

INTER-AGENCY TASK FORCE
ON FINANCING FOR DEVELOPMENT

Issue Brief Series

**Improving access to justice:
extending the reach of
sustainable development agenda**

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**UNODC**

United Nations Office on Drugs and Crime

Improving access to justice: extending the reach of sustainable development agenda

Commitment: *We underline the need to promote peaceful and inclusive societies for achieving sustainable development and to build effective, accountable and inclusive institutions at all levels. Good governance, the rule of law, human rights, fundamental freedoms, equal access to fair justice systems and measures to combat corruption and curb illicit financial flows will be integral to our efforts. (para 18 AAAA)*

Commitment: *Sustainable development cannot be realized without peace and security; and peace and security will be at risk without sustainable development. The new Agenda recognizes the need to build peaceful, just and inclusive societies that provide equal access to justice and that are based on respect for human rights (including the right to development), on effective rule of law and good governance at all levels and on transparent, effective and accountable institutions. Factors which give rise to violence, insecurity and injustice, such as inequality, corruption, poor governance and illicit financial and arms flows, are addressed in the Agenda. (para 18 Agenda 2030)*

Monitoring implementation: Sustainable Development Goals: *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.b- Promote and enforce non-discriminatory laws and policies for sustainable development*

1. Introduction

Equal access to justice, or the equal ability of people to seek and obtain a remedy through formal or informal institutions of justice, is a prerequisite to fair, accountable and efficient administration of justice. It is also a fundamental pillar of sustainable economic and social development as it can improve prospects for equitable growth, strengthen the respect for and the implementation of the rule of law, promote safe and peaceful societies, as well as aiding governments in protecting the most vulnerable members of society. By giving every citizen the right to participate in an equitable and effective justice system, governments can promote cultural norms of fairness, integrity and social responsibility. UNODC's Accounting for Justice Report of 2013 concludes that "when people's basic safety, sense of security, and access to justice improves, so does their willingness to make medium- and longer-term decisions, invest locally, and contribute to productive growth".¹ In 2011, both UNODC's Global Study on Homicide and the World Bank's World Development Report found that societies registering more limited access to justice experience lower than expected growth.²

¹ UNODC, Accounting for Security and Justice in the Post-2015 Development Agenda, October 2103, p. 20.

² Ibid, p. 19.

