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## Indicators used internationally to measure Indigenous justice outcomes

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The social disadvantages faced by Indigenous people in Australia and New Zealand, across dimensions that include community safety and the justice system, have been well documented. The extent of Indigenous disadvantage and the complexities of overcoming it have led to the development of a range of indicators against which the effectiveness of efforts to reduce disadvantage can be measured. This paper aims to contribute to the further development of justice indicators by reporting on approaches used internationally.

### What are indicators?

An indicator is a measure that helps identify how much progress is being made toward achieving an objective or, indeed, whether progress is being made at all (US Agency for International Development 1998, cited in Vera Institute of Justice 2005). Indicators act as a tool for providing specific information on the state or condition of something and allow assessment of how states or conditions may vary between groups, or within a group, over a period of time (UNDP 2006).

Indicators can be used at the highest policy levels to measure progress towards overarching purposes such as equality of access to services, or at a second level to measure progress towards institutional objectives expected to contribute to broader policy goals, or at third level to measure daily activities through which institutions can attain objectives (Vera Institute of Justice 2005).

Human activity, such as criminal behaviour, can rarely be measured precisely. For instance, changes in an indicator such as reported crime rates can indicate changes in the levels of criminal behaviour, but

may also indicate changes in police activity or in community confidence in reporting. Therefore, indicators should generally not be used on their own, but in sets related to the same policy objective (Vera Institute of Justice 2005).

### Australian justice indicators

The *Overcoming Indigenous disadvantage* (OID) reports (SCRGSP2003, 2005, 2007, 2009), reflect Australia's national approach to monitoring progress in reducing Indigenous disadvantage and efforts to 'close the gap' between Indigenous and non-Indigenous Australians. These reports provide a mechanism for measuring progress against targets for whole of government policy interventions, particularly the approach of closing the gap on Indigenous outcomes developed by the Council of Australian Governments (COAG). The high-level headline indicators in the OID reports include three that directly relate to areas of disadvantage in justice and community safety: substantiated child abuse and neglect, family and community violence and imprisonment and juvenile detention.

The strategic change indicators, which aim to provide measures able to be influenced by government policies and programmatic interventions, cover alcohol consumption and related harm, drug and other substance use and harm, juvenile diversions as a proportion of all juvenile offenders and repeat offending (SCRGSP 2009).

The 2009 OID report shows that Indigenous Australians experience disadvantage, frequently to a very high degree, against all justice system indicators. In many cases the gap in disadvantage between Indigenous and non-Indigenous Australians has been increasing (SCRGSP 2009).

### Some cautionary voices

Engle Merry (2009) has argued that, while statistical indicators have the benefit of providing standardised measures amenable to policy, they tend to do so at the expense of specificity, context and history. Pholi, Black and Richards (2009) contend that the 'closing the gap' approach fails to take into account the limited power and control Indigenous Australians have over their own circumstances. It may be appropriate to consider whether

there are other types of indicators, perhaps developed for Indigenous populations outside Australia, able to measure aspects of justice and community safety disadvantage that are meaningful to Indigenous Australians and reflect how this disadvantage is manifested and experienced in their lives. For example, current indicators do not reveal the impacts that high rates of imprisonment have on family or community and the extent of disadvantage this brings. Current indicators also do not capture the resilience of families and communities in coping with these impacts or the work being done at a community level to deal with problems like family violence.

Some insight into these issues may come from considering indicators used outside Australia to measure the justice system experiences of Indigenous people.

## International indicators

### Indicators in Indigenous contexts

Justice indicators developed at an international level may be used to compare progress between nations or to assist nations to measure their own progress. A workshop held to investigate the design, implementation and use of safety and justice indicators in developing countries was critical of the large and confusing array of indicators being used by national governments and international organisations (Harvard Kennedy School 2008). Workshop participants felt that few of these indicators reflected concerns about safety and aspirations for justice in the countries where they were being used. There was a consensus that indicators needed to be developed with affected communities, capturing human dimensions and the experiences of individuals using the justice system. A final concern was that most indicators were not able to capture incremental changes towards improving justice outcomes, only large-scale changes that took time to achieve. While incremental progress or the work of individual agencies might be

making real improvements in some areas, indicators that only measure large scale changes such as public perception of the justice system or recorded levels of violence, may give the impression that nothing has been achieved. This concern may be particularly important for Indigenous communities, where change may be happening at a local level that brings real improvements to individual communities without being discernible more broadly.

