

OPEN GOVERNMENT AND FREEDOM OF INFORMATION: ADVANCING THE GLOBAL CONVERSATION

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On March 26th 2015, the World Justice Project launched the [WJP Open Government Index](#), an effort to measure the openness of governments from the perspective of the average citizen. The Index presents, for the first time, scores and rankings for 102 countries on four dimensions of open government: publicized laws and government data, right to information, civic participation, and complaint mechanisms. These scores are based on more than 70 variables derived from interviews with more than 100,000 respondents from the general public in addition to in-country expert respondents gathered as part of the data collection process of the [WJP Rule of Law Index](#). This piece provides additional contextual information about the WJP Open Government Index which may be helpful to its potential users—including the freedom of information community—to appreciate both the strengths and limitations of this new tool.

The project's goals and broader context

Our hope in launching the WJP Open Government Index is to provide multiple constituencies around the world with an additional tool to track the various interrelated aspects of governmental openness from the perspective of the ordinary person in the street, with the ultimate goal to help governments deliver more accessible and accountable services to the people. The distinct feature of the WJP Open Government Index is to provide comparative information that reflects the experiences and perceptions of citizens regarding the availability of public information, civic participation, and accountability. The project does not seek to replace, but only to complement existing exercises that produce indicators on open government, in order to enrich the quality of the public debate around these concepts.

With the generous support of the Hewlett Foundation, the World Justice Project has been working on the development of the WJP Open Government Index for over two years. However this project does not come in isolation. It originates in two previous lines of work, which provide the broader context for this new Index.

The first antecedent is the [WJP Rule of Law Index](#), a seven-year process of collecting and analyzing cross-country indicators on multiple dimensions of the rule of law. The methodology developed over the years—which is described in detail in Botero & Ponce, "[Measuring the Rule of Law](#)"—is based on a triangulation of

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new sources of data, including general population polls and expert assessments, as well as cross-checking of this data with quantitative and qualitative sources from around the world. This methodology has been vetted widely for academic rigor and cultural competency; to date, it has been presented in over 100 academic seminars around the world.

The second background element of the new WJP Open Government Index is the WJP Research & Scholarship initiative, whose aim is to support rigorous research about the meaning and measurement of the rule of law, and how it matters for economic, socio-political, and human development. After eight years of close interaction with a multi-disciplinary group of leading scholars—including Margaret Levi and Beatriz Magaloni from Stanford University, Robert Nelson from Northwestern University, Tom Ginsburg from the University of Chicago, Jack Knight from Duke University, Susan Hirsch from George Mason University, and Andrei Shleifer from Harvard University, among others—the [WJR Rule of Law Research Consortium](#) was launched at the University of Chicago in October 2014. Among the goals of this broader project is to provide academics with cross-country comparable, longitudinal data on multiple variables of the rule of law, including those pertaining to open government.

Those two antecedents constitute the building blocks on which the new WJP Open Government Index was based.

The first step on a long road

The launch of the [WJP Open Government Index](#) 2015 was preceded by an extensive literature review and several thorough rounds of vetting of the conceptual framework and methods with leading open government experts from around the world. We benefited greatly from extensive feedback in the pre-launch stage of the project.² However, we do not see this Index as the final word on the matter, but only as a starting point of a long conversation. We are presenting this new tool to the open government community with an open mind, eager to receive feedback. We hope to continue a rich dialogue around this project.

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We anticipate the WJP Open Government Index will continue to evolve in successive iterations over the coming years; the wording of certain questions within the Open Government survey instrument may be modified or new questions added; the weights of the Index's four pillars and sub-categories may be adjusted. WJP's vision is to be an "honest broker of information." While it is not possible to produce an Index that is acceptable to everybody—given profound cultural differences around this subject matter—our commitment is to listen and engage widely, and to relentlessly improve the Index so that it is perceived and used as an unbiased and practical tool for a variety of constituencies in a multicultural world.

The WJP Open Government Index currently includes 102 countries. The only barrier for inclusion of additional countries is the availability of financial resources; as additional funding becomes available, the surveys will be applied in other countries, as well as at the sub-national level in some jurisdictions.

