Chapter 57
Open Judiciary Worldwide:
Best Practices and Lessons Learnt

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ABSTRACT

Despite its origins, openness in the judiciary has expanded beyond transparency and, therefore, beyond the common law open justice principle. Several initiatives worldwide are echoing this trend and a new term, open judiciary, is arising as a way to address openness in the justice field. This chapter gives an overview of open judiciary initiatives worldwide, focusing on some of the most successful, in order to identify drivers of adoption, critical success factors, and preliminary results. The research is embedded in a broader exploratory study on the state of the art of open judiciary. The chapter is addressed to answer two of the research questions: What are some learning practices that can be identified worldwide in relation to openness in the judiciary? What are some of the most important lessons that can be learnt from these practices?

INTRODUCTION

Although the term of open government was first used back in 1957 (Parks, 1957), it was not until the end of the seventies in the UK when the government gave more importance to initiatives addressed in order to reduce opacity, giving citizens more access to institutional information as well as to governmental activities (Chapman & Hunt, 1987, 2006). With President Obama's Open Government and Transparency Memorandum (Obama, 2009), the concept of open government became even more popular, also gaining a different dimension.

Open government guarantees transparency, accountability and openness of government, while increasing the opportunities of citizen participation (OCDE, 2003). Openness is therefore a key word when associated with access to information within the institutions, in contrast to secrecy, as well as collaboration and cooperation's management, in democratic processes (Peters & Britez, 2008). Although many open government initiatives have been implemented around the world, most of them have been related to the executive and legislative powers and institutions. Albeit, the concept of open government

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in democratic societies is usually linked to the executive power, special attention must be given to the idea that -even if the judiciary has specific and contextualized characteristics- it is possible to apply the open government philosophy to the judiciary.

The open justice principle of the common law has been originally linked to the right to know and public scrutiny (Reinhardt, 1995). This principle states that judicial procedures should be open to the public, including information of judicial records and public hearings. But openness in the judiciary has currently expanded beyond this view. Jiménez-Gómez (2014) refers to *Open Judiciary* as the application and adaptation of the open government dimensions (transparency and accountability, collaboration and participation) to the judiciary. But despite the importance of this openness-in-justice view, this remains an unexplored area of research.

In this context, the aim of this chapter is to contribute to bridging this gap. In particular, the chapter addresses two main research questions:

1. What are some learning practices that can be identified worldwide in relation to openness in the judiciary?
2. What are some of the most important lessons (in terms of drivers of adoption, critical success factors, and preliminary results) that can be learnt from these practices?

The study presented in this chapter is part of a wider research about the state of the art of open judiciary funded by the Department of Justice of the Autonomous Government of Catalonia (and, in particular, funded by the Centre for Legal Studies and Specialized Training). Such research aimed at exploring open government's processes and principles in the context of judiciary in the civil law, as a basis of a modern view of Administration of Justice. It was conducted between December of 2013 and November 2014.[1]

The remainder of this chapter is organized as follows. In the next section, we present the data and methods used to identify and analyze learning/best practices. Subsequently, we select, describe and assess three of the more meaningful initiatives, highlighting three crucial aspects: drivers of adoption, critical success factors, and preliminary results. Finally, we draw some conclusions, emphasizing the practical implications of our findings and what further steps are to be taken.

METHODOLOGY: IDENTIFYING OPEN JUDICIARY INITIATIVES

Due to the lack of literature, this study (as well as the broader one) was exploratory in nature. Thus, we did not have a specific and clear theoretical framework guiding our research. Instead, we were open to identify initiatives in the justice field aimed at increasing transparency and/or collaboration/participation generally speaking. As stated, our objective was to contribute to the development of the conceptual body of open judiciary by starting to understand what drives adoption, what implementation critical factors are, and what results are being achieved.

Although the broader research, where the results presented in this chapter are embedded in, adopted a multi-method approach, only qualitative methods were used in the collection of information with regard to the identification and analysis of learning/best practices.

Qualitative analysis is a powerful method to identify topics and their interconnections if the phenomena under study are largely unexplored, as was the case here. Thus, first of all, desk research was conducted in order to identify initiatives in the justice field aimed at increasing transparency and/or