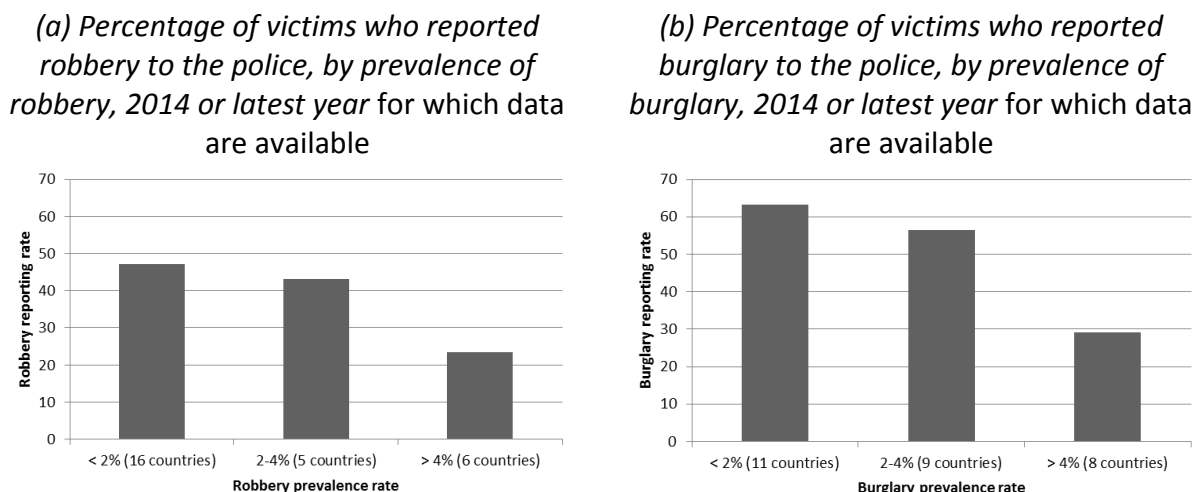
2. Stocktaking³

Effective, accessible and fair justice systems, jointly with comprehensive crime prevention policies, are seen as the primary instruments to protect human rights and public safety from the threats posed by organized crime, violence, corruption and all forms of illicit trafficking. By defending societies against such menaces and by promoting the rule of law, the foundations are laid for promoting economic growth, social development and environmental protection.

(a) Crime reporting rate compared to crime prevalence rate

Data on the share of victims that report the crime to police or other law enforcement agencies (i.e., the crime reporting rate) provide a direct measurement of the first step in the criminal justice process and thus is one of the measures of access to justice. Those data also provide an indirect measurement of other aspects of the multidimensional concept of the rule of law, including the capacity, transparency, efficiency and effectiveness of criminal justice institutions. This type of data can be produced through crime victimization surveys. Available information indicate that the reporting rates for the crimes of robbery and burglary are lower in countries with higher prevalence rates for both types of crime, indicating that access to criminal justice tends to be lower exactly where there is more need for it.

Figure 1: Percentage of victims who reported robbery or burglary to the police, by level of prevalence, 2014 or latest year for which data are available



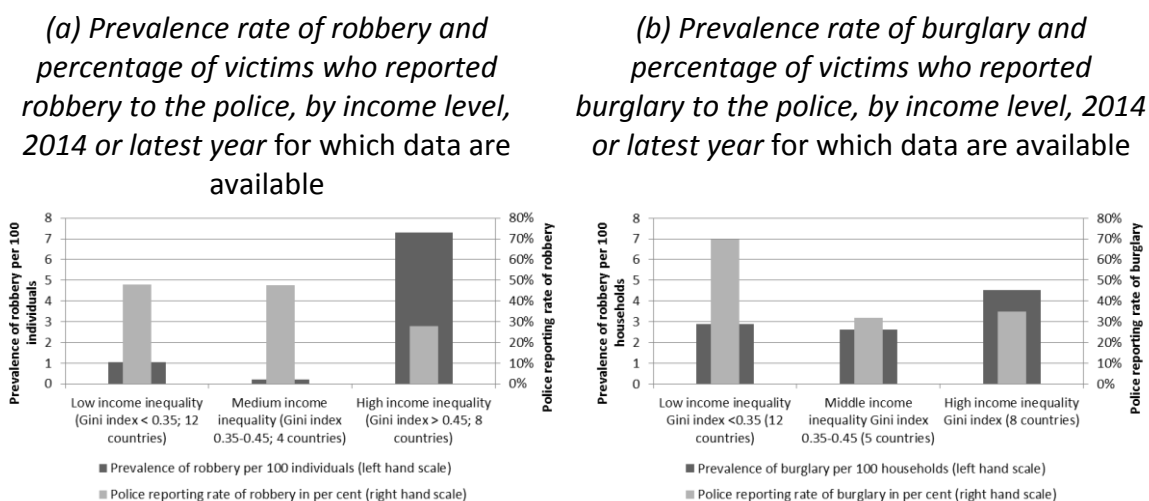
Source: United Nations Survey of Crime Trends and Operations of Criminal Justice Systems.

Note: Number of countries providing data in each category is denoted in brackets. Averages are non-weighted averages of country rates. Prevalence rates denote experience of victimization over the past 12 months per 100 individuals (robbery) or households (burglary).

³ Parts of this section reproduces text and data from E/CN.15/2016/10, Commission on Crime Prevention and Criminal Justice, *World crime trends and emerging issues and responses in the field of crime prevention and criminal justice*, Note by the Secretariat, 29 March 2016.

