities of making better decisions.

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SUB-NATIONAL OPEN JUSTICE: THE EXPERIENCE OF SANTA FE PROVINCE FROM A CIVIL SOCIETY PERSPECTIVE

TRISTÁN ÁLVAREZ*

1. Introduction

In 2017, Santa Fe province undertook the commitment to further justice transparency mechanisms. This commitment was set forth in Target 44 of the Third National Action Plan 2017/2019 presented by Argentina to the Open Government Partnership (OGP), within the framework Plan's sub-national targets. Two parties must take part in the process of preparing and following up on the Action Plans: State and civil society. Santa Fe province, through the Open Government Directorate (Under-secretariat for Public Innovation, Ministry of Government and State Reform), participated in this process and convened civil society organizations from the province to submit projects on potential participation. The NGO *Acción Colectiva*, a non-profit from Rosario city, authored the selected project and participated in the building and follow up of the Target.

The purpose of the commitment is: firstly to open functional, structural and administrative data of the Santa Fe province justice service; secondly, to open the penitentiary service data in Santa Fe province and; finally, to open data on pardons and commutation of sentences within the province. The idea was to include information on prior years and establish an automatic publication mechanism with regular updates, depending on the information available. The government of Santa Fe province appointed the Directorate for Criminal Justice Information Management, Ministry of Justice, to work on achieving the goal. Its officials then participated in civil society associations' working meetings, and appear as responsible parties on behalf of the State in the documents submitted to OGP.

This target seeks to reverse the fact of not having public information on the justice service. Once the target has been met, all information published on

* *Asociación Civil Acción Colectiva.*

the webpage of the Santa Fe Province Open Government Directorate will be made available to society at large. Below, the contents of the information to be published will be provided. It is a dynamic process that includes data considered relevant or demanded by society. The challenge addressed by this sub-national target is to enhance public integrity.

2. Status of access to public information in Santa Fe

There is still no Law on Access to Public Information in Santa Fe province. On several occasions it has lost parliamentary status; the last time, in the first few months of 2018. Nonetheless, the State is responsible for taking appropriate measures to promote the active participation of individuals and groups outside the public sector (United Nations Convention against Corruption, 1996, article 13). In Santa Fe province, civil society has been able to fulfill the above in a non-conventional manner. That is to say, through a provincial, national and also international commitment thanks to the momentum provided by citizen participation. One of the purposes of the above Target is to try and fulfill the principles stemming from Law 27,275 on Access to Public Information at the national level. It is a matter of adjusting the standards for judicial institution publications, even before the enactment of a provincial law. Therefore, one of the Target's challenges is to enhance public integrity. That is to say, the idea is to enhance public integrity by fulfilling the republican principles recognized by the Argentine Law on Access to Public Information, publishing information on the judicial and penitentiary systems, and on pardons and commutation of sentences.

For the Target to be considered fulfilled, once the commitment is over, there must be an assumption of publicity of all justice-related data, seeing to their transparency and full disclosure. In this regard, it is necessary to make known where the information can be found. Civil society, moreover, can request the publication of data that do not appear therein, without having to use any special form, ensuring the greatest possible openness. Should it be necessary, and with a view to assuring personal data protection, sensitive data should be dissociated as pertinent. Naturally, the information will be made available free of charge, in a non-discriminatory manner and as promptly as possible. The publication must be made using the appropriate means, ensuring information can be re-used, as established by the above-mentioned law. Although some of these principles have started to be respected by fulfilling the first five milestones, only later will it be possible to evaluate to what extent all of them have been fulfilled through target compliance.

3. Description of Target 44

Below is the outline of Target 44 (Argentina's third Open Government National Action Plan, 2017/2019, page 194). This table spells out detailed information on the commitment, specifying the seven agreed milestones. The status as at August 2018 has been evidenced, showing the milestones already met by the Target.

Santa Fe		
Openness of justice-related information		
Responsible Secretariat / Ministry		Directorate for Managing Criminal Justice Information, Ministry of Justice, Santa Fe Provincial government
Other stakeholders	Government	Provincial Directorate for Open Government.
	Civil society, Private sector, working groups and multilateral organizations	NGO *Acción Colectiva.*
Status quo or problem to be solved		Lack of public information on justice sector services
Main objective		Open up data of all areas of the Santa Fe province justice system (criminal, labor, civil, commercial, administrative litigation, among others) so as to shorten procedures.
Brief description of commitment		The proposal is to open up justice data regarding open, pending, closed court cases, reasons for closure, timeframes for each case, delays and "bottlenecks" in the judicial system, leading to proposals on amendments to the procedural codes to speed up the service. nformation will be collected within the Judiciary, Executive Branch (Public Ministry for the Prosecution, Public Service for the Defense, Ministry of Security, etc.) and different organizations (ART -workers' compensation-, Trade Unions, NGOs connected with the victims). Furthermore, information will be included from the Legal Medicine Institute, hospitals, Penitentiary Service, among others. As information is obtained, different institutions such as educational, doctrinaire, intermediate organizations will be invited (lawyer associations, bar associations, publishing houses, etc.) so as to provide suggestions and achieve amendments to the procedural codes, professional ethics courts, and others.
OGP challenge addressed by the commitment		Enhance public integrity.
Relevance		Citizen participation, so that the population can become positively involved in the justice sector services. Transparency, to access information that is not available and in re-usable format. Technology and innovation, to view and democratize information through technology and digital means.
Ambition		That data openness helps to reinforce an active involvement of citizens and allows access to quality information within the provincial justice system.

Milestones allowing verification of commitment fulfillment	Ongoing or new milestone	Start Date	End Date
1. Identification and survey of information available within the Judiciary, Public Prosecutor's Office, Public Provincial Service for Criminal Defense, Ministry of Security (for data regarding the Penitentiary Service) and the Provincial Ministry of Justice (for data on pardons and commutation of sentences).	Fulfilled	August 2017	October 2017
2. Setting up of a pluralistic committee to follow-up on justice-related data opening.	Fulfilled	August 2017	June 2019
3. Committee meeting to validate survey and define the information and data to be opened up and published.	Fulfilled	October 2017	December 2017
4. Formal proposal through a group request from society, based on the above priorities.	Fulfilled	December 2017	December 2017
5. Processing of information and data in accessible, re-usable format.	Fulfilled	December 2017	June 2018
6. Publication of information on the province's Open Data Portal.	Ongoing	June 2018	June 2019
7. Permanent Update	New	June 2018	June 2019

4. Organizations partaking in the commitment

The commitment's contents cover several fields of work of the Provincial Executive Branch and even beyond. In fact, in fulfillment of the Target, interaction with the Santa Fe Province Judiciary was achieved and, although it was not committed as signatory to the Commitment Document, its participation was indeed necessary to ensure thorough fulfillment. The Santa Fe Province Supreme Court of Justice sent a representative to the meetings addressing milestone 5, and committed to provide information within its jurisdiction.

The Executive Branch participates in the commitment through staff at the above-mentioned Open Government Directorate, and also through staff at the following agencies:

a) Ministry of Justice;

b) Public Prosecutor's Office;

c) Public Defender's Office;

d) Ministry of Security;

e) Ministry of Labor;

f) Mediation Agency.

Apart from all these agencies that participate actively in the compliance meetings for each of the commitment's milestones, others will join in to provide information. That is to say, available information can also be analyzed bearing in mind who has provided it, so as to identify inconsistencies, if any. For instance, with regard to labor matters, the information provided by trade unions and workers' compensation schemes is essential for its comparison with the data provided by the Ministry of Labor and the Judiciary itself. This is the only way to determine the true status of labor-related claims. With regard to criminal matters, information from the Public Prosecutor's Office can be compared to that of the Public Defender's Office, and that of the Judiciary and, eventually, to the reports of the Legal Medicine Institute (the court morgue). Quality information can thus be obtained, which is the ultimate goal of this target.

That interaction will help to minimize the possibility of making mistakes. An example is the report issued by the Legal Medicine Institute on a deceased person. It could report suicide and that is how it will be reflected on the official webpage, but after due investigation the Judiciary may determine that it was not suicide, and this must be corrected in the records. Otherwise reports are duplicated and the contents of the information are not true. This can be avoided with the participation of all agencies. Receiving information from several sectors improves the quality of the information to be published.

5. Information published so far

In fulfillment of milestone 5 of the commitment (see table above), certain information stemming from the requirements of the NGO *Acción Colectiva* has already been published on the Santa Fe Province Open Data webpage.

The above information can be found at www.santafe.gob.ar/datosabiertos. No doubt lay-out of the information, the contents, length, degree of disaggregation, etc. must be improved but at least this is a starting point. Hereafter are the data that are in the process of becoming open. Some of these items have been published fully and others, not yet. The information published is absolutely true, but must still be completed and, in some cases, disaggregated. It is a good start vis-à-vis opaqueness in the past, but there is still a lot to be done. When the other intermediate organizations start participating (academic entities, professional associations, etc.), information will be enriched and enhanced in each data field.

6. With regard to the Judiciary

6.1. Structural Data

- Premises: here it is necessary to inform their location, if they are owned by the institution, leased, or on loan. Furthermore, whether there is another building being planned or refurbished.

- Judges: here a detail shall be provided of his/her position, seniority, whether he/she has been confirmed in the position, or whether the judge is acting as surrogate, o if the position is vacant (and in this case, since when it has been vacant).
- Judiciary employees/other staff: number, categories, positions, level of education, seniority, etc. shall be stated here.
- Courts and committee positions, vacant in the province: time frame of such vacancies.
- Acting surrogate judges.
- Courts created by law and not yet operational.
- Budget: amounts of main expense items as per the approved budget.
- Budget: payment of salaries by category and operating expenditure (per diem).
- Number of jobs (pending).

6.2. Data on criminal matters in the Judiciary

- Number of sentences issued in district and appellate courts.
- Percentage of sentences, including convictions and dismissed cases.
- Number of summary trials.

6.3. Data on non-criminal court activity (civil and commercial, family, extra-contractual liability)

- Claims filed and name of court (pending).
- District and appellate court judgments (pending).
- Average duration of district court trial (pending).
- Average duration of trial in appellate courts (pending).
- Rulings issued (pending).

6.4. Court Management Office data

- Number of hearings held.
- Number of trials.

7. Institute of Legal Medicine (court morgue)

- Number of autopsies carried out.
- Break-down by cause of death.
- Sex of the deceased (pending).

8. Amount of court work

- Number of appellate judgments issued, stating the court.
- Number of judgments confirming district court rulings.

- Number of judgments revoking district court rulings.
- Average waiting time before the final hearing in the proceedings takes place.
- Average duration of trial in a district court.
- Average duration of trial in appellate court.

9. Ministry of Justice – Mediation Management Agency

- Functional data.
- Mediation requests received.
- Mediations completed, with a detail of the reasons therefor.

10. Ministry of Justice – Judges' Council

- Council's functional data.
- Open competitions: registered/assigned staff and administrative time-frames for each competition.
- Open competitions underway: vacant positions/surrogates.
- Open competitions to take place with a detail of positions (pending).

11. Data of the Public Prosecutor's Office

11.1. Structural data

- Premises.
- Organization chart.
- Employees: number, categories, positions.
- Other staff: services/ trainees / assistants / cleaning staff.
- Budget: amounts by main expense items.
- Remuneration scales (pending).

11.2. Functional data

- Criminal cases filed
- Cases finalized and reasons therefor.
- Reporting at police stations by type of crime (pending)

12. Ministry of Labor and Social Security

12.1. Functional data

- Claims regarding occupational health and safety.
- Inspections carried out and fines applied.
- Labor claims. Homologation (pending).

13. Public Defender's Office

13.1. Structural data

- Budget: amounts by main expense items.
- Premises (pending).
- Organization chart and authorities (pending).
- Employees by categories and positions (pending).
- Other staff (services/trainees/assistants/cleaning staff) (pending).
- Budget: remuneration categories (pending).

13.2. Functional data

- Number of defenses in court, convictions and dismissed cases.
- Number of requests for release from prison, stating the outcome.
- Number of releases granted for pre-trial detainees.

14. Ministry of Security – Penitentiary Service

14.1. Structural data

- Budget.
- Organization chart.
- Existing jails.
- Detail of operational capacity of each prison.

14.2. Functional data

- Rate of occupation in prisons.
- Repeat offenders.
- Foreign inmates.
- Inmates by crime.
- Abuses reported.
- Deaths within prisons.
- Pregnant women deprived of their freedom (pending).
- Babies born in prison (pending).

15. Professional associations

15.1. Structural data

- Registered lawyers by gender and jurisdiction (pending).
- Organization chart of existing ethics tribunal (pending).
- Number of claims filed and rulings issued by ethics tribunals (pending).
- Number of statute of limitations declared by the ethics tribunal (pending).

As it can be noted, there is lots of information pending publication. The deadline to do so as agreed in the target was not yet due as at August 2018. While milestone 6 is being fulfilled, information to be published can be added as required by intermediate or academic entities, or by organized civil society or others.

16. Purpose and future commitment

So far, it can be inferred from what has been said, and if the currently published information is analyzed, that there is already material published to start analyzing the operations of the justice sector in Santa Fe province.

During fulfillment of milestone 6 of the commitment, information will be included from a gender perspective. As already done with the information requested from the Institute of Legal Medicine, it is necessary to start dissociating data, taking into account the sex of the individuals. Thus, information can be harnessed by those working on gender matters.

During these last stages of the commitment, professional associations and academic entities must participate; the former, to propose new contents for the information to be published, and to invite law practitioners in the province to participate and collaborate in a widespread manner. The academic entities, through different chairs, can put forth proposals and thus have an impact on the final outcome.

Once the last milestone has been completed, there should be an operational portal in place, with a permanent, automatic update mechanism. This will necessarily be the grounds for research to propose an amendment to the codes of procedure, to set up courts, to enlarge premises in certain jurisdictions, etc. That is to say, all proposals should be set forth based on specific, real, public and accurate data.

Without empirical data, any proposal for amending a procedure or for creating more positions or courts, would be done blindly, or at least without certainty about the solution to a given situation. With data on the actual situation this would not happen. Any reform proposal shall necessarily be formulated on a sound basis, which is precisely a true diagnostic assessment, thus increasing the probability of success.

