

## **Open Society Foundations and the Civil Society Prison Reform Initiative Meeting on Measuring Criminal Justice in Africa Conference Report**

On 10 and 11 June, the Human Rights Initiative (HRI) and Open Society Justice Initiative (OSJI) organised a meeting on “Measuring Change in Criminal Justice Systems” in Dakar, Senegal. Eighteen participants from 13 countries attended. The agenda and list of participants is included in the annexures.

### **Day 1: 10 June 2014: What do we want to measure, what are we currently measuring?**

<b>09:30 - 09:45</b>	<b>Welcome introductions</b>	<b>Afia Asantewaa Asare-Kyei (OSIWA)</b>
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The first session allowed all the participants to introduce each other. Afia Asantewaa Asare-Kyei started by outlining the broad objective of the meeting, which is to assess how organisations represented around the table collect information and data, how they measure the impact of their work, and the aim is to share experiences and expectations and learn from the experts.

All participants introduced each other. Some had already done extensive work on indicators, while others were trying to develop scientific data collection and indicators, and others still had no previous experience in developing indicators.

The list of participants is included in Annexure 2.

<b>09:45 - 10:00</b>	<b>Brief introduction on the intention of the meeting</b>	<b>Louise Ehlers (HRI)</b>
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Louise Ehlers outlined that HRI and OSJI were very much interested in criminal justice reform, and that CSPRI had a lot of expertise on data collection and criminal justice reform. Furthermore, many people in the room, as well as many other organisations on the continent, had been extensively involved in conducting extensive work on law reform, access to justice, etc. In recent years, there had been a growth in civil society movements to push for change in the criminal justice field, but also, positively, increasing openness from governments to change and improve their domestic criminal justice systems. This created an opportune environment for this meeting.

One challenge many organisations face is to be able to assess whether their work effects change. Indeed, in order for civil society organisations (CSOs) to successfully conduct advocacy campaigns and argue for change with relevant government and international stakeholders, they should be able to present scientific measures backing up their claims. Collecting data enables this. The first question is therefore to ask how the State currently collects information, whether such information is comprehensive, and how civil society can assist the State in collecting relevant information.

Furthermore, data collection and indicators should assist CSOs to assess the work that they are doing.

The purpose of this meeting is therefore to discuss the process that leads to the development of data collection and indicators (What are the questions we need to be asking? How do we present the questions? Etc). The meeting will not be of a technical nature, but will serve to exchange experiences and challenges on information and data collection. Hopefully, those participants who are less familiar with data collection will be able to learn from colleagues.

<b>10:00 - 11:00</b>	<b>Presentation: Overview of criminal justice indicators</b>	<b>Martin Schoenteich and Stanley Ibe (OSJI)</b>
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Martin Schönteich (OSJI) gave a general presentation on criminal justice indicators, followed by a country-specific case presentation (Nigeria) by Stanley Ibe (OSJI) on the impact that indicators can have.

Martin started by outlining what an indicator was, and how indicators should be developed. Martin explained that an indicator was more than a statistic, but that it was a “measure that helps answer the question of how much, or whether, progress is being made toward a certain objective(s)”. Different indicators can be used in different contexts and for different purposes. It is essential to know what the indicator will be used for and by whom, before developing the indicator. It is key to a successful data collection process. There are three categories of indicators. They can measure input, output or outcome. The latter are probably the most important to inform policy and accountability.

Indicators can be used by both government and civil society to measure performance and change. Ideally, governments are conscious of the importance of using indicators, use them to inform their practices, motivating and shaping performance, and share the data they collect. It is also a tool for enhanced accountability since it allows the evaluation of government performance and actions. Therefore, government will be sceptical of developing new indicators, especially in the criminal justice sector. No government wants to be accused not to do its best to combat crime and improve security.

At this workshop, the conversation will focus on developing indicators to measure pretrial detention, the reason being that the entry point of the criminal justice system is the one where there are the least checks and balances, and also the one that has the most serious ramifications on human rights violations, from torture and corruption to socio-economic consequences.

*This slide brought a conversation on what exactly is meant by pretrial justice. Martin indicated that he understood pretrial justice to be everything from the moment of arrest to the beginning of the criminal trial, i.e. arrest, interrogation, police detention, first court hearing, bail hearing, investigation until the prosecutor takes over the file or investigation by an investigating judge or commission. However, Louise Ehlers underlined that there is no definite answer as to what is understood by pretrial justice and that others will argue that it ends at the point of conviction (i.e. as long as the person is detained in a remand centre or police detention during the trial), others will argue that it ends with sentencing and a small minority will argue that it only ends with an appeal. One should look at the context and at what point the accused is asked to plead, and whether he or she benefits from any additional protection after the plea. For example, Jean explained that in Malawi, an accused is requested to plead at first appearance, but the pretrial phase continues after this. What matters*

*when developing an indicator is to be consistent and to clearly understand the context one is working on, to develop the correct indicator.*

When Martin presented average global and African figures of pretrial detention, this raised three issues: a continent-wide average can in no manner reflect the huge discrepancies that exist on the continent; these figures only rely on official data, which might not be reliable, and they exclude police detention, which is widely relied on in some African countries.

Martin ended his presentation by explaining what OSJI tried to develop in Latin America: a basket of different indicators that would assess the risk to liberty by measuring arrests, conditions of pretrial detention, conditions of release and the legitimacy of the overall criminal justice system. These resulted in several indicators being developed.