Countries with higher levels of income inequality have both a significantly higher prevalence rate of robbery and burglary and a lower police reporting rate for both crimes. The link between income inequality within a country and the country’s crime intensity is confirmed, and, in parallel, this tends to be accompanied by reduced access to justice and therefore weaker rule of law.

Figure 2: Prevalence rate of robbery and burglary and percentage of victims who reported robbery and burglary to the police, by income level, 2014 or latest year for which data are available



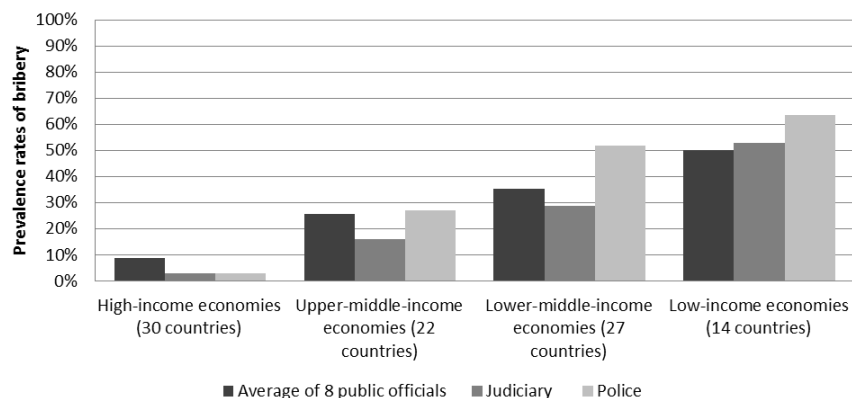
Source: United Nations Survey of Crime Trends and Operations of Criminal Justice Systems.

Note: The number of countries providing data in each category is denoted in brackets. Averages are non-weighted averages of country rates. Prevalence rates denote experience of victimization over the past 12 months per 100 individuals (robbery) or households (burglary).

(b) Corruption

The existence of corruption in public service, in particular in the criminal justice system, can be a serious obstacle to the equitable, efficient and fair dispensing of justice. A direct indicator of the corruption experienced by individuals in dealing with public officials and/or civil servants is the prevalence of bribery as measured by corruption/victimization surveys. Data reveal that the prevalence of bribery is closely related to the average level of national income and is significantly higher in poorer countries than in richer ones.

Figure 3: Prevalence rates of bribery by type of public official, by level of income, 2013



Source: UNODC calculations based on Transparency International's 2013 Global Corruption Barometer. The average includes public officials from education, judiciary, medical and health, police, registry and permits, utilities, tax revenue and customs and land services.

(c) Pre-trial detention

Another important element of access to justice and the rule of law is that prisoners, including pre-trial detainees, are treated with the respect due to their inherent dignity and value as human beings, as emphasised by the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). Furthermore, in accordance with the fundamental right of anyone charged with a criminal offence to be presumed innocent until proven guilty according to law, pre-trial detention should be used as a last resort in criminal proceedings.⁴ Should it be used, detainees suspected of or charged with a crime are entitled to trial within a reasonable time or to release pending trial. The number and share of persons held in prison without any sentence is thus an important indicator of fairness and efficiency of the criminal justice system.

Globally, for the 145 countries for which data are available, the share of unsentenced detainees to the overall prison population decreased from 32 to 30 per cent between the period 2003-2005 and the period 2012-2014. While countries in Africa and Asia saw a significant decrease, the proportion of pretrial detainees in the two regions remained high, 38 per cent and 40 per cent, respectively. Countries in Europe also recorded a decrease (from 20 to 17 per cent), while the Americas and Oceania experienced small increases (from 27 to 29 per cent, and 23 to 24 per cent, respectively).

⁴ International Covenant on Civil and Political Rights, Art. 9(3); United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules), Rule 6.1; Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, Principle 39; and United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules), Rules 57-58.