Citizen participation promoted the creation of this mechanism to publish justice-related information. Civil society itself should demand continuity of the publication and analyze information to ensure a more efficient and effective justice service.

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SECTION FIVE:
AN ACCESS TO JUSTICE PERSPECTIVE

INCLUSIVE JUSTICE: CONTRIBUTIONS TOWARDS OPENNESS MADE BY POLICIES ON ACCESS TO JUSTICE

MARÍA FERNANDA RODRÍGUEZ*

1. Introduction

The fact of adding the paradigm of Open Justice to the area of public policies on access to justice entailed a major challenge in the design, implementation, assessment, and adjustment of public policies in this field. At a global level, Sustainable Development Goal (SDG) 16 (within the international context of the 2030 Agenda) has firmly created this crosslink through the Pathfinders for Peaceful, Just, and Inclusive Societies.(1) At a national level, Argentina has expressed its commitment in this sense through the development of more institutional capacity to gather and use data, monitor results regarding access to justice and thus show steps forward regarding SDG 16 goals and indicators, as well as other goals related to the promotion of peaceful, fair and inclusive societies. This requires significant investments, innovative ideas, as well as a participatory and inclusive approach.

The current open data scenario has landed in the justice sector in a multidimensional manner, having substantial implications in the field of public policies to access justice. It entails starting from the broadest notion: on the one hand, the role of the State as service provider and guarantor of rights and, on the other hand, the role of citizens in exercising their rights. Together, both outlooks aim at thinking about access to justice from a remedial and execution-based perspective, ensuring that people and communities understand, make use of and shape the law, and envisaging the provision of legal services from a perspective of community legal empowerment.

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* Under Secretariat of Access to Justice, National Ministry of Justice and Human Rights.

(1) https://cic.nyu.edu/programmes/sdg16plus

This paradigmatic and significant crosslink of the principles of Open Justice and access to justice is self-explanatory when measuring how the State can become an interface to guarantee the exercise of rights; an inclusive means to overcome geographical, social, and economic barriers bringing justice closer to the most vulnerable populations. Accountability with regard to these statements has moved Open Justice into the field of access to justice.

The political and institutional efforts to guarantee access to justice throughout the history of national public policies have taken on several implementation styles and methodologies. There are countless examples of community legal work schemes. What effect have they had? How have certain cases generated more progress towards achieving peaceful, fair and inclusive societies?.

The Ministry of Justice and Human Rights designed public policies for access to justice based on a management model, whose foundational pillars were the principles of public governance in Open Justice: transparency, access to information, accountability, participation, collaboration, innovation, and use of new technologies.

Based on that vision, the Ministry of Justice designed an information system that helps gather, analyze, and present simple-format data in real time to policy makers. Overall, the reports generated through this system include goals and indicators that are also useful to promote a new global approach to SDG 16 regarding access to justice as a means of consolidating peaceful, fair and inclusive societies.

Open Justice will be outlined in this article concerning access to justice through the experience of creating the Information System of the Centers for Access to Justice (SICAJ), from its inception through to its completion and implementation in 90 centers for access to justice (CAJs) under the Argentine Ministry of Justice and Human Rights. To that effect, the article is divided into three sections. The first will introduce the operationalization of Open Justice principles in the centers for access to justice and the steps towards designing the information system. The second part will introduce SICAJ and account for the results obtained, showing how they effectively contribute to the development, implementation, assessment, and readjustment of policies on access to justice from a perspective that fosters a better quality of life for people. Finally, I conclude with a reflection on investment and the use of new technologies to serve access to justice.

2. Making the principles of Open Justice operational at the centers for access to justice (CAJs)

The main mission of the centers for access to justice is to provide primary comprehensive legal aid vis-à-vis the community's unmet legal needs. They represent the policy of the Argentine State in response to Sustainable Development Target 16.3 and the mandates of the OECD with regard to administrative and legal assistance for the most vulnerable part of the popula-

tion (OECD, 2018). Their general objective is to promote the strengthening and expansion of currently applied policies of access to justice; mainly, those aimed at vulnerable sectors of our population. This mechanism adopts an understanding of access to justice from a two-fold perspective: it considers it a fundamental human right as well as a guarantee, leading to respect for, exercise, and restoration of other rights.

The primary responsibilities of CAJs are to facilitate and strengthen access to justice for citizens, conducting and supporting activities related to legal and social community service programs, as well as dealing with claims filed by citizens through actions to meet those needs, within the framework of the assigned jurisdiction. As to the type of aid provided by CAJs, the following services are provided:

- Information and counseling: aid on legal issues raised by people and rights included in their claim, with direct counseling for their resolution.
- Legal assistance: professional assistance to people regarding administrative actions, negotiations, and claims, whenever required.
- Psychological and social support: the psychosocial team assists people so that they become aware of their status as rights-bearing persons.
- Community mediation: community mediation is performed in order to solve family, neighborhood, and economic conflicts, among others.
- Community activities: lectures, workshops and working groups are organized to strengthen community capacities related to exercising their rights.
- Assistance to access social rights and benefits: guidance and facilitation of access to other State agencies that manage social benefits (personal documentation, certificates, ANSES[2] -related administrative formalities, social fares, criminal record checks, etc.).
- Itinerant and decentralized services: CAJs perform regular visits to other areas within the region where vulnerable sectors of society live in order to extend their services.
- Legal representation: a cooperation network with lawyers´ associations, law schools, and NGOs facilitates access to legal representation of those requesting the service, who experience insurmountable obstacles to obtain said representation through the formal lawyers' market or the public ministries.

The purpose of the centers for access to justice, under the supervision of the National Directorate to Promote and Strengthen Access to Justice *(Dirección Nacional de Promoción y Fortalecimiento para el Acceso a la Justicia* - DNPFAJ),[3] is to bring legal services closer to areas where the State does not usually reach out to. There is a single comprehensive assistance window

(2) Argentina's national public social insurance agency.

(3) Administrative decision 483/2016 MJDH. Available at: http://servicios.infoleg.gob.ar/infolegInternet/anexos/260000-264999/261475/norma.htm

to deal with formalities, inquiries, and guidance, which used to require a long process through different offices and programs within the local and national public administration.

In 2016, the public federal policy on access to justice was structured, adapted and reviewed to expand, deepen, and professionalize community services on the basis of three structural principles: geographical priority, management of services offered to the citizens based on the proven demand of vulnerable communities, and the definition of a new management model, ongoing improvement, development projects, and accountability based on empirical evidence.

At present, the territorial coverage of CAJs guarantees the delivery of access to justice services in every Argentine province. Part of the importance of this network lies in the possibility of reaching out to every corner of the country, as well as becoming a primary source of data with regard to the demand for justice (and other related services) of the Argentine population, especially the most vulnerable sector. The challenge of CAJs is manifold and supplementary in nature: generating an impact in terms of access to services, becoming a national reference with regard to access to justice, and, at the same time, efficiently managing and creating reliable and accurate data in real time.

The organization and adaptation of the access to justice process was initially faced with the challenge of creating reliable records, based on an internal information management and awareness policy. Tackling this challenge became an absolute priority; hence we started designing a CAJ community services management information system that would contribute to the above, whose features and implementation stages will be addressed in the next section.

It is worth highlighting that certain strategic management decisions had to be made in advance based on a survey of available technological and human resources. We drafted an equitable geographical location plan for CAJs, based on the socio-demographic conditions of the population, and conducted the first national survey on unmet legal needs[4] (Survey of Unmet Legal Needs –NJI-), whilst also carrying out a successful ISO 9001:2008 certification program in 54 centers.

(4) Survey conducted by the Argentine Ministry of Justice and the University of Buenos Aires (2016). The scheduled sample included 2,800 direct interviews to individuals who were over 16 years old, residing in homes of 103 areas distributed across 6 regions, including all provinces and the Autonomous City of Buenos Aires. Five demographic layers were taken into consideration: the metropolitan area, cities inhabited by more than 100,000 people, cities inhabited by 50,000 to 100,000 people and cities inhabited by less than 10,000 people. The country was divided into six regions: Metropolitan, Pampa, Northwest, *Cuyo,* Northeast, and Patagonia. Results acknowledge a global error of +/- 2,3% for the total values at a confidence level of 95%. It is the first time that such a survey is carried out in our country. So far, the few policies of access to justice were based on discretional elements and, as from this survey, they are now based on the existing demand throughout the country. Available at: http://www.jus. gob.ar/media/3234696/diagnosticoinformefinaldic2016.pdf

Within this framework, and in order to plan, execute, and account for public policies on access to justice, we needed a services data management system that would:

a) Structure the work of CAJs based on general and shared methodologies;[5]

b) Facilitate network cooperation among the different CAJs, especially in cases that required action in different provinces, referrals, inquiries, etc.;[6]

c) Produce quality information for public decision making;[7]

d) Strengthen knowledge on the challenges related to access to justice, since the system would identify the levels of acknowledgement of legal conflict and needs, the effectiveness of the different means and channels for obtaining legal information, assistance and representation, and its specific impact in relation to communities which have been traditionally disadvantaged as indigenous people, persons with disabilities, people in a situation of structural poverty, among others.[8]

The implementation of an information tool was key for defining an adequate diagnosis with regard to specific obstacles that prevent or limit access to justice by vulnerable communities.

3. The Information System at the Centers for Access to Justice (SICAJ)

3.1. Registration and access to information

The Centers for Access to Justice Information System (*Sistema de Información de los Centros de Acceso a la Justicia*, SICAJ) was designed as an accountability mechanism for the internal management of legal services provided to citizens. Given the geographical representation guaranteed by CAJs within

(5) The information management system was conceived based on a participatory conceptualization and formalization of CAJs services, processes, activities, and work outcomes.

(6) The benefits of working with an office network system are defined by the extension of the country, its federal dynamics, as well as internal migration and regular commuting between the Greater Buenos Aires area and the Autonomous City of Buenos Aires. The management of a typical case of access to social benefits in the City of Buenos Aires may require previous steps such as obtaining identity documents which, in turn, entail visits to provincial civil registry offices, etc. Working and cooperating within the network allows for solving geographical and economic obstacles through a fast and appropriate information management system.

(7) Different aspects of continuous improvement management of services and their impact, such as training, production of community legal literacy material, strategies of community awareness of the CAJs, etc., will be defined with the support of the evidence that the management system would produce.

(8) The overall information produced by the survey on unmet legal needs, together with the information on claims received and answers provided by CAJs are the basis of reliable evidence on the status of the community's legal needs, as well as the results and impact of the public policy.

the federal structure of Argentina, data production plays a significant role when defining the public policies' monitoring and adaptation mechanisms. That is why the statistics provided to each of the CAJs become so important at the time of defining indicators and choosing sources of information. The most reliable and updated systems are based on direct analyses of primary information produced by the registration system, following approved standards that aim at minimizing human error.

Therefore, all actions performed in order to implement each strategic decision related to a case, as well as all institutional team activities, had to be recorded and arranged in the management system so that they could be redeveloped, analyzed, quantified, compared, etc.

On the other hand, SICAJ was organized in such a way that it produces useful information with regard to the legal needs that the communities presented to CAJs. The social demand for services, the composition, distribution, and evolution thereof had to be recorded in a quantifiable and manageable manner in order to produce information. Mainly, the management system had to structure the work of the teams, ensuring it reflected the notion of Open Justice, which implicitly places the person, gender perspective, age diversity, and streamlining of proceedings at the center, within the framework of the Rule of Law. SICAJ's internal logic had to be designed and organized on this basis.

Evidence shown by the studies on legal needs reveals that the greater the degree of vulnerability, the higher the interrelated legal needs. Therefore, and quite foreseeable, people that appear before a CAJ due to a certain legal need will, as they become more empowered, continue to do so in relation to other needs they might identify, provided the experience they had was a valuable one. To that effect, the idea that the SICAJ could rebuild the people´s "clinical records" was adopted so that they could produce institutional and comprehensive information about the exercise of rights situation.

Additionally, the system had to produce socio-demographic information about those consulting CAJs so that it could provide geographical, gender, and age dynamics that were relevant to understand the demand and impact of the services. The SICAJ design process was a collaborative task between the teams of the DNPFAJ, the work of an expert in data and statistics management, and the participation of the teams of the centers for access to justice.

The software's development took several months and the first pilot test was carried out in mid-2016 at one of the CAJs in the City of Buenos Aires. Months later, another pilot test was implemented throughout the city of Buenos Aires and, as more CAJs around the country started having access to the Internet, more adjustments were made to the software.

At the same time, initial training was delivered to the teams in a collaborative effort made by the two national directorates involved.

In the following years, adjustments were made every semester based on implementation enhancements, the identification of operational needs, etc.

The main benefits of the system are the following:

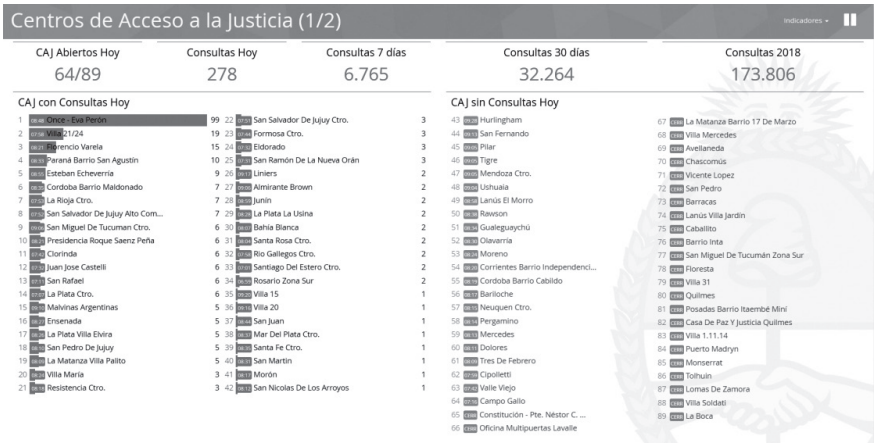
1) Controlled access to the application;
2) Registration of CAJ itinerant and decentralized services;
3) Data georeferencing;
4) Registration of institutional, community, and internal work in which CAJs participate;
5) Fast inquiry mechanism, requiring less data, regarding inquiries to offices within CAJs;
6) Comprehensive task management;
7) Participation and management of professionals with a focus on multidisciplinary management;
8) Full historical information for each person;
9) Easy addition of attached files in different formats.