The Open Government definition: Moving target and emerging consensus

The notion of Open Government is a rapidly evolving concept. An extensive literature review revealed that until very recently, a global consensus around the notion of open government was lacking. Moreover, cultural differences about the understanding of this concept appear to be significant. With the birth of the [Open Government Partnership](#) (OGP)—a multi-stakeholder platform launched in September 2011 which brings together civil society and 65 participating governments to develop and implement open government reforms—a global consensus about the meaning of Open Government is rapidly evolving. While the WJP Open Government Index's definition of "open government" is compatible with OGP's definition, the WJP initiative is entirely independent from OGP. The Index's data collection methods are not tied in any way to OGP leadership or participant entities. We hope the Index is useful to governments and private actors in countries around the world, regardless of OGP membership.

To address potential concerns about the definition of Open Government, we have made available not only the full list of all variables included in the equation, but also a very large amount of raw data. This choice does not come without peril (as it is explained below).

Civic Participation and Government Accountability

One of the main advantages of the [WJP Open Government Index](#) is to be the first to present indicators for a large number of countries about citizen participation and civil liberties in the context of open government. Measurement of Civic Participation is particularly robust—with 31 variables which cover multiple dimensions of this concept, including the protection of the freedoms of opinion and expression, and assembly and association, and the right to petition the government.

Other dimensions of open government are not covered as comprehensively. In particular, Open Data is almost entirely excluded from this new Index; on this topic the user may rely on other existing indices, which are available for a large number of countries.

The fourth dimension of the Index evaluates whether citizens are able to bring complaints to the government and receive responses about the provision of public services or about the performance of government officers in carrying out their legal duties. Effective complaint mechanisms signal that, at least at a basic level, the government responds to its citizens and is keen to be held accountable for its actions. Our definition of open government includes the idea of governments empowering people with tools to hold governments accountable, but not whether governments are actually held accountable in practice, either through criminal sanctions for misconduct, or through political accountability derived from the system of checks and balances on the government's power. These two dimensions of government accountability relate to a broader notion of adherence to the rule of law, which are comprehensively measured in Factor 1: Constraints on Government Powers and Factor 2: Absence of Corruption of the WJP Rule of Law Index.

The current version of the WJP Open Government Index does not capture whether government officers assume responsibility for their lawful but ineffective actions and decisions—for instance, when high-ranking government officers voluntarily resign upon failure to deliver results, even in the absence of corruption or official misconduct on their part. We anticipate that this aspect of accountability will be included in the next edition of the WJP Open Government Index report.

The concept of Freedom of Information

There are definitional challenges with regard to sub-components of (or related concepts to) the notion of Open Government, such as the notion of Freedom of Information. On April 9, 2015 Ben Worthy published a thought-provoking [piece](#) which raised some interesting questions on the opportunities and limitations related to collecting and analyzing global data on the subject of freedom of information (FOI). There is no question that FOI is a rapidly evolving ground, and we anticipate this to be one of the areas where the WJP Open Government Index may experience significant changes in future iterations. We look forward to engaging in a rich dialogue with the very active FOI community, as well as other constituencies, some of which oppose the global trend for making government information more accessible to citizens.

Arguments against governmental transparency come from multiple corners, and they range from high-level national security concerns in an age of terror, to deeply rooted historical/cultural differences about the very meaning of government, to practical considerations on administrative and bureaucratic efficiency. While we recognize the need to ensure a reasonable balance among the multiple—and often contradictory—societal interests involved, we adhere to the notion that an open government is a necessary component of a system of government founded on the rule of law.

The second caveat refers to the types of information covered. A great deal of discussion took place during the early stages of the Index development about the meaning and scope of a FOI request. To some extent, this reflects a tradeoff between *deeper* and *wider*, i.e., between a very precise definition of a Freedom of Information Act (FOIA) request, versus the laymen's broader understanding of requesting governmental information.