In 2006 the United Nations Permanent Forum on Indigenous Issues held a technical workshop on Indigenous peoples and indicators of wellbeing (United Nations Permanent Forum on Indigenous Issues 2006). Participants noted the need to support culturally relevant standards of measurement and agreed that indicators need to emphasise things that are meaningful to Indigenous people – inherent values, traditions, languages and traditional orders and systems. Indicators should focus on the interplay between Indigenous and non-Indigenous systems that result in impacts like racism, discrimination, urban migration, youth suicide, and disconnection to land and culture (PFII 2006). A core issue in the workshop was the view that the role of government statistical agencies should consider shifting away from collecting information to supporting Indigenous people in collecting their own information (PFII 2006).

The International Centre for the Prevention of Crime (ICPC) has developed a community safety framework that recognises that safety in Indigenous communities comes from contributions of Indigenous individuals and groups who interconnect to influence the community. The ICPC notes that safety for Indigenous people and communities needs to be based on more than just official measures of crime and victimisation (Capobianco 2009). Reductions in the rates of crime and victimisation will not in themselves reveal whether Indigenous people are experiencing wellbeing and safety, although they are among the possible positive indicators. Indicators such as

school retention rates, employment opportunities and parenting skills, while not directly related to crime and victimisation or the justice system, contribute to feelings of safety in the community. Similarly, the UN Technical Workshop (PFII 2006) suggested that the rate of youth suicide is a useful indicator of community safety.

The ICPC has noted that the analysis of some community safety and wellbeing constructs may also be different for urban and rural contexts, owing largely to the high level of migration of many Indigenous peoples. For example, indicators that seek to measure the quantity or quality of policing and other justice services or Indigenous crime prevention initiatives may apply differently in remote communities and urban communities (Capobianco 2009). This has important implications for Australia, given that Indigenous Australians change their place of residence more often than non-Indigenous Australians, particularly in remote areas (Biddle 2009). Indicators will be more meaningful and valid if they are able to take into account differences between urban and remote communities on dimensions such as: the availability of justice and community safety services (including community-based safety and justice mechanisms), the impacts of disadvantage, governance arrangements and the challenges of maintaining service delivery, crime prevention initiatives and offender reintegration programs with highly mobile target populations.

### Human rights

International organisations often focus on whether nations are meeting human rights obligations and delivering equitable access to justice. The United Nations Development Programme (UNDP 2006) has noted that there are three dimensions to international human rights, placing obligations on states to: *respect* and not interfere in the exercise of rights, *protect* rights from violations by non-state actors, and to *fulfil* access to rights through active measures such as providing

resources and implementing appropriate policies. These three dimensions in turn give rise to possible indicators of progress by the state in meeting its obligations. It is in the third dimension, fulfilment, in particular where new indicators are likely to arise. The UNDP (2006) suggested indicators such as the investment in judiciaries, prisons and police forces, as well as indicators of the progressive realisation of economic, social and cultural rights.

The UN Office of the High Commissioner on Human Rights has distinguished indicators that capture different aspects of ensuring human rights:

- *structural* aspects of government commitment, such as special protections for the rights of juveniles that may be measured by the existence of evidence-based and culturally appropriate policies to reduce juvenile offending
- *process* elements of implementation, such as the extent of specialist training for justice officials working with juveniles or changes in the diversity of professional staff in justice sector institutions
- *outcome* elements, such as changes in the number or proportion of children being detained (Harvard Kennedy School 2008; Vera Institute of Justice 2005).