SICAJ also has two tools for working with the recorded information: filters and information download. The first part allows for filtering inquiries, people, interventions, management, institutional activities, etc., according to different criteria. For instance, it may select inquiries on certain topics, people of a certain nationality or gender, or certain institutional activities. If there is a particular interest in obtaining statistics, drafting graphs or using information for service planning or enhancement of the CAJ, this information can be downloaded in a file. The system is based on open technologies and enables the use and extraction of data in different formats (Web services, CSV, Excel, DB Dump, etc.).

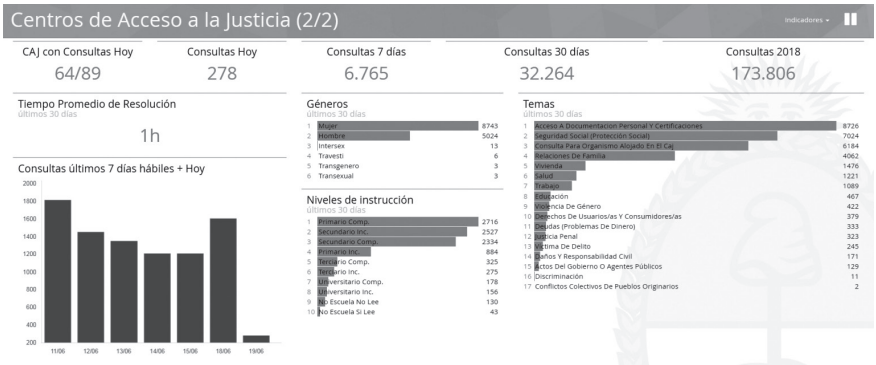
At the same time, SICAJ has an internal system resembling a dashboard where the authorities can view CAJs management in real time through certain statistical indicators that facilitate the decision-making process if the information shows any issues (see pictures 1 and 2), or if there is need for improvement. This dashboard facilitates visual or numerical comparison, which can lead to determining certain trends.

SICAJ reflects the actual style of work carried out at the centers for access to justice, facilitating the task of the agents with regard to inquiries by allowing immediate access to information for inquirers and the State through CAJs. Moreover, it reminds users of unfinished tasks for quality management surveys. These surveys are associated to each received inquiry and linked to each CAJ's global evaluation (together with an evaluation of the involved agent), so that performance can be accurately appraised.

Picture 1. CAJ management dashboard in real time. (Example 1)



Picture 2. CAJ management dashboard in real time. (Example 2)



Quality information allows each CAJ's performance to be analyzed and made available to them. Moreover, if two or more periods are compared in terms of inquiries or people, it shows for each CAJ whether the number of inquiries or people has increased or not. Therefore, once the context is established, it can be determined whether the differences in figures are related to time and space circumstances (e.g. timing, lack of personnel, location, etc.) or whether there is a specific management factor to be taken into consideration. These are mere examples of the countless benefits of having adopted an information management system that offers timely and efficient information.

If we consider that quality statistics are achieved when the production of data is based on the use of information generated within the system itself (in this case, the SICAJ records), nowadays it is possible to have adequate data so that various statistical reports on DNPFAJ management can be periodically drafted. Likewise, said information is expanded, after filtering sensi-

tive data[9], and provides the basis for publications on the Argentine Open Judicial Data Portal (*datos.jus.gob.ar*), Argentine Ministry of Justice and Human Rights and, at the same time, on Datos Argentina, Argentine Government Secretariat of Modernization (*datos.gob.ar*). Both publications are available to the public in open formats for use and redistribution as inputs or data sources for research or applications, according to citizens' creativity or needs.

No doubt, SICAJ contributes to the enhancement of the management quality at the Directorate of Access to Justice both internally, and also in support of the publication of the activities that have to be accounted for, in the way of open data. Therefore, by extending information to public portals through accessible formats, value is added to the recorded information, including transparency regarding institutional actions concerning citizens. Showing data to society, ensuring it is properly understood, was a step difficult to imagine until only recently, despite the fact that it is a fundamental right of the citizens since, as prescribed by the National Law on the Right to Access Public Information, this information belongs to citizens.

Efforts made by the Ministry of Justice and Human Rights led to significant progress in the recording of data on services offered, in the type of periodically published indicators and in the timeline in which this information is made available, since it is quite unlikely to find solutions to potential problems years after they happened. An ongoing, regular update of information is key and should not be underestimated since it provides citizens with the possibility of expressing their views about public policies, whilst giving decision-makers the possibility of foreseeing the necessary changes to enhance the quality of their management.

4. Conclusion

Enhancing the principles of public governance to fulfill SDG 16 entails ambitious challenges related to the existence and quality of data, which includes collection, processing, and further analysis of the information. SICAJ is a management tool that developed institutional capacities within the public administration and raised awareness about access to justice at the federal level. Moreover, SICAJ shows how the Open Justice paradigm was extended to the field of access to justice by promoting strategies and accountability mechanisms, as well as access to information so that the individuals can exercise their rights, monitor the performance of institutions, and cooperate with the ongoing improvement of services.

(9) Law 25,326 on Personal Data Protection, section 7, sub-section 2: "sensitive data can only be gathered and then treated whenever there are reasons of general interest authorized by law. It may also be treated for statistical or scientific objectives whenever their owners cannot be identified", and sub-section 3: "the creation of files, banks or records that store information revealing sensitive data either directly or indirectly is prohibited…".

Investment in access to justice from a perspective of technological innovation represented a crosscutting solution. In order to guarantee that the policies of community legal empowerment have the intended reach and scalability, the use of transparency, accountability and participation tools for measuring progress becomes a necessity. Having an information system that allows for real-time recording of interactions of citizens with the Ministry of Justice and associated services posed a greater challenge for those of us who are in a position to redefine the course of action of public policies to innovate the way in which answers are provided to citizens.

SICAJ is a system that effectively identifies where readjustments to these public policies based on awareness must be made, taking into account the most demanded or unmet legal needs throughout the country. This leads to achieving an even further impact, such as the optimization and re-functionalization of resources or a larger coverage of new social demands in the field of access to justice. In other words, the Open Justice paradigm is now available for accessing justice services.

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FIRST LEGAL AID HOSPITAL IN ARGENTINA

MARÍA FERNANDA RODRÍGUEZ*
KARINA CARPINTERO**

1. Introduction

Innovation policies in access to justice are a key component within governments and agencies that aim at developing their societies. Designing people-centered institutional models entails adjusting services to their needs, generating early care models, accelerating and streamlining processes, centralizing responses to legal issues and backing alternative pathways to access justice.

Small, subtle and even counter-intuitive changes in a process' structure can produce a great impact on the lives of the most vulnerable, always taking into consideration and understanding their human behavior and psychology (UNDP, 2016).

The first Legal Aid Hospital of Argentina was designed with a view to seeking an appropriate response to people's legal needs and, furthermore, bearing in mind the possibility of increasing cooperation to achieve collective goals. Its purpose is to diagnose and solve people's legal issues in a single place. The Legal Aid Hospital provides all kinds of legal assistance services: information, guidance, advice, assistance, support, mediation and legal aid. It was designed together with 17 national and local public administration agencies, universities and legal service providers within the local and national judiciaries. (1)

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* Under-secretary of Access to Justice, Argentine Ministry of Justice and Human Rights.

** Advisor, Under-secretary of Access to Justice, Argentine Ministry of Justice and Human Rights.

(1) This Project is an initiative of the Argentine Ministry of Justice and Human Rights, together with the United Nations Development Program (UNDP), implemented jointly with the Argentine Ministry of Production and Labour; Argentine Ministry of Health and Social Development; Public Defender's Office; Attorney-General's Office; Comprehen-

This article intends to reflect mainly the justification for an innovation project to have a person-centered institutional justice model, which is currently at an incipient stage of implementation. We will refer to the essence of the Legal Aid Hospital, what makes it different from the policies developed so far, the project's implementation context, resources available, what impediments can hinder this undertaking and why is the enhancement of this initiative good for society.

2. People-centered policies on access to justice

In order to understand the Legal Aid Hospital Project, we wish to first of all explain what a people-centered justice model means, for which we must highlight at least, four core dimensions: (i) understand what happens to people facing justice-related problems, what they expect and what they actually obtain, through studies to provide answers to these questions; (ii) recognize the existence of a world that is becoming more and more complex, in which it is very difficult to ensure that particularly some of the vulnerable groups facing social and legal problems can exercise their rights in daily life; (iii) view the damages at this level as well as the cost associated to a lack of response to this kind of controversies for the people and the community; and finally (iv) understand that these social and legal disputes cannot only be processed within the formal system but instead require a comprehensive answer within a huge justice ecosystem.

In order to implement people-centered access to justice policies and promote fulfillment of the commitments undertaken within the 2030 Agenda and Sustainable Development Goal 16.3 (set by the United Nations in 2015), Argentina worked through its country-wide network of Centers for Access to Justice (CAJ)[2]. In each CAJ, four staff members (a lawyer, an administrative officer, a psychologist and a social worker) provide comprehensive, preventive judicial services. These centers are close to the community needing them and are aimed at intervening at an early stage in the judicial process.

CAJs implement a permanent State policy which allows people to come into contact with what the State has promised to deliver, that is to ensure compliance with legal regulations and, moreover, that the exercise of rights becomes a reality in everyone's life.

In order for this to happen, some vulnerable groups need support, guidance, information and advice regarding the exercise of their rights. In some cases, this is achieved by eliminating bureaucratic and territorial obstacles, or those

sive Medical Care Programme (PAMI); the National Registry of Persons (RENAPER); Argentina's Health Superintendent's Office; Buenos Aires City Ombudsperson's office; Buenos Aires City Public Defender's Office; Buenos Aires City Prosecutor's Office; Buenos Aires City Public Ministry's Guardianship Office; and the Buenos Aires City Attorney-General's Office.

(2) Information Guides on Centers for Access to Justice. Available at: https://www.argentina.gob.ar/justicia/afianzar/caj. Accessed on:13/02/2019

resulting from lack of information, education or social capital of the people leading them. For instance, by providing assistance in the formalities concerning administrative benefits (which are complex but very necessary for certain vulnerable groups); triggering a system of itinerant services in the smaller or more isolated communities; drafting information guides on their rights; delivering community talks; promoting community mediation; or providing free legal counsel within the formal system.

Policies on the Centers for Access to Justice follow several guiding principles for: making each of the management decisions, so as to provide excellent service where there is greater need, bearing in mind high quality and dignity standards; ensuring geographical equity at the federal level; organizing supply according to objective evidence-based demand; implementing a differentiated and multi-cultural approach to overcome all access to justice obstacles preventively and at an early stage; and developing public-private partnerships to render those unprovided services that people need.

A priority to implement this model was for the service to be framed within open government/open data-based quality processes. Bearing in mind this perspective of open justice for designing access to justice-related public policies, we were able to find out which were the unmet legal needs in Argentina and what must be done from an internal and institutional approach to meet such needs. For this purpose, the Ministry adopted two strategies to generate knowledge and evidence on unmet legal needs, and actions taken by CAJs to solve them. Such evidence and data are considered public goods and were made available to the public at large, the academic community and other agencies.

On the one hand, the Ministry started producing studies on legal needs, based on international expertise in this field. The first study on unmet legal needs was produced in 2016, and the second will be produced in 2019. The study provides unique evidence on the prevalence of legal problems and people's experience when faced with daily legal issues and events.

On the other hand, the Ministry designed a software system for CAJs to manage cases on-line: the Centers for Access to Justice Information System (*Sistema de Información de los Centros de Acceso a la Justicia*, SICAJ). SICAJ allows the collection of social and demographic data on people requesting CAJ services, the type of cases presented, the intervention decided upon, measures taken, outcomes, etc. Furthermore, this system identifies each of the problems posed at the centers, by topics and sub-topics, as well as the formalities to solve the issues. This leads to developing "clinical records" gathering data on legal issues affecting the persons requesting assistance, whilst also becoming dynamic surveys on legal needs, focusing on low-income sectors of the population. SICAJ gathers all data on queries in real time, and then processes them.[3]

(3) This publication includes a chapter describing the operation of SICAJ in detail.

In order to honour the promise of building fairer, more peaceful and inclusive societies and enhancing access to justice, it is necessary to seek support in the big ecosystem in which civil society, the States (both national and sub-national, starting by their senior officials) and the formal justice systems work in a coordinated manner.

3. Legal Aid Hospital in Argentina, a model centralizing the response to people's legal needs

An institutional model was designed, consistent with the differential approaches and with the quest to scale up access to justice services in order to serve big urban areas, avoiding institutional fragmentation and lack of coordination, so as to increase and extend the potential of CAJs regarding their intervention, coordination and networking capacities among free legal aid providers.

A pilot test was thus carried out to have the First Legal Aid Hospital in Argentina[4], a comprehensive legal aid center that coordinates the work of interdisciplinary teams made up of lawyers, psychologists and social workers, and the services provided by a series of legal service providers, the national and sub-national executive branches, the judiciary, lawyers' bars and universities. Its purpose is to ensure unified, efficient responses and to reduce the costs linked to the prevalence of unmet legal needs. The aim is to instate a big ecosystem with the convergence of civil society, the States through their executive branches and the formal justice systems.

The rationale behind the Legal Aid Hospital is to solve issues in a single place and in less time, bringing closer to the people the offices of those agencies that can meet the greatest amount of vulnerable groups' legal needs. In this regard, a people-centered systemic approach was designed. Once inside the Legal Aid Hospital people can learn about their rights, harness personalized, permanent legal aid to access their rights (thus avoiding the excessive referrals of public bureaucracy), leaving aside several of the economic and geographical barriers to access justice.