Stanley Ibe then provided an outline of a project that the organisation CLEAN ran in Lagos state in Nigeria. Nigeria is a federal system, which has implications on the functioning of the criminal justice system. Indeed, some offences are state offences, other are federal offences. 90% of cases, however, start in state courts for state-created offences. They will be imprisoned in federal facilities. It is difficult to have all these platforms work together.

There is no concrete data on the length of pretrial detention. The project then took prison exit samples, and realised that it took an average of 142 days to process a file, but that the average duration between arrest and sentencing was 4 years. The project brought the Attorney General to better understand what caused bottlenecks in the criminal justice system (too many lawyers examining a file, too many cases struck off the roll), and to send specific directives to the Directors of Public Prosecutions, including to report to him regularly, which brought a reduction in the processing of files, in the first three months of the project, from 142 to 44 days. This project also illustrated the problem that an accused is not guaranteed to be presented to the same magistrate court upon a subsequent court hearing. This brought the ECOWAS court to condemn Nigeria because there was no proof that an individual had been remanded on the basis of a specific decision by a particular magistrate court. Systems have now been improved to ensure that the same judge, or at least the same court, hears a case throughout, and to ensure that the accused is regularly presented before the court for the DPP to provide an update on the case.

*Stanley's presentation brought a discussion on the legitimacy of prolonged detention on terrorism charges. Ndongo FALL, representative of the Senegalese Minister of Justice, explained that the Senegalese legislation imposes that pretrial detainees be automatically released after a certain period of time, but for certain offences such as those heard by the anti-corruption court, pretrial detention can be renewed on several occasions, and the ECOWAS court confirmed the conformity of this rule with international law. Louise Ehlers indicated that the issues of detention on terrorism charges was a broader one than the one discussed during this seminar, but that qualitative indicators aimed at measuring detention on terrorism charges, or torture in detention, should be developed. Indeed, the legality of a measure should be tested against its compliance with human rights rules and principles. Another delegate (OSIWA guy) indicated that a distinction had to be made between what the law said, and the practical impact of the law on individual lives.*

Jean Redpath gave a presentation on key concepts one has to be familiar with when collecting data and developing indicators.

She started by providing key terminology, including what should be understood as “information”, “records”, “data”, “statistics”, “research”, and “indicators”. One key element is that data can only be reliable if it is collected in a systematic manner. A major issues many stakeholders encounter is the accessibility of data. But this should not prevent anyone from collecting available data and developing indicators. She then insisted that indicators would only be effective if they were relevant, easy to understand, reliable and based on data that was easily collectable. Indicators should be able to measure change, and should be able to indicate whether specific programmes and policies have the right outcome or not. Finally, she distinguished between “single measure indicators” (such as the homicide rate) and “composite indicators” (such as the Human Development Index, combining several components). She insisted that the right reference population be used for a particular indicator, so as not to skew the outcome. For example, when calculating incarceration rates, the outcome will be very different if the reference population is the overall population or the adult population.

When theorising, or developing, indicators, several elements must be kept in mind. Indicators are never a “one size fits all”, but must be specifically developed for a particular country, legal system, context etc. In relation to pretrial detention, looking at the flow of the system is often more reliable than snapshot data, i.e. looking at admission and release data will be more reliable than the prison population at a certain time. The traditional measures are length of detention and number of detainees. However, other indicators, relevant in certain contexts, could be developed, such as the number of people detained for politically motivated arrests against ordinary arrests; the number of people arrested before being charged; the duration can be disaggregated between before trial, during trial and after conviction but before sentencing.

<b>12:00 - 13:00</b>	<b>Small group discussions:</b> <ul style="list-style-type: none"><li>• <b>What are the major rights violations we are trying to address?</b></li><li>• <b>What has been our strategy for addressing them?</b></li><li>• <b>How might the use of indicators and data by civil society and governments help to protect the rights of detainees and prevent these violations?</b></li></ul>
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<b>14:00 - 15:00</b>	<b>Plenary report-back on group discussions</b>	<b>Chair: Gwenaelle Dereymaeker (CSPRI)</b>
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The groups were addressing the following questions:

- What are the major rights violations we are trying to address?
- What has been our strategy for addressing them?

- How might the use of indicators and data by civil society and governments help to protect the rights of detainees and prevent these violations?

In this session the groups reported back as follows.

### **Group 1**

Group one felt that the major rights violations which should be addressed are:

- Access to justice
- Fairness of trial
- Speedy trial
- ADRM

In addition, issues of arbitrary arrest, police discretion and torture

The major strategies which have been used to address these issues are:

- Use of paralegals
- Public education
- Use of oversight in effectiveness
- Oversight and accountability
- Access to information
- Co-ordination of actors

The group further felt that indicators and data could shed some light on the following:

- Conditions of detainees' access to lawyers
- Access to oversight
- Lack of record-keeping
- Documentation of paralegal impact versus the impact of lawyers, including costs

However a great deal of questions are raised. How do we measure interventions? What is success? This is particularly the case when matters are withdrawn. Is this a success?