## Access to justice

Equitable access to the criminal justice system can be measured at various points of the system. At the level of policing, indicators include the average amount of time for police to respond to victims of violent crime and biases in enforcement with different groups, such as the proportion of people stopped and searched (Vera Institute of Justice 2005). Measures of inequality between Māori and non-Māori women in New Zealand include indicators focused on areas in which Māori are most likely to face inequality in the justice system and include the rate of police

apprehension for offending by young Māori women aged 10-16 years. Such targeted indicators provide an opportunity for more directed efforts to reduce inequality than might be possible with more broadly based indicators (New Zealand Ministry of Women's Affairs nd).

Access to courts can be indicated by the percentage of accused persons legally represented at one or more court appearances in their cases - disaggregated by gender, ethnicity, region and level of urbanisation - or by comparing prosecution caseloads in communities with different levels of socioeconomic disadvantage (Vera Institute of Justice 2005). Equitable access to justice may also be indicated by enforcement biases in the proportion of sentence served, the proportion of defendants denied bail, or changes in the rate at which people are remanded in custody or fail to post bail (Vera Institute of Justice 2005).

Other indicators developed internationally in the context of Indigenous over-representation and equitable access include time spent with a legal representative, number of stays in proceedings due to lack of counsel, number of instances of court-ordered counsel and time spent in pre-trial detention (Canadian Criminal Justice Association 2000; Canada. Department of Justice 2010). The time taken to process cases, the number of cases processed and the amount of time a person remains on remand have been suggested by the UNDP (2006) as indicators for meeting international obligations for the safe, appropriate and humane treatment of prisoners.

Applying these indicators may be relevant to measuring the Indigenous experience of justice and placing this within a human rights context. For example, 'time taken to process cases, disaggregated to Indigenous status and remoteness', may serve as a measure of whether the justice system is providing an equitable level of service to all Australians, regardless of where they live. Given that one-quarter of the Indigenous population lives in remote or very

remote areas, compared with less than two percent of the non-Indigenous population (SCRGSP 2009), Indigenous Australians will be disproportionately affected by a lack of services in remote areas and the contribution of this to poor justice system outcomes. Amount of time on remand, disaggregated by Indigenous status, could similarly provide a representative measure of how the justice system impacts on individuals and whether this is affected by their Indigenous status.

## Quality of service

Measures of the quality of justice services can provide indicators of whether Indigenous and other groups are receiving not only equitable access to justice, but justice services of equivalent quality. Work by the Netherlands-based Measuring Access to Justice project on developing measures of access to justice for victims of crime has focused on measures of cost, procedural quality and outcome quality (Barendrecht, Mulder & Giesen 2006; Laxminarayan 2009). Cost measures include out-of-pocket expenses and time lost due to attending court processes as well as stress and other emotional costs. Procedural quality indicators include: procedural fairness (tone of voice used and neutrality), informational justice (how processes are explained), interpersonal justice (respect and politeness) and use of restorative justice approaches. Indicators of the quality of outcome include: equality of outcomes, informational (explanation of outcome) and transformative quality (ability for parties to move forward).

A checklist for promoting the quality of justice and the courts developed by the Council of Europe covers many dimensions including: whether legal and court information is available and easily accessible to all citizens in their own language, access to legal representation, management of court timeframes and physical access to courts (CEPEJ 2008).

While European justice systems differ in many ways from those in Australia, the notions of

quality service reflected in these approaches could be adapted to Australian circumstances. Together with indicators of quality service in other areas of the criminal justice system, they could provide a means for determining whether Indigenous Australians are receiving justice services on an equitable basis with other Australians.

## Victimisation and safety

Victims who are unable or unwilling to report victimisation to police are not able to fully access justice. The extent to which willingness and ability to report are differentially distributed across groups of people can be an indication of relative disadvantage. Indicators of victimisation also aim to measure whether certain groups face a greater risk of victimisation than others. For example, the opening of 13 new community policing resource centres in the Punjab region of India, staffed by members of the local community and providing telephone hotlines and designated areas for women, led to increased confidence in reporting to police and a three-fold increase in reports of domestic violence (Vera Institute of Justice 2005). Changes in victims' confidence in reporting to police may serve as an indicator of one aspect of community safety and also of equitable access to the justice system.