This centralized legal assistance service, in coordination with the different state agencies, helps to make public, human and technical resources more

(4) The Legal Aid Hospital is an initiative framed within the joint work carried out under UNDP Project ARG/16/022 "Fostering Sustainable Development Goals through access to justice of people in vulnerable situations", and the Justice 2020 Program. The "Justice 2020" Program is a digital platform of the Argentine Ministry of Justice and Human Rights, operating through citizen participation. It is a forum for dialogue, and gives the possibility of making proposals, sharing ideas and learning about ongoing projects to improve justice-related services. This system provides the possibility of participating in two ways: on-line or in-person. The pillars currently discussed on the platform are the following: Institutional; Criminal law; Civil law; Access to Justice; Management; Human Rights, and Justice and Society. Available at: https://www.justicia2020.gob.ar/.

efficient, thus maximizing social return on investment. This is mainly due to a participatory, integrated methodology to work with all of the convened agencies. The agreed guidelines presuppose the selection of certain case studies to be discussed at grand rounds on legal issues, allowing the most reasonable adjustments to be made in order to ensure the required outcomes.

The Legal Aid Hospital is different from other public policies essentially since it seeks to effectively streamline and reach out with legal services to the most disadvantaged communities. Therefore, it is worthwhile considering its guiding principles: (1) Ensure application of the principle of efficiency, quality and response preparedness within the State's services; (2) Ensure active inter-institutional coordination; (3) Professionalize state operators in the fields of specialization at the different service levels through ongoing training; (4) Resort to all of the Hospital's resources before any external referral; and (5) Generate active institutional participation and strengthening forums for operators by holding grand rounds on legal issues.

In order to ensure appropriate levels of service and response, institutional coordination and follow-up of the people's legal needs, the Legal Aid Hospital has (1) action protocols; (2) institutional coordination mechanisms with different State agencies; (3) identification of focal points to deal with urgent cases; and (4) inter-institutional working groups to address those cases that need specific interventions from other national or local public administration agencies.

3.1. Link between the medical care and legal aid systems

Since the Legal Aid Hospital is defined as a space that provides an integrated care system, it is important to bear in mind that legal health and prevention discussions allow comparison with the health care system. Such comparison is feasible given the potential consequences of ignoring legal issues and due to the way in which law and medicine interact with people's private lives.

Some countries like Australia have innovated with policies that intertwine legal and health matters. Therefore, "Health Justice Partnerships" are institutions promoting collaboration between both worlds that advocate for solutions benefiting both human dimensions, i.e. people's legal status and health condition. That is to say, legal advice is rendered to vulnerable people who without such aid would not be likely to access legal services to solve their problems, which would deteriorate their health (Health Justice Australia, 2018).

Just like in the case of the medical care system, the justice system is full of professionals with specialized knowledge. People trust these experts to diagnose their problems and propose and implement actions that often entail complex steps, unknown and intimidating language, and burdensome procedures. If initial attempts in the legal and medical fields are unsuccessful, then systems move towards specialized institutions with more expert staff, more specific processes and a set of confusing tests and rules.

Just like an untreated medical problem, an untreated legal conflict can escalate, affecting other areas of a person's life. Lost time at work, stress, tension with colleagues or neighbors can produce tension in the family and inter-personal relations, or vice-versa. People become distrustful and anxious, which leads to a deficient performance at work or precarious physical or mental health. Loss of income is then added to the situation and can affect stability concerning housing, credit and consumer-related issues.

The consequence of ignoring legal issues can result in a spiral-like circuit resulting in poorer general well-being and an increase in the complexity of the problems, getting to a point in which no legal remedy can successfully address the problem. In this regard, an unmet legal need produces unexpected damages or unwanted effects.

Changes in public legal education, in pro-bono services, para-legal notarial services and governmental and private services, for instance, the Federal Network on Free Legal Aid, are helping to build the equivalent of walk-in medical centers, pharmacists, nurses and toll-free lines for the medical services continuum.

3.2. Preventive approach: Legal Health Check-up

The Legal Aid Hospital establishes different service levels to provide an individualized system, with specific treatment according to each person's legal needs, and with differentiated teams that can appropriately follow up on each case, through expert practitioners in certain State or law-related problems, to ensure the necessary coordination for providing appropriate responses to each case.

From a practical standpoint, the analogy with the health system (besides happening in the way of staggered services at different levels) refers to incorporating the region's first Legal Health Check-Up (LHC).(5)

(5) Australia has a legal health check-up initiative to be found on the website *"Legal Health Check"* where training is provided through four videos, as well as support to community workers to help out vulnerable customers with many legal problems. In this case, the Legal Health Check helps to identify the inquirer's legal needs and collaborates with community lawyers to help solve the problems. All four models are adapted for youth at risk, recently arrived migrants, people with mental health conditions and those with housing problems. Professionals can select the LHC that best reflects the issues the consulting party is facing. Legal Health Check. Basic. Available at: http://legalhealthcheck.org.au/LHC-Basic.php. Accessed on: 07/02/2019.

Another LHC style was implemented in the United Kingdom in which the legal check is a means for people to learn about their legal service needs and, according to the identified legal need, they will be connected with experts to help them out with the solutions. Available at: https://www.mylegalcheckup.uk/. Accessed on: 15/02/2019.

In the United States there are several initiatives linked to specific subjects. For instance, in Seattle, a legal firm tried out a model regarding labor cases, for inspecting trade unions and ensuring compliance with federal and state laws. The proposal is to review trade union safety procedures or submit claims on the forever changing reporting regulations, presenting this proposal as one that is profitable for businesses. The Law Offices

The Legal Health Check-up is a way of inquiring about the legal problems faced by people on a daily basis with regard to their income, housing, education, employment, family, social and health services. It is an opportunity to analyze the legal health of people and to identify risk factors, guide them in addressing and controlling them, and finding preventive remedies or alternative legal dispute settlement options outside court before there is an emergency situation.

LHC objectives are: (a) designing a preventive legal diagnostic assessment model; (b) identifying the consulting party's needs resulting from unmet legal needs; and (c) proposing specific solutions for treatment and oversight within the Legal Aid Hospital.

Check-ups entail taking the first preventive steps and minimizing, avoiding or being prepared to face different legal problems. Having good "legal" wellness includes, for instance, having a lease contract, a legal employment contract, reviewed contracts, information about personal care and child support requirements, an understanding of tax obligations, having ID documents and other matters.

Often times, legal problems are overall not seen to by specialized law practitioners, as neither are they evaluated or identified as such until there is an emergency, e.g., receiving a certified letter or being served notice of a court claim, or until legal proceedings must be started as the only way to solve legal problems.

Within the Argentine Ministry of Justice and Human Rights, and through CAJs, institutional efforts are being made to identify together with those inquiring about a situation, which are the unobserved or unattended legal problems because of lack of resources or information on the measures to be taken.

Often times the micro-management of daily matters linked to domestic problems take more time than advisable and thus generate a chain of associated legal issues, which leads to seeking justice in its reparatory dimension at the courts.

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of Schwerin Campbell Barnard Iglitzin & Lavitt LLP. Available at: http://www.workerlaw.com/Seminars/Custom-Seminars/Legal-Checkup.aspx. Accessed on: 07/02/2019.

In Tennessee, for instance, there is *HELP4TN*, a web portal designed to provide residents in Tennessee with a broad range of one-stop legal and social services. The check-up includes general questions and can be accessed on-line. In Tennessee Alliance for Legal Services (TALS) & West Tennessee Legal Services, Legal Wellness Checkup. Available: https://www.help4tn.org/node/432. Accessed on: 07/02/2019. Another important benchmark case is the Legal Health Checkup Project in Canada. The LHC was developed in 2013-2014 by *Halton Community Legal Services* (HCLS), a small legal assistance clinic in Ontario. The pilot Project includes associations such as the HCLS and seven intermediary groups within the clinic's delivery area in the Halton region. The purpose of the Project was to increase the number of customers served through partnerships with these intermediaries. In Legal Health Check-Up. Available at: https://www.legalhealthcheckup.ca/. Accessed on: 07/02/2019.

Pursuant to this rationale, the Legal Health Check-up is a service comprising a personalized, individual session with people wishing to have a diagnostic assessment of their legal needs. Therefore, the purpose of LHC is to encourage people to recognize legal problems at an early stage and take measures once the problems have been identified, for instance, for professionals providing primary legal services, the process entails friendly conversations with people on the law, how to obtain legal aid and how to work efficiently with a lawyer.

4. Conclusion

Innovative projects need time to mature. Achieving outcomes can often take more time than expected. Therefore, and to anticipate any adversity that could crop up, we decided to carry out a thorough analysis of the main challenges posed by the Argentine state's reality for providing legal services.

This led us to determine that the main challenges for the Legal Aid Hospital are related to an administrative and bureaucratic overload, fragmentation of services according to each legal need, and blind points, that is to say, institutional isolation. While analyzing these challenges, we also tested processes to overcome and find a way about them. The greatest needs are linked to subjective knowledge gaps, capacity to act and effective availability of institutional resources to solve legal disputes. Traditional responses of the institutional system to most of the legal issues arising in daily life are slow, formalistic, disarticulated and difficult to address by the community at large.

The implementation of a systemic approach led us to designing the Legal Aid Hospital, a new way of helping people to navigate through the system, accelerating processes, unifying the supply of legal services and personalizing services as per their legal needs.

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PRIORITY COMMITMENTS FOR ACCESS TO JUSTICE AND LEGAL EMPOWERMENT

PETER CHAPMAN*

1. Introduction

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, access services, push for legal and regulatory protection, shed light on corrupt practices and effectively participate in governance processes. The OGP process, in turn, can help to 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 are increasingly using the OGP platform to drive broader justice reforms. A 2018 review of OGP national commitments shows that OGP National Action Plans (NAPs) are increasingly being used to advance judicial transparency, open justice data and combat violence against women.(1) The frequency of justice commitments have grown significantly since 2011 and in 2017 more than 10% of all NAP commitments were related to justice.

(*) The author acknowldges contributions of the Open Society Justice Initiative authored this paper with contributions from Abigail Moy and Stacey Cram of Namati and input from Maaike de Langen of the Pathfinders Justice Taskforce, members of the Global Legal Empowerment Network and staff at the Open Society Justice Initiative.

(1) See Sandra Elena, Justice Related Commitments in OGP Action Plans: Updating the Findings (March 2018) available at https://www.opengovpartnership.org/resources/opening-justice, building on Sandra Elena, Promoting Open Justice: Assessment 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.

2. Access to Justice, Legal Empowerment and Open Government

The law impacts nearly every aspect of life, from health, housing and education to employment 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.(2) 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 the family facing eviction; the woman seeking child support benefits from an absent husband; the Roma man being denied health services due to discrimination; the daily laborer not being paid wages he was promised; and the community fighting for recognition of their land rights in the face of land-based 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 cluster with 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 spark other problems, thus contributing to a cycle of decline which inhibits opportunity.(3)

Justice systems do not provide adequate response to these needs. When one is a victim of violence or crime, or involved in a legal dispute, too many people either have no access to justice or are failed by distant, opaque or poor-quality justice institutions. Many countries are making justice a developmental priority and taking steps to meet people's justice needs through informal and formal justice services.

Access to justice and legal empowerment can provide concrete avenues for people to understand and enforce their rights and thereby participate meaningfully in society. Access to justice and legal empowerment should be a key priority for OGP members as it advances numerous priority OGP themes, including the three identified for the 5th Global Summit in Tbilisi, Georgia:

a. Civic Engagement

Access to justice and legal empowerment advance meaningful and concrete civic engagement. To achieve open government, people must have the ability to respond to the injustices that affect their daily lives. This means they

(2) See Pleasence, P., Balmer, N.J. & Sandefur, R.L., Paths to Justice: A Past, Present and Future Roadmap, London: Nuffield Foundation (2013) available at http://www.nuffield-foundation.org/paths-justice-past-present-and-future-roadmap.

(3) *Forthcoming* OECD and Open Society Justice Initiative, Toolkit on Legal Needs Surveys and Access to Justice (2018).

must be guaranteed access to information about laws and regulations; but it also means they must be able to obtain effective assistance when discrimination, corruption, violence, or lack of resources prevents them from addressing grievances or obtaining remedies. People must have the chance to take part in processes for setting institutional agendas and holding institutions accountable for systemic failures. Access to justice partnerships between governments and independent civil society organizations can provide productive platforms for collaboration and engagement.

b. Anti-corruption

Access to justice and legal empowerment advance awareness and provide tools for people and communities to shed light on corrupt practices, to protect their rights against bribery and corruption, push for legal and regulatory protection, and concretely participate in open government initiatives. Access to justice and legal institutions have a strong impact on the effectiveness of anti-corruption and open government policies; they are the tool to ensure more 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 as to highlight breaches in integrity of public officials (e.g., through the support of paralegals or mediators who can help people challenge corruption to secure access to government services and benefits).

c. Public Service Delivery

Legal empowerment, be with legal clinics, paralegals, citizen advice bureaus or community organizing, is typically focused on helping people access services that they are entitled to. By solving individual cases and translating issues into structural improvements, legal empowerment contributes to sustainably improving public service delivery. Research has shown that access to justice and legal empowerment can lead to the improved delivery of, and access to, services including health, education, and water and sanitation. Moreover, the growing evidence shows that access to justice and legal empowerment have an impact on access and equity in social sectors such as improving access to social benefits, education, healthcare or levels of employment.[4]

3. How Can OGP Help Strengthen Access to Justice?

Justice reform efforts are too often focused on state institutions alone. The justice sector is often siloed with insufficient links to broader development priorities. An open government approach developed through the Nation Action Planning process can strengthen sectoral linkages and deepen participatory policy making.