Interventions using indicators and data include:

- Name and shame
- Advocacy / policy
- Through data governments can be put under pressure

### **Group 2**

Concerning the major rights violations, the groups listed:

- Rule of law
- Bail
- Privacy
- Communication with lawyers and family
- Human dignity

The major strategies which have been used are attempts to understand causes, formulate guidelines, and the imposition of time limits on commencement of trial

Indicators and data could be used to measure / could be used

- The proportion of cases coming to court within time limits, to compare courts and understand how the law is interpreted.
- Delay before trial
- Delay before sentencing
- Develop a criminal case tracking system
- Monitoring implementation

### **Group 3**

In relation to Tunisia:

- Presumption of innocence is ignored
- PTD is automatic especially in relation to drug offences
- Specific time periods are based on crime
- Renewable
- Role of "jurd'instruction"
- Near automatic use of detention
- Dockets being extensive
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In relation to data:

- Data is a problem, especially disaggregated data
- There needs to be some way of measuring the duration of detention
- People are spending longer in PTD than sentence would be
- In relation to drugs, there are minimum sentences
- Some 46% are drug consumption cases, and these have automatic PTD – which is probably unconstitutional

CSPRI talked about the situation in Burundi:

- Lack of available data
- Lack of political space to engage or urge government to reform

- Elections soon
- Journalists and HR activists are arrested
- CSPRI Collaborator detained
- No legal basis
- No political civil society space

In Tunisia there is a new constitution. Rights we cannot achieve, especially right to liberty, physical integrity, right to presumption of innocence, are what we are interested in.

There are three ways this can be dealt with:

- Determine limitations
- Legal methods, i.e. there should be exceptions, with the balance safeguarded with the basis being the right to liberty.
- Exception should be limited and time-bound

Using this method to clarify the infringement. Anything can be measured. Can set up indicators to understand these infringements. Difficulty is absence of official data and figures.

#### **Group 4**

This group's input was based on experience in Nigeria and Senegal. The major rights violations are:

- Access to justice
- No equal access to justice
- Problem of corruption
- Extended detention
- Rights on arrest

In Senegal there is no lawyer for those in police custody. This is a form of inequality. Mothers also are sent to prison PTD. There is also the problem of co-ordination amongst various services.

There is a new criminal procedure code, people must be judged in short time frame now. Indicators can be used to show the impact on state institutions. This allows matters to go from abstract to concrete. This will permit donors to see the situation and make for a more transparent judiciary.

#### **Plenary Discussion**

Jean gave some examples of data collection.

- Court monitoring Western Cape South Africa
- PASI paralegal impact

#### **Rumbi – ZHRC**

Duration of detention is a problem. ZHRC have a mandate to monitor condition of detention. From the pre-trial audit it was found that there were these issues:

- Frequency of use of PTD

- Duration
- Access to legal counsel

In the latest project inmates are interviewed to find out how long they have been in detention, how many postponements, time, whether bail or bond granted. The PTD Audit found that the majority were detained on bailable offences. Other questions asked are:

- Whether access to legal representation
- Only one instance of constitutional bail – 10 year old
- Inmates who had lawyers tended to be released

Incarceration rates are obtained from prison – 4 times a year. ZHRC never thought of measuring it per 100 000. The ratio shows that provincial prisons have more un-sentenced

### **Louise**

What remains in place after the end of the project? Incarceration rate is fairly meaningless unless it is interpreted. There needs to be messaging behind indicators.

### **Janet**

In Kenya there are a lot of terror related acts, which police say they have been able to intercept. Janet's organisation is active in collecting info related to "Rapid Results Initiatives". Detention is for 100 days – very harsh ways. Many innocents get caught up in swoops. Lot of unclear related offences. Frequently police don't involve prisons and judiciary in decisions. There is an impact on space etc. cutting off normal activities of courts etc. Amnesty is promised by police for those who confess – but then are arrested. No access by civil society /paralegals to these detainees.

Constitution says everyone has right to bail. The judiciary give bail, but the police then say this is too lenient and they bring the accused back. People can generally pay. Judiciary are in an uncomfortable position. They do not want to promote terrorism. The numbers of those arrested in relation to terror is growing. If the man goes into detention the family becomes a target by state – the right to privacy is affected.

Prisoners don't want to be detained with terror suspect – want separate facilities. Induction into terror occurs in prison. Illegal groups in prison – induct / recruit others .

It is of concerned there are huge network, money resources, police must know?

Janet shared an anecdote about woman (Agnetha) murdered with her children. It involved a gang member on 1<sup>st</sup> charge robbery rape. Agnetha gives evidence. The accused was then released for lack of evidence. Court User committees, WPA not alerted by judiciary, and Agnetha murdered.

There is a lack of national policy for terror suspects. The charges on which they are detained are often not serious offences. There are frequent applications to extend 24 hour rule.

Janet referred to the research in Kenya. Data was collected from prisons for a report on paralegals. The data is compared with data from the prison service. Information covered included demographic, conditions, how often do they appear before court, why witnesses do not appear, bail, who is really getting bail and some of the things that don't make sense. In one area no one owns land because it is traditional land yet magistrates used to ask for title deed for bail. Rural areas tend to have harsher sentences than urban , possibly because of space, even though town could be frequent offender. We



also have the problem of judges disqualifying themselves from hearing terror cases due to intimidation.