The [WJP Open Government Index](#) groups together distinct types of requests for information. There are several reasons why the requests were grouped together. The first is that the distinct contribution of this research endeavor is to focus on the perspective of the ordinary citizen. The Index primarily seeks to describe the common, everyday experiences of citizens in their interactions with the government, and not necessarily the experiences of highly sophisticated NGOs or the media soliciting government information. Since the Index was not targeted to answer the particular needs of FOI legislation policy debates, but more broadly to serve the needs of multiple constituencies interested in the broader notion of open government, adopting a wider approach about the scope of FOI seemed more useful in the long run. For several reasons that are explained below, we are convinced that this was the right choice. But we look forward to engaging with FOI experts from all latitudes about possible changes to the wording or scope of the FOI variables in the Index, in line with the broader goals of this project which were explained above.

The second reason for grouping the data in this manner is that, on some occasions, the size of the sample is too small to make precise estimates. In other words, in some countries it would be necessary to use a larger sample of respondents to be able to analyze, on the basis of experience-based questions of the general public, very precise distinctions about FOIA requests.

The third and most important, is that the distinction between FOIA requests and requests for personal data is not as simple as it seems. For instance, when a female member of the military uses the “right to petition” under article 23 of the Colombian Constitution to gather personal information which may be only indirectly related to the institution’s failure to promote her, she may be requesting personal data only as a tool for advancing broader social goals about gender discrimination in the armed forces (as the Colombian Constitutional Court has expressly recognized). When [Rosa Parks](#) refused to give up her bus seat in Alabama, that action was not made to advance her personal situation only. In a similar way, as Dr. Worthy points out in the aforementioned [piece](#), “requests about a very local issue, whether a hole in the road or access to water, may be seen as implicitly or overtly political in different situations.”

Finally, as all FOI experts know, Freedom of Information laws are not uniform around the world. What exactly constitutes a FOIA request varies widely from one country to the next. Neither in the laws on the books, nor in the minds of culturally-diverse people around the world, does a universally accepted standard about what is or is not a FOIA request exist.

Freedom of Information and Access to Personal Data in practice

While we recognize that the notion of FOIA request lends itself to multiple interpretations, we also acknowledge the fact that requests for personal data are conceptually different from requests for the tax records of government officials, and that presenting these data grouped together can give a different view from that of an assessment of the second component alone.

In practice, however, this difference is relatively minor from the point of view of the ordinary citizen. When we analyze the experiences in terms of time, satisfaction, and cost, the differences between those

who requested personal data and those who requested information understood to be governed by freedom of information laws (FOIA requests) the results are not very different.

Only in 15% of cases worldwide was the difference between these two types of requests statistically significant. This may prove a fertile ground for further inquiry for the FOI community. This finding tends to suggest that, at least from the point of view of the ordinary citizen, personal data and other requests for information may be a reasonable proxy for more precise FOIA requests in most countries. However, such conclusion should be taken with a grain of salt. There may be multiple reasons why countries would handle these requests (FOIA and personal data) in a different way; for instance, FOIA may be available in the books but largely unknown to the bureaucracy or the wider public; or there may be an ethnic or gender bias among government officers responding to these requests; or there may be a wider policy in place to isolate government officers from examination from the public. Those are very different reasons, demanding different policy responses. A precise analysis of FOIA requests cannot be performed without a careful consideration of contextual factors. Cross-country data may be helpful only to some extent (as it is explained below).

In light of such complexities, what can we do to make the WJP Open Government Index more useful to multiple constituencies? As a response to Dr. Worthy's comments and others, we are currently updating our dataset (as viewable on our website) to show the results grouped by type of request: (a) Information about yourself, associated with the conduct of a local business or as a legal representative, against (b) information requested as a member of the media, as a member of a NGO or special interest group, for political purposes, to lobby or pursue an issue, or for educational or research purposes. Again, we remain eager to continue exploring these questions with the FOI community within the broader boundaries of this research project.