(4) See White House Legal Aid Interagency Round Table, Legal Aid Toolkit available at https://www.justice.gov/lair/file/829321/download

a. Platform for Government-Civil Society Collaboration

The OGP is a national mechanism for government, civil society and other stakeholders to co-create priority commitments in 2-year National Action Plans. NAPs provide opportunities to identify priority reforms, strengthen the hand of reformers within and outside government, gain trust and buy-in for reforms, and convene and collaborate with broad stakeholders across government agencies and civil society.

b. Country-owned Framework Ensures Accountability

National Action Plans are developed by key policymakers. An Independent Reporting Mechanism (IRM) promotes accountability within the framework by producing independent progress reports for each OGP member on an annual basis. This independent structure seeks to stimulate dialogue and promote accountability between member governments, civil society groups and the general population.

c. Strengthening Linkages across Sectors

The OGP process provides opportunities for justice reformers to connect with other relevant government agencies and civil society organizations. The NAP process is multi-sectoral and access to justice advocates are able to engage with diverse governance reformers in government to describe why access to justice should be an open government priority. In several countries, the Ministry of Justice are the OGP Point of Contact, thereby playing an important leadership role in articulating and coordinating OGP's broader governance efforts.

d. 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.

e. A Peer Network of Reformers in Government and Civil Society

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

4. Priorities for Access to Justice and Legal Empowerment in Open Government

When governments and civil society groups incorporated justice into NAPs in the early years of the OGP, these commitments tended to focus on judicial information systems, case management, combatting judicial corruption and

civil participation in conflict resolution.[5] Commitments related to access to justice and open justice data initiatives have increased in the last two years but focus often remains on transparency and open justice.[6] OGP members have the opportunity to build on these reforms to include commitments to strengthen access to justice and legal empowerment.

a. Effective Justice Policies

NAP processes can help to identify, develop and implement more effective and inclusive access to justice efforts. This section describes four policy 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, to strengthen access to justice for open government, OGP members should prioritize policies that expand access to civil justice. Civil justice problems and disputes—including those related to health, employment, consumer issues, land and property and social benefits—are tremendously frequent, more likely to impact poor and marginalized communities and are fundamental for advancing open government. NAP process can enable new government and civil society partnerships for responding to civil problems and strengthening 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 and providing 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 institutional recognition by the Government of South Africa can hinder CAO work. In 2016, civil society colleagues in South Africa engaged with government and civil society colleagues working on the NAP and secured 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 independent

(5) 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

(6) See Sandra Elena, Justice Related Commitments in OGP Action Plans: Updating the Findings (March 2018) available at https://www.opengovpartnership.org/resources/opening-justice.

with standards for effective oversight. OGP members should amend or establish legislation, regulation and policies that allow for and recognize independent paralegals to contribute to justice and governance processes that include judicial and administrative functions in both criminal and civil justice.

Global legislative innovations around non-lawyers

Recent years have seen a wave of regulations seeking to expand how non-lawyers and paralegals can contribute to strengthening access to justice at a community level. 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 individual clients and to eligible groups.
- In Indonesia, a 2011 legal aid law enshrines 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 a mixed model of criminal and civil legal aid, from legal information and mediation services through to representation in court, to be provided through 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 local municipalities and donors.

• **Improve Transparency and Access to Information:** A significant portion of NAP commitments have focused on improving the transparency of 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 through the creation of mechanisms that ensure the regular preparation and dissemination of aids, guides and charters to enable people to better engage with government processes and understand and use laws relevant to them.

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.

Global Access to Information Innovations

- 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

• **Protect and deepen civil society partnerships:** Today's justice challenges require shared solutions. The OGP can play an important role in protecting and advancing civil space.(7) 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.

b. 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 to strengthen 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 Funding:** Alongside national commitments, OGP members should adopt strategies and policies that encourage

(7) 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

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 while simultaneously budgeting for access to civil justice through sectoral partnerships to identify new sources of justice funding from agencies working on issues of labor, environment and health.

c. 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 process in ensuring equal access to justice for all.

• **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 use 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.

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.

• **Focus on Marginalization and Disparate Impacts**: In monitoring and measuring access to civil justice, OGP members should prioritize the experiences of marginalized and excluded groups. 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 these findings across countries.

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

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 forward implementation. Read more about Jordan's commitment to expanding access to justice for persons with disabilities here.

• **Increase Participation and Monitoring for Justice Accountability:** In addition to expanding transparency of the justice system, the OGP platform has also 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.

• **Reinforcing Global Commitments:** Global mechanisms and forums, including the High-Level Political Forum, provide important opportunities for learning and mutual accountability on 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.[8] The United States 3rd NAP identified opportunities for how their NAP could support the United States' global sustainable development efforts more broadly. OGP members should use the NAP process to contextualize global commitment to prioritize and advance access to justice.

5. Partners and Resources

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(8) 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.

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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.
- The National Alliance for the Development of Community Advice Offices.

SECTION SIX:
JUSTICE, GENDER AND DATA

DATA FROM A GENDER PERSPECTIVE ON THE ARGENTINE OPEN JUDICIAL DATA PORTAL

SANDRA ELENA* - JUAN MANUEL GARCÍA**

1. Introduction

Prevention, eradication and investigation of 'gender-based' and/or 'gender-expression' violence calls for sound public policies, which are the way for the government to enforce these rights. For this purpose, data are a key piece to size and understand the magnitude and types of different forms of violence. They are important for the government, in its different branches, both for accountability purposes, as well as for the design and assessment of public policies. They are also valuable for civil society, to define problems, priorities and action strategies.

Aware of the fact that Open Government policies can contribute to this objective, several institutions promoting this agenda at the international level are also mainstreaming the gender perspective in their processes.

The Open Government Partnership (OGP), which is the main institution promoting these principles at world level, is in the process of adopting a specific gender strategy. Among the actions shaping this strategy, OGP proposes the need to ensure a broader and more active participation of women in the different co-creation processes, having them play a greater leadership role in the preparation of reform commitments; foster the outlining of more commitments addressing the epidemics of sexual and gender-based violence; and enhance the leading role of women in policy formulation and public service supervision (Pradhan, 2017). This strategy is supported by initiatives implemented within the OGP, such as the Feminist Open Government (FOGO), fo-

(*) Coordinator, Open Justice Program, Ministry of Justice and Human Rights, Argentina.

(**) Active Transparency Coordinator, Government of the Autonomous City of Buenos Aires.

cused on ensuring a greater leadership of women in each of the stages of the OGP cycle.(1)

There are also specific initiatives on data from a gender perspective, such as Data2x, that work with United Nations Organizations, regional agencies, governments, non-governmental organizations and private sector partners to reduce the gender data gap, fostering an increase in quality, availability and use of gender disaggregated data to understand the dimension of socio-economic problems, their causes and potential approaches from a gender perspective.(2)

In this regard, the International Open Data Charter, stating the principles to be followed for public data openness, includes the requirement of disaggregation by gender so as to consider them timely and comprehensive.(3) International organizations such as the OECD(4) or the World Bank(5) make available their information in this regard on specific portals, where they offer data and information from a gender perspective.

2. Legal framework to reduce the gender data gap in Argentina

Since 1989, in light of the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), different countries have worked on developing statistics systems envisaging the gender perspective. It has been particularly important in promoting the actions of the CEDAW Committee's General Recommendation 9 that says "...statistical information is absolutely necessary in order to understand the real situation of women in each of the States parties to the Convention..." (UN, 1989).

More recently, the UN 2030 Agenda and its Sustainable Development Goals included a specific goal (No. 5) aimed at gender equality and the empowerment of women and girls.(6) In order to measure and achieve this goal, it is essential to have data disaggregated by gender, leading to generate reliable information and evidence-based policies.

The legal framework for addressing violence against women in Argentina is provided by Law 26,485 on the Comprehensive Protection of Women. In order to fulfill its objectives, this regulation includes the development of mechanisms for data collection (by designing selection and registration criteria, and outlining indicators) (section 9).(7)

(1) See https://www.idrc.ca/en/project/feminist-approach-open-government-investinggender-equality-drive-sustainable-development

(2) See https://www.data2x.org/

(3) See https://opendatacharter.net/principles-es/

(4) See http://www.oecd.org/gender/data/

(5) See http://datatopics.worldbank.org/gender/home

(6) See https://www.un.org/sustainabledevelopment/es/gender-equality/

(7) See http://servicios.infoleg.gob.ar/infolegInternet/anexos/150000-154999/152155/norma.htm

This law also appoints the National Institute for Women (former National Council for Women – CNM) as the guiding agency in charge of designing public policies to enforce its provisions (section 8) and thus commissions it with the drafting, implementation and monitoring of a National Plan.(8) This Plan, submitted in mid-2016, has among its objectives that of ensuring fulfillment of national regulations in this matter, as well as of international human rights treaties that have constitutional status in Argentina, particularly the abovementioned and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (known as the Belem do Para Convention). This Plan organizes effective policy implementation in a cross-cutting manner, as the name of the Convention says, to "prevent, render assistance to victims and eradicate" violence, and establishes an evaluation system allowing follow-up of the process. One of the Plan's fundamental premises is to "provide visibility to a national diagnostic assessment on the situation of women with regard to gender violence, highlighting the regional characteristics of this problem at the local level. Basically, this section uses data and figures to justify why it is necessary to implement this National Plan..." (CNM, 2016, p.18). Specifically, in the introduction to the chapter on diagnostic assessments, figures and statistical data, it states "...the outlining of efficient public policies needs a diagnostic assessment to account for the different forms of violence suffered by women in Argentina (CNM, 2016, p.27).

With regard to gender-based violence, several initiatives have been put in place to collect and present information as, for instance, statistics produced by the Office on Domestic Violence (Argentine Supreme Court of Justice), and by the provincial Supreme Courts of Justice of Argentina, or by the National Program "Victims against all kinds of Violence", Argentine Ministry of Justice and Human Rights.

3. Argentina's Open Judicial Data Portal from a gender perspective

Echoing this context, the Argentine Ministry of Justice and Human Rights included a section on gender-related data in the Open Judicial Data Portal, where data on different gender-related issues such as discrimination, inequality and violence are published. It shows data produced by different ministerial agencies working on recording data, as well as on rendering legal and psychological advice and assistance to victims needing such help. These Programs are, namely: the Unit of Registration, Systematization and Follow-up of Femicides and Aggravated Homicide due to Gender; the Program of Victims against all kinds of Violence; and the National Program on the Rescue of and Support to Victims of Human Trafficking. This section on Justice-related Data from a Gender Perspective also includes the analysis of databases, such as the registry of corporations at the Ministry's *Inspección General de Justicia*

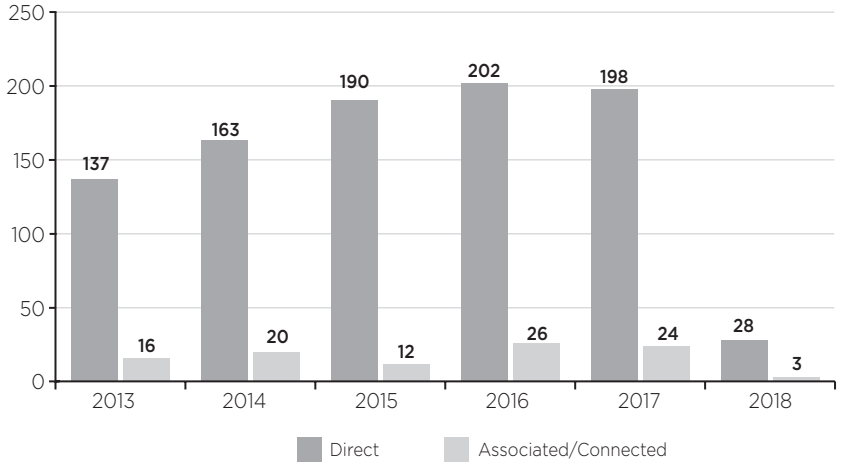
(8) See https://www.argentina.gob.ar/sites/default/files/plannacionaldeaccion_2017_2019ult.pdf

(Office of Corporate Oversight) and the dataset of the Federal Penitentiary Service to learn about the situation of women in the economic and penitentiary environments. Below is a description of the published databases.

4. Femicide Registry

The Unit of Registration, Systematization and Follow-up of Femicides and Aggravated Homicide due to Gender has been recording aggravated murder due to gender and femicides since 2012. The database contains primary data and obtains information from different sources: articles published in the printed press, police and court reports, claims filed with the Ministry's Secretariat of Human Rights and Cultural Pluralism. Two types of femicide can be identified: direct and associated or connected. An associated or connected femicide takes place in two different situations: when individuals trying to avoid perpetration of a femicide are killed, or when someone with an emotional bond with the victim is killed, generally sons and daughters, so as to punish the woman (as per the definition in Law 26,792/2012, which included the crime of Femicide in the Argentine Criminal Code). The registry has information as from December 2012. As at March 12th 2018, it included information on 1062 femicides.

Graph 1. Number of femicides by year and type: January 2013- March 2018

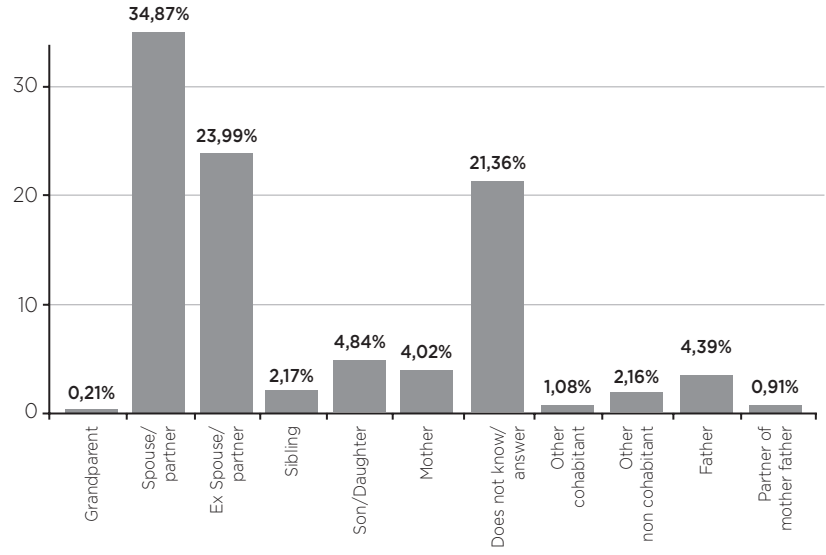


5. Support to the victims of gender-based violence

The Program "Victims against all kinds of Violence" operates within the Under-Secretariat of Access to Justice. It has a call center (freephone number 137) that receives requests for help from victims of violence, after which the specialized inter-disciplinary teams are asked to guide, care for and support the victims. Data published refer to the main reasons for requesting assis-

tance. However, it must be clarified that the victim may suffer more than one type of violence (sexual, economic or psychological violence all at the same time, or any combination thereof). All the published data so far are for Buenos Aires City although the Program also works in other provinces across the country in Misiones (Oberá, El Dorado and Posadas), Chubut (Rawson) and Chaco (Resistencia).