Louise emphasized that anecdotal evidence not enough. We need tools for measuring change, and analysis not just data . It is true that in Kenya there is now real fear and a real threat. In that context human rights become very difficult to promote. So in all advocacy think about who are you talking to and what are you saying. We don't want to end up Impeding other people's rights - we need to figure out how justice systems can keep people safe when not at the expense of other. Similarly torture research is very difficult.

Felicity spoke about Nigeria and the REPLACE lawyers in police station. The information collected which they collect relates to the number of people given advice, released, gender. Solicitors give a report which leads to a consolidated report e.g. 4000 people in 6 states over 12 months.

As regards duration – Police Stations in which REPLACE is working, finding how long they stay it was found that the detention period fell from 28 days to 5 days in states in which they work. Platform for CJ co-ordination allows capture of number released through CJ coordination.

As regards the terror threat, number of people detained in terror are held in prisons only not police and cells not open. Each criminal division has a terror unit. However they have succeeded to get lawyer in in two states, but then lawyers withdrawn. The Legal Aid Council has asked s it possible to visit these cells , how many people are in cells. There is a feeling that lawyers "Should not touch any terror case". There is no access to information on terror charges .

It was remarked that sttate of emergency detention indefinite in Senegal. Stanley noted that these detentions are not under emergency laws. Need to document missing people, and what is known

Louise noted there is balance between doing that and maintaining access to others, how to not have information shut down.

Alfred said in Liberia PFL works with government to ensure HR of persons are not violated. To a large extent PTD extended however. Camp courts and the Magistrates sitting programme at Monrovia central prison sees prosecutors and magistrates dealing with individuals who have stayed longer than 30 days then they should be nolle prosequi. In the Circuit court it is 34 days . The intervention Does not just end there, when a person is freed through MSP. PFL & JPC – number released recorded. Mediation is needed with less serious cases on ad hoc basis. PTD is high, a 2013 study showed PTD it high because when person on bail, abscondement occurs. In the prisons there are 1500 persons only 300 sentenced. 850 and only 10 sentenced at MCP. Recently set free 250 PTDs on "probation" which is more like plea bargaining.

Mary remarked that there are a number of measurement issues. For example defence counsel at magistrate court, can we measure impact of defence counsel. Is the camp court having any impact? With measurement the state can be convinced to shoulder burden.

It was remarked that in Senegal there is also a PTD challenge. There is a need to reduce PTD time, there are problems of address for bail. There is an issue of security, keep them in lock up. Sometimes PTD justified. In Senegal there is a new CPC, defendant must be judged within a few days, more serious cases 2 years . Overcrowding leads to releases, the President has authority to release.

Nazarate from Mozambique talked about promoting access to Justice in prisons and other detention centres.

Martin talked about balancing rights and safety

Amanda shared some of her experience of the Khayelitsha commission in South Africa, where failures of criminal justice system lead to cases being struck off which should not be.

Aura from Senegal talked about advocacy of abortion right. Links between abortion / child murders- these detainees misjudged and there is a link between these and other case. Mental soundness is an issue – women are suffering from mental diseases. Effective advocacy around abortion needs measurement. PTD woman arrested for child murder and convicted 5 years .

Janet says we need to develop indicators re prolonged detention for those who are “taken off” and to ensure families protected. Our work must include intelligence arrests.

<b>15:15 - 16:45</b>	<b>Input from participants in plenary on some common measures in their contexts:</b>	<b>Chair: Louise Ehlers (HRI)</b>
	<ul style="list-style-type: none"> <li>• <b>Incarceration rate (per 100,000 nationally, in your local community, in four prisons, etc.) - How do we measure how many people are in detention relative to the total population?</b></li> <li>• <b>Ratio of sentenced to unsentenced prisoners</b></li> <li>• <b>Frequency of the use of pretrial detention rather than alternative measures post-arrest – what alternative measures exist?</b></li> <li>• <b>Duration of detention - admissions/occupancy rate/over-stay</b></li> <li>• <b>Legitimate use of pretrial detention - illegal and unnecessary use of detention</b></li> <li>• <b>Access to legal counsel and its impact on pretrial detention</b></li> </ul>	

**Day 2: 11 June 2014: How do we use data to advance our work?**

<b>09:00 - 09:45</b>	<b>Measurement methods in the African context</b>	<b>Jean Redpath (CSPRI)</b>
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Jean Redpath started the second day with a presentation on the different measurement methods that various stakeholders could use in the African context. In Many African countries, governments rely mostly on record keeping in paper format rather than electronic format, and is therefore not always reliable.

When a stakeholder wants to create an indicator (which requires systematic collection of data), it needs to conduct a scoping study to understand how the relevant state entities keep records of their prison population (and determine the level of disaggregation of the data), what the challenges are and what one can work with.

For data collection to be successful, one must first be clear about which population should be measured. Secondly, the researcher must determine a representative sample, following a scientific

method, which usually gives a very close estimate of the overall situation (sample of 30-40 is ideal, but must include all population representatives). How the sampling will be done is key to reliability of the data collected. Finally, the manner in which the quantitative data is analysed is also very important. Jean explained the challenges in relying on averages only, and that using medians is important as well. The methodology used and the outcome of the sampling has to be explained in the study. If the researcher cannot go in the field to collect data, creative alternatives should be looked into, which are not as reliable as a clean scientific data collection through sampling, but nevertheless useful and can provide some information.