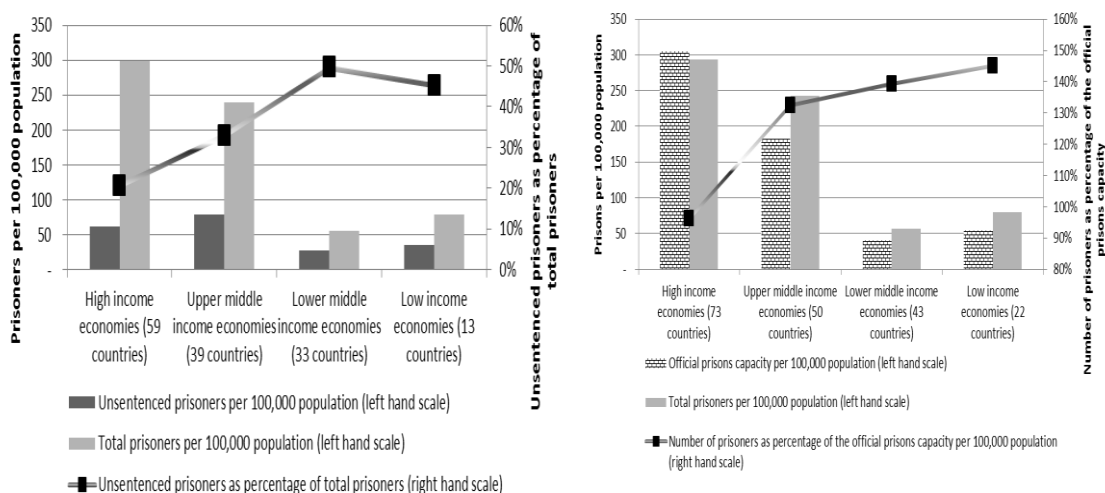
However, such trends in the share of unsentenced detainees occurred while the total prison population continued to grow in absolute numbers (from 9.1 million in the period 2003-2005 to 10.2 million in the period 2012-2014) and increased slightly in proportion to the world population (the global rate of imprisonment has increased from 143 to 145 per 100,000 population in that same time). At the regional level, large increases in prison populations over the past decade were observed in South America, South-East Asia and West Asia (increases of 64 per cent, 40 per cent and 33 per cent, respectively). While women prisoners continue to be a minority in all regions (less than 10 per cent), the proportion of the prison population that is female has increased in every continent.

The analysis of pre-trial detention and prison overcrowding by level of income of countries confirms that poorer countries often experience critical situations. In particular, such countries tend to have prison populations that are smaller in size, but with a much higher share of unsentenced detainees (see figure below). A very similar pattern applies to total prison capacity in relation to total prisoners held, with a higher rate of overcrowding, on average, for lower-income countries, which have a lower rate of imprisonment but even lower capacities (see figure 14 (b)). These common patterns suggest that, factors other than particularly high rates of imprisonment, such as the lack of resources and capacity constraints of the criminal justice system account for high rates of pre-trial detention and prison overcrowding in many low-income countries.

Figure 4: Rate and share of unsentenced prisoners and prisoners as percentage of total prison capacity, by income level, 2014 or latest year for which data are available

(a) Unsented prisoners as a percentage of total prisoners and per 100,000 population, 2014 or latest year for which data are available, by income level

(b) Prisoners as a percentage of total prison capacity and per 100,000 population, 2014 or latest year for which data are available, by income level



Source: United Nations Survey of Crime Trends and Operations of Criminal Justice Systems and International Centre for Prison Studies.

Note: Number of countries in categories is denoted in brackets.