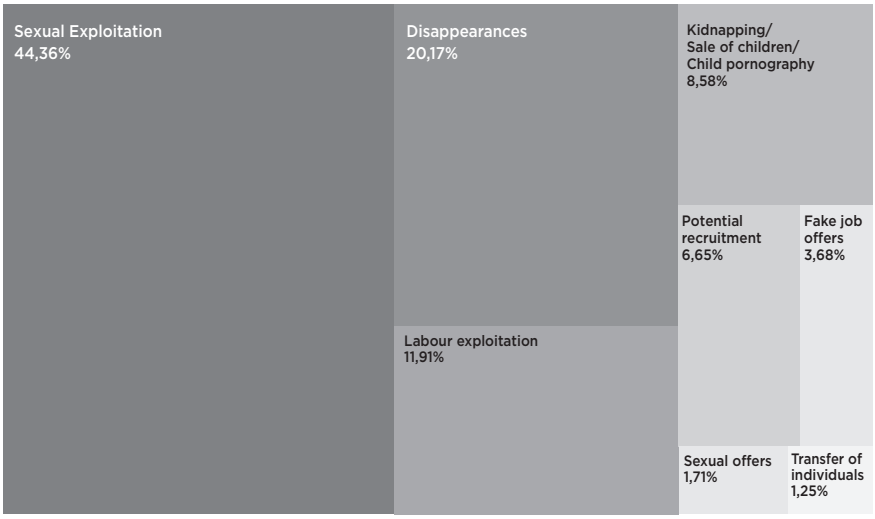
Graph 2. Relationship of criminal offenders with victims: January- December 2017



6. Human Trafficking

The National Program on Rescue of and Support to Victims of Human Trafficking, within the Under-secretariat of Access to Justice has a freephone telephone line (number 145) for reporting purposes. The calls are answered by specialized technical staff who know how to listen to and receive this kind of case reporting, which can be done anonymously to preserve the identity of claimants, since trafficking in persons is considered a part of organized crime. The line is operational around the clock. Data published refer to calls received by the Program's team of experts. On the one hand, the database on guidance provided to those calling number 145 describes events which are not necessarily related to the crime of trafficking in persons but that deserve some sort of attention, either because they are related to other crimes or situations of extreme vulnerability, or require coordination with other agencies. On the other hand, it includes data on the calls answered by the Program's technical staff (holding a degree in Psychology or Social Work), specialized in listening to callers and in receiving this kind of calls.

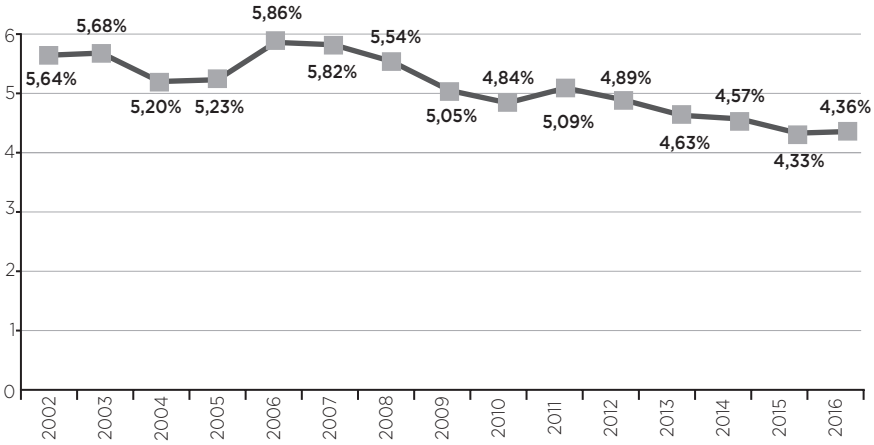
Graph 3. Types of crimes mostly reported on the freephone line 145: January-December 2017



7. Women in confinement

The report issued by the National System on Sentence Enforcement Statistics (SNEEP in its Spanish acronym) includes data on the federal and provincial inmates. For the section on "Justice-related Data from a Gender Perspective", an analysis was carried out of women in prison. Apart from the graph that appears below, other data were included on population, legal status, education, employment and maternity, taken from the 2016 SNEEP census.

Graph 4. Share of women in prisons

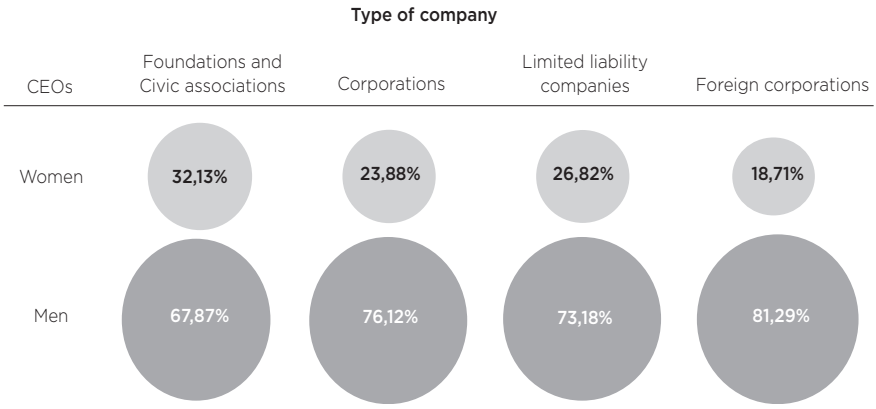


8. Women in the economic sphere

Data from the *Inspección General de Justicia* (IGJ – Office of Corporate Oversight) posted on the portal *datos.jus.gob.ar* provide an overview on the presence of women as CEOs of legal entities. For this purpose, an analysis was carried out of women in corporations, limited liability companies, civic associations, foundations and companies incorporated abroad. This analysis of CEOs registered in the IGJ database, evidenced that more female executives can be found in civil society associations and foundations: 32.13% of the total amount.

IGJ, in its oversight of corporations' role, controls and publishes information on stock and non-stock companies, (including those incorporated abroad), civic associations and foundations, all of them with domicile of choice in CABA (Buenos Aires City). Data used pertain to all entities registered at IGJ. In this case, no difference is drawn between cis women (women whose gender coincides with the sex assigned at birth, biological sex) and trans women.

Graph 5. Men and women heading entities registered at the IGJ



Note: the graph shows updated information as at 28 February 2018.

9. Use of Justice-related data from a Gender Perspective

As from the publication of the section on Justice-related Data from a Gender Perspective, the Ministry of Justice conducted activities with civil society organizations working on the eradication and prevention of gender-based violence and inequality. Data is published mainly to make available resources allowing empirical evidence-based diagnostic assessments.

The Ministry, through the Justice 2020 Program, holds working meetings on the most important public policies implemented in the field of justice. Regular meetings are held to discuss data on the portal *datos.jus.gob.ar*, with the participation of representatives from civil society and state organizations. The need for additional data is discussed and suggestions are received on how to improve the quality and format of tpublished data.

With a view to fostering collaboration based on open data, the Open Justice Program organizes regular *hackathons* using data from the portal *datos.jus.gob.ar*. In August 2018, a hackathon on Justice and Gender Data was organized in collaboration with the NGO *Equipo Lationoamericano de Justicia y Géner*o (ELA -Latin American Team for Justice and Gender) and the National Institute for Women, focused on convening gender activists and experts: designers, journalists, researchers, academicians, officials and judges interested in this topic.

It is necessary to have these forums to ensure an effective exchange of data with users. Their comments and feedback make a difference when the time comes to outlining an agenda for data publication that prioritizes society's specific needs.

10. Conclusions

Any attempt to have substantive policies from a gender perspective to settle inequality between men and women must have evidence-based data to support and sustain them. It is necessary to aim at bringing about a quantitative and qualitative improvement of such data, for which firstly they must be made more accessible to society. The open data philosophy provides optimal tools for these data to be owned by society as a whole.

In the specific case of justice, it is necessary to raise awareness about the gender perspective among its institutions and operators. This must take place not only to fulfill existing rules (since in many cases there are regulations but their enforcement fails because there is no matching gender perspective), but also to be able to outline and work with data backing the necessary reform in public policies (i. e. what cases are considered gender-based violence? femicide? Etc.).

The opening up of data on justice and gender within the framework of the Open Justice Program is a contribution towards the above change, which must take place hand-in-hand with a series of efforts by the remaining government institutions so as to reverse the current situation.

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NEW STANDARDS FOR PUBLISHING DATA ON JUSTICE AND GENDER-BASED VIOLENCE

SILVANA FUMEGA* - FABRIZIO SCROLLINI **
GABRIELA RODRÍGUEZ ***

1. Introduction

Women are subjected to many types of violence and discrimination worldwide and, particularly, in Latin American societies. The maximum expression of such violence is the death of a woman on account of her gender, known as feminicide. Not so many years ago, feminicides became a public, social issue. Only a few decades ago did they acquire their specific name. This notion, although in force since the 1970s thanks to the work of Diana Russell at the International Tribunal on Crimes against Women, only started being used in Spanish as from the 1990s after the crimes in Juarez City, Mexico.

Regional discussion of this phenomenon has led to making it visible and to spelling it out as a problem questioning societies and governments. Visibility exercises have gone side-by-side with an improvement of the official registry systems for these crimes, which would allow societies and governments to make better decisions and generate evidence-based public policies to combat them.

The organizations and people that work to actively make visible these crimes have started to use Information and Communication Technologies (ICTs) to account for this phenomenon. In general, the data provided by these initiatives differ from official statistics because of the criteria used to collect

(*) Director, Research and Policies, Latin American Open Data Initiative (ILDA).

(**) ILDA Executive Coordinator.

(***) Technology consultant.

information, which brings about a discrepancy between the official records and the view that society has about these serious events. The relevance of this situation is the main reason why the Latin American Open Data Initiative (ILDA) decided to study this topic from an empirical perspective, within our own project on Standardization of Feminicide-related Data.[1]

What exactly is registered when feminicides are recorded? What criteria are used and how? What kind of data are available to assess this phenomenon? How can they be used to improve public policies in this area? Although the answer to some of these questions seems to be simple, reality is quite more complex.

In this article we will reflect on the research objectives and questions addressed in our ongoing project. Firstly, we will put into context the debate on feminicides, gender and data. Secondly, we will explain the assumptions on how data standardization could help us improve data quality and, thirdly, we will reflect on their use. Our article concludes with the idea that data standardization helps to (re)open the debate on the criteria used, and (according to the context) aids governments and societies to rethink their strategies to further public policies, thus improving data collection as well as the actions with regard to this problem. Far from being a magical instrument to solve the problem, standardization and a potential data opening is a process which helps provide visibility to the problem and leads to reflecting on the criteria for data production at public agencies.

2. Feminicides, gender-based violence and data

At the beginning of the 1990s, the bodies of hundreds of women, many of whom worked in the *maquila* (assembly plants) on the border between Mexico and the United States of America appeared mutilated, tortured and, often times, sexually abused in Juarez City (Chihuahua, Mexico). These murders were known as "femicides" or "feminicides". So far, no one knows the exact number of women who were killed or disappeared since most of the murders were not investigated, and a significant part of the original evidence has disappeared (Heiskanen, 2013).

For many years, these feminicides were concealed such as is described by Patricia Ravelo Blancas (2008):

> ....since the publication of the "Final Report on the killing of women in Ciudad Juarez", submitted on 16 February 2006 by Mario Álvarez Ledezma, Under-secretary of Human Rights, Care of Victims and Community Services, Attorney-General's Office,

(1) This research work is supported by the International Development Research Center of Canada (IDRC), the Avina Foundation and the Development Bank of Latin America (CAF) through their joint initiative Innovation with Purpose Platform.

> the idea was disseminated that the killing of women in Ciudad Juarez was something of the past and that a myth had been generated: "the myth of the Juarez deaths", a stance that was then reinforced by the state and municipal authorities and by El Diario de Juarez newspaper, one of the broadest circulated in the district and that for several months showed on its electronic page an interview entitled "Juarez, the worldwide myth of crime", published on June 5th 2006.... (p. 13).

This concealment and attempt to restrict feminicides to a mere private sphere problem started to change. The public nature of this issue increased after the many claims on equal rights for women. A very important milestone of the above is the demonstration that took place in Argentina in 2015 convened by the movement "Ni una menos" ("Not one [woman] less"). These demonstrations took place in several Latin American cities in the last three years. The idea of patriarchy(2), which had been customary for centuries, was now being questioned.

Much has been achieved in just a few years. All these movements have raised awareness on the rights not yet recognized to women, as well as on the violence that they suffer in many fields of their lives, from the symbolic to the physical aspects -although there is still a lot to do and many rights to achieve.

In this regard, many laws have been passed in Latin America criminalizing feminicide as a specific crime. In the last few years, 16 out of the 33 countries in Latin America and the Caribbean have criminalized feminicide.

According to the ECLAC Gender Equality Observatory, in 2016, based on the official information provided so far by the countries, 1,831 women from 16 countries in the region (13 in Latin America and 3 in the Caribbean) had been the victims of feminicide. As mentioned in that same report: "... apart from the specific measures to prevent, care for, protect and redress, another challenge on the path to eradicating violence is precisely the availability of information..." (ECLAC, 2016).

Within this context, it is important to understand how these data are constructed and which are the variables taken into consideration, the methodology, and finally, the levels of access to the collected data in each country. Without understanding the methodological specificities, it will be difficult to have data to timely reflect this serious problem. Without an accurate diagnostic assessment, it is very difficult to think of appropriate solutions and initiatives to help mitigate the situation.

(2) According to Lerner (1990) it is defined as "the manifestation and institutionalization of male domination over women and boys/girls in the family and the extension of such domination to women in society at large".

3. Is standardization the way forward?

At the beginning of 2017, due to the relevance of the feminicide issue for the region, ILDA, and at the request of the Group on Open Data member countries, the E-Government Network in Latin America (Red-Gealc), coordinated by the Organization of American States (OAS), started an exploratory study to understand how data production and their use could help understand and, eventually, combat feminicides in Latin America.

With this purpose, ILDA designed a research/action methodology to calculate the size of the problem, understand how working with data (particularly open data) could contribute to its solution, as well as to establish recommendations to the countries involved.