Jean then presented an audit on pretrial detention she and other partners conducted in Zambia, Malawi and Mozambique. She explained the methodology, research process and sampling of the project. Since data collection requires a certain level of collaboration of state institutions, it is best to work with organisations that have a pre-existing relationship with authorities and are already granted access to places of detention. After collecting quantitative data, it is essential to collect and/or research qualitative data to understand and explain the quantitative data. It is key to a comprehensive audit exercise, and to take the research findings forward to make policy recommendations and advocate for change. After outlining the research project, Jean then presented the research findings, based both on the quantitative and qualitative data collected.

To summarise, key concepts to keep in mind when developing indicators are:

- One should be clear about what one want to measure, as it will impact directly on the development of indicators;
- Relying on averages has its limitations; including medians reinforces the quality of the indicator;
- The choice of the reference population is very important and should be clearly explained in the methodology;
- Qualitative research, or data analysis, is necessary to explain the quantitative data

*Several participants requested clarification after this very informative session. Jean clarified how to determine a sampling methodology; insisted on the importance of qualitative data to explain quantitative data (corruption, inefficiency, workload, inadequate laws, policies with perverse effects, lack of training etc); indicated that accessing all the data was always better than sampling, but usually very difficult to obtain, and insisted on the importance of raw data (whereas governments often analysed the data before making it available to the public, which a research project could not rely on). Mary highlighted that full audits come at a high cost, and asked what low cost projects could be put in place. Jean said that researchers should primarily look into data which can be easily obtained (from officials or online, whether figures are global or specific to a population or location), without relying on field workers.*

**09:45 – 11:00**

**Plenary discussion:**

- **What would we like to measure?**
- **What would be feasible to measure in your context? How can we overcome obstacles?**

**Chair: Afia Asantewaa  
Asare-Kyei (OSIWA)**

Several participants outlined their own current research projects, or highlighted what they would like to measure through future research projects.

Alfred Hill explained that he would like to put in place a court monitoring project to assess the length of pretrial detention, the quality and length of investigations, level of corruption, access to legal aid etc. Jean highlighted the kind of information that should be collected for such a project to be successful (not only look at global figures, but collect as much information as possibly on every specific case, such as age of the accused, charge etc).

Ndongo Fall explained that the Senegalese authorities would like to develop indicators to assess the length of detention, recidivism, and efficiency of the criminal justice system. Jean used the Mozambican project as an example of such data collection being possible. It all depends on how the state collect data.

<b>11:30 - 13:30</b>	<b>Discussion /presentations in plenary of how we use data to effect change</b> <ul style="list-style-type: none"><li>• <b>Custody time limits project in Malawi (Victor Mhango (CHREAA)</b></li><li>• <b>Zambian Human Rights Commission Bail Project (Rumbi Mutasa)</b></li><li>• <b>“Snapshot” research on the socio-economic impact of pre-trial detention (Martin Schoenteich in West Africa)</b></li><li>• <b>ACHPR Pre-trial guidelines and indicators (Louise Edwards)</b></li></ul>	<b>Chair: Mary Miller Flowers</b>
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Before the formal presentations, several participants explained what kind of projects they were conducting in their own countries.

Felicitas (Nigeria) outlined her pretrial detention project, and said that this seminar helped her understand how to better collect data. Her aim was to measure the length of police detention.

Alfred (Liberia) outlined his court monitoring project, aimed at assessing the reasons for the length of pretrial detention (access to legal aid, investigations, absence of judges or prosecutors). Stanley highlighted that it might be relevant to also monitor police stations, since they are feeding the courts, and this element might provide some of the answers.

Dhaker (Tunisia) explained that there was no state-run central data collection system, which was a challenge. Since the adoption of the new Constitution, more rights respective legislation has been or should be adopted and they would like to conduct advocacy projects for legislative change and compliance with international human rights standards, in particular in relation to police detention (“garde à vue”, which can last for six days), and “détention provisoire”, which lasts 9-12 months but is only counted until the beginning of the trial).

Awa (Senegal) outlined her project aimed at collecting data on conditions of detention for women. They are finalising a research report and will use it as an advocacy tool.

Janet (Kenya) explained that the Kenyan authorities were reinforcing their data collection, and that civil society was trying to build upon this momentum. She will look into focusing on the impact of

recess and transfers on the length of trial, and the link between corruption and bail. Louise Ehlers highlighted that the elderly, children, people with disabilities (especially mental) are constituencies research projects should pay attention to.

Martin presented the OSJI “snapshot” research on the socio-economic impact of pre-trial detention. This research was relatively inexpensive because there was reliance on local partners. Martin explained the various forms of hardship experienced in the three countries as a result of pre-trial detention.

Mary asked what charges detainees faced; perhaps people are detained for good reason. Martin explained around 1/5 for theft and from a half to a third for relatively minor offences. Jean commented that just because someone is detained on homicide offences it does not necessarily mean detention is appropriate. Accusations of witchcraft, road accidents and self-defence in a domestic violence context often explain these offences. Victor agreed that in Malawi police do not specify or distinguish what is behind homicide charges. A question was raised about recidivism. Although this was not covered in the West Africa study, questions on this were included in the South and Eastern African study. Louise and Martin commented that looking at your audience will determine the kind of research done. Jean emphasized that admissions data tends to raise the profile e.g. of women and less serious offences, rather than “snapshot” data.

