

15. Judicial Systems

Key definitions: what is the judicial system and what role does it play in security?

The judicial system refers to the system of courts that pass judgement on whether a person or legal entity has broken the law and impose appropriate punishments. It includes a variety of professionals, who work as judges, lawyers, defense and prosecution services, paralegal practitioners, court personnel (such as bailiffs and ushers). Some organizations work closely with courts, such as bar associations and legal aid bodies. There may also be systems of alternative dispute resolution mechanisms such as tribunals, mediation services, and community-based resolution mechanisms. There may also be military judicial systems that have jurisdiction over armed forces personnel and operate in parallel to civilian judicial systems. Some of these elements may be directly employed by the state and/or they may work independently with state institutions, or they may be part of a traditional, community or religious justice systems. But in all cases, how they do their jobs still has a direct impact on security.

The judicial system is critical for ensuring the rule of law and this affects both public safety and national security in two separate ways. The first role of the courts is to administer justice by ensuring that people accused of crimes are appropriately judged in a timely manner and fairly punished accordingly. This justice function is essential to the work of security providers in preventing impunity and also means the judicial system works closely with both police and prisons. The process whereby a suspect is apprehended, charged, judged and punished involves all of these state security institutions and is sometimes called the criminal justice chain.

The second role of the courts is to provide a check on government power by ensuring that all of the laws passed by governments and parliaments respect the fundamental principles and rights set down in a country's constitution, and its other organic laws. This oversight function can protect from violations of rights and abuse of power both by security providers and the political authorities that control them. The courts may be the last line of defense when governments enact laws or policies that do not respect the fundamental principles of human rights or try to politicize the security institutions. Failings in the judicial system result in violations of rights and insecurity, to which journalists can draw attention.

Key issues for reporting on judicial systems

Political neutrality? Because judicial oversight is a critical check on government abuse or violation of freedoms, it is imperative that the court system does not become politicized or corrupt. This is especially important for the highest judicial authorities which may be called to decide on legal matters that will directly affect the safety and security of the nation e.g., disputed election results, laws that infringe on fundamental civil and political rights, or laws that give the security providers invasive powers under states of exception (emergency or martial law). Political neutrality is especially vulnerable when personnel depend on political decisions for their appointments and their terms of service can be terminated either because only personnel sympathetic to a particular political ideology or actor will be appointed, or people may feel their jobs are in jeopardy if they act against political power holders. Low rates of pay also expose judicial systems to corruption, since personnel may be forced to choose between professional integrity and poverty. The inability of the judicial system to work in an impartial way undermines security and creates the impression of impunity, especially because they may not be willing to prosecute cases that involve security providers or security issues.

→ **Journalists can ask:**

- ✓ Does the record of judicial appointments, trials and decisions suggest the law is being applied in a fair, impartial and politically neutral way?
- ✓ How will certain judicial proceedings and decisions affect public safety and national security?
- ✓ How will certain judicial proceedings and decisions affect the powers security providers hold and the conditions for oversight and control?
- ✓ How can judicial personnel identify whether the security system is exposed to risks of corruption?
- ✓ What aspects of the judicial system might expose it to the risk of corruption and what measures are in place to promote integrity?
- ✓ How do independent justice sector stakeholders (such as lawyers, paralegals, rights advocates, community stakeholders, or other civil society) assess the fairness and impartiality of the justice system?
- ✓ What do the experience of those who have been to trial suggest about the fairness and impartiality of the justice system?
- ✓ Are patterns of discrimination on the basis of gender or other aspects of identity evident in the working of the justice system?

Fast and fair? Judicial systems have to work hand-in-hand with both police and prisons. When courts cannot keep up with the number of suspects police deliver for trial, this can lead to emergency hearings that don't allow for a fair trial, or alternatively long waiting periods during which time suspects may be imprisoned without being charged or without seeing their cases progress. This undermines public safety if suspects are released without trial because it can create the impression of impunity and undermine public confidence in the police and the state. At the same time, if suspects are held for long periods without charge or trial, this is a grave violation of fundamental human rights to liberty and also a violation of the law. Delays in court processes contribute to overcrowding in prisons and detention centers, which can lead to people being detained in sub-standard conditions and contribute to insecurity inside prisons.