Challenges in assessing FOI awareness across countries

We are conscious of the challenges to evaluating awareness of access to information laws. These laws vary enormously around the world, so logistically it is an extremely complicated task to formulate one question that applies to all countries. The question that we present refers to the right to request information from the government, regardless of the governing law. This encompasses a wide range of possibilities, from a very precise FOIA, to a general government transparency law or policy guideline, to a multi-purpose "right to petition" statute or regulation, or to a very general statement in the country's Constitution. This explains the figures in some countries. Likewise, it is very difficult to capture awareness of this right with a single question, even if the scale is changed.

The precise wording of the two questions employed to measure awareness is as follows:

- Are you aware of any laws that are intended to provide individuals with the right to access information held by government agencies?
- Have you not requested information from a government agency because you did not know you can ask the government for information?

A better way to capture FOIA awareness would be to use a series of factual questions that would allow an objective measurement of this knowledge (the political science and finance literatures, for example, use a number of questions to measure political literacy or financial literacy). Nonetheless, this would impose additional costs on the exercise. This was one possibility we discussed with the polling companies who conducted the survey's fieldwork for the Index. The conclusion was to include two questions, however imperfect, to gather some information on the topic, understanding that data on this topic are scarce. Indeed, since we recognize that these questions are contextual, the results were not presented in comparative tables, but rather country by country.

What does 30% precisely mean?

According to the WJP Open Government Index dataset, on average, 30% of the people in the three largest cities of France are "aware of any laws that are intended to provide individuals with the right to access information held by government agencies." What does 30% precisely mean?

The only correct answer is this: It means that based on a probability sample of 1,000 people in the three largest cities of France, with a margin of error of +/- 3%, with a 95% confidence interval, 30% of them answered yes the aforementioned question. But what does this technical answer mean in plain language? Several answers are possible:

- It means that 30% of people in France (or at least, 30% of people in the three largest cities in France), are aware that article XV of the *Déclaration des droits de l'homme et du citoyen*, passed by France's National Constituent Assembly in August 1789, reads as follows: "The society has the right of requesting account from any public agent of its administration."
- It means that this same 30% of people knows that the aforementioned text of article XV of the *Déclaration*, comprised in the current French Constitution of October 4, 1958, implies the principle of government accountability on which the entire freedom of information edifice is built.
- It means that 30% of ordinary people in France know about *Loi n°78-753 du 17 juillet 1978 portant diverses mesures d'amélioration des relations entre l'administration et le public et diverses dispositions d'ordre administratif, social et fiscal* (On various measures for improved relations between the Civil Service and the public and on various arrangements of administrative, social and fiscal nature), or *Décret n°2005-1755 du 30 décembre 2005 relatif à la liberté d'accès aux documents administratifs* (On the freedom of access to public documents), which provide for the right of citizens to demand a copy of government documents.
- More likely, it means that about 30% of urban dwellers in France believe there is somewhere a law, a regulation or something else, which gives them the right to ask the government for information held by government agencies.

Is this 30% number correct? Aside of measurement error, data is only data. Whether data is correct or incorrect depends on the research question. The percentage of urban dwellers in France that knows about the *Déclaration des droits de l'homme et du citoyen* is probably well above 30%. The percentage of

those who know that the *Déclaration* includes the principle of government accountability is probably lower than that. And the percentage of people in the three largest cities of France who knows about Law 78-753 of 1978, is probably much lower. All we know is that, aside of measurement error, about 30% of urban dwellers in France believe there is some binding instrument which gives them the right to ask the government for information held by government agencies.

After having surveyed over 200,000 people on various topics related to government performance in over 100 countries over the past 8 years, we are aware of the volatility of isolated data points. All veteran researchers are aware of this fact, which is well documented in the survey methods literature. That is why knowledgeable researchers and policymakers do not rely on isolated data points to reach conclusions.

From the point of view of effective government service delivery, whether ordinary people in France know the title or contents of Law 78-753 of 1978 has little practical significance. What is important is whether they know they have the right to access government information, and whether in fact they exercise this right in practice. The aforementioned 30% tends to suggest that urban dwellers in France are not generally aware of this right. However, this conclusion only provides a limited picture. When the broader picture is taken into account, France ranks 13th out of 102 countries on the “Right to Information” dimension of the WJP Open Government Index, which takes into account 26 variables pertaining to the question of the effectiveness of the freedom of information right in practice. In other words, France’s score in one variable may be useful for some limited purposes—and this is why we released a significant portion of raw data—but it does not convey a full picture of the larger issue at hand. An effective delivery of the Right to Information depends on multiple dimensions (not just one).