Louise Edwards (APCOF, regional) presented the Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa, which were adopted by the ACHPR in May 2014 after a continent-wide consultation process. The Guidelines are now entering their implementation phase, with the aim to integrate them in work of commission and support national and regional implementation projects (including working with the African Court on Human and Peoples’ Rights to bring them to use the Guidelines). To that end, APCOF will develop a monitoring checklist, which should be clear and easy to use. She also presented a second project aimed at monitoring and evaluating police oversight institutions across the continent, by developing key performance indicators.

The challenge of the Guidelines monitoring checklist will be to simplify the language of the Guidelines and to have a checklist that can be used in all countries, but nevertheless specific enough to actually be used. They are aimed to facilitate state reporting to the ACHPR, CAT and the UPR process. Gwen (CSPRI) briefly mentioned the Article 5 Initiative project, which developed a comprehensive checklist to monitor compliance with the UNCAT, aimed at collecting the necessary information to draft state reports to the ACHPR, CAT and the UPR process.

### **Victor Mhango**

The data work done has involved a consortium of four paralegal organisations with OSISA & OSF-SA. We conducted an audit. From the findings we found the criminal justice system underfunded and the DPP is failing to co-ordinate the system. In Malawi the prosecutors are of two types, those who are employed by the police and those in DPP office, but they are all under DPP. The DPP contributes to drain case flow management. There is a lack of knowledge of rules of arrest. Malawi has a very old Prisons Act, and very old Prison buildings. Legal Aid is scant if it is there it is only for very serious.

One of the initiatives coming from the audit has been the standardisation of registers as each prison had their own with different information from other prison. The same with courts and police. We are

also engaged in advocacy and are currently in the process of drafting issue paper to Malawi Law Commission on new Prisons Act.

Consortium partnered with Ministry of Justice on the project regarding the registers. This ensured easy access. The partnership is also funded through EU-DGP. Louise commented that this is a use of the baseline study. Mary asked whether it can be replicated in Liberia?

## **Rumbi**

The Zambian bail project, the recommendation for which came out of audit. The project looked at bail legislation and practice, and the ability of accused persons to meet bail and bond conditions as well as the issue of committals. We reviewed the committal process to find out cause of delays. The study was done in 27 sites and 3 districts. Northern and Muchinga were combined

Interviews were done with institutional bodies and a sample of 30 was drawn from the Criminal registers 2008-2012 at each site. In the Courts, judges and magistrates also completed self-administered questionnaires. In the police we used the APB (Arrested Person's Property) Books and interviewed suspects.

In the prisons we spoke to the Officer in Charge (OIC) and inmates and also sampled the remand registers as in some prisons these contain all the information on bail but in some prisons this was not done. Where there were blanks we looked at the warrants. Where there were blanks we had to look at the warrants.

The research covered 2250 detainees, both convicts and remands. We found that the media time to being charged was 1 day. The average was 7 days but in Western Province (WP) it was 8 days in 2011 and 12 days in 2012. As a result of this the Commissioner of police informed of the deteriorating trend. In the Northern Province we found only 3.6% has access to legal representation.

Other findings were that on average 35% requested bond but WP it was 47%. There was little knowledge of bail, and misconception about conditions of bail so they did not ask for bail. The type of bond conditions used: 2 working sureties were required in 49%. Cash bail was required in 19% for high amounts. Less than 26% were able to meet bond conditions. In Eastern Province none asked for bail. Granted bail was 34%. In Copperbelt magistrates were very reluctant to grant bail as they feared accused would interfere with witnesses. They were also worried about accusations of bribery. There was also the problem of not having available social officers for juveniles or parents refusing to appear court

The Inspector General of Police in their capacity building training used the data for province and districts and an action plan was developed. Only OICs attended it would have been better to have CIDs there also. Some people remained cells merely because arresting officer (who is the one who may release) hadn't been there. Some were released when the CIDs were telephoned. Plans of Action was developed, and there was lots of support.

There is a lack of knowledge so a Radio programme was developed on the right to bond and bail using UNDP funded programmes. There was also production of ICT materials. The fieldwork helped us understand what needed to be communicate. Consultative meetings were also held to develop a way forward

The existence of separate bail act in different jurisdictions is a problem. We are hoping for co-operation with the Zambia Law Reform Commission to give a recommendation to government as to which law reform – act – guidelines are used.

In relation to delayed committal, the Subordinate court is supposed to commit the case to the high court. Although they do have this mandate, they haven't been doing this, they have been waiting for DPP to do it.

ZHRC has ensured matters are cause listed. What was happening is that even where a matter was committed, then it was not cause listed. Some progress has been made on committal cases. We used information from the research and tied it to the mandate – made progress with cause listing

**Question Alfred:** How does Cash bond / bail, the process of posting bail – do people get money back?

**Rumbi:** The money is deposited with the court, and a receipt is given. When the case is over you are supposed to be able get money back – but there problems with getting money in practice.

**Question Dhaker:** Is it a right to ask for bail? A comment based on Tunisia experience. We have set objectives reduce number PTD. So we will not have results since 1995 criminal policy has changed. Government has enacted a number of legislations – alternative to imprisonment, criminal mediation procedure. Some 2 / 3 cases tried to use these laws – there is always some abuse even though it is not expensive .