New Zealand safety surveys have examined risk of victimisation by type of offence, finding Māori to be at greater risk than other ethnic groups. New Zealand also uses the rate of application for protection orders where the applicants are Māori women as an indicator of disadvantage (Mayhew & Reilly 2007; New Zealand Ministry of Justice 2009; New Zealand. Ministry of Women's Affairs nd). Research with ethnic communities in the Netherlands has used measures of victimisation in ethnic minorities as well as the percentage of crimes reported by different ethnic groups (Bijlveld, Goudriaan & Malsch 2007). Other indicators of victimisation-related disadvantage might include: changes in the domestic crime

index (numbers and rates of crimes occurring in the home), changes in personal domestic security index (perceptions of safety in the home) and the average amount of time for police to respond to victims of violent crime (Vera Institute of Justice 2005). The number of preventive programs to reduce family violence in Indigenous communities has been proposed as a measure of community safety (PFII 2006).

## Justice outcomes

Indicators related to justice system outcomes aim to measure whether certain groups receive inequitable outcomes compared with others. Inequalities between Māori and non-Māori women have been mapped through the rate of prosecution for young Māori women, the prosecution rate for Māori women overall, the conviction rate for Māori women and custodial sentences as a proportion of Māori women convicted, in each case compared with figures for non-Māori (New Zealand. Ministry of Women's Affairs nd). Over-representation of male and female Māori in the criminal justice system has also been examined through indicators including the:

- proportion of apprehensions resolved through prosecution versus other outcomes such as diversion, warnings or cautions
- proportion of convicted persons receiving custodial sentences, home detention or other sentence types (New Zealand. Ministry of Justice 2009).

For measuring the use of non-custodial sentencing, it has been suggested that rather than simply using the number of persons on community-based orders, it is better to capture the availability and use of non-custodial mechanisms, while measuring the extent to which these serve community-wide interests (Vera Institute of Justice 2005).

## Imprisonment

Typical measures of imprisonment, such as the size of the prison population and the number of escapes, do not reveal the

experiences of people living in prison and in this sense, indicators of overcrowding and space per prisoner may be more useful (Vera Institute of Justice 2005). The challenge lies in designing indicators to identify simple measures that capture the experience of incarceration, particularly the burdens on prisoners and families. Given the extent to which Indigenous Australians are over-represented in prison, it may be valuable to try to measure the impacts of having a family or community member imprisoned and how these manifest as forms of disadvantage. Indicators of detention and imprisonment may include overcrowding and space per prisoner, prisoners' access to a system of redress and living conditions within prisons (Vera Institute of Justice 2005). The number of prisoners per cell has also been suggested as an indicator to ensure international obligations for the safe, appropriate and humane treatment of prisoners are being met (UNDP 2006).

## Perceptions of the justice system

Surveys that measure perceptions, for example the level of perceived bias within justice institutions, or public perceptions regarding access to justice, can indicate whether people from different ethnic groups feel they have equitable access to the justice system (Canada. Department of Justice 2010; Vera Institute of Justice 2005). Crime and safety surveys in New Zealand have found differences between Māori and other ethnic groups on perceptions of whether police, court officials and corrections personnel were doing a good job (Mayhew & Reilly 2007). Other questions in these surveys investigated whether victims felt they had to wait an unreasonable time for a police response, whether police were interested and respectful and levels of confidence in the police (Mayhew & Reilly 2007). Research with ethnic communities in the Netherlands has examined overall attitudes to police for different ethnic groups (Bijlveld, Goudriaan & Malsch 2007).

Indicators based on perceptions of justice should be used with caution. Australian and Canadian research on confidence in the criminal justice system has shown that the public has less confidence in the justice system than other public systems, such as the health system, and this declines across the institutions of the justice system, with the greatest confidence shown in the police, less in the courts and the least in the prison system (Roberts 2007; Indermaur & Roberts 2009). This is likely to be due to the public's decreasing levels of experience and contact across the three sectors and differences in public focus from positive aspects of crime control to negative aspects of dealing with serious offenders. The research suggests, however, that each institution should be investigated separately and that measures of confidence and perceptions tend to reveal more about the public than about the system (Roberts 2007).