These efforts are built on work that has been carried out to produce and collect data on feminicides, such as those of the ECLAC Gender Equality Observatory[3] , and also progress made to standardize the notions of the Bogota Protocol.[4]

3.1. Data standards and social processes

ILDA has experience in standardizing data in the fields of health, procurement and air quality. These standardization processes entail working in a participatory manner with those who produce, store, use and eventually release data. This kind of reflection on the role of data standards has been recognized by institutions such as the OECD, since the standards not only contain relevant knowledge for product and service production but also for all participating stakeholders (Blind, 2016).

The process for such standardization is a key factor. Data standardization processes force organizations to think of the kind of data needed, how they are collected, how they are stored and, ultimately, how they are used (Goëta & Davies, 2016). That is to say, standards not only shape the production of open data but also conduct silent, localized transformations of bureaucracy (Rodríguez, Fumega & Scrollini, 2017).

ILDA explores how uniform, standardized production of data can be of help so that the authorities understand the different phenomena, develop informed public policies and use data for citizens to build on them and improve their quality.

Given this previous experience, ILDA decided to develop a four-step research strategy:

a) Identify and compare the conditions in this field by reviewing available literature;

(3) See https://oig.cepal.org/es/indicadores/feminicidio

(4) See http://conferenciahomicidiosbogota2015.org/wp-content/uploads/2015/11/Calidad-de-datos-entregable-ESPA%E2%80%A2OI_SOlO_TXT.pdf

b) Try out different approaches on standardization with a group of stakeholders identified in the field of safety and security, gender and open data;

c) Test any potential steps to standardize these data and carry out the process;

d) Identify promissory data usage by government and society.

Through this process, ILDA sought to collect relevant information to understand how the change or adaptation of data infrastructure regarding safety, security and gender could have an incidence on feminicides.

3.2. Testing assumptions: first workshop

The first workshop was held in San Jose, Costa Rica, before the 5th edition of Abrelatam,(5) on August 21st-22nd 2017. The purpose of the meeting was to reflect and work on these very important topics of the regional agenda. Among its participants were activists in gender equality, public servants from the justice and security sectors, academics, and experts in technology from Argentina, Brazil, Uruguay, Bolivia, Costa Rica and Mexico.

Participants confirmed that one of the tools that can help with public policy design and civic technology projects is the power of having the necessary data to obtain an accurate diagnostic assessment of the situation. For this purpose, not only better tools for data production are needed but also protocols for data collection, publication and use, as well as a permanent update thereof.

Furthermore, not only is it important to have better tools for data production, but also to take into consideration conceptual aspects that add complexity to this topic. It is difficult to agree on the terminology used in this field. The different terms have many theoretical, epistemological and methodological implications. Based on what Lagarde (2006) said, it is necessary to go from femicide to feminicide, that is to say, to be able to distinguish with the help of legal instruments and data, the death of women on account of gender.

In such a complex universe, standardization of a minimum set of data allowing inter-operability, cooperation and/or comparison among different jurisdictions is a key task on which all participants agreed.

A recurrent topic during the above-mentioned workshop was that of having several sources of information. Each of these sources, from the official ones through to the mass media, provide data that help to understand gender-based violence events although there are variables missing to be able to compare or join different databases. In other words, there is no consistency and/or methods to collect information from non-formal sources, or for interoperation among official sources. This lack of consistency not only applies to

(5) See http://2017.abrelatam.org/

different sources within the same jurisdiction, but also to the consistency of a minimum amount of data among the different jurisdictions. In this regard, after discussions on the key topics to outline a standard, participants unanimously expressed the need and their own interest to develop such a data standard.

4. First steps towards building a standard

After this workshop was held, the preliminary version of the standard on feminicide data was drafted bearing in mind a series of premises the standard should meet:

- take into consideration the needs identified by those who participated in the workshop and an enhanced community of experts;
- have an iteration mechanism allowing agile feedback and improvement of the standard after its implementation;
- be designed so that technologically it can be adopted on any platform or using any technology;
- attach no license thereto so as to promote its dissemination; and
- take into consideration existing legal frameworks and practices to seek inspiration and promote its iteration.

Participants in the workshop and the enhanced community of experts provided feedback into this first document.(6)

After a rigorous examination, the current version of the standard includes mandatory and optional fields (to be fulfilled progressively). Not all countries can achieve the same level of compliance, especially at an initial stage of implementation (Rodriguez, Fumega & Scrollini, 2017).

5. Standard localization: discussions in Argentina and Uruguay

After this first stage of reflection and development of the draft, it was deemed necessary to start with its implementation and receive feedback from stakeholders out in the field.

Throughout the standard's preparation, we found that the Open Justice Program (Argentine Ministry of Justice and Human Rights) was a partner willing to collaborate in the implementation of the first pilot experience, which was kicked off at an inception workshop (June 14th-15th 2018, in Mendoza city), to foster participation and dialogue among the different actors involved in feminicide-related data production and collection in Argentina. Furthermore, a few weeks later (June 27th 2018) a workshop was organized in Montevideo, Uruguay, convened by AGESIC.

(6) See https://github.com/idatosabiertos/femicidios-latam

In both cases, the profiles of participants included people with experience in court data and statistics, justice system operators and analysts. Both events were facilitated by the ILDA team and a series of key agreements came out of both workshops.

5.1. Infrastructure

Problems were reported on the interaction of systems and data that can be taken therefrom. Furthermore, there were problems with the entry of data in all jurisdictions. Moreover, difficulties were reported concerning the interaction and exchange among organizations in the different government branches, which hinders the process of data collection and analysis.

On the other hand, many of the challenges were related to the degree of discretionality regarding disagreements between the social and criminal definition of feminicide, the difficulty to track events (prior allegations), as well as changes in the case names as time goes by, and whether amendments are made or not to registries, among other issues.

5.2. Capacities

Three matters emerged clearly with regard to capacities:

1) The classification of the criminal offense and the difficulties mentioned above;
2) The role of judicial operators;
3) Training of those who collect data.

Classification of the crime (if called feminicide from the word go, or if any other definition is used, e.g. aggravated murder) is a complex matter and requires resources which are not always available. It was agreed that the classification is often done manually, and that there is not always a unified criterion on how to apply the term feminicide. This hinders data comparison and analysis. In the case of Argentina, this could also hinder data comparison among provinces.

The role of judicial operators was also discussed. There is overall agreement that the gender perspective is not present in prosecutors' offices and courts (which are mostly male-dominated environments). This also has an impact on the legal categorization of the criminal offense in court case files. There are, moreover, strong incentives for these people, usually with a great workload, to use more efficient means to obtain the same conviction for the offense giving rise to feminicide. For instance, murder aggravated by the relationship between the victim and offender is punished in a similar manner although the justification is not based on gender violence. This forces statistics offices to look into the cases in further detail since this kind of classification, at first sight, renders feminicides invisible.

The third topic is training of those who collect data within the systems, as well as in related systems as, for instance, the police or offices dealing with

violence against women. Likewise, there is the need to generate common criteria for what is known as associated feminicide and include the LGBTQ group in the records. There are still many queries about data collection in these two fields and there is no simple solution, although a more thorough analysis is needed to identify mechanisms that can be systematized to thus collect verifiable and comparable data.

5.3. Communication

There are a series of challenges concerning use and communication. Firstly, there seems to be a coincidence in the occasional misuse by the press of the term feminicide and in the fact that, within a context of high pressure for news, the media demand information that could affect feminicide trials. Furthermore, some institutions present in both workshops said that a way of detecting cases comes from information provided by journalist sources. Besides the press, the value of NGO reports has also been mentioned.

With regard to data use and publication, in Argentina, this happens mainly through narrative reports prepared annually at some prosecutors' offices, as well as through reports sent to the different federal agencies. On the other hand, the permanent need for reports, together with the potential duplication of this exercise, leads the officials in charge of statistics to face a heavy workload. This could be remarkably reduced if data entry were more standardized and consistent with the requirements of national and international reports.

5.4. Institutional coordination

There are several challenges in the field of institutional coordination. On the one hand, the lack of connection of the data systems of those organizations that can provide information to classify a crime as feminicide is reflected at the institutional level. The strong fragmentation in this area as regards its institutional, legal and occasionally political dimensions makes it difficult to coordinate who will be in charge of reporting and in what manner on a specific type of crime. The implications of the spokesperson are not a minor issue: on the one hand, the legal category of feminicide does not coincide with the social phenomenon and/or with the broad criterion that most of the communities of practice undertake in this field. This generates confusion in public opinion and among political actors.

5.5. Use of data and ethical considerations

Ethical considerations on data management were a factor to bear in mind throughout the process. On the one hand, not all data should be open, which is something recognized from the very beginning of the process. Some data have the potential of re-victimizing the victims' relatives. On the other hand, and depending on the context, how data are treated and their visibility help to highlight the issue.

6. Moving forward iteratively

Our process of building a feminicide standard is still underway so it is not possible at present to provide final conclusions. Nonetheless, we can offer a series of lessons learned that relate to the processes of standardization, feminicide visibility, and the need to generate an iterative methodology to standardize public sector data from a gender perspective:

1) Notions matter when standardizing data and, moreover, the co-existence of different forms of interpreting data must be taken into consideration, since this gives rise to different "truths". For instance, the official truth is that which one or more state agencies indicate, according to their data; in the case of feminicides, the prosecutors and statistics offices. In other words, the same database can be interpreted differently by government and society. Although initially this can be viewed as a problem, it is indeed an asset that can nurture dialogue on feminicides and policies.

2) It is important to establish institutional mechanisms allowing data to be available at different access levels. In our experience, Costa Rica and its Observatory is a good practice to imitate concerning governance in accessing and disseminating data on feminicides. It is especially important to know what entity will act as spokesperson to communicate the data.

3) Most of the standardization processes entail dealing with inherited systems, and many of them have problems, particularly with the manual entry of data. There is a way around for process automation and improvement. In our case, we made a decision to consider these systems as a part of reality and see what changes are necessary in data collection. While this happens, it is important to have clear rules on how to deal with the data obtained from these systems and the subsequent validation chains.

4) A widespread problem is the lack of a gender perspective among stakeholders working on this matter. There are several reasons therefor, but it no doubt shows the need to train actors within the judicial and security systems on how to collect a series of important data to determine whether or not a crime is a feminicide.

5) A complex issue to be solved is the fact that the death of a woman cannot automatically be considered a feminicide. During the investigation of a case or even after it has been closed, information may emerge indicating that it was a feminicide, when originally it had not been classified as such. In some cases, this entails reviewing official data, and there must be protocols in place for this purpose.

6) Standardization at this level shows the limitations of regional instruments for comparing data but, on the other hand, it can allow countries to improve data exchanges in an inter-operable manner, within a more reasonable time frame, than through an annual report.

7) It is still necessary to examine whether the automatic learning or data analysis technologies applied can help create and implement specific public policies for feminicides.

In brief, the standardization experience in the case of feminicides shows that, far from it being a technical process, it is an exercise that leads to re-thinking data production and their use, as well as problems that exist with gender biases in their construction. Standardization operates in legal and institutional frameworks, which can be changed through such standardization, although the process entails a two-way path between standardization, society and those who make decisions within an organization.

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FEMICIDE MEASUREMENT AT THE PUBLIC MINISTRY, BUENOS AIRES PROVINCE

LEANDRO GASPARI*

1. Introduction

This article refers to the experience of the Buenos Aires Province Public Ministry in preparing reports on femicides. The context for such reports will be described, as well as the objectives of the study, the information building methodology and the working protocol for their drafting.

Since 2014, a team specialized in the gender perspective has been analyzing all the killings of women in the province so as to identify cases of femicides, study and characterize them. This work is done with a view to publishing information that is scientifically developed. Femicide is a theoretical-political notion, so it was necessary to define a methodology for building such information, based on a series of indicators to identify gender-based violence in each of the analyzed cases. The article concludes with a few brief reflections on the relevance of publishing the reports for Public Ministry officials, as well as for the State and society at large.

2. Report background and the context in which it emerged

In order to meet the requirements of national and provincial regulations to protect against family and gender-based violence, a module was included in the Public Ministry's IT System (hereinafter, SIMP), to identify preparatory criminal investigations (hereafter PCIs) related to crimes in the family and/or gender fields, giving rise to the Criminal Registry on Family and Gender-based Violence (hereinafter Revifag), used by all prosecutors in the Province.

(*) Under-secretary, in charge of the Criminal Registry on Family and Gender-based Violence, Public Ministry, Buenos Aires Province.

This instrument fulfills the provisions of section 18, Law 12,569 (wording as per Laws 14,509 y 14,657),[1] stating that the Attorney-General shall keep socio-demographic records of the claims filed on the acts of violence encompassed in the law, allowing thus to learn, *inter alia*, about the characteristics of those who perpetrate or suffer violence in its different forms. This information is essential to optimize the investigation, formulate projects and produce reports, within the framework of the commitments undertaken with follow-up and monitoring agencies of the treaties, conventions or other related instruments.

Consistent with the above and the constitutional principle of publicizing acts of government,[2] the publication of data on family and gender-based violence tends to significantly contribute to the process of access to public information by showing statistical data, allowing public policy formulation and the application of effective measures to prevent, investigate and prosecute this scourge.

On the other hand, since 2013, a study is being carried out on intentional homicides in Buenos Aires province, so as to characterize this kind of events in the province. With a view to including the gender perspective in the production of statistical information, in 2015, the sex of the victims and *prima facie* accused was included in the above-mentioned study. This first step was essential to carrying out a detailed, thorough analysis of women's killings so as to identify cases of femicides.

In this regard, the Convention on the Elimination of all Forms of Discrimination against Women[3] and the recommendations formulated by the Monitoring Committee recognize the importance of collecting data and producing statistics disaggregated by sex, so as to understand the situation of women and outline scientifically-grounded public policies. On the other hand, United

(1) The Supreme Court of Justice and the Attorney-General's Office shall coordinate their work to keep socio-demographic records of the claims on violent events foreseen in the law, specifying at least age, marital status, profession or occupation of the person who has been the victim of violence, as well as of the offender; relationship with offender, nature of events, measures adopted and outcomes, as well as punishment of perpetrator. Access to the records must be duly grounded and requires prior judicial authorization, ensuring confidentiality of the parties' identity. The Supreme Court of Justice shall prepare annual statistical reports that can be accessed by the public to provide at least the characteristics of those who exert or suffer violence in its different modalities, relationship between the parties, type of measures adopted and their outcomes, and type and amount of sanctions applied, for the design of public policies, research, project formulation and production of a report, within the framework of the commitments undertaken with the Agencies in charge of following up and/or monitoring Treaties and/or Conventions or other related-instruments" (Article 18, Law 12,569 and its amendments).