**Rumbi:** Zambian law CPC – where the police are not able to bring within prescribed time – there must be release. Some are notailable offences. Constitutional was available for long time even where non-bailable offence. Yes there is a right to bail. There are lots of acquittals. In the draft constitution – person has a right to bail.

**Question Janet:** In the 2250 cases on delays at police station, was the audit enough to understand reasons for delay on non-bailable offences. Can a court move to prison via visiting magistrates? Sentencing trends in Kenya report found this is open to abuse. Need policy guidelines on who is entitled to bail / bond. Zambia HRC experiences should be shared with other oversight agencies.

**Rumbi:** Lots of skills transference has happened the audit. For example we learnt we cannot rely on inmates' info on dates – relied on official records for that component. Regarding causes of delay, there is a decided case in Zambai where there was undue delay in a committal and it was decided that courts can carry out committal. Police' excuse is that they are typing dockets. Post mortems are also a problem. There is only one pathologist in Zambia Police Service. Issues of evidence, issues of justice

Within DPP – cause listing is views as a problem with the judiciary. In consultation, we found that the police have nothing to guide them, only old law volumes.

Bail bond task force was created. Every time a person does not appear, police end up leaving to go to the court.

**Louise comment:** the Guidelines provide a useful framework.

**Mary:** What about litigation?

**Rumbi:** Did think about it, with the LRC the issue of mentally disturbed persons has been taken up by the Legal Resources Centre.

**Victor:** In Malawi there is the problem of people detained at his Excellency's Pleasure. We had a case of a juvenile being detained under pleasure of President 11 years. This is a separation of powers issue.

<b>14:30 – 15:30</b>	<b>Discussion in plenary:</b> <ul style="list-style-type: none"> <li>• <b>How do we see this work developing in our respective countries?</b></li> <li>• <b>Follow up meeting in August: How can we structure a useful seminar?</b></li> </ul>	<b>Chair: Stanley Ibe (OSJI)</b>
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**Janet:** in Kenya: no audit as such yet in Kenya, although various reports exist.

**Rumbi:** It is useful that the Commission has a wide mandate. The challenge has been knowing how to bring out the information. We have new Commissioners who are still learning. If we do court monitoring etc. how do we use indicators without financiers? There is also the issue of bail guidelines.

**Alfred:** Liberia is starting a court monitoring project. We need to understand how to use data arising in a way that works to showcase flaws in system. Government is not pushing guidelines only international guidelines.

**Louise:** We are trying to build momentum around evidence-based police development. People want to learn from other African countries. For example the duty solicitor scheme (DSS) in Nigeria. Our grant-making encourages people to incorporate indicators on the impact of work done. We are interested in whether the impact carried on after the grant.

**Mary:** We are under pressure to show impact. Always ask, are there ways to measure your work?

**Felicitas:** We try to have component on measuring. On projects already rolling we include measuring components. Meetings with CJS players we can do some advocacy. Police hierarchy want to get DSS included in police regulations – to be officially authorised. We need to be able to advocate on implementing. We are collecting comprehensive data. Old MOU not always sufficient, some commissioners say they are not bound.

**Aura:** Association of Senegalese lawyers. We make all information available to org. We want a reform of law on reproductive health. Data would be useful for advocacy. Because of the MPS relationship – we hope to implement. We hold seminars.

**Nazarate:** In Mozambique we will continue to pressure government

**Alfred:** We are interested in measuring the work of paralegals and quantifying the contribution of the Carter Centre. Over 5000 cases were expedited as a result of Carter work. We have this case record. TIMAP modified.

#### **Senegal:**

This has been a very enlightening workshop. I commend all presentations. These need to be consolidated and disseminated. Can we share presentations? Senegal is setting in place a judicial watchdog for effective implementation.

**Janet:** This has been a great opportunity for LRF as we are in the final stages of strategic planning. We need to tighten our indicators and measures so we can show what impact we have. We need to document paralegal work over the period 2014-2010. We want to strengthen our information management - a partnership is requested !



**15:30 – 16:00**

**Closing remarks**

**Louise :** Next meeting in August. Audits are not only way. The next meeting will be the launch of the Mozambique audit which was a collaboration between LIGA CHR CSPRI – MOU with prisons service, This will be an opportunity to bring people together to hear the Mozambique audit findings. We don't have budget for everyone, but we will make space for those really invested in measurement work. A 2 day meeting – learning exchange opportunity is planned for 20 August

**Rumbi:** thanks to representatives of funders and organisers

**Afia:** Thanks to participants.

## Annexure 1 – Agenda

### Open Society Foundations and the Civil Society Prison Reform Initiative Meeting on Measuring Criminal Justice in Africa – Agenda

Day 1: 10 June 2014: What do we want to measure, what are we currently measuring?