(d) Access to legal aid

Access to legal aid is a key component of ensuring access to justice. Legal aid, which includes legal advice, assistance and/or representation for persons accused or convicted of a criminal offence who do not have sufficient means to afford it or when the interests of justice so require, is an essential element of a fair, humane and efficient criminal justice system that is based on the rule of law. Providing legal aid to persons accused or suspected of a crime can protect their right to a fair trial, such as by ensuring lawful and appropriate treatment towards them by criminal justice actors. Relatedly, providing effective legal aid for criminal defendants contributes to reducing prison overcrowding and thus can result in cost savings for the State. Legal aid in civil matters is also an important element in ensuring access to justice, as it enables people without the resources to pay for legal assistance to assert their rights and entitlements and thus contributes to not only poverty reduction but also increased faith in the justice system.

Findings of the UNDP/UNODC Global Study on Legal Aid⁵ show that barriers to access to legal aid is more pronounced in less developed countries. For example, Least Developed Countries (LDCs) are less likely (14%) than High-Income Countries (HICs; 61%) to have a separate allotment for legal aid in the national budget. Moreover, while nearly all of 107 represented Member States have indicated that defendants have a right to legal aid under their national law upon being charged with a criminal offence, upon arrest or detention on criminal charges or when sentenced to imprisonment, there is a significant gap between legal entitlements as provided by law and the availability of legal aid in practice. For civil cases, the demand for legal aid services almost always outstrips the availability of services in Least Developed Countries (LDCs).

3. Selected policy options and considerations

Poor access to justice can be due to a variety of factors, such as lack of proper legal framework, lack of an impartial and accountable justice system, weak rule of law, ineffective systems and limited human and budgetary resources. These barriers to access to justice may be addressed by a range of public policy options, such as those designed to strengthen the legal framework and institutions or those designed to improve processes and inter-agency cooperation. In situations where access to justice involves disregard for law, rights or the independence of the judiciary, and where there is significant social and economic inequality, such underlying factors must be addressed in order for legal and institutional reforms to be effective. Ultimately, policies should be targeted at improving both access and efficiency of the justice system. Several policy recommendations in this regard include: measures to reduce the use and length

⁵ UNDP/UNODC Global Study on Legal Aid, scheduled for publication in July 2016.

of pre-trial detention (for all population groups including children); widening access to legal aid for criminal defendants with particular attention to protecting the rights of vulnerable populations, victims and witnesses; and increasing the numbers of victims of violent crime who report victimisation to law enforcement.

Policy coherence is an important consideration in dealing with access to justice as it can yield greater impact and efficiency across a variety of public policy areas. Policies to reduce corruption and improve access to justice should be considered mutually reinforcing. In poorer countries, the prevalence of bribes paid to police officers and the judiciary is of particular concern due to the impact it has on policy execution, service delivery, on the functioning of the criminal justice system and for the rule of law. Such bribery is indicative of reduced access to equitable justice.

Policy sequencing is another important factor in implementing measures to increase access to justice. Ameliorative measures to address inefficiencies in the administration can be beneficial prior to launching an institutional reform that targeted at resolving underlying problems. For example, improvement in the case management system can lead to improved functioning of the court system or the prison administration. The same can be said for implementing or improving a national system for legal aid or public defender administration. In this way, policy sequencing and coherence should be strategically considered to ensure the most effective approach in solving the problem of unequal access and service delivery.

The implementation of policies, systems and procedures that seek to increase the reporting by victims of violent crimes to law enforcement are also recommended. Ensuring the rule of law and access to justice for those who have been a victim of a crime is a core State function, and it requires open and effective communication between citizens and police or judicial authorities. However, many crime victims do not report their experience to authorities or are otherwise barred from accessing justice at an early stage for a variety of reasons, such as lack of awareness and information, obstacles in physical accessibility, fear of stigmatization or retribution, limited or lack of trust in the public institutions resulting from lack of the rule of law and corruption. In this regard, effective provision of legal aid for victims and witnesses of crime will contribute to increased trust in the criminal justice system. Therefore, the most impactful policies will also address the underlying impediments to reporting, including those targeted at effective systems, dealing with structural inequalities as well as establishing standards and norms surrounding accountability, governance and political will.