Raw data vs. a comprehensive system of indicators

It is essential to clarify two issues: First, the difference between raw data and an effective system of indicators. Isolated data points are always more volatile than a well-balanced system of indicators.³ Indicators and data are only tools. How appropriate and useful they are for policymaking in particular situations largely depends on the context. When isolated data points are taken out of context, they tend to lead to ineffective outcomes. Unfortunately, users of indicators - even very sophisticated ones - often forget or deliberately disregard their limitations. One way to deal with this issue is by creating baskets of indicators.⁴

All social science research is subject to multiple forms of error. In order to minimize error, the [WJP Open Government Index](#) relies on well-balanced baskets of indicators and triangulated data sources and

³ Botero, Juan Carlos, Robert L. Nelson, and Christine S. Pratt “[Indices and Indicators of Justice, Governance and the Rule of Law: An Overview.](#)” *Hague Journal on the Rule of Law* 3. Cambridge University Press, Sept. 2011.

⁴ Parsons, Jim. “[Developing Clusters of Indicators: An Alternative Approach to Measuring the Provision of Justice.](#)” *Hague Journal on the Rule of Law* 3. Cambridge University Press, Sept. 2011.

research methods. While one particular question may have multiple problems in interpretation, the baskets of indicators minimize these problems. Triangulation of methods and data sources also help reduce volatility; for this reason, in this Index perception-based data from household surveys is anchored on both experience-based questions and expert assessments, to deliver a more comprehensive picture of governmental openness.

The second important point is that an effective indicator system not only provides information on whether and to what extent progress is being made in one particular aspect, but also how progress in achieving one government objective may negatively affect another.⁵ This is true at the micro level, such as the case of a local police chief trying to solve more crimes with less intrusion on citizens' liberties.⁶ It is also true at the macro level, such as the uneasy interaction between guaranteeing order and security at the country level, while providing effective protection of fundamental rights in low and middle income countries, as suggested by the WJP Rule of Law Index data. An effective system of indicators tracks different dimensions of the system together, and provides information about interaction among these dimensions over time.⁷ This is particularly important after intervention measures are implemented.

There are several key requirements that must be met by indicators - all types of indicators, from those developed by local government agencies based on official statistics, to those produced by international organizations for cross country analysis - in order to be both technically acceptable and of practical utility. First, the quality of the conceptualization of what is being measured is extremely important, and it is crucial for end-users to understand the underlying assumptions and value structure of what is being measured. Second, one must check the indicators' technical dimensions, such as the rigor of the data collection, aggregation, imputation, weighting, and normalization methods which are used to produce them. In addition, uncertainty and sensitivity analyses, and other methods of explicit reporting of margins of error, are essential tools to understand the meaning of numbers. While these statistical analyses are generally beyond the reach of ordinary citizens, they cannot be ignored by governments, donor agencies and other constituencies who attempt to base or track policy decisions on these indicators.⁸ Finally, specific indicators must be used in context, so that decisions are based on a full picture, rather than on isolated data points. This requires that the relations (positive and negative) among pieces of data be made accessible to the users.

⁵ Botero, Juan Carlos, Joel Martinez, Alejandro Ponce, and Christine S. Pratt. "[The Rule of Law Measurement Revolution: Complementarity Between Official Statistics, Qualitative Assessments, and Quantitative Indicators of the Rule of Law](#)," in Botero et al, eds. *Innovations in Rule of Law - A Compilation of Concise Essays*. HiIL and The World Justice Project, 2012.

⁶ Foglesong, Todd, and Christopher Stone. "[Strengthening the Rule of Law by Measuring Local Practice, One Rule at a Time](#)," in Botero et al, eds. *Innovations in Rule of Law - A Compilation of Concise Essays*. HiIL and The World Justice Project, 2012.

⁷ *The Rule of Law Measurement Revolution*, supra note 5.