Time	Agenda	Facilitator/Presenter
09:00 - 09:30	Registration	
09:30 - 09:45	Welcome introductions	Afia Asantewaa Asare-Kyei (OSIWA)
09:45 - 10:00	Brief introduction on the intention of the meeting	Louise Ehlers (HRI)
10:00 - 11:00	Presentation: Overview of criminal justice indicators	Martin Schoenteich and Stanley Ibe (OSJI)
<b>BREAK</b>		
11:15 - 12:00	Overview: Data, measurement and indicators	Jean Redpath (CSPRI)
12:00 - 13:00	Small group discussions: <ul style="list-style-type: none"> <li>• What are the major rights violations we are trying to address?</li> <li>• What has been our strategy for addressing them?</li> <li>• How might the use of indicators and data by civil society and governments help to protect the rights of detainees and prevent these violations?</li> </ul>	
<b>LUNCH</b>		
14:00 - 15:00	Plenary report-back on group discussions	Chair: Gwenaelle Dereymaeker (CSPRI)
<b>BREAK</b>		
15:15 - 16:45	Input from participants in plenary on some common measures in their contexts: <ul style="list-style-type: none"> <li>• Incarceration rate (per 100,000 nationally, in your local community, in four prisons, etc.) - How do we measure how many people are in detention relative to the total population?</li> <li>• Ratio of sentenced to unsentenced prisoners</li> <li>• Frequency of the use of pretrial detention rather than alternative measures post-arrest – what alternative measures exist?</li> <li>• Duration of detention - admissions/occupancy rate/over-stay</li> <li>• Legitimate use of pretrial detention - illegal and unnecessary use of detention</li> <li>• Access to legal counsel and its impact on pretrial detention</li> </ul>	Chair: Louise Ehlers (HRI)

## Day 2: 11 June 2014: How do we use data to advance our work?

Time	Agenda	Facilitator/Presenter
09:00 - 09:45	Measurement methods in the African context	Jean Redpath (CSPRI)
09:45 – 11:00	Plenary discussion: <ul style="list-style-type: none"> <li>• What would we like to measure?</li> <li>• What would be feasible to measure in your context? How can we overcome obstacles?</li> </ul>	Chair: Afia Asantewaa Asare-Kyei (OSIWA)
<b>BREAK</b>		
11:30 - 13:30	Discussion /presentations in plenary of how we use data to effect change <ul style="list-style-type: none"> <li>• Custody time limits project in Malawi (Victor Mhango (CHREAA)</li> <li>• Zambian Human Rights Commission Bail Project (Rumbi Mutasa)</li> <li>• “Snapshot” research on the socio-economic impact of pre-trial detention (Martin Schoenteich in West Africa)</li> <li>• ACHPR Pre-trial guidelines and indicators (Louise Edwards)</li> </ul>	Chair: Mary Miller Flowers
<b>LUNCH</b>		
14:30 – 15:30	Discussion in plenary: <ul style="list-style-type: none"> <li>• How do we see this work developing in our respective countries?</li> <li>• Follow up meeting in August: How can we structure a useful seminar?</li> </ul>	Chair: Stanley Ibe (OSJI)
15:30 – 16:00	Closing remarks	

## Annexure 2 – List of participants

Tunisia	Dhaker Aloui	<a href="mailto:dhakeraloui@yahoo.fr">dhakeraloui@yahoo.fr</a>
Liberia	Alfred Hill	<a href="mailto:sociologisthill@gmail.com">sociologisthill@gmail.com</a>
Nigeria	Felicitas Aigbogun-Brai	<a href="mailto:faigbogun@replacportal.com">faigbogun@replacportal.com</a>
Senegal	Awa Cissé	
Senegal	Ndongo Fall	<a href="mailto:ndongofall1@gmail.com">ndongofall1@gmail.com</a>
Kenya	Janet Munywoki	<a href="mailto:janetmunywoki@yahoo.com">janetmunywoki@yahoo.com</a> <a href="mailto:jmunywoki@lrf-kenya.org">jmunywoki@lrf-kenya.org</a>
Malawi	Victor Mhango	<a href="mailto:victormhango@chreaa.org">victormhango@chreaa.org</a>
Mozambique	Nazarete Reginaldo	<a href="mailto:nazaregin@yahoo.com.br">nazaregin@yahoo.com.br</a>
Regional	Louise Edwards	<a href="mailto:louise@apcof.org.za">louise@apcof.org.za</a>
Regional	Amanda Dissel	<a href="mailto:adissel@cybersmart.co.za">adissel@cybersmart.co.za</a>
Zambia	Rumbi Mutasa	<a href="mailto:rumbi_mutasa@yahoo.co.uk">rumbi_mutasa@yahoo.co.uk</a> or <a href="mailto:rumbidzai79@gmail.com">rumbidzai79@gmail.com</a>
South Africa	Gwen Dereymaeker	<a href="mailto:gdereymaeker@uwc.ac.za">gdereymaeker@uwc.ac.za</a>
South Africa	Jean Redpath	<a href="mailto:redpath@iafrica.com">redpath@iafrica.com</a>
OSF	Louise Ehlers	<a href="mailto:louisee@osisa.org">louisee@osisa.org</a>
OSF	Mary Miller Flowers	<a href="mailto:Mary.MillerFlowers@opensocietyfoundations.org">Mary.MillerFlowers@opensocietyfoundations.org</a>
OSF	Stanley Ibe	<a href="mailto:stanley.ibe@opensocietyfoundations.org">stanley.ibe@opensocietyfoundations.org</a>
OSF	Martin Schoenteich	<a href="mailto:martin.schoenteich@opensocietyfoundations.org">martin.schoenteich@opensocietyfoundations.org</a>
OSF	Afia Asare-Kyei	<a href="mailto:akyei@osiwa.org">akyei@osiwa.org</a>