(2) Sections 1, 33, 41, 42 and related provisions in Chapter II – establishing new rights and guarantees- and article 75, para. 22 of the National Constitution.

(3) Convention on the Elimination of all Forms of Violence Against Women (CEDAW), adopted by the United Nations in 1979, and ratified by 189 countries, among them, Argentina, on 15 July 1985, adopted by Law 23,179, and granted constitutional hierarchy in the 1994 amendment.

Nations established as its immediate priority the prevention of femicides and the use of data on violence against women as an instrument for this purpose.[4] Furthermore, it urged the States to act with due diligence to prevent and investigate acts of violence against women and put an end to impunity, underlining the essential role of the criminal justice system in preventing and providing a response vis-à-vis the killing of women and girls on account of gender.[5]

On the other hand, with a view to publishing official data on femicides, in 2014, the Attorney-General's Office, within the Criminal Registry on Family and Gender-based Violence, together with the Management Oversight area, started working on the preparation of a methodology for a special study on femicides.

Firstly, it was necessary to define what would be considered femicide: if its understanding would boil down to a crime, or if it would be deemed to be a theoretical-political concept. Based on the analysis of prevailing factors and the report's objectives, the second interpretation was chosen because the purpose of the study is to provide visibility to a social problem – gender-based killing of women- beyond those cases when the aggravating factor is used. In this regard, the selected notion was taken from the Declaration on Femicide, issued by the Committee of Experts of the Follow-up Mechanism, Belem do Para Convention – MESECVI: Femicide is the violent death of women based on gender, whether it occurs within the family, a domestic partnership, or any other interpersonal relationship; in the community, by any person, or when it is perpetrated or tolerated by the state or its agents, by action or omission.[6]

In order to identify, characterize and measure the phenomenon to be studied, it was necessary to operationalize the notion, by defining indicators, as well as preparing a methodology to allow its detection, exploration and description. In this regard, it was essential to prepare a research design, define a time and spatial frame, select sources of information, techniques to be used and types of applicable analyses.

In this way, and after hard work, the first report on Femicides in Buenos Aires Province was published in 2016, including cases of the year 2015. The studies have been posted on the Public Ministry website[7] . Furthermore, since 2015,

(4) Through the report of the UN Special Rapporteur on violence against women, its causes and consequences (19 April 2016).

(5) United Nations Committee on Crime Prevention and Criminal Justice (Resolution 68/191, on the adoption of measures against the gender-based killing of women and girls, United Nations, 11 February 2014).

(6) Declaration on Femicide, adopted at the Fourth Meeting of the Committee of Experts, Follow-up Mechanism, Belem do Para Convention held on 15 August 2008.

(7) Cfr. https://www.mpba.gov.HYPERLINK "https://www.mpba.gov.ar/informes" \h ar/informes

contributions have been made to the Argentine Justice's National Registry on Femicides held by the Argentine Supreme Court of Justice, by sending data on the events that happen within the province.

3. Report characteristics

The Reports on Femicides and Criminal Proceedings concerning Family and Gender-based Violence are published on March 8th every year and include the events considered femicides, as well as criminal claims filed for any crime occurring within a family and/or gender-based violence context, registered in Revifag. In this article, we will only describe the characteristics and methodology for femicides, without delving deep into other crimes that must be addressed differently.

As has already been said, femicide is here considered a theoretical-political notion to conceptualize and provide visibility to a phenomenon with specific characteristics: the violent gender-based death of women. Based on the above, the report includes all the killing of women, perpetrated by men or unidentified perpetrators, motivated by gender-based violence, regardless of its legal description.

The Report tries to introduce the gender perspective for producing and analyzing criminal information, making a contribution to eradicating all forms of discrimination and violence against women. Furthermore, its intent is to contribute to public policy formulation, by producing reliable, scientifically-built data, as recommended by the Follow-up Committee to the Convention on the Elimination of All Forms of Violence Against Women.

With a view to achieving these objectives, detailed data are required to measure the size and dimension of the problem. In this regard, accurate statistics are essential to define several facets of gender-based violent crimes in their different manifestations, as well as their causes and consequences.

Based on the experience gained through the study on Femicides and Criminal Proceedings concerning Family and Gender-Based Violence developed since 2015, a Protocol was drafted by summarizing and organizing the necessary steps for building such information. This ensures continuity and comprehensiveness in the annual reports, to unify criteria and determine stages and responsibilities. At present, a second version of the above-mentioned Protocol is being drafted with new data and analysis categories included only recently.

4. Methodology

So as to carry out the study on femicide, information was taken firstly from the Survey on Willful Murder that has been carried out since 2013, within the framework of Attorney-General's Resolution 301/2014. Besides the core areas of the Attorney-General's Office, the prosecutors' offices have participated in the analysis of case files, checking the accurate entry of data into SIMP, thus

completing a survey of the event's characteristics. Based on the above, the reasons for the murder of women perpetrated by men can be detected (or those in which there is so far no one *prima facie* accused) while seeking to identify any of the femicide indicators:

- The prior existence of a family, emotional, affectionate or trust relationship, whichever the degree, between the offender and the victim.
- Any signs of sexual violence in the victim.
- The victim having reported the *prima facie* accused or suspect before the crime.
- The intent of causing damages or suffering to the victim, analyzed from a gender perspective.

This analysis will lead to ruling out other intentional homicides of female victims and help to group the cases identified as femicides, regardless of their legal category.

It must be clarified that, consistent with the provisions of Law 26,743 on Gender Identity, female victims are all those whose identity and/or gender expression is feminine, regardless of the sex assigned at birth.

The indicators were prepared on the basis of the Latin American Model Protocol for the Investigation of Gender-related Killings of Women (Femicides/Feminicides), developed by the United Nations Office of the High Commissioner for Human Rights (OHCHR) and UN Women, the UN agency for gender equality and the empowerment of women.

Finally, the event's data and the personal data of victims and the *prima facie* accused are surveyed to outline variables whose values are regrouped into categories and intervals. Furthermore, variables are compared and analyzed, and indicators are built to add complexity to the statistical information produced.

5. Description of the protocol for drafting the study on femicide

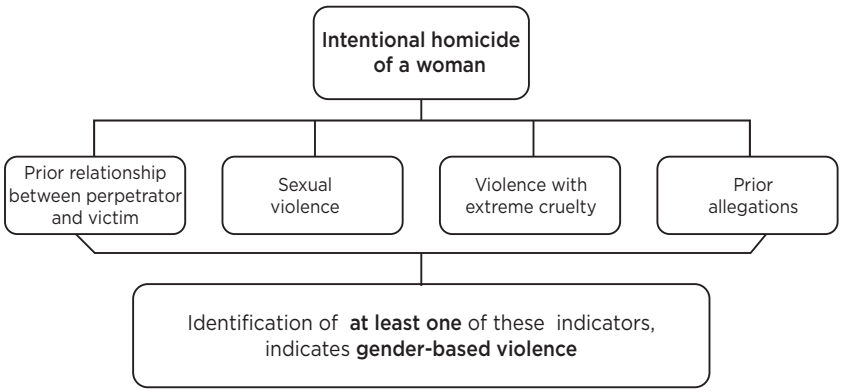
Below is a brief description of the working protocol used for building femicide-related information. This instrument was prepared to ensure continuity and comprehensiveness of the data-building criteria and to organize the procedure for its preparation.

Firstly, a survey of intentional homicide in Buenos Aires province is carried out every quarter, producing a list of preliminary criminal investigations (PCI) started in that period, with at least one intentional homicide, or other crimes that ended up in death. Thereafter, the information is analyzed and cleaned up so as to prepare spreadsheets to survey the identified PCIs, which are sent to the general prosecutors' offices in all judicial departments

so that they enter the data. The collected spreadsheets are then received and information is duly verified. Finally, a unified database is prepared with the collected data.

Cases are extracted in which there is at least one female victim and one male *prima facie* accused or unidentified perpetrator. Each of the selected PCIs are then analyzed virtually on SIMP so as to determine those cases of femicide according to the methodologically established indicators:

Graph 1. Femicides as per the established indicators



It is important to clarify that the procedure to look for and identify indicators is carried out by a team of professionals trained in the gender perspective, an essential condition to understand the ways in which gender-based violence expresses itself and its detection in court case files. The team meets periodically to jointly discuss each of the cases.

Once there is a list of the events identified as femicides, all the fields of analysis previously classified and agreed upon are analyzed within the framework of the investigation and data entered into SIMP. A time-frame, spatial and context analysis is carried out; a socio-demographic and inter-sectional characterization is drawn up of the victims and *prima facie* accused, as well as the relationship between both; as regards the PCI, status of the procedure and its legal category are examined.

On the other hand, with the purpose of ensuring the report's comprehensiveness, a review is carried out every six months and every year, consisting of the lists of new PCIs started during the period under analysis, with at least one intentional homicide, or crime followed by death, and compared to the PCIs surveyed before during the quarterly procedure. The differences can appear due to the fact that, throughout time, investigations move forward, with the possibility for surveyed data to be modified (for instance, an attempted homicide that after the death of the victim becomes a perpetrated murder).

Finally, all quarterly databases and surveys were unified to then assign ranges to the parameter-based fields, according to previously defined categories.

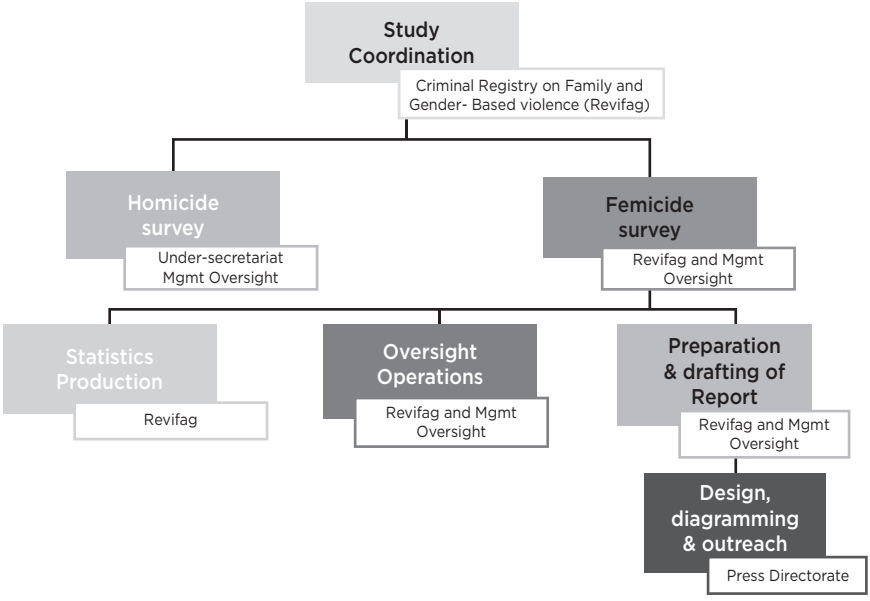
On the other hand, journalist articles published on alleged femicides are followed up as a parallel oversight mechanism, so as to monitor and provide justification on the differences that could arise between the report produced by the Attorney-General's Office and those published by civil society organizations, that use news articles as sources of information.

The unified database is processed so as to produce statistical information, which is analyzed and compared with that of previous years. Potential changes or a situation of continuity are assessed and the contents of the report to be published are defined.

With a view to supporting the information obtained with graphs and help readers understand, a front page is designed as well as a graph summarizing the most important data obtained by the study.

Below are the main tasks and areas participating in the study:

Graph 2. Tasks and areas participating in the study



6. Final comments

In the years 2015-2017, 286 women were killed as a result of gender-based violence in Buenos Aires Province.

A significant outcome of the reports is the disclosure that the main cause of violent death among women in the province is gender-based violence, accounting for over 60% of all homicides having a female victim.

On the other hand, the prevailing femicide is the so called intimate femicide (perpetrated by partners or former partners) essentially among young victims between the ages of 21 and 40.

Furthermore, with regard to girls and adolescents, there is a prevalence of intra-family femicides (perpetrated by fathers or step-fathers). The rate of femicides in the province is not the highest in the country (1.1 femicides per 100,000 women) although it is the area in which more events happen.

It is relevant to highlight that gender-based violence is one of the strategic axes of criminal policies on which the Public Ministry of Buenos Aires province is focusing to draft the reports, in the belief that the compilation, analysis and exchange of statistical data in this field is essential to apply effective and efficient measures to prevent, investigate and prosecute this scourge.

In this regard, the Attorney-General's Office has been carrying out several actions with a view to optimizing investigation and registry of family and gender-based violence.

With a view to the above, several actions and measures have been taken to reinforce the training of all Public Ministry officials to effectively fulfill statutory obligations.

It is also worth recalling that the methodology used in the study is permanently reassessed so as to reflect, in the most faithful and scientific manner possible, the reality that is being worked on. Likewise, the idea is to increase the quantity and quality of the information produced, thus perfecting the protocol.

Resolution 476/2018 of the Attorney-General's Office approved the use of the "Protocol to Investigate and Litigate Cases of Violent Death of Women (Femicides)", adopted by the Argentine Attorney-General's Office by resolution PGN 31/2018, within the framework of, and adjusted to, the regulations in force in Buenos Aires Province.

Along those lines, the Attorney-General recommended judges and Public Ministry officials within its jurisdiction to apply the above Protocol, notwithstanding the protocols or guides in force on this matter in the judicial departments, provided they are compatible with the guiding criteria of the adopted protocol.

The reports on femicides published by the Public Ministry were declared of interest by the Lower and Upper Houses of the Buenos Aires Provincial legislature,[8] thus becoming an official source of statistics in this field.

(8) House of Representatives, Buenos Aires Province, on August 31st 2017 (D-553/17-18) and Buenos Aires Province Senate, on July 11th 2018 (F-586/18-19).

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