⁸ *Indices and Indicators of Justice*, supra note 3.

Using Open Government indicators for policy reform

Quantitative and qualitative indicators are useful tools to evaluate performances, draw attention to issues, establish benchmarks, monitor progress, and evaluate the impact of interventions or reforms.⁹ Effective programs should not be based on a priori assumptions. Interventions are more effective if they are matched to the extent possible to the true underlying situations, as revealed by data. A culture of measurement - and decision-making based on measurement - would contribute to advance the Open Government field worldwide.

Nonetheless, as we introduce this new system of indicators and a large new dataset to the Open Government community, we must recognize from the outset that indicators and data are complex tools; we have even suggested that, as useful as indicators and data may be, these are also “hazardous materials” that must be handled with care.¹⁰

We strongly encourage potential users of the [WJP Open Government Index](#) and its related dataset, to read the user advisory warning contained at page 13 of the 2015 Report. In particular, we hope users consider the following inherent limitation of these indicators and data:

1. *“The WJP Open Government Index does not identify priorities for reform and is not intended to establish causation or to ascertain the complex relationship among different dimensions of open government in various countries.*
2. *The Index’s rankings and scores are the product of a rigorous data collection and aggregation methodology. Nonetheless, as with all measures, they are subject to measurement error.*
3. *Indices and indicators are subject to potential abuse and misinterpretation. Once released to the public, they can take on a life of their own and be used for purposes unanticipated by their creators. If data is taken out of context, it can lead to unintended or erroneous policy decisions.*
4. *The Index is generally intended to be used in combination with other instruments, both quantitative and qualitative. Just as in the areas of health or economics, no single index conveys a full picture of a country’s situation. Policymaking in the area of rule of law requires careful consideration of all relevant dimensions - which may vary from country to country - and a combination of sources, instruments, and methods.”*

⁹ Botero, Juan Carlos, Joel Martinez, and Alejandro Ponce. "Justice by the Numbers – Using Quantitative Tools to Advance the Rule of Law." [Promoting the Rule of Law: A Practitioner's Guide to Key Issues and Developments](#). American Bar Association, 2013.

¹⁰ Botero, Juan Carlos. "[Using Indicators in International Law: The WJP Rule of Law Index 2011.](#)" *Proceedings of the Annual Meeting (American Society of International Law)*, Vol. 106, (March 2012): 245-248. American Society of International Law.

Additionally, as we have said [elsewhere](#), “both a clear understanding of the existing legal framework and institutional arrangements, and how these laws and institutions function in practice, are critically important to effective reforms efforts... It is also important to acknowledge how non-legal issues can sideline reform. India, for example, dramatically improved its freedom of information legislation over the past decade, but bureaucratic barriers, lack of resources, and competing policy priorities, among other causes, have led to partial collapse of the system. This shows that effective reforms are not a one-time push for change but rather an ongoing process of changing institutions and agendas. Laws, regulations, procedures, practices, and customs must be aligned for reform to truly take hold.”

Complementarity of data

While there has been an impressive development of regional and global indicators in various areas of governmental performance during the past ten years, these indicators are more effectively employed when different data sources are used. Different indicators complement each other. They should be used in conjunction to get the full picture and to avoid manipulation and misuse.¹¹

Moreover, different orders of data (official and privately-produced; local and global; quantitative and qualitative), are not incompatible; effective reformers are cognizant of the relative advantages and shortcomings of each of them, and use them all in an integrative manner.¹² Even countries with highly sophisticated official judicial statistics, such as the USA and Canada, have benefitted from simple, cross-country comparable, privately-developed, independent and impartial, global indicators.¹³

To conclude, we recognize that this project, like all others, has challenges and limitations. But we also believe that the exercise is of significant value. Through data, analysis, collaboration, and open debate, this new system of indicators and its accompanying dataset have the potential to contribute to deepen the discussion around governmental openness around the world.

¹¹ *The Rule of Law Measurement Revolution*, supra note 5.

¹² *The Rule of Law Measurement Revolution*, supra note 5.

¹³ *Justice by the Numbers*, supra note