→ **Journalists can ask:**

- ✓ Does the caseload within the judicial system suggest a lack of resources?
- ✓ How is the rate of progress in court cases affecting policing and prisons?
- ✓ Are parliamentary budgets for judicial systems sufficient, and are they being efficiently administered by a department or ministry of justice?
- ✓ Is the judiciary sufficiently independent of the executive?
- ✓ Who controls decisions about judicial procedures and regulations, and are they competent and accountable in their work?
- ✓ Are regulations determining how courts work up to date and fit for purpose?
- ✓ How do independent justice sector stakeholders (such as lawyers, paralegals, rights advocates, community stakeholders, or other civil society) assess the efficiency of the justice system?
- ✓ What do the experience of those who have been to trial suggest about the efficiency of the justice system?
- ✓ Are patterns of discrimination on the basis of gender or other aspects of identity evident in the working of the justice system?

Losing public trust? Failures in judicial systems might be due to corruption or political interference, but they can also be straightforward administrative failures, whereby access to justice is hampered by unaffordable judicial fees, difficulties with access (e.g., when courts are located far away or transport costs are high), a lack of institutional resources for record-keeping, management and planning, a lack of trained staff, and inefficient and burdensome legislation. Inefficient judicial systems are easily perceived as corrupt, and in this way, they can lose credibility, legitimacy and the public's trust. Loss of trust can translate directly into insecurity because people become less willing to report crimes, press charges, or trust in decisions. They may instead turn to alternative systems of dispute resolution, which may or may not respect the rule of law and human rights (e.g., traditional authorities and leaders, religious courts, or even violence).

→ **Journalists can ask:**

- ✓ What is the public perception of the integrity of the courts?
- ✓ How has media coverage of the judicial system affected public trust?
- ✓ Do administrative failures explain a lack of public trust and how could the problem be overcome?
- ✓ Why are courts under-resourced or poorly run?
- ✓ What are ministries of justice (responsible for managing judicial systems) and judicial authorities doing to remedy problems and build public confidence?
- ✓ Are justice outcomes equally legitimate, fair or efficient for all members of the population regardless of identity factors such as gender, sexuality, ethnicity or religion?
- ✓ What alternative dispute resolution mechanisms or traditional justice systems are available to the public?
- ✓ Do the public have greater faith in alternative justice mechanisms?
- ✓ Do alternative justice mechanisms more transparent, faster or cheaper in their functions?
- ✓ Are alternative justice mechanisms equally legitimate, fair or efficient for all members of the population regardless of identity factors such as gender, sexuality, ethnicity or religion?
- ✓ Do the justice sector or alternative justice mechanisms offer adequate protection for human rights?

Box 30 Practical example: “Sri Lanka Top Court Rules Parliament Dissolution as Illegal in Setback for President”

In 2018, Sri Lanka experienced a constitutional crisis when the President appointed a new Prime Minister before formally dismissing the incumbent, resulting in a situation where the country had two concurrent Prime Ministers. Media reports of the crisis described how the President’s new Prime Minister was seen as an ethnic nationalist, and that members of other ethnic groups feared his appointment would embolden the security sector to use greater force to suppress dissent. The incumbent Prime Minister—supported by the majority of the Parliament, and opposition parties—refused to acknowledge his removal and the appointment of the new Prime Minister, stating that the President’s decision was unconstitutional. In response the President tried to dissolve the Parliament, but the Supreme Court ruled against the attempt. This example shows how security sector reporting can raise public awareness of the judicial system’s role in security sector oversight. It also illustrates how the court’s role as a politically neutral check on executive power can prevent attempts to politicize the security sector.

Sources: Sri Lanka Top Court Rules Parliament Dissolution as Illegal in Setback for President”, December 2018, <https://thewire.in/south-asia/sri-lanka-top-court-rules-parliament-dissolution-as-illegal-in-setback-for-president>

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Image: Secretary-General and Assembly President Speak to Media in Khartoum, 2011 © UN Photo/Eskinder Debebe.