## Community justice

The Canadian Department of Justice, in measuring performance against their key program of increased involvement of Aboriginal communities in the local administration of justice, measures changes in the numbers of communities with Aboriginal Justice Strategy projects, communities undertaking capacity building and training to support the administration of justice and clients served by Aboriginal justice programs (Canada. Department of Justice 2010).

Measuring access to community justice mechanisms may be useful for Indigenous Australian communities, particularly in remote communities with little access to state-based mechanisms or where the community draws on traditional authority in managing local community safety issues. Possible indicators would include the prevalence of community justice groups and the extent to which the groups are active (based on measures of types and frequency of activity, number of community members involved and the extent of external funding and other support).

## Wellbeing

Given the international focus on the wellbeing of Indigenous peoples, indicators of social and emotional wellbeing may be important to understanding the Indigenous experience of justice system disadvantage. The 2004–05 National Aboriginal and Torres Strait Islander Health Survey (NATSIHS) examined wellbeing across eight areas: psychological distress, impact of psychological distress, positive wellbeing, anger, life stressors, discrimination, cultural identification and removal from natural family (Kelly et al. 2009). Indigenous Australians were twice as likely (27%) as non-Indigenous Australians (13%) to report high or very high levels of psychological distress and this was higher for Indigenous women (32%) than Indigenous men (21%). Indigenous women aged 35 to 54 years were particularly likely to report serious psychological distress (76%).

While psychological distress can arise from many sources, including the many forms of disadvantage experienced by Indigenous Australians, many of these are located within the justice and community safety realm. Indigenous people reported higher levels of stressors than non-Indigenous people across a range of experiences related to justice and community safety, including:

- witnessing violence
- drug-related problems
- trouble with police
- being a victim of actual or threatened violence or abuse
- having a family member sent to, or currently in gaol (not asked of other Australians in social survey; Kelly et al. 2009).

## Choosing suitable indicators

In his 2009 *Social justice report*, the Aboriginal and Torres Strait Islander Social Justice Commissioner presented justice reinvestment, a policy approach originating in the

United States, as a promising way forward in addressing Indigenous over-representation in the justice system. Justice reinvestment involves diverting funds that would otherwise have been used for imprisonment to crime prevention, reduction and rehabilitation programs and services in local communities with high concentrations of offenders (Aboriginal and Torres Strait Islander Social Justice Commissioner 2009). The successful implementation of such an approach would require the use of indicators disaggregated to a local community level that could measure whether the services delivered through reinvestment were producing genuine benefits for those they areas they are directed towards.

It is also clear that indicators must be suited to capturing the justice system outcomes they are seeking to measure and be able to be disaggregated to inform policy processes. One example which demonstrates the problems associated with failing to use adequate indicators occurred in Brazil, where a number of courts were established to serve local communities, and especially the poor (Vera Institute of Justice 2005). Evaluation of the new courts sought to use measures of judicial performance including the number of cases filed, number of verdicts, time taken to dispose each case, proportion of hearings held on time and assessments of the quality of decisions. However, no information was collected on the identity of those using the court, their individual experiences or the impact of court decisions. It was therefore impossible to assess whether the new courts were meeting their goals and improving justice system access for the populations they were intended to serve (Vera Institute of Justice 2005).

New indicators need to be valid, reliable, consistently repeatable, able to be disaggregated in the context of small sample sizes and able to account for under-reporting of victimisation (see Marks 2004; Taylor 2006). These are not minor issues to resolve. Nonetheless, indicators able to measure constructs related

to stressors and their impact on wellbeing, community-level impacts of justice services and quality of service provided at all levels of the criminal justice system, may ultimately be the best way forward in understanding and addressing the real impacts of justice system disadvantage for Indigenous Australians.

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**All URLs were correct as at 5 July 2010.**

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